DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 286, 302, 309 and 310

RIN 0970–AB73

Tribal Child Support Enforcement Programs

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: ACF is issuing final regulations to implement direct funding to Indian Tribes and Tribal organizations under section 455(f) of the Social Security Act (the Act). Section 455(f) of the Act authorizes direct funding of Tribal Child Support Enforcement (IV–D) programs meeting requirements contained in the statute and established by the Secretary of HHS by regulation. These regulations address these requirements and related provisions, and provide guidance to Tribes and Tribal organizations on how to apply for and, upon approval, receive direct funding for the operation of Tribal IV–D programs.

DATES: This rule is effective March 30, 2004. For Tribes and Tribal organizations not operating a Tribal IV–D program under 45 CFR part 310, these regulations are applicable March 30, 2004. For Tribes operating a Tribal IV–D program under the Interim Final Rule, 45 CFR part 310 will apply until no later than October 1, 2004. Tribes operating under 45 CFR part 310 must comply with these final regulations (45 CFR part 309) no later than October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Paige Biava, Policy Specialist, OCSE Division of Policy, (202) 401–5635.

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 a.m. and 7 p.m., Eastern Time.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This final regulation implements section 455(f) of the Act, as added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and amended by section 5546 of the Balanced Budget Act of 1997 (Pub. L. 105–33). This final regulation is also issued under the authority granted to the Secretary of HHS (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, 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.''

Scope of This Rulemaking

On August 21, 2000, a Notice of Proposed Rulemaking (NPRM) and Interim Final Rule were published (65 FR 50800 and 65 FR 50786, respectively). The NPRM set forth the proposed rules for direct funding to Tribal IV–D agencies. The rulemaking process is ordinarily a lengthy process. A number of Tribes expressed concern that efforts they had under way 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). The Interim Final Rule allowed Tribes and Tribal organizations currently operating comprehensive Tribal IV–D programs comprising the five mandatory elements listed in section 455(f) and meeting the requirements specified in the interim rule to apply for, and if approved, receive direct funding to operate a Tribal IV–D program.

This rulemaking is intended to establish the minimum requirements that must be satisfied by an Indian Tribe or Tribal organization to be eligible for direct funding under title IV–D of the Social Security Act. The final regulation establishes application procedures, child support enforcement plan requirements, funding provisions, and accountability and reporting requirements. OCSE is planning a series of conferences across the country to explain, discuss, and respond to questions on the final regulation. Additional information about these conferences will be forthcoming.

The national Child Support Enforcement Program was initially established in 1975 under title IV–D of the 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 all 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.

We believe the promulgation of these regulations is not only consistent with the commitment of the Department to the government-to-government relationship with Indian Tribes, but also with a productive partnership of the Office of Child Support Enforcement in all dealings with Tribes.

Tribal Child Support Enforcement

Prior to enactment of PRWORA, title IV–D of the Act placed authority to administer the delivery of IV–D services solely with the States. However, within much of Tribal territory, the authority of State and local governments is limited or non-existent. The Constitution, numerous court decisions, and Federal law clearly reserve to Indian Tribes important powers of self-government, including the authority to make and enforce laws, to adjudicate civil and criminal disputes including domestic relations cases, to tax, and to license. Consequently, States have been limited in their ability to provide IV–D services on Tribal lands and to establish paternity and establish and enforce child support orders and Indian families have had difficulty getting IV–D services from State IV–D programs. Some child support enforcement services have been provided through cooperative agreements between Tribes and States and have helped bring child support services to some Indian and Alaska Native families.

Prior to enactment of PRWORA, Federal funding under title IV–D of the Act was limited to funding State child support enforcement programs and there was no direct Federal funding to Tribes for child support enforcement activities. Federal funding was only available indirectly to Tribes through States for eligible expenditures of Tribes pursuant to cooperative agreements with States under which the State delegated functions of the IV–D program to the Tribal entity. The Tribal entity was required to comply with all aspects of title IV–D of the Act applicable to the function or functions delegated to the Tribe. Only under these circumstances was Federal reimbursement under title IV–D available to the State for costs incurred by the Tribal entity for performing IV–D functions.

For the first time in the history of the title IV–D program, PRWORA authorized direct funding of Tribes and Tribal organizations for operating child support enforcement programs. The Department recognizes the unique relationship between the Federal government and Federally-recognized Indian Tribes and acknowledges 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 administer their own IV–D programs to meet the needs of children and their families.

Principles Governing Regulatory Development

Essential to the Federal-State-Tribal effort to ensure that noncustodial parents support their children is coordination and partnership, especially in the processing of inter-jurisdictional cases. Therefore, we believe that all IV–D programs must be administered under a basic framework to ensure that the objectives of title IV–D are successfully implemented. This common title IV–D framework does not mean that Indian Tribes are subject to the same regulations as States are. However, this regulation sets forth the minimum core requirements that must be met in order for a Tribe or Tribal organization to receive direct funding for IV–D programs.

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, 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 rule is consistent with these priorities and principles. The regulations are required by PRWORA and represent the requirements governing direct funding to Tribal IV–D agencies that demonstrate the capacity to operate a IV–D 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. ACF consulted with Tribes and Tribal organizations and their representatives to obtain their views prior to the publication of this final rule. Consultations included a series of six Nation-to-Nation meetings held across the county. In addition, a toll free ''800'' number was created to allow for additional comments and input from Tribes and Tribal organizations and more in-depth individual consultations also occurred.

This rule is considered a ''significant regulatory action'' under 3(f) of the Executive Order, and therefore has been reviewed by the Office of Management and Budget.

Executive Order 13175

Executive Order 13175 (65 FR 6724, November 6, 2000) requires us to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' The purpose of consultation is to strengthen the United States government-to-government relationship with Indian Tribes and to reduce the imposition of unfunded mandates upon Indian Tribes. ACF consulted with Tribes and Tribal organizations and their representatives to obtain their views prior to the publication of this final rule. Consultations included a series of six Nation-to-Nation meetings in Albuquerque, New Mexico; Portland, Oregon; Nashville, Tennessee; Fairbanks, Alaska; Washington, DC; and Prior Lake, Minnesota on the Shakopee Indian Reservation. Each of the consultations lasted for two and a half days and further follow up was conducted on an individual level. In addition, a toll free ''800'' number was created to allow for additional comments and input by Tribes and Tribal organizations. The consultations were successful in elicting a wide range of questions, issues, and suggestions.

Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 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 rules 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 the 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 Federal annual expenditures under the Tribal IV–D Program: FY 2004—$18.0 million; FY 2005—$38.0 million; FY 2006—$53.0 million; FY2007—$57.4 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 rule is not a major rule as defined in 5 U.S.C. Chapter 8.

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 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 regulation 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 is responsive to the needs of Tribes and Tribal organizations and provides them the opportunity to design programs that serve this purpose. The rule will have a positive effect on family well-being. Implementation of Tribal IV–D 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.

Paperwork Reduction Act of 1995

This final rule contains reporting requirements as proposed at 45 CFR part 309. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Administration for Children and Families submitted the requirements to the Office of Management and Budget (OMB) for its review.

Part 309 contains a regulatory requirement that, in order to receive funding for an independent Tribal IV–D program, a Tribe or Tribal organization must submit an application containing standard forms 424 and 424A and a plan describing how the Tribe or Tribal organization meets or plans to meet the objectives of section 455(f) of the Act, including establishing paternity, establishing, modifying, and enforcing support orders, and locating noncustodial parents. Tribes and Tribal organizations must respond if they wish to operate a Federally funded program. In addition, any Tribe or Tribal organization participating in the program would be required to submit standard form 269A and form OCSE 34A and to submit statistical and narrative reports regarding its Tribal IV–D program. The potential respondents to these information collection requirements are approximately 10 Federally recognized Tribes, and Tribal organizations, during Year 1; 65 additional Federally recognized Tribes and Tribal organizations during Year 2; and 75 additional Federally recognized Tribes and Tribal organizations during Year 3; for a three year total of 150 grantees. This information collection requirement will impose the estimated total annual burden on the Tribes and Tribal organizations described in the table below:

Information collection	Number of espondents	Responses per respondent	Average burden per response	Total annual burden
Year 1				
SF 424	10	1	.75	7.5
SF 424A	10	1	3	30
SF 269A	10	5	2	100
45 CFR 309—Plan	10	1	480	4,800
Form OCSE 34A	10	4	8	320
Statistical Reporting	10	1	24	240
Total				5,497.5
Year 2				
SF 424	75	1	.75	56.25
SF 424A	75	1	3	225
SF 269A	75	5	2	750
45 CFR 309—Plan	65	1	480	31,200
Form OCSE 34A	75	4	8	2,400
Statistical Reporting	75	1	24	1,800
Total				36,431.25
Year 3				
SF 424	150	1	.75	112.5
SF 424A	150	1	3	450
SF 269A	150	5	2	1,500
45 CFR 309—Plan	75	1	480	36,000
Form OCSE 34A	150	4	8	4,800
Statistical Reporting	150	1	24	3,600
Total				46,462.5

Total Burden for 3 Years: 88,391.25.

Total Annual Burden Averaged Over 3 Years: 29,463.75 per year.

The information collection requirements were approved by OMB under OMB number 0970–0218.

Summary Description of Regulatory Provisions

The following is a summary of the regulatory provisions included in this final rule. The Notice of Proposed Rulemaking (NPRM) and Interim Final Rule for Comprehensive Tribal Child Support Enforcement Programs were published in the **Federal Register** on August 21, 2000 (65 FR 50786). The NPRM contained part 309, subparts A through F, and the Interim Final Rule contained part 310, subparts A through G. Subparts A through F were essentially the same in part 309 and part 310, with one exception. Part 309 included proposed provisions both for Tribes and Tribal organizations that already are able to operate comprehensive IV–D programs, and for Tribes and Tribal organizations that do not already operate comprehensive IV–D programs and need program development funding for start-up IV–D programs. Because the Interim Final Rule, part 310, applied only to Tribes and Tribal organizations that already operate comprehensive IV–D programs, it did not include provisions for program development funding for start-up IV–D programs. Subpart G of the part 310 rule contained additional specific requirements for interim funding of operational comprehensive Tribal IV–D programs. On the effective date of these regulations, part 310 will become time-limited. For Tribes operating a Tribal IV–D program under the Interim Final

Rule, 45 CFR part 310 will be applicable to grants covering the period up to the first day of the quarter beginning 6 months after the date of publication of the final regulations for 45 CFR part 309. Tribes operating under 45 CFR part 310 must make changes to their current program to comply with this final rule not later than the first day of the quarter beginning 6 months after the date of publication of the final rule in order to receive continued IV–D funding.

Since issuance of the proposed rule, we have also made changes to Sections 286 and 302. Part 286 was modified to comply with the distribution requirements found in part 309 of the rule. Changes were made to part 302 to include cooperation with Tribal IV–D agencies as a requirement for State IV–D agencies.

45 CFR Chapter II

Tribal TANF Provisions, Section 286, Subpart C—Tribal TANF Plan Content and Processing

Section 286.155 sets out the eligibility provisions for Tribal TANF in relationship to assignment of child support. This section currently requires the Tribal TANF agency to have procedures for ensuring that child support collections in excess of the amount of Tribal TANF received by the family must be paid to the family. The section was modified to eliminate references to payments to the family because distribution of these collections is now addressed in § 309.115 of this rule.

45 CFR Chapter III

Section 302, State Plan Requirements

Section 302.36 details the State plan requirement for States to cooperate with other states in interstate IV–D cases. This section title and content is modified to include cooperation with all Tribal IV–D programs. Section 302.36(a)(2) requires States to extend the full range of services available under its IV–D plan to all Tribal IV–D programs.

Part 309—Comprehensive Tribal Child Support Enforcement (CSE) Programs

Subpart A—Tribal Child Support Enforcement Program (IV–D) Program: General Provisions

Section 309.01 provides the general provisions. Section 309.05 defines key terms. We added a number of definitions for clarification and to make the rule easier to read. Definitions were added for the following terms: income, non-cash support, notice of disapproval, OCSE, program development plan, TANF and Tribal custom.

This section establishes definitions for terms used throughout part 309 of this final rule. We also want to make clear that underlying these regulations is the recognition that many Tribal customs and traditions have the force and effect of law. We have determined that such Tribal customs are equivalent to ''common law'' as described by William Blackstone: ''[t]he lex non scripta, or unwritten law, includes not only general customs, or the common law properly so called; but also the particular customs of certain parts of the kingdom; and likewise those particular laws, that are by custom observed only in certain courts and jurisdictions'' (Blackstone, 1 Commentaries on the Law of England 62).

Section 309.10 outlines who is eligible to apply for Federal funding to operate a Tribal IV–D program. Proposed § 309.10 required a Tribe or Tribal organization to have at least 100 children under the age of majority in the population subject to the jurisdiction of the Tribe in order to be eligible to receive Federal funding to operate a Tribal IV–D program. In response to comments, we added a provision at § 309.10(c) that, if a Tribe or Tribal organization can demonstrate to the satisfaction of the Secretary the capacity to operate a child support enforcement program and provide justification for operating a cost effective program with less than the minimum number of children, it may be considered eligible for direct funding under a waiver. Details on what information must be included in a waiver request are provided in the regulation at § 309.10(c)(1) and (2) and the waiver request must be included in the original application.

Subpart B—Tribal IV–D Program Application Procedures

Section 309.15 establishes what must be included in an application for direct funding. The application must include a Standard Form (SF) 424, ''Application for Federal Assistance,'' SF 424A, ''Budget Information-Non-Construction Programs'' and a Tribal IV–D plan—a comprehensive statement that demonstrates the capacity of the Tribe or Tribal organization to operate a IV–D program meeting the objectives of title IV–D. This section also describes annual budget submissions including a specific mechanism to deal with requests for inclusion of indirect costs.

The provisions in proposed § 309.15 described what was included in the initial application, including the SF 424 and 424A, as well as the Tribal IV–D plan. We expanded this provision to clarify the requirements. The SF 424A, ''Budget Information—Non-Construction Programs,'' must be completed and include: A quarter-by-quarter estimate of expenditures for the funding period; notification of whether the Tribe or Tribal organization is requesting funds for indirect costs and if so, an election of a method to calculate estimated indirect costs; a narrative justification for each cost category on the form; a statement that the Tribe or Tribal organization has or will have the non-Federal share of program expenditures available, as required, or a request for a waiver of the non-Federal share in accordance with § 309.130(e), if appropriate. These new requirements are based on our experience with the Tribal IV–D programs currently funded under the Interim Final Rule. We discovered that our requirements in the interim rule were not explicit enough to ensure we received the information necessary to make an informed decision on funding. In our review of the applications, we found that it was necessary to request the information listed in § 309.15(a)(2)(i)–(iv). These new requirements will save time for the applicant and OCSE by making immediately available all information needed for approval and funding decisions.

We added language at § 309.15(a)(3) giving Tribes an option regarding the inclusion of indirect costs. If a Tribe or Tribal organization's budget request includes indirect costs as part of its request for Federal funds, such requests may be submitted in one of two ways. For applications which include indirect costs, we have determined that an applicant may, at its option, either calculate the estimated indirect costs by documenting the dollar amount of indirect costs allocable to the IV–D program, or submit its current indirect cost rate negotiated with the Department of the Interior and a dollar amount of indirect costs based on that rate. If the Tribe elects to submit actual estimated costs attributable to the Tribal IV–D program, the methodology used to arrive at the dollar amount must be included in the application. Whichever option an applicant chooses, the applicants obligations remains the same: Tribal IV–D grantees are responsible for ensuring that actual expenditures of Federal IV–D funds are directly, demonstrably attributable to operation of the IV–D program, *i.e.*, all actual costs claimed under the IV–D grant must be allocable to the IV–D program. The Federal statute at 42 U.S.C. 651 limits the use of Federal IV–D funds to the purposes enumerated in that section, whether

such costs are characterized as ''direct'' or ''indirect'' costs. Grantees are prohibited from shifting costs to IV–D grants which are not attributable to operation of the IV–D program. Adjustments will be made for any differences between estimated and actual costs attributable to the IV–D program.

In the Temporary Assistance for Needy Families (TANF) program, even though Tribal grantees may use their negotiated indirect cost rate to calculate indirect costs, total actual costs are limited and may not go beyond a regulatory cap on administrative expenditures. Similarly, in the Tribal IV–D program, Tribal grantees may use their negotiated indirect cost rate to calculate estimated indirect costs, but the Federal statute limits the total amount of costs that may be claimed to those that are directly attributable to administration of the IV–D program.

We also added language at § 309.15(a)(4) that the initial application must include a comprehensive statement identifying how the Tribe or Tribal organization is meeting the requirements of subpart C of this part, and that describes the capacity of the Tribe or Tribal organization to operate a IV–D program which meets the objectives of title IV–D of the Act.

Section 309.16 establishes the rules for a Tribe or Tribal organization to apply for start-up funding authorized under § 309.65(b) if the Tribe or Tribal organization cannot, at the time of application, meet all the Tribal IV–D plan requirements in § 309.65(a). In addition to the application requirements listed in § 309.15 above, a Tribe or Tribal organization must include a program development plan describing how a Tribal IV–D agency will meet any Tribal IV–D plan requirements not currently met within a reasonable, specific period of time, not to exceed two years. Funding is limited to $500,000. In extraordinary circumstances, the Secretary may grant a no-cost extension of time.

The language at proposed § 309.65(b)(1) and (2) contained requirements for a start-up application and a program development plan. In order to clarify the rule, we moved that language to § 309.16(a)(4) and (5). We added language at § 309.16(a)(3) that if a Tribe or Tribal organization's budget for start-up funding includes a request for indirect costs, a mechanism parallel to that described at § 309.15(a)(3) must be used. If a Tribe or Tribal organization receives funding based on submission and approval of a Tribal IV–D application which includes a program development plan under § 309.16(a)(5), a progress report that describes accomplishments in carrying out the plan, as required by § 309.170(b)(6), must be submitted with the next annual refunding request.

New language was added at paragraph (b) indicating that the approval and disapproval procedures for applications for start-up funding are found in §§ 309.35, 309.40, 309.45 and 309.50. We also added language that clarifies that an application for start-up funding is not subject to administrative appeal.

Paragraph (c) of § 309.16 indicates that start-up funding is limited to $500,000 and must be obligated and liquidated within two years from the first day of the quarter after the start-up application is approved. The Secretary will consider a request to extend the period of time during which the start-up funding is available or increase the amount of funding provided. The language that addressed the no-cost extension or the additional start-up funding was only found in the preamble discussion of the NPRM and is now clearly stated in the final rule in paragraphs (c)(1) and (c)(2).

Proposed §§ 309.20 and 309.30 were consolidated in the final rule as § 309.20 for clarity. Section 309.20 now addresses who submits a Tribal IV–D application and where it must be submitted. The authorized representative of a Tribe or Tribal organization must sign and submit the application. Two copies of an application or plan amendment must be submitted: the original to the OCSE Central Office, and a copy to the appropriate regional office.

Proposed §§ 309.25 and 309.35 were consolidated as § 309.35 for clarity. Section 309.35 now outlines the procedures for review of IV–D program applications, plans and plan amendments. The Secretary will determine whether the application, plan or plan amendment meets the requirements not later than 90 days after receipt. If additional information is required, the determination will be made within 45 days of receipt of all necessary information. Determinations as to whether the Tribal IV–D plan, including plan amendments, meets or continues to meet the requirements are based on applicable Federal statutes and regulations. Guidance may be furnished to assist in interpretation. All relevant changes required by new Federal statutes, rules, regulations and interpretations are required to be submitted so that OCSE may determine whether the plan continues to meet Federal requirements. If a Tribe or Tribal organization intends to make any substantive change to the Tribal IV–D program, a plan amendment must be submitted at the earliest reasonable time. The effective date of a plan or plan amendment may not be earlier than the first day of the fiscal quarter in which a plan or amendment is approved.

Section 309.40 describes the basis for disapproval of a Tribal IV–D program application, IV–D plan or plan amendment. An application, plan or plan amendment will be disapproved if the Secretary determines that: It fails to meet, or no longer meets one or more of the Federal requirements; the required Tribal laws, codes or regulations are not in effect; or the application is not complete (after the Tribe or Tribal organization has had the opportunity to submit all necessary information.) A written Notice of Disapproval will be sent to the Tribe or Tribal organization upon determination that any of the conditions for disapproval applies. If the application, plan or plan amendment is incomplete and fails to provide enough information to make a determination, the Secretary will request the necessary information.

Section 309.45 provides that a Tribe or Tribal organization may request reconsideration of disapproval of a Tribal IV–D application, plan or plan amendment and describes the process. The request for reconsideration must include all documentation that is relevant and supportive of the application, plan or plan amendment and a written response to each ground for disapproval. The request for reconsideration must also include whether the Tribe or Tribal organization requests a meeting or conference call with the Secretary. The Secretary will have a 60-day period to make a written determination affirming, modifying or reversing disapproval of the application. Disapproval of start-up funding or of a request for waiver of the 100-child rule or waiver of the required Tribal share of expenditures is not subject to administrative appeal.

If we intend to disapprove an existing IV–D plan, we will send the Tribe a Notice of Intent to Disapprove the plan. The Tribe may request a hearing within 60 days of the date of the notice of our intent to disapprove the plan if the Tribe waives its right to a reconsideration under § 309.45. Although we received no written comments on this section, we added the opportunity for a hearing prior to disapproval of an existing Tribal IV–D plan because of the significant consequences of Tribal plan disapproval.

Section 309.50 describes the consequences of disapproval of an application or plan amendment. If an

application is disapproved, the Tribe can receive no direct funding until a new application is submitted and approved. If a plan amendment is disapproved, there is no funding for the proposed activity.

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

Subpart C—Tribal IV–D Plan Requirements

Section 309.55 states that subpart C of § 309 defines the Tribal IV–D provisions that are required to demonstrate the Tribe or Tribal organization has the capacity to operate a child support enforcement program.

Section 309.60 describes who is responsible for administration of the Tribal IV–D program under the plan. The Tribe or Tribal organization must designate an agency to administer the Tribal IV–D plan. The Tribe or Tribal organization is responsible and accountable for the operation of the Tribal IV–D program. If a Tribe or Tribal organization delegates any functions of the Tribal IV–D program to another Tribe, State, and/or another agency or entity, the Tribe or Tribal organization is responsible for securing compliance with the requirements of the plan. The Tribe or Tribal organization is responsible for submitting copies and appending to the Tribal IV–D plan any agreements, contracts, or Tribal resolutions between the Tribal IV–D agency and a Tribe, State, other agency or entity.

Section 309.65(a) describes what a Tribal IV–D plan must include in order to be approved and receive Federal funds for the operation of the Tribal IV–D program. This part outlines the 14 required elements which include: (1) A description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support purposes; (2) evidence that the Tribe has in place procedures for accepting all applications for IV–D services and providing IV–D services required by law and regulation; (3) assurance that due process rights are protected; (4) administrative and management procedures; (5) safeguarding procedures; (6) maintenance of records; (7) copies of applicable Tribal laws and regulations (8) procedures for the location of noncustodial parents; (9) procedures for the establishment of paternity; (10) guidelines for the establishment and modification of child support obligations; (11) procedures for income withholding; (12) procedures for the distribution of child support collections; (13) procedures for intergovernmental case processing; and (14) Tribally-determined performance targets.

Section 309.65(b) includes a provision for Tribes or Tribal organizations that can demonstrate the capacity to operate a IV–D program but that are unable at the time of application to satisfy all of the requirements of paragraph (a) to request start-up funding. The NPRM at § 309.65(b) outlined what must be included in a start-up application. Those provisions are now found at § 309.16. The Tribe or Tribal organization may demonstrate capacity to operate a Tribal IV–D program by submission of an application for start-up funding as required by § 309.16. Proposed § 309.65(c) said that the Secretary will cease funding to a Tribe or Tribal organization's start-up efforts if that Tribe or Tribal organization fails to demonstrate satisfactory progress pursuant to §§ 309.15(b)(2) and 309.25(d) toward putting a full program in place. The language was revised for clarity and now says, ''The Secretary may cease start-up funding to a Tribe or Tribal organization of that Tribe or Tribal organization fails to satisfy one or more provisions or milestones described in its program development plan within the timeframe specified in such plan.'' This requirement is now found at 309.65(b)(2).

In §§ 309.70 through 309.120, we eliminate duplicative language in the introduction to each section that read, ''A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting objectives of title IV–D of this Act.'' The language is unnecessary as approval of a plan is based on the contents of the plan. the new introductory language reads: ''A Tribe or Tribal organization must include in its Tribal IV–D plan a description of. * * *''

Section 309.70 requires that the Tribe or Tribal organization include a description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support enforcement purposes and certify that there are at least 100 children under the age of majority in the population subject to the Tribe's jurisdiction, in accordance with § 309.10 of this part and subject to § 309.10(c)

Section 309.75 outlines the administrative and management procedures that must be included in the plan. The plan must include a description of the agency and the distribution of responsibilities within the agency. In response to comments, we eliminated as duplicative the requirement that the plan includes procedures under which applications are made available to the public upon request and that the plan also includes procedures under which the agency must promptly open a case record and determine necessary action. This requirement is found at § 309.65(a)(2).

The plan must include evidence that all Federal funds and amounts collected by the Tribal IV–D agency are protected against loss. Tribes and Tribal organizations may comply with this requirement by submitting documentation that every person who receives, disburses, handles, or has access to or control over funds collected is covered by a bond or insurance sufficient to cover all losses. In response to comments we eliminated as duplicative the language in proposed § 309.75(d)(3) that specified, ''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.''

The plan must include that notices of support collected, itemized by month of collection, are provided to families receiving services under the Tribal IV–D program at least once a year and to either the custodial or noncustodial parent upon request. The plan must include a certification that the Tribe or Tribal organization will comply with the provisions of chapter 75 of title 31 of the U.S.C. (the Single Audit Act of 1984, Pub. L. 98–502, as amended) and OMB Circular A–133.

We added a new provision at § 309.75(e) that if the Tribal IV–D agency intends to charge an application fee, the plan must contain provisions that the fee will be uniformly applied and cannot exceed $25.00; that in intergovernmental cases referred for services, the application fee may only be charged by the jurisdiction where the individual applies for services; that fees may not be charged to individuals receiving services under titles IV–A, IV–E foster care assistance or XIX (Medicaid) of the Act; and that the Tribal IV–D agency may recover actual costs of providing services in excess of the application fee. Fees collected and costs recovered are considered program income and must be used to reduce the amounts of expenditures for Federal matching. The Tribal IV–D agency must exclude from its quarterly expenditure claims an amount equal to all fees which are collected and costs recovered during the quarter. Assessment of a fee and/or recovery of costs are not mandatory requirements, but optional provisions that some Tribes may choose to use.

Section 309.80 outlines what safeguarding procedures a Tribe or

Tribal organization must include in its plan. The plan must include procedures under which the use or disclosure of personal information received by or maintained by the Tribal IV–D agency is limited to purposes directly connected to the administration of the program, or other programs or purposes prescribed by the Secretary in regulations. The plan must include procedures for safeguards that are applicable to all confidential information including safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, establish, modify or enforce support. Also included are prohibitions against the release of information on the whereabouts of one party or the child to another party when a protective order has been entered, and against the release of information if the Tribe has reason to believe the release of the information may result in physical or emotional harm to the party or child, and any other procedures in accordance with specific safeguarding regulations applicable to Tribal IV–D programs promulgated by the Secretary. The plan must also contain sanctions to be imposed for unauthorized disclosure of personal information.

Although not specified in this final rule, in addition to programs and purposes prescribed by the Secretary, Tribal IV–D programs are authorized to disclose information to individuals for purposes authorized by Federal statute. If a Federal statute requires a Tribal IV–D program to share information, the agency must comply.

Section 309.85 was amended to clarify the section's requirements. Previously, the title of the section was ''What reports and maintenance of records procedures must a Tribe or Tribal organization include in a Tribal IV–D plan?'' The emphasis was on procedures. The title now reads: ''What records must a Tribe or Tribal organization agree to maintain in a Tribal IV–D plan?'' This more appropriately places the emphasis on what will be maintained. This section now requires that the Tribal IV–D plan provide that the Tribal IV–D agency will maintain records necessary for proper and efficient operation of the program including: (1) Applications for child support services; (2) efforts to locate noncustodial parents; (3) actions taken to establish paternity and obtain and enforce support; (4) amounts owed, arrearages, and amounts and sources of support collections, and the distribution of such collections; (5) IV–D program expenditures; (6) any fees charged and collected, if applicable; and (7) statistical, fiscal and other records necessary for reporting and accountability. Records must be maintained in accordance with 45 CFR 74.53. The NRPM noted that records would be maintained in accordance with 45 CFR 92.42; however, it is more appropriate that they be maintained in accordance with part 74. Both require three-year records retention, but title IV–D falls under part 74.

