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Part III

Department of Health and Human Services

Administration of Children and Families

45 CFR Part 302, et al.

Child Support Enforcement Program; Incentive Payments, Audit Penalties; Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 302, 303, 304 and 305

RIN 0970–AB85

Child Support Enforcement Program; Incentive Payments, Audit Penalties

AGENCY: Office of Child Support Enforcement (OCSE), ACF, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This regulation proposes to implement the statutory requirement of the Social Security Act that requires the Secretary of Health and Human Services to establish the new performance-based incentive system. It also proposes a performance-based penalty system and establishes standards for certain types of audits. Finally, OCSE is proposing a requirement that States establish an administrative review process. Beginning in fiscal year 2000, the incentive system will be used to reward States for their performance in running a Child Support Enforcement (IV–D) Program. The penalty system will be used to penalize States that fail to perform at acceptable levels or fail to submit complete and reliable data.

DATES: Consideration will be given to written comments received by December 7, 1999.

ADDRESSES: Comments should be submitted in writing to the Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th Floor, Washington, DC 20447, Attention: Director of Policy and Planning Division, Mail Stop: OCSE/DPP. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m. on the 4th floor of the Department's offices at the above address. Comments may also be submitted by sending electronic mail (e-mail) to jpitts@acf.dhhs.gov, or by telefaxing to 202–401–3444. This is a not a toll-free number. Comments sent electronically must be in ASCII format.

FOR FURTHER INFORMATION CONTACT: Joyce Pitts, OCSE Division of Policy and Planning, (202) 401–5374. Hearing impaired individuals may call the Federal Dual Party Relay Service at 800–877–8339 between 8:00 a.m. and 7:00 p.m. eastern time.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Authority

These proposed regulations implement sections 409(a)(8), 452 (a)(4) and (g), and 458A of the Social Security Act (Act), as added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, (PRWORA), by the Child Support Performance and Incentive Act of 1998, Public Law 105–200, and as amended by the Welfare Reform Technical Amendments Act of 1997, Public Law 105–34.

These regulations are also issued under the authority granted to the Secretary of Health and Human Services (the Secretary) by section 1102 of the Act, 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which the Secretary is responsible under the Act.

II. Summary

These regulations cover four subjects: incentives to States; penalties against State TANF grants; audits; and administrative reviews. Each is briefly summarized below and is discussed in detail in subsequent sections of the preamble.

The incentive payment provisions are set forth in section 458A of the Act. Incentive payments would be made to States each fiscal year based on their collections and their performance levels on five statutory performance measures: paternity establishment; establishment of support orders; collections for current support; case collections for child support arrearages; and cost-effectiveness. The States would be assigned a statutorily set percentage based on their performance levels on each measure or their improved performance levels over the preceding year. The precise amount a State would be entitled to receive would be determined based on a number of different formulae set forth in the statute. First, an incentive base amount would be calculated for each State taking into account the State's collections base amount. This latter amount would be computed based on the amounts collected by the State with extra weight being given to cases that are or were formerly assigned to the State. For certain performance measures, the State would be credited with the full amount of the collections base and for others, 75 percent of the collections base. These amounts would then be multiplied by the percentages earned on each of the five performance measures and all would be added together to compute the State incentive base. Second, the incentive base amount would be used to compute the State's share of the incentive pool appropriated each year. A State's share of the pool would be the State's incentive base amount divided by the sum of the incentive base amounts for all States for that year multiplied by the amount appropriated for incentives for the year. However, in order to receive incentive amounts each year, the State's data must also be determined to be complete and reliable. Incentive payments would be made quarterly based on estimates with adjustments made following the end of the year based on actual data and performance levels. These provisions would be used to determine one-third of incentive payments made to States in fiscal year 2000, two-thirds of the incentive payments made for fiscal year 2001, and all of the incentive payments in subsequent years.

The penalty provisions are contained in section 409(a)(8) of the Act. A reduction of up to five percent would be taken against a State's family assistance grant for any of the following types of failures to meet requirements of the child support enforcement program under title IV–D of the Act: the failure to meet the paternity establishment percentages; the failure to meet other performance standards specified by the Secretary; the failure to submit complete and reliable data; and the failure to substantially comply with one or more IV–D program requirements. The Secretary proposes to adopt two additional performance measures for penalty purposes, i.e. support order establishment and collections for current support. These failures would be determined either based on a review of data submitted by a State, or as a result of a federal audit. After a failure has been identified, a State would have an automatic one-year corrective action period to remedy the failure or meet the performance standard or other requirement. A reduction would be imposed for quarters following the end of the corrective action year if the State fails to take sufficient corrective action and would continue through the first quarter in which the State is fully in compliance. The hearing and appeal provisions and 25 percent penalty ceiling applicable to other reductions in the State's family assistance grant under section 409 of the Act would also apply.

The audit provisions are set forth mainly in section 452(a)(4)(C) of the Act, but are also further clarified in section 409(a)(8) of the Act. OCSE would be required to conduct audits for the following purposes: to assess the completeness, reliability, and security of the data and the accuracy of the reporting systems used in calculating incentive and penalty performance measures; to determine the adequacy of financial management of the State IV–D

programs; to determine whether a State IV–D program is substantially complying with IV–D program requirements; and such other purposes as the Secretary finds necessary. The proposed regulations also establish specific standards for audits to determine whether a State IV–D program is in substantial compliance. Certain audits must be performed at least once every three years or more frequently if the State fails to meet standards.

The administrative review provisions are being proposed based on the Secretary's rulemaking authority under section 1102 of the Act. They would require a State to establish procedures to provide recipients of IV–D program services the opportunity to request a review of actions taken or not taken in their case. The State must establish procedures for reviewing such requests, taking appropriate actions, if necessary, and notifying the recipients of the results of the review and any actions taken.

III. Background

A. The National Strategic Plan

OCSE and its State IV–D program partners saw an opportunity to create a closer working relationship in the Government Performance and Results Act of 1993. This Act required Federal programs to set goals and measure results by establishing strategic plans. OCSE and State partners embarked on an effort to develop a National Child Support Enforcement Strategic Plan by consensus with a vision, mission, goals and objectives. This was achieved in February, 1995. The plan can be viewed on OCSE's website at http://www.acf.dhhs.gov/programs/cse/new/spwith.htm.

The plan includes three major goals for the child support program—that all children have paternity established, all children in the program have financial and medical support orders established, and all children in the program receive financial and medical support from both parents.

The plan has provided the foundation for both reshaping the State-Federal relationship into a collaborative partnership and building a results-oriented framework for the child support enforcement program. After development of the National Child Support Enforcement Strategic Plan, States and OCSE worked together to develop specific performance indicators that could be used to measure the program's success in achieving the goals and objectives.

It was this Strategic Plan and its array of performance measures that the States and OCSE looked to in order to recommend a performance-based incentive funding system to reward States for results. State and Federal partners sought a formula that would spur States to achieve the goals and objectives of the Strategic Plan. The array of performance measures was reviewed and the key indicators for the major activities of the child support enforcement program were selected. Essentially, the performance measures selected for the new incentive system are a subset of key measures for the program. The Strategic Plan measures and incentive measures for paternity establishment, support order establishment, collections on current support and cost-effectiveness are the same. The only deviation from the plan was the measure for collections on past-due support. State and Federal partners rejected the Strategic Plan measure that would provide an arrearage collection rate because there is a wide variation in how States laws affect arrearages. State and Federal partners concluded that the only workable measure that would level the playing field among States in this important area was one based on the number of cases that were paying on arrears.

After the incentive funding proposals were developed, State and Federal partners further collaborated to recommend a system of performance penalties for States. They returned to the Strategic Plan, its full array of measures and the recommended incentive funding system that was being considered for legislation. First the larger array of measures from the Strategic Plan were considered for penalties but rejected. Next, the partners focused on those key measures of the program's performance which had been recommended for incentives. The States and OCSE chose a subset of the incentive measures for application of financial penalties. These were the incentive measures which were given a greater weight in the computation of the incentive formula—paternity establishment, order establishment and the collection of current support.

In addition to the use of the Strategic Plan for developing performance measures for the child support enforcement program, recommending a State incentive funding system, and a system of performance penalties, it has also more recently shaped a revision of the child support data reporting and collection systems and the role of the Federal audit process. This proposed rule would implement key structures that have been shaped and guided by the Strategic Plan and these structures will, in turn, help achieve outcomes that fulfill the goals and objectives of the Plan itself.

B. Issues and Activities Leading to the New Incentive Provisions

Under section 458 of title IV–D of the Act, States are paid a minimum of six percent of their collections in TANF cases and six percent of their non-TANF collections as an incentive. Under this system, there is also the potential to earn up to 10 percent of collections based on the State's cost-effectiveness in running a child support program. However, the amount of non-TANF incentives is capped at 115 percent of the TANF incentive earned.

This incentive system has been questioned for focusing on only one aspect of the IV–D program—cost-effectiveness. It does not reward States for other important aspects of child support enforcement, such as paternity and support order establishment. In addition, since all States receive the minimum incentive amount of six percent of collections regardless of performance, this system was not regarded as having a real incentive effect.

Over the past decade, a number of commissions and organizations have recommended the adoption of a new performance-based incentive system. In 1988, Congress authorized the creation of the U.S. Commission on Interstate Child Support to make recommendations to Congress on improving the child support program. That Commission's report called for a study of the Federal funding formula and changes to an incentive structure that is based on performance. In addition, other national organizations, including the National Conference of State Legislatures, the American Public Welfare Association (now the American Public Human Services Association, APHSA), the National Governor's Association, and several national advocacy organizations recommended the adoption of a new performance-based incentive system.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) required the Secretary, in consultation with State IV–D Program Directors, to recommend to Congress a new incentive funding system for State IV–D programs based on program performance. Section 341(a) of PRWORA required that: (1) the Secretary of Health and Human Services develop a new incentive funding system, in a revenue neutral manner; (2) the new system provide additional payments to any State based on that

State's performance; and (3) the Secretary report to Congress on the new system.

The Incentive Funding Workgroup was formed in October 1996. This group consisted of 15 State and local IV–D directors or their representatives and 11 Federal staff representatives from HHS. Earlier efforts of this State-Federal partnership produced the National Strategic Plan for the IV–D program and a set of outcome measures to indicate the program's success in achieving the goals and objectives of the plan. Using the same collaboration and consensus-building approach, State and Federal partners recommended a new incentive funding system based on the foundation of the National Strategic Plan.

Over a period of three months, recommendations for the new incentive funding system emerged. State partners consulted with State IV–D programs not represented directly on the Workgroup. The final recommendations represented a consensus among State and Federal partners on the new incentive funding system. The Secretary fully endorsed the incentive formula recommendations. The Secretary's report made recommendations to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

Most of the recommendations were included in Public Law 105–200, the Child Support Performance and Incentive Act of 1998. This proposed rule would implement that legislation. The legislative language is very explicit. Therefore, we are for the most part, merely repeating the language in these proposed rules. However, the proposed regulations add details or guidance on how to treat certain cases or actions and describe when it is permissible to exclude certain cases for purposes of calculating State performance. We developed the specific exclusions and definitions contained in the proposed regulations based on the work done by the Incentive Funding Workgroup. Any non-statutory proposed elements of this regulation are subject to public comment and may be changed based on comments received.

C. Audit and Penalties

Prior to enactment of PRWORA, the Federal statute at former section 452(a)(4) of the Act required periodic, comprehensive Federal audits of State IV–D programs to ensure substantial compliance with all Federal IV–D requirements. If the audit found that the State program was not in substantial compliance and if the deficiencies identified in an audit were not corrected, States faced a mandatory fiscal penalty of between 1 and 5 percent of the Federal share of the State's title IV–A program funding under section 403(h) of the Act. Once an audit determined compliance with identified deficiencies, the penalty was lifted or ceased.

Such a detailed, process-oriented audit was time-consuming and labor-intensive for both Federal auditors and the States. In addition, audit findings did not measure current State performance or current program requirements because of delays and the time it took to conduct audits. States contended that the audit system focused too much on administrative procedures and processes rather than performance outcome and results.

Notwithstanding these deficiencies, it is widely agreed that efforts to pass the Federal audit were a significant driving force behind States' improved program performance during the years that these audit and penalty provisions were in place prior to enactment of PRWORA. While two-thirds of the States failed the initial audit, three-fourths of these same States came into compliance after a corrective-action period and avoided the financial penalty.

Section 452(a)(4) of the Act, as amended by PRWORA, changed the Federal audit process to focus on measuring performance and program results, instead of process. Subsequently as part of technical amendments to PRWORA, the penalty provision under 409(a)(8) of the Act was modified to conform to the new audit approach under the IV–D program. The new approach to measuring program results changes the Federal audit focus to determining the reliability of program data used to measure performance and requires States to conduct self-reviews, similar to the former Federal process audits, to assess whether or not all required IV–D services are being provided. States have the opportunity to use these self-reviews (as the Office of Child Support Enforcement is publishing under a separate proposed rule) to find and correct deficiencies and avoid frequent Federal audits. Federal auditors will assess States' data used to compute performance outcome measures and determine if these data are complete and reliable. In addition, Federal auditors will conduct periodic financial and other audits, as necessary. The statute allows OCSE to make an annual determination on the completeness and reliability of State data used to compute performance measures. However, once a State's data has been determined to be complete and reliable, we plan to only audit the data every three years—unless there is a reason to believe it is needed more often.

The penalty system in this proposed rule would replace the previous penalty under former section 403(h) of the Act that focused on substantial compliance with prescriptive Federal IV–D requirements. However, sections 452(a)(4)(C) and 409(a)(8) continue to allow the Secretary discretion to determine substantial noncompliance with IV–D requirements and to assess a penalty under section 409(a)(8) of the Act, based on discretionary audits of State IV–D programs.

Federal auditors will work with States to assess the reliability of their data as well as to test State systems used to produce the data and the tools used to make the reliability determinations. Federal auditors' assessment of data reliability is a critical aspect of assuring that both incentives and penalties are based on accurate and reliable State-reported data. This is an important control, not only on the expenditure of Federal funds, but because it underpins the fairness of the incentive and penalty system and the resulting confidence that States have in rewards dispensed and penalties assessed nationwide.

State-reported, statistical and financial data taken from the new reporting forms, the OCSE–157, the OCSE–34A, and the OCSE–396A will be used in determining State performance levels. The OCSE–157 statistical report is, in part, the culmination of a Federal-State data improvement initiative that began in early 1992. That initiative, referred to as the Measuring Excellence Through Statistics (METS) initiative, developed clear reporting instructions and State reporting of data critical to measuring program results, which in turn will result in improved State program statistical and financial data. State data as reported on the OCSE–157, as well as on the expenditure reporting form (the OCSE–396A) and the support collection reporting form (the OCSE–34A), will be evaluated for completeness and reliability by Federal auditors. State-reported data that is determined to be incomplete or unreliable may cause reductions in the State's funding under the IV–A program and loss of Federal incentive payments under the IV–D program.

The performance measures and standards proposed in this regulation for penalty purposes reflect three objectives: (1) To insure consistency and integration with the proposed incentive system; (2) to neither reward nor penalize a State for certain levels of performance with no significant increase over the previous year; and (3) to assess a penalty for poor State

performance with no significant improvement over the previous year. While the specifics of performance measures for penalty purposes, with the exception of the Paternity Establishment Percentage (PEP) under section 452(g) of the Act, are left to the discretion of the Secretary, the approach to assessing penalties proposed in this regulation takes into consideration the results of work done by State and Federal partners during the development of the National Strategic Plan and the proposal for incentive measures, as well as consultations with a wide variety of other interested parties, including the Congress, State representatives, advocates, and national organizations.

D. Performance Measures

This section gives a description of each of the performance measures to be used for incentive and penalty purposes.

The new child support incentive system, in section 458A of the Act, as amended by the Child Support Performance and Incentive Act of 1998, measures State IV–D program performance in five major areas: (1) Paternity establishment; (2) cases with child support orders; (3) collections on current support; (4) cases with collections on arrears; and (5) cost-effectiveness.

The penalty system proposed in this regulation would measure State IV–D program performance in three areas: (1) Paternity establishment, (2) cases with child support orders, and (3) collections on current support. The first is required by the statute pursuant to 409(a)(8)(i) and the other two are measures being proposed by the Secretary.

