

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of Child Support Enforcement**

**45 CFR Part 310**

RIN 0970-AB73

**Comprehensive Tribal Child Support Enforcement Programs**

**AGENCY:** Office of Child Support Enforcement (OCSE), Administration for Children and Families, HHS.

**ACTION:** Interim final rule.

**SUMMARY:** The Administration for Children and Families (ACF) is issuing this interim final rule to implement direct funding to Indian Tribes and Tribal organizations under section 455(f) of the Social Security Act (the Act) as added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104-193), and amended by section 5546 of the Balanced Budget Act of 1997 (Pub. L. 105-33). Section 455(f) of the Act authorizes direct funding of Tribal Child Support Enforcement (CSE) programs meeting requirements contained in the statute and established by the Secretary by regulation. This interim final rule enables Tribes and Tribal organizations currently operating a comprehensive Tribal CSE program directly or through agreement, resolution, or contract, to apply for and receive direct Tribal CSE funding. This interim final rule addresses the requirements in section 455(f) and provides guidance to these Tribes and Tribal organizations on how to apply for and, upon approval, receive direct funding for the operation of Tribal CSE programs.

A separate notice of proposed rulemaking (NPRM) for a wider range of Tribal CSE programs is published concurrently with this interim final rule, in this **Federal Register**.

**DATES:** Effective date: This interim final rule is effective on August 21, 2000.

Comment dates: Consideration will be given to written comments received by December 19, 2000, and to comments made for the record at public consultations to be held by OCSE during the 120-day comment period. See the NPRM for Tribal CSE Programs in this **Federal Register** for additional information on submission of comments and on the public consultations.

**ADDRESSES:** Written comments should be submitted to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, SW, Washington,

DC 20447, Attention: Director, Division of Policy and Planning, Mail Stop: OCSE/DPP. Written comments also may be submitted at the OCSE public consultations to be held during the comment period.

You may also transmit written comments electronically via the Internet. To transmit comments electronically, or download an electronic version of the rule, you should access the Administration for Children and Families Welfare Reform home page at "http://www.acf.dhhs.gov/hypernews/" and follow any instructions provided. You may also submit comments by telefaxing to (202) 401-3444. This is not a toll-free number.

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 370 L'Enfant Promenade, SW, Washington, DC 20447.

**FOR FURTHER INFORMATION CONTACT:** Tribal Child Support Enforcement Program, (202) 205-4554, or OCSE Division of Policy and Planning, (202) 401-9386.

Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 from Monday through Friday between the hours of 8:00 a.m. and 7:00 p.m., Eastern Time.

**SUPPLEMENTARY INFORMATION:**

**Statutory Authority**

This interim final rule implements section 455(f) of the Social Security Act (the Act), as added by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA; Pub. L. 104-193) and amended by section 5546 of the Balanced Budget Act of 1997 (Pub. L. 105-33).

This interim final rule is also issued under the authority granted to the Secretary of Health and Human Services (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.

Section 455(f) of the Act, as amended by Public Law 105-33, reads as follows: "The Secretary may make direct payments under this part to an Indian tribe or tribal organization that demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program meeting the objectives of this part, including establishment of paternity, establishment, modification, and enforcement of support orders, and

location of absent parents. The Secretary shall promulgate regulations establishing the requirements which must be met by an Indian tribe or tribal organization to be eligible for a grant under this subsection."

**Interim Final Regulations for Operational Tribal CSE Programs**

The Administrative Procedure Act (APA) requires an agency to publish notice of a proposed substantive rule in the **Federal Register** and to provide an opportunity for public comment. Section 553(b)(B) of the APA allows an exception to the notice and comment procedures "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Section 553(d) of the APA provides that a substantive rule be published in the **Federal Register** "not less than 30 days before its effective date," but permits an exception "for good cause."

Under section 455(f) of the Act, the Department of Health and Human Services must issue regulations governing Tribal CSE programs before it can make a direct grant to a Tribe or Tribal organization that "demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program \* \* \*." The rulemaking process, including consultation prior to our drafting these regulations and opportunity for public comment on these rules, is ordinarily a lengthy process. A number of Tribes expressed concern that efforts they have under way, including demonstration projects funded under other Federal authorities, would be unduly delayed or disrupted if the regulatory process had to run its ordinary course before funds could be made available under section 455(f).

In response to this concern, and in an effort to ensure that Tribes can begin to provide services as quickly as possible, we are issuing concurrently a proposed rule which will become effective under the ordinary notice and comment rulemaking procedures, and this interim final rule which takes effect immediately upon publication, but which may be modified in response to public comment. The interim final rule allows those Tribes and Tribal organizations that currently operate comprehensive Tribal CSE programs comprising the five mandatory elements listed in section 455(f) of the Act (paternity establishment, support order establishment, modification, and enforcement, and location of absent

parents) and meeting the requirements specified in the interim rule to receive (subsequent to application and approval) direct funding for a Tribal CSE program under section 455(f) prior to the conclusion of the ordinary rulemaking process. By operating a comprehensive program, we mean that a Tribal CSE agency is operating a comprehensive Tribal CSE program under a cooperative agreement with a State IV-D program or that the Tribal CSE agency is operating its own comprehensive Tribal CSE program. A Tribe or Tribal organization could be considered to be operating a comprehensive program even if other organizations or States conducted some portions of the program under contracts or agreements with the Tribal CSE agency.

The Department finds that there is good cause to dispense with an NPRM with respect to direct funding of Tribes and Tribal organizations that currently operate a comprehensive child support enforcement program. We find that publication of regulations in proposed form would be impracticable, unnecessary, and contrary to the public interest for the following reasons. First, the Department has concluded that a Tribe or Tribal organization which already operates a comprehensive child support program obviously "has the capacity" to do so and therefore would be eligible for direct funding under any conceivable regulatory definition of the term "has the capacity." Since such Tribes or Tribal organizations, after approval by the Secretary, would assuredly be eligible for funding under the final rule, the Department has concluded that it is in the best interests of the child support program and Tribal children and families to allow such Tribes or Tribal organizations to apply immediately for direct funding. This will allow these Tribes and Tribal organizations to continue to operate and, as appropriate, to expand their programs as quickly as possible and to provide uninterrupted service to their constituents. We believe that the families and children may be harmed without immediate funding for currently operating child support enforcement programs. Second, the criteria Tribes and Tribal organizations must meet to qualify for funds under the interim final regulations are derived from title IV-D of the Act and many of them are the same or similar to criteria already applicable to IV-D programs.

For these reasons, the agency believes that there is good cause to find that providing notice and comment in connection with immediate direct funding of Tribes and Tribal

organizations that currently operate a comprehensive child support enforcement program is impracticable, unnecessary, and contrary to the public interest. With respect to the immediate effective date of this interim final rule, the Department finds that good cause exists to waive the 30-day post-promulgation period ordinarily required since: (1) A 30-day waiting period would unnecessarily delay applications for direct funding from Tribal entities that already operate comprehensive child support enforcement programs, (2) provision of child support enforcement currently being provided by Tribes and Tribal organizations may be interrupted by delays in the effective date for this interim final rule, which would adversely affect needy families, and (3) the Department will provide widespread notice to affected parties that already operate child support enforcement programs.

While this interim final rule makes certain Tribes and Tribal organizations immediately eligible for direct funding upon approval of their applications by the Secretary, the proposed rule, upon publication in final form, would apply to a wider range of Tribes and Tribal organizations. However, because the requirements in the proposed rule are subject to revision in response to public comment, the Department concluded that it would not be in the best interest of the program nor Tribes to allow any Tribe or Tribal organization to apply which might later be made ineligible for direct funding due to changes in the regulation.

There is some risk for a Tribe that elects to apply to receive direct funding under this interim rule. Its CSE program will be governed initially by the provisions of the interim rule. The risk to a Tribe that operates under the interim rule is that the rule may change, and the Tribe will have to change its program to comport with the final rule. The Tribe would not be at financial risk as long as its program was consistent with the interim rule and it changed its program to comply with the final rule in a timely manner.

#### **Paperwork Reduction Act of 1995**

Under the Paperwork Reduction Act of 1995 (Pub. L. 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. For discussion of the reporting and recordkeeping requirements in the Tribal CSE Program regulations, see the preamble to the NPRM for Tribal CSE Programs published in this **Federal**

**Register**. These requirements are the same in the NPRM and this interim rule. Interested parties may comment to OMB on these requirements as explained in the NPRM's preamble. The Department has submitted these reporting requirements to OMB for its review.