Section 309.90(a) requires the submission of copies of Tribal law, code, regulations or procedures and other evidence that provides for: (1) Establishment of paternity for any child up to at least 18 years of age; (2) establishment and modification of child support obligations; (3) enforcement of child support obligations including requirements that Tribal employers comply with income withholding; and (4) location of custodial and noncustodial parents. In the absence of written laws and regulations, a Tribe or Tribal organization may provide in its plan detailed descriptions of any Tribal custom or common law with the force and effect of law which enables the Tribe or Tribal organization to satisfy the requirements in paragraph (a).

Section 309.95 requires the plan to include provisions governing the location of custodial and noncustodial parents and their assets. The Tribal IV–D agency must attempt to locate custodial and noncustodial parents or sources of income and/or assets when location is required to take necessary action in a case, and must use all sources of information and records reasonably available to locate custodial and noncustodial parents and their sources of income and/or assets. We added the reference to custodial parents to ensure that locate sources are used to find custodial parents for whom support has been collected and whom the Tribe may be unable to find.

Section 309.100 outlines the paternity establishment procedures that a Tribe or Tribal organization must include in its plan. The agency must attempt to establish paternity by the process set out under Tribal law, code and/or custom and provide the alleged father an opportunity to voluntarily acknowledge paternity. In a contested paternity case the child and all other parties must submit to a genetic test (unless otherwise barred by Tribal law) upon the request of any party if the request is supported by a sworn statement alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between parties; or denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties. The phrase 'otherwise barred by Tribal law' is intended to cover situations where, either by action of one or both of the parties or the application of Tribal law, or both, paternity has already been conclusively determined and may not be reconsidered. In such cases, genetic testing to challenge the paternity determination would not be authorized. Examples of such a paternity determination would include a voluntary admission of paternity or circumstances under which the Tribe has other means of recognizing paternity under Tribal law. A Tribe, through its own custom, tradition or procedure, may recognize a man as the father or may preclude a man who holds himself out to be the father from challenging paternity. Similarly, a Tribe may have a conclusive presumption of paternity when a child is born to married parents or if a noncustodial parent has been validly served in a paternity proceeding and failed to contest paternity in such proceeding. A uniquely Tribal means would be acceptable as precluding the need for genetic tests if Tribal law is used to establish paternity. In such cases, because paternity has already been determined, genetic testing would be ''otherwise barred by Tribal law.'' This language is consistent with the language found at section 466(a)(5)(B) of the Act, which mandates genetic testing in contested cases to ensure that the rights of both parties are protected.

In any case involving incest or forcible rape, or in a case in which legal proceedings for adoption are pending, the agency need not attempt to establish paternity. The agency must use accredited laboratories, which perform legally and medically-acceptable genetic tests when genetic testing is used to establish paternity. Establishment of paternity under this section has no effect on Tribal enrollment or membership.

Section 309.105 indicates what procedures governing child support guidelines must be included in the plan. We changed the title of this section to better reflect its content. The section requires that a Tribal IV–D plan establish one set of child support guidelines by law or by judicial action for setting and modifying child support obligation amounts; include a copy of the child support guidelines; and indicate whether non-cash payments of support will be permitted to satisfy the child support obligation. In response to comments, we added language that the plan must indicate whether non-cash payments will be permitted to satisfy support obligations and if so, require that Tribal support orders allowing non-cash payments also state the specific

dollar amount of the support obligation, and describe the types of non-cash support that will be permitted to satisfy the underlying specific dollar amount of the support order. We also added language providing that non-cash payments may not be used to satisfy assigned support obligations.

The guidelines must be reviewed, and if appropriate, revised at least every four years and provide a rebuttable presumption that the child support award based on the guidelines is the correct amount. The plan must provide for the application of the guidelines unless there is a written finding or a specific finding on the record of the tribunal that the application of the guidelines would be unjust or inappropriate in a particular case. The guidelines must take into account the needs of the child and the earnings and income of the noncustodial parent and be based on specific descriptive and numeric criteria.

Section 309.110 outlines the procedures and requirements governing income withholding. The income withholding requirements are similar to those requirements governing States' IV–D programs, except that income is subject to withholding once the noncustodial parent has failed to make a payment equal to the support payable for one month. In response to comments from Tribes that income withholding may not be appropriate in all cases, we added language to § 309.110(h), that income withholding will not be required in any case where either the custodial or noncustodial parent demonstrates, and the tribunal enters a finding, that there is good cause not to require income withholding; or a signed written agreement is reached between the custodial and noncustodial parent which provides for an alternate agreement. We added a requirement at § 309.110(m) indicating that the Tribal IV–D agency must allocate amounts withheld across multiple withholding orders and that, in no case, shall the allocation result in a withholding for one of the orders not being implemented. Section 309.110(n) was amended by adding a requirement that the Tribal IV–D agency is responsible for receiving and processing income withholding orders from States or other Tribes and ensuring orders are promptly served on employers.

Section 309.115 outlines the requirements governing distribution. This section was rewritten for clarity. A Tribal IV–D plan must outline procedures for distribution of child support collections. As a general rule, the Tribal IV–D agency, in a timely manner, must apply collections first to satisfy current support obligations, and pay all support collections to the family unless the family is currently receiving or formerly received assistance from the Tribal TANF program, or the Tribal IV–D agency has received a request for assistance in collecting support on behalf of the family from a State or Tribal IV–D agency. Such requests for assistance may be to collect support assigned to the State or Tribe as a condition of receiving assistance or to provide services on behalf of a family residing in or receiving services from the referring State or Tribe. When support is owed to both States and Tribes, the Tribal IV–D agency may either send collections to the requesting State or Tribe for distribution *or* determine appropriate distribution by contacting the requesting State or Tribe and distribute collections accordingly. We added a new requirement that any collections attributable to the Federal Income Tax Refund Offset must be applied to satisfy child support arrears. This is consistent with section 464 of the Act. Finally, we made a conforming change to Tribal TANF regulations at 45 CFR 286.155 to eliminate reference to payments to the family because distribution of collections is addressed in § 309.115 of this rule.

Section 309.120 requires a Tribe or Tribal organization to specify procedures under which the Tribal IV–D agency will extend the full range of services available under its IV–D plan to respond to all requests from, and cooperate with State and other Tribal IV–D programs. The Tribe or Tribal organization must also provide assurances that it 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 (FFCCSOA). ACF is making a parallel change to include cooperation with Tribal IV–D agencies as a requirement for State IV–D programs at 45 CFR 302.36.

Subpart D—Tribal IV–D Program Funding

Section 309.125 provides the basis on which Tribal IV–D program funding is determined. The funding is based on the Tribal IV–D application, which includes the proposed budget and a description of the nature and scope of the Tribal IV–D program and gives assurance that the program will be administered in conformity with applicable requirements of title IV–D of the Act, regulations contained in this part, and other official issuances of the Department that specifically apply to Tribes and Tribal organizations.

Section 309.130 outlines the general mechanism for funding Tribal IV–D programs; financial form submittal requirements; the Federal share of program expenditures; non-Federal share of program expenditures; waiver of non-Federal share of program expenditures; an increase in an approved budget; obtaining Federal funds and grant administration requirements. The changes in this section are addressed below.

New language was added at § 309.130(a) indicating that the Tribe or Tribal organization will receive funds in the amount equal to the percentage specified in paragraph (c) of the total amount of approved and allowable expenditures. This language was added for clarity. We also added language explaining that Tribes receiving grants of less than $1 million per 12-month funding period will receive a single annual award and those Tribes that receive grants of $1 million or more per 12-month funding period will receive four equal quarterly awards. The Department-wide grant procedures require that grant funds be disbursed in this manner. The programs administered by the Tribes currently being funded under the Interim Final Rule received their grant funds in this fashion. This language was added to the rule to clarify the manner in which funds are disbursed.

Section 309.130(b) outlines that the financial forms required must be submitted to ACF. ACF reviews each application for direct funding. The requirements associated with the submission of the SF 424A, ''Budget Information—Non-Construction Programs'' form have changed. The rule now requires a quarter-by-quarter estimate of expenditures for the fiscal year; notification of whether the Tribe or Tribal organization is requesting funds for indirect costs; a narrative justification for each cost category on the form for funding under § 309.65(a); and either: a statement certifying that the Tribe or Tribal organization has or will have the non-Federal share of program expenditures available, as required; or a request for a waiver of the non-Federal share in accordance with paragraph (e). As mentioned earlier in the preamble, we discovered that our requirements in the Interim Final Rule were not explicit enough to get the information necessary to make an informed decision on funding. In our review of applications from Tribes being funded under the Interim Final Rule, we found it necessary to request the information listed above. Requiring the

information from the onset will result in a timesaving for the applicant and for OCSE, as we will have the necessary information earlier in the process and the approval and funding, if appropriate, will not be unduly delayed.

The requirement in proposed § 309.140 that the Tribe or Tribal organization must submit a Financial Status Report, SF 269, was moved to § 309.130(b)(3). We eliminated proposed § 309.140. The final rule requires that the SF 269A Financial Status Report (short form) be submitted quarterly. We decided to substitute the short form for the form previously required. The short form is more appropriate for Tribes and Tribal organizations and requires less information than the proposed form. The requirements for reporting on the OCSE 34A, ''Quarterly Report of Collections,'' previously found in proposed § 309.140 were also moved to this section of the final rule. As noted in the preamble to the NPRM, we revised the instructions for reporting on this form. We will modify the form to apply to Tribes and Tribal organizations operating IV–D programs through direct funding.

Section 309.130(c) outlines the Federal share of program expenditures. During the period of start-up funding, a Tribe or Tribal organization will receive Federal funds equal to 100 percent of the approved and allowable expenditures made during that period. It is important to note that this is a change from the NPRM. Previously, a non-Federal match was required for Tribes applying for start-up funding. In recognition of the fact that Tribes just beginning title IV–D child support enforcement funding may have very limited funds for this activity, we have eliminated the requirement for non-Federal match for start-up tribes. During the initial three years of full program operation, a Tribe or Tribal organization will receive 90 percent Federal funding and 80 percent thereafter.

Section 309.130(d) outlines the non-Federal share of program expenditures. This subsection states that the non-Federal share of program expenditures must be provided either with cash or with in-kind contributions and must meet the requirements found in 45 CFR 74.23. This is a change from the NPRM, which stated that 45 CFR part 92 was applicable to the administration of Tribal IV–D programs. We have amended the rule and changed each reference from 45 CFR part 92 to 45 CFR part 74, because the language in 45 CFR part 92 clearly states that title IV–D programs are not required to comply with part 92.

Based on comments and experience with currently operating Tribal IV–D programs, we revised the section on waiver provisions at § 309.130(e). Under certain circumstances, the Secretary may grant a temporary waiver of the non-Federal share of expenditures. If a Tribe or Tribal organization anticipates that it will temporarily be unable to contribute part or all of the non-Federal share of funding, it must submit a written request that this requirement be temporarily waived. A request for waiver must be sent to ACF, and included with the submission of SF 424A, no later than 60 days prior to the start of the funding period. If, after the start of a funding period, an emergency situation occurs that necessitates the grantee to request a waiver of the non-Federal costs, it may do so as soon as the adverse affect of the emergency situation giving rise to the request is known. The request must include a statement of the amount the Tribe is requesting be waived; a narrative statement describing the circumstances and justification for the waiver; portions of the Tribal budget to demonstrate that any funding shortfall is not limited to the Tribal IV–D program and any uncommitted funds are insufficient to meet the non-Federal funding requirement; copies of any additional financial documents in support of the request; a detailed description of the attempts made to secure the necessary funding from other sources; and any other documents the Secretary may request to make this determination.

In its request for a temporary waiver of the non-Federal share of expenditures, the Tribe or Tribal organization must demonstrate to the satisfaction of the Secretary that it lacks sufficient resources to provide the required non-Federal share of costs; has made reasonable, but unsuccessful, efforts to obtain non-Federal share contributions; and has provided all required information requested by the Secretary. All statements must be supported by evidence including a description of how the Tribe or Tribal organization has the capacity to provide child support enforcement services even though it lacks the financial resources to provide its required non-Federal share of program costs. The following statements are insufficient to merit a waiver without documentary evidence satisfactory to the Secretary: funds committed to other budget items; a high rate of unemployment; a generally poor economic condition; a lack of or a decline in revenue from gaming, fishing, timber, mineral rights and other similar revenue sources; a small or declining tax base; little or no economic development.

A Tribe or Tribal organization may consider requesting a waiver if, for example, it has experienced a natural disaster, extreme weather conditions, or other calamities (*e.g.,* hurricanes, earthquakes, and fire) whose disruptive impact is so significant and unpredictable that the applicant is temporarily unable to satisfy the non-Federal share requirement; or isolated, unanticipated economic hardship, beyond the control of the applicant, which makes it temporarily impossible for the applicant to satisfy the non-Federal share requirement. The authorized representative of the Tribe or Tribal organization must sign and submit the Tribal IV–D waiver request. Applications must be submitted to 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 and must be submitted as soon as the adverse effect of the emergency situation giving rise to the request is known to the grantee.

We added language that the temporary waiver will expire on the last day of the funding period for which the waiver was approved. If the Tribe is unable to meet the non-Federal share in subsequent years, the Tribe must submit a new request with its next budget submission. It should also be noted that if a request for a waiver is denied, the denial is not subject to administrative appeal.

Section 309.130(f) addresses increases in an approved budget, which may be requested by submitting a revised copy of the SF 424A with an explanation of why additional funds are needed. Any approved increase in the Tribal IV–D budget will include a requirement for a proportional increase in the non-Federal share. Tribes and Tribal organizations will obtain Federal funds on a draw-down basis from the Department's Payment Management System.

Section 309.135 specifies the requirements that apply to funding, obligating and liquidating IV–D grant funds. This section outlines the funding period, obligation period, liquidation period, funding reductions and extension requests. This section was broken into subsections for ease of understanding.

Proposed § 309.140 required Tribes to submit a Financial Status Report, SF 269, quarterly. Tribes must also submit the Child Support Enforcement Program: Quarterly Report of Collections (Form OCSE 34A) on a quarterly basis. A report on the

liquidation of obligations must be submitted using the SF 269A. While these requirements must still be met, they have been moved to § 309.130(b)(3) and (4), as we felt these requirements made more sense in the funding portion of the rule.

Section 309.145 outlines the allowable costs for Tribal IV–D programs carried out under § 309.65(a). This list is similar to the list of allowable costs in the State IV–D program.

Section 309.150 outlines costs that are allowable for start-up programs carried out under § 309.65(b). Federal funds are available for the costs of developing a Tribal IV–D program meeting Federal requirements, provided that such costs are reasonable, necessary and allocable to the program. Federal funding for program development generally may not exceed a total of $500,000 except in very unusual or extraordinary circumstances. Allowable start-up costs and activities include: planning for the initial development and implementation of a program; developing Tribal IV–D laws, codes, guidelines, systems and procedures; recruiting, hiring, and training Tribal IV–D program staff; and any other reasonable, necessary and allocable costs with a direct correlation to the development of a Tribal IV–D program, consistent with the cost principles of OMB Circular A–87, and approved by the Secretary.

Section 309.155 outlines costs that are not allowable, which are basically the same as those costs that are not allowable under the State IV–D program. Funds may not be used for activities related to administering other programs including those under the Social Security Act; construction or major renovations; expenditures that have been reimbursed by fees collected, including any fee collected from a State; jailing of parents in Tribal IV–D cases; the cost of legal counsel for indigent defendants in Tribal IV–D actions; the cost of guardians ad litem or any other costs that are not reasonable, necessary and allocable to the Tribal IV–D program.

Subpart E—Accountability and Monitoring

Section 309.160 indicates that OCSE will rely on audits required by OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations,'' and 45 CFR part 74. The Tribal IV–D program will 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.

Section 309.165 provides that the recourse for a Tribe or Tribal organization to dispute a determination to disallow program expenditures is governed by the procedures in 45 CFR part 16.

Subpart F—Statistical and Narrative Reporting Requirements

Section 309.170 requires Tribes to submit information and statistics for program activities and caseload for each funding period. The required information includes: (1) Total number of cases, and of those, the number that are State or Tribal TANF and non-TANF; (2) total number of out-of-wedlock births in the previous year and total number of paternities established or acknowledged; (3) total number of cases and the total number of cases with an order; (4) total amount of current support due and collected; (5) total amount of past-due support owed and total collected; (6) a narrative report on activities, accomplishments, and progress of the program; (7) total costs claimed; (8) total amount of fees and costs recovered; and (9) total amount of laboratory paternity establishment costs.

The requirements found in proposed § 309.175 were moved to § 309.170 for clarity.

Part 310—Comprehensive Tribal Child Support Enforcement (CSE) Programs

Part 310 establishes provisions, procedures, funding, monitoring and reporting for Tribes currently operating a Tribal IV–D system under the Interim Final Rule. Section 310.1(c) is added indicating that on the effective date of these regulations, part 310 will become time-limited for Tribes operating a Tribal IV–D program under the Interim Final Rule. For Tribes operating under the Interim Final Rule, 45 CFR part 310 will be applicable to grants covering the period up to the first day of the quarter beginning six months after the date of publication of this final rule. In order to continue to receive funding, Tribes currently operating under 45 CFR part 310 must make changes to their current program to comply with this final rule not later than the first day of the quarter beginning six months after the date of publication of this final rule.

Discussion of Regulatory Provisions and Response to Comments

The following is a discussion of the regulatory provisions included in this final rule. The discussion follows the order of regulatory text, describes each subpart and section and addresses all relevant comments.

Comments were received from 14 Tribes and Tribal organizations, 15 State IV–D agencies and 10 other interested parties. A discussion of the comments received and our responses follows:

Subpart A—Tribal Child Support Enforcement (IV–D) Program: General Provisions

Section 309.01 describes the general parameters of the final regulation, § 309.05 defines key terms, and § 309.10 establishes threshold eligibility criteria.

Section 309.01—What Does This Part Cover?

1. *Comment:* Two Tribal commenters suggested a provision be added allowing the Secretary to waive any conditions of these regulations as long as the statutory requirements are met, and good cause is shown by the Tribe or Tribal organization.

Response: The statute directs the Secretary to establish requirements necessary to operate a Tribal child support enforcement program capable of meeting the program objectives of title IV–D. The final rule establishes the minimum elements, which we have determined to be critical to the basic framework for operation of Tribal IV–D programs meeting the objectives of title IV–D. After consideration of comments received on regulatory waivers, we are persuaded to permit limited waivers. We believe that Tribes should be given an opportunity to request a waiver of certain specific requirements in this regulation. However, we believe that the care taken to limit Federal regulatory requirements and to recognize Tribal sovereignty has resulted in regulations that are essential to a successful Federally-funded Tribal IV–D program. We have established criteria under which we will consider requests for waiver of the following regulatory requirements: § 309.10(a) (100-child minimum) and § 309.130(d) (non-Federal share of program expenditures). Waivers of any other regulatory requirements are not included because we have determined that these are essential to the administration of successful Tribal child support enforcement programs.

2. *Comment:* We received positive comments from States, Tribes, and national organizations affirming that the best way for Tribal IV–D programs to be administered is through a direct government-to-government relationship and direct funding. One State commented that it supported limiting the direct funding of Tribal IV–D programs to *current* Federally-recognized Tribes, and a Tribal organization affirmed its view that the basic eligibility for funds under section 455(f) of the Act was limited to

Federally-recognized Tribes, as published in the **Federal Register** pursuant to 25 U.S.C. 479a–1.

Response: Consistent with the government-to-government relationship between the Federal government and Indian Tribes, eligibility for direct IV–D funding of Tribal IV–D programs is extended to all Federally-recognized Indian Tribes. The list of such Tribes is found in the annual list of Federally-recognized Indian Tribes, which the Secretary of the Interior publishes in the **Federal Register** pursuant to 25 U.S.C. 479a–1. Any Tribe that successfully completes the Federal recognition process is eligible to apply for direct funding, regardless of its status at the time of publication of this final rule. If a Tribe is not Federally-recognized at the time of the publication of the final rule, but is subsequently recognized, we will consider such Tribe eligible to apply for direct funding.

3. *Comment:* Two Tribal commenters criticized the proposed regulations as significantly different from the document drafted by the joint Tribal/Federal workgroup.

Response: We worked in close consultation with Tribes prior to publication of the NPRM. The proposed regulation was the result of a significant amount of effort which included not only input from the joint Tribal/Federal workgroup, but also consultation from other stakeholders (including Tribes) and from within the Department. While the draft document submitted by the Tribal/Federal workgroup was significant to the development of the proposed regulation, the Department's obligation to fulfill its statutory mandate to efficiently administer the IV–D program necessarily required broader consultation. The NPRM published in August 2000 reflected wide consultation and collaboration. This final regulation reflects that input as well as careful consideration of all relevant comments received in response to the proposed rule. The end result reflects the Federal government's determination of the minimum requirements necessary for the successful administration of child support programs capable of meeting the objectives of title IV–D.

Section 309.05—What Definitions Apply to This Part?

1. *Comment:* One State commented that IV–D services as defined by the NPRM do not include services that a program may provide in addition to those listed in the definition. The State also stated that the definition does not include services that may be prohibited.

Response: It is not the intention of this final regulation to set forth an exhaustive list of specific services that may be provided under the IV–D program; thus, we do not list in the regulation every service that may be provided and attributed to child support enforcement. However, §§ 309.145, 309.150, and 309.155 establish parameters for allowable costs that may be submitted for funding at the established rate. We believe the regulations establish an appropriate framework for Tribal child support enforcement services that may be provided under title IV–D.

2. *Comment:* One State commenter noted that ''competent jurisdiction'' is used in the definition of ''child support order'' and ''child support obligation'' but is not defined.

Response: As used in the definition, competent jurisdiction is used in its common legal sense and refers to the legal authority to take actions in child support matters.

3. *Comment:* One State commenter suggested that because the definition of ''location'' refers to ''other sources of income and assets,'' a definition of ''assets'' should be added to indicate assets would include ''in-kind'' child support.

Response: We believe the definition of ''location'' appropriately describes the term as it is used in the context of child support enforcement and that the word ''assets'' does not require additional elaboration. In-kind support is not within the meaning of assets.

4. *Comment:* One State commented that the definition of child support order and child support obligation is incorrect when it says it includes ''* * * a judgment * * * for the support and maintenance of a child * * * or of the parent with whom the child is living.'' The commenter noted that the definition would conform to the Full Faith and Credit for Child Support Orders Act (FFCCSOA) by deleting ''of the parent with whom the child is living.''

Response: We disagree that the regulatory definitions are incorrect. The proposed definitions track the definition of support found in 45 CFR part 301 governing State IV–D plans and do not conflict with any provision of FFCCSOA. We have therefore retained such definitions in the final regulation.

5. *Comment:* One Tribe thought the definition of ''Indian'' found in the Indian Civil Rights Act would alleviate confusion that enrollment might be required. Another thought the Pub. L. 93–638 definition of Indian Tribes and Tribal organizations should be used.

Response: This final Tribal child support enforcement regulation does not in any way link the definition of ''Indian'' to any Federal standard or rule governing Tribal enrollment. The regulatory definition of ''Indian'' is not intended to affect a Tribe's inherent ability to determine enrollment standards or to affect the ability of any other Federal agency to appropriately exercise authority in this area. We agree that enrollment and membership are internal Tribal matters and not the concern of the Federal Office of Child Support Enforcement. The final rule defines ''Indian'' as 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.We have determined that this definition of ''Indian'' is sufficient and reference to the Indian Civil Rights Act is not necessary.

Eligibility for direct IV–D funding under section 455(f) of the Act is limited to Federally-recognized Indian Tribal governments because child support enforcement necessarily requires at least delegated governmental authority. Because the definition of ''Indian Tribe'' in Pub. L. 93–638 includes some entities that are not Tribal governments, to avoid confusion we have not adopted that definition of ''Indian Tribe.''

6. *Comment:* One State commenter thought the definition of Tribe was insufficient in defining persons and circumstances that fall under the jurisdiction of Tribes.

Response: We disagree. For purposes of these final regulations, we have determined that it is not appropriate or necessary to define ''Tribe'' in terms of the limits of Tribal jurisdiction. The regulatory definition of ''Tribe'' is appropriately related to Federal recognition of governmental entities eligible for Federal funds. Such definition is not intended to have any effect on the exercise of Tribal or State jurisdiction.

7. *Comment:* One State commenter suggested that definitions for ''Tribal resident,'' ''reservation'' and ''Indian Country'' be added. A Tribal commenter suggested that the regulations overlooked the special circumstances of Alaska's Tribes when employing the term ''Indian Country.''

Response: We have determined that it is not appropriate or necessary in this regulation to define the territorial limits of a Tribe's authority by defining ''Tribal resident'' or ''reservation.'' The parameters of ''Tribal resident'' and ''reservation'' are more appropriately

determined by Tribal law, the jurisdiction of the Tribe's courts or administrative process and by applicable Federal law, not by child support enforcement regulations.

We are aware of the special circumstances in Alaska related to the term ''Indian country'' as a consequence of the Supreme Court's decision in *Alaska* v. *Native Village of Venetie Tribal Government,* 522 U.S. 520 (1998). For clarification, except where specifically noted, throughout the preamble ''Indian country'' is replaced with the term ''Tribal territory'' in consideration of the special circumstances in Alaska. The final regulatory definition of ''Indian Tribe and Tribe'' encompasses all Indian Tribes and Alaska Native entities enumerated in the Department of the Interior's listing of Federally-recognized entities such that each is eligible to apply for direct IV–D funding.

8. *Comment:* One Tribal commenter suggested that the term ''agency'' is likely to be misunderstood because ''agency'' refers to a geographical entity delineated by a Department of the Interior Administration area.

Response: We believe the context of these regulations make the definition of Tribal IV–D agency clearly distinguishable from any other type of agency and will not result in confusion.

Section 309.10—Who Is Eligible To Apply for Federal Funding To Operate a Tribal IV–D Program?

1. *Comment:* Twenty-nine Tribal and State commenters opposed the requirement that a Tribe have 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 Tribe to be eligible to apply for direct funding.

Response: The main purpose of establishing the 100-child minimum is to assure that Tribal IV–D programs will be cost effective. We also believe this threshold eligibility requirement is a reasonable indication of necessary IV–D program infrastructure. Any Tribe that has at least 100 children subject to its jurisdiction clearly meets this requirement. However, in response to comments received, we have amended the final rule to permit waiver of the requirement that a Tribe has at least 100 children under the age of majority subject to its jurisdiction to be eligible for direct funding. Section 309.10(c) has been added and specifies that a Tribe or Tribal organization with less than 100 children subject to its jurisdiction may apply for direct funding provided it can make the required showing. The new subsection requires justification for waiver of the § 309.10(a) requirement to ensure that a Tribe or Tribal organization has the required administrative capacity to undertake a child support enforcement program.

Subpart B—Tribal IV–D Program Application Procedures

Section 309.15 describes what must be included in a Tribal IV–D application; §§ 309.20–309.30 establish procedures for submitting an application for funding; § 309.35 describes procedures for approval of applications and Tribal IV–D plan amendments; and §§ 309.40–309.50 describe procedures related to disapproval actions.

1. *Comment:* We received comments from two Tribal entities suggesting that provision be made in the regulation for voluntary retrocession of a IV–D program similar to the retrocession provisions in the Tribal TANF and Indian Self-Determination and Education Assistance Act (ISDEA) regulations.

Response: The concept of ''retrocession'' relates to transferring authority from one governmental authority to another and is not appropriate for these Tribal child support enforcement program regulations. In the case of both the Tribal TANF program and contracts under the ISDEA, retrocession describes the process under which a Tribe voluntarily terminates its administration of a program and cedes back (or returns) the program to the State or Federal government. If a Tribe or Tribal organization administering a Tribal IV–D program decides not to continue to operate a child support enforcement program, it may not cede back the program to either a State or to the Federal government. Therefore we have determined that retrocession provisions are incompatible with the Tribal child support enforcement program. If a Tribe or Tribal organization decides not to continue administration of a Tribal IV–D program, it is not required to do so. Under the statute, administration of Tribal IV–D programs is undertaken voluntarily by Tribes and Tribal organizations. Should they decide to do so, applicants on Tribal lands can apply for IV–D services from the State as they always could.