1. Paternity Establishment

The measure for paternity establishment is that included by Congress for purposes of paternity establishment penalties under section 452(g) of the Act, as amended by PRWORA. It is also one of the performance measures for incentives purposes under section 458A(b)(6)(A)(i) of the Act. States may use either one of the following two measures set forth in 452(g)(2) of the Act:

(1) IV–D Paternity Establishment Percentage (PEP) is the ratio that the total number of children in the IV–D caseload in the fiscal year (or, at the option of the State, as of the end of the fiscal year) who have been born out-of-wedlock and for whom paternity has been established or acknowledged, bears to the total number of children in the IV–D caseload as of the end of the preceding fiscal year who were born out of wedlock.

(2) Statewide Paternity Establishment Percentage (PEP) is the ratio that the total number of minor children who have been born out-of-wedlock and for whom paternity has been established or acknowledged during the fiscal year, bears to the total number of children born out-of-wedlock during the preceding fiscal year.

Under section 452(g)(2) of the Act, the count of children will not include any child who is a dependent by reason of the death of a parent (unless paternity is established for that child), nor any child whose parent is found to have good cause for refusing to cooperate with the State agency in establishing paternity, or for whom the appropriate State agency determines it is against the best interest of the child to pursue paternity issues.

2. Cases With Child Support Orders

This measure is found in section 458A(b)(6)(B)(i) of the Act and shows, for incentive purposes, the percentage of cases in the IV–D caseload in which there is a support order. This proposed regulation would apply the same measure for penalty purposes.

3. Collections on Current Support

The third measure is at section 458A(b)(6)(C)(i) of the Act for purposes of incentives, and is proposed as the measure for penalty purposes in this regulation. This measure focuses on the proportion of current support owed that is collected in IV–D cases during the fiscal year.

Another approach would be to look at cases with payments instead of actual collections. We invite comment on the use of ''Cases with Collections'' as an alternative to the ''Collections on Current Support'' penalty measure.

4. Collections on Arrears

The fourth measure, found in section 458A(b)(6)(D) of the Act for incentive purposes, measures the total number of cases under the IV–D program in which payments of past-due child support were received in the fiscal year and part or all of the payments were distributed to the family to whom the past-due child support was owed (or, if all past-due child support owed to the family was, at the time of receipt, subject to an assignment to the State under title IV–A of the Act, part or all of the payments were retained by the State) divided by the total number of IV–D cases in which there is past-due child support.

This measure includes those cases where, during the fiscal year, all of the past-due support collected was disbursed to the family, or was retained by the State because all the support was assigned to the State. If some of the past-due support owed in a IV–D case was assigned to the State and some was owed to the family, only those cases where some of the support actually went to the family can be included.

5. Cost-Effectiveness

The final measure for incentive purposes under section 458A(b)(6)(E)(i) of the Act, compares the total amount of support collected by the State's IV–D program during the fiscal year to the total amount expended during the fiscal year in the IV–D program.

E. Weighting the Measures

The statute requires some measures to get more weight than other measures. For incentive purposes under section 458A of the Act, each State would earn five scores based on performance on each of the five measures. The statute specifies that more emphasis should be placed on some of the measures, such as those that ensure timely and consistent support for children. Therefore, in accordance with section 458A(b)(5)(A) of the Act, we propose to weight the first three measures (paternity establishment, order establishment, and collections on current support) slightly more heavily than the last two (collections on arrears and cost effectiveness). The weighted scores are used to determine a State's maximum base amount.

F. Exclusion of Other Measures From Penalty Measures

While the incentives measures, formula, and process is laid out or cross referenced explicitly in section 458A of the Act, the penalty provisions in sections 409(a)(8) of the Act allow the Secretary to set the measures, performance standards (other than those for paternity establishment), and process that will be used to determine if State performance is sufficiently inadequate to warrant a financial penalty.

As noted earlier, we based these measures on the Strategic Plan. Under this proposed regulation, penalties would be based on a State's failure to meet minimum standards on paternity establishment, support order establishment and collection on current support performance measures, which are all in the strategic plan. The remaining measures—collections on arrears and cost-effectiveness are not included in the penalty system. We do not propose that these two measures be included for the following reasons:

(1) The Child Support Performance and Incentive Act of 1998 changed the recommended performance standard for

the number of cases paying arrears. The impact of this adjustment to the proposed standard may have the effect of reducing the number of cases for which past-due support is collected which may be counted for incentives purposes. If some past due support was assigned to the State and some due to the family, the case can only be included where some of the support actually went to the family. We do not believe a State should be measured, for penalty purposes, on collection of arrears cases at this time. This is a new area of reporting for states and the impact of the statutory adjustment to this standard is not clear.

(2) We also do not propose including the cost-effectiveness measure for penalty purposes. Including it might have discouraged States from investing in program improvements that might raise program costs and might reduce cost-effectiveness or might not yield results immediately. We believe that there are other, adequate mechanisms to address concerns for cost-shifting or improper use of IV–D funds (such as financial management and administrative cost audits). In addition, State automated IV–D systems costs are expected to remain high over the next few years due to continued development and modification of statewide-automated systems to meet the requirements of PRWORA, thus making such a measure less reflective of the actual cost-effectiveness of the program.

For these reasons, we propose to begin the new penalty system with just three penalty measures and intend to evaluate the possibility of including other measures at a later time when more is known about the impact of this penalty system. For example, we are in the process of developing a recommendation to the Congress on a medical support performance measure for incentive purposes, in accordance with section 201(d)(2) of the Child Support Performance and Incentive Act of 1998. The Secretary's report is due to the Congress on October 1, 1999, including recommendations for incorporation of a medical support measure in a revenue neutral manner in the incentive payments system established under section 458A of the Act. When changes are made to incorporate such a measure in the statutory incentives system, it would be appropriate to consider changes to the penalty measures presented in these regulations.

G. Interaction Between Incentives and Penalties

We believe there are levels of State performance that merit an incentive payment and there are levels that warrant a penalty. However, there are also levels of State performance that neither merit an incentive nor warrant a penalty.

There is an interaction between the incentive and penalty systems proposed in this regulation. States with certain levels performance on the three penalty measures would be able to avoid a penalty and qualify for an incentive payment if a significant increase over the previous year's performance is achieved in those measures (i.e., 10 percent on the PEP, 5 percent on support orders and current support collections). However, under this alternative improvement formula the incentive payment would never be more than half of the maximum incentive possible. As a result, those States with lower performance levels would at least receive some incentive provided the program is improving sufficiently and quickly. Penalties would be assessed against States with very poor performance and decreasing, static, or minimal increases in performance over the previous year.

While Congress was clear in setting a performance standard for the paternity establishment percentage, the statute provided the Secretary with discretion to set standards for performance in other areas. State and Federal partners strongly considered the mandated paternity establishment penalty model and determined that it would not work for the other measures. Setting such a high standard for order establishment and current support would be unrealistic and would cause almost every State to be penalized.

The order establishment and current support performance standards for determining at what level a penalty would be assessed against a State were set applying historical program data. Using this information, an analysis was done to determine the number of States that might receive incentive funding, the number that might receive neither incentive or penalty, and the number that would receive a penalty. The partners agreed that the resulting system would provide a graduated scale of punishment and rewards that would motivate States to improve from year to year. Under the proposed levels, the majority of States would not potentially be subject to penalties.

IV. Description of Regulatory Provisions—Incentives and Administrative Review

Parts 302, 303 and 304—State Plan Requirements, Standards for Program Operations, and Federal Financial Participation

The cross-references to existing regulations mentioned in this Description of Regulatory Provisions are as amended by the Interim Final Conforming Rule (64 FR 6237) published in the **Federal Register** February 9, 1999.

Sections 302.55 and 304.12—Regulations for Existing Incentives Process

Currently, under section 454(22) of the Act and 45 CFR 302.55, the only restriction on the use of incentive funds awarded to the State is that States must share incentives earned with any political subdivision that shares in funding the administrative cost of the program. The restriction to share funds with political subdivisions is not being changed. Although Section 454(22) does not refer to Section 458A, the restriction will be applicable when Section 458A is redesignated as Section 458. Thus, we believe it was Congress' intent to have this restriction apply continuously to the payment of incentives. Therefore, we propose adding reference to the proposed new part 305 in § 302.55 by adding the words ''and part 305'' after ''§ 304.12''.

Current 45 CFR 304.12(b)(1), as revised on 2/9/99 at 64 FR 6237, based on section 458 of the Act, computes incentive payments for States for a fiscal year as a percentage of the State's TANF collections, and a percentage of its non-TANF collections. The percentages are determined separately for TANF and non-TANF portions of the incentive. The percentages are based on the ratio of the State's TANF collections to the State's total administrative costs and the State's non-TANF collections to the State's total administrative costs. This is known as a State's cost-effectiveness ratio. The portion of the incentive payment paid to a State in recognition of its non-TANF collections is limited to 115 percent of the portion of the incentive payment paid in recognition of its TANF collections.

HHS estimates the total incentive payment that each State will receive for the upcoming fiscal year. Each State includes one-quarter of the estimated total payment in its quarterly collection report that will reduce the amount that would otherwise be paid to the Federal government. Following the end of a fiscal year, HHS calculates the actual

incentive payment the State should have received. If adjustments to the estimated amount are necessary, an additional positive or negative title IV–D grant award is issued. Under section 201(f) of the Child Support Performance and Incentive Act of 1998, effective October 1, 2001, current section 458 of the Act will be repealed and section 458A of the Act, will be redesignated as section 458. To implement this statutory provision, we propose to add a new paragraph (d) to § 304.12 under which § 304.12 would become obsolete on October 1, 2001.

A new paragraph (e) would be also added to reflect the phase-in of the new incentive system. In fiscal year 2000, the amount of incentives paid under § 304.12 would be reduced by one-third. In fiscal year 2001, the amount of incentives paid under § 304.12 would be reduced by two-thirds.

Section 303.35—Administrative Review Process

We are proposing an outcome-oriented approach to child support enforcement program accountability and responsibility. The proposed approach seeks to balance the Federal government's oversight responsibility with States' responsibilities for child support service delivery and fiscal accountability. One element of the proposal being implemented by these proposed regulations, is the focus on results-oriented performance measures for incentives and penalties purposes. A second aspect of the proposal replaces statutory and regulatory Federal audit requirements with States' responsibility for ensuring that their programs meet IV–D requirements. The requirement for these periodic State self-reviews, intended for management purposes to identify and resolve deficiencies in case processing, was also adopted under PRWORA as a State plan requirement at section 454(15)(A) of the Act. Procedures for State self-reviews are being implemented under a separate rulemaking.

Although Federal funding of administrative review processes has long been considered an allowable expenditure under the IV–D program, we believe it to be a key element to any IV–D program. In the era of our focus on program results, we believe it appropriate to ensure that these administrative review processes are available to recipients of IV–D services. Using the authority under section 1102 of the Act to publish regulations that the Secretary deems necessary for the efficient administration of the IV–D program, we propose to add a section to part 303 requiring States to provide for an administrative review.

Under proposed § 303.35, entitled Administrative Review Procedure, each State must have a procedure in place to allow individuals receiving IV–D services the opportunity to request a review of actions taken, or not taken when there is evidence that an action should have been taken, on a particular case. In addition, the State must have a procedure for reviewing the individual's complaint and resolving it where appropriate action was not taken and for notifying the individual of the results of the review and any actions taken.

Part 305—Program Performance Measures, Standards, Financial Incentives, and Penalties

We propose adding a new part 305 to implement the new incentive system under section 458A of the Act and certain audit and penalty provisions found in sections 409(a)(8), 452(a)(4)(C) and (g) of the Act. Former Part 305 was revoked on 2/9/99 at 64 FR 6237.

Section 305.0 Scope

Proposed § 305.0, Scope, explains what part 305 covers, including the statutory basis for the incentive and penalty systems, when the incentive and penalty systems, described above, are effective and a general description of the contents of part 305. Proposed § 305.1 contains definitions and proposed § 305.2 contains performance measures. Proposed §§ 305.31 through § 305.36 of part 305 would describe the incentive system. Proposed §§ 305.40 through § 305.42 and §§ 305.60 through § 305.66 would describe the grounds for penalties under section 409(a)(8), the procedures for imposing penalties, the types of audits, and set forth the standards for substantial compliance audits and certain audit procedures.

Section 305.1 Definitions

Under proposed § 305.1, Definitions, the definitions found in § 301.1 of program regulations would also apply to part 305. In addition, for purposes of part 305, § 305.1 would define the following terms:

The term IV–D case is a parent (mother, father, or putative father) who is now or eventually may be obligated under law for the support of a child or children receiving services under the title IV–D program. In counting cases for the purposes of this part, States may exclude cases closed under § 303.11 and cases over which the State has no jurisdiction. Lack of jurisdiction cases are those in which a non-custodial parent resides in the civil jurisdictional boundaries of another country or Federally recognized Indian Tribe and no income or assets of this individual are located or derived from outside that jurisdiction, and the State has no other means through which to enforce the order.

The definition of a IV–D case in proposed § 305.1 implements the requirement in section 458A(e) that the Secretary include in regulations directions for excluding from the incentive calculations certain closed cases and cases over which the States do not have jurisdiction. The definition itself was developed during the METS initiative and used in required Federal report forms and defines which cases may be excluded for purposes of calculating incentives, namely, IV–D cases meeting the conditions for case closure under § 303.11 and cases over which the State has no jurisdiction. This definition assures that workable cases are counted while those cases in which there is no possible action by the IV–D agency would be discounted. It is essential that we use consistent definitions for all data and we propose, therefore, that the definitions in § 305.1 apply equally for incentives and penalties purposes.

Under proposed paragraph (b), the term Current Assistance collections means collections received and distributed on behalf of individuals whose rights to support are required to be assigned to the State under title IV-A of the Act, under title IV–A of the Act, under title IV–E of the Act, or under title XIX of the Act. In addition, a referral to the State's IV–D agency must have been made. Current Assistance collections do not include assistance paid under Tribal TANF because the statute includes only those collections where there is an assignment to the State. Tribal TANF does not fall within that category.

Under proposed paragraph (c), the term Former Assistance collections means collections received and distributed on behalf of individuals whose rights to support were formerly required to be assigned to the State under either title IV–A (TANF or Aid to Families with Dependent Children, AFDC), title IV–E (Foster Care), or title XIX (Medicaid) of the Act.

Under proposed paragraph (d), the term Never Assistance/Other collections means all other collections received and distributed on behalf of individuals who are receiving child support enforcement services under title IV–D of the Act.

The definitions of various categories of collections proposed above reflect categories of collections described in section 458A(b)(5)(C) of the Act and used to calculate the State collections

base used for computing incentives. Current Assistance and Former Assistance are multiplied by 2 and added to Never Assistance/Other collections to determine the State's collections base. The current report that States use to report collection information to OCSE, the OCSE–34A, did not originally address how title XIX, Medicaid, collections should be reported. This was changed to be consistent with the definitions stated above, when the report was last submitted for clearance.

Under proposed paragraph (e), the term total IV–D administrative costs means total IV–D administrative expenditures claimed by a State in a specified fiscal year adjusted in accordance with § 305.32 of this part. Proposed § 305.32, addressed later, includes specific expenditures that are excluded when calculating a State's total IV–D administrative expenditures for calculation of the cost-effectiveness performance measure.

The term Consumer Price Index or CPI, in proposed paragraph (f), is taken from the definition in section 458A(b)(2)(B) of the Act, and means the last Consumer Price Index for all-urban consumers published by the Department of Labor. The CPI for a fiscal year is the average of the Consumer Price Index for the 12-month period ending on September 30 of the fiscal year.

Under proposed paragraph (g), the term State incentive payment share for a fiscal year means the incentive base amount for the State for the fiscal year divided by the sum of the incentive base amounts for all of the States for the fiscal year. This definition is found in section 458A(b)(3) of the Act.

Under proposed paragraph (h), the term State incentive base amount for a fiscal year means the sum of the State's performance level percentages (determined in accordance with § 305.33) multiplied by the State's corresponding maximum incentive base amount for each of the following measures: (1) The paternity establishment performance level; (2) the support order performance level; (3) the current collections performance level; (4) the arrears collection performance level; and (5) the cost-effectiveness performance level. This definition is found in section 458A(b)(4) of the Act.