The potential respondents to these information collection requirements under this interim final rule are approximately 10 Tribes and Tribal organizations during Year 1. We expect that the final rule for Tribal CSE programs will be published by the end of Year 1.

#### **Regulatory Flexibility Analysis**

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

#### **Executive Order 12866**

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this interim final rule is consistent with these priorities and principles. The regulations are required by PRWORA and govern direct funding to Tribal CSE agencies that demonstrate the capacity to operate a CSE program, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described in the preamble to the NPRM for Tribal CSE Programs in this **Federal Register**, ACF consulted with Tribes and Tribal organizations and their representatives to obtain their views prior to the publication of these regulations.

#### **Unfunded Mandates**

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (Unfunded Mandates Act), requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes a 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 rule.

We have determined that this rule is not an economically significant rule and 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. The following are estimated annual expenditures under the Tribal CSE Program under this interim final rule: FY 2000—\$0; and FY 2001—\$4.3 million. 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.

#### **Congressional Review**

This interim final rule is not a major rule as defined in 5 U.S.C., Chapter 8. It is effective upon publication.

#### **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 criteria specified in the law. We have determined that this interim final rule may affect family well-being as defined in section 654 of the law and certify that we have made the required impact assessment. The purpose of the Tribal Child Support Enforcement Program is to strengthen the economic and social stability of families. This rule gives flexibility to Tribes and Tribal organizations to design programs that serve this purpose. The rule will have a positive effect on family well-being. Implementation of Tribal CSE programs will result in increased child support enforcement services, including increased child support payments, for Tribal service populations. By helping to ensure that parents support their children, the rule will strengthen personal responsibility and increase disposable family income.

#### **Executive Order 13132**

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as "regulations, legislative comments or proposed legislation, and other policy statements

or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distributions of power and responsibilities among the various levels of government." This rule does not have federalism implications for State or local governments as defined in the Executive Order.

#### **Background**

The Child Support Enforcement Program was established in 1975 under title IV-D of the Social Security Act as a joint Federal/State partnership. The goal of the Child Support Enforcement Program (also known as the title IV-D program) is to ensure that both parents financially support their children. The IV-D program locates noncustodial parents, establishes paternity, establishes and enforces support orders, and collects child support payments from parents who are legally obligated to pay.

For the first time in the history of the program, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) provided authority under title IV-D of the Act for direct funding of Tribes and Tribal organizations for operating child support enforcement programs. Section 455(f) of the Act provides, "The Secretary may make direct payments under this part to an Indian tribe or tribal organization that demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program meeting the objectives of this part, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. The Secretary shall promulgate regulations establishing the requirements which must be met by an Indian tribe or tribal organization to be eligible for a grant under this subsection." The Department of Health and Human Services (HHS) recognizes the unique relationship between the Federal Government and Federally recognized Indian Tribes and reflects this special government-to-government relationship in the implementation of the Tribal provisions of PRWORA. The direct Federal funding provisions provide Tribes with an opportunity to design their own child support programs to meet the needs of the Tribes' children and their families.

Title IV-D gives the Secretary broad and exclusive authority to establish duties and responsibilities of Tribes and Tribal organizations in the operation of Tribal CSE programs and which meet the objectives of title IV-D. We believe that all IV-D programs must have in

common a minimum set of fundamental characteristics to ensure that the objectives of title IV-D are implemented. This interim final rule for comprehensive Tribal CSE programs sets forth requirements that must be met in order for Tribes and Tribal organizations to receive direct funding under section 455(f) of the Act for such IV-D programs.

If a Tribal entity chooses not to undertake responsibility for operation of a IV-D program, section 454(33) of the Act provides that State IV-D agencies may negotiate cooperative agreements with a Tribe to ensure Tribal children and families receive much-needed support services. Under section 454(33) cooperative agreements, the funding relationship is between the State and the Federal government.

See the preamble to the NPRM for Tribal CSE programs in this **Federal Register** for additional background information.

#### **Consultation Process**

See the preamble to the NPRM for Tribal CSE programs in this **Federal Register** for information on the consultations held by OCSE to obtain Tribal input prior to publishing regulations for Tribal CSE programs.

#### **Scope of Rulemaking**

This interim final rule focuses on the explicit requirement in section 455(f) of the Act which allows the Secretary to make direct payments to Tribes and Tribal organizations that demonstrate the capacity to operate a CSE program which meets the objectives of title IV-D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents.

We are amending the Federal child support regulations by adding a new part 310, Comprehensive Tribal Child Support Enforcement (CSE) Programs, to title 45 of the Code of Federal Regulations. Part 310 contains requirements under which Tribes and Tribal organizations that currently operate comprehensive child support enforcement programs may apply for direct Tribal CSE funding and, upon approval of their applications, receive Federal funding and administer Tribal CSE programs under section 455(f). 45 CFR part 310 is effective upon publication of this interim final rule.

In the separate notice of proposed rulemaking published concurrently with this interim final rule, we propose to add a new part 309, Tribal Child Support Enforcement (CSE) Program, to the Federal child support regulations. The NPRM proposes for public

comment essentially the same set of requirements as are in subparts A through F of this interim rule, with the following exception. The NPRM includes proposed provisions both for Tribes and Tribal organizations that already are able to operate full, comprehensive CSE programs, and for Tribes and Tribal organizations that do not already operate comprehensive CSE programs and need program development funding for start-up CSE programs. Because this interim final rule applies only to Tribes and Tribal organizations that already operate comprehensive CSE programs, it does not include provisions for program development funding and start-up CSE programs.

Subpart G of this interim final rule contains additional specific requirements for interim funding of operational Tribal CSE programs.

We will develop final rules for Tribal CSE programs based on comments on the NPRM and interim rule. The final rules will apply to all Tribal CSE programs. We expect the final rules to be codified at 45 CFR part 309. After the final rules for Tribal CSE programs become effective, 45 CFR part 310 (the interim final rule) will be deleted from the Federal child support regulations.

#### Discussion of Regulatory Provisions

This interim final rule contains the following subparts:

- Subpart A—Tribal CSE Program: General Provisions;
- Subpart B—Tribal CSE Program Application Procedures;
- Subpart C—Tribal CSE Plan Requirements;
- Subpart D—Tribal CSE Program Funding;
- Subpart E—Accountability and Monitoring;
- Subpart F—Statistical and Narrative Reporting Requirements; and
- Subpart G—Interim Funding of Operational Tribal CSE Programs.

As noted, the provisions in subparts A through F are essentially the same in the NPRM and in this interim rule, except that the interim rule does not include the provisions relating to program development start-up funding.

For detailed discussion of subparts A through F, see the discussion of these subparts in the preamble to the NPRM. Keep in mind that the NPRM is proposed part 309, and this interim rule is part 310. Therefore, each regulatory provision has the same section and paragraph number in the NPRM and in the interim rule, but the part number is different. For example, the first section in both the NPRM and the interim rule (§\_\_\_\_.01—What does this part

cover?) is § 309.01 in the NPRM and § 310.01 in the interim rule.

Program development start-up provisions are found in the NPRM in §§ 309.15(b)(2), 309.25(d), 309.65(b), 309.65(c), and 309.150. In this interim rule, §§ 310.15(b)(2), 310.25(d), 310.65(b), 310.65(c), and 310.150 are designated “Reserved” and left blank in order to keep the numbering consistent in both regulations.

Discussion of subpart G of this interim final rule follows.

#### Subpart G—Interim Funding of Operational Tribal CSE Programs

*Who is eligible to apply to receive interim funding under this part? (section 310.180)*

A Tribe or Tribal organization currently satisfying the requirements in this part (part 310), and currently operating a comprehensive Tribal CSE program that includes the five mandatory elements in section 455(f) of the Act (establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents) may apply for and upon approval, receive direct funding upon publication of this part.

During consultation a number of Tribes expressed concern that efforts they have under way, including demonstration projects funded under other Federal authorities, would be unduly delayed or disrupted if the full regulatory process had to run its course before any funds could be made available under section 455(f) of the Act. Therefore, Tribes and Tribal organizations currently operating a comprehensive Tribal CSE program and meeting the requirements of this part are eligible to apply to receive interim funding.