Section 309.15—What Is a Tribal IV–D Program Application?

1. *Comment:* One commenter stated that the use of existing forms SF 424 and SF 424 A was helpful as Tribes are already familiar with those forms.

Response: We appreciate that comment. We have attempted to use existing procedures to ease the application process and alleviate undue administrative burden.

Section 309.20—Who Submits a Tribal IV–D Program Application and Where?

We received no comments on this section.

Section 309.25—When Must a Tribe or Tribal Organization Submit a Tribal IV–D Application?

We received no comments on this section. The requirements in this section were moved to § 309.16, ''What rules apply to start-up funding?''

Section 309.30—Where Does the Tribe or Tribal Organization Submit the Application?

We received no comments on this section. This section was combined with § 309.20.

Section 309.35—What Are the Procedures for Review of a Tribal IV–D Program Application, Plan and Plan Amendment?

1. *Comment:* One Tribal commenter stated that the application process and requirements should be the same as those outlined in the Indian Self-Determination and Education Assistance Act (ISDEA), (Pub. L. 93–638).

Response: The differences between programs eligible for contracting under Pub. L. 93–638 and child support enforcement programs funded under title IV–D are so significant that we have determined it would be inappropriate to adopt similar substantive requirements. Programs are eligible for contracting under Pub. L. 93–638 because they are programs, services, or functions otherwise provided by the Federal government under Federal statute. The ISDEA is fundamentally different from Tribal IV–D programs which are operated by Tribal governmental entities under section 455(f) of the Social Security Act. In addition, we have determined that an effective program that efficiently delivers needed child support services to all families, including the effective processing of inter-jurisdictional cases, must be governed by the requirements and objectives of the IV–D program rather than those of Indian-related programs.

2. *Comment:* One Tribal commenter objected to § 309.35(a), stating that allowing the Secretary or designee to ''determine whether the Tribal IV–D program application or plan amendment conforms to the requirements of approval'' subjects the applications to arbitrary standards.

Response: We disagree that Tribal IV–D applications or plan amendments are subject to arbitrary standards by requiring such applications and plan amendments to conform to section 455(f) and final Tribal child support enforcement regulations. We believe we have established in these regulations appropriate and balanced standards for the administration and operation of Tribal child support enforcement programs that are responsive to the needs of Tribes and Tribal organizations. The statute states clearly that the Secretary must ''promulgate regulations establishing the requirements which must be met by an Indian Tribe or Tribal organization'' to be eligible for a direct grant under title IV–D. These final regulations establish such requirements and are the standards against which all applications will be considered. The rule is also issued under the authority granted to the Secretary by section 1102 of the Act authorizing 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. The Tribal child support enforcement regulations are the product of a deliberative and collaborative process under which all relevant input was fully considered. The result is a final regulation that we believe is necessary for the efficient administration of the national child support enforcement program; one which balances the needs of Tribes and Tribal organizations with the need for a predictable administrative framework.

3. *Comment:* Four Tribal respondents stated that the regulations should provide a 45-day approval time rather than the 90-day timeframe. One Tribal respondent stated that the Federal timeframe for response to Tribal IV–D plans is appropriate.

Response: We have decided to retain the 90-day deadline for review of applications, plans and plan amendments with an additional 45 days to consider all additional necessary information requested from the applicant. We have reviewed Tribal IV–D applications under 45 CFR part 310 and have determined, based on this experience, that the 90-day deadline assures that due consideration is given to every Tribal IV–D application. Our experience in reviewing Tribal IV–D applications under the Interim Final regulations demonstrated that the complexity of the documents, the technical assistance that was required, the coordination of requests for additional information, and the consideration of such information required a realistic timeframe. Every Tribal IV–D application submitted to the Department under 45 CFR part 310 was unique and many raised complex issues requiring consideration. For these reasons, we decided that 90 days was a realistic timeframe to complete application and plan amendment review with an additional 45 days to consider all necessary information requested from the applicant.

4. *Comment:* One State suggested that copies of approved Tribal IV–D plans be provided to the State. Another State commenter suggested that States be notified of Tribal IV–D plan approval where the Tribe may be using a State's automated system to provide services.

Response: While we will not routinely provide copies of approved Tribal IV–D plans to States or Tribes, we will notify IV–D Directors of newly approved Tribal IV–D programs in the form of a Dear Colleague Letter. We encourage Tribes and States to stay in communication with one another because such communication is essential to the successful delivery of IV–D services to children and families. In support of that goal, we are available to provide technical assistance.

Section 309.40—What Is the Basis for Disapproval of a Tribal IV–D Program Application, Plan or Plan Amendment?

1. *Comment:* One Tribal commenter criticized the proposed rule as not providing specific grounds for plan disapproval.

Response: We have revised § 309.40 to clarify the specific grounds upon which Tribal IV–D plans will be disapproved. We believe the final regulation adequately specifies requirements which will ensure that the objectives of title IV–D are met. These regulations balance the needs of Tribes and Tribal organizations with the need for a predictable administrative framework so that Tribal child support programs successfully accomplish the outcomes specified in the statute. Section 309.40 makes clear that Tribal IV–D applications, IV–D plans, and plan amendments will be disapproved if applicable statutory and regulatory requirements are not met, required procedures are not in place, or the plan amendment is incomplete.

2. *Comment:* Five Tribal commenters stated that the proposed rule imposes requirements not included in section 455(f) of the Act. The added elements are not required by statute and should be deleted.

Response: Section 455(f) of the Act authorizes direct funding for Tribal IV–D programs which have the capacity to ''operate a child support enforcement program meeting the objectives of this part.'' ''[T]his part'' refers to part D of title IV of the Social Security Act. The statute specifies the mandatory objectives of title IV–D programs: establishment of paternity, establishment, modification and enforcement of support orders, and location of noncustodial parents. While the statute specifies mandatory objectives, it is left to the Secretary to promulgate Tribal regulations necessary to accomplish these objectives. We have determined that these final regulations fulfill the statutory mandate to ''promulgate regulations establishing the requirements which must be met by an Indian Tribe or Tribal organization to be eligible'' for direct IV–D funding. After consideration of all issues raised in comments, we have established the minimum requirements which we have determined are necessary to reasonably support the statutory objectives of Tribal child support enforcement programs.

3. *Comment:* Eleven Tribal commenters stated that § 309.40(a)(2) goes beyond the statute by specifying that the Secretary review the Tribe's laws, code, regulations and procedures. Some also stated that although a Tribe may be required to submit a copy of its laws, approval of a Tribal IV–D plan or plan amendment should not be based on the Secretary's approval of such laws.

Response: In response to Tribes' requests for clarification, we have revised § 309.40(a)(2) to more clearly reflect that Tribal IV–D plans and plan amendments may be disapproved if required laws, code, regulations, and procedures are not in effect. While it is necessary to ensure that the appropriate statutes and laws are in place, we do not intend to ratify or otherwise approve Tribal law. While the Secretary is not approving the Tribal laws, Tribal IV–D plans must contain enough information so that the Secretary can determine that relevant required Tribal law, regulations and procedures are in place to operate a IV–D program.

4. *Comment:* Four Tribal commenters stated the proposed regulations provide that an application *will* be disapproved under certain circumstances. The section should provide flexibility by replacing ''will'' with ''may.''

Response: Section 309.40 establishes the bases for disapproval of an application. We have not adopted the suggestion to replace ''will'' with ''may.'' As a practical matter, deficiencies in Tribal IV–D plans do not inevitably lead to formal Tribal IV–D plan disapproval under these regulations. An incomplete plan, for example, is not automatically disapproved. Instead, we will communicate with Tribal applicants

and request needed information. We added § 309.40(c) to clarify that if the application or plan amendment is incomplete and does not provide sufficient information for HHS to make a determination to approve or disapprove, HHS will request additional information. However, at some point, final action must be taken on a Tribal IV–D plan or plan amendment and § 309.40 specifies the circumstances under which an application, plan or plan amendment will be disapproved.

Section 309.45—When and How May a Tribe or Tribal Organization Request Reconsideration of a Disapproval Action?

1. *Comment:* Two Tribal commenters recommended that the Tribe, not the Secretary, should have the option to request a meeting. One commenter stated that conference calls and face-to-face meetings provide a critical forum for interaction, communication and dialogue and another endorsed the reconsideration process.

Response: Tribes have the option to request a meeting. However, we have amended the language at § 309.45(c) by deleting ''at the Department's discretion,'' to eliminate any confusion.

Section 309.50—What Are the Consequences of Disapproval of a Tribal IV–D Program Application, Plan or Plan Amendment?

We received no comments on this section.

Subpart C—Tribal IV–D Plan Requirements

Section 309.55—What Does This Subpart Cover?

1. *Comment:* One Tribal commenter stated that the Tribal IV–D plan requirements go beyond the specific requirements in the statute and that they are overly burdensome to Tribal governments.

Response: Section 455(f) of the Act requires the Secretary to determine the minimum requirements necessary for the administration of Tribal child support programs capable of meeting the objectives of title IV–D. The objectives of title IV–D include the establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. We have promulgated regulations that we believe contain the minimum procedures and processes necessary for successful administration of IV–D programs, which are capable of establishing paternity, establishing, modifying, and enforcing support orders, and locating noncustodial parents.

We recognize that Tribal IV–D programs are in the early stages of development. In Subpart C we have established requirements for Tribal IV–D programs which accommodate the unique characteristics and circumstances of Tribes. At the same time these regulations incorporate a framework which has proven effective in delivering needed child support services to families.

2. *Comment:* Five State commenters stated that the proposed regulations did not sufficiently address issues of standardization and coordination between Tribes and States. They suggested that the lack of comparability among Tribal and State IV–D programs could limit the ability of these programs to effectively and efficiently provide IV–D services to families.

Response: We address these comments more fully in the discussion of § 309.120, which deals with intergovernmental coordination and cooperation. We recognize that Tribal and State child support programs necessarily will interact with one another and may do so through a variety of mechanisms. Subpart C is intended to establish Tribal IV–D program requirements, which will enhance these interactions and inter-jurisdictional effectiveness. While Tribal IV–D programs are not required to meet all requirements that apply to State IV–D programs, nothing precludes them from adopting any and all of the techniques proven successful for States. In fact, we encourage them to do so, but remain convinced that additional mandates at this time are inappropriate.

Section 309.60—Who Is Responsible for Administration of the Tribal IV–D Program Under the Tribal IV–D Plan?

1. *Comment:* Several State commenters suggested that the regulation clarify a State's responsibility in complying with the provisions of approved Tribal IV–D plans under agreements where a State is providing services under an approved Tribal IV–D plan.

Response: Both §§ 309.60(c) and 309.145((a)(3) authorize Tribal IV–D programs to enter into cooperative arrangements with States. Under these provisions, child support enforcement services must be provided in accordance with the approved Tribal IV–D plan in order for Tribes to be eligible for Federal reimbursement. Rules governing the negotiation of agreements between Tribes and States and other entities are not the subject of this regulation. However, § 309.60(c) makes clear that Tribes, not States, will be held accountable for the proper operation of Tribal IV–D programs, including all actions undertaken on behalf of such programs. The language at § 309.60(c) clearly states that if the Tribe or Tribal organization delegates any of the functions of operating a program to another Tribe, State or any other agency, the Tribe is responsible for compliance with the approved Tribal IV–D plan.

2. *Comment:* One commenter stated that contracting with the State would be viable for many individual Alaska Tribes, rather than delegating functions to a regional consortium.

Response: The unique circumstances and challenges faced by child support enforcement programs in the State of Alaska require recognition and accommodation so that arrangements may be made for the provision of needed services. Alaska and Alaska Native Tribal entities are encouraged to find local solutions to meet the challenges they face. Contracting with the State or with other Native entities is one mechanism for delivery of IV–D services on terms that are in accordance with title IV–D requirements and which will enable families to receive needed support.

Section 309.65—What Must a Tribe or Tribal Organization Include in a Tribal IV–D Plan in Order To Demonstrate Capacity To Operate a Tribal IV–D Program?

Section 309.65(a) establishes requirements under which a Tribe or Tribal organization may receive direct funding by submitting a Tribal IV–D plan which meets specified criteria. We received many comments from Tribes and States—some of them general and some specific—on this provision which raised many complex and cross-cutting issues.

1. *Comment:* Tribal and State commenters provided positive comments on this portion of the rule establishing Tribal IV–D plan requirements. They stated that the rule clearly allows for Tribal values, customs and traditions. Two Tribal commenters stated that the rule is simple and provides needed flexibility.

Response: We appreciate the acknowledgment of the responsiveness to the needs of Tribes and Tribal organizations in these first regulations for Tribal IV–D programs and are encouraged by the positive response to our efforts to accommodate the unique circumstances of Indian Tribes.

2. *Comment:* One Tribal commenter stated that during the early years of the IV–D program, the specifications for State programs were recommendations, not requirements and it should be the same for new Tribal IV–D programs. The

commenter suggested this rule is much more prescriptive than those initially promulgated for States.

Response: We disagree. The final rule implementing the initial Child Support Enforcement program established by Part B of Pub. L. 93–647 was published in the **Federal Register** on June 26, 1975. This publication added 45 CFR Parts 301 (State Plan Approval and Grant Procedures), 302 (State Plan Requirements), 303 (Standards for an Effective Program) and 304 (Federal Financial Participation). These are not recommendations. States are required to operate child support enforcement programs under a specific statutory and regulatory framework. As State programs evolved, requirements were expanded. With this rule we have set forth minimum requirements for Tribes to ensure effective Tribal IV–D programs that are capable of delivering child support enforcement services to families.

3. *Comment:* One Tribal commenter stated that OCSE must encourage Tribes to develop their own policies to achieve program directives, defer to Tribes to establish standards and limit the imposition of Federal standards in deference to Tribal authority.

Response: We believe these initial regulations implementing the Tribal IV–D program provide the appropriate recognition of Tribal sovereignty and culture. Tribes may develop culturally-appropriate policies to conform to the requirements of these regulations and are encouraged to do so. We have established a minimum administrative framework for all Tribal IV–D programs. We recognize that individual Tribes may establish IV–D programs within this framework through various means.

4. *Comment:* One State commenter stated that it is not reasonable to expect Tribes to be immediately accountable for the many requirements that have evolved over 25 years for State IV–D programs, but that it is reasonable to expect that State and Tribal IV–D programs will move in the same direction.

Response: We agree that State and Tribal IV–D programs should move in the same direction. As stated earlier, title IV–D has been amended over the years to mandate specific case processing actions and timeframes for State action as the program has evolved and become more automated. We have determined that it is premature to consider such specific requirements with respect to Tribal IV–D programs. Like States, Tribes need adequate time to develop their programs and determine appropriate approaches, levels of automation, and processes for delivering services before it would be appropriate to consider the need for more specific requirements. Tribes need to have sufficient time to operate and automate programs and we need to understand how much time it takes Tribal IV–D programs to carry out various functions before we can consider specific actions, timeframes and processing standards or whether such standards are necessary. These regulations strike a balance between including requirements for specific, proven, and critical components and aspects of a child support program, while leaving implementation details up to the Tribes.

5. *Comment:* One State commenter stated that each Tribe should be required to have a Central Registry and use CSENet (an automated system for interstate case processing), or as an alternative, be required to adopt the Uniform Interstate Family Support Act (UIFSA). Another State commenter appreciated the efforts to allow Tribes flexibility to develop and administer programs consistent with Tribal laws and traditions, but thinks that the lack of comparability among Tribal and State programs will limit efficiency and effectiveness.

Response: The specific State requirements raised by the commenter related to the Central Registry and CSENet evolved over time and were not among the initial set of State IV–D regulatory requirements. This Tribal regulation will allow Tribes to begin planning for building appropriate automated data processing systems and procedures over time and does not mandate links to systems to which Tribes do not presently have access.

As previously stated, we have begun consideration of appropriate minimum Tribal systems automation specifications with stakeholders.

Where needed for effective and efficient programs, we have established Tribal IV–D requirements that are comparable with State IV–D requirements while bearing in mind that the statutory provision authorizing direct funding to Indian Tribes was enacted to provide much-needed services where, historically, no services were available. As to the suggestion that Tribes be required to adopt UIFSA, we address this issue in the discussion of § 309.120.

6. *Comment:* Twenty-three Tribal commenters objected to this section stating that the regulations do not match the statute and impose unnecessary burdens. They stated that the 14 elements in § 309.65(a) far exceed the five core functions listed in the statute at section 455(f) and that Tribes should not have to include procedures for each of the 14 criteria.

Response: We agree with the commenters that section 455(f) of the Act specifies five core program objectives. However, we disagree that the elements enumerated in § 309.65(a) go beyond these objectives. The statute specifies functions which must be performed and explicitly delegates to the Secretary of HHS the authority to promulgate regulations ''establishing the requirements which must be met by an Indian Tribe or Tribal organization to be eligible'' for funding under title IV–D. While, as a matter of law, the Secretary is not limited in the number of requirements which may be promulgated, these regulations in fact establish only the minimum requirements we have determined necessary for the operation of Tribal child support enforcement programs meeting the objectives of title IV–D. Every element specified at § 309.65(a) was determined to be necessary to the operation of Tribal IV–D programs capable of meeting the specific program objectives enumerated in the statute. This determination was made after careful and deliberate consideration of comments received on the proposed regulation as well as experience administering Tribal IV–D programs under the interim final regulation.

7. *Comment:* One Tribal commenter stated that the regulations will not facilitate establishment and collection of support for Native American children because they are too process-oriented and prescriptive for Tribal entities to achieve over the short term.

Response: These regulations establish only the minimum requirements we have determined necessary for the operation of Tribal child support enforcement programs meeting the mandatory objectives of title IV–D: establishing paternity, establishing, modifying and enforcing support orders, and locating noncustodial parents. Every requirement established by this rule as a condition for Federal funding is intended to ensure that Tribal IV–D programs meet the objectives of title IV–D while at the same time recognizing the unique status and circumstances of Indian Tribes.

8. *Comment:* Five Tribal commenters stated that there are too many requirements in the rule and these prevent Tribes from designing programs to meet their needs. The design and implementation of Indian programs by Indian Tribes has proven that the most effective way to deliver services is with programs designed by the Tribes themselves.

Response: While this regulation is responsive to the needs of Tribes and Tribal organizations, the statute itself limits the scope of this flexibility. The authorization for direct Federal IV–D funding of Indian Tribes requires that Tribes demonstrate to the satisfaction of the Secretary a capacity for accomplishing specific IV–D program objectives. As we have stated in response to other comments, every element specified at § 309.65(a) was determined to be necessary to the operation of Tribal IV–D programs capable of meeting the program objectives enumerated in the statute. In this rule we have worked hard to ensure flexibility and recognize the status of Indian Tribes and accommodate the operational realities faced by Tribes. We agree that section 455(f) of the Act allows for flexibility, but such flexibility must be exercised within the parameters established in the statute. Under this regulation we are confident that Tribes will be able to design and implement Tribal IV–D programs that meet local needs.

9. *Comment:* Nine Tribal commenters stated that, while IV–D regulations should have some areas of commonality, respect for Tribal sovereignty and recognition of the unique aspects of Indian Tribes require accommodation for such characteristics and appropriate flexibility in Federal regulations. These commenters suggested that forcing Tribal IV–D programs into the existing State model violates the law recognizing the unique legal status of Indian Tribes and generally stated that Tribes were not States and should not be forced to function as States.

Response: We agree that the final regulation should accommodate the unique status of Indian Tribes and incorporate as much flexibility as possible while ensuring effective and efficient Tribal IV–D programs. In particular, we emphasize that one of the key underlying principles of these final Tribal IV–D regulations is recognition of and respect for Tribal sovereignty and the unique government-to-government relationship between Indian Tribes and the Federal government. We have determined that the statute does not mandate that requirements imposed on Tribal IV–D programs be the same as those imposed on State IV–D programs as prerequisites for funding. Moreover, there is nothing to suggest either in the original authorization for Tribal IV–D programs or in a subsequent amendment, that Congress intended to limit the Secretary's rulemaking discretion to the rules already established for State IV–D programs. While Tribal IV–D programs must assure that assistance in obtaining child support is available to all who request services or are referred to the Tribal IV–D program, the rules for such programs must also take into account the unique legal status of such Tribes. We believe that these final Tribal IV–D regulations strike the appropriate balance.

10. *Comment:* One State commenter stated that current IV–D regulations do not allow States to refuse services to particular applicants, no matter where they reside. If the State where the request for services is made had no jurisdiction, the State can refer the applicant to an agency in the appropriate jurisdiction. The same commenter suggested that a referral process be specified in Federal regulation for case referral among Tribes and between States and Tribes.

Response: Under these regulations, Tribes are not permitted to refuse services to any applicant. Tribal IV–D programs must take all applications and open a case for each application. We know there may be circumstances under which the only appropriate service will be to request assistance from another Tribal or State IV–D program with the legal authority to take actions on the case. We address these comments more fully in the discussion of § 309.120, which deals with intergovernmental coordination and cooperation.

11. *Comment:* One commenter stated that Tribes should be permitted to develop their own program operation criteria and service areas.

Response: As stated above, the statute authorizing direct IV–D funding for Tribal programs limits the flexibility that can be established to permit Tribes to individually create program requirements. The authorization for direct Federal IV–D funding of Indian Tribes requires that Tribes demonstrate to the satisfaction of the Secretary a capacity for accomplishing specific IV–D objectives. We have determined that every element specified at § 309.65(a) is necessary to the operation of Tribal IV–D programs capable of meeting the objectives enumerated in the statute.

Section 309.65(a)(2) requires evidence that a Tribe or Tribal organization has in place procedures for accepting all applications for IV–D services and providing IV–D services as required by law and regulation. A Tribe, when describing the population subject to its laws, may include geographical descriptions of the area over which such authority is exercised. However, as noted above, Tribal IV–D programs must take all applications and open cases for each application, and there may be instances in which the appropriate services will be to request assistance from another Tribal or State IV–D program. Since these regulations provide for reimbursement of all allowable costs of administering a Tribal IV–D program at the appropriate match rate, it is expected that a Tribe will exercise authority over Tribal members and others on Tribal lands to the maximum extent legally permitted and that Tribes will also provide services to all applicants.

12. *Comment:* One Tribal commenter stated that Tribes are not public agencies and access to Tribal IV–D services should be limited to reservation residents and Tribal members.

Response: As stated earlier in the preamble, these final regulations require that Tribal child support agencies accept all applications for services and require that the child support agency provide all appropriate services. This is to ensure that IV–D services are available to all who need them.

13. *Comment:* One Tribal commenter suggested that the wording in § 309.65(a)(2) be changed to allow Tribal IV–D agencies to refer customers without having to go through the application process. Two other Tribal commenters stated that ensuring access to services is not a requirement of the statute and should be removed from the regulation.

Response: As a practical matter, we think the instances in which a Tribal IV–D agency has no authority to take action in a particular case will be few, but in those instances the Tribal IV–D agency will refer the case to the appropriate IV–D agency. There will be instances in which States and Tribes must work together to ensure families receive the support they deserve. Under these regulations Tribes are not permitted to refuse services to any applicant. Taking all applications, determining what services are needed or may be provided and providing those services either directly or through another IV–D agency are activities that are included in categories of costs eligible for Federal reimbursement at the appropriate funding rate. We require that all IV–D programs accept all applications so that families receive assistance in reaching the appropriate IV–D program and no family is denied services which are legally available.

Tribes may not merely refer someone to another IV–D agency without accepting an application because everyone needs to be served. However, we recognize that as Tribal IV–D programs begin to operate, States and Tribes may need to work out cooperative agreements to deal with cases in specific instances, *e.g.*, a Tribe has authority to provide certain services

while only a State IV–D agency may provide others. We will provide guidance governing referral of cases in specific instances, as needed.

14. *Comment:* One State commenter recommended that we provide Federal guidance to ensure that an individual does not apply for IV–D services at both the local State IV–D program office and the Tribal IV–D program office. The commenter suggested that this portion of the rule be rewritten to clarify that services by a Tribal IV–D program can only be provided to an individual who is not receiving services from a State IV–D program.

Response: There is nothing to preclude an individual from applying for and receiving services from more than one IV–D agency. The fact that a custodial parent and child may reside within a Tribe's jurisdiction while the noncustodial parent may reside or work within a State's jurisdiction highlights the importance of Tribal-State communication and coordination. We encourage States and Tribes to work together to provide needed services and coordinate those services.

15. *Comment:* One State commenter asked if the Tribal IV–D program must charge an application fee as is required of State programs.

Response: Application fees are not required of Tribal IV–D programs at this time. However, Tribes may, at their option, provide that an application fee will be charged to individuals who apply for services under the Tribal IV–D plan (with stated exceptions). We have added paragraph (e) to § 309.75, governing administrative and management procedures, which reflects this option and which provides that any application fee charged must be uniformly applied, be a flat amount not to exceed $25.00, or be an amount based on a fee schedule not to exceed $25.00. This is the same cap placed on State IV–D programs.

16. *Comment:* One Tribal commenter stated that it was unclear what ''due process'' means in § 309.65(a)(3). This language offended another Tribal commenter who stated that Tribes provide due process. Two other Tribal commenters stated that assuring due process is not a requirement of the statute and should be removed.

Response: The term ''due process'' in the context of § 309.65(a)(3) refers to legal proceedings according to rules and principles which have been established by the Tribe or Tribal organization for the protection and enforcement of individual rights. The required statement of assurance is intended to ensure that the procedural and substantive protections of individuals are in place and is not meant to suggest that Tribes do not provide due process. Requiring this assurance is not indicative of a judgment as to whether a Tribe's due process is adequate. While we do not define for Tribes what due process is, we have determined that all IV–D programs should have due process protections in place and we require an assurance to that effect.

17. *Comment:* Three Tribal commenters stated that because the statute does not require it, OCSE may only suggest that a Tribe include performance targets in its plan. Another Tribal commenter stated that some Tribes do not utilize standard performance measurements and that measuring success by numerical or monetary targets does not allow for intangible successes to be taken into account (such as family reconciliation.)

Response: The Federal statute specifically authorizes the Secretary to establish requirements which must be met in order to be eligible for funding under title IV–D. We have determined that in order to fulfill our responsibility to ensure the effective and efficient administration of Federally-assisted Tribal child support enforcement programs, it is essential that Tribes and Tribal organizations consider and articulate performance targets or goals for their programs. In response to comments, we have revised § 309.65(a)(14) to clearly reflect that the performance targets should be based on the particular needs and circumstances of Tribal IV–D programs. In addition to submission of targets for paternity and support order establishments, targets on total amount of current collections, and targets on total amount of past due collections, we encourage Tribes and Tribal organizations to include Tribally-defined measures of success that go beyond numerical or monetary description. These optional measures could include, for example, family reconciliation or other indications of improved quality of life for Indian families. We believe that performance targets are essential for ensuring that Tribes focus on maintaining efficient and effective child support services because such targets assist us and Tribes in ensuring that Tribal IV–D programs can increase their efficiency and effectiveness over time.

18. *Comment:* One Tribal commenter objected to the imposition of a performance-based incentive and penalty system for Tribal grantees. Another asked if we were proposing to withhold sanctions from Tribal and State programs while performance standards are sorted out and one commenter said that heavy penalties for failure to meet program requirements will drive away a lot of Tribes.

Response: The proposed rule did not impose a performance-based incentive or penalty system for Tribal IV–D grantees and we have not imposed such systems in this final regulation. Tribal IV–D plans must include performance targets, but funding is not contingent upon the targets being met. In the statistical and narrative reports required under § 309.170, grantees must report on their success in reaching their performance targets. We are not setting performance targets because we believe that Tribes are in the best position to set performance targets in the initial years of the Tribal IV–D program and to estimate the targets that they can reasonably attain. Tribal IV–D performance targets have no effect on State IV–D programs.

Sections 309.16 and § 309.65(b)—Start-Up Funding

1. *Comment:* Thirteen Tribal commenters stated that a two-year start-up time frame is not sufficient. Some suggested that extensions be permitted.

