MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

January 24, 1985

The thirteenth meeting of the Senate Judiciary Committee was called to order at 10:10 a.m. on February 24, 1985, by Chairman Joe Mazurek in Rooms 413-415 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF SB 55: Senator Tom Towe, sponsor of SB 55, stated this bill attempts to correct a problem that could cost and is costing the counties millions of dollars. Tax titles have proved to be defective. Because of a state statute, a royalty interest was retained when property was sold. Most went through a quiet title action. However, the county was not able to do that. The royalty interest is becoming a problem now that there is starting to be some production, because the defective titles are coming back to the county and there is some attempt by the heirs of previous owners (persons who lost their land because of failure to pay taxes back in the 1920s) to come back and say they want that royalty interest. This attempt is to try a different approach to get that interest back to the county. A royalty interest is something we can reach in a different manner by the statute of limitations five years from the time the production starts and treat it as personal property and terminate it as far as the 1920s owners are concerned. Senator Towe stated that on page 3, lines 2-3, the words "or mineral" should be deleted regarding sale by the county of land that is received by tax deed. This is not any different than a statute of liminations in any other type of action.

PROPONENTS: Judge A. B. Coate, District Judge from the Sixteenth Judicial District, spoke in support of SB 55 (see witness sheet and written testimony attached as Exhibit 1). Ed McCaffree, County Commissioner from Rosebud County, spoke in support of the bill (see witness sheet attached as Exhibit 2). Mr. McCaffree stated in his county in the last few years, they have settled or lost $905,000 while they have cases pending which could cost them nearly $3 million. He thinks it is time for something to be done. If people have a right to these royalties, they have an obligation to come forth and claim them. Gordon Morris, Executive Director of the Montana Association of Counties, appeared in support of the bill. He testified that MACO has introudced a House Joint Resolution this session that proposes to request an interim study of this issue from the standpoint of the problems of the irregularities of the delinquent tax procedures utilized by the counties. As far as

the bill, he has one proposed change. (See proposed amendment attached as Exhibit 3.) From the perspective of MACO, we do need a legitimate statute of limitations by way of the tests it is going to be put to in a court of law. The statute of limitations does not toll until five years from the time production commences rather than from the date of the tax sale. MACO requests a do pass recommendation with consideration of the amendment. Jim McCann, Roosevelt County Attorney, testified in support of the bill. He stated others have covered the factual situation. One thing he wants to point out is that in Rosebud County since the King case, the actions have been quite promptly presented to the counties. These actions are commenced within months of the time of production; they are not waiting years. A five-year statute of limitations encourages actions and encourages the oil companies to set up an escrow account and hold all of the moneys. His main objection to the bill is the specific language in that it doesn't become active until the production is there. Judge Coate is waiting until it becomes personalty and then using the same statute of limitations for other personal property. We are talking about millions of dollars. In their case, it is $7-8 million that is being threatened at this time. The problem has been before the legislature a number of times. He thinks that the amendment offered by MACO has merit, and if it's properly phrased, rather than waiting to treat these royalty payments as personalty after they come into existence after they are already there, they are not coming under the redemption statutes. If they were, they would have to pay all of the taxes that were accrued at the time of the action and interest, and it would be a terrible encumbrance upon them, and they won't do it. If they only have to wait until the moneys are there, then they will do it. If people are allowed to sleep on their rights for 50-60 years and then wait while the royalties accumulate, there is something wrong with the system. The matter is of an extreme technical nature; it will take a lot of work. It should be carried over as a priority item for the interim and brought up next time.

OPPONENTS: None.

OTHER TESTIMONY: John Schontz, representing Richland County, testified regarding SB 55. He was not sure if he were opposing or supporting it, but he wanted to thank Judge Coate for bringing the issue to the legislature. He raised potentially another solution to the problem. Richland County just completed two cases in district court. One case is being appealed to the Montana Supreme Court. The rationale used is that all of the old claims (including the royalty interests) became null and void. He believes this issue is a classic one for an interim study. He asked that the committee look at the decisions of the Seventh District Court. Their county attorney would be providing them with a written brief and is available to talk on the phone.

QUESTIONS FROM THE COMMITTEE: Senator Shaw asked Judge Coate why the district court has ruled all of those claims are null and void, but the Supreme Court has ruled the other way. Judge Coate stated the rationale of the Supreme Court and the Ninth Circuit Court has been that if tax title deed is issued and the precise procedure has not been followed by the county, the whole procedure is void, and you cannot breathe life into a void act. Therefore, you cannot cut off any rights. He is not familiar with the cases in Richland County. He has no question that a tax deed is a new title. It is not a change in a link in an old title. Senator Crippen stated the Roosevelt County Attorney's proposal would take this one step further and you would apply this to mineral interests in the ground as well as severed mineral interests. The county attorney responded that is not what he meant. This 6-1/4% royalty interest that the county has as it lies in the ground is incorporeal. He is not talking about minerals, just about that 6-1/4% royalty. Senator Galt asked Judge Coate what is the fault in the tax deed that these courts are finding. Senator Mazurek stated he has had numerous calls from county attorneys around the state, and one question they raise is the availability to the counties of equitable defenses of laches, estoppel, etc. They fear this bill will preclude them from raising these defenses in the future. Judge Coate stated the Supreme Court said in King, the county has no defenses. Senator Blaylock stated his lessens as a layman indicated an incorporeal hereditament is an interest which doesn't really exist. Judge Coate responded a corporeal hereditament is a part of real property--something tangible. An incorporeal hereditament is not tangible. The best example is rents or profits to land. They don't exist until the crop is raised. The same with royalties--there is nothing there until production. Senator Blaylock asked if the same were true with minerals. Judge Coate stated no. Senator Blaylock asked why if most cases were decided on techicalities, why strike mineral. Judge Coate stated counties must sell the property as soon as possible to get it back on the tax roles. The only interest the county has is in retained royalties because the law requires that it be retained. Senator Blaylock asked if mineral were struck leaving only the royalty interest, did Judge Coate think the courts would say that is constitutional and the counties would be safe. Judge Coate responded yes, because the legislature has a right to pass statutes of limitations and control the ownership and transfer of property. He feels this is a royalty bill, not a surface ownership bill. Senator Blaylock asked Judge Coate if the committee adopted the bill with his proposed amendment, would a study on this issue be needed. Judge Coate stated in his opinion, a study would not be needed, although he can't answer how the supreme court will rule on it. Senator Daniels asked why the counties couldn't use the tax confirmation proceedings to establish their ownership on land to quiet title. Judge Coate stated he is not suggesting that because it would be a tremendous job to determine all of the land in which the county has an interest and it would be a big job to do all

of those quiet title actions. The second reason is he would have to hear all of those cases. Senator Shaw asked if all counties that received lands under tax title, retained this 6-1/4% interest when they sold it back out. Mr. Morris stated his experience is most counties do retain that interest.