Under proposed paragraph (i), the term reliable data includes the most recent data available which are found by the Secretary to be reliable for purposes of computing the paternity establishment percentage. In addition, we have gone beyond the legislative definition by adding that data for computing each of the measures must be found to be sufficiently complete and error free to be convincing for their purpose and context. This definition is based on § 452(g)(2)(C) of the Act and includes further elaboration of the circumstances under which the Secretary will consider data to be reliable. This is consistent with the recognition that data may contain errors as long as they are not of a magnitude that would cause a reasonable person, aware of the errors, to doubt a finding or conclusion made based on the data. Part of this definition is lifted verbatim from the Chapter 1, Introduction of the U.S. General Accounting Office, Office of Policy Booklet (Standards) entitled, Assessing the Reliability of Computer-Processed Data, dated September 1990. The official designation of this booklet is GAO/OP–8.1.3. The Government Auditing Standards—generally referred to as the ''Yellow Book''—provide the standards and requirements for financial and performance audits. A key standard covers the steps to be taken when relying on computer-based evidence. This booklet from the Office of Policy is intended to help auditors meet the Yellow Book standard for ensuring that computer-based data are reliable.

Under proposed paragraph (j), the term complete means all reporting elements from OCSE OMB approved reporting forms that are necessary to compute a State's performance levels, incentive base amount, and maximum incentive base amount have been provided.

We believe the definitions in (i) and (j) are appropriate for purposes of Part 305 since State IV–D programs are required to have comprehensive statewide automated systems which, under section 454A(c) of the Act must enable the Secretary to determine the incentive payments and penalty adjustments required by sections 452(g) and 458 of the Act. In addition, under section 454(15)(A), States must have a process of extracting from the automated data processing system and transmitting to the Secretary, data and calculations concerning the levels of accomplishment and rates of improvement with respect to the applicable performance indicators for purposes of sections 452(g) and 458 of the Act. Finally, Federal auditors are required under section 452(a)(4)(C)(i) of the Act to conduct audits to assess the completeness, reliability, and security of the data, and the accuracy of the reporting systems used in calculating performance indicators. These provisions, taken together, require a clear, accepted and supportable definition of reliable data.

Reliable data on all the key data elements is critical for calculating accurate incentive payments. States must ensure that they will be able to accurately report this data. Federal auditors will determine the reliability of State data using commonly accepted standards. We invite comment on the definition of reliable data set forth at proposed section 305.1(i) and the methods for ensuring reliable data is reported. Specifically, we request alternate suggestions for methods or approaches which would address this issue within the context of the statutory requirement and the procedures of conducting the data reliability assessments.

Section 305.2 Performance Measures

This section describes the performance measures that will be used in the incentive and penalty systems. Proposed paragraph (a) of § 305.2, Performance measures, indicates the child support incentive system would measure State performance levels in five areas: (1) Paternity establishment; (2) child support order establishment (cases with orders); (3) collections on current support; (4) collections on arrears; and (5) cost-effectiveness. It also proposes that the penalty system measure State performance in three of these areas: (1) paternity establishment; (2) child support order establishment; and (3) collections on current support.

Proposed paragraph (a)(1), Paternity Establishment Performance Level, reflects the explicit statutory language in section 458A(b)(6)(A)(i) of the Act, which gives States the choice of being evaluated on one of the following two measures, discussed in detail later for their paternity establishment percentage (commonly known as the PEP). The statute and the proposed paragraph provide that the count of children shall not include any child who is a dependent by reason of the death of a parent (unless paternity is established for that child). It shall also not include any child with respect to whom there is a finding of good cause for refusing to cooperate with the State agency in establishing paternity, or for whom the appropriate State agency determines it is against the best interest of the child to pursue paternity issues.

The IV–D paternity establishment percentage and statewide paternity establishment percentage definitions that follow are contained in subparagraphs (a)(1)(i) and (ii) are set forth in sections 452(g)(2)(A) and (B) of the Act:

IV–D Paternity Establishment Percentage means the ratio that the total number of children in the IV–D caseload

in the fiscal year (or, at the option of the State, as of the end of the fiscal year) who have been born out-of-wedlock and for whom paternity has been established or acknowledged, bears to the total number of children in the IV–D caseload as of the end of the preceding fiscal year who were born out-of-wedlock. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Total \# of Children in IV-D Caseload in the Fiscal Year or, at the option of the State, as of the end of the Fiscal Year who were Born Out-of-Wedlock with Paternity Established or Acknowledged}}{\text{Total \# of Children in IV-D Caseload as of the end of the preceding Fiscal Year who were Born Out-of-Wedlock}}$$

Statewide Paternity Establishment Percentage is the ratio that the total number of minor children who have been born out-of-wedlock and for whom paternity has been established or acknowledged during the fiscal year, bears to the total number of children born out-of-wedlock during the preceding fiscal year. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Total \# of Minor Children who have been Born Out-of-Wedlock and for Whom Paternity has been Established or Acknowledged During the Fiscal Year}}{\text{Total \# of Children Born Out of Wedlock During the Preceding Fiscal Year}}$$

The IV–D PEP is a measure of children in the caseload at a point-in-time (i.e. the end of the fiscal year). The Statewide PEP is a measure of what happened during the fiscal year. Both counts include children in interstate cases.

As we propose the measure, paternities include those established by: (1) Voluntary acknowledgments; and (2) all types of orders, including court, administrative, and default. However, a paternity can only be counted once—either when a voluntary acknowledgment is completed or when an order determining paternity is established.

The second performance measure contained in proposed § 305.2(a)(2), Support Order Performance Level, requires a determination of whether or not there is a support order for each case. These support orders include all types of legally enforceable orders, including court, default, and administrative. Since the measure is a case count at a point-in-time, modifications to an order do not affect the count. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Number of IV-D Cases with Child Support Orders}}{\text{Total Number of IV-D Cases}}$$

While the performance measure is defined in section 458A(b)(6)(B)(i) of the Act, paragraph (a)(2) provides guidance as to which orders are counted for calculation of performance measures. This is to ensure consistency across States and is consistent with reporting instructions for States.

The proposed performance measure in paragraph (a)(3) is Current Collections Performance Level. It measures the amount of current support collected as compared to the total amount owed. Current support is money applied to current support obligations and does not include payment plans for payment towards arrears. If included, voluntary collections must be included in both the numerator and the denominator. This measure would be computed monthly and the total of all months reported at the end of the year.

The equation to compute the measure would be as follows (expressed as a percent):

$$\frac{\text{Total Dollars Collected for Current Support in IV-D Cases}}{\text{Total Dollars Owed for Current Support in IV-D Cases}}$$

As with the other performance measures, this measure derives from section 458A(b)(6) of the Act. This approach and definition ensures a consistent interpretation across States and captures a true picture of payments made, voluntarily or under order, which families receive each month. Finally, as provided under section 458A(c), support collected by one State at the request of another State would be treated as having been collected in full by both States.

Section 458A(b)(6)(D)(i) of the Act sets forth the arrearage collection performance level included in proposed § 305.2(a)(4) Arrearage Collection Performance Level. This measure would include those cases where all of the past-due child support was disbursed to the family, or all of the past due child support was retained by the State because all the past due child support was assigned to the State. If some of the past due child support was assigned to the State and some was owed to the family, only those cases where some of the support actually was disbursed to the family would be included. The equation to compute the measure would be as follows (expressed as a percent):

$$\frac{\text{Total number of eligible IV-D cases paying toward arrears}}{\text{Total number of IV-D cases with arrears due}}$$

This measure, unlike the current collections measure, counts cases with child support arrearage collections, rather than the percentage of arrearages collected.

Because we recognize the confusion that may ensue from reporting, as required by section 452(a)(10)(C)(vi) of the Act, widely disparate levels of arrearage debts in States, any display of this data at the Federal level will be accompanied with a clear explanation of why State performance cannot be compared and circumstances that affect this measure. This would include such things as: (1) The optional charging and calculation of interest on arrearages, (2) cases entering the IV–D caseload with existing large arrearages, and (3) old arrearages set before Federal law mandated establishing support orders based on the obligor's income rather than based on the amount of public assistance paid to the obligor's family.

The final performance measure, reflecting section 458A(b)(6)(E)(i) of the Act, appears at proposed paragraph (a)(5) Cost-Effectiveness Performance Level. This measure compares the total amount of IV–D collections for the fiscal year to the total amount of IV–D expenditures the fiscal year. The equation to compute this measure is as follows (expressed as a ratio):

$$\frac{\text{Total IV-D Dollars Collected}}{\text{Total IV-D Dollars Expended}}$$

This indicator provides a basic cost-benefit analysis of a child support enforcement program. As provided under section 458A(c) of the Act, collections by one State at the request of another State will be counted as having been collected in full by both States and any amounts expended by a State in carrying out a special project under section 455(e) of the Act will be excluded.

Under proposed § 305.2(b), as specified in section 458A(b)(5) of the Act for incentive purposes, the 5 performance measures would be weighted in the following manner. Each State will earn five scores based on performance on each of the five measures. The first three measures (paternity establishment, order establishment, and current collections) percent score earn 100 percent of the collections base as defined in proposed § 305.31(e). The last two measures (collections on arrears and cost-effectiveness) earn a maximum of 0.75 percent of the collection base as defined in proposed § 305.31(e).

The weighting provision was recommended by State and Federal partners and included in the Secretary's report to Congress as an essential aspect of the incentive system, which would place extra emphasis on getting support to families each and every month.

Section 305.31 Amount of Incentive Payment

Under proposed paragraph (a) of § 305.31 (which addresses the contents of section 458A(b) of the Act), the incentive payment for a State for a fiscal year would be equal to the incentive payment pool for the fiscal year, multiplied by the State incentive payment share for the fiscal year. As specified in section 458A(b)(2) of the Act, proposed paragraph (b) would define the incentive payment pool as:

(1) $422,000,000 for fiscal year 2000;
(2) $429,000,000 for fiscal year 2001;
(3) $450,000,000 for fiscal year 2002;
(4) $461,000,000 for fiscal year 2003;
(5) $454,000,000 for fiscal year 2004;
(6) $446,000,000 for fiscal year 2005;
(7) $458,000,000 for fiscal year 2006;
(8) $471,000,000 for fiscal year 2007;
(9) $483,000,000 for fiscal year 2008; and
(10) For any succeeding fiscal year, the amount of the incentive payment pool for the fiscal year that precedes such succeeding fiscal year multiplied by the percentage (if any) by which the CPI for such preceding fiscal year exceeds the CPI for the second preceding fiscal year. In other words, for each fiscal year following fiscal year 2008, the incentive payment pool would be multiplied by the percentage increase in the CPI between the two preceding years. For example for fiscal year 2009, if the CPI increases by 1 percent between fiscal years 2007 and 2008, then the incentive pool for fiscal year 2009 would be a 1 percent increase over the $483,000,000 incentive payment pool for fiscal year 2008, or $487,830,000.

Proposed paragraph (c) defines, in accordance with section 458A(b)(3), the State incentive payment share for a fiscal year to be the incentive base amount for the State for the fiscal year divided by the sum of the incentive base amounts for all of the States for the fiscal year.

Under proposed paragraph (d), a State's maximum incentive base amount for a fiscal year would be the combined sum of: the State's collections base for the fiscal year for each of the paternity establishment, support order, and current collections performance measures; and 75 percent of the State's collections base for the fiscal year for the arrearage payment and cost-effectiveness performance measures. This is specified in section 458A(b)(5) of the Act.

Under proposed paragraph (e), a State's maximum incentive base amount for a fiscal year would be zero, unless a Federal audit performed under proposed § 305.60 (described later in this preamble) determined that the data which the State submitted for the fiscal year and which would be used to determine the performance level involved are complete and reliable. This provision is required by section 458A(b)(5)(B) of the Act. It is essential to ensure the integrity of the incentive system and the timeliness of the determinations. States are accountable for providing reliable data or they receive no incentives. This would prevent a State from being able to submit repeated adjusted data, should data used to compute incentives and penalties be determined unreliable.

Finally, under proposed paragraph (f), a State's collections base for a fiscal year, as provided in section 458A(b)(5)(C) of the Act, would be equal to: 2 times the sum of the total amount of support collected for Current Assistance cases plus two times the total amount of support collected in Former Assistance cases, plus the total amount of support collected in all other cases during the fiscal year, that is:

2(Current Assistance collections + Former Assistance collections) + all other collections.

This double-weighting of collections in Current Assistance and Former

Assistance cases when calculating the collection base is another key component of the new incentives system. As with the emphasis placed on the current collections performance measure to ensure consistent and timely support to families, the calculation of the State's collection base also emphasizes the goal of helping families become and remain self-sufficient. Under the current incentive system, States lose incentives when families leave the State assistance rolls because collections in non-assistance cases are capped at 115 percent of collections in assistance cases. However, under section 458A of the Act and these proposed regulations, collections in Former Assistance cases, as well as collections in Current Assistance cases will count double, while collections in all other cases (often seen as requiring less work by IV–D programs) will only be counted once. We would note that current assistance cases do not include cases in which assistance is paid under a Tribal TANF program because the statutory language covers only cases where an assignment to the State is required by the Act. Tribal TANF cases have no such required assignment to the State. Tribal TANF cases will be included in Former Assistance cases to the extent that the individuals formerly were required to assign support rights to the State.

Section 305.32 Requirements Applicable to Calculations

Proposed § 305.32 would establish certain special provisions applicable to calculating the amount of incentives and penalties. Some are derived from current incentive rules and practice and some are based on explicit rules in section 458A of the Act. They are also applied to penalty calculations because we are using the same measures. Under this section the following conditions would apply:

Paragraph 305.32(a) specifies that each measure would be based on data relating to the Federal fiscal year (FY). The Federal fiscal year runs from October 1st of one year through September 30th of the following year. This is consistent with current practice and reference to the fiscal year in section 458A of the Act.

Paragraph 302.32(b) specifies that only collections disbursed or retained, as applicable, and only those expenditures made by the State, in the fiscal year would be used to determine the incentive payment payable for that fiscal year. This is consistent with the way collections have always been counted on Federal reporting forms.

Paragraph 305.32(c) specifies that support collected by one State at the request of another State would be treated as having been collected in full by each State. Required by section 458A(c) of the Act, this implements for the new incentive system the same practice that exists under the current incentive system.

Paragraph 305.32(d) specifies that amounts expended by the State in carrying out a special project under section 455(e) of the Act would be excluded from the State's total IV–D administrative costs in computing incentive payments. This implements section 458A(c) of the Act, and also appears in section 458 of the Act.

Paragraph 305.32(e) specifies that fees paid by individuals, recovered costs, and program income such as interest earned on collections would be deducted from total IV–D administrative costs. This is consistent with § 304.12(b)(4)(iii) which is applicable to the current incentive system under section 458 and the requirement under § 304.50 that States exclude from quarterly expenditure claims an amount equal to all fees, interest and other income earned from services provided under the State IV–D plan.

Paragraph 305.32(f) specifies that States would be required to submit data used to determine incentives following instructions and formats required by HHS and on Office of Management and Budget (OMB) approved reporting instruments. This is consistent with the requirement in § 302.15 under which States must maintain statistical, fiscal and other records necessary for reporting and accountability required by the Secretary and make such reports in the form and containing information the Secretary requires.

Section 305.33 Determination of Applicable Percentages Based on Performance Levels

This proposed section sets forth the explicit requirements in section 458A(b)(6) of the Act for determining the applicable percentages used to calculate incentives based on a State's performance levels in the five performance measures.

Paternity Establishment Percentage

Under proposed paragraph (a), a State's paternity establishment performance level for a fiscal year would be, at the option of the State, the IV–D paternity establishment percentage or the Statewide paternity establishment percentage determined under proposed § 305.2 of this part. The applicable percentage for each level of a State's paternity establishment performance would be set forth in table 1, except as provided in paragraph (b).

Under proposed paragraph (b), if the State's paternity establishment performance level for a fiscal year is less than 50 percent, but exceeds its paternity establishment performance level for the immediately preceding fiscal year by at least 10 percentage points, then the State's applicable percentage for the paternity establishment performance level would be 50 percent.

Support Order

Under proposed paragraph (c), a State's support order performance level for a fiscal year would be the percentage of the total number of IV–D cases where there is a support order determined under § 305.2 and § 305.32. The applicable percentage for each level of a State's support order performance would be found on table 1, except as provided in paragraph (d).

Under proposed paragraph (d), if the State's support order performance level for fiscal year is less than 50 percent, but exceeds the State's support order performance level for the immediately preceding fiscal year by at least 5 percentage points, then the State's applicable percentage would be 50 percent.