Response: We were persuaded by commenters to re-evaluate the regulatory framework for start-up funding and have added a new § 309.16 to reflect provisions related to applications and approval of start-up funding. Section 309.16(a) lays out the requirements for an application for start-up funding including the standard application forms SF 424, ''Application for Federal Assistance'', and SF 424A, ''Budget Information—Non-Construction Programs'', a quarter-by-quarter estimate of expenditures for the start-up period, notification of whether the Tribe or Tribal organization is requesting funds for indirect costs and an election of a method to calculate estimated indirect costs, and a narrative justification for each cost category on the form. If the Tribe or Tribal organization requests funding for indirect costs as part of the application for start-up funds, estimated costs may be submitted either by a documentation of the dollar amount of indirect costs allocable to the IV–D program, including the methodology used to arrive at the amounts, or submission of the current indirect costs rate negotiated with the Department of the Interior and a dollar amount of estimated indirect costs. The amount of indirect costs must be included within the $500,000 limit for start-up funds. The Tribe or Tribal organization must also submit a description of the requirements a Tribe currently meets and, if the Tribe does not currently meet the requirements in § 309.65(a), a program development

plan detailing actions to be taken to meet the Tribal plan requirements. Section 309.16(c) describes under what circumstances the Secretary may consider extending the period of time during which start-up funding will be available or increasing the amount of start-up funding provided. An unfavorable decision to extend the period of time during which start-up funding is available or to increase the amount of start-up funding provided is not subject to an administrative appeal.

Based on the experience of Tribes of varying sizes and circumstances that are currently operating IV–D programs, we believe that the amount of time specified at § 309.16(a)(5) will provide Tribes and Tribal organizations with reasonable and necessary support to complete the start-up phase necessary for comprehensive child support enforcement programs. However, in extraordinary circumstances, we will consider extending the period of time during which start-up funding will be available to a Tribe or Tribal organization or increasing the amount of start-up funding provided.

2. *Comment:* One commenter stated that ''demonstrate satisfactory progress'' towards a fully operational Tribal IV–D program in proposed § 309.65(c) is vague and suggested that it be more clearly defined.

Response: The language at proposed § 309.65(c) has been reworded and moved to 309.16(a)(5) for clarity. Under § 309.16(a)(5), Tribes must develop a program development plan which demonstrates to the satisfaction of the Secretary that the Tribe or Tribal organization will have a IV–D program meeting the requirements of § 309.65(a) within a specific period of time, not to exceed two years. In order to demonstrate satisfactory progress toward a fully-operational Tribal IV–D program, a Tribe would have to show it is meeting specific goals established in the program development plan within the timeframes established in the plan. In response to comments, we have revised § 309.65(b) to make clear that the Secretary may terminate start-up funding if the Tribe or Tribal organization fails to satisfy any provision or milestone described in its program development plan within the timeframe specified in the plan. A decision to terminate start-up funding is not subject to administrative appeal.

Section 309.65(d)—Delayed Program Requirements

1. *Comment:* Thirty-nine Tribal and State comments were received on this section that outlined future requirements for Tribal IV–D programs. While a few of the commenters thought that the requirements for enforcement services should be the same for Tribes as for States, the majority of the commenters recommended eliminating § 309.65(d). Most expressed concern about how Tribes will access the Federal automated systems. They also stated that if Tribes are mandated to enter into cooperative agreements with States to access these systems, it would infringe on Tribal sovereignty.

Response: Based on comments, we are persuaded that it is not appropriate at this time to impose future requirements for additional procedures which Tribes and Tribal organizations must implement within two years after the Secretary issues guidelines for these requirements. These requirements were removed from the final rule. If, after experience and consultation, additional regulations become necessary, we will propose rules at that time. Some of the advanced child support enforcement techniques require a minimal level of automation, and it would not be appropriate to mandate the phase-in of such techniques in advance of understanding more clearly the issues related to Tribal IV–D automation. We have begun consideration of appropriate minimum Tribal systems automation specifications with stakeholders.

Section 309.65(e)—Certification of Compliance With the 100-Child Minimum Requirement

1. *Comment:* One commenter suggested the requirement to certify compliance with the 100-child minimum be deleted except for initial applications or when a member Tribe drops out of a consortium.

Response: One of the basic eligibility requirements—that a Tribe is eligible to apply for funding if it has at least 100 children under the age of majority in the population subject to its jurisdiction is found at § 309.10(a). This requirement may be subject to a waiver under § 309.10(c). We deleted the language from proposed § 309.65(e) and moved it to § 309.70. The Tribe must certify that there are at least 100 children under the age of majority in the population subject to its jurisdiction. The requirement that a consortium demonstrate authorization of two or more Indian Tribes with at least 100 children under the age of majority subject to its jurisdiction remains applicable even if a member of the consortium drops out. If, during the funding cycle, a member of a consortium drops out, the assurance that the consortium will continue to serve at least 100 children must be resolved by the beginning of the next funding cycle.

Section 309.70—What Provisions Governing Jurisdiction Must a Tribe or Tribal Organization Include in a Tribal IV–D Plan?

1. *Comment:* Seven Tribal commenters supported the fact that the regulation did not address jurisdiction. Several State commenters stated that jurisdiction is not adequately addressed in the regulation and that guidance is needed.

Response: Jurisdiction is the legal authority which a court or administrative agency has over particular persons and over certain types of cases. Issues related to jurisdiction are central to intergovernmental cooperation for the provision of child support enforcement services to families. Without proper jurisdiction, a tribunal cannot proceed to establish, enforce, or modify a support order or determine paternity. The legal authority to undertake these functions is essential to the ability of both State and Tribal child support enforcement programs to meet the statutory objectives of title IV–D of the Social Security Act. Lack of jurisdiction does not excuse a Tribal IV–D program from the responsibility of providing services when asked, including seeking assistance from another IV–D program.

Section 309.75—What Administrative and Management Procedures Must a Tribe or Tribal Organization Include in a Tribal IV–D Plan?

1. *Comment:* One commenter suggested that the word ''promptly'' should be replaced with a 20-calendar day time frame for opening a case as required for State IV–D agencies by 45 CFR 303.2(b).

Response: We disagree that it is necessary at this time to require a specific time frame for opening a Tribal IV–D case. We are satisfied that § 309.65(a)(2) is sufficient to ensure that all applications for IV–D services are accepted and acted upon. We expect that all applications for Tribal IV–D services will be acted upon in a prompt and efficient manner. A Tribal IV–D agency must open a case for each application. In some of these cases, the proper action will be to refer the case for enforcement by a State or another Tribe with access to enforcement tools the Tribe may not access directly, *e.g.* State income tax refund offset; in others it will be to refer the case to a State or another Tribe because the Tribe has no jurisdiction over the parties. We have eliminated the language originally proposed in § 309.75(c) related to opening IV–D cases since it was duplicative of language in § 309.65(a)(2).

2. *Comment:* One Tribal commenter suggested deleting the requirement for bonding in paragraph (d), as most Tribes are not able to afford bonding. Nine other Tribal commenters suggested eliminating the language at paragraph (d)(3) under which 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 IV–D agency's program because it implies the Tribe has liability and it could be construed as a waiver of Tribal sovereignty.

Response: We reviewed the proposed requirement for the bonding of employees in light of Tribal comments that such a requirement would cause financial hardship. In response to the concerns raised, we have revised § 309.75(b) so that taking out a bond is not the only means of satisfying the requirement for protection against loss. Under the revised provision, Tribal IV–D programs must submit documentation that establishes that every person who receives, disburses, handles, or has access or control over funds collected under the Tribal IV–D program is covered by either a bond or insurance sufficient to cover all losses. Because the bond or insurance will cover all losses, it is not necessary to address liability. In addition, we have eliminated as unnecessary the language in former § 309.75(d)(3) related to the ultimate liability of Tribes.

3. *Comment:* One Tribal commenter objected to the requirement at proposed paragraph (e) to provide notice of all support collections to families and noted that States only have to provide notice of assigned support. The proposed requirement is more stringent. Another Tribal commenter stated that until a Tribe has a sophisticated computer system to track individual accounts, providing a notice will be time-consuming and the agency should provide such information only on request.

Response: As indicated earlier in this preamble, we have determined that all regulations applicable to State IV–D programs need not apply to Tribal IV–D programs. State IV–D programs are required to provide monthly notice of support payments for each month to individuals who have assigned their rights of support to the IV–A agency. However, we believe that notices of support collections should be provided to all families receiving services from the program. In order to recognize the level of automation currently available to Tribal IV–D programs, we have revised § 309.75(c) to require that notice of collections be provided to families receiving services under the Tribal IV–D program at least once a year. This is less cumbersome than a requirement to provide notices on a monthly basis. In addition to the annual notice, a notice must be provided at any time to either the custodial or noncustodial parent upon request. In this way families will receive regular notices of collections made on their behalf.

4. *Comment:* One commenter recommended that we require that for each of the first three program years, the Tribe should obtain an evaluation every six months as well as a yearly external evaluation.

Response: We have not imposed these additional evaluation requirements on Tribes in these final regulations. We have determined that the required audits under § 309.75(d) and the authority to conduct Federal audits as the need arises are sufficient to ensure accountability and additional evaluations are not necessary.

Section 309.80—What Safeguarding Procedures Must a Tribe or Tribal Organization Include in a Tribal IV–D Plan?

1. *Comment:* One Tribal commenter stated that because the statute does not require it, OCSE may only suggest that the Tribal IV–D plan include safeguarding information in its plan. Another commenter stated that it is critical for Tribal grantees to describe safeguarding procedures.

Response: We disagree that because the statute does not explicitly direct the Secretary to establish safeguarding regulations, that the Secretary may not do so. As we noted above, the statute explicitly delegates to the Secretary the authority to promulgate regulations ''establishing the requirements which must be met by an Indian Tribe or Tribal organization to be eligible'' for funding under title IV–D. We have determined that safeguarding confidential information is critical to individual rights to privacy as well as to effective Tribal child support programs, and that implementation of safeguarding procedures is necessary to meet IV–D program objectives and to ensure that data and information received from State IV–D programs are safeguarded in accordance with statutory and regulatory requirements. Therefore, we require minimum but critical safeguarding procedures at § 309.80 to ensure that confidential information is protected from improper disclosure.

2. *Comment:* Two Tribal commenters indicated concern about confidential information on Tribal members going into a national database system that will be shared with States. Tribes do not want to make their enrollment records accessible. Another Tribal commenter did not like the proposed requirement in § 309.65(d) and related safeguarding requirements in § 309.80(b) that the Tribal IV–D agency will have to report new hires to States, which in turn would report them to the National Directory of New Hires (NDNH).

Response: These final regulations do not require Tribes to submit any information to a national or State database and there is nothing in this final rule that requires Tribes to provide enrollment records to any entity. The requirement at § 309.80(b) is necessary because Tribes may receive information from Federal sources including the NDNH from States as well as information about state cases and must meet Federal statutory and regulatory confidentiality requirements. In response to comments, the requirements at proposed § 309.65(d) were eliminated.

3. *Comment:* One State commenter stated that Tribes have no authority to access the FPLS or other Federal databases to locate individuals for IV–D purposes. Another State commenter stated that if Tribes have direct access to statewide systems, confidentiality would be a concern.

Response: Tribes are legally precluded from direct access to the FPLS. However, they could receive FPLS data from a State in an intergovernmental case. The technical requirements for access to the FPLS will be the subject of future guidelines and program instructions. All IV–D case record information is confidential, whether a State or Tribal IV–D program maintains it and both entities are required to treat the information as confidential and are bound by safeguarding requirements. State and Tribal safeguarding requirements are not in conflict. If Tribes and States enter into agreements for reciprocal access to each other's databases for location or other child support purposes, such agreements must not conflict with Federal safeguarding and other regulations and must comply with the Internal Revenue Service (IRS) rules governing the disclosure of tax return information.

4. *Comment:* One commenter asked who would be prosecuted if a State contracts with a Tribe and a violation of confidentiality of IRS material occurs. The commenter suggested that States have hold harmless regulations regarding release from liability of prosecution.

Response: Current Federal law does not allow a State to release tax information to a Tribal IV–D agency.

When an entity directly receives tax return information from the IRS, it has the legal responsibility to safeguard such information. Any agreement negotiated between a Tribe and a State must address safeguarding and comply with all applicable Federal law and regulations.

Section 309.85—What Records Must a Tribe or Tribal Organization Agree To Maintain in a Tribal IV–D Plan?

1. *Comment:* One State commenter stated that the regulations do not address reporting of collections made by States on behalf of families who are receiving Tribal IV–A assistance.

Response: State reporting requirements are not addressed in this regulation. Information about any collection received by a Tribal IV–D program from a State IV–D program must be included in the Tribal IV–D program's records under § 309.85(a)(4) and must be reported under § 309.170.

2. *Comment:* We received five State comments suggesting that Tribal IV–D programs use all the standard Federal forms that State IV–D programs use.

Response: State IV–D programs have been in operation for almost 30 years and are required to use a variety of standard Federal forms. The requirements related to these standard forms have evolved over time and some of them were developed or amended recently. At this initial stage in the development of Tribal IV–D programs, we have determined that it is not reasonable to mandate that Tribes use all the same forms as States. Whether or not a particular standard Federal form should be required of Tribal IV–D programs depends on whether the use of such form is essential to the effective and efficient administration of Tribal child support enforcement programs. We disagree that Tribes should be required to use every standard Federal form that States currently use, especially since many of the forms were designed for automated case processing. Section 309.110 requires that Tribes use the standard income withholding notice, because we have determined that the standard use of this form by all IV–D programs is necessary for the effective and efficient enforcement of support orders.

Section 309.90—What Governing Tribal Law or Regulations Must a Tribe or Tribal Organization Include in a Tribal IV–D Plan?

1. *Comment:* One State commenter noted that Tribal laws should be used in administering Tribal programs, but States should approve the Tribal laws. Three Tribal commenters responded favorably to the provision allowing Tribes to use their own laws, traditions and customs.

Response: There is no legal authority to impose a requirement that States approve Tribal laws. This would be a clear infringement on Tribal sovereignty.

2. *Comment:* One Tribal commenter noted that not all Tribal codes are written and it would be difficult to submit that kind of code or law. Another commenter appreciated the fact that the rule recognized that not all Tribes have written codes.

Response: Should a Tribe with unwritten codes and laws apply for direct funding, these final regulations require a detailed description of such codes and laws in its application. We recognize in this regulation that one of the unique characteristics of Indian Tribes is that some do not have written laws and codes, even though they have long-standing and rich legal traditions. We have added a definition of ''Tribal custom'' at § 309.05 to make clear that this term is not open-ended, but means unwritten law that has the force and effect of law. Section 309.90(b) permits Tribes without written laws to submit detailed descriptions of Tribal common law as evidence that procedures required by § 309.90(a) are in place. Even though Tribal custom is unwritten, it is nonetheless capable of being known and may be shown in several ways: it may be shown through recorded opinions and decisions of Tribal courts; it may be judicially noticed; or it may be established by testimony of expert witnesses who have substantial knowledge of Tribal common law in an area relevant to the issue before the Tribe.

3. *Comment:* One State commenter suggested that the language at § 309.90 be amended to require Tribal employers to comply with an income withholding order of another Tribe or State.

Response: We have not amended § 309.90 as suggested because Tribes are not required to adopt the Uniform Interstate Family Support Act (UIFSA) as all States were required to do. UIFSA compels a State employer to honor a withholding order sent directly from another State or Indian Tribe. However, the Full Faith and Credit for Child Support Orders Act (FFCCSOA) requires both Tribes and States to enforce valid child support orders. Where State or Tribal orders referred to a Tribal IV–D program include provision for income withholding, such orders must be enforced by Tribal IV–D agencies as required by FFCCSOA. Please note that § 309.110 provides that Tribal IV–D agencies are responsible for ensuring that valid withholding orders are promptly served.

Section 309.95—What Procedures Governing the Location of Noncustodial Parents Must a Tribe or Tribal Organization Include in a Tribal IV–D Plan?

We received no comments on this section.

Section 309.100—What Procedures for the Establishment of Paternity Must a Tribe or Tribal Organization Include in a Tribal IV–D Plan?

1. *Comment:* Eight Tribal commenters raised concerns about the effect of paternity establishment on Tribal enrollment and membership. Seven of these commented that OCSE should not interfere with the authority of Tribal governments, Tribal enrollment committees and Tribal religious leaders in establishing paternity. They stated that determining paternity through foreign regulations would totally disrupt the way they deal with issues and they want to incorporate traditional lifestyle into child support enforcement programs through Tribal courts. Four commenters supported the provisions allowing Tribal discretion in how paternity is established.

Response: In response to concerns raised by commenters we have added § 309.100(d) to make clear that establishment of paternity under this regulation does not affect Tribal enrollment or membership. Section 309.100(a)(1) provides for paternity to be established in accordance with Tribal law, code, or custom. These regulations are not intended to override established Tribal authority.

2. *Comment:* One Tribal commenter suggested that States be required to give full faith and credit to any legal determination of paternity considered final by a Tribal court.

Response: Under the State-enacted UIFSA statutes and FFCCSOA, States are required to honor Tribal paternity orders when they are the basis for child support orders pursuant to Tribal law, in the same manner that a Tribe is compelled to honor States' paternity orders when they are the basis for child support orders. We have determined that it is not necessary to further regulate in this area.

3. *Comment:* One State commenter suggested that parents should have the option to request genetic testing.

Response: We are persuaded that genetic testing should be provided upon request and have added § 309.100(a)(3) to require the Tribal IV–D plan to provide procedures under which the Tribal IV–D agency is required, in a

contested paternity case (unless otherwise barred by Tribal law), to require the child and all other parties to submit to genetic tests upon the request of any such party, if the request is supported by a sworn statement by the party alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between parties; or denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties. As stated in an earlier section of the preamble, the phrase ''otherwise barred by Tribal law'' is intended to cover situations where, either by action of one or both of the parties or the application of Tribal law, or both, paternity has already been conclusively determined and may not be reconsidered. In such cases, genetic testing to challenge the paternity determination would not be authorized. Examples of such a paternity determination would include a voluntary admission of paternity or circumstances under which the Tribe has other means of recognizing paternity under Tribal law. A Tribe, through its own custom, tradition or procedure, may recognize a man as the father or may preclude a man who holds himself out to be the father from challenging paternity. Similarly, a Tribe may have a conclusive presumption of paternity when a child is born to married parents or if a noncustodial parent has been validly served in a paternity proceeding and failed to contest paternity in such proceeding. A uniquely Tribal means under Tribal law that was used to establish paternity would be acceptable as precluding the need for genetic tests. In such cases, because paternity had already been determined, genetic testing would be ''otherwise barred by Tribal law''. This language is consistent with the language found at section 466(a)(5)(B) of the Act, which mandates genetic testing in contested cases to ensure that the rights of both parties are protected.

4. *Comment:* One commenter stated that the due process rights of individuals must be protected. States should give full faith and credit to paternity determinations made by Tribal law/ordinance but not to processes that result in a person with whom the mother has had no relation (either sexual or marriage) being established as the legal father.

Response: The regulations at § 309.65(a)(3) require due process assurances and § 309.100(a)(1) makes clear that such assurances encompass paternity establishment. In light of these requirements, we have determined that it is not necessary to mandate further paternity establishment procedures. States and Tribes are required to recognize and honor valid determinations of paternity.

5. *Comment:* One commenter said that the voluntary paternity requirement does not go far enough. Voluntary paternity acknowledgement services should operate in all birthing hospitals located under the Tribe's jurisdiction.

Response: This rule is flexible enough to allow voluntary acknowledgement of paternity at birthing hospitals as determined appropriate by Tribes. This practice has proven to be highly effective for States and has resulted in a record number of paternity acknowledgements.

6. *Comment:* Four commenters said that the requirement at § 309.100(b) should be omitted, and Tribes should determine the exceptions to require paternity establishment actions and the appropriate entity to make exceptions.

Response: We believe the language at § 309.100(b) accommodates the needs of Tribes to determine exceptions to paternity establishment and allows Tribes to establish the appropriate entity to make those determinations.

Section 309.105—What Procedures Governing Child Support Guidelines Must a Tribe or Tribal Organization Include in a Tribal IV–D Plan?

1. *Comment:* Three Tribal commenters suggested that child support guidelines are not required. One also suggested that the requirements go beyond what Congress intended and interfere with Tribal sovereignty.

Response: We disagree that because the statute does not explicitly direct the Secretary to establish specific minimum requirements for support guidelines, that the Secretary may not do so. As we note above, the statute explicitly delegates to the Secretary the authority to promulgate regulations ''establishing the requirements which must be met by an Indian Tribe or Tribal organization to be eligible'' for funding under title IV–D. Although guidelines are not specifically addressed in the statute, establishment of support orders is one of the mandatory program objectives, and we have determined that § 309.105 requirements are critical to establishing fair and consistent support orders. Implementation of the requirements specified at § 309.105 is necessary to satisfy the statutory IV–D program objective of establishing child support orders, and we believe such requirements respect Tribal sovereignty.

2. *Comment:* One State commenter stated that because there is no requirement to enact UIFSA, a Tribal child support guideline could allow the Tribal court to change or ignore a State's order, and competing orders could result. The need for UIFSA is apparent.

Response: The commenter fails to take into account that Federal law requires all tribunals to give full faith and credit to valid child support orders. FFCCSOA requires tribunals of all United States territories, States and Tribes to give full faith and credit to a child support order issued by another State or Tribe that properly exercised jurisdiction over the parties and the subject matter. A Tribe may not modify an order valid under FFCCSOA except in certain circumstances, nor may valid orders be modified under these regulations in any manner that is inconsistent with that Federal law. The grounds for modification under FFCCSOA are consistent with UIFSA.

3. *Comment:* One State commenter suggested we include requirements regarding modifications, since States have very specific requirements relating to review and adjustment, and periodic modification ensures child support obligation amounts are appropriate over time.

Response: These regulations specify that guidelines apply to both setting and modifying orders. We believe that § 309.105(a)(4) sufficiently addresses the commenter's concerns that periodic modification ensures child support obligation amounts are appropriate over time and do not believe that additional regulation is called for at this time.

4. *Comment:* Numerous State commenters stated that they did not have a clear understanding of the in-kind concept as it related to support obligations, while numerous Tribal commenters responded positively to the recognition that Tribal support orders could be satisfied with cash and non-cash resources.

Response: We were urged by Tribes to accommodate the reality of Tribal economies by recognizing that noncustodial parents could satisfy support obligations with non-cash (in-kind) support in addition to cash payments. Many reservations and Indian communities are located in remote areas with little or no industry or business; thus, there are limited opportunities for cash employment. We were persuaded by Tribes to accommodate the long-standing recognition among Indian Tribes that all resources that contribute to the support of children should be recognized and valued by IV–D programs.

In-kind (non-cash) support is support provided to a family in the nature of goods and/or services rather than in cash, but which nonetheless has a

certain and specific dollar value. Non-cash support for purposes of this regulation is support that directly contributes to the needs of a child. Non-cash support may include services such as making repairs to automobiles or a home, the clearing or upkeep of property, providing a means for travel, or providing needed resources for a child's participation in Tribal customs and practices.

In § 309.105(a)(3), we allow Tribal child support guidelines to permit support obligations to be satisfied with both cash and non-cash payments. The regulations at § 309.105(a)(3) require that a support order which permits satisfaction with non-cash resources must include, in the order itself, a specific dollar amount reflecting the amount of the support obligation. The regulation allows individual Tribes to make the determination of whether non-cash as well as cash payments can be accepted to satisfy the support order.

Since all Tribal support orders will include a specific dollar amount reflecting the support obligation, a specific monetary amount of a child support obligation is clear in every order. In this way Tribal orders contain the same information as State orders do. The only difference is that some Tribal orders may allow the support obligation to be satisfied with non-cash resources. Thus, States should be able to process support payments through their automated systems and account for support payments made under Tribal orders. Other Tribes that receive requests for enforcement assistance where there is a support order which can be satisfied with non-cash resources should similarly be able to process such support payments.

5. *Comment:* Five State commenters suggested that the specific dollar amount for non-cash support must be a part of the Tribal court order. One of these suggested that satisfaction of support obligations with non-cash payments should be limited to current support only.

Response: We agree that support orders must include specific dollar amounts and that these amounts must be expressly reflected in the Tribal order. Non-cash support merely recognizes that an obligation for a specific dollar amount of child support may be satisfied with non-cash resources. We are persuaded that this is a critical accommodation for Tribal subsistence economies. We have added language in § 309.105(a)(3) to ensure that Tribal support orders include specific dollar amounts. If non-cash payments are permitted to satisfy Tribal support orders, the support order must include both the specific dollar amount of the obligation and the types of non-cash support which may be provided to meet the obligation.

We are not persuaded that the accommodation of non-cash resources should be limited to current support obligations only. Arrears, like current support, are specific dollar amounts. Since each non-cash payment will have an associated dollar value attached to it, it can be credited toward arrears as well as current support obligations. However, non-cash support cannot be used to satisfy assigned support (including arrears). This is consistent with the language added to § 309.105(a)(3)(iii).

6. *Comment:* We received nine positive comments from Tribes on the provision allowing non-cash (in-kind) support payments. One State commenter stated that determining the amount of non-cash contributions that have been made on a newly opened enforcement case would be cumbersome and require intensive labor on the part of the State.

Response: Permitting Tribal courts to establish support orders which can be satisfied with non-cash payments is an essential accommodation made to recognize Tribal custom and circumstances. If a Tribal IV–D agency refers a case to a State IV–D agency for enforcement, the Tribal IV–D agency must provide information necessary to work the case, which would include the payment record under the order. Therefore, State IV–D agencies would not be required to determine non-cash contributions made by the obligor. Non-cash payments are merely one means by which Tribal support orders may be satisfied. For example, a Tribal support order could provide that an obligor owes $200 a month in current support and $100 a month for arrears which may be satisfied with the provision of firewood suitable for home heating and cooking to the custodial parent and child. The order could provide that a cord of firewood has a specific dollar value of $100 based on the prevailing market. In this case, the obligor would satisfy his support obligation by providing two cords of firewood every month plus $100. Such ''payments'' would be credited as $300 paid every month. Whenever non-cash payments are permitted, the specific dollar amount will always be known (and be reflected in the order) and can be credited and tracked. The language at § 309.105(a)(3) has been amended to indicate that should the Tribe decide that an non-cash order is acceptable, a specific dollar amount must be set in the order.

Permitting Tribal support orders to specify that support obligations may be satisfied with non-cash resources is an important recognition of the economic conditions of Indian Tribes and of the subsistence economies prevalent throughout much of Tribal territory. In addition, it recognizes that noncustodial parents without significant cash resources may nonetheless satisfy support obligations and make productive contributions to their children's lives.

7. *Comment:* One State commenter stated that in-kind orders are not compatible with States' automated systems.

Response: Tribal IV–D programs are required under § 309.105(a)(3) to include a specific dollar amount if obligors are permitted to satisfy their support obligations with non-cash payments. Since every non-cash payment will have an associated monetary value, each payment will be reducible to a specific dollar amount, which every automated system should be able to handle just like any other payment.

8. *Comment:* One Tribal commenter stated that there are many problems associated with valuing in-kind payments which Tribes themselves should address; OCSE officials should not propose regulations in areas where they do not have a good understanding.

Response: Section 309.105(a)(3) requires Tribal support orders which permit non-cash payments to establish a specific dollar amount in the order itself. We agree that the valuation of non-cash resources is the responsibility of Tribes themselves. The Tribe must establish standards for valuation of non-cash resources, should it choose to permit non-cash payments to be used to satisfy support obligations.

9. *Comment:* Two State commenters suggested that we clarify how assignments to offset public assistance to a State will be handled when the noncustodial parent is making in-kind payments and suggested that where assignments are made to a State the obligor must pay a cash equivalent specified within the Tribal order.

Response: Where non-cash payments are permitted to satisfy support obligations, they are required to be represented as a specific dollar amount which can be credited just like any other child support payment. Where assignments of support rights are made to the State as a condition of receipt of public assistance, any non-cash payment made by the noncustodial parent can be credited to the family as a cash payment would be. As specified in § 309.105(a)(3)(iii), if there is an

assignment to the State or another Tribe, the specific dollar amount must be paid.

10. *Comment:* One commenter said that the term ''cash equivalents'' has subsistence and public assistance implications and may make the term unworkable in Alaska. The term ''cash alternatives'' would be more acceptable.