CLOSING STATEMENT: Senator Towe closed by referring to the King case and reading its conclusion. He believes there is a lot of money to be made by hunting up those heirs and telling them if you just simply file a lawsuit, you might get a million dollars. As far as defenses are concerned, they raised all of these defenses in the King case. They said there is no sleeping on their rights because the county had no rights to sleep on. There could be no adverse possession because to do so you must pay taxes, and the county doesn't pay taxes. This is to get at the royalty interest now and possibly the study can come up with a way to get at the underlying mineral interests.

Hearing on SB 55 was closed.

CONSIDERATION OF SB 105: Senator Pat Regan, sponsor of the bill, opened the hearing on SB 105 and stated this bill grew out of an interim study. The original bill was found to be too restrictive, so Joan Uda drafted some proposed amendments (Exhibit 4). In the new bill, the court must take into consideration apportioning health care costs for minor children.

PROPONENTS: Joan Uda, an attorney in Helena, testified she drafted the amendments before the commitee. She had some concerns that by mentioning health insurance (this bill was to deal with a problem with medicaid) and by dealing with it this way, it might be too overbroad. She added a definition of health care costs. She believes this picks up the intent of the original bill as proposed. She changed the bill a little bit in regard to temporary orders. Pat Godbout, Administrator of the Audit and Program Compliance Division of the Department of Social and Rehabilitation Services, spoke in favor of the bill on behalf of the department. The department supports this legislation as a recommendation of the health costs study program this year. About 4% of those people have health insurance compared to 12% of the disabled and 9% of the aged. Of the people that do have coverage, about one-third of their bills are paid by that coverage. If the bill is enacted, they believe there will be some savings in the medicaid program. There is no penalty for not doing this. They do support the bill the way it has been amended. Anne Brodsky, on behalf of the Wommen's Lobbyist Fund, stated they support the bill and the amendments (see written testimony attached as Exhibit 5). Louise Kunz, on behalf of the Montana Low Income Coalition, stated they support this bill and its amendments (see witness sheet attached as Exhibit 6). Wilbur Rehmann, speaking on behalf of himself, appeared in support of SB 105 (see witness sheet attached as Exhibit 7).

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Blaylock asked Senator Regan if it were her desire that the committee totally substitute the bill proposed by Joan Uda for the original bill. Senator Regan responded affirmatively. Senator Pinsoneault stated it appears in the bill there is a presumption of insurability on the part of dependent children. He asked what would happen if the children were uninsurable. Ms. Uda stated she thinks that what the bill does is require the orders to contain a provision apportioning health care costs. It does not say there must be health insurance. How they are going to handle that becomes a matter for the parties to try to work out. Senator Mazurek asked if they had discussed with insurers what would happen if there is a group policy provided by the employer but it is not available unless the parent has custody. Ms. Uda stated if there is insurance available, it must be kept in effect during the temporary order. Senator Towe stated generally speaking, the concept is a good one. You are simply asking the judge to make sure there is some provision for health care every time he signs a divorce decree. He asked Ms. Uda if she anticipated there are going to be attempts by courts to resist. Ms. Uda stated she would not anticipate that problem. She has a good deal of faith in our judges and their ability to read the law, although it may put more pressure on the parties. It seems that there is more pressure on people divorcing in that they are being made to realize they both have obligations to their children. She does not mind that pressure, but she would if it diminished the child support. Senator Crippen asked Ms. Uda to return to the point of what happens to an uninsurable child that needs medical attention. He asked whether medicaid would pick that up under the AFDC program now. Ms. Uda stated it would do so only if the child is medicaid eligible; the bill does not address the question of what you do with an uninsurable child.

CLOSING STATEMENT: None.

Hearing on SB 105 was closed.

CONSIDERATION OF SB 119: Senator Dorothy Eck, sponsor of SB 119, stated we are seeing a lot of bills concerned about the well-being of children, and in particular, better ways of enforcing child support. This bill provides that the Department of Revenue in collecting money for child support will require that the services be paid by the person for whom the support is collected rather than by the applicant for services. Senator Eck stated we have decided more recently that the Department of Revenue's support collection services should be available to the person who is not on public assistance. She believes it would be better for the Department of Revenue to take the collection fee out of the moneys collected, because what you are really doing is taking it from the child

rather than from the person who was delinquent and late in paying those fees. Many people feel they will get away with it if they don't pay child support. Senator Eck asked that the committee consider some amendments to the bill (Exhibit 8). She does not feel the initial application fee would be a hardship on the person trying to collect. Senator Eck left a copy of the Federal Register with the committee in order that they might see if the way the fees were to be collected conformed with federal regulations (Exhibit 9). She believes this would solve a really severe problem for a lot of women in the state.

PROPONENTS: Carol Kimble appeared in support of the bill (see witness sheet and written testimony attached as Exhibit 10). Raylynn Lauderdale appeared in support of the bill (see witness sheet and written testimony attached as Exhibit 11). Nancy McNutt appeared in support of the bill (see witness sheet attached as Exhibit 12). Anne Brodsky, on behalf of the Women's Lobbyist Fund, appeared in support of the bill and the amendments proposed by Senator Eck (see written testimony attached as Exhibit 13). Lynn Roberts appeared in support of the bill. She stated one problem she found with the department's collection services was it would take two to three weeks for her to get her check after her ex-husband paid the support. She also didn't feel she should have to be deprived of the collection fee for something that is his responsibility. Lana Logan appeared in support of the bill (see witness sheet attached as Exhibit 15). She stated she does not feel the Department of Revenue should take a collection fee when it is her ex-husband's responsibility to pay the support. Wilbur Rehmann appeared in support of the bill (see witness sheet attached as Exhibit 16). Louise Kunz, on behalf of the Montana Low Income Coalition, appeared in support of the bill (see witness sheet attached as Exhibit 17).