TABLE 1

[Use this table to determine the maximum incentive levels for the paternity establishment and support order performance measures.]

If the paternity establishment or support order performance level is:					
At least: (percent)	But less than: (percent)	The applicable percentage is:	At least: (percent)	But less than: (percent)	The applicable percentage is:
80		100	64	65	74

TABLE 1—Continued

[Use this table to determine the maximum incentive levels for the paternity establishment and support order performance measures.]

If the paternity establishment or support order performance level is:					
At least: (percent)	But less than: (percent)	The applicable percentage is:	At least: (percent)	But less than: (percent)	The applicable percentage is:
79	80	98	63	64	73
78	79	96	62	63	72
77	78	94	61	62	71
76	77	92	60	61	70
75	76	90	59	60	69
74	75	88	58	59	68
73	74	86	57	58	67
72	73	84	56	57	66
71	72	82	55	56	65
70	71	80	54	55	64
69	70	79	53	54	63
68	69	78	52	53	62
67	68	77	51	52	61
66	67	76	50	51	60
65	66	75	0	50	0

Current Support Collections

Under proposed paragraph (e), a State's current collections performance level for a fiscal year would be equal to the total amount of current support collected during the fiscal year divided by the total amount of current support owed during the fiscal year in all IV–D cases, as determined under § 305.32. The applicable percentage with respect to a State's current collections performance level would be found on table 2, except as provided in paragraph (f).

Under proposed paragraph (f), if the State's current collections performance level for a fiscal year is less than 40 percent but exceeds the current collections performance level of the State for the immediately preceding fiscal year by at least 5 percentage points, then the State's applicable percentage would be 50 percent.

Arrearage Collections

Under proposed paragraph (g), a State's arrearage collections performance level for a fiscal year would be equal to the total number of IV–D cases in which payments of past-due child support were received and disbursed during the fiscal year, divided by the total number of IV–D cases in which there was past-due child support owed, as determined under § 305.32 of this part. The applicable percentage with respect to a State's arrearage collections performance level would be found on table 2, except as provided in paragraph (h).

Under proposed paragraph (h), if the State's arrearage collections performance level for a fiscal year is less than 40 percent but exceeds the arrearage collections performance level for the immediately preceding fiscal year by at least 5 percentage points, then the State's applicable percentage would be 50 percent.

TABLE 2

[Use this table to determine the maximum incentive levels for the current and arrearage support collections performance measures]

If the current collections or arrearage collections performance level is:					
At least: (percent)	But less than: (percent)	The applicable percentage is:	At least: (percent)	But less than: (percent)	The applica ble (percentage is:
80	.....	100	59	60	69
79	80	98	58	59	68
78	79	96	57	58	67
77	78	94	56	57	66
76	77	92	55	56	65
75	76	90	54	55	64
74	75	88	53	54	63
73	74	86	52	53	62
72	73	84	51	52	61
71	72	82	50	51	60
70	71	80	49	50	59
69	70	79	48	49	58
68	69	78	47	48	57
67	68	77	46	47	56
66	67	76	45	46	55
65	66	75	44	45	54
64	65	74	43	55	53
63	64	73	42	43	52
62	63	72	41	42	51

TABLE 2—Continued

[Use this table to determine the maximum incentive levels for the current and arrearage support collections performance measures]

If the current collections or arrearage collections performance level is:					
At least: (percent)	But less than: (percent)	The applicable percentage is:	At least: (percent)	But less than: (percent)	The applicable (percentage is:
61	62	71	40	41	50
60	61	70	0	40	0

Under proposed paragraph (i), a State's cost-effectiveness performance level for a fiscal year would be equal to the total amount of IV–D support collected and disbursed or retained, as applicable during the fiscal year, divided by the total amount expended during the fiscal year, as determined under § 305.32 of this part. The applicable percentage with respect to a State's cost-effectiveness performance level would be found on table 3.

TABLE 3

[Use this table to determine the maximum incentive level for the cost-effectiveness performance measure.]

If the cost-effectiveness performance level is:		
At least:	But less than:	The applicable percentage:
5.00	.....	100
4.50	4.99	90
4.00	4.50	80
3.50	4.00	70
3.00	3.50	60
2.50	3.00	50
2.00	2.50	40
0.00	2.00	0

Because of the complexity of the incentives formula set forth in section 458A of the Act and implemented by these proposed regulations, we have included an example of how the system would work in a particular year for State A under proposed paragraph (j):

Let's make the following assumptions regarding State A (See table A):

- State A's paternity performance level is 54 percent, making its applicable percent 64 percent (see table 1)
- State A's order establishment performance level is 79 percent, making its applicable percent 98 percent (see table 1)
- State A's current support collections performance level is 41 percent, making its applicable percent 51 percent (see table 2)
- State A's arrearage support collections performance level is 40 percent, making its applicable percent 50 percent (see table 2)
- State A's cost-effectiveness ratio is 3.00, making its applicable percent 60 percent (see table 3)
- State A's collections base is $50 million (determined by 2 times the collections for Current Assistance and Former Assistance cases plus collections for other cases)
- The maximum incentive is:

—$32 million collections base for paternity ($50 mil. times 0.64), plus

—$49 million collections base for orders ($50 mil. times 0.98), plus

—$25.5 million collections base for current collections ($50 mil. times 0.51), plus

—$18.8 million collections base for arrearage collections ($50 million times 0.75 times 0.50) plus

—$22.5 million collections base for cost-effectiveness ($50 million times 0.75 times 0.60) equals

—Resulting in a maximum incentive base amount of $147.8 million for State A.

TABLE A

Measure	State A's performance level (percent)	Applicable percent based on performance	Weight	State A's collection base (in millions) (assumed to be $50.0 million)
Paternity Establishment	54	64	1.00	$32.0
Order Establishment	79	98	1.00	49.0
Current Collections	41	51	1.00	25.5
Arrearage Collections	40	50	0.75	18.8
Cost-Effectiveness	(*)	60	0.75	22.5
State A's Maximum Incentive Base Amount	.....	.....	.....	147.8

* $3.00

- We must now make some assumptions regarding the other States. Let's assume that there are only two other States in our country—and the maximum incentive base amount is $82 million for State B and $52 million for State C, making the total maximum incentive base amount $281.8 million for all three States (See table B).
- We must now determine what State A's share of the $281.8 million is. It is 52 percent ($147.8 divided by $281.8)

TABLE B

State	Maximum incentive base amounts	State's share of $281.8 million	Incentive payment pool $422 million (in millions)
A	$147.8	0.52	$219.4
B	82.0	0.34	143.5
C	52.0	0.14	59.1
Totals	281.8	1.00	422.0

• Let us assume the incentive payment pool for the FY is $422 million.

• Since State A's share is 0.52, this State has earned 52 percent of the $422 million incentive payment pool that Congress is allowing, or $219.4 ($422 mil. times 0.52) million incentive payment for this particular fiscal year.

Section 305.34 Payment of Incentives

Section 458A(d) of the Act includes administrative provisions for estimating and paying incentives. Proposed § 305.34 implements those provisions. Under proposed paragraph (a), each State must claim/include one-fourth of its estimated annual incentive payment on each of its four quarterly expenditure reports for a fiscal year. When combined with the other amounts reported on each of the State's four quarterly expenditure reports, the portion of the annual incentive payment as reported each quarter would be included as in the calculation of the next quarterly grant awarded to the State under title IV–D of the Act.

We have not specified any procedures for determining how States should calculate their estimated payments. We invite comment on whether we should specify a methodology in the regulations or merely provide guidance to States. We also invite comment on appropriate methods for determining the amount of estimated payments to be paid. We believe it is in the interest of States to avoid estimates that result in significant additional payments to States or significant repayments when final incentive amounts are determined.

Under proposed paragraph (b), following the end of each fiscal year, HHS would calculate the State's annual incentive payment, using the actual collection and expenditure data and the performance data submitted by the State and other States for that fiscal year. A positive or negative grant would then be awarded to the State under title IV–D of the Act to reconcile an actual annual incentive payment that has been calculated to be greater or lesser, respectively, than the annual incentive payment estimated prior to the beginning of the fiscal year.

Under proposed paragraph (c), payment of incentives would be contingent on a State's data being determined reliable data by Federal auditors, consistent with the requirement for complete and reliable data set forth in section 458A(b)(5)(B) of the Act.

Section 305.35 Reinvestment

Section 458A(f) of the Act requires a State to use incentive payments to supplement and not supplant other funds used by the State in its IV–D program, or otherwise with approval of the Secretary. Under proposed § 305.35, which implements this requirement, proposed paragraph (a) would require a State to expend the full amount of incentive payments received under the IV–D program to supplement, and not supplant other funds used by the States to carry out IV–D program activities; or funds for other activities approved by the Secretary which may contribute to improving the effectiveness or efficiency of the State's IV–D program, including cost-effective contracts with local agencies, whether or not the expenditures for the activity are eligible for reimbursement under title IV–D of the Act.

Under proposed paragraph (b), in those States in which incentive payments are passed through to political subdivisions or localities, in accordance with section 454(22) of the Act and § 302.55, such payments must be used in accordance with this section.

Under proposed paragraph (c), State IV–D expenditures may not be reduced as a result of the receipt and reinvestment of incentive payments.

In order to determine if incentive payments are used to supplement rather than supplant other amounts used by the State to fund the IV–D program, a base year level of program expenditures is necessary. Therefore, under proposed paragraph (d), a base amount would be determined by subtracting the amount of actual incentives paid to the State invested in the IV–D program for fiscal year 1998 from the total amount expended by the State in the IV–D program during the same period. The proposal would also allow States, in the alternative, to use the average of the previous three fiscal years (1996, 1997, and 1998) as a base amount. This base amount of State spending would have to be maintained in future years. Incentive payments under this part would be used in addition to, and not in lieu of, the base amount.

We selected fiscal year 1998 rather than fiscal year 1999 because we believe that the total for fiscal year 1999 may not be available until some time in fiscal year 2000 and we want States to know what their base amount that must be maintained is in advance of receiving any incentive payments under section 458A. Additionally, we allow the States the alternative of computing a 3-year average. We propose this alternative because we believe it might more closely approximate the amount a State has been spending on its IV–D program and will not give undue weight to any extraordinary or non-recurring expenditures that the State may have made in fiscal year 1998.

We also considered and rejected using a changing base year, i.e. the year immediately preceding the year for which incentives are paid. We believe that such an approach would penalize States for, or discourage them from, making large one time expenditures for improvements to their programs because they would have to maintain their program expenditures at that artificially high level. However, we recognize concerns that a fixed base year could possibly penalize States that improve the cost-effectiveness of their program.

We invite comment on the method we have chosen and other alternative ways of ensuring that incentive funds are used to supplement and not supplant State expenditures.

Again, based on the complexity of the statute, we believe an example would be helpful and have included one under proposed paragraph (e). Therefore,

(1) State A expended $15 million in FY1998 to conduct IV–D activities and used incentive payments received by the State as general revenues to fund an

assortment of non–IV–D State and local programs or activities. If State A receives incentives, it must continue to expend at least $15 million of its money annually to conduct IV–D activities, not including incentive money. In addition, State A must henceforth expend any incentive payments received pursuant to section 458A of the Act and this part for IV–D activities, or other activities approved by the Secretary. These incentive payments will be expended in addition to, and not in lieu of, the current $15 million expended;

(2) State B expended $20 million in FY1998 in its IV–D program and, of the $20 million, $5 million represents incentive funds that the State received and reinvested in its IV–D program. If State B receives incentive payments, it must continue to spend at least $15 million in State money (not including incentive money) annually. Incentive payments received by the State must continue to be used in addition to, and not in lieu of, this $15 million base amount.

Under proposed paragraph (f), requests for approval of expending incentives on activities not currently eligible for funding under the IV–D program, but which would benefit the IV–D program (e.g., work programs for noncustodial parents), must be submitted in accordance with instructions issued by the Commissioner of the Office of Child Support Enforcement. We will develop and disseminate by Action Transmittal instructions for States seeking approval to expend incentives on activities that would benefit the IV–D program.

Section 305.36 Incentive Phase-in

Section 201(b) of the Child Support Performance and Incentive Act of 1998 establishes a transition period which phases in the new incentives system under section 458A of the Act. Under proposed § 305.36, the incentive system under part 305 would be phased-in over a three-year period during which both the current system and the new system would be used to determine the amount a State will receive. For fiscal year 2000, a State would receive two-thirds of what it would have received under the incentive formula set forth in § 304.12, and one-third of what it would received under the formula set forth under part 305. In fiscal year 2001, a State would receive one-third of what it would have received under the incentive formula set forth under § 304.12 and two-thirds of what it would received under the formula under part 305. In fiscal year 2002, the formula set forth under part 305 would be fully implemented and would be used to determine all incentive amounts.

V. Description of Regulatory Provisions-Penalties and Audit

Former Audit and Penalty Process

In implementing the former requirement at section 452(a)(4) of the Act, the former regulations at part 305 required HHS to conduct an audit at least once every three years, to evaluate the effectiveness of each State's program in carrying out the purposes of title IV–D of the Act and to determine that the program met the title IV–D requirements. These audits were the sole basis for imposing a penalty under former section 403 (h) of the Act.

The audits were a comprehensive review which used the criteria prescribed in the regulations, including requirements governing: statewide operations; reports and maintenance of records; separation of cash handling and accounting functions; notice of collection of assigned support; case closure criteria; collection and distribution of support payments; establishment of paternity; establishment, review and adjustment of orders for maintenance and medical support using mandatory guidelines and expedited processes; location of non-custodial parents; enforcement of support obligations through State and Federal income tax refund offset and income withholding; and case processing timeframes. There were numerical standards that the State had to meet for each category.

A penalty was assessed in accordance with section 403(a) of the Act when the State failed the audit, but it was suspended during the period the State was under a corrective action plan. If the State passed the follow-up review, the penalty was not applied. In addition, HHS then conducted the comprehensive audit on an annual basis in the case of a State that was subject to a penalty. For a State operating under a corrective action plan, the review at the end of the corrective action period covered only the criteria specified in the notice of non-compliance.

Part 305 of the regulations were removed as part of an omnibus clean-up regulation designed to conform existing program regulations to mandatory changes, made by PRWORA and subsequent enactments. Since PRWORA and P.L. 105–200 significantly changed audit and penalty provisions of the statute, we removed all of part 305. The clean-up regulation was published February 9, 1999 (64 FR 6237). We include this summary of the former Federal process, however, because under the revised audit and penalty provisions in sections 409(a)(8) and 452(a)(4) and (g) of the Act, the Secretary is required to assess a penalty if a State IV–D program is determined not to be in substantial compliance with IV–D requirements. As explained in greater detail later in this preamble, the proposed process for making such a determination is based largely on the former audit and penalty standards and procedures.

Proposed Regulations

Under section 409(a)(8) of the Act, if, based on the data submitted by the State or a review, the State program fails to achieve the paternity establishment or other performance standards set by the Secretary; or if an audit finds that the State data is incomplete or unreliable; or the State failed to substantially comply with one or more IV–D requirements, and the State fails to correct the deficiencies in the following year, then the amounts otherwise payable to the State under title IV–A will be reduced.

However, a State will be determined to be in substantial compliance with IV–D requirements if the Secretary determines that the noncompliance is of a technical nature which does not adversely affect the performance of the State's IV–D program, or will be determined to have submitted accurate data where the incompleteness or unreliability of the data is of a technical nature which does not affect the determination of the State's performance on the performance standards.

In these proposed regulations, we have relied heavily on the well-established, tested and experienced Federal audit process, which was used for penalties, assessed under the former section 403(h) of the Act and former part 305 to establish the new audit regulations. In fact, much of our proposed language governing the audit process is taken almost verbatim from former part 305, particularly in sections dealing with the audit process, State responsibilities, definition of substantial compliance and notice and assessment of the penalty.

Section 305.40 Penalty Performance Measures, and Levels

Proposed § 305.40 would establish the performance measures to be used to determine whether a State IV–D program is performing adequately to avoid a financial penalty under section 409(a)(8)(A)(i)(I) of the Act. As discussed earlier in this preamble, under proposed paragraph (a), there would be three performance measures for which States would have to achieve

certain levels of performance in order to avoid being penalized for poor performance. These measures are paternity establishment, order establishment, and collection of current support set forth in § 305.2 of these proposed regulations.