*What is the application and approval process for Tribes and Tribal organizations with operational Tribal CSE programs applying for interim funding? (section 310.185)*

In paragraph (a), a Tribe or Tribal organization with an operational comprehensive Tribal CSE program must meet the requirements under this part and demonstrate that the operational comprehensive program exists, through submittal of:

- (1) A cooperative agreement with a State IV–D agency under section 454(33) of the Act that demonstrates that the Tribe or Tribal organization currently operates a comprehensive Tribal CSE program including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents, and meeting

the requirements of section 455(f) of the Act and this part; or

- (2) Evidence that demonstrates that the Tribe or Tribal organization currently operates a comprehensive Tribal CSE program including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents, and meeting the requirements of section 455(f) of the Act and this part, directly or through agreement, contract, or resolution with another entity. Evidence includes copies of Tribal CSE codes, program procedures, agreements or contracts, and program statistics.

A Tribal CSE agency currently operating a comprehensive Tribal CSE program will use the application procedures outlined in Subpart B—Tribal CSE Program Application Procedures, and, in addition, will submit documentation of the comprehensive Tribal CSE program as required by this section.

We are requesting evidence of the operational comprehensive program in one of two ways. A Tribe or Tribal organization may be operating a comprehensive Tribal CSE program through a cooperative agreement with a State IV–D agency under section 454(33) of the Act. If the Tribe or Tribal organization is operating a comprehensive Tribal CSE program through a cooperative agreement with a State IV–D agency in accordance with section 454(33) of the Act and OCSE AT–98–21, and including the five mandatory statutory elements, this is a clear indication that the Tribe or Tribal organization is providing services in a manner that will meet the requirements of the regulations. In addition, we recognize that there may be Tribes and Tribal organizations that are operating a comprehensive Tribal CSE program without any involvement or agreement with the State IV–D agency. If this is the case, the Tribe or Tribal organization must submit proof that the operational program includes the five mandatory statutory elements and meets the requirements of section 455(f) of the Act and this part. Evidence includes copies of Tribal CSE codes, program procedures, agreements or contracts, and program statistics. The application submitted in accordance with requirements of this part, plus the supporting evidence must provide enough detail and justification for the Secretary or designee to make a determination that the Tribe’s CSE program meets or fails to meet necessary requirements.

As noted earlier in this preamble, a Tribe or Tribal organization could be

considered to be operating a comprehensive Tribal CSE program even if other entities—such as a State or another Tribe—conduct some portions of the program under agreement or contract with the Tribe or Tribal organization.

Under paragraph (b), the Secretary or designee will determine whether the Tribe or Tribal organization meets the requirements for interim funding, using the process described in this regulation. This is consistent with Subpart B—Tribal CSE Program Application Procedures, § 310.35, which provides that the Secretary or designee must approve or disapprove Tribal CSE program applications. We will review applications for interim funding to determine whether the application, and the applicant's operational CSE program, meet the requirements specified in this regulation. If an application is incomplete, we will tell the applicant the information we need in order to complete our review.

*What requirements apply to programs operated with interim funding? (section 310.190)*

Tribes and Tribal organizations that receive interim funding under part 310 must meet all requirements under this part.

Tribes and Tribal organizations operating Tribal CSE programs under this interim rule (codified at 45 CFR part 310) must comply with the requirements of the final rule (to be codified at 45 CFR part 309) upon its publication or after an appropriate phase-in period.

As outlined earlier, there is some risk for a Tribe or Tribal organization that elects to receive direct funding under this interim rule. The risk to a Tribe or Tribal organization that begins its program before the final rule is published is that the rules may change and the Tribe or Tribal organization will have to change its program. A Tribe or Tribal organization will not be at financial risk as long as its program was consistent with the interim final rule and the Tribe or Tribal organization changes its program in a timely manner to comply with the final rule.

We recognize that there may be a period of adjustment necessary for Tribes and Tribal organizations operating under the interim final rule to comply with the final rule. Because we cannot anticipate the nature of the comments or the changes that will be made to the final rule, we are not proposing a specific phase-in period for compliance with the final rule. For Tribes and Tribal organizations operating under the interim final rule,

we are specifically soliciting comments on an appropriate phase-in period for compliance with the final rule.

#### List of Subjects in 45 CFR Part 309

Child support, grant program—social programs, Indians, Native Americans, Tribal Child Support Enforcement programs.

Dated: July 18, 2000.

**Olivia A. Golden,**

*Assistant Secretary for Children and Families.*

Approved: July 18, 2000.

**Donna E. Shalala,**

*Secretary, Department of Health and Human Services.*

For the reasons discussed in the preamble, title 45 chapter III of the Code of Federal Regulations is amended by adding new part 310 to read as follows:

### PART 310—COMPREHENSIVE TRIBAL CHILD SUPPORT ENFORCEMENT (CSE) PROGRAMS

#### Subpart A—Tribal CSE Program: General Provisions

Sec.

310.1 What does this part cover?

310.5 What definitions apply to this part?

310.10 Who is eligible to apply for Federal funding to operate a Tribal CSE program?

#### Subpart B—Tribal CSE Program Application Procedures

310.15 What is a Tribal CSE program application?

310.20 Who submits a Tribal CSE program application?

310.25 When must a Tribe or Tribal organization submit a Tribal CSE program application?

310.30 Where does the Tribe or Tribal organization submit the application?

310.35 What are the procedures for approval or disapproval of Tribal CSE program applications and plan amendment(s)?

310.40 What is the basis for disapproval of a Tribal CSE program application or plan amendment(s)?

310.45 How may a Tribe or Tribal organization request a reconsideration of a disapproval action?

310.50 What are the consequences of disapproval of a Tribal CSE program application or plan amendment?

#### Subpart C—Tribal CSE Plan Requirements

310.55 What does this subpart cover?

310.60 Who is ultimately responsible for administration of the Tribal CSE program under the Tribal CSE plan?

310.65 What must a Tribe or Tribal organization include in a Tribal CSE plan in order to demonstrate capacity to operate a Tribal CSE program?

310.70 What provisions governing jurisdiction must a Tribe or Tribal organization include in a Tribal CSE plan?

310.75 What administrative and management procedures must a Tribe or

Tribal organization include in a Tribal CSE plan?

310.80 What safeguarding procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

310.85 What reports and maintenance of records procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

310.90 What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal CSE plan?

310.95 What procedures governing the location of noncustodial parents must a Tribe or Tribal organization include in a Tribal CSE plan?

310.100 What procedures for the establishment of paternity must a Tribe or Tribal organization include in a Tribal CSE plan?

310.105 What procedures governing guidelines for the establishment and modification of child support obligations must a Tribe or Tribal organization include in a Tribal CSE plan?

310.110 What procedures governing income withholding must a Tribe or Tribal organization include in a Tribal CSE plan?

310.115 What procedures governing the distribution of child support must a Tribe or Tribal organization include in a Tribal CSE plan?

310.120 What intergovernmental procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

#### Subpart D—Tribal CSE Program Funding

310.125 On what basis is Federal funding in Tribal CSE programs determined?

310.130 How will Tribal CSE programs be funded?

310.135 How long do Tribes and Tribal organizations have to obligate and spend CSE grant funds?

310.140 What are the financial reporting requirements?

310.145 What costs are allowable charges to Tribal CSE programs carried out under § 310.65(a) of this part?

310.150 [Reserved]

310.155 What uses of Tribal CSE program funds are not allowable?

#### Subpart E—Accountability and Monitoring

310.160 How will OCSE determine if Tribal CSE program funds are appropriately expended?

310.165 What recourse does a Tribe or Tribal organization have to dispute a determination to disallow Tribal CSE program expenditures?

#### Subpart F—Statistical and Narrative Reporting Requirements

310.170 What statistical and narrative reporting requirements apply to Tribal CSE programs?

310.175 When are statistical and narrative reports due?

#### Subpart G—Interim Funding of Operational Tribal CSE Programs

310.180 Who is eligible to apply to receive interim funding under this part?

- 310.185 What is the application and approval process for Tribes and Tribal organizations with operational Tribal CSE programs applying for interim funding?
- 310.190 What requirements apply to programs operated with interim funding?
- Authority:** 42 U.S.C. 655(f), 1302.