OPPONENTS: Dennis Shober, Program Manager of the Child Support Enforcement Bureau of the Department of Revenue, appeared in opposition to SB 119. (see written testimony attached as Exhibit 18). He stated they have problems with some of the language. From a program standpoint, they would not be opposed to the bill if some of the language were changed. They are collecting $3 million plus a year, and $600,000 of that is money which this bill would pertain to. They do not have an automated accounting system and believe this bill would cause them problems from that aspect.

QUESTIONS FROM THE COMMITTEE: Senator Crippen asked under what circumstances the Department of Revenue waives the $20 fee. Mr. Shober stated the application fee is waived upon three months going off of AFDC, and the federal government will extend that period five months. The collection fee is 5-10% of what they collect based on their adjusted gross income; they must fill out a financial application to determine what that might be. Senator Crippen stated he is concerned about what the

department's determination of necessity would be. He asked if it were determined on a time basis or on necessity in view of the fact the spouse can't afford the fee. Mr. Shober stated the fee is based solely on income after that period of time. Senator Crippen asked the proponents if it were explained to them the fee could be waived and what the regulations were. Ms. Lauderdale stated she was told the only way it could be waived was to be on AFDC, and if she weren't on public welfare, she didn't get that fee at all. Senator Towe asked Mr. Shober why the bill would create an accounting nightmare. Mr. Shober responded the way they understand it, they could go on and off AFDC and tacking on fees onto payments and collecting it at the time it is paid in full would create problems, as they have a manual accounts receivable system. They have not been able to charge interest because they cannot compute the interest. Senator Mazurek asked if they got 10% regardless of the amount collected and if it were collected into the future as well. Mr. Shober stated yes, but not future payments, only on past-due amounts. Senator Towe asked why they didn't just collect $110 instead of $100. Mr. Shober stated they understand they can't collect it until the end. If they could take the fee at the time of collection, they are not opposed to taking the fee. Senator Towe asked if now they have to charge a fee or we loose federal funds. Mr. Shober stated yes. Senator Towe asked if they could charge that to the obligor also. Mr. Shober stated he was advised there may be a constitutional due process problem there--you cannot assess them a fee because they have not performed a service for them. Senator Mazurek asked if they were making an effort to add their fees on to the father's obligation when they applied through the court for payments. Mr. Shober responded in very few cases they do. Senator Mazurek stated when your legal staff goes to court to collect sums owing, you can ask to have the father pay the fees and costs. Mr. Shober stated in most cases, they don't. Senator Mazurek asked why. Mr. Shober stated it just never has been a practice of the program. Senator Towe asked Mr. Shober to have the department look at this again and come back with any amendments they feel are required. He suggested they look at Senator Eck's amendments and let them know what your department is willing to accept. Senator Mazurek asked if we were to adopt your bill or something similar to it, would that affect the department's enforcement attitude. Mr. Shober responded no. Senator Mazurek questioned if they have to justify their existence by your performance. Mr. Shober responded affirmatively. Senator Towe advised Mr. Shober he would be wise to advise John LaFavor of this discussion.

CLOSING STATEMENT: Senator Eck stated she is glad Senator Mazurek brought up the due process law. She hopes we not only look after the interests of the persons who are seeking child support but also support

the department. She would like to see the department further beefed up and be able to take on a larger case load.

Hearing on SB 119 was closed.

There being no further business to come before the committee, the meeting was adjourned at 12:07 p.m.

Committee Chairman

ROLL CALL

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 01/24/85

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

DATE January 24, 1985

COMMITTEE ON Judiciary

SB 55, 105 & 119

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Dennis Iverson	State Revenue	SB119		✓
Caylynn Lauderdale	myself	SB119	✓	
Carol Kimble	myself	SB 119	✓	
Nancy McNutt	myself	SB119	✓	
Pat Wilson	Montco / Thermal Energy	SB 55		✓
William W Rehmann	Myself	105 SB119	✓	
Lynn Roberts	myself	SB119		
Lance Logan	myself	SB 119	✓	
Gordon Morris	MACo	SB 55	✓	
Jim McCann	Roosevelt Cty	SB 55	✓	
Louise Kuns	MLIC	105 119	✓	
Shelly Jo McPhee	Montana Association of Realtors	55		
Anne Brodsky	Women's Lobbyist Fund	SB 105 SB119	✓	
John Shontz	Richland Cty	SB55		✓

(Please leave prepared statement with Secretary)

DATE 24 Jan 85

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Louis Hausken	NY Assn Optometric Phys	10 S		

(Please leave prepared statement with Secretary)

NAME Al Conte BILL NO. SB 55

ADDRESS Forsyth Mont. DATE 1/24/85

WHOM DO YOU REPRESENT State

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 012485
BILL NO. SB 55

MEMO

TO: Senate Judiciary Committee
SUBJECT: S.B. #55
FROM: A.B. Coate

BACKGROUND:

During the late 1920's and the 1930's, many landowners were unable to pay their real property taxes. The counties then proceeded to obtain title to the land by tax title. The land was then sold to third parties by the county, as soon as there was a market for it. The law, §7-8-2305 MCA, provided that when the county sold the land, it must retain a 6 1/4 percent "royalty interest." The third party purchasers quiet titled the land in the 1940's or 1950's and cut off all interests in the property except the county's royalty interest. Oil and gas has been discovered on the property and the county has received payment for its royalty interest.

PROBLEM:

Heirs of the original owner, who lost the land for taxes, are now bringing legal actions against the county to recover the county's royalty interest in the land. They have been winning and counties have had to pay out millions of dollars in judgments.