The proposed levels of performance that would determine whether or not a State would be subject to a penalty were established based on analysis of historical statistical and financial program data submitted by States. This program data was used to set the expected levels of performance and improvements, which are based on past State performance, and reasonable expectations of improved performance. The expectations of performance in this proposed rule were set taking into consideration State concerns, prior work done by State and Federal partners to develop the incentive system, and consultations with State partners about what constituted reasonable performance levels supported by historical data.

The proposed measures and levels of performance would be:

(1) The paternity establishment percentage which is required under section 452(g) of the Act for penalty purposes. States have the option of using either the IV–D paternity establishment percentage or the statewide paternity establishment percentage defined in proposed § 305.2. However, as stated on the OCSE–157 form that States will use to report incentive information, ''the option can be changed at a later date, however, for calculation purposes, like data must be compared from year-to-year.'' Table 4 shows at which level of performance the State would be subject to a penalty under the paternity establishment measure. For example, if State A earned a paternity establishment percent of 34 percent and only improved by 3 percentage points over the previous fiscal year, then State A would be subject to a penalty of 1–2 percent of TANF funds, for the first finding.

TABLE 4

[Use this table to determine the level of performance for the paternity establishment measure that would incur a penalty]

Statutory penalty performance standards for paternity establishment		
PEP (percent)	Increase required over previous year's PEP (percent)	Penalty FOR FIRST FAILURE if increase not met
90 or more	None	No Penalty.
75 to 89	2	1–2% TANF Funds.
50 to 74	3	1–2% TANF Funds.
45 to 49	4	1–2% TANF Funds.
40 to 44	5	1–2% TANF Funds.
39 or less	6	1–2% TANF Funds.

(2) The *order establishment* performance measure to be used for penalty purposes is the measure defined in proposed § 305.2. For purposes of the penalty with respect to this measure, there would be a threshold of 40 percent, below which a State would be penalized unless an increase of 5 percent over the previous year is achieved—which would qualify it for an incentive. Performance in the 40 percent to 49 percent range with no significant increase would not be penalized, but neither would it qualify for an incentive payment. Table 5 shows at which level of performance a State would incur a penalty under the order establishment measure.

TABLE 5

[Use this table to determine the level of performance for the order establishment measure that would incur a penalty]

Performance standards for order establishment		
Performance level	Increase over previous year	Incentive/penalty
50% or more	no increase over previous year required	Incentive.
40% to 49%	w/5% increase over previous year	Incentive.
	w/out 5% increase	No Incentive/No Penalty.
Less than 40%	w/5% increase over previous year	Incentive.
	w/out 5% increase	Penalty equal to 1–2% of TANF funds for the first failure, 2–3% for second failure, and so forth, up to a maximum of 5% of TANF funds.

(3) For the *current collections performance* measure, there would be a threshold of 35 percent below which a State would be penalized unless an increase of 5 percent over the previous year is achieved (that would qualify it for an incentive). Performance in the 35 percent to 40 percent range with no significant increase would not be penalized but neither would it qualify for an incentive payment. Table 6 shows at which level of performance the State would incur a penalty under the current collections measure.

TABLE 6

[Use this table to determine the level of performance for the current collections measure that would incur a penalty]

Performance standards for current collections		
Performance level	Increase over previous year	Incentive/penalty
40% or more	no increase over previous year required	Incentive.
35% to 40%	w/5% increase over previous year	Incentive.
	w/out 5% increase	No Incentive/No Penalty.
Less than 35%	w/5% increase over previous year	Incentive.
	w/out 5% increase	Penalty equal to 1–2% of TANF funds for the first failure, 2–3% for second failure, and so forth, up to a maximum of 5% of TANF funds.

Under proposed paragraph (b), the provisions applicable to calculations listed under § 305.32, would apply to the calculation of performance levels for penalty purposes, for e.g., counting only disbursed collections, and double-counting interstate collections.

Section 305.42 Penalty Phase-in

Proposed § 305.42 sets a schedule for phasing in the new penalty provisions which relates to the incentive phase-in under § 305.36. Penalties would be measured for the first full fiscal year beginning after the publication of final rules. We expect this will be fiscal year 2001. States would be subject to the performance penalties based on data reported for FY 2001. Data reported for FY 2000 would be used as a base year to determine improvements in performance during FY 2001. There would be a statutory corrective action period of one year before any penalty would be assessed. The penalties would be assessed and then suspended during the corrective action period.

Section 305.60 Timing and Scope of Federal Audits

Based on explicit statutory requirements at sections 452(a)(4)(C) and 409(a)(8)(A)(i)(II) of the Act, under proposed § 305.60, OCSE would conduct audits, in accordance with the Government auditing standards of the Comptroller General of the United States—

(1) At least once every three years (or more frequently if the State fails to meet performance standards and reliability of data requirements) to assess the completeness, authenticity, reliability, accuracy and security of data and the systems used to process the data in calculating performance indicators under part 305;

(2) To determine the adequacy of financial management of the State IV–D program, including assessments of:

(i) Whether funds to carry out the State program are being appropriately expended, and are properly and fully accounted for; and

(ii) Whether collections and disbursements of support payments are carried out correctly and are fully accounted for; and

(3) For such other purposes as the Secretary may find necessary, including audits to determine if the State is substantially complying with one or more of the requirements of the IV–D program (with the exception of the requirements of section 454(24) of the Act relating to statewide-automated systems). Substantial compliance audits are defined in § 305.63 and are discussed later in this preamble.

Under the proposed rules the substantial compliance audits would be conducted at the discretion of the Secretary, and would be triggered based on substantiated evidence of a failure by the State to meet IV–D program requirements. We propose that evidence that might warrant such an audit to determine substantial compliance would include:

(i) The results of 2 or more sequential State self-reviews conducted under section 454(15)(A) of the Act which: show evidence of sustained poor performance, or indicate that the State has not corrected deficiencies identified in previous self-assessments and that these deficiencies are determined to seriously impact the performance of the State's program; or

(ii) Evidence of a State program's systemic failure to provide adequate services under the program through a pattern of non-compliance over time.

While we recognize the advantage and responsibility to maintain the authority to conduct audits similar to those which resulted in improved State performance in years past, we are committed to the philosophy which focuses on measuring program results, and allowing States the flexibility and responsibility to manage their own programs, while assuring that Federal requirements are met. We expect States to take both the self-reviews to determine compliance with IV–D requirements and the proposed requirements for administrative review procedures in § 303.35 seriously and to use those processes to continually critique and adjust their programs to ensure that children and families are adequately served. These discretionary Federal process audits authorized under section 452(a)(4)(C) provide a fall back measure for the Secretary's use should systemic or serious problems with IV–D programs become apparent.

The Child Support Performance and Incentive Act of 1998 established a specific financial penalty for a State's failure to meet statewide-automated systems requirements in section 454(24) of the Act. As a conforming amendment, section 409(a)(8) of the Act was amended to preclude a financial penalty under that section for failing to meet automated systems requirements under section 454(24). While compliance with particular system's requirements will be excluded from any Federal audit to determine substantive compliance with IV–D requirements, States must still meet the individual IV–D program requirements being audited, as defined in proposed § 305.63, in order to avoid a financial penalty under § 305.61. These program requirements exist independently from the systems requirements under section 454(24) of the Act and, therefore, States will be held accountable for compliance with them.

Under proposed paragraph (b), as with past audits, during the course of the audit, OCSE would make a critical investigation of the State's IV–D program through inspection, inquiries, observation, and confirmation and use the audit standards promulgated by the Comptroller General of the United States in ''Government Auditing Standards.''

Section 305.61 Penalty for Failure to Meet IV–D Requirements

To implement the requirements of section 409(a)(8) of the Act, under proposed paragraph (a) of § 305.61, a State would be subject to a financial penalty and the amounts otherwise

payable to the State under title IV–A of the Act would be reduced:

If, on the basis of:

(i) Data submitted by the State or the results of an audit conducted under proposed § 305.60, the State's program failed to achieve the paternity establishment percentages, as defined in section 452(g)(2) of the Act and proposed section § 305.40, or to meet the support order and current collections performance measures set forth in proposed § 305.40; or

(ii) The results of an audit under proposed § 305.60, the State did not submit complete and reliable data, as defined in proposed § 305.1; or

(iii) The results of an audit under proposed § 305.60, the State failed to substantially comply with 1 or more of the requirements of the IV–D program, as defined in proposed § 305.63;

And, with respect to the following fiscal year, the State failed to take sufficient corrective action to achieve the appropriate performance levels or compliance or the data submitted by the State are still incomplete or unreliable.

A penalty would be applied when a State was determined not to meet a requirement, but the penalty would be suspended during the following year and applied only if the State failed to correct any identified deficiencies by the end of this corrective action year.

Under proposed paragraph (b) of § 305.61, the penalty reductions described under proposed § 305.61(c) (discussed below) would be made for quarters following the end of the fiscal year following the fiscal year in which the determination under § 305.61(a)(1) is made that the State is subject to a penalty and would continue until the State, as appropriate:

(1) Has achieved the paternity establishment percentages, the order establishment or the current collections performance measures defined in § 305.40; or

(2) Is in substantial compliance with the IV–D requirements audited for substantial compliance, as defined in § 305.63; or

(3) Has submitted data that is complete and reliable.

It is important to note that the statute at section 409(a)(8)(A) of the Act and these proposed regulations clearly require States to submit complete and reliable data or face financial penalties. However, unlike other penalty circumstances, penalties for incomplete or unreliable data may also trigger potential penalties for failure to meet performance standards. This is because when data is incomplete or unreliable, it may be impossible to accurately determine the State's level of performance on one or more of the performance measures. In such cases, a State would have one year following a determination that its data was incomplete or unreliable, to submit complete and reliable data, and demonstrate that the submitted data meets the performance measures in order to avoid the imposition of a penalty. Correcting incomplete or unreliable data within the one-year period would not be enough; the data must also show that the State performed at a high enough level to avoid a financial penalty.

Proposed paragraph (c) sets forth the penalty levels from section 408(a)(8)(B) of the Act under which, the payments for a fiscal year under title IV–A of the Act will be reduced by the following percentages:

(1) One to two percent for the first finding;

(2) Two to three percent for the second such finding; and

(3) Not less than three percent and not more than 5 percent for the third or a subsequent consecutive finding.

These section 409(a)(8) penalties, which increase with each subsequent finding, are identical to the level and source of penalties assessed under the former audit and penalty process in former section 403(h) of the Act. In actual practice, OCSE has used the lower amount for each situation. Thus, under past practice, while the penalty imposed for the first failure would be 1 percent of a State's TANF block grant, if a State fails to meet the appropriate standard on one or all of the three performance measures two years in a row, the penalty would be 2 percent of TANF funds. Three years of failure would garner a 3 percent penalty against TANF funds and so forth, up to a maximum of 5 percent of TANF funds. The maximum penalty that would be imposed would be 5 percent regardless of the number of different grounds for which a State would be subject to a penalty. However, OCSE reserves the right to impose the higher range of the amount allowed under the statute in the case of multiple penalty grounds or if the State's failures are willful or egregious .

Because the penalty is taken against a State's TANF block grant, certain provisions applicable to other TANF penalties also apply to this penalty. The provisions in section 409(d) of the Act which provide that the total penalties that may be taken may not exceed 25 percent of the TANF grant would apply. In addition, section 410 of the Act provides for appeals when penalties are taken pursuant to section 409 of the Act.

Finally, section 409(a) (12) of the Act which requires that a State spend additional funds to replace the reductions in funds resulting from the imposition of a penalty, would apply. The TANF regulations published April 12, 1999 at 64 FR 17720 and effective October 1, 1999, contain provisions in new 45 CFR Part 262 which address and implement these statutory provisions. We incorporate those provisions by cross reference.

Section 305.62 Disregard of a Failure Which is of a Technical Nature

Section 409(a)(8)(C) of the Act, like the former section 403(h) of the Act, recognizes that certain noncompliance may be insufficient to significantly impact a State's performance or data reliability. Under proposed § 305.62, we implement this concept by proposing that a State subject to a penalty under § 305.61(a)(1)(ii) or (iii) may be determined, as appropriate, to have submitted adequate data or to have achieved substantial compliance with one or more IV–D requirements, as defined in § 305.63 (discussed below), if the Secretary determines that the incompleteness or unreliability of the data, or the noncompliance with one or more of the IV–D requirements, are of a technical nature which does not adversely affect the performance of the State's IV–D program or does not adversely affect the determination of the level of the State's paternity establishment or other performance measures percentages.

§ 305.63 Definition of Substantial Compliance With IV–D Requirements

Because section 409(a)(8) of the Act requires the assessment of a penalty should a State be found, as a result of an audit, to have failed to substantially comply with one or more IV–D requirements which it fails to correct in the subsequent year, we must provide a definition of substantial compliance that will be used by the auditors to measure State compliance with IV–D requirements. Fortunately, it is not necessary to reinvent the wheel because of the existence of a previously established and tested definition of substantial compliance from former section § 305.20. That section established for purposes of the former Federal audit and penalty process, the definition of an effective program in substantial compliance with the requirements of title IV–D of the Act. Therefore, we propose under § 305.63 to use the definition under former § 305.20 as the basis for a determination that a State failed to achieve substantial

compliance with one or more IV-D requirements.

However, there is one significant difference between the proposed and former audit and penalty process which deals with the required scope of the audit. Under the former statute and regulations, a penalty was based on a complete audit of a State's program for substantial compliance with all of the applicable IV–D requirements. Under section 408(a)(9) of the Act and these proposed regulations, a State may be audited on one, some or all of the requirements and may be assessed a penalty, if it is found not to comply with one or more IV–D requirements. Assessment of a penalty could be based, therefore, on a targeted audit of specific IV–D requirements. Specifically, for the purposes of a determination under § 305.61(a)(1)(iii), in order to be determined in substantial compliance with one or more of the IV–D requirements as a result of an audit conducted under § 305.60, a State would be required to meet the specific IV–D State plan requirement or requirements that was audited. The IV–D requirements subject to audit are contained in part 302 of this chapter, and are measured as described in the following paragraphs.

Under proposed paragraph (a), the State would have to meet all the requirements under any of the following areas being audited:

Statewide operations, § 302.10;
Reports and maintenance of records, § 302.15(a);
Separation of cash handling and accounting functions, § 302.20; and
Notice of collection of assigned support, § 302.54.

These areas are identical to those in former § 305.20, which measured management and accountability of the program.

Under proposed paragraph (b), the State would be required to meet the requirements under the following areas in at least 90 percent of the cases reviewed for each criterion being audited, consistent with the requirement used under the former § 305.20:

Establishment of cases, § 303.2(a); and
Case closure criteria, § 303.11.

We believe these criteria should continue to be met in 90 percent of cases reviewed because of their critical nature. They are intended to ensure that cases are opened and closed appropriately.

Under proposed paragraph (c), States would be held to the same test they have been held to under former audit and penalty requirements in place and used since the early to mid-1990s. Under the proposed paragraph, the State would be required to meet the following areas in at least 75 percent of the cases reviewed for each area being audited:

(1) Collection and distribution of support payments, including: collection and distribution of support payments by the IV–D agency under § 302.32(b); distribution of support collections under § 302.51; and distribution of support collected in title IV–E foster care maintenance cases under § 302.52;

(2) Establishment of paternity and support orders, including: establishment of a case under § 303.2(b); services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a) (1) through (4); provision of services in interstate IV–D cases under § 303.7(a), (b) and (c)(1) through (6) and (8) through (10); location of non-custodial parents under § 303.3; establishment of paternity under § 303.5(a) and (f); guidelines for setting child support awards under § 302.56; and establishment of support obligations under § 303.4(d), (e) and (f);

(3) Enforcement of support obligations, including, in all appropriate cases: establishment of a case under § 303.2(b); services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a) (1) through (4); provision of services in interstate IV–D cases under § 303.7(a), (b) and (c)(1) through (6) and (8) through (10); location of non-custodial parents under § 303.3; enforcement of support obligations under § 303.6 and State laws enacted in accordance with section 466 of the Act, including submitting once a year all appropriate cases in accordance with § 303.6(c)(3) to State and Federal income tax refund offset; and wage withholding under § 303.100. In cases in which wage withholding cannot be implemented or is not available and the non-custodial parent has been located, States must use or attempt to use at least one enforcement technique available under State law in addition to Federal and State tax refund offset, in accordance with State laws and procedures and applicable State guidelines developed under § 302.70(b) of this chapter;

(4) Review and adjustment of child support orders, including: establishment of a case under § 303.2(b); services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a) (1) through (4); provision of services in interstate IV–D cases under § 303.7(a), (b) and (c)(1) through (6) and (8) through (10); location of non-custodial parents under § 303.3; guidelines for setting child support awards under § 302.56; and review and adjustment of support obligations under § 303.8;

(5) Medical support, including: establishment of a case under § 303.2(b); services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a) (1) through (4); provision of services in interstate IV–D cases under § 303.7(a), (b) and (c)(1) through (6) and (8) through (10); location of non-custodial parents under § 303.3; securing medical support information under § 303.30; and securing and enforcing medical support obligations under § 303.31; and.