### Subpart A—Tribal CSE Program: General Provisions

#### § 310.1 What does this part cover?

(a) The regulations in this part prescribe the rules for implementing section 455(f) of the Social Security Act through interim funding for Indian Tribes and Tribal organizations that currently operate comprehensive Tribal child support enforcement programs. Section 455(f) authorizes direct grants to Indian Tribes and Tribal organizations to operate CSE programs.

(b) These regulations establish the requirements that must be met by Indian Tribes and Tribal organizations currently operating comprehensive Tribal CSE programs to be eligible for grants under section 455(f). They establish requirements for: Tribal CSE plan and application content, submission, approval, and amendment; program funding; program operation; uses of funds; accountability; reporting; interim funding; and other program requirements and procedures.

#### § 310.5 What definitions apply to this part?

The following definitions apply to this part:

*ACF* means the Administration for Children and Families, Department of Health and Human Services.

*Act* means the Social Security Act, unless otherwise specified.

*Assistant Secretary* means the Assistant Secretary for Children and Families, Department of Health and Human Services.

*Central office* means the central office of the Office of Child Support Enforcement.

*CSE services* are the services that are required for establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents as required in title IV–D of the Act, this rule, and the Tribal CSE plan. In some situations, the appropriate service may be for a Tribe or Tribal organization to refer an applicant for CSE services to another Tribal CSE agency or a State IV–D agency.

*Child support order and child support obligation* mean a judgment, decree, or order, whether temporary, final or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support

and maintenance of a child, including a child who has attained the age of majority under the law of the issuing jurisdiction, or of the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.

*The Department* means the Department of Health and Human Services.

*Indian* means a person who is a member of an Indian Tribe.

*Indian Tribe and Tribe* mean any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and includes in the list of Federally recognized Indian Tribal governments as published in the **Federal Register** pursuant to 25 U.S.C. 479a–1.

*Location* means information concerning the physical whereabouts of the noncustodial parent, or the noncustodial parent's employer(s), and other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

*Regional office* refers to one of the regional offices of the Administration for Children and Families.

*Secretary* means the Secretary of the Department of Health and Human Services.

*Title IV–D* refers to the title of the Social Security Act that authorizes the Child Support Enforcement Program, including the Tribal Child Support Enforcement Program.

*Tribal CSE agency* means the organizational unit in the Tribe or Tribal organization that has the delegated authority for administering or supervising the Tribal CSE program under section 455(f) of the Act.

*Tribal organization* means the recognized governing body of any Indian Tribe as defined in this part; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, That in any case where a contract is let or grant made to an organization to perform services benefitting one or more Indian Tribes, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant.

#### § 310.10 Who is eligible to apply for Federal funding to operate a Tribal CSE program?

The following are eligible to apply to receive Federal funding to operate a Tribal CSE program meeting the requirements of this part:

(a) An Indian Tribe meeting the requirements of § 310.180 of this part, with at least 100 children under the age of majority as defined by Tribal law or code, in the population subject to the jurisdiction of the Tribal court or administrative agency.

(b) A Tribal organization meeting the requirements of § 310.180 of this part, that demonstrates the authorization of one or more Indian Tribes to operate a Tribal CSE program on their behalf, with a total of at least 100 children under the age of majority as defined by Tribal law or code, in the population of the Tribe(s) that is subject to the jurisdiction of the Tribal court (or courts) or administrative agency (or agencies).

### Subpart B—Tribal CSE Program Application Procedures

#### § 310.15 What is a Tribal CSE program application?

(a) *Initial application.* The initial application must include:

(1) Standard application forms SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs; and

(2) A Tribal CSE plan—a comprehensive statement meeting the requirements of subpart C of this part that describes the capacity of the Tribe or Tribal organization to operate a CSE program meeting the objectives of title IV–D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

(b) *Annual refunding applications.* (1) Annual refunding applications must include standard application forms SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs. As appropriate, annual refunding applications also may include amendment(s) to the Tribal CSE plan.

(2) [Reserved]

(c) *Additional application requirement for Tribal organizations.* The application of a Tribal organization must adequately demonstrate that each participating Tribe authorizes the Tribal organization to operate a Tribal CSE program on its behalf.

**§ 310.20 Who submits a Tribal CSE program application?**

The authorized representative of the Tribe or Tribal organization must sign and submit the Tribal CSE program application.

**§ 310.25 When must a Tribe or Tribal organization submit a Tribal CSE program application?**

(a) The initial application consisting of the Tribal CSE program plan that meets the requirements under subpart C of this part, and the application and budget information forms (SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs) may be submitted at any time.

(b) Subsequent refunding applications containing only SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs, must be submitted annually at least 60 days before the beginning of the next budget period if the Tribe or Tribal organization wishes to receive its funding on time.

(c) If a Tribe or Tribal organization intends to make any substantial or material change in any aspect of the Tribal CSE program:

(1) A Tribal CSE plan amendment must be submitted at the earliest reasonable time for approval under § 310.35. The plan amendment must describe and, as appropriate, document the changes the Tribe or Tribal organization proposes to make to its CSE plan, consistent with the requirements under § 310.65.

(2) Any amendment of an approved Tribal CSE plan may, at the option of the Tribe or Tribal organization, be considered as a submission of a new Tribal CSE plan. If the Tribe or Tribal organization requests that such amendments be so considered, they must be submitted no less than 90 days before the proposed effective date of the new plan.

(d) [Reserved]

(e) The effective date of a plan amendment may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted.

**§ 310.30 Where does the Tribe or Tribal organization submit the application?**

Applications must be submitted to the central office of the Office of Child Support Enforcement, Attention: Tribal Child Support Enforcement Program, 370 L'Enfant Promenade, SW, Washington, DC 20447, with a copy to the appropriate regional office.

**§ 310.35 What are the procedures for approval or disapproval of Tribal CSE program applications and plan amendment(s)?**

(a) The Secretary of the Department of Health and Human Services or designee will determine whether the Tribal CSE program application or Tribal CSE plan amendment submitted for approval conforms to the requirements of approval under the Act and these regulations not later than the 90th day following the date on which the Tribal CSE application or Tribal CSE plan amendment is received by the Secretary or designee, unless additional information is needed from the Tribe or Tribal organization. The Secretary or designee will notify the Tribe or Tribal organization if additional time or information is required to determine whether the application or plan amendment may be approved.

(b) The Secretary or designee will approve the application or determine that the application will be disapproved within 45 days of receipt of any additional information requested from the Tribe or Tribal organization.

**§ 310.40 What is the basis for disapproval of a Tribal CSE program application or plan amendment(s)?**

(a) An application or plan amendment will be disapproved if:

(1) The Secretary or designee determines that the application or plan amendment fails to meet one or more of the requirements set forth in this part;

(2) The Secretary or designee determines that the laws, code, regulations, and procedures described in the application or plan amendment will not achieve the outcomes consistent with the objectives of title IV—D including: ensuring access to services; paternity establishment; support order establishment; basing child support orders on the noncustodial parent's ability to pay; collecting support; making timely and accurate payments to families; protecting due process rights; and protecting security of data;

(3) The Secretary or designee determines that the application or plan amendment is not complete (after the Tribe or Tribal organization has had the opportunity to submit the necessary information); or

(4) The Secretary or designee determines that the requested funding is not reasonable and necessary (after the Tribe or Tribal organization has had the opportunity to make appropriate adjustments).

(b) A written Notice of Disapproval of the Tribal CSE program application or plan amendment will be sent to the

Tribe or Tribal organization upon the determination that any of the conditions of § 310.40(a) apply. The Notice of Disapproval will include the specific reason(s) for disapproval.

**§ 310.45 How may a Tribe or Tribal organization request a reconsideration of a disapproval action?**

(a) A Tribe or Tribal organization may request reconsideration of disapproval of a Tribal CSE application or amendment by filing a written Request for Reconsideration to the Secretary or designee within 60 days of the date of the Notice of Disapproval.

(b) The Request for Reconsideration must include:

(1) All documentation that the Tribe or Tribal organization believes is relevant and supportive of its application or plan amendment; and

(2) A written response to each ground for disapproval identified in the Notice of Disapproval, indicating why the Tribe or Tribal organization believes its application or plan amendment conforms to the requirements for approval specified at § 310.65 and subpart C of this part.