Most of the cases have turned on a defect in the tax title proceedings, e.g., no certificate showing notice of the tax title proceedings, to the original owner, in the County Treasurer's office.

Tax proceedings are strictly construed against the taxing authority, so there must be proof that each specific statutory proceeding was performed according to law. If it wasn't, the original owner's right of redemption is never cut off and an action can be commenced at anytime.

No one knows whether the county officials failed to give the proper notice when the proceedings were commenced or if the notice was given and some subsequent county official, in a "good house-

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SENATE JUDICIARY COMMITTEE
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keeping" effort, destroyed them. However, that is immaterial as even if the original taxpayer had actual notice, he would still win his lawsuit upon the failure of the county to produce the records. Lowery vs. Garfield County, (1949) 122 M. 571, 208 P.2d 478.

PROPOSED SOLUTION:

One method would be to enact an entire new procedure for the obtaining of tax title; however, that would not correct the problem that we are here concerned with. That method could avoid any future tax title problems however.

To resolve the immediate problem, Senate Bill #55 has been introduced for your consideration. The purpose of this Bill is to create a specific statute of limitations on royalty interests obtained by counties through tax titles. Our Court has held that statutes of limitations which preclude the landowner from exercising his right of redemption are unconstitutional.

In 1927 the Legislature enacted C85, L 1927, a one-year statute of limitations, to bring an action to attack the validity of tax title proceedings. Our Court held that the Legislation was unconstitutional. Small vs. Hull, (1934) 96 M 525, 535, 32 P.2d 4. In 1939, the Legislature attempted to validate existing tax titles. Our Court held that such legislation was unconstitutional. Kerr vs. Small, (1941) 112 M 490, 493, 117, P.2d 271. The Legislature in 1943 enacted C 100, Laws 1943, a short statute of limitations and the Court by a 3 to 2 decision declared the act unconstitutional. Lowery vs. Garfield County, (1949) 122 M 571, 585, 208 P.2d 478. All of those Acts were concerned with the title to land acquired by tax title.

The Bill before you is concerned solely with "royalty interest." This Bill is not concerned with the land itself or the ownership of the other 93 3/4 percent of the mineral royalty. This Bill makes no attempt to cut off the right of redemption of the original

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owner to that portion of the land. In most cases, the counties long ago - 35-40 years ago - sold the land and minerals to a third party. That party, generally, brought a quiet title action and ownership has been established judicially in everything other than the county's royalty interest.

In Montana, we recognize that minerals and royalty interests may be severed from the surface estate; however, unless there has been a severance, the minerals and royalty go with the surface and can be obtained by tax title. N.P. Ry. vs. Musselshell County, 74 M 81, 238 Pac. 872; Rist v. Toole County, 117 M 426, 159 P.2d 340, 162 ALR 406.

A royalty interest is not a mineral interest; it is merely a right to share in production on the severance of the minerals and is personalty. Thompson on Real Property, Vol. 1A, §179, P. 129. Thus, it is a "rent" or "profit" arising out of a corporeal interest in property, the minerals, and is an incorporeal hereditament. Op cite P. 135. When the minerals are severed fr the soil, they become personalty and are no longer treated as real property. Op cite P. 138; also see, 22 Rocky Mountain Law Review 523, "The Doctrine of Severance of Estates and the Effect of Tax Titles Thereon."

Therefore, once production of the minerals has been commenced we have personalty rather than real property. There is no legal reason that the Legislature cannot enact a specific statute of limitations for royalty interest. The Legislature can, and has, enacted laws restricting ownership in other personalty - e.g., los personal property; estrays; unclaimed bank deposits; motor vehicle registration; and etc.

The purpose of statute of limitations is to: prevent potential plaintiffs from sitting on their rights, and to suppress stale claims after the facts concerning them have become obscured by lapse of time, defective memory, or death or removal of

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SENATE JUDICIARY COMMITTEE
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witnesses.

Cassidy vs. Finley, 173 M 475, 568 P.2d 142.

This Bill does not propose to change any of the delinquent taxpayers' rights of redemption. It does not set a statute of limitations to tax title proceedings. It does not validate any prior acts of county officials. It will not change any legal proceedings filed prior to its effective date.

Actions for the recovery of damages, enforcement of contracts, recovery of land, and even for wrongfully death have statutes of limitations. Is there any logical reason why there shouldn't be one for royalty interests?

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SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 012485
BILL NO. SB 55

NAME Ed McGlynn BILL NO. S.B. 55

ADDRESS Forsyth MT DATE 1/24/85

WHOM DO YOU REPRESENT Rosebud Co.

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

SENATE JUDICIARY COMMITTEE
EXH'BIT NO. 2
DATE 012485
BILL NO. SB 55

MONTANA
ASSOCIATION OF
COUNTIES

1802 11th Avenue
Helena, Montana 59601
(406) 442-5209

SENATE BILL 55

COUNTY MINERAL RIGHTS

SENATE JUDICIARY COMMITTEE

JANUARY 24, 1985

On behalf of the Montana Association of Counties the following amendment to the bill as drafted is submitted for consideration:

Section 2 (3). An action against a county to recover a royalty or mineral interest in land acquired by the county by tax deed must be brought within ~~5-years-after-the-commencement-of-commercial-production-of-oil,-gas,-or-other minerals-from-the-land."~~ within 3 years of any tax sale. Failure to bring an action within 3 years after any tax sale shall be deemed to convey the absolute title to the lands described therein, including all the right, title, interest, estate, lien, claim, and demand of the State of Montana and of the county in and to said real estate and including the right, if said tax deed or tax sale or any of the tax proceedings upon which said deed may be based shall be attached and held irregular or void.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 012485
BILL NO. SB 55