(6) Disbursement of support payments in accordance with the timeframes in section 454B of the Act or the regulation at § 302.32.

Except for the last requirement for disbursement of support collected within the timeframe set forth in requirements for a State Disbursement Unit in section 454B of the Act, the provisions are taken from the former § 305.20. We have proposed to use those standards because we still consider them to represent the critical aspects of IV–D program requirements and believe they are essential to any determination of substantial compliance with any of the requirements being audited for that purpose. The subparagraphs, as written, are broad and are intended to incorporate revised provisions of title IV–D of the Act, such as any changes in distribution, additional enforcement techniques, revised review and adjustment procedures and evolving medical support expectations that are indicated in the statute or regulations. We do not believe it is necessary to include an explicit reference to each and every aspect of the program.

The timeframe for disbursement of support collections by the State Disbursement Unit under section 454B of the Act is included because it is one of the essential case processing timeframes added by PRWORA. Other explicit requirements of PRWORA are included by reference to laws enacted under section 466 of the Act and still others, for example, the State Directory of New Hires and other new locate sources, will be evaluated as part of the State's automated system certification.

It is not our intention to include every aspect of IV–D case processing or every State responsibility under this definition of substantial compliance. There are a number of means of carrying out Federal oversight responsibilities and ensuring State accountability and provision of services to those in need of them without including every IV–D requirement under this definition. We intend to use the Secretary's discretion to conduct process audits only in

egregious situations. Other processes, including penalties for failure to meet performance standards, Federal audits to ensure appropriate financial management of program funds and general Federal review and oversight of State programs, together with State self-reviews and the availability of administrative review procedures for recipients of IV–D services, should work together to ensure successful IV–D programs.

As with the former audit process which recognized that citing States for each failure to meet a specific timeframe could remove a State's motivation to move forward in such a case, we propose to adopt the provisions from former § 305.20 under which States can receive credit for a case being reviewed if they accomplish the necessary action within the audit period, despite having missed an interim timeframe. We remain committed to this concept in these proposed regulations and have incorporated it into proposed paragraph (d).

Finally, as under the former audit standards in § 305.20, proposed paragraph (e) would require a State to meet the requirements for expedited processes under § 303.101(b)(2) (i) and (iii), and (e).

Under the new penalty standards in section 409(a)(8) and the new audit responsibilities under section 452(a)(4) of the Act, the Federal audit and subsequent penalty can cover simply one, or a number of IV–D requirements. Using the definition of substantial compliance proposed above, Federal auditors, States and other interested parties would be aware of the expected level of State performance with respect to any particular requirement being audited.

Section 305.64 Audit procedures and State comments

This proposed section would adopt the same procedures as were in effect under former § 305.12. Under proposed paragraph (a), prior to the start of the actual audit, Federal auditors would hold an audit entrance conference with the State IV–D agency. At that conference, the auditors would explain how the audit will be performed and make any necessary arrangements.

Under proposed paragraph (b), at the conclusion of audit fieldwork, Federal auditors would afford the State IV–D agency an opportunity to have an audit exit conference at which time preliminary audit findings would be discussed and the State IV–D agency may present any additional matter it believes should be considered in the audit findings.

Under proposed paragraph (c), after the exit conference, Federal auditors would prepare and send to the State IV–D agency, a copy of an interim report on the results of the audit. Within 45 days from the date the report was sent by certified mail, the State IV–D agency would be able to submit written comments on any part of the report that the State IV–D agency believes is in error. The auditors would note such comments and incorporate any response into the final audit report.

Section 305.65 State cooperation in audit

Also consistent with historic State responsibilities with respect to Federal audits, we propose to incorporate former § 305.13 and require that each State make available to the Federal Auditors such records or other supporting documentation (electronic and manual) as the audit staff may request, including records to support the data as submitted on the Federal statistical and financial reports that will be used to calculate the State's performance. We have included specific reference to the data States must submit because it is essential to the auditors' work. States would also be required to make available personnel associated with the State's IV–D program to provide information that the audit staff may find necessary in order to conduct or complete the audit.

We also propose to require, under paragraph (b), that States provide evidence to OCSE that their data are complete and reliable. This ensures the responsibility for maintaining and providing reliable data is the State's responsibility.

As was the case under former audit regulations at § 305.13, we propose in paragraph (c), that failure to comply with the requirements of this section with respect to audits conducted under proposed § 305.64 may necessitate a finding that the State has failed to comply with the particular criteria being audited. State cooperation with the audit is essential to assess performance.

§ 305.66 Notice, corrective action year, and imposition of penalty for failure to meet requirements

Proposed § 305.66 addresses notice to the State of any deficiency or deficiencies identified. Similar to the notice aspects of the former audit process at former § 305.99, the proposed paragraph (a) would require that, if the Secretary, on the basis of the results of an audit or review, finds a State to be subject to a penalty, OCSE would notify the State in writing of such finding.

Under proposed paragraph (b), the notice would:

(1) Explain the deficiency or deficiencies which result in the State being subject to a penalty, indicate the amount of the potential penalty, and give reasons for the Secretary's finding; and

(2) Specify that the penalty would be assessed if the State fails to correct the deficiency or deficiencies cited in the notice during the subsequent fiscal year, referred to as the ''corrective action'' year.

As discussed earlier in the preamble, the imposition of a penalty is subject to certain limitations, appeals and replacement of funds requirements specified in sections 409 and 410 of the Act. We incorporate those statutory requirements in paragraph (b)(2) by cross reference to the specific TANF regulatory provisions in 45 CFR Part 262 that implement those requirements.

Under proposed paragraph (c), the penalty would be assessed if the Secretary determines that the State has not corrected the deficiency or deficiencies cited in the notice by the end of the corrective action year. This determination would be made as of the first full three-month period beginning after the end of corrective action year.

We propose, as supported by the language of section 409(a)(8) of the Act, under paragraph (d), that only one corrective action period be provided to a State in relation to a given deficiency when consecutive findings of noncompliance are made on that deficiency. In the case of a State in which the penalty is accessed and which failed to correct the deficiency or deficiencies cited in the notice by the end of the corrective action year, the penalty would be applied for any quarter that ends after the end of the corrective action year and until the first quarter throughout which the State is determined to have corrected the deficiency or deficiencies cited in the notice.

Under proposed paragraph (e), a consecutive finding would occur only when the State does not meet or achieve substantial compliance with the same criterion or criteria cited in the notice.

VI. Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), the Regulatory Flexibility Act (Pub. L. 96–354), that these proposed regulations will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Act.

VII. Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. The proposed rule implements the statutory provisions by specifying the performance-based incentive and penalty systems.

VIII. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the proposed rule.

We have determined that the proposed rules will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. The reports necessary to implement this proposed rule have received OMB approvals. They are the OCSE–157, OMB No. 0970–0177; the OCSE–34A, OMB No. 0970–0181; and the OCSE–396A, OMB No. 0970–0181. This proposed rule requires no other reporting or recordkeeping requirements.

X. Congressional Review

This proposed rule is not a major rule as defined in 5 U.S.C., Chapter 8.

XI. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's conclusion is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These proposed regulations will not have an impact on family well-being as defined in the legislation.

List of Subjects

45 CFR Parts 302 and 303

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR Part 304

Child support, Grant programs/social programs, Penalties, Reporting and recordkeeping requirements, Unemployment compensation.

45 CFR Part 305

Child support, Grant programs/social programs, Accounting.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program)

Dated: April 29, 1999.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: June 21, 1999.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons discussed above, we propose to amend title 45 CFR Chapter III of the Code of Federal Regulations as follows:

PART 302—STATE PLAN REQUIREMENTS

1. The authority citation for part 302 is revised to read as follows:

Authority: 42 U.S.C. 651 through 658A, 660, 664, 666, 667, 1302, 1396(a)(25), 1396B(d)(2), 1396b(o), 1396(p), 1396(k).

2. Section 302.55 is amended by adding the words ''and part 305'' after ''§ 304.12''.

PART 303—STANDARDS FOR PROGRAM OPERATIONS

3. The authority section for Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

4. A new § 303.35 is added to read as follows:

§ 303.35 Administrative complaint procedure.

(a) Each State must have an administrative complaint procedure in place to allow individuals the opportunity to request a review of actions taken, or not taken when there is evidence that an action should have been taken, on a particular case. In addition, the State must have a procedure for reviewing the individual's complaint and resolving it where appropriate action was not taken.

(b) A State need not establish a formal hearing process but must have clear procedures in place and available for recipients of IV–D services to use when requesting such a review and for notifying them of the results of the review and any actions taken.

PART 304—FEDERAL FINANCIAL PARTICIPATION

5. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 658, 1302, 1396(a)(25), 1396b(d)(2), 1396b(o), 1396(p), and 1396(k).

6. Section 304.12 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 304.12 Incentive payments.

* * * * *

(d) This section is in effect only through 9/30/01.

(e) The amounts payable under this section will be reduced by one-third for fiscal year 2000 and two-thirds for fiscal year 2001.

7. A new part 305 is added to read as follows:

PART 305—PROGRAM PERFORMANCE MEASURES, STANDARDS, FINANCIAL INCENTIVES, AND PENALTIES

Sec.

305.0 Scope.
305.1 Definitions.
305.2 Performance measures.
305.31 Amount of incentive payment.
305.32 Requirements applicable to calculations.
305.33 Determination of applicable percentages based on performance levels.
305.34 Payment of incentives.
305.35 Reinvestment.
305.36 Incentive phase-in.
305.40 Penalty performance measures and levels.
305.42 Penalty phase-in.
305.60 Types and scope of Federal audits.

305.61 Penalty for failure to meet IV–D requirements.
305.62 Disregard of noncompliance which is of a technical nature.
305.63 Standards for determining substantial compliance with IV–D requirements.
305.64 Audit procedures and State comments.
305.65 State cooperation in the audit.
305.66 Notice, corrective action year, and imposition of penalty.
42 U.S.C. 609(a)(8), 652(a)(4) and (g), 658A and 1302.

§ 305.0 Scope.

This part implements the incentive system requirements as described in section 458A (to be redesignated as section 458 effective October 1, 2001) of the Act and the penalty provisions as required in sections 409(a)(8) and 452(g) of the Act. This part also implements Federal audit requirements under sections 409(a)(8) and 452(a)(4) of the Act. Sections 305.0 through 305.2 contain general provisions applicable to this part. Sections 305.31 through 305.36 of this part describe the incentive system. Sections 305.40 through 305.42 and §§ 305.60 through 305.66 describe the penalty and audit processes.

§ 305.1 Definitions.

The definitions found in § 301.1 of this chapter are also applicable to this part. In addition, for purposes of this part:

(a) The term *IV–D case* means a parent (mother, father, or putative father) who is now or eventually may be obligated under law for the support of a child or children receiving services under the title IV–D program. In counting cases for the purposes of this part, States may exclude cases closed under § 303.11 of this chapter and cases over which the State has no jurisdiction. Lack of jurisdiction cases are those in which a non-custodial parent resides in the civil jurisdictional boundaries of another country or Federally recognized Indian Tribe and no income or assets of this individual are located or derived from outside that jurisdiction and the State has no other means through which to enforce the order.

(b) The term *Current Assistance collections* means collections received and distributed on behalf of individuals whose rights to support are required to be assigned to the State under title IV–A of the Act, under title IV–E of the Act, or under title XIX of the Act. In addition, a referral to the State's IV–D agency must have been made.

(c) The term *Former Assistance collections* means collections received and distributed on behalf of individuals whose rights to support were formerly required to be assigned to the State under title IV–A (TANF or Aid to Families with Dependent Children, AFDC), title IV–E (Foster Care), or title XIX (Medicaid) of the Act.

(d) The term *Never Assistance/Other collections* means all other collections received and distributed on behalf of individuals who are receiving child support enforcement services under title IV–D of the Act.

(e) The term *total IV–D administrative costs* means total IV–D administrative expenditures claimed by a State in a specified fiscal year adjusted in accordance with § 305.32 of this part.

(f) The term *Consumer Price Index or CPI* means the last Consumer Price Index for all-urban consumers published by the Department of Labor. The CPI for a fiscal year is the average of the Consumer Price Index for the 12-month period ending on September 30 of the fiscal year.

(g) The term *State incentive payment share* for a fiscal year means the incentive base amount for the State for the fiscal year divided by the sum of the incentive base amounts for all of the States for the fiscal year.

(h) The term *incentive base amount* for a fiscal year means the sum of the State's performance level percentages (determined in accordance with § 305.33 of this part) multiplied by the State's corresponding maximum incentive base on each of the following measures:

(1) The paternity establishment performance level;

(2) The support order performance level;

(3) The current collections performance level;

(4) The arrears collections performance level; and

(5) The cost-effectiveness performance level.

(i) The term *reliable data* means the most recent data available which are found by the Secretary to be reliable and is a state that exists when data are sufficiently complete and error free to be convincing for their purpose and context. This is with the recognition that data may contain errors as long as they are not of a magnitude that would cause a reasonable person, aware of the errors, to doubt a finding or conclusion based on the data.

(j) The term *complete data* means all reporting elements from OCSE OMB approved reporting forms, necessary to compute a State's performance levels, incentive base amount, and maximum incentive base amount, have been provided.

§ 305.2 Performance measures.

(a) The child support incentive system measures State performance levels in five program areas: paternity establishment; support order establishment; current collections; arrearage collections; and cost-effectiveness. The penalty system measures State performance in three of these areas: paternity establishment; establishment of support orders; and current collections.

(1) Paternity establishment performance level. States have the choice of being evaluated on one of the following two measures for their paternity establishment percentage (commonly known as the PEP). The count of children shall not include any child who is a dependent by reason of the death of a parent (unless paternity is established for that child). It shall also not include any child whose parent is found to have good cause for refusing to cooperate with the State agency in establishing paternity, or for whom the State agency determines it is against the best interest of the child to pursue paternity issues.

(i) IV–D paternity establishment percentage means the ratio that the total number of children in the IV–D caseload in the fiscal year (or, at the option of the State, as of the end of the fiscal year) who have been born out-of-wedlock and for whom paternity has been established or acknowledged, bears to the total number of children in the IV–D caseload as of the end of the preceding fiscal year who were born out-of-wedlock. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Total \# of Children in IV-D Caseload in the Fiscal Year or, at the option of the State, as of the end of the Fiscal Year who were Born Out-of-Wedlock with Paternity Established or Acknowledged}}{\text{Total \# of Children in IV-D Caseload as of the end of the preceding Fiscal Year who were Born Out-of-Wedlock}}$$

(ii) Statewide paternity establishment percentage means the ratio that the total number of minor children who have been born out-of-wedlock and for whom paternity has been established or acknowledged during the fiscal year, bears to the total number of children born out-of-wedlock during the preceding fiscal year. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Total \# of Minor Children who have been Born Out-of-Wedlock and for Whom Paternity has been Established or Acknowledged During the Fiscal Year}}{\text{Total \# of Children Born Out-of-Wedlock During the Preceding Fiscal Year}}$$

(2) Support order establishment performance level. This measure requires a determination of whether or not there is a support order for each case. These support orders include all types of legally enforceable orders, such as court, default, and administrative. Since the measure is a case count at a point-in-time, modifications to an order do not affect the count. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Number of IV-D Cases with Support Orders During the Fiscal Year}}{\text{Total Number of IV-D Cases During the Fiscal Year}}$$

(3) Current collections performance level. Current support is money applied to current support obligations and does not include payment plans for payment towards arrears. If included, voluntary collections must be included in both the numerator and the denominator. This measure is computed monthly and the total of all months is reported at the end of the year. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Total Dollars Collected for Current Support in IV-D Cases}}{\text{Total Dollars Owed for Current Support in IV-D Cases}}$$

(4) Arrearage collection performance level. This measure includes those cases where all of the past-due support was disbursed to the family, or retained by the State because all the support was assigned to the State. If some of the past-due support was assigned to the State and some was to be disbursed to the family, only those cases where some of the support actually went to the family can be included. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Total number of eligible IV-D cases paying toward arrears}}{\text{Total number of IV-D cases with arrears due}}$$

(5) Cost-effectiveness performance level. Interstate incoming and outgoing distributed collections will be included for both the initiating and the responding State in this measure. The equation to compute this measure is as follows (expressed as a ratio):

$$\frac{\text{Total IV-D Dollars Collected}}{\text{Total IV-D Dollars Expended}}$$

(b) For incentive purposes, the measures will be weighted in the following manner. Each State will earn five scores based on performance on each of the five measures. Each of the first three measures (paternity establishment, order establishment, and current collections) earn 100 percent of the collections base as defined in § 305.31(e) of this part. The last two measures (collections on arrears and cost-effectiveness) earn a maximum of 0.75 percent of the collections base as defined in § 305.31(e) of this part.