(c) After receiving a Request for Reconsideration, the Secretary or designee will hold a conference call or, at the Department's discretion, a meeting with the Tribe or Tribal organization as part of the reconsideration, to discuss the reasons for the Department's disapproval of the application or plan amendment, and the Tribe or Tribal organization's response. Within 30 days after receipt of a Request for Reconsideration, the Secretary or designee will notify the Tribe or Tribal organization of the date and time the conference call or meeting will be held.

(d) A conference call or meeting under § 310.45(c) shall be held not less than 30 days nor more than 60 days after the date the notice of such call or meeting is furnished to the Tribe or Tribal organization, unless the Tribe or Tribal organization agrees in writing to another time.

(e) The Secretary or designee will make a written determination affirming, modifying, or reversing disapproval of a Tribal CSE program application or plan amendment within 60 days after the conference call or meeting is held. This determination upon reconsideration shall be the final decision of the Secretary.

(f) The Secretary or designee's initial determination that a Tribal CSE application or plan amendment is not approvable remains in effect pending the reconsideration under this part.

**§ 310.50 What are the consequences of disapproval of a Tribal CSE program application or plan amendment?**

(a) If an application submitted pursuant to § 310.25 is disapproved, the Tribe or Tribal organization can receive no funding under section 455(f) of the Act or this part until a new application is submitted and approved.

(b) If a plan amendment is disapproved, there is no funding for the activity proposed in the plan amendment.

(c) A Tribe or Tribal organization whose application or plan amendment has been disapproved may reapply at any time, once it has remedied the circumstances that led to disapproval of the application or amendment.

**Subpart C—Tribal CSE Plan Requirements****§ 310.55 What does this subpart cover?**

This subpart defines the Tribal CSE plan provisions which are required and which demonstrate that a Tribe or Tribal organization has the capacity to operate a child support enforcement program meeting the objectives of title IV–D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

**§ 310.60 Who is ultimately responsible for administration of the Tribal CSE program under the Tribal CSE plan?**

(a) Under the Tribal CSE plan, the Tribe or Tribal organization shall establish or designate an agency to administer the Tribal CSE plan. That agency shall be referred to as the Tribal CSE agency.

(b) The Tribe or Tribal organization is responsible and accountable for the operation of the Tribal CSE program. Except where otherwise provided in this part, the Tribal CSE agency need not perform all the functions of the Tribal CSE program, so long as the Tribe or Tribal organization ensures that all approved functions are carried out properly, efficiently, and effectively.

(c) If the Tribe or Tribal organization delegates any of the functions of the Tribal CSE program to another Tribe, a State, and/or another agency pursuant to a cooperative arrangement, contract, or Tribal resolution, the Tribe or Tribal organization is responsible for securing compliance with the requirements of the Tribal CSE plan by such Tribe, State, or agency. The Tribe or Tribal organization is responsible for submitting copies and appending to the Tribal CSE plan any agreements, contracts, or Tribal resolutions between the Tribal CSE agency and a Tribe, State, or other agency.

**§ 310.65 What must a Tribe or Tribal organization include in a Tribal CSE plan in order to demonstrate capacity to operate a Tribal CSE program?**

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act by submission of a Tribal CSE plan which meets the requirements listed in paragraphs (a)(1) through (14) of this section:

(1) Describes the population subject to the jurisdiction of the Tribal court or administrative agency for child support purposes as specified under § 310.70;

(2) Evidence that the Tribe or Tribal organization has in place procedures for accepting all applications for CSE services and providing appropriate CSE services, including referral to appropriate agencies;

(3) Assurance that the due process rights of the individuals involved will be protected in all activities of the Tribal CSE program, including establishment of paternity, and establishment, modification, and enforcement of support orders;

(4) Administrative and management procedures as specified under § 310.75;

(5) Safeguarding procedures as specified under § 310.80;

(6) Assurance that the Tribe or Tribal organization will maintain records as specified under § 310.85;

(7) Copies of all applicable Tribal laws and regulations as specified under § 310.90;

(8) Procedures for the location of noncustodial parents as specified under § 310.95;

(9) Procedures for the establishment of paternity as specified under § 310.100;

(10) Guidelines for the establishment and modification of child support obligations as specified under § 310.105;

(11) Procedures for income withholding as specified under § 310.110;

(12) Procedures for the distribution of child support collections as specified under § 310.115;

(13) Procedures for intergovernmental case processing as specified under § 310.120; and

(14) Reasonable performance targets for paternity establishment, support order establishment, amount of current support to be collected, and amount of past due support to be collected.

(b) [Reserved]

(c) [Reserved]

(d) No later than two years from the implementation of a Tribal CSE program meeting the requirements specified in paragraph (a) of this section, or no later than two years after the Secretary or

designee issues guidance outlining the necessary procedures to comply with paragraphs (d)(1) through (5) of this section, whichever is later, a Tribal CSE plan must include the following:

(1) Procedures for requiring employers operating in the jurisdiction of the Tribe to report information about newly hired employees to the Tribal CSE agency in accordance with instructions issued by the Secretary or designee;

(2) Procedures for requiring employers operating in the jurisdiction of the Tribe to report wage information on a quarterly basis to the Tribal CSE agency in accordance with instructions issued by the Secretary or designee;

(3) Procedures under which the Tribal CSE agency reports new hire and quarterly wage information to the National Directory of New Hires in accordance with instructions issued by the Secretary or designee;

(4) Procedures under which the Tribal CSE agency submits CSE cases to the Federal Case Registry in accordance with instructions issued by the Secretary or designee; and

(5) Procedures for submitting CSE cases to the Federal Income Tax Refund Offset Program in accordance with instructions issued by the Secretary or designee.

(e) In the CSE plan included in its initial application and in any plan amendment submitted as a new plan, a Tribe or Tribal organization must certify that, as of the date the plan or plan amendment is submitted to the Department, there are at least 100 children under the age of majority as defined by Tribal law or code, in the population of the Tribe, or of the Tribe(s) authorizing the Tribal organization to operate a CSE program on their behalf, that is subject to the jurisdiction of the Tribal court (or courts) or administrative agency (or agencies).

**§ 310.70 What provisions governing jurisdiction must a Tribe or Tribal organization include in a Tribal CSE plan?**

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes a description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support enforcement purposes.

**§ 310.75 What administrative and management procedures must a Tribe or Tribal organization include in a Tribal CSE plan?**

A Tribe or Tribal organization demonstrates capacity to operate a



Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the following minimum administrative and management provisions, and the Secretary or designee determines that these provisions are adequate to enable the Tribe or Tribal organization to operate an effective and efficient Tribal CSE program and otherwise comply with Federal requirements:

(a) A description of the structure of the agency and the distribution of responsibilities within the agency.

(b) Procedures under which applications for Tribal CSE services are made available to the public upon request.

(c) Procedures under which the Tribal CSE agency must promptly open a case by establishing a case record and determining necessary action.

(d) Procedures to control the use of and to account for Federal funds and amounts collected on behalf of custodial parents, including assurances that the following requirements and criteria to bond employees are in effect:

(1) Procedures under which the Tribal CSE agency will ensure that every person who has access to or control over funds collected under the Tribal CSE program is covered by a bond against loss resulting from employee dishonesty;

(2) The requirement in paragraph (d) of this section applies to every person who, as a regular part of his or her employment, receives, disburses, handles, or has access to support collections;

(3) The requirements of this section do not reduce or limit the ultimate liability of the Tribe or Tribal organization for losses of support collections from the Tribal CSE agency's program; and

(4) A Tribe may comply with the requirements of paragraph (d) of this section by means of self-bonding established under Tribal law and approved by the Secretary or designee.

(e) Procedures under which notice of the amount of any support collected for each month is provided to families receiving services under the Tribal CSE plan and to the noncustodial parent upon request. Families receiving services must receive such notice on a quarterly basis.

(f) Certification that for each year during which the Tribe or Tribal organization receives or expends funds pursuant to section 455(f) of the Act and this part, it shall comply with the provisions of chapter 75 of Title 31 of the United States Code (the Single Audit Act of 1984, Public Law 98–502, as amended) and OMB Circular A–133.

**§ 310.80 What safeguarding procedures must a Tribe or Tribal organization include in a Tribal CSE plan?**

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes safeguarding provisions consistent with the following and approved by the Secretary or designee:

(a) Procedures under which the use or disclosure of information concerning applicants or recipients of child support enforcement services is limited to purposes directly connected with the administration of the Tribal CSE program or with other programs or purposes prescribed by the Secretary or designee.