49th Legislature

SENATE BILL NO. 105

A BILL FOR AN ACT ENTITLED; "AN ACT TO REQUIRE CHILD SUPPORT ORDERS TO INCLUDE A PROVISION ~~REQUIRING CERTAIN SUPPORTING PARENTS TO OBTAIN HEALTH INSURANCE COVERAGE FOR DEPENDENT CHILDREN~~ COVERING HEALTH CARE COSTS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Child support orders to ~~require~~ contain health ~~insurance coverage~~ care provisions. Each district court judgment, decree, or order establishing a ~~temporary or~~ final child support obligation under this title and each modification of ~~an existing~~ a final order for child support must include a provision apportioning health care costs for the minor children to either or both parties. "Health care costs" in this section means costs for health insurance premiums, for insurance deductible amounts or co-insurance, as well as for reasonable and necessary hospital, medical, dental, orthodontal, ocular, and mental health service expenses not covered by insurance. ~~an order requiring the person ordered to pay support to maintain or provide health insurance coverage for each child covered by the judgment or order if health insurance that can be extended to cover the child is available to that person through an employer or other organization and the employer or other organization offering the health insurance will contribute all or a part of the premium for coverage of the child.~~

If either or both parties have available through an employer or other organization health

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 012485
BILL NO. SB 105

insurance coverage for the child or children for which the premium is paid entirely or in part by the employer or other organization, the judgment, decree or order shall contain a provision requiring health insurance for the child or children to be continued or obtained.

All temporary child support orders shall contain a provision requiring a party who has health insurance in effect for the child or children of the parties to continue that insurance pending final disposition of the case.

In the event health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it through loss or change of employment or otherwise, that party shall obtain comparable insurance or may move the court for a modification of this requirement.

The parties may by written agreement provide health care coverage as required herein, subject to approval by the court.

This health ~~insurance~~ care coverage is in addition to and not in substitution, in whole or part, for the child support obligation.

Section 2. Codification instruction. Section 1 is intended to be codified as an integral part of Title 40, chapter 4, part 2, and the provisions of Title 40, chapter 4, ~~part 2,~~ apply to section 1.

-End-

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 012485
BILL NO. SB 105

WOMEN'S LOBBYIST FUND

January 24, 1985

TESTIMONY IN SUPPORT OF SB 105

Mr. Chairman and members of the Senate Judiciary Committee:

My name is Anne Brodsky and I am here today on behalf of the Women's Lobbyist Fund (WLF) to speak in support of SB 105. SB 105 addresses a serious problem faced by children of parents who are divorced: adequate health care. With today's burgeoning health care costs, everyone needs health insurance to guarantee that these costs, if needed to be met, can be. SB 105 provides a reasonable and attentive approach to an area that is a big part of a child's expenses, With the proposed amendments, it also provides an equitable means for paying attention to the child's health care needs.

On behalf of the Women's Lobbyist Fund, I urge to pass SB 105.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 012485
BILL NO. SB 105

(This sheet to be used by those testifying on a bill.)

NAME: Louise Bruz / MLIC DATE: 1/24

ADDRESS: 107 Lawrence

PHONE: 449-8801

REPRESENTING WHOM? MT. Low Income Coalition

APPEARING ON WHICH PROPOSAL: SB 105

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: We support this bill as it makes an inroad & a halting of the feminization of poverty. While it effects both male & female single parents, statistically women will be the most heavily affected. Health care is a significant item in any budget & sometimes children suffer when the care is actually available through employer provided ins.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 012485
BILL NO. SB 105

(This sheet to be used by those testifying on a bill.)

NAME: Wilbur Lehmann DATE: 1/24

ADDRESS: 913 Wankesha Helena

PHONE:

REPRESENTING WHOM? Myself

APPEARING ON WHICH PROPOSAL: SB105

DO YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE?

COMMENTS: I support Senator Regan's amendments and support the bill as amended.

In my own contract for health insurance coverage of my daughter, my former spouse and I have put our daughter under who ever has employer covered health insurance. In the begining of our separation my former spouse carried the insurance and I paid half of the child coverage.

So, that that should be the procedure followed in all child custody and support agreements and contracts and I support the bill as amended

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 012485
BILL NO. SB 105

Senate Bill 119

Proposed amendments:

1. Page 1 line 25 following "obligation" insert:

"but an initiation fee not to exceed $25.00 may be charged the applicant by the department"

2. Page 2 line 11, following "services." insert:

"When payments are scheduled on an installment basis, a portion of the amount owed to the Department shall be added to each payment."

or,

Fees collected by the Department may be collected on a proportional basis in connection with support payments.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 012485
BILL NO. SB 119

federal register

Friday
October 5, 1984

Part VI

Department of Health and Human Services

Office of Child Support Enforcement
Social Security Administration

45 CFR Parts 205 and 305
Child Support Enforcement Program; Aid to Families With Dependent Children, Revision of Child Support Enforcement Program Audit Regulations; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

Social Security Administration

45 CFR Parts 205 and 305

Child Support Enforcement Program; Aid to Families With Dependent Children; Revision of Child Support Enforcement Program Audit Regulations

AGENCY: Office of Child Support Enforcement (OCSE), and Social Security Administration (SSA), HHS.

ACTION: Notice of Proposed Rulemaking; Withdrawal of Proposed Rulemaking.

SUMMARY: These proposed rules amend Office of Family Assistance (OFA) and Office of Child Support Enforcement (OCSE) regulations at 45 CFR 205.146(d) and Part 305 to implement section 9 of Pub. L. 98–378, the Child Support Enforcement Amendments of 1984. The amendments revise 45 CFR Part 305 to: (1) Require OCSE to conduct an audit of the effectiveness of State Child Support Enforcement programs at least once every three years; (2) require OCSE to use a "substantial compliance" standard to determine whether each State has an effective IV–D child support enforcement program; (3) provide that any State found not to have an effective IV–D program in substantial compliance with the requirements of title IV–D of the Social Security Act (the Act) be given an opportunity to take the corrective action necessary to be in substantial compliance with those requirements; (4) provide for the use of a graduated penalty of not less than one nor more than five percent of a State's Federal AFDC funds if a State is not in substantial compliance with title IV–D of the Act; and (5) specify the period of time during which a penalty is effective. The amendments also revise the penalty for failure to have an effective child support enforcement program provisions at 45 CFR 205.146(d) under title IV–A (aid to families with dependent children) of the Act. Section 9 is effective on and after October 1, 1983.