§ 305.31 Amount of incentive payment.

(a) The incentive payment for a State for a fiscal year is equal to the incentive payment pool for the fiscal year, multiplied by the State incentive payment share for the fiscal year.

(b) The incentive payment pool is:

(1) $422,000,000 for fiscal year 2000;
(2) $429,000,000 for fiscal year 2001;
(3) $450,000,000 for fiscal year 2002;
(4) $461,000,000 for fiscal year 2003;
(5) $454,000,000 for fiscal year 2004;
(6) $446,000,000 for fiscal year 2005;
(7) $458,000,000 for fiscal year 2006;
(8) $471,000,000 for fiscal year 2007;
(9) $483,000,000 for fiscal year 2008; and

(10) For any succeeding fiscal year, the amount of the incentive payment pool for the fiscal year that precedes such succeeding fiscal year multiplied by the percentage (if any) by which the CPI for such preceding fiscal year exceeds the CPI for the second preceding fiscal year. In other words, for each fiscal year following fiscal year 2008, the incentive payment pool will be multiplied by the percentage increase in the CPI between the two preceding years. For example, if the CPI increases by 1 percent between fiscal years 2007 and 2008, then the incentive pool for fiscal year 2009 would be a 1 percent increase over the $483,000,000 incentive payment pool for fiscal year 2008, or $487,830,000.

(c) The State incentive payment share for a fiscal year is the incentive base amount for the State for the fiscal year divided by the sum of the incentive base amounts for all of the States for the fiscal year.

(d) A State's maximum incentive base amount for a fiscal year is the State's collections base for the fiscal year for the paternity establishment, support order, and current collections performance measures and 75 percent of the State's collections base for the fiscal year for the arrearage collections and

cost-effectiveness performance measures.

(e) A State's maximum incentive base amount for a State for a fiscal year is zero, unless a Federal audit performed under § 305.60 of this part determines that the data which the State submitted for the fiscal year and which are used to determine the performance level involved are complete and reliable.

(f) A State's collections base for a fiscal year is equal to: 2 times the sum of the total amount of support collected for Current Assistance cases plus two times the total amount of support collected in Former Assistance cases, plus the total amount of support collected in Never Assistance/other cases during the fiscal year, that is:

2(Current Assistance collections + Former Assistance collections) + all other collections.

§ 305.32 Requirements applicable to calculations.

In calculating the amount of incentive payments or penalties, the following conditions apply:

(a) Each measure is based on data submitted for the Federal fiscal year. The Federal fiscal year runs from October 1st of one year through September 30th of the following year.

(b) Only those Current Assistance, Former Assistance and Never Assistance/other collections disbursed and those expenditures claimed by the State in the fiscal year will be used to determine the incentive payment payable for that fiscal year;

(c) Support collected by one State at the request of another State will be treated as having been collected in full by each State;

(d) Amounts expended by the State in carrying out a special project under section 455(e) of the Act will be excluded from the State's total IV–D administrative costs in computing incentive payments;

(e) Fees paid by individuals, recovered costs, and program income such as interest earned on collections will be deducted from total IV–D administrative costs; and

(f) States must submit data used to determine incentives and penalties following instructions and formats as required by HHS on Office of Management and Budget (OMB) approved reporting instruments. If not submitted within the timeframes specified in the instructions to the OMB approved reporting instruments, we may consider the data to be incomplete.

§ 305.33 Determination of applicable percentages based on performance levels.

(a) A State's paternity establishment performance level for a fiscal year is, at the option of the State, the IV–D paternity establishment percentage or the Statewide paternity establishment percentage determined under § 305.2 of this part. The applicable percentage for each level of a State's paternity establishment performance can be found in table 1 of this part, except as provided in paragraph (b) of this section.

(b) If the State's paternity establishment performance level for a fiscal year is less than 50 percent, but exceeds its paternity establishment performance level for the immediately preceding fiscal year by at least 10 percentage points, then the State's applicable percentage for the paternity establishment performance level is 50 percent.

(c) A State's support order establishment performance level for a fiscal year is the percentage of the total number of cases where there is a support order determined under §§ 305.2 and 305.32 of this part. The applicable percentage for each level of a State's support order establishment performance can be found in table 1 of this part, except as provided in paragraph (d) of this section.

(d) If the State's support order establishment performance level for a fiscal year is less than 50 percent, but exceeds the State's support order establishment performance level for the immediately preceding fiscal year by at least 5 percentage points, then the State's applicable percentage is 50 percent.

TABLE 1 TO PART 305

[Use this table to determine the applicable percentage levels for the paternity establishment and support order establishment performance measures.]

If the paternity establishment or support order establishment performance level is:					
At least: (percent)	But less than: (percent)	The applicable percentage is:	At least: (percent)	But less than: (percent)	The applicable percentage is:
80	.....	100	64	65	74
79	80	98	63	64	73
78	79	96	62	63	72
77	78	94	61	62	71
76	77	92	60	61	70
75	76	90	59	60	69
74	75	88	58	59	68
73	74	86	57	58	67
72	73	84	56	57	66
71	72	82	55	56	65
70	71	80	54	55	64
69	70	79	53	54	63
68	69	78	52	53	62
67	68	77	51	52	61
66	67	76	50	51	60
65	66	75	0	50	0

(e) A State's current collections performance level for a fiscal year would be equal to the total amount of current support collected during the fiscal year divided by the total amount of current support owed during the fiscal year in all IV–D cases, determined under § 305.32 of this part. The applicable percentage with respect to a State's current collections performance level can be found in table 2 of this part, except as provided in paragraph (f) of this section.

(f) If the State's current collections performance level for a fiscal year is less

than 40 percent but exceeds the current collections performance level of the State for the immediately preceding fiscal year by at least 5 percentage points, then the State's applicable percentage is 50 percent.

(g) A State's arrearage collections performance level for a fiscal year is equal to the total number of IV–D cases in which payments of past-due child support were received and distributed during the fiscal year, divided by the total number of IV–D cases in which there was past-due child support owed, as determined under § 305.32 of this part. The applicable percentage with respect to a State's arrearage collections performance level can be found in table 2 of this part, except as provided in paragraph (h) of this section.

(h) If the State's arrearage collections performance level for a fiscal year is less than 40 percent but exceeds the arrearage collections performance level for the immediately preceding fiscal year by at least 5 percentage points, then the State's applicable percentage is 50 percent.

TABLE 2 TO PART 305

[Use this table to determine the percentage levels for the current collections and arrearage collections performance measures]

If the Current Collections or Arrearage Collections Performance Level Is:					
At least: (percent)	But less than: (percent)	The applicable percentage is:	At least: (percent)	But less than: (percent)	The applicable percentage is:
80	.....	100	59	60	69
79	80	98	58	59	68
78	79	96	57	58	67
77	78	94	56	57	66
76	77	92	55	56	65
75	76	90	54	55	64
74	75	88	53	54	63
73	74	86	52	53	62
72	73	84	51	52	61
71	72	82	50	51	60
70	71	80	49	50	59
69	70	79	48	49	58
68	69	78	47	48	57
67	68	77	46	47	56
66	67	76	45	46	55
65	66	75	44	45	54
64	65	74	43	55	53
63	64	73	42	43	52
62	63	72	41	42	51
61	62	71	40	41	50
60	61	70	0	40	0

(i) A State's cost-effectiveness performance level for a fiscal year is equal to the total amount of IV–D support collected and disbursed or retained, as applicable during the fiscal year, divided by the total amount expended during the fiscal year, as determined under § 305.32 of this part. The applicable percentage with respect to a State's cost-effectiveness performance level can be found in table 3 of this part.

TABLE 3 TO PART 305 [USE THIS TABLE TO DETERMINE THE PERCENTAGE LEVEL FOR THE COST-EFFECTIVENESS PERFORMANCE MEASURE.]

If the cost-effectiveness performance level is:		
At least:	But less than:	The applicable percentage
5.00	.....	100
4.50	4.99	90
4.00	4.50	80
3.50	4.00	70
3.00	3.50	60

TABLE 3 TO PART 305 [USE THIS TABLE TO DETERMINE THE PERCENTAGE LEVEL FOR THE COST-EFFECTIVENESS PERFORMANCE MEASURE.]—Continued

If the cost-effectiveness performance level is:		
At least:	But less than:	The applicable percentage
2.50	3.00	50
2.00	2.50	40
0.00	2.00	0

(j) The following example shows how an incentive payment would be determined for State A. Let's make the following assumptions regarding State A (see table A of this paragraph):

State A's paternity performance level is 54 percent, making its applicable percent 64 percent (see table 1 of this part).

State A's order establishment performance level is 79 percent, making its applicable percent 98 percent (see table 1).

State A's current support collections performance level is 41 percent, making its applicable percent 51 percent (see table 2 of this part).

State A's arrearage collections performance level is 40 percent, making its applicable percent 50 percent (see table 2).

State A's cost-effectiveness ratio is 3.00, making its applicable percent 60 percent (see table 3 of this part).

State A's collections base is $50 million (determined by 2 times the collections for current assistance and Former Assistance cases, plus collections for other cases).

The maximum incentive base is:

$32 million collections base for paternity ($50 million times .64), plus

$49 million collections base for orders ($50 million times .98), plus

$25.5 million collections base for current collections ($50 million times .51), plus

$18.8 million collections base for arrearage collections ($50 million times .75 times .50) plus

$22.5 million collections base for cost-effectiveness ($50 million times .75 times .60) equals

Resulting in a maximum incentive base amount of $147.8 million for State A.

TABLE A TO PARAGRAPH (j)

Measure	State A's performance level (percent)	Applicable percent based on performance	Weight	State A's collection base (in millions) (assumed to be $50.0 million)
Paternity Establishment	54	64	1.00	$32.0
Order Establishment	79	98	1.00	49.0
Current Collections	41	51	1.00	25.5
Arrearage Collections	40	50	0.75	18.8
Cost-Effectiveness	*	60	0.75	22.5
State A's Maximum Incentive Base Amount				147.8 million

*$3.00.

We must now make some assumptions regarding the other States. Let's assume that there are only two other States in our country—and the maximum incentive base amount is $82 million for State B and $52 million for State C, making the total maximum incentive base amount $281.8 million for all three States (See table B of this paragraph).

We must now determine what State A's share of the $281.8 million is. It is 52 percent ($147.8 divided by $281.8).

TABLE B TO PARAGRAPH (j)

State	Maximum incentive base amounts	State's share of $281.8 million	Incentive payment pool $422 million (in millions)
A	$147.8	.52	$219.4
B	82.0	.34	143.5
C	52.0	.14	59.1
Totals	281.8	1.00	

Let us assume the incentive payment pool for the FY is $422 million.

Since State A's share is .52, this State has earned 52 percent of the $422 million incentive payment pool that Congress is allowing or a $219.4 ($422 million times .52) million incentive payment for this particular fiscal year.

§ 305.34 Payment of incentives.

(a) Each State must report one-fourth of its estimated annual incentive payment on each of its four quarterly collections' reports for a fiscal year. When combined with the amounts claimed on each of the State's four quarterly expenditure reports, the portion of the annual incentive payment as reported each quarter will be included in the calculation of the next quarterly grant awarded to the State under title IV–D of the Act.

(b) Following the end of each fiscal year, HHS will calculate the State's annual incentive payment, using the actual collection and expenditure data and the performance data submitted by the State and other States for that fiscal year. A positive or negative grant will then be awarded to the State under title IV–D of the Act to reconcile an actual annual incentive payment that has been calculated to be greater or lesser, respectively, than the annual incentive payment estimated prior to the beginning of the fiscal year.

(c) Payment of incentives is contingent on a State's data being determined complete and reliable by Federal auditors.

§ 305.35 Reinvestment.

(a) A State must expend the full amount of incentive payments received under this part to supplement, and not supplant other funds used by the State to carry out IV–D program activities; or funds for other activities approved by the Secretary which may contribute to improving the effectiveness or efficiency of the State's IV–D program, including cost-effective contracts with local agencies, whether or not the expenditures for the activity are eligible for reimbursement under this part.

(b) In those States in which incentive payments are passed through to political subdivisions or localities, such payments must be used in accordance with this section.

(c) State IV–D expenditures may not be reduced as a result of the receipt and reinvestment of incentive payments.

(d) A base amount will be determined by subtracting the amount of incentive funds received by the State IV–D program for fiscal year 1998 from the total amount expended by the State in the IV–D program during the same period. Alternatively, States have an option of using the average amount of the previous three fiscal years (1996, 1997, and 1998) as a base amount. This base amount of State spending must be maintained in future years. Incentive payments under this part must be used in addition to, and not in lieu of, the base amount.

(e) For example: (1) State A expended $15 million in FY1998 to conduct IV–D activities and used incentive payments received by the State as general revenues to fund an assortment of non-IV–D State and local programs or activities. If State A receives incentives, it must continue to expend at least $15 million of its money annually to conduct IV–D activities (not including incentive money). In addition, State A must henceforth expend any incentive payments received pursuant to section 458A of the Act and this part for IV–D activities, or other activities approved by the Secretary. These incentive payments will be expended in addition to, and not in lieu of, the current $15 million expended;

(2) State B expended a total of $20 million in FY 1998 in its IV–D program and, of the $20 million, $5 million

represented incentive funds, which the State received and reinvested in its IV–D program. If State B receives incentive payments, it must continue to spend at least $15 million in State money (not including incentive money) annually. Incentive payments received by the State must continue to be used in addition to, and not in lieu of, this $15 million base amount.

(f) Requests for approval of expending incentives on activities not currently eligible for funding under the IV–D program, but which would benefit the IV–D program, must be submitted in accordance with instructions issued by the Commissioner of the Office of Child Support Enforcement.

§ 305.36 Incentive phase-in.

The incentive system under this part will be phased-in over a three-year period during which both the old system and the new system would be used to determine the amount a State will recieve. For fiscal year 2000, a State will receive two-thirds of what it would have received under the incentive formula set forth in § 304.12 of this chapter, and one-third of what it would receive under the formula set forth under this part. In fiscal year 2001, a State will receive one-third of what it would have received under the incentive formula set forth under § 304.12 of this chapter and two-thirds of what it would receive under the formula under this part. In fiscal year 2002, the formula set forth under this part will be fully implemented and would be used to determine all incentive amounts.

§ 305.40 Penalty performance measures and levels.

(a) There are three performance measures for which States must achieve certain levels of performance in order to avoid being penalized for poor performance. These measures are the paternity establishment, support order establishment, and current collections measures set forth in § 305.2 of this part. The levels the State must meet are:

(1) The paternity establishment percentage which is required under section 452(g) of the Act for penalty purposes. States have the option of using either the IV–D paternity establishment percentage or the statewide paternity establishment percentage defined in § 305.2 of this part. Table 4 of this part shows the level of performance at which a State will be subject to a penalty under the paternity establishment measure.

TABLE 4 TO PART 305

[Use this table to determine the level of performance for the paternity establishment measure that will incur a penalty]

Statutory Penalty Performance Standards for Paternity Establishment		
PEP	Increase required over previous year's PEP (percent)	Penalty FOR FIRST FAILURE if increase not met
90% or more	None	No Penalty.
75% to 89%	2	1–2% TANF Funds.
50% to 74%	3	1–2% TANF Funds.
45% to 49%	4	1–2% TANF Funds.
40% to 44%	5	1–2% TANF Funds.
39% or less	6	1–2% TANF Funds.