(b) Procedures consistent with safeguarding provisions in sections 453 and 454 of the Act and regulations promulgated pursuant to section 464 of the Act and which conform to any specific rules or instructions issued by the Secretary or designee to assure that requests for and disclosure and use of information obtained from the Federal Parent Locator Service and the Federal Tax Refund Offset Program are limited only to individuals and entities authorized under these sections of the Act for the purposes authorized under these sections.

(c) Procedures under which sanctions must be imposed for the unauthorized disclosure of information concerning applicants and recipients of child support enforcement services as outlined in paragraphs (a) and (b) of this section.

**§ 310.85 What reports and maintenance of records procedures must a Tribe or Tribal organization include in a Tribal CSE plan?**

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes procedures for maintaining records necessary for proper and efficient operation of the program, including:

(1) Applications for support services;

(2) Records on location of noncustodial parents;

(3) Records on actions taken to establish paternity and obtain and enforce support;

(4) Records on amounts and sources of support collections and the distribution of such collections;

(5) Records on other costs; and

(6) Statistical, fiscal, and other records necessary for reporting and accountability required by the Secretary or designee.

(b) The retention and access requirements for these records are prescribed at 45 CFR 92.42.

**§ 310.90 What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal CSE plan?**

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes Tribal law, code, regulations, and/or other evidence that provides specific procedures that result in:

(a) Establishment of paternity for any child up to and including at least 18 years of age;

(b) Establishment and modification of child support obligations;

(c) Enforcing child support obligations, including requirements that Tribal employers comply with income withholding as required under § 310.110; and

(d) In the absence of specific laws and regulations, a Tribe or Tribal organization may satisfy this requirement for locating noncustodial parents by providing in its plan detailed descriptions of such procedures which the Secretary or designee determines are adequate to enable the Tribe or Tribal organization to meet the performance targets approved by the Secretary or designee.

**§ 310.95 What procedures governing the location of noncustodial parents must a Tribe or Tribal organization include in a Tribal CSE plan?**

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the following provisions governing the location of noncustodial parents:

(a) In all appropriate cases, the Tribal CSE agency must attempt to locate noncustodial parents or sources of income and/or assets when location is required to take necessary action in a case; and

(b) All sources of information and records reasonably available to the Tribe or Tribal organization must be used to locate noncustodial parents.

**§ 310.100 What procedures for the establishment of paternity must a Tribe or Tribal organization include in a Tribal CSE plan?**

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the procedures that result in the establishment of paternity included in

this section. For cases in which paternity has not been established, the Tribe must include in its Tribal CSE plan the procedures under which the Tribal CSE agency will:

(1) Attempt to establish paternity by the process established under Tribal law, code, and/or custom; and

(2) Provide an alleged father the opportunity to voluntarily acknowledge paternity.

(b) The Tribal CSE agency need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the Tribal CSE agency, it would not be in the best interests of the child to establish paternity.

(c) When genetic testing is used to establish paternity, the Tribal CSE agency must identify and use accredited laboratories which perform, at reasonable cost, legally and medically acceptable genetic tests which tend to identify the father or exclude the alleged father.

**§ 310.105 What procedures governing guidelines for the establishment and modification of child support obligations must a Tribe or Tribal organization include in a Tribal CSE plan?**

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan:

(1) Establishes one set of child support guidelines by law or by judicial or administrative action for setting and modifying child support obligation amounts;

(2) Includes a copy of child support guidelines governing the establishment and modification of child support obligations; and

(3) Indicates whether in-kind or non-cash payments of support will be permitted and if so, describes the type(s) of in-kind (non-cash) support that will be permitted and how such in-kind (non-cash) payments will be converted into cash equivalents if necessary.

(b) The guidelines established under paragraph (a) of this section must at a minimum:

(1) Take into account the needs of the child and the earnings and income of the noncustodial parent; and

(2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation.

(c) The Tribe or Tribal organization must ensure that child support guidelines are reviewed at least every three years.

(d) The Tribe or Tribal organization must provide that there shall be a

rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award that would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.

(e) A written finding or specific finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the Tribe or Tribal organization. Such criteria must take into consideration the best interests of the child. Findings that rebut the guidelines must state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

**§ 310.110 What procedures governing income withholding must a Tribe or Tribal organization include in a Tribal CSE plan?**

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes copies of Tribal laws and regulations providing for income withholding under which:

(1) In the case of each noncustodial parent against whom a support order is or has been issued or modified under the Tribal CSE plan, or is being enforced under such plan, so much of his or her income as defined in section 466(b)(8) of the Act must be withheld as is necessary to comply with the order.

(2) In addition to the amount to be withheld to pay the current month's obligation, the amount withheld must include an amount to be applied toward liquidation of any overdue support.

(3) The total amount to be withheld under paragraphs (a)(1) and (2) of this section may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

(4) All income withholding must be carried out in compliance with all procedural due process requirements of the Tribe or Tribal organization.

(5) The Tribal CSE agency must have procedures for promptly refunding amounts which have been improperly withheld.

(6) The Tribal CSE agency must have procedures for promptly terminating income withholding in cases where there is no longer a current order for

support and all arrearages have been satisfied.

(b) To initiate income withholding, the Tribal CSE agency must send the noncustodial parent's employer a notice using the standard Federal form that includes the following:

(1) The amount to be withheld;

(2) A requirement that the employer must send the amount to the Tribal CSE agency within 7 business days of the date the noncustodial parent is paid;

(3) A requirement that the employer must report to the Tribal CSE agency the date on which the amount was withheld from the noncustodial parent's income;

(4) A requirement that, in addition to the amount to be withheld for support, the employer may deduct a fee established by the Tribe for the employer's administrative costs incurred for each withholding, if the Tribe permits a fee to be deducted;

(5) A requirement that the withholding is binding upon the employer until further notice by the Tribe;

(6) A requirement that, if the employer fails to withhold income in accordance with the provision of the notice, the employer is liable for the accumulated amount the employer should have withheld from the noncustodial parent's income; and

(7) A requirement that the employer must notify the Tribe promptly when the noncustodial parent terminates employment and provide the noncustodial parent's last known address and the name and address of the noncustodial parent's new employer, if known.

(c) The income of the noncustodial parent shall become subject to withholding, at the latest, on the date on which the payments which the noncustodial parent has failed to make under a support order are at least equal to the support payable for one month.

(d) The only basis for contesting a withholding under this section is a mistake of fact, which for purposes of this paragraph means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.

(e) The provisions of this section do not apply to that portion of a child support order that may be satisfied in kind.

(f) Tribal law must provide that the employer is subject to a fine to be determined under Tribal law for discharging a noncustodial parent from employment, refusing to employ, or taking disciplinary action against any noncustodial parent because of the withholding.

**§ 310.115 What procedures governing the distribution of child support must a Tribe or Tribal organization include in a Tribal CSE plan?**

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes the following requirements:

(a) In cases where families receiving services from the Tribal CSE program are receiving Temporary Assistance for Needy Families (TANF) assistance from the State, collected child support must be distributed consistent with section 457(a)(1) of the Act;

(b) In cases where families receiving services from the Tribal CSE program are receiving TANF assistance from a Tribal TANF program and formerly received assistance under a State program funded under title IV–A, child support arrearage collections must be distributed consistent with section 457(a)(2) of the Act;

(c) In cases where families receiving services from the Tribal CSE program are receiving TANF assistance from a Tribal TANF program and have assigned their rights to child support to the Tribe, collected child support up to the amount of Tribal TANF assistance received by the family may be retained by the Tribe, and any collected child support in excess of the amount of Tribal TANF assistance received by the family must be paid to the family;

(d) In cases where families receiving services from the Tribal CSE program formerly received Tribal TANF assistance and assigned their right to child support to the Tribe, collected child support above current support may be retained by the Tribe as reimbursement for past Tribal TANF assistance payments made to the family for which the Tribe has not been reimbursed, and any collected child support in excess of the amount of unreimbursed Tribal TANF assistance received by the family must be paid to the family; and

(e) In cases where families receiving services from the Tribal CSE program never received assistance under a State or Tribal program funded under title IV–A, all collected child support must be paid to the family.