These proposed regulations also amend Part 305 by adding State plan-related audit criteria and performance-related audit criteria that will be used in addition to existing criteria in determining whether a State has an effective IV–D program.

Finally, we are withdrawing the proposed rule published in the **Federal Register** on October 1, 1980 to amend the audit regulations to provide for a substantial compliance test to determine whether a State has an effective Child Support Enforcement Program.

DATES: Consideration will be given to written comments received by December 4, 1984. Dates of public hearings, are set forth in Supplementary Information.

ADDRESS: Address comments to: Deputy Director, Office of Child Support Enforcement, Department of Health and Human Services, 10th Floor, 6110 Executive Blvd., Rockville, Maryland 20852. ATTN: Policy Branch. The comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m. in Room 1010 of the Department's offices at the above address.

Addresses of public hearings are set forth in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Michael P. Fitzgerald, Policy Branch, OCSE, (301) 443–5350.

SUPPLEMENTARY INFORMATION:

Public Hearings

To obtain the broadest public participation possible on these proposed rules, we will conduct four public hearings on the dates and at the times and locations listed in the chart below. Any individual who wishes to comment on the contents of this document at any of the hearings must register at least three days prior to the hearing with the appropriate Regional Office contact designated on the chart below. At the time of registration, we ask that prospective participants give identifying information such as name, organization, if any, address and telephone number to the Regional Office contact so that participants can be properly introduced at the hearing.

Comments must be limited to these proposed rules, their implementation, and specific recommendations for change within the constraints of the new law and the Act. Keep in mind that where the statute is explicit, the corresponding regulations will often be a reiteration of the statute. Since we have no authority to change the statute, your presentations and written comments should address only those areas where the statute provides discretion and where we have authority to change the corresponding regulations.

Presentations are limited to 10 minutes. In addition, we encourage participants to submit written comments in support of their oral presentations to the Regional Office contact at the address given in the chart below. We will also accept written comments at the hearings from any participants who would like to submit them. Written comments from individuals not planning to participate in the hearing should be submitted to the address given above for other commenters.

To clarify presentations, we may ask questions. We cannot, however, address participants' concerns regarding these proposed regulations or respond to questions at the hearings. Instead, we will consider comments and recommendations received at the public hearings and written comments, suggestions and recommendations received at the address given above in the final version of these rules.

Date and time	Location of public hearing	Regional office contact and address
October 10, 1984; 8:30 a.m.	Dirkensen Federal Bldg., Court Room 2525, 219 South Dearborn, Chicago, Illinois 60604.	Mr. Kent Wilcox (or) Ms. Gwen Hardaway, Region V, Office of Child Support Enforcement, 10 West Jackson Blvd., 4th floor, Chicago, Illinois 60604, Phone: (312) 886–5425.
October 12, 1984; 8:30 a.m.	Dallas City Hall Council Chambers, 1500 Marilla, Dallas, Texas 75201.	Ms. Tomasia Pinter, Region VI, Office of Child Support Enforcement, Room 8–A–20, 1100 Commerce Street, Dallas, Texas 75242, Phone: (214) 767–3749.
October 15, 1984; 8:30 a.m.	Seattle Center, Mercer Street, Between 3rd & 4th Avenue North, Mercer Forum, Rooms I and II, Seattle, Washington 98121.	Mr. Vince Herberholt (or) Ms. Charlene Allen, Region X, Office of Child Support Enforcement, Third & Broad Bldg., 2901 Third Avenue, Mail Stop 415, Seattle, Washington 98121, Phone: (206) 442–0943.
October 17, 1984; 8:30 a.m.	Dept. of Health and Human Services, North Auditorium, Room 1081, 330 Independence Avenue, SW., Washington, D.C. 20201.	Ms. Catherine McAuliffe, DHHS, Office of Child Support Enforcement, Room 1010 6110 Executive Blvd., Rockville, Maryland 20852, Phone: (301) 443–1981.

If additional copies of this document are needed, please contact the National Reference Center by calling 301–443–5106 or write: National Reference Center, Office of Child Support Enforcement, 6110 Executive Boulevard, Rockville, Maryland 20852.

Statutory Requirements

Section 9 of Pub. L. 98–378 amends sections 402(a)(27), 403(h) and 452(a)(4) of the Act regarding the Child Support Enforcement program audit requirements. Section 402(a)(27) was amended to require a State to operate a Child Support Enforcement program in substantial compliance with the IV–D State plan. Section 452(a)(4) of the Act was amended by replacing the

requirement for an annual review of State IV-D programs with a requirement for a review at least once every three years (or not less than annually in the case of any State which is being penalized, or is operating under a corrective action plan in accordance with section 403(h)). Sections 403(h) and 452(A)(4) of the Act were amended by substituting a "substantial compliance" standard for the existing "full compliance" test used to determine whether a State has an effective IV-D program meeting the requirements of title IV-D of the Act. Section 403(h)(3) now specifies that a State which is not in full compliance with the title IV-D requirements shall be determined to be in substantial compliance with the requirements only if the Secretary determines that any noncompliance with the requirements is of a technical nature which does not adversely affect the performance of the program. Section 403(h) was further amended to provide for a corrective action period and to substitute a graduated penalty for the flat five percent reduction of a State's AFDC funds for quarter beginning after September 30, 1983. Section 403(h)(1) provides for a reduction of not less than one nor more than two percent in an initial finding, not less than two nor more than three percent if the finding is the second consecutive such finding made as a result of a review, or not less than three nor more than five percent if the finding is the third or subsequent finding made as a result of a review. Under section 403(h)(2)(A), a reduction will be suspended for a quarter if: (1) The State submits a corrective action plan within a period specified by the Secretary which contains steps necessary to achieve substantial compliance within a time period the Secretary finds appropriate; (2) the Secretary approves the plan and amendments thereto; and (3) the Secretary finds that the corrective action plan (or any amendment that is approved) is being fully implemented and the State is progressing toward substantial compliance in accordance with the timetable in the plan. Under paragraph (h)(2)(B), the penalty shall be suspended until the Secretary determines that: (1) The State has achieved substantial compliance; (2) the State is no longer implementing its corrective action plan; or (3) the State is implementing or has implemented its corrective action plan but has failed to achieve substantial compliance within the appropriate time period. Under paragraph (h)(2)(C), a penalty shall not be applied to any quarter during a suspension period if the State achieves substantial compliance. It a state is implementing its corrective action plan but fails to achieve substantial compliance within the time period allowed, the penalty will be applied to all quarters ending after the expiration of the suspension period until the first quarter throughout which the State IV-D program is in substantial compliance. If a State is not implementing its corrective action plan, the penalty will be applied as if the suspension had not occurred.