(2) The support order establishment performance measure is set forth in § 305.2 of this part. For purposes of the penalty with respect to this measure, there is a threshold of 40 percent, below which a State will be penalized unless an increase of 5 percent over the previous year is achieved—which would qualify it for an incentive. Performance in the 40 percent to 49 percent range with no significant increase would not be penalized but neither would it qualify for an incentive payment. Table 5 of this part shows at which level of performance a State will incur a penalty under the child support order establishment measure.

TABLE 5 TO PART 305

[Use this table to determine the level of performance for the order establishment measure that will incur a penalty]

Performance Standards for Order Establishment		
Performance level	Increase over previous year	Incentive/penalty
50% or more	no increase over previous year required	Incentive.
40% to 49%	w/5% increase over previous year	Incentive.
	w/out 5% increase	No Incentive/No Penalty.
Less than 40%	w/5% increase over previous year	Incentive.
	w/out 5% increase	Penalty equal to 1–2% of TANF funds for the first failure, 2–3% for second failure, and so forth, up to a maximum of 5% of TANF funds.

(3) The current collections performance measure is set forth in § 305.2 of this part. There is a threshold of 35 percent below which a State will be penalized unless an increase of 5 percent over the previous year is achieved (that would qualify it for an incentive). Performance in the 35 percent to 40 percent range with no significant increase would not be penalized but neither would it qualify for an incentive payment. Table 6 of this part shows at which level of performance the State will incur a penalty under the current collections measure.

TABLE 6 TO PART 305

[Use this table to determine the level of performance for the current collections measure that will incur a penalty]

Performance Standards for Current Collections		
Performance level	Increase over previous year	Incentive/penalty
40% or more	no increase over previous year required	Incentive.
35% to 40%	w/5% increase over previous year	Incentive.
	w/out 5%	No Incentive/No Penalty.
Less than 35%	w/5% increase over previous year	Incentive.
	w/out 5% increase	Penalty equal to 1–2% of TANF funds for the first failure, 2–3% for second failure, and so forth, up to a maximum of 5% of TANF funds.

(b) The provisions listed under § 305.32 of this part also apply to the penalty performance measures.

§ 305.42 Penalty phase-in.

States are subject to the performance penalties based on data reported for FY 2001. Data reported for FY 2000 will be used as a base year to determine improvements in performance during FY 2001. There will be a statutory one-year corrective action period before any penalty is assessed. The penalties will be assessed and then suspended during the corrective action period.

§ 305.60 Types and scope of Federal audits.

(a) OCSE will conduct audits, at least once every three years (or more frequently if the State fails to meet performance standards and reliability of data requirements) to assess the completeness, authenticity, reliability, accuracy and security of data and the systems used to process the data in calculating performance indicators under this part.

(b) OCSE will conduct audits to determine the adequacy of financial management of the State IV–D program, including assessments of:

(1) Whether funds to carry out the State program are being appropriately expended, and are properly and fully accounted for; and

(2) Whether collections and disbursements of support payments are carried out correctly and are fully accounted for.

(c) OCSE will conduct audits for such other purposes as OCSE may find necessary.

(1) These audits include audits to determine if the State is substantially complying with one or more of the requirements of the IV–D program (with the exception of the requirement of section 454(24) of the Act relating to statewide-automated systems) as defined in § 305.63 of this part. Other audits will be conducted at the discretion of OCSE.

(2) Audits to determine substantial compliance will be initiated based on substantiated evidence of a failure by the State to meet IV–D program requirements. Evidence, which could warrant an audit to determine substantial compliance, includes:

(i) The results of 2 or more State self-reviews conducted under section 454(15)(A) of the Act which: show evidence of sustained poor performance; or indicate that the State has not corrected deficiencies identified in previous self-assessments, or that those deficiencies are determined to seriously impact the performance of the State's program; or

(ii) Evidence of a State program's systemic failure to provide adequate services under the program through a pattern of non-compliance over time.

(d) OCSE will conduct audits of the State's IV–D program through inspection, inquiries, observation, and confirmation and in accordance with standards promulgated by the Comptroller General of the United States in ''Government Auditing Standards.''

§ 305.61 Penalty for failure to meet IV–D requirements.

(a) A State will be subject to a financial penalty and the amounts otherwise payable to the State under title IV–A of the Act will be reduced in accordance with § 305.66 of this part:

(1) If on the basis of:

(i) Data submitted by the State or the results of an audit conducted under § 305.60 of this part, the State's program failed to achieve the paternity establishment percentages, as defined in section 452(g)(2) of the Act and § 305.40 of this part, or to meet the support order establishment and current collections performance measures as set forth in § 305.40 of this part; or

(ii) The results of an audit under § 305.60 of this part, the State did not submit complete and reliable data, as defined in § 305.1 of the part; or

(iii) The results of an audit under § 305.60 of this part, the State failed to substantially comply with 1 or more of the requirements of the IV–D program, as defined in § 305.63 of this part; and

(2) With respect to the following fiscal year, the State failed to take sufficient corrective action to achieve the appropriate performance levels or compliance or the data submitted by the State are still incomplete and unreliable.

(b) The reductions under paragraph (c) of this section will be made for quarters following the end of the fiscal year following the fiscal year in which the determination under paragraph (a)(1) of this section is made that the State is subject to a penalty and continues until the State, as appropriate:

(1) Has achieved the paternity establishment percentages, the order establishment or the current collections performance measures set forth in § 305.40 of this part; or

(2) Is in substantial compliance with IV–D requirements as defined in § 305.63 of this part; or

(3) Has submitted data that are determined to be complete and reliable.

(c) The payments for a fiscal year under title IV–A of the Act will be reduced by the following percentages:

(1) One to two percent for the first finding under paragraph (a) of this section;

(2) Two to three percent for the second such finding; and

(3) Not less than three percent and not more than 5 percent for the third or a subsequent consecutive finding.

(d) The reduction will be made in accordance with the provisions of 45 CFR 262.1 (b) through (e) and 262.7.

§ 305.62 Disregard of noncompliance which is of a technical nature.

A State subject to a penalty under § 305.61(a)(1)(ii) or (iii) of this part may be determined, as appropriate, to have submitted adequate data or to have achieved substantial compliance with one or more IV–D requirements, as defined in § 305.63 of this part, if the Secretary determines that the incompleteness or unreliability of the data, or the noncompliance with one or

more of the IV–D requirements, is of a technical nature which does not adversely affect the performance of the State's IV–D program or does not adversely affect the determination of the level of the State's paternity establishment or other performance measures percentages.

§ 305.63 Standards for determining substantial compliance with IV–D requirements.

For the purposes of a determination under § 305.62(a)(1)(iii) of this part, in order to be found to be in substantial compliance with 1 or more of the IV–D requirements as a result of an audit conducted under § 305.60 of this part, a State must meet the standards set forth in this section for each specific IV–D State plan requirement or requirements being audited and contained in parts 302 and 303 of this chapter, measured as follows:

(a) The State must meet the requirements under the following areas:

(1) Statewide operations, § 302.10;

(2) Reports and maintenance of records, § 302.15(a);

(3) Separation of cash handling and accounting functions, § 302.20; and

(4) Notice of collection of assigned support, § 302.54.

(b) The State must provide services required under the following areas in at least 90 percent of the cases reviewed:

(1) Establishment of cases, § 303.2(a); and

(2) Case closure criteria, § 303.11.

(c) The State must provide services required under the following areas in at least 75 percent of the cases reviewed:

(1) Collection and distribution of support payments, including: collection and distribution of support payments by the IV–D agency under § 302.32(b); distribution of support collections under § 302.51; and distribution of support collected in title IV–E foster care maintenance cases under § 302.52;

(2) Establishment of paternity and support orders, including: establishment of a case under § 303.2(b); services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a)(1) through (4); provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(1) through (6), and (c)(8) through (10); location of non-custodial parents under § 303.3; establishment of paternity under § 303.5(a) and (f); guidelines for setting child support awards under § 302.56; and establishment of support obligations under § 303.4(d), (e) and (f);

(3) Enforcement of support obligations, including, in all appropriate cases: establishment of a case under § 303.2(b); services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a)(1) through (4); provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(1) through (6), and (c)(8) through (10); location of non-custodial parents under § 303.3; enforcement of support obligations under § 303.6 and State laws enacted under section 466 of the Act, including submitting once a year all appropriate cases in accordance with § 303.6(c)(3) to State and Federal income tax refund offset; and wage withholding under § 303.100. In cases in which wage withholding cannot be implemented or is not available and the non-custodial parent has been located, States must use or attempt to use at least one enforcement technique available under State law in addition to Federal and State tax refund offset, in accordance with State laws and procedures and applicable State guidelines developed under § 302.70(b).

(4) Review and adjustment of child support orders, including: establishment of a case under § 303.2(b); services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a)(1) through (4); provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(1) through (6), and (c)(8) through (10); location of non-custodial parents under § 303.3; guidelines for setting child support awards under § 302.56; and review and adjustment of support obligations under § 303.8; and

(5) Medical support, including: establishment of a case under § 303.2(b); services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a)(1) through (4); provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(1) through (6), and (c)(8) through (10); location of non-custodial parents under § 303.3; securing medical support information under § 303.30; and securing and enforcing medical support obligations under § 303.31; and

(6) Disbursement of support payments in accordance with the timeframes in section 454B of the Act and § 302.32.

(d) With respect to the 75 percent standard in paragraph (b) of this section:

(1) Notwithstanding timeframes for establishment of cases in § 303.2(b); provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(4) through (6), and (c)(8) and (9); location and support order establishment under § 303.3(b)(3) and (5), and § 303.4(d), if a support order needs to be established in a case and an order is established during the audit period in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action in that case for audit purposes.

(2) Notwithstanding timeframes for establishment of cases in § 303.2(b); provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(4) through (6), and (c)(8) and (9); and location and review and adjustment of support orders contained in § 303.3(b)(3) and (5), and § 303.8, if a particular case has been reviewed and meets the conditions for adjustment under State laws and procedures and § 303.8, and the order is adjusted, or a determination is made, as a result of a review, during the audit period, that an adjustment is not needed, in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action in that case for audit purposes.

(3) Notwithstanding timeframes for establishment of cases in § 303.2(b); provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(4) through (6), and (c)(8) and (9); and location and wage withholding in § 303.3(b)(3) and (5), and § 303.100, if wage withholding is appropriate in a particular case and wage withholding is implemented and wages are withheld during the audit period, the State will be considered to have taken appropriate action in that case for audit purposes.

(4) Notwithstanding timeframes for establishment of cases in § 303.2(b); provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(4) through (6), and (c)(8) and (9); and location and enforcement of support obligations in § 303.3(b)(3) and (5), and § 303.6, if wage withholding is not appropriate in a particular case, and the State uses at least one enforcement technique available under State law, in addition to Federal and State income tax refund offset, which results in a collection received during the audit period, the State will be considered to have taken appropriate action in the case for audit purposes.

(e) The State must meet the requirements for expedited processes under § 303.101(b)(2)(i) and (iii), and (e).

§ 305.64 Audit procedures and State comments.

(a) Prior to the start of the actual audit, Federal auditors will hold an audit entrance conference with the IV–D agency. At that conference, the auditors will explain how the audit will be performed and make any necessary arrangements.

(b) At the conclusion of audit fieldwork, Federal auditors will afford the State IV–D agency an opportunity for an audit exit conference at which

time preliminary audit findings will be discussed and the IV–D agency may present any additional matter it believes should be considered in the audit findings.

(c) After the exit conference, Federal auditors will prepare and send to the IV–D agency a copy of their interim report on the results of the audit. Within 45 days from the date the report was sent by certified mail, the IV–D agency may submit written comments on any part of the report which the IV–D agency believes is in error. The auditors will note such comments and incorporate any response into the final audit report.

§ 305.65 State cooperation in the audit.

(a) Each State shall make available to the Federal auditors such records or other supporting documentation (electronic and manual) as the audit staff may request, including records to support the data as submitted on the Federal statistical and financial reports that will be used to calculate the State's performance. The State shall also make available personnel associated with the State's IV–D program to provide information that the audit staff may find necessary in order to conduct or complete the audit.

(b) States must provide evidence to OCSE that their data are complete and reliable as defined in § 305.2 of this part.

(c) Failure to comply with the requirements of this section with respect to audits conducted to determine compliance with IV–D requirements under § 305.60 of this part, may necessitate a finding that the State has failed to comply with the particular criteria being audited.

§ 305.66 Notice, corrective action year, and imposition of penalty.

(a) If a State is found by the Secretary to be subject to a penalty as described in § 305.61 of this part, the Office will notify the State in writing of such finding.

(b) The notice will:

(1) Explain the deficiency or deficiencies which result in the State being subject to a penalty, indicate the amount of the potential penalty, and give reasons for the Secretary's finding; and

(2) Specify that the penalty will be assessed in accordance with the provisions of 45 CFR 262.1(b) through (e) and 262.7 if the State fails to correct the deficiency or deficiencies cited in the notice during the subsequent fiscal year (corrective action year).

(c) The penalty under § 305.61 will be assessed if the Secretary determines that the State has not corrected the deficiency or deficiencies cited in the notice by the end of the corrective action year. This determination will be made as of the first full three-month period beginning after the end of the corrective action year.

(d) Only one corrective action period is provided to a State with respect to a given deficiency where consecutive findings of noncompliance are made with respect to that deficiency. In the case of a State against which the penalty is assessed and which failed to correct the deficiency or deficiencies cited in the notice by the end of the corrective action year, the penalty will be effective for any quarter after the end of the corrective action year and ends for the first full quarter throughout which the State IV–D program is determined to have corrected the deficiency or deficiencies cited in the notice.

(e) A consecutive finding occurs only when the State does not meet the same criterion or criteria cited in the notice in paragraph (a) of this section.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 308

RIN 0970–AB96

State Self-Assessment Review and Report

AGENCY: Office of Child Support Enforcement (OCSE), ACF, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations would implement a provision of the Social Security Act added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which requires each State to annually assess the performance of its own child support enforcement program and to provide a report of the findings to the Secretary of the Department of Health and Human Services (DHHS).

DATES: Consideration will be given to written comments received by December 7, 1999.

ADDRESSES: Send comments to: Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, S.W., Washington D.C. 20447. Attention: Division of Policy and Planning, Office of Child Support Enforcement. Comments will be available for public inspection Monday through Friday, 8:00 a.m. to 4:30 p.m. on the fourth floor of the Department's offices at the address mentioned above.

You may also transmit written comments electronically via the Internet. To transmit comments electronically, or download an electronic version of the proposed rule, you should access the Administration for Children and Families Welfare Reform Home Page at ''http://www.acf.dhhs.gov/hypernews/'' and follow the instructions provided.

FOR FURTHER INFORMATION CONTACT: Jan Rothstein, Division of Policy & Planning, OCSE, telephone number: (202) 401–5073, fax: (202) 401–3444, e-mail: jrothstein@acf.dhhs.gov.

SUPPLEMENTARY INFORMATION:

State Self-Assessment Review and Report

Statutory Authority

These proposed regulations are published under the authority of the Social Security Act (the Act), as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193). Section 454(15)(A) of the Act (42 U.S.C. 654(15)(A)) contains a requirement for each State to annually assess the performance of the State's child support enforcement program under title IV–D of the Act in accordance with standards specified by the Secretary, and to provide a report of the findings to the Secretary.

These proposed regulations are also published under the general authority of section 1102 of the Act (42 U.S.C. 1302) authorizing the Secretary to publish regulations necessary for the efficient administration of the title IV–D program.

Background

Prior to PRWORA, Federal law specified that States that had been audited and found not to be in substantial compliance with Federal requirements were subject to a financial penalty of between 1 and 5 percent of the State's funding under the title IV–A program. These audits were performed every 3 years. The penalty could be held in abeyance for up to one year to allow States the opportunity to implement corrective actions to remedy the program deficiency. At the end of the corrective action period, a follow-up audit was conducted. If the follow-up audit showed that the deficiency had been corrected, the penalty was rescinded. Section 342(b) of PRWORA revised section 452(a)(4) of the Act, and