**§ 310.120 What intergovernmental procedures must a Tribe or Tribal organization include in a Tribal CSE plan?**

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV–D of the Act when its Tribal CSE plan includes:

(a) Procedures that provide that the Tribal CSE agency will cooperate with

States and other Tribal CSE agencies to provide CSE services in accordance with instructions and requirements issued by the Secretary or designee; and

(b) Assurances that the Tribe or Tribal organization will recognize child support orders issued by other Tribes and Tribal organizations, and by States, in accordance with the requirements under 28 U.S.C. 1738B, the Full Faith and Credit for Child Support Orders Act.

**Subpart D—Tribal CSE Program Funding**

**§ 310.125 On what basis is Federal funding in Tribal CSE programs determined?**

Federal funding of Tribal CSE programs is based on information contained in the Tribal CSE application, which includes a proposed budget, a description of the nature and scope of the Tribal CSE program and which gives assurance that it will be administered in conformity with applicable requirements of title IV–D, regulations contained in this part, and other official issuances of the Department.

**§ 310.130 How will Tribal CSE programs be funded?**

(a) *General mechanism.* Tribal CSE programs will be funded on an annual basis. At or just before the beginning of a Tribal grantee's program year, OCSE will issue a grant award to the Tribe or Tribal organization to operate its Tribal CSE program for the following 12-month budget period.

(b) *Special provision for initial grant.* A Tribe or Tribal organization may request that its initial Tribal CSE grant award be for a period of less than a year (but at least six months) or more than a year (but not to exceed 17 months) to enable its program funding cycle to coincide with its desired annual funding cycle.

(c) *Determination of Tribal funding amounts.* The Secretary or designee will determine the amount of funds that a Tribe or Tribal organization needs to pay reasonable, necessary, and allocable costs to operate its Tribal CSE program, based on information supplied by the Tribe or Tribal organization on Standard Form 424 (Application for Federal Assistance), Standard Form 424A (Budget Information “Non-Construction Programs”), and the Tribe or Tribal organization's CSE plan, as reviewed and approved by the Secretary or designee. The Secretary or designee will review the grantee's request, ask for additional information as necessary, and negotiate any appropriate adjustments with the grantee.

(d) *Federal and non-Federal shares.*

(1)(i) During the first three years in

which a Tribe or Tribal organization operates a full CSE program under § 310.65(a) of this part, the amount of the Federal grant will not exceed 90 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section. After a Tribe or Tribal organization has operated a full CSE program under § 310.65(a) of this part for three years, the amount of the Federal grant will not exceed 80 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section.

(ii) During the first three years in which a Tribe or Tribal organization operates a full CSE program under § 310.65(a) of this part, the Tribe or Tribal organization must contribute to its Tribal CSE program a non-Federal (Tribal) matching share of at least 10 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section. After a Tribe or Tribal organization has operated a full CSE program under § 310.65(a) of this part for three years, the Tribe or Tribal organization must contribute to its Tribal CSE program a non-Federal (Tribal) matching share of at least 20 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section. The non-Federal share may be provided in cash and/or in kind, fairly valued, by the Tribe or Tribal organization and/or by a third party, in accordance with the requirements of 45 CFR 92.24 and this part.

(iii) Donations of funds, and in-kind contributions of property and services valued at fair market value, from a third party to a Tribe or Tribal organization, may satisfy the non-Federal share requirement. The non-Federal share requirement may not be satisfied by:

(A) Donations for which the donor receives or expects to receive a financial or economic benefit;

(B) Donations intended as consideration for any benefit received from the Tribe or Tribal organization;

(C) Donations whose costs ultimately will be borne by another Federal grant; or

(D) Any other donation which the Secretary or designee determines to benefit the donor in a manner inconsistent with 45 CFR part 92.

(2)(i) A Tribe or Tribal organization that lacks sufficient resources to provide a 10 or 20 percent non-Federal matching

share may request a waiver of part or all of the non-Federal share.

(ii) Requests for waiver of part or all of the non-Federal matching share must be included with initial applications for funding, refunding applications, and budget amendment requests, and must contain the following:

(A) A statement that the Tribe or Tribal organization lacks the available resources to meet the 10 or 20 percent non-Federal matching share;

(B) A statement of the amount of the non-Federal share that the Tribe or Tribal organization requests the Secretary or designee to waive;

(C) A statement of the reasons that the Tribe or Tribal organization is unable to meet the non-Federal share requirement; and

(D) Documentation that reasonable efforts to obtain the non-Federal share have been unsuccessful.

(iii) The Secretary or designee may require submission of additional information and documentation as necessary. The Secretary or designee will grant a waiver of all or part of the non-Federal matching share, as appropriate, if he or she determines that a waiver request demonstrates that the Tribe or Tribal organization lacks sufficient resources to provide the non-Federal share, has made reasonable but unsuccessful efforts to obtain non-Federal share contributions, and has provided all required information. Waiver of all or part of the non-Federal share shall apply only to the budget period for which application was made.

(e) *Increase in approved budget.* A Tribal CSE grantee may request an adjustment to increase the approved level of its current budget by submitting Standard Form 424 (Application for Federal Assistance) and Standard Form 424A (Budget Information "Non-Construction Programs), and explaining why it needs to increase its budget. The Tribe or Tribal organization should submit this request at least 60 days before additional funds are needed, in order to allow the Secretary or designee adequate time to review the estimates and issue a revised grant award as appropriate. Requests for changes to budget levels are subject to approval by the Secretary or designee. If the change in a grantee's budget estimate results from a change in the grantee's CSE plan, the grantee also needs to submit a plan amendment in accordance with § 310.25(c) of this part, with its request for additional funding. The effective date of a plan amendment may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted in accordance with § 310.25(e). The Secretary or designee will review the grantee's request, ask for

additional information as necessary, and negotiate any appropriate adjustments with the grantee. The Secretary or designee must approve the plan amendment before approving any additional funding.

(f) *Obtaining Federal funds.* Tribes and Tribal organizations will obtain Federal funds on a draw down basis from the Department's Payment Management System.

(g) Grant administration requirements. The Tribal CSE program is subject to the grant administration regulations under 45 CFR part 92.

#### **§ 310.135 How long do Tribes and Tribal organizations have to obligate and spend CSE grant funds?**

(a) A Tribe or Tribal organization must obligate its CSE grant funds by the end of the budget period for which they were awarded. Any funds that remain unobligated at the end of the budget period for which they were awarded must be returned to the Department. A Tribe or Tribal organization must estimate in its refunding application any amounts that may be unobligated at the end of the current budget period. In its fourth quarter financial report for a budget period, a Tribe or Tribal organization must indicate the exact amount of any funds that remained unobligated at the end of that budget period. The Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period for which any unobligated funds were awarded by the amount that remained unobligated at the end of this budget period.

(b) A Tribe or Tribal organization must liquidate obligations by the last day of the 12-month period following the budget period for which the funds were awarded and the Tribe or Tribal organization obligated the funds, unless the Department grants an exemption and extends the time period for liquidation. Funds that remain unliquidated after the time period for liquidation has expired must be returned to the Department. Tribes and Tribal organizations may request an exemption to this rule based on extenuating circumstances. A request for an exemption must be sent to the OCSE grants officer listed on the most recent grant award and must be made before the end of the time period for liquidation; such requests are subject to approval by the Department. If any funds remain unliquidated at the end of the maximum time period for liquidation, the Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period for which any unliquidated funds were awarded, by

the amount that remains unliquidated at the end of the liquidation period. Repeated failure by a Tribe or Tribal organization to liquidate obligations in a timely way would result in the Department's reexamination of the program budget development process and could result in action to address financial systems deficiencies.

#### **§ 310.140 What are the financial reporting requirements?**

(a) A Tribe or Tribal organization operating a Tribal CSE program must submit a Financial Status Report, Standard Form 269, quarterly. The Financial Status Reports for each of the first three quarters of the budget period are due 30 days after the end of each quarterly reporting period. The Financial Status Report for the fourth quarter is due 90 days after the end of the fourth quarter of each budget period.

(b) A Tribe or Tribal organization operating a Tribal CSE program must submit the "Child Support Enforcement Program: Quarterly Report of Collections" (Form OCSE-34A), or such other report as the Secretary or designee may prescribe, quarterly. The reports for each of the first three quarters of the budget period are due 30 days after the end of each quarterly reporting period. The report for the fourth quarter is due 90 days after the end of the fourth quarter of each budget period.