Response: We have revised the regulation at § 309.105(a)(3) to eliminate the phrase ''cash equivalents'' to clarify the meaning of terms and to eliminate confusion.

11. *Comment:* Two State commenters suggested that the obligee be required to provide a written receipt to the obligor acknowledging a non-cash payment.

Response: If the Tribal IV–D program decides to permit non-cash resources to be used to satisfy a support order, the Tribe is responsible for recording payments to ensure obligors receive credit for meeting their child support obligations. At this time, we do not believe the alternatives suggested by the commenters are necessary.

12. *Comment:* One State commenter suggested that we establish numeric and descriptive guidelines for in-kind payments. If there is a deviation due to in-kind support, the tribunal should make a specific finding justifying departure from cash support and establishing that such departure is in the best interest of the child. The Tribal IV–D plan should specify how the noncustodial parent receives credit for in-kind payment.

Response: We have determined that § 309.105 adequately provides for consistent and predictable support guidelines which take into account the needs of the child and are not persuaded that the suggestions of the commenter are necessary.

13. *Comment:* One State commenter stated that if a Tribe's guidelines allow in-kind credits, then it should be the burden of the obligor to raise the issue and prove the entitlement to such credits. The in-kind support must directly benefit the child. This same commenter stated that there is an issue of equal protection.

Response: As explained above, allowing Tribal orders to specify both a specific dollar amount of support due and an equivalent non-cash resource that can be used to satisfy the obligation is an important accommodation for Indian Tribes. Such an accommodation permits noncustodial parents who can provide non-cash resources which are needed by families to meet their child support obligations even when they do not have cash available to make cash payments. Section 309.105(b) requires Tribal child support guidelines to take the needs of the child into account, and we do not believe it is necessary to require any additional finding in order to allow non-cash resources to be used to satisfy a Tribal support order. As long as the Tribal support order indicates the specific dollar amount of the support obligation and the dollar amount of the non-cash resource, the support can be collected whether or not it is made in cash or non-cash resources. Allowing non-cash support in Tribal IV–D programs recognizes Tribal tradition and custom appropriate to Tribal IV–D programs and consistent with Tribal sovereignty.

We do not believe there is any equal protection risk associated with final regulations permitting Tribal support orders to be satisfied with non-cash resources consistent with Tribal law and Tribal economies. Singling out Indian Tribes for different regulations from States is constitutionally sound. The United States Supreme Court has, on numerous occasions, upheld legislation and regulations that single out Indians for particular and different treatment.

14. *Comment:* Two Tribal commenters said that basing support orders on the noncustodial parent's ability to pay is not a requirement of the statute. If a parent cannot provide non-cash support because he/she no longer has access to the resource, the parents should return to Tribal court to request that the order be modified.

Response: We have determined that support guidelines that take into account the earnings and income of the noncustodial parent are essential to effective IV–D programs. Where a noncustodial parent is no longer able to provide non-cash support nor able to satisfy the support obligation with cash payments, the Tribe's procedures for modification of support orders may be applicable on a case-by-case basis. Non-cash support is not a substitute for support; it is a means of providing support. If there is a change in circumstances such that the noncustodial parent may, under Tribal law, seek modification of the support order, the fact that non-cash support is reflected in the order should not contribute to any delay or pose any particular problem.

15. *Comment:* One State commenter said that Federal child benefit programs such as Social Security Retirement or Social Security Disability provide for a benefit to be paid directly to the child or guardian and that the regulations should address how these benefits will affect the obligation of the noncustodial parent.

Response: We believe that § 309.105 adequately ensures that the needs of the child are taken into consideration while providing that the support order is appropriate and just given the particular circumstances of the case. If a particular child is receiving direct payments, such payments may be taken into consideration under these regulations.

16. *Comment:* One commenter suggested that OCSE examine whether there is a need to address Tribal responsibility when a child support order contains provisions for health care coverage.

Response: There is no requirement at this time for Tribal support orders to include medical support. However, nothing in this regulation precludes a Tribal order of support from including separate provisions for medical support and we encourage Tribes to make sure children have access to medical care through IHS or otherwise. To the extent that a Tribe is enforcing an order containing provisions for health care coverage, such an order is entitled to full faith and credit provided the underlying order is valid. Just like any other valid order, Tribal and State support orders containing provisions for health care coverage are enforceable under FFCCSOA.

17. *Comment:* We received comments from six Tribal respondents suggesting that Tribes be required to review their guidelines every four, rather than three years.

Response: We agree with the commenters. The language at § 309.105(a)(4) has been changed to require review of support guidelines at least once every four years.

18. *Comment:* One Tribal commenter disagreed that the standard of ''best interest of the child'' be imposed. Requiring the tribunal to make ''a finding'' why the application of the ''guidelines'' is unjust is more than sufficient.

Response: Proposed § 309.105(b)(1) and (e) used the term ''needs of the child'' and ''best interest of the child'' to reflect the requirement that the particular needs of the child be taken into consideration when support orders are established. We have maintained this language in final regulation as recodified. In order to ensure that support orders in Tribal IV–D programs are just and appropriate, we require there be a rebuttable presumption that application of a Tribe's support guidelines will result in a support order that is correct. In recognition of the possibility that particular circumstances may make application of the guidelines unjust or inappropriate, we provide for variance from such guidelines on a case-by-case basis as long as the needs of the child are taken into consideration.

Section 309.110—What Procedures Governing Income Withholding Must a Tribe or Tribal Organization Include in a Tribal IV–D Plan?

1. *Comment:* Eight Tribal commenters suggested that the requirement for income withholding be eliminated because the statute does not require income withholding. Two of these commenters stated that Tribes need to determine if income withholding is appropriate for their populations.

Response: Although income withholding requirements are not specifically addressed in the statute, enforcement of support orders is specifically required and we have determined that regulations governing income withholding are necessary to address this important IV–D program objective.

Income withholding has been one of the most effective means of collecting child support from parents who receive regular income and is especially important to ensure that the noncustodial parent does not fall into arrears. As important as income withholding is to enforcement of child support orders, we have tried to accommodate the needs of Tribes and Tribal organizations in how income withholding procedures are implemented by Tribal IV–D programs.

2. *Comment:* One State commenter said that Tribes should count allotment payments (payments made to individuals from either the Tribe or the Bureau of Indian Affairs [BIA]) or winnings from gaming as income. Two State commenters suggested that Tribes should withhold Tribal benefits (casino profits, oil and mineral rights) of all obligors and allow other entities to participate in this intercept program. A Tribal commenter suggested that the regulation should not interfere with Indian Tribal per capita payments, Individual Indian Monies (IIM), trust income or Social Security benefits. The commenter also suggested that Tribes should also have the discretion to set lower income withholding limits than the Consumer Credit Protection Act (CCPA) allows.

Response: The extent to which trust distributions, including per capita payments, may be garnished by a Tribe to satisfy its own order of support is strictly a matter of Tribal law. Garnishment of Indian trust distributions by States is prohibited under 25 U.S.C. 410. This statute states that any money accruing from any lease or sale of lands held in trust is not liable for the payment of any debt without the approval of the Secretary of the Interior. For purposes of this regulation, we have defined income at § 309.05, to mean any periodic form of payment due to an individual regardless of source, except that the exclusion of per capita, trust or Individual Indian Money (IIM) payments must be expressly decided by a Tribe. This allows Tribes the flexibility to exclude specific categories of payments from this definition, including per capita payments, trust income, and gaming profit distributions. We have not required Tribes to withhold the Tribal benefits (casino profits, oil and mineral rights) of obligors. We refer here to the businesses owned by the Tribe and the profits thereof. In respect for Tribal sovereignty, we have determined that it is not appropriate in this regulation to directly affect Tribal management of Tribes' own resources.

With respect to concerns about the CCPA limits, Tribes have the discretion to set lower income withholding limits than the CCPA. These rules only preclude income withholding beyond the upper limits set forth in the CCPA.

3. *Comment:* One Tribal commenter noted that in his village, over half of the people with child support orders lose over 50 percent of their paychecks to income withholding. The individual's only means of getting by is by receiving general assistance. Most, therefore, choose not to work.

Response: The withholding limits set by a Tribe or Tribal organization may be lower than the maximum CCPA limits, so that income withholding itself does not create a disincentive to remain employed. The limit set by a Tribe or Tribal organization may be lower, but may not be higher than those set forth in the CCPA. There is nothing to prevent a Tribe from setting the upper limit for income withholding at any amount deemed appropriate, as long as such limit does not exceed CCPA limits. The limits set forth in the CCPA are the highest percentages allowed under Federal law and apply to Tribal income withholding orders under these Tribal IV–D regulations. However, the actual income withholding limit is set by Tribes and may be lower than the maximum established in the CCPA.

When a noncustodial parent's financial circumstances change, or a default order is entered because income was not known, the noncustodial parent should go back to the appropriate tribunal to seek a modification of the order.

4. *Comment:* One Tribal commenter stated that until Tribes demonstrate substantial enforcement difficulties that can directly benefit from income withholding, this section should be eliminated. This commenter suggested that if the section is not eliminated, the requirement should be made flexible, so that Tribes may adapt income withholding to their needs. Two other Tribal commenters stated that Tribes need to determine if income withholding is appropriate for their populations.

Response: In response to the concerns raised by commenters, we are persuaded that income withholding may not be appropriate in every circumstance. Many of the comments we received from Tribes indicated that other methods of collecting support owed are more effective than income withholding. In some instances, the noncustodial parent is brought before Tribal elders and asked to explain why child support payments are not being made. This may be enough to get the noncustodial parent to make payments. Therefore, we added language to § 309.110 providing flexibility in this area. Section 309.110(h) allows for exceptions to income withholding on a case-by-case basis if: (1) Either the custodial or noncustodial parent demonstrates, and the tribunal finds good cause not to require the income withholding; or (2) a signed written agreement is reached between the custodial and noncustodial parent which provides for an alternative arrangement and is reviewed and entered into the record by the tribunal.

5. *Comment:* One State commenter suggested that § 309.110 incorporate UIFSA requirements.

Response: We disagree that it is appropriate to incorporate specific UIFSA procedures in these regulations. Section 309.110 assures that valid income withholding orders will be honored. We have incorporated procedures at § 309.110(n) which require the Tribal IV–D agency to receive and process income withholding orders issued by States, other Tribes, and other entities and promptly serve such orders on employers within the Tribe's jurisdiction.

6. *Comment:* One State commenter noted that the section is silent concerning penalties against employers to enforce compliance with income withholding orders and allocation of income withholding when there are multiple orders.

Response: Section 309.110(g) requires that Tribes have procedures under which employers are liable for the accumulated amount the employer should have withheld from the noncustodial parent's income. Section 309.110(k) requires that Tribal law must provide that the employer is subject to a fine for discharging a noncustodial parent from employment, refusing to

employ or taking disciplinary action against any noncustodial parent because of income withholding. Section 309.110(n) income withholding requires the Tribal IV–D agency be responsible for receiving and processing income withholding orders from States, Tribes and other entities, and ensuring orders are properly and promptly served on employers within the Tribe's jurisdiction. Language concerning the treatment of multiple orders has been added at § 309.110(m) to provide that income that is withheld be allocated across all valid orders. We do not believe that additional regulation is required at this time.

7. *Comment:* One State commenter stated that allowing direct income withholding from another State or Tribe under UIFSA would save work for the Tribal IV–D program and that since States are already required to extend this privilege to Tribes the responsibility should be reciprocal.

Response: We have not adopted this suggestion. As noted earlier, Tribes are not required to adopt UIFSA. Tribes may choose to allow direct income withholding but it is their choice.

8. *Comment:* One Tribal commenter said that requiring that income withholding include amounts ''to be applied toward liquidation of any overdue support'' may affect a parent's willingness to pay.

Response: Payment of overdue support remains the responsibility of obligors. Nothing in this regulation precludes an obligor from seeking an acceptable agreement for repayment of arrearages or, in certain specific and appropriate instances, and with the agreement of the State, a compromise of arrearages owed to a State pursuant to the law which established the support obligation in the first instance. We previously issued two Policy Interpretation Questions (PIQs) on this subject. PIQ–99–03 and PIQ–00–03 provide general information concerning compromise of child support arrears. This, and other policy issued by OCSE, may be found at: *https://www.acf.dhhs.gov/programs/cse/poldoc.htm.*

9. *Comment:* Two Tribal commenters noted that including instructions for completing the standard Federal income withholding form in the rule is duplicative and perhaps conflicting with regulatory income withholding provisions.

Response: In light of the requirement that the standard Federal income withholding form be used whenever income is to be withheld, we agree with the commenter and have eliminated language in proposed § 309.110(b) which merely duplicates language and conditions specified in the instructions to the form itself.

10. *Comment:* One State commenter stated that the difference in withholding requirements for Indian and non-Indian citizens creates operational issues, including the fact that States' automated systems are not equipped to handle the different timeframes. A Tribal commenter stated that Tribes should be exempt from the immediate income withholding.

Response: We believe that the income withholding provisions in § 309.110 are sufficiently consistent with State rules and provide the minimum requirements necessary to ensure successful withholding among IV–D programs when there are valid income withholding orders in place. Use of the standard Federal income withholding form by both State and Tribal IV–D programs will ensure responsiveness of employers. All employers must recognize this form and respond immediately to this important enforcement tool. The flexibility allowed under § 309.110(h) to provide an alternative arrangement to income withholding is substantially parallel to 45 CFR 303.100(b) and we do not believe that implementation of § 309.110 by Tribes will lead to operational problems for States.

These regulations do not require immediate income withholding, although Tribal IV–D programs may choose to impose withholding immediately to avoid any possibility for default by obligors who are employed. Under § 309.110(i), the income of noncustodial parents is subject to income withholding on the date on which the payments the noncustodial parent has failed to make are at least equal to the support payable for one month unless a determination is made to exempt the obligor from income withholding under § 309.110(h).

Section 309.115—What Procedures Governing the Distribution of Child Support Must a Tribe or Tribal Organization Include in a Tribal IV–D Plan?

1. *Comment:* Five Tribal commenters stated objections to having OCSE impose a State-based distribution scheme. Instead, they suggested that the regulations permit Tribes to merely describe how they will distribute support collections.

Response: Section 457 of the Act imposes requirements which govern distribution of support collections in a IV–D case (related custodial parent, noncustodial parent and child(ren)) whenever a State IV–D program is providing services under title IV–D of the Act. In recognition of this statutory mandate, the Tribal IV–D distribution requirements must provide for distribution in accordance with section 457 rules when a Tribe receives a request for assistance in collecting support from a State IV–D agency.

Therefore, section 457 of the Act does not apply to collections under the Tribal IV–D program unless a State IV–D agency requests assistance in collecting support from a Tribal IV–D agency. Tribal IV–D programs are not required to distribute support collections using the complex section 457 distribution requirements under this final rule. Rather, we have required Tribal IV–D agencies, upon receipt of a request from a State IV–D agency for assistance in collecting support under § 309.120, which specifies required intergovernmental procedures for Tribal IV–D programs, to either: (1) Forward collections to the State IV–D agency for distribution using the section 457 requirements, or (2) contact the State IV–D agency to determine appropriate distribution under section 457 and distribute the collections accordingly. The latter option would be appropriate, for example, if the Tribal IV–D agency is providing IV–D services to the family and subsequently receives a request for assistance from a State in collecting assigned support from a prior period of receipt of State TANF.

Similarly, we have required that, if a Tribal IV–D agency receives a request for assistance in a Tribal IV–D case under § 309.120 from another Tribal IV–D agency, collections must be either: (1) Forwarded to the requesting Tribal IV–D agency for distribution in accordance with § 309.115; or (2) distributed in accordance with instructions requested of, and provided by, the other Tribal IV–D agency.

2. *Comment:* One State commenter said that automation is a requirement for distribution and that the regulations must be the same for States and Tribes.

Response: Title IV–D of the Act imposes explicit distribution and automation requirements upon State IV–D agencies but does not impose such requirements on Tribal IV–D programs. As discussed above, we have revised the final rule to ensure that, when appropriate, Tribal IV–D agencies send support collections to State IV–D programs for distribution in accordance with section 457, or contact State IV–D agencies to determine the appropriate distribution, without requiring Tribal IV–D programs to adopt the complex statutory distribution requirements that apply to State IV–D programs.

We understand the importance of minimum automation standards for Tribal IV–D programs to ensure program efficiency and effectiveness. To that end, we expect to promulgate regulations establishing such minimum standards for automated systems (beyond planning provisions articulated under this rule) in the future after consultation with all stakeholders.

We also recognize that some Tribal IV–D programs do, and may continue to, contract with State IV–D programs to use the State's automation system to calculate appropriate distribution of collections. In these instances, forwarding collections to the State, or contacting the State to determine appropriate distribution would be unnecessary.

3. *Comment:* One State commenter indicated that distribution would require another programming change for State systems if collected support had to be distributed to Tribal child support enforcement programs.

Response: The impact of State IV–D program cooperation with Tribal IV–D programs and distribution by States of collections sent to or received from Tribal IV–D programs will depend on each State's automated system. Federal funding is available for 66 percent of all appropriate and allowable costs associated with any needed programming changes to State automated systems.

4. *Comment:* One Tribal commenter said that because Tribes do not have the same economic base as State governments, Tribes should not be required to reimburse the Federal government from IV–D collections.

Response: This final rule does not require Tribal IV–D agencies to reimburse the Federal government using retained Tribal IV–D collections in Tribal TANF cases, or otherwise share a portion of retained Tribal IV–D collections with the Federal government. The Federal government by statute is entitled to a share of collections assigned to a State by a family as a condition of receipt of assistance under titles IV–A, IV–E, or XIX of the Act. No parallel requirement applies to Tribes.

5. *Comment:* One Tribal commenter said that part of child support enforcement has to do with helping children and their families, while the other has to do with retrieving funds that have been paid out in public assistance. This commenter stated that the latter function has a very negative impact on some Tribal children because so many Tribal members have been on public assistance.

Response: These final regulations must be consistent with existing Federal statutory law governing assignment of rights to support to States as a condition of receipt of certain State assistance, and distribution of support collections assigned to States. There are no corresponding Federal assignment requirements as a condition of receipt of assistance under Tribal assistance programs, although some Tribal TANF programs have adopted a requirement for assignment of support as a condition of receipt of Tribal TANF. To the extent that Federal law requires States to retain assigned support collections as reimbursement for receipt of State public assistance, these regulations cannot undermine that requirement. Any changes to or simplification of the distribution process in State IV–D programs must come about as a result of statutory changes. The Administration has urged the Congress to adopt simplified distribution requirements for State IV–D programs that would ensure more support is paid to families to help them attain or maintain their self-sufficiency.

6. *Comment:* One State commenter said that the regulations should address offset of previously provided TANF benefits and priority of distribution, especially when a family may have received State and Tribal benefits in varying sequences throughout a significant period of time. Another State commenter said that a hierarchy for collection and distribution is necessary.

Response: We have revised and clarified § 309.115 governing distribution of collections in a Tribal IV–D case by Tribal IV–D programs in response to this comment and concerns that Tribal IV–D programs not be responsible for complex distribution requirements that apply to State IV–D programs. Section 309.115 specifies distribution requirements in a Tribal IV–D case based on specific circumstances that may exist for each case. The regulation requires a Tribal IV-D agency to distribute collections in a timely manner and to apply collections first to satisfy current support.

The Tribal IV–D agency must pay all support to the family when the family receiving Tribal IV–D services has never received Tribal TANF and the Tribal IV-D agency has not received a request for assistance in collecting support for the family from a State IV–D agency or another Tribal IV–D agency under § 309.120. A Tribal IV–D agency may receive a request for assistance in securing support from a State if the custodial parent resides in that State and has applied for or been referred to the State IV–D agency for IV–D services. Or a State may refer a case to the Tribal IV–D agency for assistance in collecting support assigned to the State for some prior period of receipt of assistance from the State.

Section 309.115 then addresses distribution requirements if a family receiving Tribal IV–D services is currently receiving or formerly received Tribal TANF and there is an assignment of support rights to the Tribe.

A further distinction is made with respect to families who have assigned support rights as a condition of receipt of Tribal TANF from another Tribe. The Tribal IV–D agency may have received a request for assistance in collecting support from a State or another Tribal IV–D agency. If the family is currently receiving Tribal TANF, there is an assignment to the Tribe, and the Tribal IV–D agency has received from a State or another Tribal IV–D agency a request for assistance in collecting support previously assigned to that State or Tribe, the regulation allows the Tribal IV–D agency to retain assigned support up to the amount of Tribal TANF paid to the family. The Tribal IV–D agency must then send any remaining collections to the requesting State or Tribal IV–D agency for distribution, as appropriate, or contact the State or other Tribe to determine accurate distribution and distribute the amount of the collection in excess of the Tribal TANF reimbursement accordingly. The hierarchy for distribution in different case circumstances is illustrated in a chart that appears later in the discussion.

If the family formerly received Tribal TANF from another Tribe, there is an assignment of support to that Tribe, and the Tribal IV–D agency has received a request for assistance on behalf of the family from a State or that other Tribal IV–D agency, the regulation requires the Tribal IV–D agency to send all collections to the State or other Tribal IV–D agency for distribution. The requesting State or Tribal IV–D agency, as appropriate, is then responsible for distribution in accordance with State IV–D program requirements at section 457 of the Act or 45 CFR 302.51 or 302.52, or in accordance with these Tribal distribution requirements in § 309.115. Alternatively, the Tribal IV–D agency may contact the State or other Tribal agency to determine appropriate distribution of the collection as explained above.

The requirement to send all collections to a State or other Tribal IV–D program that has requested assistance on behalf of a family under certain circumstances addresses a number of

possible scenarios. For example, the family may have applied for IV–D services from a State or another Tribal IV–D agency and not directly with the Tribal IV–D agency making the collection. Or the family may be receiving or may have formerly received TANF or other public assistance from the requesting State or Tribal IV–D agency. As long as the family is not currently receiving Tribal TANF from the same Tribe as the Tribal IV–D agency making the collection, under a program that requires an assignment of support rights, we believe the only entity in a position to determine appropriate distribution is the requesting State or Tribal IV–D agency. We have, however, included an option that allows Tribal IV–D agencies to determine appropriate distribution by contacting the requesting State or Tribe and to then distribute the collections as directed. State and Tribal IV–D program requirements for timely distribution and disbursement of collections will ensure collections owed to families reach them in a timely manner.

The rules for distribution in cases involving each of these circumstances are included in § 309.115, as well as clarification that any collection as a result of Federal income tax refund offset that is distributed by a Tribal IV–D agency must be applied to satisfy arrearages. The following chart should be of assistance to Tribal and State IV–D agencies.

Tribal IV–D case type	Case 1	Case 2	Case 3	Case 4	Case 5	Case 6	Case 7	Case 8	Case 9
Current Tribal TANF case w/assignment	.....	.....	.....	X	X	.....	.....	.....	.....
Current Tribal TANF case w/o assignment	.....	X	.....	.....	.....	.....	.....	X	.....
Never Tribal TANF case	X	.....	X	.....	.....	X	.....	.....	.....
Former Tribal TANF w/assignment	.....	.....	.....	.....	.....	.....	X	.....	X
Request for services from State IV–D agency	.....	.....	X	.....	X	.....	.....	X	X
No request for services from State IV–D agency	X	X	.....	X	.....	X	X	.....	.....
Request for services from another Tribal IV–D agency	.....	.....	.....	.....	.....	X	.....	.....	.....
No request for services from another Tribal IV–D agency	X	X	X	X	X	.....	X	X	X

Distribution: The Tribal IV–D agency:

Cases 1 and 2: Must send all collections to the family.

Case 3: Must send all collections to the State IV–D agency for distribution under section 457 of the Act.*

Case 4: May retain collections up to the total amount of Tribal TANF paid to the family, then must send excess collections to the family.

Case 5: May retain collections up to the total amount of Tribal TANF paid to the family, then must send excess collections to the State IV–D agency for distribution under section 457 of the Act.*

Case 6: Must send all collections to the other Tribal IV–D agency for distribution under § 309.115.

Case 7: Must pay current support to the family, may retain excess collections up to the total amount of Tribal TANF paid to the family and pay excess collections to the family.

Case 8: Must send all collections to the State IV–D agency for distribution under section 457 of the Act.*

Case 9: Must send all collections to the State IV–D agency for distribution under section 457 of the Act.*

*For cases 3, 5, 8 & 9: The Tribal IV–D agency may, rather than send collections to the State IV–D agency for distribution, contact the State IV–D agency to determine appropriate distribution, and distribute the collections as directed.

These regulations attempt to address the many possible combinations of Tribal IV–D case circumstances involving assignment of support rights to State and Tribal public assistance programs, and intergovernmental requests for assistance in collecting support. We encourage State and Tribal IV–D programs to work together to maximize the amount of support that is paid to families and ensure support obligations are set in an amount that is based on the obligor's ability to pay. This will reduce circumstances under which large arrearages are assigned to a State based on default support orders set without knowledge of an obligor's ability to pay. If complex distribution requirements that apply to State IV–D programs are simplified in the future to ensure more support is paid to families, State and Tribal IV–D programs, as well as the families themselves, will benefit from the changes in statute.

7. *Comment:* One State commenter said that there is no legal basis upon which a Tribe can distribute collections differently from States.

Response: By its terms, section 457 of the Act does not address distribution rules applicable to Indian Tribes or support collected by Tribal IV–D programs. However, the revised § 309.115 ensures that support collected by Tribal IV–D programs on behalf of State IV–D programs that have requested assistance under § 309.120 from the Tribal IV–D program is sent to the State IV–D program for distribution in accordance with section 457 of the Act, or the Tribe must contact the State to determine appropriate distribution and distribute the support as directed.

8. *Comment:* One State commenter said that the regulations should provide that the Tribes seek retroactive support to assist a State that has previously provided State TANF.

Response: Retroactive support is support for a prior period that is established based on an obligor's ability to pay. For example, a Tribal court may establish a support order in June for a six-month-old child going back to the date of the child's birth. The amount from January to June is considered retroactive support. While these rules do not require Tribal IV–D agencies to establish retroactive support, Tribal IV–D agencies may choose to do so. If a State IV–D agency has requested assistance from a Tribal IV–D agency, the Tribe must provide all appropriate services under its Tribal IV–D plan and forward any collections, in accordance with § 309.115, to the requesting State for distribution in accordance with section 457 of the Act and 45 CFR 302.51 and 302.52.

9. *Comment:* One Tribal commenter suggested that we continue the practice under which child support assigned to a Tribe may be retained by the Tribe up to the amount of Tribal TANF assistance received by a family and the amount in excess of the total TANF assistance must be paid to the family.

Response: Underlying the distribution regulations at § 309.115 is the concept that all support collections must be paid to the family unless there is an assignment of support rights to a State or Tribe as a condition of receipt of assistance. Whether or not a Tribe conditions receipt of TANF assistance on assignment of support to the Tribe is

not mandated by Federal statute or regulation, but is an option that Indian Tribes may exercise at their discretion. We have made a conforming change to the Tribal TANF regulations at 45 CFR 286.155(b)(1) to remove the requirement under which amounts in excess of the total amount of TANF assistance be paid to the family. Section 286.155(b)(1) continues to require that in no case may a Tribe retain assigned collections in excess of the amount of Tribal TANF paid to the family. Distribution of support beyond the total amount of Tribal TANF assistance paid to the family is now addressed exclusively in Tribal IV–D regulations at § 309.115.

Section 309.120—What Intergovernmental Procedures Must a Tribe or Tribal Organization Include in a Tribal IV–D Plan?

1. *Comment:* Eight State commenters suggested that States would need additional resources and one stated that States will have to consider their own program needs as a priority when responding to requests for services from Tribal IV–D programs. Another State commenter said that there should be a Federal directive outlining State duties, which indicates how States will be reimbursed whenever they respond to a Tribal request for assistance. One State suggested that reimbursement be at 90 percent of the costs incurred.

Response: State IV–D programs may receive FFP at the 66 percent rate for expenditures in providing services in response to a request from a Tribal IV–D agency. Section 309.65(a)(2) requires Tribal IV–D programs to provide IV–D services required by law and regulation, including referral of cases to appropriate State IV–D agencies or to other Tribal IV–D agencies and § 309.120(a) requires Tribal IV–D programs to extend the full range of services available under their approved IV–D plans to all other IV–D programs. In addition, we have included a parallel requirement in 45 CFR 302.36(a)(2), which requires each State to extend the full range of services available under its IV–D plan to all Tribal IV–D programs, including promptly opening a case where appropriate. We encourage States and Tribes to work together to design intergovernmental procedures and look to established, proven interstate procedures that apply to State IV–D programs as a guide.