Although these statutory changes are effective beginning October 1, 1983, these proposed regulations have varying effective dates for different provisions as discussed below.

Under the existing section 452(a)(1) of the Act, the Director, OCSE, may establish standards for locating absent parents, establishing paternity and obtaining child support and support for the spouse (or former spouse) with whom the absent parent's child is living as he determines to be necessary to assure that State programs will be effective. The performance indicators in these regulations are proposed under the authority of section 452(a)(1).

Withdrawal of Proposed Regulations.

On October 1, 1980, we published a proposed rule in the **Federal Register** (45 FR 69495) to amend the audit and penalty regulations to provide for a "substantial compliance" test to determine whether a State has an effective Child Support Enforcement program meeting the requirements of section 402(a)(27) of the Act. Because of the enactment of Pub. L. 98-378, we are withdrawing the proposed rule published in October, 1980 and propose instead the changes contained in this document.

Regulatory Provisions

Frequency of Audit

Current regulations at 45 CFR 305.10 require OCSE to conduct an annual audit of State Child Support Enforcement programs to determine whether each State has an effective IV-D program. To implement the provision of the amended section 452(a)(4) of the Act regarding the frequency of audit, the proposed regulations at § 305.10, Audit, would require OCSE to conduct an audit of State IV-D programs, at least once every three years, or at least annually in the case of any State which is being penalized to evaluate the effectiveness of the programs and determine that they meet the requirements of title IV-D of the Act.

Under this provision, OCSE has flexibility regarding the frequency of audit during the three-year period. OCSE may conduct an audit of each State's IV-D program once every two years, continue to conduct annual audits or vary the audit frequency among States (e.g., audit some States twice a year and others every 2 years). OCSE plans to conduct an audit, at least once a year, in any State that is not meeting the performance-related criteria in effect for fiscal year 1986 and any subsequent fiscal year. Nonetheless, we will conduct an audit of each State's IV-D program at least once every three years. We will conduct an audit more frequently than on an annual basis at the request of any State that is being penalized for not meeting State plan-related criteria. States should be aware that any audit conducted in this situation may result in an increased penalty for the State if the State is not found in substantial compliance. The audit will cover a one-year or shorter period (see 45 CFR 305.11).

Current Measurement of Program Effectiveness

Current audit and penalty regulations at 45 CFR Part 305 set forth audit criteria for an effective IV-D program and provide for an annual audit and imposition of the penalty if a State is found not to have an effective program. Those regulations define an effective program as one that is in compliance with each of several specified IV-D State plan requirements. In order to be in compliance with a particular State plan requirement, the State must meet specific regulatory criteria which, for the most part, require States to have and use written procedures to carry out the requirement. Thus, if a determination is made that a State has and uses written procedures and/or meets other criteria with regard to each State plan requirement, the State will not be subject to the penalty.

OCSE has completed annual audits during the past few years. After reviewing the findings, we believe that the audits have encouraged States to establish Child Support Enforcement programs that carry out the activities described in the IV-D State plan. Nevertheless, a State may have and be using procedures for each State plan requirement and not be operating its program in an effective manner. The House of Representatives, Committee on Ways and Means, in House Report No. 98-527, page 44, indicates that the audit should focus on program effectiveness rather than on simple compliance with processes. The Senate, Committee on Finance, in Senate Report No. 98-387, page 32, indicates that the Department

should be developing performance measures which will enable OCSE auditors to determine whether States are effectively attaining each of the important objectives of the program. The Report further indicates that, based on the experience in the program to date, it should be possible to set standards which represent minimum acceptable levels of success in carrying out the various objectives of the Child Support Enforcement program. We agree that, because State IV-D programs have been in operation for nine years, sufficient time has passed to allow States to reach a degree of maturity where it is no longer necessary to focus solely on compliance with the IV-D State plan.

Having reviewed the results of the audits for the first four periods, we have concluded that the current audit regulations do not enable us to adequately measure program effectiveness. We therefore are proposing to revise 45 CFR Part 305, Audit and Penalty, as described below.

Substantial Compliance Standard

In these regulations, we propose that a State must meet both State plan-related audit criteria and performance-related audit criteria to be found to have an effective program.

To implement the provisions of the amended section 402(a)(27) of the Act regarding the use of a substantial compliance standard and section 403(h)(3) of the Act regarding the determination OCSE will make as to whether noncompliance with requirements is of a technical nature that does not adversely affect program performance, we propose to amend the regulations at § 305.20, Audit criteria.

Currently, OCSE regulations at § 305.20(a) list IV-D State plan requirements that a State must satisfy to have an effective IV-D program. To implement substantial compliance, the proposed § 305.20(a)(1) lists ten selected criteria that must be fully met in order for a State to be found to meet the corresponding IV-D State plan requirements. The proposed § 305.20(a)(2) contains nine selected criteria and specifies that the procedures required by each criterion must be used in 75 percent of the cases reviewed in order for the State to be found to meet the corresponding IV-D State plan requirements. These provisions are effective beginning with fiscal year 1984. We consider the 75 percent standard to be rigorous because prior audit findings indicate that many States were not meeting the audit criteria in 75 percent of the cases reviewed. However, we believe that the 75 percent standard is attainable by all States and will strengthen the program by providing the States with a measure of program activity that will encourage improvement. In addition, we believe that the use of a 75 percent standard is reasonable because the audit criteria listed in § 305.20(a)(2) relate to program activities that have been IV-D State plan requirements applicable to all IV-D cases since the inception of the IV-D program in July, 1975. We welcome comment on the appropriateness of the 75 percent standard.