(c) A Tribe or Tribal organization operating a Tribal CSE program must submit a report on the liquidation of its CSE obligations, using the Financial Status Report, Standard Form 269. The liquidation report is due 30 days after the end of the maximum period for liquidation of obligations, or 30 days after all grant funds are liquidated, whichever is earlier.

(d) The Secretary or designee will consider requiring less frequent financial reporting for Tribal CSE agencies that submit the required financial reports timely and accurately, and establish adequate financial systems and effective program operations under the Tribal CSE program.

#### **§ 310.145 What costs are allowable charges to Tribal CSE programs carried out under § 310.65(a) of this part?**

Federal funds are available for direct costs of operating a Tribal CSE program under an approved Tribal CSE application carried out under § 310.65(a) of this part, provided that such costs are determined by the Secretary or designee to be reasonable, necessary, and allocable to the program. Federal funds are also available for indirect costs, where applicable, at the

appropriate negotiated indirect cost rate. Allowable activities and costs include:

(a) Support enforcement services provided to eligible individuals, including: parent locator services; paternity establishment; and support order establishment, modification, and enforcement services;

(b) Administration of the Tribal CSE program, including but not limited to the following:

(1) Establishment and administration of the Tribal CSE program plan;

(2) Monitoring the progress of program development and operations, and evaluating the quality, efficiency, effectiveness, and scope of available support enforcement services;

(3) Establishment of all necessary agreements with other Tribal, State, and local agencies or private providers for the provision of child support enforcement services in accordance with Procurement Standards found in 45 CFR 92.36. These agreements may include:

(i) Necessary administrative agreements for support services;

(ii) Use of Tribal, Federal, State, and local information resources;

(iii) Cooperation with courts and law enforcement officials;

(iv) Securing compliance with the requirements of the Tribal CSE program plan in operations under any agreements;

(v) Development and maintenance of systems for fiscal and program records and reports required to be made to OCSE based on these records; and

(vi) Development of cost allocation systems;

(c) Establishment of paternity, including:

(1) Establishment of paternity in accordance with Tribal codes or custom as outlined in the approved Tribal CSE program plan;

(2) Reasonable attempts to determine the identity of a child's father, such as:

(i) Investigation;

(ii) Development of evidence including the use of genetic testing performed by accredited laboratories; and

(iii) Pre-trial discovery;

(3) Court or administrative or other actions to establish paternity pursuant to procedures established by Tribal codes or custom as outlined in the approved Tribal CSE program plan;

(4) Identifying accredited laboratories that perform genetic tests (as appropriate); and

(5) Referrals of cases to another Tribal CSE agency or to a State to establish paternity when appropriate;

(d) Establishment, modification, and enforcement of support obligations including:

(1) Investigation, development of evidence and, when appropriate, court or administrative actions;

(2) Determination of the amount of the support obligation (including determination of income and allowable in-kind support under Tribal CSE guidelines, if appropriate);

(3) Enforcement of a support obligation including those activities associated with collections and the enforcement of court orders, administrative orders, warrants, income withholding, criminal proceedings, and prosecution of fraud related to child support; and

(4) Investigation and prosecution of fraud related to child and spousal support;

(e) Collection and disbursement of support payments, including:

(1) Establishment and operation of an effective system for making collections and identifying delinquent cases and collecting from them;

(2) Referral of cases to another Tribal CSE agency or to a State CSE program for collection when appropriate; and

(3) Making collections for another Tribal CSE program or for a State CSE program;

(f) Establishment and operation of a Tribal Parent Locator Service (TPLS) or agreements for referral of cases to a State PLS, another Tribal PLS, or the Federal PLS for location purposes;

(g) Activities related to requests to State CSE programs for certification of collection for Federal Income Tax Refund Offset;

(h) Establishing and maintaining case records;

(i) Planning, design, development, installation, enhancement, and operation of CSE computer systems;

(j) Staffing and equipment that are directly related to operating a Tribal CSE program;

(k) The portion of salaries and expenses of a Tribe's chief executive and staff that is directly attributable to managing and operating a Tribal CSE program;

(l) The portion of salaries and expenses of Tribal judges and staff that is directly related to Tribal CSE program activities;

(m) Service of process;

(n) Training on a short-term basis that is directly related to operating a Tribal CSE program;

(o) Costs associated with obtaining technical assistance that are directly related to operating a CSE program, from outside sources, including Tribes, Tribal organizations, State agencies, and private organizations, and costs associated with providing such technical assistance to public entities; and

(p) Any other reasonable, necessary, and allocable costs with a direct correlation to a Tribal CSE program, consistent with the cost principles in OMB Circular A-87.

#### § 310.150 [Reserved]

#### § 310.155 What uses of Tribal CSE program funds are not allowable?

Federal Tribal CSE funds may not be used for:

(a) Services provided or fees paid by other Federal agencies, or by programs funded by other Federal agencies;

(b) Construction and major renovations;

(c) Any expenditures that have been reimbursed by fees collected;

(d) Expenditures for jailing of parents in Tribal CSE program cases;

(e) The cost of legal counsel for indigent defendants in Tribal CSE program actions;

(f) The cost of guardians ad litem; and

(g) All other costs that are not reasonable, necessary, and allocable in Tribal CSE programs, under the costs principles in OMB Circular A-87.

#### Subpart E—Accountability and Monitoring

#### § 310.160 How will OCSE determine if Tribal CSE program funds are appropriately expended?

OCSE will rely on audits required by OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" and other provisions of 45 CFR 92.26. The Department has determined that this program is to be audited as a major program in accordance with section 215(c) of the circular. The Department may supplement the required audits through reviews or audits conducted by its own staff.

#### § 310.165 What recourse does a Tribe or Tribal organization have to dispute a determination to disallow Tribal CSE program expenditures?

If a Tribe or Tribal organization disputes a decision to disallow Tribal CSE program expenditures, the grant appeals procedures outlined in 45 CFR part 16 are applicable under this part.

#### Subpart F—Statistical and Narrative Reporting Requirements

#### § 310.170 What statistical and narrative reporting requirements apply to Tribal CSE programs?

Tribes and Tribal organizations must submit the following information and statistics for Tribal CSE program activity and caseload for each budget period:

(a) Total number of cases and, of the total number of cases, the number that

are TANF cases and the number that are non-TANF cases;

(b) Total number of paternities needed and number of paternities established;

(c) Total number of support orders needed and the total number of orders established;

(d) Total amount of current support due and collected;

(e) Total amount of past-due support owed and total collected;

(f) A narrative report on activities, accomplishments, and progress of the program;

(g) Total costs claimed;

(h) Total amount of fees and costs recovered;

(i) Total amount of automated data processing (ADP) costs; and

(j) Total amount of laboratory paternity establishment costs.

**§ 310.175 When are statistical and narrative reports due?**

A Tribe or Tribal organization must submit Tribal CSE program statistical and narrative reports no later than 90 days after the end of each budget period.

**Subpart G—Interim Funding of Operational Tribal CSE Programs**

**§ 310.180 Who is eligible to apply to receive interim funding under this part?**

A Tribe or Tribal organization currently satisfying the requirements in this part, and currently operating a comprehensive Tribal CSE program that includes establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents, may apply for and upon approval, receive direct funding under this part.

**§ 310.185 What is the application and approval process for Tribes and Tribal organizations with operational Tribal CSE programs applying for interim funding?**

(a) In order to receive interim funding under this part, a Tribe or Tribal organization with an operational comprehensive Tribal CSE program must meet the requirements under this part and demonstrate that the operational comprehensive program exists, through submittal of:

(1) A cooperative agreement with a State IV-D agency under section 454(33) of the Act that demonstrates that the Tribe or Tribal organization currently operates a comprehensive Tribal CSE program including establishment of paternity, establishment, modification,

and enforcement of support orders, and location of absent parents, and meeting the requirements of section 455(f) of the Act and this part; or

(2) Evidence that demonstrates that the Tribe or Tribal organization currently operates a comprehensive Tribal CSE program including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents, and meeting the requirements of section 455(f) of the Act and this part, directly or through agreement, contract, or resolution with another entity. Evidence includes copies of Tribal CSE codes, program procedures, agreements or contracts, and program statistics.

(b) The Secretary or designee will determine whether the Tribe or Tribal organization meets the requirements under this part and adequately demonstrates that the operational comprehensive CSE program exists.

**§ 310.190 What requirements apply to programs operated with interim funding?**

Tribes and Tribal organizations that receive interim funding must meet all requirements under this part.

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