Even though State and Tribal IV–D agencies must respond to each other's requests for assistance, we recognize that Tribal and State programs are at different stages of development. We encourage, and allow time for Tribes and States to put mutually agreeable procedures in place to facilitate coordination between IV–D programs. We are committed to providing Tribes and States an opportunity to work out specific processes for cooperation without imposing more specific regulatory mandates at this time.

The characteristics of cases requiring services, the quality of the information received from the initiating agency, the amount of staff and other resources available to the responding agency, and the development of new or expanded working relationships between Tribes and States are all factors which bear on Tribal/State cooperative relationships. We are committed to fostering cooperative Tribal/State relationships. If it becomes necessary to promulgate specific regulations applicable to all IV–D programs to clarify the respective roles in an intergovernmental relationship, we will do so in partnership with Tribes and States.

State and Tribal IV–D agencies may claim Federal Financial Participation (FFP) at the applicable rate otherwise provided under applicable regulations: 66 percent of expenditures when the State responds to a Tribal request for interjurisdictional services and 90 percent of expenditures for the first three years of a fully operational Tribal program and 80 percent thereafter when the Tribe responds to a State's request for interjurisdictional services. When a case is referred for services, the responding State or Tribe must open its own case and provide the necessary services.

2. *Comment:* One State commenter noted that use of tax offset and locate functions must be done through the States because Tribes do not have direct access to necessary tools.

Response: These regulations do not require the use of tools by Tribal IV–D agencies for which there is no statutory authority. The Tribe and States may enter into agreement to refer cases to the State for submittal for Federal tax refund offset and any such access would currently require request for services from the State. It is premature to regulate specific procedures governing requests for services which Tribes are legally unable to perform directly at this time. At some future date, if it becomes necessary to establish specific new procedures, we will consider such rules after consultation with stakeholders.

3. *Comment:* One State commenter suggested that where a State enters into an agreement to provide services to a Tribal court, the Tribe should reimburse the State, but that a State should never be compelled to appear in a Tribal court.

Response: When a State and Tribe enter into an agreement, the agreement should be mutually agreeable to both parties.

4. *Comment:* One State commenter suggested the Federal government should reach agreements with Tribes on issues that affect all States; otherwise, uniformity will be sacrificed. Another State suggested that we should establish basic rules on negotiation procedures between States and Tribes.

Response: We are committed to working with Tribes and States to ensure cooperation and assistance between them as necessary to ensure children receive needed support. We believe that issues raised by cooperation and coordination between States and Indian Tribes require local solutions if they are to be successful. Still, we intend to work closely with State and Tribes, issue guidance and share best practices and, if regulations are necessary to ensure cooperation, we will work with our State and Tribal partners to develop rules that appropriately balance the impact on both Tribes and States.

5. *Comment:* One Tribal commenter stated the regulations should clarify that States will not monitor or oversee Tribes.

Response: There is nothing in this final regulation which authorizes or requires States to monitor Tribal IV–D programs.

6. *Comment:* One Alaska Native commenter stated that the regulations assume there is a geographical component to the Tribes' jurisdiction and that Tribal court jurisdiction does not mesh with UIFSA or FFCCSOA. This commenter asked how controlling orders or continuing exclusive jurisdiction determinations can be made by Tribal courts, if there is no geographic region from which to determine whether the parent or child resides ''in the State'' for purpose of those determinations.

Response: As noted earlier in the preamble, the lack of ''Indian country'' in Alaska does not prevent Alaska Native villages from applying for direct funding or from exercising jurisdiction over their members. FFCCSOA does not limit the exercise of jurisdiction to a geographical area. FFCCSOA only requires a court exercising jurisdiction to have the authority to do so. UIFSA is not applicable to Tribes and is not a factor when Tribes are making jurisdictional determinations in relation to Tribal members.

7. *Comment:* One commenter observed that States recoup past assigned child support payments as a punitive measure and that a Tribal IV–

D program, in complying with § 309.120(a) requiring intergovernmental cooperation, may create a disincentive to Tribal members in remote areas from obtaining/keeping employment.

Response: The recoupment of past assigned support is not punitive, but is required by Federal law. Section 309.120(a) requires Tribal IV–D agencies to extend the full range of services available under their IV–D plans upon request from a State or another Tribal IV–D program. However, the requesting agency may not dictate the actions taken by the responding jurisdiction. The responding agency must take enforcement actions as required by Federal regulations and its own laws and procedures. We recommend that IV–D programs contact each other to determine how to most efficiently and effectively coordinate IV–D services at the local level.

We are particularly aware of Tribal concerns about support orders entered against Tribal members by default, resulting in large arrearages owed to a State that an obligor is unable to pay and which may discourage compliance. We strongly urge States and Tribes to work together in these instances to reach agreement on steps to take that will result in ongoing support payments to families, including the possibility of compromising arrearages permanently assigned to the State and/or entering into repayment agreements.

8. *Comment:* Two commenters suggested that the reporting requirements must be clarified and that States will not know how to report State/Tribal cases for purposes of completing the OCSE–157 reports.

Response: State IV–D agencies are required to submit the OCSE–157, the Support Enforcement Annual Data Report, which is to be used to report program status and accomplishments under title IV–D of the Social Security Act. There are two specific parts of the OCSE–157 which accommodate Tribal IV–D cases. At Line 1: Cases Open and the End of the Fiscal Year, ''[i]nclude cases open at end of the fiscal year as a result of requests for assistance received from other States, as well as cases open in your State that you have referred to another State. Do not include on this line Native American and international cases over which the State has no jurisdiction. These cases should be reported separately on line 3.'' Line 3 of the OCSE–157 is provided to report on Cases Open for Which the State has No Jurisdiction. See OCSE–AT–01–09 for additional information.

We are working with States on revisions to the OCSE–157 form to more accurately reflect how Tribal IV–D cases referred to the State IV–D programs should be reported. Please note that Tribes are not required to complete the OCSE–157 reports.

9. *Comment:* One State commenter stated that Tribal IV–D plans should include assurances that the Tribe will cooperate with requests for assistance with service of process. This commenter said that Tribes should establish a central registry for receipt of incoming interstate and a Tribal information agency that maintains a list of tribunal addresses.

Response: Tribes are required to provide the full range of Tribal IV–D services upon request of another State or Tribal IV–D program. As noted above, § 309.120 requires Tribal IV–D agencies to extend the full range of services available under their IV–D plans to all IV–D programs upon request and to cooperate with States and other Tribal IV–D agencies to provide services required by law and regulation. This could include assisting with service of process or, in the alternative, bringing enforcement action in a Tribal tribunal. We have determined that additional regulation is not necessary at this time.

As to the suggestion that Tribes be mandated to establish an interstate registry, while we have not mandated such a registry, Tribal IV–D programs may determine such a registry is helpful for management purposes. Insofar as a State requires the address of a Tribal tribunal, States should request the address from the Tribal IV–D agency.

10. *Comment:* Seven Tribal and State commenters expressed concern that States did not have reciprocal obligations to cooperate with Tribal IV–D programs and observed that cooperation was key to the success of all IV–D programs.

Response: As stated in our earlier discussion of § 309.120, both Tribes and States are required to extend the full range of services available under a IV–D plan and respond to all requests received from other IV–D programs. We made a conforming change to include a parallel requirement in 45 CFR 302.36(a)(2), which requires each State to extend the full range of services available under its IV–D plan to all Tribal IV–D programs. Without more experience with cooperation between these entities, we do not believe that it is appropriate to promulgate uniform regulations governing the cooperation process. At this initial stage in the development of Tribal IV–D programs, we want to allow States and Tribes time and maximum flexibility to establish local procedures for coordination and cooperation. We are committed to assisting in those efforts, providing written guidance and sharing best practices as needed and requested. If we determine that additional regulations mandating cooperation requirements are necessary for the effective and efficient operation of IV–D programs, we will promulgate them at a later date.

11. *Comment:* One commenter asked if cooperative arrangements with States are going to be absolutely necessary for Tribes.

Response: Whether Tribes enter into cooperative arrangements with States or other entities, as well as the nature of such arrangements, is entirely at their discretion. Nothing in this regulation mandates such arrangements as a condition of receipt of IV–D funds. Service agreements, contracts, and other types of formal agreements between Tribes and States may facilitate the effective and efficient delivery of IV–D services, and we encourage them when deemed appropriate by the parties.

12. *Comment:* One State commenter asked how programming costs would be paid if Tribes enter into agreements with States to have the States' automated systems process child support monies.

Response: We expect that processing of child support monies collected by Tribal IV–D programs will be accomplished under the same framework as processing by State A of support collected by State B. Federal reimbursement is available to States at the usual match rate. The Tribe may claim allowable contract costs and the State must account for any payments under the contract as program income. At this time we are not persuaded that additional regulation is necessary.

13. *Comment:* Eight Tribal commenters criticized the requirement that Tribes recognize default paternity orders and default orders based on imputed income as a matter of course when the courts that issued such orders did not have jurisdiction in the first instance.

Response: While FFCCSOA requires orders to receive full faith and credit, nothing in that statute nor in this regulation requires that invalid orders be accorded full faith and credit. If invalid default orders are entered, they are subject to challenge under ordinary rules of State or Tribal law. See OCSE–AT–02–03 on the applicability of FFCCSOA to States and Tribes. However, when valid default orders based on imputed income create hardship on obligors because they are not based on the ability of the obligor to pay support, we urge States to modify those orders and consider compromising arrearages owed to the

State, when appropriate. As discussed earlier, we urge State and Tribal IV–D programs to work together to remove impediments to timely and consistent payment of support.

14. *Comment:* One State commenter stated that FFCCSOA applies to Tribes and that § 309.120 should require Tribes to comply with the Act in its entirety, not just the enforcement section. This commenter suggested that the word ''assurance'' was not strong enough. To address current enforcement problems the section should require Tribes to ''recognize child support orders, including income withholding orders, issued by other Tribes and Tribal organizations and by States.''

Response: All the requirements of FFCCSOA (28 U.S.C. 1738B) are applicable to States and Tribes. We are not persuaded that any change to § 309.120 as suggested by the commenter is necessary to impose this requirement. To the extent that a valid order includes provisions for income withholding, FFCCSOA applies.

15. *Comment:* Numerous commenters suggested that Tribes should be required to implement UIFSA to promote uniformity and to alleviate jurisdictional, as well as operational problems. Several Tribal commenters stated that it was inappropriate to require Tribes to adopt UIFSA.

Response: As discussed previously, States are required to adopt UIFSA as the result of an express statutory mandate. We have determined that requiring Tribes to adopt UIFSA is neither necessary nor appropriate.

Subpart D—Tribal IV–D Program Funding

Section 309.125—On What Basis Is Federal Funding of Tribal IV–D Programs Determined?

No comments were received on this section. Changes were made to the regulation, however, to specify more directly what information must be provided in order for a Tribe to receive Federal funding. We also clarified that official issuances of the Department refers only to those that specifically indicate applicability to Tribal IV–D programs. The title of the section was also modified slightly in the final rule by changing ''funding in'' to ''funding of'' for clarity.

Section 309.130—How Will Tribal IV–D Programs Be Funded and What Forms Are Required?

1. *Comment:* Several Tribal commenters stated that Tribal IV–D programs should be funded in the same manner as State IV–D programs, *i.e.*, as entitlement programs. They suggested that Tribal IV–D programs be funded continuously, with quarterly grant amounts determined, in part, by the Tribe's own quarterly estimates. The estimates would be subject to review and approval and the Tribes may be requested to submit additional supporting documentation as necessary.

Response: The Tribal IV–D program is an entitlement program. The difference between Tribal IV–D grants and State IV–D payments is that Tribal IV–D programs are funded for expenditures under an approved IV–D plan based on budget requests for a 12-month funding period. We have revised § 309.130 to provide that Tribal IV–D programs eligible for grants of less than $1 million per 12-month funding period will receive a single annual award of the total amount and Tribal IV–D programs with funding of $1 million or more per 12-month funding period will receive quarterly awards similar to State IV–D programs.

2. *Comment:* One commenter suggested clarification is required concerning whether Tribal IV–D funds will come from a different funding stream than State funds.

Response: As stated in the preamble to the NPRM, the funding for Tribal IV–D activities is completely separate from funding for State programs. A Tribe's decision to run its own IV–D program does not impact a State's IV–D program funds. Tribal IV–D funding is not apportioned from a State's IV–D funding. However, funds for the Tribal IV–D programs come from the same appropriation as the State IV–D program.

3. *Comment:* One commenter said that if Tribes are required to provide a 10 or 20 percent match, then they should be able to receive an incentive back into their programs.

Response: States receive incentive funds under section 458 of the Act, which does not extend to Indian Tribes. There is no statutory authority that provides for Tribal IV–D program incentives.

4. *Comment:* Four Tribal commenters suggested that funding should be allocated based on population, geographical area, service area, land base, isolation factors and local/national scale of economy. Funding should be put under a ''special'' category similar to the category used for Tribal Program Allocation law enforcement.

Response: Funding for Tribal IV–D programs is authorized by section 455(f) of the Social Security Act, which does not provide for allocation of funds on the basis described. Under title IV–D of the Act and § 309.130, Tribal IV–D funding is based upon documentation submitted by Tribes including the SF 424 and 424A and is awarded based on reasonable, necessary, and allocable expenditures of approved Tribal IV–D programs. We are not persuaded that the factors suggested by the commenters are appropriate for the IV–D program. However, in their budget requests, there is nothing to preclude Tribes from taking service area and population into account.

5. *Comment:* Numerous Tribal commenters suggested that the regulations should not require a non-Federal share and that Tribes should receive 100 percent Federal funding. Some of these commenters said that requiring a non-Federal share would penalize, rather than support, family programs. Others indicated that most Tribes do not have sufficient resources to cover the non-Federal share.

Response: Unlike other Tribal grant programs, the funding for Tribal IV–D programs are not sum certain grants. The Tribal IV–D program provides for 90 percent Federal funding for all reasonable, necessary and allocable cost associated with the administration of a IV–D program during the first three years of operation of a program, and 80 percent thereafter. The provision of Federal funding at 90 percent of program expenditures, with a concomitant non-Federal share of 10 percent, reflects our understanding of the unique and generally unfavorable fiscal circumstances that Tribes face. We have determined that a non-Federal share in expenditures is necessary, based on the principle that better programs and better management result when local resources are invested. We acknowledge that Tribes may have to split limited resources between programs and make difficult decisions concerning allocation of funds among important Tribal programs. However, we are also aware that some Tribes may face unexpected and uniquely adverse conditions that make them temporarily unable to provide the non-Federal share in a particular program year. To address these limited circumstances, we have incorporated a waiver provision at § 309.130, which allows a Tribe in this situation to request a temporary waiver of its non-Federal share, based on requirements described in paragraph (e), as discussed earlier in this preamble.

6. *Comment:* One Tribal commenter stated that the 90 percent Federal share rate is fair and adequate. This same commenter suggested that the Tribal non-Federal share requirement be fulfilled through in-kind contributions. Three other Tribal commenters

suggested the non-Federal share be in cash or in-kind.

Response: The regulation permits Tribes to satisfy their non-Federal share requirements with whatever resources may be available; *e.g.*, cash, non-cash resources provided by the Tribe, or in-kind third-party contributions, as long as the requirements of 45 CFR 74.23 and OMB Circular A–87 are satisfied. Regardless of how a Tribe chooses to satisfy the non-Federal share of program expenditures, the Federal share remains limited to the applicable rates provided in § 309.130(c), absent a waiver.

7. *Comment:* One Tribal commenter stated the assumption that certain collections a Tribal IV–D program makes will lose their identity and be able to be counted as matching. Where a Tribe has both a TANF and IV–D program, collected funds could be allowed for use as matching dollars for its IV–D program.

Response: If a Tribe has a TANF program that requires an assignment of support rights as a condition of receipt of Tribal TANF, and assigned support collections are retained by the Tribe, the TANF regulation at 45 CFR 286.155(b) applies. Section 286.155(b)(2) requires that retained collections under TANF assignments to the Tribe must be used ''to further the Tribe's TANF program.'' This disqualifies such collections from also being used as the Tribe's IV–D non-Federal share.

8. *Comment:* One commenter asked what criteria are used to determine whether a Tribe has sufficient resources to provide the required non-Federal match. How will a Tribe's revenue from gaming be considered?

Response: We have substantially revised the non-Federal waiver provisions at § 309.130 to clarify that waivers of the non-Federal share will be limited to certain temporary circumstances. In the NPRM and the interim final regulation we intended the waiver provisions to apply to atypical situations in a particular program year that make it impossible for a Tribe to cover its share of program expenditures. Such situations were expected to represent difficulties over and above the generally poor economic conditions faced by most Tribes (*e.g.*, high unemployment rate, lack of economic development) which we already have taken into account by providing for Federal funding for up to 90 percent of program expenditures in the first three years of full funding. The final rule governing waiver requests makes more explicit the limited availability of waivers of the non-Federal share and the general agreement and understanding that a Tribe or Tribal organization receiving funds under this part is expected to share in the financial costs of the program.

In addition, the regulation makes clear that the Secretary must make specific findings in order to grant a waiver request. The availability of gaming or other Tribal resources is a legitimate factor that the Secretary may consider under § 309.130 in granting a waiver, but the absence of gaming or similar revenue does not necessarily entitle a Tribe to a waiver. Finally, § 309.130 states that Tribes and Tribal organizations are responsible for the non-Federal share unless notified in writing that the Secretary has approved a request for waiver. There should be no uncertainty as to liability for the non-Federal share; a Tribe or Tribal organization is liable for the non-Federal share unless it has received a written approval of a waiver request.

9. *Comment:* One Tribal commenter suggested that we allow Tribes to request a budget increase by submitting SF 424 and/or SF 424A with an explanation 60 days before the funds are needed. Another three commenters indicated that the provision for Tribes to request a mid-year increase in their approved budgets is a positive feature.

Response: Regulations at § 309.130(f) permit Tribes and Tribal organizations to request budget adjustments by submitting the SF 424 and/or SF 424A forms with an explanation of why an adjustment is necessary. We also revised this subsection to make clear that increases in a Tribal IV–D budget will result in a proportional increase in a Tribe's non-Federal share.

10. *Comment:* One Tribal commenter opposed the application of 45 CFR part 95 to Tribal IV–D programs, saying that such regulation was not appropriate for Tribes. As Tribes begin to operate IV–D programs, the Department will gain knowledge and experience with Tribal system development. Tribes will be able to provide technical assistance to one another on the processes and models that they have developed.

Response: In the proposed regulation, we solicited comment on investments in Tribal IV–D automation and specifically asked for consideration of 45 CFR part 95 as a model. We are not regulating Tribal IV–D automation at this time beyond allowable expenditures for office automation and planning under § 309.145, but will take the suggestions into consideration as we deliberate in this area for the future. Of course, no final automation requirements will be imposed on Tribal IV–D programs without feedback from all stakeholders.

Section 309.135—What Requirements Apply to Funding, Obligating and Liquidating Federal Title IV–D Grant Funds?

1. *Comment:* We received five positive Tribal comments on the time allotted for obligating and spending IV–D grant funds. One commenter criticized requiring Tribes to revise their financial systems.

Response: There are no provisions in § 309.135 that require Tribes to revise their financial systems. The requirements in § 309.135 are consistent with requirements in other Federal programs. To be as clear as possible about the provisions of this section, however, we have broken up the two long paragraphs in the proposed rule into three shorter paragraphs and added topic headings. In addition, to smooth the transition from start-up grant to initial IV–D program funding grants, we have added new paragraphs (a) and (b) to this section. Paragraph (a) specifies that IV–D program grant awards will be made for 12-month periods that coincide with the Federal fiscal year (October 1 to September 30). Paragraph (b) provides for an initial IV–D program funding period of 6 to 17 months, in order to bring the funding cycle in line with the Federal fiscal year. This is necessary for an efficient grant process and does not affect the Tribal financial system or processes.

2. *Comment:* Two commenters suggested that the rule allow carry-forward of funding to the following fiscal year.

Response: Since quarterly adjustments can be made to the Tribal IV–D grants based on actual expenditures, carry-forward of grant funds is not necessary. However, in the interest of providing Tribes with the maximum flexibility, under our program regulations at § 309.135, we allow Tribes to liquidate obligations no later than the last day of the 12-month period following the funding period for which the funds were awarded.

Proposed Section 309.140—What Are the Financial Reporting Requirements?

We eliminated § 309.140 and moved all financial reporting requirements to § 309.130, which already contained some of the same material and is discussed earlier in this preamble. This places all financial reporting requirements in one place in the regulations and should make the regulations easier to use.

1. *Comment:* Two Tribal commenters were concerned that heavy penalties for failure to meet program deadlines will drive away a lot of Tribes.

Response: Financial Status Reports are required on a quarterly basis and are essential to the on-going Tribal IV–D funding process. They are required under the terms and conditions of annual IV–D grant awards. However, to lessen the burden on Tribes, we have determined that they may report on the SF 269A (Short Form) to provide the minimum necessary information.

Financial Status Reports are due not later than 30 days following the end of each of the first three quarters and no later than 90 days following the end of the fourth quarter of each annual funding period and of the subsequent 12-month liquidation period. Failure to meet these deadlines will result in possible delays in Federal Tribal IV–D funding. If Tribes require technical or other assistance to meet the Financial Status Report deadlines, we encourage them to contact us immediately to avoid any undue delay in Federal IV–D funding.

2. *Comment:* Five Tribal commenters supported less frequent financial reporting for Tribal IV–D agencies that meet requirements.

Response: Because the information provided on the quarterly Financial Status Reports is so essential to the Tribal IV–D funding mechanism, especially adjustment for the prior quarter's actual obligations, less frequent reporting is not feasible. However, we have lessened the reporting burden to the minimum required by the SF 269A (Short Form), rather than the SF 269 (Long Form) that was proposed. If any aspect of financial reporting raises a concern for a Tribe, we encourage that Tribe to contact us immediately.

Section 309.145—What Costs Are Allowable for Tribal IV–D Programs Carried Out Under § 309.65(a) of This Part?

1. *Comment:* We received numerous comments on automation in Tribal IV–D programs. A majority of the comments indicated that automation was necessary and that without the automation, it would be impossible for Tribes to accurately and efficiently process child support collections. Many commenters said that States would not be able to bear the burden of manual processing, and that the regulations should require that Tribal automated systems be compatible with State systems. Other commenters suggested that OCSE develop a skeletal automation system for Tribal IV–D programs, and some stated that it was inappropriate to require a specific level of program automation. One commenter stated that Tribes need to be wary of vendors and should evaluate vendors for reliability.

Response: Under § 309.145, Federal funds are available for costs of operating a Tribal IV–D program carried out under § 309.65(a), provided that such costs are determined by the Secretary to be reasonable, necessary, and allocable to the program. While we agree that automated data processing systems are helpful for record keeping, monitoring and high speed processing in child support enforcement cases, such automated systems are not presently required for Tribal IV–D programs and therefore are not necessary to operation of such programs. As stated earlier in this preamble, we have begun consideration with stakeholders of appropriate minimum Tribal systems automation specifications in anticipation of Tribal IV–D programs moving toward high-speed automated data processing by convening a workgroup. Factors such as compatibility, scale, functionality and cost, among others, are issues being considered by this workgroup.

Section 309.145(h) states that among those Tribal IV–D costs that are allowable are costs for ''planning efforts in the identification, evaluation, and selection of a new or replacement automated data processing computer system solution,'' for the ''operation and maintenance of existing Tribal automated data processing computer systems,'' as well as for ''essential office automation capability,'' and the ''[e]stablishment of intergovernmental agreements with States and Tribes for use of an existing automated computer data processing system.'' We have determined that these categories of costs, in lieu of guidance regarding the need for or scope of Tribal IV–D automation, are reasonable at this time. Since high-speed automated data processing systems are not currently required under these regulations, the costs of designing, developing and implementing such systems are not allowable at this time.

2. *Comment:* Ten Tribal commenters supported the extensive list of allowable costs. One commenter indicated that this gives the Tribes the opportunity to continue to develop the necessary infrastructures. One commenter suggested that in determining whether costs are reasonable, the Secretary must realize that costs vary by geographic area.

Response: Section 309.145 makes Federal IV–D funds available for costs of operating a Tribal IV–D program provided such costs are determined by the Secretary to be reasonable, necessary, and allocable to the program. Determinations as to whether or not costs are reasonable are governed by OMB Circular A–87 and will take all relevant factors into consideration.

3. *Comment:* One Tribal commenter indicated that it is unclear whether Tribes are eligible for Federal assistance for the costs of bad debts. Another commenter noted that bad debts are unallowable costs for States and asked if they will be allowed for Tribes.

Response: OMB Circular A–87, Attachment B, establishes principles to be applied in establishing the allowability or unallowability of certain items of cost. With regard to ''bad debts,'' it states that ''[a]ny losses arising from uncollectible accounts and other claims, and related costs are unallowable unless provided for in Federal program award regulations.'' We encourage States and Tribes who have questions about allowable IV–D costs to contact us with specific information. These final regulations make no provision for the costs of bad debts as allowable expenditures.

4. *Comment:* Ten Tribal commenters requested clarification on how indirect cost rates would be treated.

Response: Section 309.145 provides that Federal IV–D funds are available ''for the costs of operating a Tribal IV–D program under an approved Tribal IV–D application.'' The use of a negotiated indirect cost rate could result in recovery of costs unrelated to the IV–D program, which is prohibited by Section 451 of the Act that expressly limits the Congressional appropriation for the IV–D program funds. OCSE is allowing Tribes and Tribal organizations the option to use the negotiated indirect cost rate as a mechanism for the recovery of allowable indirect costs. However, use of this method does not guarantee allowability of costs, which must still be attributable to the IV–D program. Because the title IV–D program is an uncapped entitlement program, the funds allocated are closely scrutinized. Actual indirect costs—just like actual direct costs—must be demonstrably attributable to operation of the IV–D program. This means that Tribal grantees must be able to demonstrate that whatever costs are claimed under the IV–D grant are reasonable, necessary, and allocable to the IV–D program.

As stated earlier in the preamble, if a Tribe or Tribal organization's budget request includes indirect costs as part of its request for Federal funds, such requests may be submitted in one of two ways. For applications which include indirect costs, we have determined that an applicant may, at its option, submit either documentation of the dollar

amount of indirect costs allocable to the IV–D program, or submit its current indirect cost rate negotiated with the Department of the Interior and a dollar amount of indirect costs based on that rate. Whichever option an applicant chooses, the applicant's obligation remains the same: Tribal IV–D grantees are responsible for ensuring that actual expenditures of Federal IV–D funds are directly, demonstrably attributable to operation of the IV–D program, *i.e.*, all actual costs claimed under the IV–D grant must be allocable to the IV–D program. The Federal statute at 42 U.S.C. 651 limits the use of Federal IV–D funds to the purposes enumerated in that section, whether such costs are characterized as ''direct'' or ''indirect'' costs.

If a Tribe's application includes a budget request for indirect costs as well as direct costs, such request must either calculate the estimated indirect cost by documenting the dollar amount of indirect costs allocable to the IV–D program, or include the indirect cost rate and the estimated indirect costs using the negotiated indirect cost rate. If the Tribe elects to submit the actual estimated costs attributable to the Tribal IV–D program, the methodology used to arrive at the dollar amount must be included with the application.

Whichever option a Tribe choose, the Tribe's obligation is the same: Tribal IV–D grantees are responsible for ensuring that expenditures of Federal IV–D funds are directly, demonstrably attributable to operation of the IV–D program, *i.e.,* all costs claimed under the IV–D grant must be allocable to the IV–D program. Tribal IV–D grant funds may be used for both direct and indirect costs. However, only such actual costs that are directly, demonstrably attributable to operation of the IV–D program are allowable under the Federal statute.

We remind Tribal grantees that even if the Tribe has an approved indirect cost rate agreement, any indirect costs must be allowable under the program statute, regulations, OMB circulars and Federal appropriations law. Any unallowable costs that are recovered under any agreement are also unallowable and subject to disallowance. The indirect costs must be reasonable, necessary, allocable and in compliance with statute, rules, regulations and OMB circulars.

In addition, under § 309.160 of this final regulation, Tribal IV–D programs will be audited as a major program in accordance with section 215 (c) of OMB Circular A–133. The annual A–133 audits will be used to reconcile the grant award. Adjustments will be made for any differences between estimated and actual costs attributable to the program. The Department may supplement these required audits through reviews or audits conducted by its own staff.

We caution Tribes that there is some risk involved in using the negotiated indirect cost rate agreement. As stated earlier, the Federal statute at 42 U.S.C. 651 limits the use of Federal IV–D funds to the purposes enumerated in that section, whether such costs are characterized as ''direct'' or ''indirect'' costs. Tribes will want to be careful with charges to the indirect cost rate so as not to build up a large audit exception or debt. A Tribe that initially chooses to use the negotiated indirect cost rate to get its program operational, may at a later date choose to document program specific indirect costs in subsequent years to avoid a large pay-back to the Federal government, disrupting program services to families in need.

5. *Comment:* One commenter stated that it is not equitable that the salaries of chief executives are allowable costs for Tribes.

Response: OMB Circular A–87, Attachment B, Section 23.b, states, ''For Federally-recognized Indian Tribal governments and Councils Of Governments (COGs), the portion of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his staff is allowable. ''Following this guidance, we have determined that Federal IV–D funds may be used for that portion of the salaries and expenses of a Tribe's chief executive and staff which are directly attributable to managing and operating the Tribal IV–D program.

6. *Comment:* Five Tribal commenters supported the provision that the portion of salaries and expenses of Tribal judges and staff that is directly related to Tribal IV–D case program activities is an allowable cost because Tribal IV–D programs create additional and unprecedented workload increases for Indian tribunals. Six State commenters stated that it is not equitable to fund Tribal court costs but not those of State courts.

Response: We have revised § 309.145(k) to permit Federal IV–D funds to be used for the portion of salaries and expenses of tribunals and staff directly related to required Tribal IV–D program activities. We recognize that, at this initial stage of Tribal IV–D programs, operation of programs and associated program requirements will result in increased workloads for some Indian tribunals. Unlike States, Tribes may not have a tax base or the resources to enable them to fund these activities of the Tribal court. Child support may not be a normal function that the court would perform. Therefore, as provided in OMB Circular A–87, Attachment B, section 23.a.(5), we have determined that the costs associated with such circumstances are allowable.

7. *Comment:* One State commenter suggested that States receive direct Federal funds to cover costs associated with providing technical assistance to Tribes. Another commenter suggested that the expenses for technical assistance should be borne by the funding agency and that the costs should not be part of the funds awarded to a Tribe.

Response: If a State enters into an agreement to provide services which are not part of the operation of its IV–D plan, the State may bill the Tribe or Tribal organization at rates negotiated between the two parties. If the services provided under such purchase of service agreements are reasonable, necessary, and allocable to the Tribal IV–D program, the Tribe could claim the associated costs it has incurred in obtaining the services and would be required to participate in those costs, consistent with the required Tribal IV–D share.

8. *Comment:* Several Tribal commenters said that unless funds awarded to States under section 469B of the Act, which addresses grants to States for access and visitation programs, are opened up to Tribal child support grantees, access and visitation activities should be identified as allowable fundable activities.

Response: Grants under section 469B of the Act are limited by the terms of the statute to States. We do not consider access and visitation activities to be allowable child support activities and therefore, expenditures related to access and visitation are not eligible for IV–D funding under § 309.145.

Section 309.150—What Start-Up Costs Are Allowable for Tribal IV–D Programs Carried Out Under § 309.65(b) of This Part?

1. *Comment:* Seven Tribal commenters said that a ceiling should not be placed on start-up expenses and that in some instances the limit will be inadequate. One commenter suggested that exceptions to this limit be allowed if a Tribe can prove reasonable need.

Response: Based on the experiences of currently operating Tribal IV–D programs, we continue to believe that a Tribe or Tribal organization that receives start-up funding can generally be expected to be ready to operate a full Tribal IV–D program within two years and that the Federal share of start-up

costs should generally not exceed $500,000. However, to accommodate extraordinary and limited circumstances we have provided, at § 309.16(c), an opportunity for Tribes and Tribal organizations to request additional time and/or funding for start-up Tribal IV–D programs.

2. *Comment:* Three Tribal commenters suggested that the $500,000 limit should be exclusive of indirect costs.

Response: We have determined that the $500,000 limit for start-up funding is not exclusive of indirect costs. Section 309.150(d) provides that Federal funds are available for reasonable, necessary, and allocable costs with a direct correlation to the initial development of a Tribal IV–D program, consistent with the cost principles in OMB Circular A–87, and approved by the Secretary. As stated earlier in the preamble, if a Tribe or Tribal organization's budget for start-up funding includes a request for indirect costs, a mechanism parallel to that described at § 309.15(a)(3) must be used. Applicants for start-up funding should submit such estimates of indirect costs as either a product of documentation showing the dollar amount of indirect costs specifically allocable to the IV–D program or as a product of their current negotiated indirect cost rate. The methodology used to arrive at these amounts must be included with the application.

3. *Comment:* One commenter asked if ''start-up'' monies are an ''add-on'' to the amount a Tribal IV–D program will receive in direct funding or if they are stand-alone funds for the first two years.

Response: Sections 309.16, 309.65(b) and 309.145 address funding available for initial Tribal IV–D program development. Tribes that are operating comprehensive child support enforcement programs under § 309.65(a) have moved beyond the initial start-up stage and are not eligible for start-up funds. The fact that a Tribe may have received start-up funding under § 309.65(b) has no bearing on any subsequent application for funding under § 309.65(a) for the operation of a comprehensive IV–D program. Thus, start-up funds are stand-alone funds.

4. *Comment:* One commenter suggested that the requirement for a match should be waived during the start-up phase.

Response: The final regulation does not require a non-Federal share for Tribal IV–D start-up grants under §§ 309.16 and 309.65(b). These grants are for the initial development of Tribal IV–D programs. Because the purpose of the start-up grants is to assist Tribes in the development of programs that will eventually satisfy the requirements of § 309.65(a), we have determined that requiring a non-Federal share would not be productive.

Subpart E—Accountability and Monitoring

Section 309.155—What Uses of Tribal IV–D Program Funds Are Not Allowable?

1. *Comment:* Three Tribal commenters said that Tribes should be allowed to use IV–D funds to build offices for their programs where none are available. One of those commenters said a certain percentage should be allowed for major renovation.

Response: Grant funds can be used for construction and major renovations only if Congress specifically authorizes such use. The child support statute does not provide for this use.

Although we don't believe it is necessary to include the definition of construction in the regulation we thought it may be useful to provide the definition here. It has been our experience that current grantees sometimes include unallowable construction costs in budget requests. The following definitions should be helpful.

Construction means the construction of new buildings or the modernization of, or completion of shell space in existing buildings (including the installation of fixed equipment, but excluding the cost of land acquisition and off-site improvements). A trailer or modular unit is considered construction or real property when the unit and its installation are designed or planned to be installed permanently at a given location so as to seem fixed to the land as a permanent structure or appurtenance thereto.

Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

2. *Comment:* One Tribal commenter said that the Tribes need financial supplements for the cost of jailing noncustodial parents.

Response: If jail is the penalty for violations of Tribal law, associated expenses are considered general Tribal expenses for which Federal IV–D funding is not available. Establishment and operation of penalties for violations of Tribal law is solely the responsibility of Tribal governments. These are governmental costs incurred as part of administering a Tribal government and are not appropriately borne by the Federal IV–D funds.

3. *Comment:* One commenter said that is it critical that Tribes are able to cover legal counsel for indigent defendants and guardian ad litem costs with IV–D program funding.

Response: To the extent that parties to IV–D cases incur legal costs, such costs are personal and not reasonable, necessary, or allocable to the IV–D program itself. Similarly, costs associated with *guardian ad litem* are not reasonable, necessary or allocable IV–D program costs, but are costs appropriately absorbed by the Tribal government or the individuals involved.

Subpart F—Statistical and Narrative Reporting Requirements

Section 309.170—What Statistical and Narrative Reporting Requirements Apply to Tribal IV–D Programs?

1. *Comment:* Two Tribal commenters pointed out that statistical and narrative reporting is not required by statute.

Response: Although statistical and narrative reporting is not expressly mandated in section 455(f) of the Act, we have determined that the requirements in § 309.170 are essential to ensuring that Tribes and Tribal organizations operate IV–D programs that meet the mandated program objectives specified in the statute, *i.e.,* establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents. Efforts were made to minimize the reporting requirements to those considered critical for program tracking, evaluation and monitoring.

List of Subjects

45 CFR Part 286

Administrative practice and procedure, Day Care, Employment, Grant programs—social programs, Indian Tribes, Loan programs—social programs, Manpower training programs, Penalties, Public Assistance programs, Reporting and recordkeeping requirements, Vocational education.

45 CFR Part 302

Child Support, grant program—social programs. Reporting and recordkeeping requirements.

45 CFR Part 309

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

45 CFR Part 310

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

(Catalog of Federal Domestic Assistance Programs No: 93.558 TANF Programs—Tribal Family Assistance Grants; 93.563 Child Support Enforcement Program)

Dated: August 29, 2003.

Wade F. Horn,

Assistant Secretary for Children and Families.

Approved December 19, 2003.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

■ For the reasons discussed in the preamble, title 45 chapters II and III of the Code of Federal Regulations are amended as follows:

PART 286—TRIBAL TANF PROVISIONS

■ 1. The authority citation for part 286 continues to read as follows:

Authority: 42 U.S.C. 612.

■ 2. In § 286.155, paragraph (b)(1) is revised to read as follows:

§ 286.155 May a Tribe condition eligibility for Tribal TANF assistance on assignment of child support to the Tribe?

* * * * *

(b) * * *

(1) Procedures for ensuring that assigned child support collections in excess of the amount of Tribal TANF assistance received by the family will not be retained by the Tribe; and

* * * * *

PART 302—STATE PLAN REQUIREMENTS

■ 3. The authority citation for part 302 continues to read as follows:

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

■ 4. The heading and paragraph (a) of § 302.36 are revised to read as follows:

§ 302.36 Provision of services in interstate and intergovernmental IV–D cases.

(a) The State plan shall provide that:

(1) The State will extend the full range of services available under its IV–D plan to any other State in accordance with the requirements set forth in § 303.7 of this chapter; and

(2) The State will extend the full range of services available under its IV–D plan to all Tribal IV–D programs, including promptly opening a case where appropriate.

* * * * *

■ 5. A new part 309 is added:

PART 309—TRIBAL CHILD SUPPORT ENFORCEMENT (IV–D) PROGRAM

Subpart A—Tribal IV–D Program: General Provisions

Subpart B—Tribal IV–D Program Application Procedures

Subpart C—Tribal IV–D Plan Requirements

Subpart D—Tribal IV–D Program Funding

Subpart E—Accountability and Monitoring

Subpart F—Statistical and Narrative Reporting Requirements

Authority: 42 U.S.C. 655(f), 1302.

Subpart A—Tribal IV–D Program: General Provisions

§ 309.01 What does this part cover?

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

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

§ 309.05 What definitions apply to this part?

The following definitions apply to this part:

IV–D services are the services that are authorized or required for the establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents under title IV–D of the Act, this rule, the Tribal IV–D plan and program instructions issued by the Department.

ACF means the Administration for Children and Families, U.S. 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 Office of Child Support Enforcement.

Child support order and *child support obligation* mean a judgment, decree, or order, whether temporary, final or subject to modification, issued by a court of competent jurisdiction, tribunal or an administrative agency 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 U.S. Department of Health and Human Services.

Income means any periodic form of payment due to an individual regardless of source, except that a Tribe may expressly decide to exclude per capita, trust, or Individual Indian Money (IIM) payments.

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.

Non-cash support is support provided to a family in the nature of goods and/or services, rather than in cash, but which, nonetheless, has a certain and specific dollar value.

Notice of Disapproval refers to the written notification from the Department that the Tribal IV–D application, IV–D plan, or plan amendment fails to meet the requirements for approval under applicable Federal statutes and regulations.

OCSE refers to the Federal Office of Child Support Enforcement.

Program development plan means a document detailing the specific steps a Tribe or Tribal organization will take to come into compliance with the requirements of § 309.65(a), and the timeframe associated with each step.

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 or designee.

TANF means the Temporary Assistance for Needy Families program as found at section 401 *et seq.* of the Social Security Act (42 U.S.C. 601 *et seq.*).

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

Tribal custom means unwritten law having the force and effect of law within a particular Tribe.

Tribal organization means any legally established organization of Indian Tribes which is sanctioned or chartered as a single governing body representing two or more Indian Tribes.

§ 309.10 Who is eligible to apply for and receive Federal funding to operate a Tribal IV–D program?

The following Tribes or Tribal organizations are eligible to apply to receive Federal funding to operate a Tribal IV–D program meeting the requirements of this part:

(a) An Indian Tribe 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 that has been designated by two or more Indian Tribes to operate a Tribal IV–D program on their behalf, with a total of at least 100 children under the age of majority as defined by Tribal laws or codes, in the population of the Tribes subject to the jurisdiction of the Tribal court (or courts) or administrative agency (or agencies).

(c) A Tribe or Tribal organization that can demonstrate to the satisfaction of the Secretary the capacity to operate a child support enforcement program and provide justification for operating a program with less than the minimum number of children may be granted a waiver of paragraph (a) or (b) of this section as appropriate.

(1) A Tribe or Tribal organization's request for waiver of paragraph (a) or (b) of this section must include documentation sufficient to demonstrate that meeting the requirement is not necessary. Such documentation must state:

(i) That the Tribe or Tribal organization otherwise complies with the requirements established in subpart C of these regulations;

(ii) That the Tribe or Tribal organization has the administrative capacity to support operation of a child support program under the requirements of this part;

(iii) That the Tribal IV–D program will be cost effective; and

(iv) The number of children under the jurisdiction of the Tribe or Tribal organization.

(2) A Tribe or Tribal organization's request for a waiver may be approved if the Tribe or Tribal organization demonstrates to the satisfaction of the Secretary that it can provide the services required under 45 CFR part 309 in a cost effective manner even though the population subject to Tribal jurisdiction includes fewer than 100 children.

Subpart B—Tribal IV–D Program Application Procedures

§ 309.15 What is a Tribal IV–D program application?

(a) *Initial application.* The initial application for funding under § 309.65(a) may be submitted at any time. The initial application must include:

(1) Standard Form (SF) 424, ''Application for Federal Assistance;''

(2) SF 424A, ''Budget Information—Non-Construction Programs,'' including the following information:

(i) A quarter-by-quarter estimate of expenditures for the funding period; and

(ii) Notification of whether the Tribe or Tribal organization is requesting funds for indirect costs and if so, an election of a method under paragraph (a)(3) of this section to calculate estimated indirect costs; and

(iii) A narrative justification for each cost category on the form; and either:

(iv) A statement that the Tribe or Tribal organization has or will have the non-Federal share of program expenditures available, as required; or

(v) A request for a waiver of the non-Federal share in accordance with § 309.130(e), if appropriate.

(3) If the Tribe or Tribal organization requests funding for indirect costs, estimated indirect costs may be submitted either by:

(i) Including documentation of the dollar amount of indirect costs allocable to the IV–D program; or

(ii) Submission of its current indirect cost rate negotiated with the Department of Interior and the estimated amount of indirect costs calculated using the negotiated cost rate.

(4) The Tribal IV–D plan. The initial application must include a comprehensive statement identifying how the Tribe or Tribal organization is meeting the requirements of subpart C of this part and that describes the capacity of the Tribe or Tribal organization to operate a IV–D 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 noncustodial parents.

(b) *Additional application requirement for Tribal organizations.* The initial and subsequent annual budget submissions of a Tribal organization must document that each participating Tribe authorizes the Tribal organization to operate a Tribal IV–D program on its behalf.

(c) *Annual budget submission.* Following the initial funding period, the Tribe or Tribal organization operating a IV–D program must submit annually Form SF 424A, including all the necessary accompanying information and documentation described in paragraphs (a)(2) and (a)(3) of this section.

(d) *Plan Amendments.* Plan amendments must be submitted in accordance with the requirements of § 309.35(e).

§ 309.16 What rules apply to start-up funding?

(a) The application for start-up funding under § 309.65(b) must include:

(1) Standard Form (SF) 424, ''Application for Federal Assistance';

(2) SF 424A, ''Budget Information—Non-Construction Programs,'' including the following information:

(i) A quarter-by-quarter estimate of expenditures for the start-up period;

(ii) Notification of whether the Tribe or Tribal organization is requesting funds for indirect costs and, if so, an election of a method to calculate estimated indirect costs under paragraph (a)(3) of this section; and

(iii) A narrative justification for each cost category on the form;

(3) If the Tribe or Tribal organization requests funding for indirect costs as part of its application for Federal start-up funds, estimated indirect costs may be submitted either by:

(i) Including documentation of the dollar amount of indirect costs allocable to the IV–D program including the methodology used to arrive at these amounts; or

(ii) Submission of its current indirect cost rate negotiated with the Department of Interior and the amount of estimated indirect costs using that rate.

(iii) The amount of indirect costs must be included within the limit of $500,000 specified in paragraph (c) of this section.

(4) With respect to each requirement in § 309.65(a) that the Tribe or Tribal organization currently meets, a description of how the Tribe or Tribal organization satisfies the requirement; and

(5) With respect to each requirement in § 309.65(a) that the Tribe or Tribal organization does not currently meet, a program development plan which demonstrates to the satisfaction of the Secretary that the Tribe or Tribal organization has the capacity and will have in place a Tribal IV–D program that will meet the requirements outlined in § 309.65(a), within a reasonable, specific period of time, not to exceed two years. The Secretary must approve the program development plan. Disapproval of a program development plan is not subject to administrative appeal.

(b) The process for approval and disapproval of applications for start-up funding under this section is found in §§ 309.35, 309.40, 309.45, and 309.50. A disapproval of an application for start-up funding is not subject to administrative appeal.

(c) Federal funding for start-up costs is limited to $500,000, which must be obligated and liquidated within two years after the first day of the quarter after the start-up application was approved. In extraordinary circumstances, the Secretary will consider a request to extend the period of time during which start-up funding will be available and/or to increase the amount of start-up funding provided. Denial of a request to extend the time during which start-up funding will be available or for an increase in the amount of start-up funding is not subject to administrative appeal.

(1) The Secretary may grant a no-cost extension of time if the Tribe or Tribal organization demonstrates to the satisfaction of the Secretary that the extension will result in satisfaction of each requirement established in § 309.65(a) by the grantee and completion of the program development plan required under § 309.65(b)(2).

(2) The Secretary may grant an increase in the amount of Federal start-up funding provided beyond the limit specified at paragraph (c) of this section and § 309.150 if—

(i) The Tribe or Tribal organization demonstrates to the satisfaction of the Secretary that a specific amount of additional funds for a specific purpose or purposes will result in satisfaction of the requirements specified in § 309.65(a) which the Tribe or Tribal organization otherwise will be unable to meet; and

(ii) The Tribe or Tribal organization demonstrates to the satisfaction of the Secretary that it has satisfied every applicable reporting requirement.

(d) If a Tribe or Tribal organization receives start-up funding based on submission and approval of a Tribal IV–D application which includes a program development plan under § 309.65(b), a progress report that describes accomplishments to date in carrying out the plan must be submitted with the next annual refunding request.

§ 309.20 Who submits a Tribal IV–D program application and where?

(a) The authorized representative of the Tribe or Tribal organization must sign and submit the Tribal IV–D program application.

(b) Applications must be submitted to 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.

§ 309.35 What are the procedures for review of a Tribal IV–D program application, plan or plan amendment?

(a) The Secretary will promptly review a Tribal IV–D program application, plan or plan amendment to determine whether it conforms to the requirements of the Act and these regulations. Not later than the 90th day following the date on which the Tribal IV–D application, plan or plan amendment is received by the Secretary, action will be taken unless additional information is needed. If additional information is needed from the Tribe or Tribal organization, the Secretary will promptly notify the Tribe or Tribal organization.

(b) The Secretary will take action on the application, plan or plan amendment within 45 days of receipt of any additional information requested from the Tribe or Tribal organization.

(c) Determinations as to whether the Tribal IV–D plan, including plan amendments, originally meets or continues to meet the requirements for approval are based on applicable Federal statutes, regulations and instructions applicable to Tribal IV–D programs. Guidance may be furnished to

assist in the interpretation of the regulations.

(d) After approval of the original Tribal IV–D program application, all relevant changes required by new Federal statutes, rules, regulations, and Department interpretations are required to be submitted so that the Secretary may determine whether the plan continues to meet Federal requirements and policies.

(e) If a Tribe or Tribal organization intends to make any substantial or material change in any aspect of the Tribal IV–D program, a Tribal IV–D plan amendment must be submitted at the earliest reasonable time for approval under this section. The plan amendment must describe and, as appropriate, document the changes the Tribe or Tribal organization proposes to make to its IV–D plan, consistent with the requirements of applicable statutes and regulations.

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

§ 309.40 What is the basis for disapproval of a Tribal IV–D program application, plan or plan amendment?

(a) A IV–D application, plan, or plan amendment will be disapproved if:

(1) The Secretary determines that the application, plan, or plan amendment fails to meet or no longer meets one or more of the requirements set forth in this part or any other applicable Federal regulations, statutes and implementing instructions;

(2) The Secretary determines that required Tribal laws, code, regulations, and procedures are not in effect; and/or

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

(b)(1) Except as provided in paragraph (b)(2) of this section and § 309.45(h) of this part, a written Notice of Disapproval of the Tribal IV–D program application, plan, or plan amendment, as applicable, will be sent to the Tribe or Tribal organization upon the determination that any of the conditions of paragraph (a) of this section apply. The Notice of Disapproval will include the specific reason(s) for disapproval.

(2) Where the Secretary believes an approved Tribal IV–D plan should be disapproved, he will notify the Tribe of his intent to disapprove the plan.

(c) If the application, plan or plan amendment is incomplete and fails to provide enough information to make a determination to approve or disapprove, the Secretary will request the necessary information.

§ 309.45 When and how may a Tribe or Tribal organization request reconsideration of a disapproval action?

(a) Except as specified under paragraphs (g) and (h) of this section, a Tribe or Tribal organization may request reconsideration of the disapproval of a Tribal IV–D application, plan or plan amendment by filing a written Request for Reconsideration to the Secretary 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, plan 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, plan or plan amendment conforms to the requirements for approval specified in applicable Federal statutes, regulations and office issuances; and

(3) Whether or not the Tribe or Tribal organization requests a meeting or conference call with the Secretary.

(c) After receiving a Request for Reconsideration that includes a request for a conference call or meeting, OCSE will determine whether to hold a conference call or a meeting with the Tribe or Tribal organization to discuss the reasons for disapproval of the application, plan, or plan amendment as well as the Tribe or Tribal organization's response. The Secretary will notify the Tribe or Tribal organization of the date and time of the conference call or meeting.

(d) A conference call or meeting under § 309.45(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 both parties agree in writing to another time.

(e) The Secretary will make a written determination affirming, modifying, or reversing disapproval of a Tribal IV–D program application, plan, or plan amendment within 60 days after the conference call or meeting is held, or within 60 days after the request for reconsideration that does not include a request for a meeting. This determination shall be the final decision of the Secretary.

(f) The Secretary's determination that a Tribal IV–D application, new plan or plan amendment is not approvable remains in effect pending the reconsideration under this part.

(g) Disapproval of start-up funding, a request for waiver of the 100-child rule, and a request for waiver of the non-Federal Tribal share is not subject to administrative appeal.

(h) Where the Secretary believes an approved Tribal IV–D plan should be disapproved, he will notify the Tribe of his intent to disapprove the plan. If the Tribe waives its right to reconsideration under this section, the Tribe may request a pre-decision hearing with 60 days of the date of the Notice of Intent to Disapprove the plan. The hearing will utilize the procedures at 45 CFR part 213.

§ 309.50 What are the consequences of disapproval of a Tribal IV–D program application, plan or plan amendment?

(a) If an application or plan submitted pursuant to § 309.15 is disapproved, the Tribe or Tribal organization will receive no funding under § 309.65(a) or this part until a new application or plan is submitted and approved.

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

(c) A Tribe or Tribal organization whose application, plan or plan amendment has been disapproved may reapply at any time.

Subpart C—Tribal IV–D Plan Requirements

§ 309.55 What does this subpart cover?

This subpart defines the Tribal IV–D plan provisions that are required to 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 and these regulations, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

§ 309.60 Who is responsible for administration of the Tribal IV–D program under the Tribal IV–D plan?

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

(b) The Tribe or Tribal organization is responsible and accountable for the operation of the Tribal IV–D program. Except where otherwise provided in this part, the Tribal IV–D agency need not perform all the functions of the Tribal IV–D 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 IV–D program to another Tribe, a State, and/or another agency or entity 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 IV–D plan by such Tribe, State, agency or entity. The Tribe or Tribal organization is responsible for submitting copies and appending to the Tribal IV–D plan any agreements, contracts, or Tribal resolutions between the Tribal IV–D agency and a Tribe, State, other agency or entity.

§ 309.65 What must a Tribe or Tribal organization include in a Tribal IV–D plan in order to demonstrate capacity to operate a Tribal IV–D program?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal IV–D program meeting the objectives of title IV–D of the Act and these regulations by submission of a Tribal IV–D plan which contains the required elements listed in paragraphs (a)(1) through (14) of this section:

(1) A description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support purposes as specified under § 309.70;

(2) Evidence that the Tribe or Tribal organization has in place procedures for accepting all applications for IV–D services and promptly providing IV–D services required by law and regulation;

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

(4) Administrative and management procedures as specified under § 309.75;

(5) Safeguarding procedures as specified under § 309.80;

(6) Assurance that the Tribe or Tribal organization will maintain records as specified under § 309.85;

(7) Copies of all applicable Tribal laws and regulations as specified under § 309.90;

(8) Procedures for the location of noncustodial parents as specified under § 309.95;

(9) Procedures for the establishment of paternity as specified under § 309.100;

(10) Guidelines for the establishment and modification of child support obligations as specified under § 309.105;

(11) Procedures for income withholding as specified under § 309.110;

(12) Procedures for the distribution of child support collections as specified under § 309.115;

(13) Procedures for intergovernmental case processing as specified under § 309.120; and

(14) Tribally-determined performance targets for paternity establishment, support order establishment, amount of current support to be collected, amount of past due support to be collected, and any other performance measures a Tribe or Tribal organization may want to submit.

(b) If a Tribe or Tribal organization currently is unable to satisfy any or all of the requirements specified in paragraph (a) of this section:

(1) It may demonstrate capacity to operate a Tribal IV–D program meeting the objectives of title IV–D of the Act and these regulations by submission of an application for start-up funding as required by § 309.16(a) of this part.

(2) The Secretary may cease start-up funding to a Tribe or Tribal organization if that Tribe or Tribal organization fails to satisfy one or more provisions or milestones described in its program development plan within the timeframe specified in such plan.

§ 309.70 What provisions governing jurisdiction must a Tribe or Tribal organization include in a Tribal IV–D plan?

A Tribe or Tribal organization must include in its Tribal IV–D plan a description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support enforcement purposes and certify that there are at least 100 children under the age of majority in the population subject to the jurisdiction of the Tribe in accordance with § 309.10 of this part and subject to § 309.10(c).

§ 309.75 What administrative and management procedures must a Tribe or Tribal organization include in a Tribal IV–D plan?

A Tribe or Tribal organization must include in its Tribal IV–D plan the administrative and management provisions contained in this section:

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

(b) Evidence that all Federal funds and amounts collected by the Tribal IV–D agency are protected against loss. Tribes and Tribal organizations may comply with this paragraph by submitting documentation that establishes that every person who receives, disburses, handles, or has access to or control over funds collected under the Tribal IV–D program is covered by a bond or insurance sufficient to cover all losses.

(c) Procedures under which notices of support collected, itemized by month of collection, are provided to families receiving services under the Tribal IV–D program at least once a year. In addition, a notice must be provided at any time to either the custodial or noncustodial parent upon request.

(d) A 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, Pub. L. 98–502, as amended) and OMB Circular A–133.

(e) If the Tribe or Tribal organization intends to charge an application fee or recover costs in excess of the fee, the Tribal IV–D plan must provide that:

(1) The application fee must be uniformly applied by the Tribe or Tribal organization and must be:

(i) A flat amount not to exceed $25.00; or

(ii) An amount based on a fee schedule not to exceed $25.00.

(2) The Tribal IV–D agency may not charge an application fee in an intergovernmental case referred to the Tribal IV–D agency for services under § 309.120.

(3) No application fee may be charged to an individual receiving services under titles IV–A, IV–E foster care maintenance assistance, or XIX (Medicaid) of the Act.

(4) The Tribal IV–D agency must exclude from its quarterly expenditure claims an amount equal to all fees which are collected and costs recovered during the quarter.

§ 309.80 What safeguarding procedures must a Tribe or Tribal organization include in a Tribal IV–D plan?

A Tribe or Tribal organization must include in its Tribal IV–D plan safeguarding provisions in accordance with this section:

(a) Procedures under which the use or disclosure of personal information received by or maintained by the Tribal IV–D agency is limited to purposes directly connected with the administration of the Tribal IV–D program, or titles IV–A and XIX with the administration of other programs or purposes prescribed by the Secretary in regulations.

(b) Procedures for safeguards that are applicable to all confidential information handled by the Tribal IV–D agency and that are designed to protect the privacy rights of the parties, including:

(1) Safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, or to establish, modify or enforce support;

(2) Prohibitions against the release of information on the whereabouts of one party or the child to another party against whom a protective order with respect to the former party or the child has been entered;

(3) Prohibitions against the release of information on the whereabouts of one party or the child to another person if the Tribe has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or child; and

(4) Procedures in accordance with any specific safeguarding regulations applicable to Tribal IV–D programs promulgated by the Secretary.

(c) Procedures under which sanctions must be imposed for the unauthorized use or disclosure of information covered by paragraphs (a) and (b) of this section.

§ 309.85 What records must a Tribe or Tribal organization agree to maintain in a Tribal IV–D plan?

A Tribal IV–D plan must provide that:

(a) The Tribal IV–D agency will maintain records necessary for the proper and efficient operation of the program, including records regarding:

(1) Applications for child support services;

(2) Efforts to locate noncustodial parents;

(3) Actions taken to establish paternity and obtain and enforce support;

(4) Amounts owed, arrearages, amounts and sources of support collections, and the distribution of such collections;

(5) IV–D program expenditures;

(6) Any fees charged and collected, if applicable; and

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

(b) The Tribal IV–D agency will comply with the retention and access requirements at 45 CFR 74.53, including the requirement that records be retained for at least three years.

§ 309.90 What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal IV–D plan?

(a) A Tribe or Tribal organization must include in its Tribal IV–D plan Tribal law, code, regulations, and/or other evidence that provides for:

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

(2) Establishment and modification of child support obligations;

(3) Enforcement of child support obligations, including requirements that Tribal employers comply with income withholding as required under § 309.110; and

(4) Location of custodial and noncustodial parents.

(b) In the absence of written laws and regulations, a Tribe or Tribal organization may provide in its plan detailed descriptions of any Tribal custom or common law with the force and effect of law which enables the Tribe or Tribal organization to satisfy the requirements in paragraph (a) of this section.

§ 309.95 What procedures governing the location of custodial and noncustodial parents must a Tribe or Tribal organization include in a Tribal IV–D plan?

A Tribe or Tribal organization must include in its Tribal IV–D plan the provisions governing the location of custodial and noncustodial parents and their assets set forth in this section.

(a) The Tribal IV–D agency must attempt to locate custodial or noncustodial parents or sources of income and/or assets when location is required to take necessary action in a case; and

(b) The Tribal IV–D agency must use all sources of information and records reasonably available to the Tribe or Tribal organization to locate custodial or noncustodial parents and their sources of income and assets.

§ 309.100 What procedures for the establishment of paternity must a Tribe or Tribal organization include in a Tribal IV–D plan?

(a) A Tribe or Tribal organization must include in its Tribal IV–D plan the procedures for the establishment of paternity included in this section. The Tribe must include in its Tribal IV–D plan procedures under which the Tribal IV–D agency will:

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

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

(3) In a contested paternity case (unless otherwise barred by Tribal law) require the child and all other parties to submit to genetic tests upon the request of any such party, if the request is supported by a sworn statement by the party—

(i) Alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between parties; or

(ii) Denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

(b) The Tribal IV–D 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 IV–D 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 IV–D agency must identify and use accredited laboratories which perform, at reasonable cost, legally and medically-acceptable genetic tests which intend to identify the father or exclude the alleged father.

(d) Establishment of paternity under this section has no effect on Tribal enrollment or membership.

§ 309.105 What procedures governing child support guidelines must a Tribe or Tribal organization include in a Tribal IV–D plan?

(a) A Tribal IV–D plan must: (1) Establish one set of child support guidelines by law or action of the tribunal for setting and modifying child support obligation amounts;

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

(3) Indicate whether non-cash payments will be permitted to satisfy support obligations, and if so;

(i) Require that Tribal support orders allowing non-cash payments also state the specific dollar amount of the support obligation; and

(ii) Describe the type(s) of non-cash support that will be permitted to satisfy the underlying specific dollar amount of the support order; and

(iii) Provide that non-cash payments will not be permitted to satisfy assigned support obligations;

(4) Indicate that child support guidelines will be reviewed and revised, if appropriate, at least once every four years;

(5) Provide that there shall be a rebuttable presumption, in any proceeding for the award of child support, that the amount of the award that would result from the application of the guidelines established consistent with this section is the correct amount of child support to be awarded; and

(6) Provide for the application of the guidelines unless there is a written finding or a specific finding on the record of the tribunal that the application of the guidelines would be unjust or inappropriate in a particular case in accordance with criteria established by the Tribe or Tribal

organization. Such criteria must take into consideration the needs 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.

(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.

§ 309.110 What procedures governing income withholding must a Tribe or Tribal organization include in a Tribal IV–D plan?

A Tribe or Tribal organization must include in its Tribal IV–D plan copies of Tribal laws providing for income withholding in accordance with this section.

(a) In the case of each noncustodial parent against whom a support order is or has been issued or modified under the Tribal IV–D plan, or is being enforced under such plan, so much of his or her income, as defined in § 309.05, must be withheld as is necessary to comply with the order.

(b) 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.

(c) The total amount to be withheld under paragraphs (a) and (b) 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)), but may be set at a lower amount.

(d) Income withholding must be carried out in compliance with the procedural due process requirements established by the Tribe or Tribal organization.

(e) The Tribal IV–D agency will promptly refund amounts which have been improperly withheld.

(f) The Tribal IV–D agency will promptly terminate income withholding in cases where there is no longer a current order for support and all arrearages have been satisfied.

(g) If the employer fails to withhold income in accordance with the provision of the income withholding order, the employer will be liable for the accumulated amount the employer should have withheld from the noncustodial parent's income.

(h) Income shall not be subject to withholding in any case where:

(1) Either the custodial or noncustodial parent demonstrates, and the tribunal enters a finding, that there is good cause not to require income withholding; or

(2) A signed written agreement is reached between the noncustodial and custodial parent, which provides for an alternative arrangement, and is reviewed and entered into the record by the tribunal.

(i) Where immediate income withholding is not in place, the income of the noncustodial parent shall become subject to withholding, at the earliest, on the date on which the payments which the noncustodial parent has failed to make under a Tribal support order are at least equal to the support payable for one month.

(j) The only basis for contesting a withholding 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.

(k) 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.

(l) To initiate income withholding, the Tribal IV–D agency must send the noncustodial parent's employer a notice using the standard Federal income withholding form.

(m) The Tribal IV–D agency must allocate withheld amounts across multiple withholding orders to ensure that in no case shall allocation result in a withholding for one of the support obligations not being implemented.

(n) The Tribal IV–D agency is responsible for receiving and processing income withholding orders from States, Tribes, and other entities, and ensuring orders are properly and promptly served on employers within the Tribe's jurisdiction.

§ 309.115 What procedures governing the distribution of child support must a Tribe or Tribal organization include in a Tribal IV–D plan?

A Tribe or Tribal organization must specify in its Tribal IV–D plan procedures for the distribution of child support collections in each Tribal IV–D case, in accordance with this section.

(a) *General Rule:* The Tribal IV–D agency must, in a timely manner:

(1) Apply collections first to satisfy current support obligations, except as provided in paragraph (e) of this section; and

(2) Pay all support collections to the family unless the family is currently receiving or formerly received assistance from the Tribal TANF program and there is an assignment of support rights to the Tribe's TANF agency, or the Tribal IV–D agency has received a request for assistance in collecting support on behalf of the family from a State or Tribal IV–D agency.

(b) *Current Receipt of Tribal TANF:* If the family is currently receiving assistance from the Tribal TANF program and has assigned support rights to the Tribe and:

(1) There is no request for assistance in collecting support on behalf of the family from a State or Tribal IV–D agency under § 309.120 of this part, the Tribal IV–D agency may retain collections on behalf of the family, not to exceed the total amount of Tribal TANF paid to the family. Any remaining collections must be paid to the family.

(2) There is a request for assistance in collecting support on behalf of the family from a State or Tribal IV–D agency under § 9.120 of this part, the Tribal IV–D agency may retain collections, not to exceed the total amount of Tribal TANF paid to the family. Except as provided in paragraph (f) of this section, the Tribal IV–D agency must send any remaining collections, as appropriate, to the requesting State IV–D agency for distribution under section 457 of the Act and 45 CFR 302.51 or 302.52, or to the requesting Tribal IV–D agency for distribution in accordance with this section.

(c) *Former Receipt of Tribal TANF:* If the family formerly received assistance from the Tribal TANF program and there is an assignment of support rights to the Tribe and:

(1) There is no request for assistance in collecting support from a State or Tribal IV–D agency under § 309.120 of this part, the Tribal IV–D agency must pay current support and any arrearages owed to the family to the family and may then retain any excess collections, not to exceed the total amount of Tribal TANF paid to the family. Any remaining collections must be paid to the family.

(2) There is a request for assistance in collecting support from a State or Tribal IV–D agency under § 309.120 of this part, the Tribal IV–D agency must send all support collected, as appropriate, to the requesting State IV–D agency for distribution under section 457 of the Act or 45 CFR 302.51 or 303.52, or to the requesting Tribal IV–D agency for distribution under this section, except as provided in paragraph (f) of this section.

(d) *Requests for Assistance from State or Tribal IV–D Agency:* If there is no assignment of support rights to the Tribe as a condition of receipt of Tribal TANF and the Tribal IV–D agency has received a request for assistance in collecting support on behalf of the family from a State or another Tribal IV–D agency under § 309.120 of this part, the Tribal IV–D agency must send all support collected to either the State IV–D agency for distribution in accordance with section 457 of the Act and 45 CFR 302.51 and 302.52, or to the Tribal IV–D agency for distribution under this section, as appropriate, except as provided in paragraph (f) of this section.

(e) *Federal Income Tax Refund Offset Collections:* Any collections received based on Federal income tax refund offset under section 464 of the Act and distributed by the Tribal IV–D agency must be applied to satisfy child support arrearages.

(f) *Option to Contact Requesting Agency for Appropriate Distribution:* Rather than send collections to a State or another Tribal IV–D agency for distribution as required under § 309.115 (b)(2), (c)(2) and (d), a Tribal IV–D agency may contact the requesting State IV–D agency to determine appropriate distribution under section 457 of the Act, or the other Tribal IV–D agency to determine appropriate distribution under this section, and distribute collections as directed by the other agency.

§ 309.120 What intergovernmental procedures must a Tribe or Tribal organization include in a Tribal IV–D plan?

A Tribe or Tribal organization must specify in its Tribal IV–D plan:

(a) That the Tribal IV–D agency will extend the full range of services available under its IV–D plan to respond to all requests from, and cooperate with, State and other Tribal IV–D agencies; and

(b) 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 the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738B.

Subpart D—Tribal IV–D Program Funding

§ 309.125 On what basis is Federal funding of Tribal IV–D programs determined?

Federal funding of Tribal IV–D programs is based on information contained in the Tribal IV–D application. The application must include a proposed budget and a description of the nature and scope of the Tribal IV–D program and must give assurance that the program will be administered in conformity with applicable requirements of title IV–D of the Act, regulations contained in this part, and other official issuances of the Department that specifically state applicability to Tribal IV–D programs.

§ 309.130 How will Tribal IV–D programs be funded and what forms are required?

(a) *General mechanism.* (1) Tribes and Tribal organizations with approved Tribal plans under title IV–D will receive Federal grant funds in an amount equal to the percentage specified in paragraph (c) of this section of the total amount of approved and allowable expenditures under the plan for the administration of the Tribal child support enforcement program.

(2) Tribes and Tribal organizations eligible for grants of less than $1 million per 12-month funding period will receive a single annual award. Tribes and Tribal organizations eligible for grants of $1 million or more per 12-month funding period will receive four equal quarterly awards.

(b) *Financial Form Submittal Requirements.* Tribes and Tribal organizations receiving Federal funding under this part are required to submit the following financial forms, and such other forms as the Secretary may designate, to OCSE:

(1) Standard Form (SF) 424, ''Application for Federal Assistance,'' to be submitted with the initial grant application for funding under § 309.65(a) and (b) (60 days prior to the start of the funding period);

(2) SF 424A, ''Budget Information—Non-Construction Programs,'' to be submitted annually, no later than August 1 (60 days prior to the start of the funding period) in accordance with § 309.15(a)(2) of this part. With each submission, the following information must be included:

(i) A quarter-by-quarter estimate of expenditures for the funding period; and

(ii) Notification of whether the Tribe or Tribal organization is requesting funds for indirect costs and an election of a method to calculate estimated indirect costs; and

(iii) A narrative justification for each cost category on the form; and for funding under § 309.65(a) either:

(iv) A statement certifying that the Tribe or Tribal organization has or will have the non-Federal share of program expenditures available, as required, or

(v) A request for a waiver of the non-Federal share in accordance with paragraph (e) of this section;

(3) SF 269A, ''Financial Status Report (Short Form),'' to be submitted quarterly within 30 days after the end of each of the first three quarters of the funding period and within 30 days after the end of each of the first three quarters of the liquidation period. The final report for each period is due within 90 days after the end the fourth quarter of both the funding and the liquidation period; and

(4) Form OCSE–34A, ''Quarterly Report of Collections'' to be submitted within 30 days after the end of the first three quarters and 90 days after the end of the fourth quarter.

(c) *Federal share of program expenditures.* (1) During the period of start-up funding specified in § 309.16, a Tribe or Tribal organization will receive Federal grant funds equal to 100 percent of approved and allowable expenditures made during that period. Federal start-up funds are limited to a total of $500,000.

(2) During a 3-year period, beginning with the first day of the first quarter of the funding grant specified under § 309.135(a)(2), a Tribe or Tribal organization will receive Federal grant funds equal to 90 percent of the total amount of approved and allowable expenditures made during that period for the administration of the Tribal child support enforcement program.

(3) For all periods following the 3-year period specified in paragraph (c)(2) of this section, a Tribe or Tribal organization will receive Federal grant funds equal to 80 percent of the total amount of approved and allowable expenditures made for the administration of the Tribal child support enforcement program.

(d) *Non-Federal share of program expenditures.* Each Tribe or Tribal organization that operates a child support enforcement program under title IV–D and § 309.65(a), unless the Secretary has granted a waiver pursuant to § 309.130(e), must provide the non-Federal share of funding, equal to:

(1) 10 percent of approved and allowable expenditures during the 3-year period specified in paragraph (c)(2) of this section or;

(2) 20 percent of approved and allowable expenditures during the subsequent periods specified in paragraph (c)(3) of this section.

(3) The non-Federal share of program expenditures must be provided either with cash or with in-kind contributions and must meet the requirements found in 45 CFR 74.23.

(e) *Waiver of non-Federal share of program expenditures.* (1) Under certain circumstances, the Secretary may grant a temporary waiver of part or all of the non-Federal share of expenditures.

(i) If a Tribe or Tribal organization anticipates that it will be temporarily unable to contribute part or all of the non-Federal share of funding under paragraph (d) of this section, it must submit a written request that this requirement be temporarily waived. A request for a waiver of part or all of the non-Federal share must be sent to ACF, included with the submission of SF 424A, no later than 60 days prior to the start of the funding period for which the waiver is being requested, except as provided in paragraph (e)(1)(ii) of this section. An untimely or incomplete request will not be considered.

(ii) If, after the start of the funding period, an emergency situation such as a hurricane or flood occurs such that the grantee would need to request a waiver of the non-Federal costs, it may do so. The request for a waiver must be submitted in accordance with the procedures specified in paragraphs (e)(2), (3) and (4) of this section. Any waiver request other than one submitted with the initial application must be submitted as soon as the adverse effect of the emergency situation giving rise to the request is known to the grantee.

(2) A request for a waiver of part or all of the non-Federal share must include the following:

(i) A statement of the amount of the non-Federal share that the Tribe is requesting be waived;

(ii) A narrative statement describing the circumstances and justification for the waiver request;

(iii) Portions of the Tribal budget for the funding period sufficient to demonstrate that any funding shortfall is not limited to the Tribal IV–D program and that any uncommitted Tribal reserve funds are insufficient to meet the non-Federal funding requirement;

(iv) Copies of any additional financial documents in support of the request;

(v) A detailed description of the attempts made to secure the necessary funds and in-kind contributions from other sources and the results of those attempts, including copies of all relevant correspondence; and

(vi) Any other documentation or other information that the Secretary may require to make this determination.

(3) The Tribe or Tribal organization must demonstrate to the satisfaction of the Secretary that it temporarily lacks resources to provide the non-Federal share. In its request for a temporary waiver, the Tribe or Tribal organization must be able to demonstrate that it:

(i) Lacks sufficient resources to provide the required non-Federal share of costs;

(ii) Has made reasonable, but unsuccessful, efforts to obtain non-Federal share contributions; and

(iii) Has provided all required information requested by the Secretary.

(4) All statements in support of a waiver request must be supported by evidence including, but not limited to, a description of how the Tribe or Tribal organization's circumstances relate to its capacity to provide child support enforcement services. The following statements will be considered insufficient to merit a waiver under this section without documentary evidence satisfactory to the Secretary:

(i) Funds have been committed to other budget items;

(ii) A high rate of unemployment;

(iii) A generally poor economic condition;

(iv) A lack of or a decline in revenue from gaming, fishing, timber, mineral rights and other similar revenue sources;

(v) A small or declining tax base; and

(vi) Little or no economic development.

(5)(i) If approved, a temporary waiver submitted under either paragraph (e)(1)(i) or (ii) of this section will expire on the last day of the funding period for which it was approved and is subject to review at any time during the funding period and may be revoked, if changing circumstances warrant.

(ii) Unless the Tribe receives a written approval of its waiver request, the funding requirements stated in paragraph (d) of this section remain in effect.

(iii) If the request for a waiver is denied, the denial is not subject to administrative appeal.

(f) *Increase in approved budget.* (1) A Tribe or Tribal organization may request an increase in the approved amount of its current budget by submitting a revised SF 424A to ACF and explaining why it needs the additional funds. The Tribe or Tribal organization should submit this request at least 60 days before additional funds are needed, to allow the Secretary adequate time to review the estimates and issue a revised grant award, if appropriate.

(2) If the change in Tribal IV–D budget estimate results from a change in the Tribal IV–D plan, the Tribe or Tribal organization must submit a plan amendment in accordance with § 309.35(e) of this part, a revised SF 424 and a revised SF 424A with its request for additional funding. The effective date of a plan amendment may not be earlier than the first day of the fiscal quarter in which an approvable plan is submitted in accordance with § 309.35(f) of this part. The Secretary must approve the plan amendment before approving any additional funding.

(3) Any approved increase in the Tribal IV–D budget will necessarily result in a proportional increase in the non-Federal share, unless a waiver of the non-Federal share has been granted.

(g) *Obtaining Federal funds.* Tribes and Tribal organizations will obtain Federal funds on a draw down basis from the Department's Payment Management System on a letter of credit system for payment of advances of Federal funds.

(h) *Grant administration requirements.* The provisions of part 74 of this title, establishing uniform administrative requirements and cost principles, shall apply to all grants made to Tribes and Tribal organizations under this part.

§ 309.135 What requirements apply to funding, obligating and liquidating Federal title IV–D grant funds?

(a) *Funding period.* (1) *Ongoing funding.* Federal title IV–D grant funds will be awarded to Tribes and Tribal organizations for use during a 12-month period equivalent to the Federal fiscal year of October 1 through September 30.

(2) *Initial grant.* A Tribe or Tribal organization may request that its initial IV–D grant be awarded for a funding period of less than one year (but at least six months) or more than one year (but not to exceed 17 months) to enable its program funding cycle to coincide with the funding period specified in paragraph (a)(1) of this section.

(b) *Obligation period.* A Tribe or Tribal organization must obligate its Federal title IV–D grant funds no later than the last day of the funding period for which they were awarded. Any of these funds remaining unobligated after that date must be returned to the Department.

(c) *Liquidation period.* A Tribe or Tribal organization must liquidate the Federal title IV–D grant funds obligated during the obligation period specified in paragraph (b) of this section no later than the last day of the 12-month period immediately following the obligation period. Any of these funds remaining unliquidated after that date must be returned to the Department.

(d) *Funding reductions.* As required under § 309.130(b)(3), a Tribe or Tribal organization will report quarterly on Form SF 269A the amount of Federal title IV–D grant funds that have been obligated and liquidated and the amounts that remain unobligated and unliquidated at the end of each fiscal quarter during the obligation and liquidation periods. The Department

will reduce the amount of the Tribe or Tribal organization's Federal title IV–D grant funds for the funding period by any amount reported as remaining unobligated on the report following the last day of the obligation period. The Department will further reduce the amount of the Tribe or Tribal organization's Federal title IV–D grant funds for the funding period by any amount reported as remaining unliquidated on the report following the last day of the liquidation period.

(e) *Extension requests.* A Tribe or Tribal organization may submit a written request for an extension of the deadline for liquidating Federal title IV–D grant funds. Such a request must be sent to ACF, to the attention of the Federal grants officer named on the most recent grant award. The request must be submitted as soon as it is clear that such an extension will be needed; any request received after the end of the liquidation period will not be considered. The request must include a detailed explanation of the extenuating circumstances or other reasons for the request and must state the date by which the Tribe anticipates all obligated funds will be liquidated. Unless the Tribe receives a written approval of its request, the deadline stated in paragraph (c) of this section remains in effect.

§ 309.145 What costs are allowable for Tribal IV–D programs carried out under § 309.65(a) of this part?

Federal funds are available for costs of operating a Tribal IV–D program under an approved Tribal IV–D application carried out under § 309.65(a) of this part, provided that such costs are determined by the Secretary to be reasonable, necessary, and allocable to the program. Allowable activities and costs include:

(a) Administration of the Tribal IV–D program, including but not limited to the following:

(1) Establishment and administration of the Tribal IV–D 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 part 74. 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 IV–D 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.

(b) Establishment of paternity, including:

(1) Establishment of paternity in accordance with Tribal law codes, and/or custom in accordance with § 309.100 of this part, as outlined in the approved Tribal IV–D 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) Actions taken by a tribunal to establish paternity pursuant to procedures established by Tribal law, and/or codes or custom in accordance with § 309.100 of this part;

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

(5) Referrals of cases to another Tribal IV–D agency or to a State to establish paternity when appropriate.

(c) 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 non-cash support under Tribal IV–D 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 cases receiving services under the IV–D plan.

(d) 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 or transfer of cases to another Tribal IV–D agency or to a State IV–D program when appropriate; and

(3) Services provided for another Tribal IV–D program or for a State IV–D program.

(e) 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.

(f) Activities related to requests to State IV–D programs for enforcement services for the Federal Income Tax Refund Offset.

(g) Establishing and maintaining case records.

(h) Automated data processing computer systems for:

(1) Planning efforts in the identification, evaluation, and selection of a new or replacement automated data processing computer system solution addressing the program requirements defined in a Tribal plan;

(2) Operation and maintenance of existing Tribal automated data processing computer systems;

(3) Procurement, installation, operation and maintenance of essential office automation capability;

(4) Establishment of intergovernmental agreements with States and Tribes for use of an existing automated data processing computer system necessary to support Tribal IV–D program operations; and

(5) Other automation and automated data processing computer system costs in accordance with instructions and guidance issued by the Secretary.

(i) Staffing and equipment that are directly related to operating a Tribal IV–D program.

(j) The portion of salaries and expenses of a Tribe's chief executive and staff that is directly attributable to managing and operating a Tribal IV–D program.

(k) The portion of salaries and expenses of tribunals and staff that is directly related to required Tribal IV–D program activities.

(l) Service of process.

(m) Training on a short-term basis that is directly related to operating a Tribal IV–D program.

(n) Costs associated with obtaining technical assistance that are directly related to operating a IV–D program, from non-Federal third-party sources, including other Tribes, Tribal organizations, State agencies, and private organizations, and costs associated with providing such technical assistance to public entities.

(o) Any other costs that are determined to be reasonable, necessary, and allocable to the Tribal IV–D

program in accordance with the cost principles in OMB Circular A–87. The total amount that may be claimed under the Tribal IV–D grant are allowable direct costs, plus the allocable portion of allowable indirect costs, minus any applicable credits.

(1) All claimed costs must be adequately documented; and

(2) A cost is allocable if the goods or services involved are assignable to the grant according to the relative benefit received. Any cost that is allocable to one Federal award may not be charged to other Federal awards to overcome funding deficiencies, or for any other reason.

§ 309.150 What start-up costs are allowable for Tribal IV–D programs carried out under § 309.65(b) of this part?

Federal funds are available for costs of developing a Tribal IV–D program, provided that such costs are reasonable, necessary, and allocable to the program. Federal funding for Tribal IV–D program development under § 309.65(b) may not exceed a total of $500,000, unless additional funding is provided pursuant to § 309.16(c). Allowable start-up costs and activities include:

(a) Planning for the initial development and implementation of a Tribal IV–D program;

(b) Developing Tribal IV–D laws, codes, guidelines, systems, and procedures;

(c) Recruiting, hiring, and training Tribal IV–D program staff; and

(d) Any other reasonable, necessary, and allocable costs with a direct correlation to the initial development of a Tribal IV–D program, consistent with the cost principles in OMB Circular A–87, and approved by the Secretary.

§ 309.155 What uses of Tribal IV–D program funds are not allowable?

Federal IV–D funds may not be used for:

(a) Activities related to administering other programs, including those under the Social Security Act;

(b) Construction and major renovations;

(c) Any expenditures that have been reimbursed by fees or costs collected, including any fee collected from a State;

(d) Expenditures for jailing of parents in Tribal IV–D cases;

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

(f) The cost of guardians ad litem in Tribal IV–D cases; and

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

Subpart E—Accountability and Monitoring

§ 309.160 How will OCSE determine if Tribal IV–D 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 45 CFR part 74. 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.

§ 309.165 What recourse does a Tribe or Tribal organization have to dispute a determination to disallow Tribal IV–D program expenditures?

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

Subpart F—Statistical and Narrative Reporting Requirements

§ 309.170 What statistical and narrative reporting requirements apply to Tribal IV–D programs?

(a) Tribes and Tribal organizations operating a Tribal IV–D program must submit to OCSE the *Child Support Enforcement Program: Quarterly Report of Collections* (Form OCSE–34A). The reports for each of the first three quarters of the funding 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 funding period.

(b) Tribes and Tribal organizations must submit the following information and statistics for Tribal IV–D program activity and caseload for each annual funding period:

(1) Total number of cases and, of the total number of cases, the number that are State or Tribal TANF cases and the number that are non-TANF cases;

(2) Total number of out-of-wedlock births in the previous year and total number of paternities established or acknowledged;

(3) Total number of cases and the total number of cases with a support order;

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

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

(6) A narrative report on activities, accomplishments, and progress of the program, including success in reaching the performance targets established by the Tribe or Tribal organization;

(7) Total costs claimed;

(8) Total amount of fees and costs recovered; and

(9) Total amount of laboratory paternity establishment costs.

(c) A Tribe or Tribal organization must submit Tribal IV–D program statistical and narrative reports required by paragraph (b) of this section no later than 90 days after the end of each funding period.

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

■ 6. The authority citation for part 310 continues to read as follows:

Authority: 42 U.S.C. 655(f), 1302.

■ 7. Amend § 310.1 by adding a new paragraph (c) to read as follows:

§ 310.1 What does this part cover?

* * * * *

(c) The regulations in this part apply only to grants for periods prior to October 1, 2004.

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