We are proposing at § 305.20(b) to specify additional audit criteria OCSE will use, beginning with the October 1, 1984 through September 30, 1985 audit period, to determine whether the State meets the IV-D State plan requirements contained in 45 CFR Part 302. The proposed § 305.20(b)(1) incorporates the criteria listed in § 305.20(a)(1) and lists seven additional criteria, all of which must be fully met in order for the State to be found to meet the corresponding IV-D State plan requirements. The criteria added beginning in fiscal year 1985 apply only to State plan requirements that were effective before fiscal year 1985. Thus, States were aware of these requirements prior to fiscal year 1985 and we have merely added audit criteria to measure requirements which were effective for that fiscal year.

The proposed § 305.20(b)(2) incorporates the criteria listed in § 305.20(a)(2), lists six additional criteria, and specifies that the procedures required by each criterion must be used in 75 percent of the cases reviewed. As already noted, we believe that the use of a 75 percent standard is both rigorous and reasonable because the audit criteria referred to and listed in § 305.20(b)(2) relate to case activities that have been IV-D State plan requirements since the inception of the IV-D program, or for several years.

We are proposing at § 305.20(c) to specify additional State plan-related audit criteria and new performance-related audit criteria OCSE will use for the period October 1, 1985 through September 30, 1987 to determine whether the State is in substantial compliance with the requirements of title IV-D of the Act. The proposed § 305.20(c)(1) incorporates the criteria listed in § 305.20 (a)(1) and (b)(1) and lists twelve additional criteria, all of which must be fully met in order for the State to be found to meet the corresponding IV-D State plan requirements.

The proposed § 305.20(c)(2) incorporates the criteria listed in § 305.20 (a)(2) and (b)(2), lists ten additional criteria, and specifies that the procedures required by each criterion must be used in 75 percent of the cases reviewed.

The proposed § 305.20(c)(3) requires the State to meet the performance-related audit criteria prescribed in the proposed 45 CFR 305.58(c).

We are proposing at § 305.20(b) to specify State plan-related audit criteria and new performace-related audit criteria OCSE will use, for the period October 1, 1987 through September 30, 1988 and all subseqent audit periods, to determine whether the State has an effective IV-D program in substantial compliance with the requirements of title IV-D of the Act. The proposed § 305.20(d)(1) incorporates the criteria listed in § 305.20 (a)(1), (b)(1) and (c)(1), all of which must be met in order for the State to be found to meet the corresponding IV-D State plan requirements. In addition, the proposed § 305.20(d)(2) incorporates the criteria listed in § 305.20 (a)(2), (b)(2) and (c)(2), each of which must be met for 75 percent of the cases reviewed.

The proposed § 305.20(d)(3) requires the State to meet the audit criteria referred to in § 305.58(d) relating to the performance indicators in § 305.58(a) and (b).

The proposed § 305.20 (a), (b) and (c) do not include all of the State plan-related audit criteria in 45 CFR Part 305. However, they do cover each of the IV-D State plan requirements prescribed in section 454 of the Act. The criteria addressed in § 305.20 involve IV-D functions and activities that we consider to be essential to an effective IV-D program. The criteria that were left out include having staff to perform IV-D functions covered in § 305.20, performing functions and activities that are otherwise covered by criteria in § 305.20, and performing functions and activities we do not consider to be essential to effective program performance. Nonetheless, we may at some later date, as discussed below, revise the criteria addressed in § 305.20 as a result of future audit findings.

OCSE will use only the State plan-related criteria listed or referred to in § 305.20 (a), (b), (c) and (d) in determining whether a State has an effective program in substantial compliance with the requirements of title IV-D of the Act. Nonetheless, audits of State IV-D programs will cover all of the State plan-related criteria in Part 305 (i.e., §§ 305.21 through 305.36 for the period October 1, 1983 through September 30, 1984, §§ 305.21 through 305.43 for the period October 1, 1984 through September 30, 1985, and §§ 305.21 through 305.56 for all

subsequent periods.) The audit reports will include audit findings on each criterion. After reviewing future audit findings, OCSE may revise § 305.20(c) to include additional audit criteria.

Beginning with the fiscal year 1986 audit period, a State must substantially comply with both State plan-related audit criteria and performance-related audit criteria to be found to have an effective IV-D program. A failure to comply under either set of criteria may result in imposition of the penalty. (See the discussion below under the headings: "Technical Changes to 45 CFR Part 305," for details regarding the deletion of the current § 305.20(b); "Performance Indicators," for details regarding the proposed performance indicators; and "Audit Criteria Relating to Performance Indicators," for details regarding scoring based on the performance indicators.)

The effect of these revisions in the audit and penalty regulations is that a substantial compliance standard as defined in section 403(h)(3) of the Act and § 305.20 will be the basis for determining whether States have effective IV-D programs. Under this standard, the State must, beginning with the fiscal year 1984 audit period, meet selected State plan-related criteria and, beginning with the fiscal year 1986 audit period, meet both selected State plan-related and performance-related criteria to be found to have an effective IV-D program. No failure to meet these criteria may be construed as noncompliance of a technical nature. A State will be subject to the penalty if it fails to meet either the selected plan-related or performance-related audit criteria prescribed in § 305.20.

Audit Criteria Relating to IV-D State Plan Requirements

Currently, OSCE regulations at §§ 305.21 through 305.36 prescribe audit criteria for determining program effectiveness. The criteria are based on the statutory IV-D State plan requirements prescribed in section 454 of the Act at the inception of the IV-D program in July, 1975. Since then, several mandatory and optional IV-D State plan provisions, including provisions added by the Child Support Enforcement Amendments of 1984, have been added to section 454 of the Act. To measure program effectiveness under section 403(h) of the Act, OCSE must determine whether the State is in substantial compliance with the requirements of title IV-D of the Act. Therefore, we are proposing to add new §§ 305.37 through 305.43 to the audit regulations to specify additional audit criteria OCSE will use to determine whether the State is in substantial compliance with the requirements of title IV-D of the Act as of the fiscal year 1985 audit period. We are also proposing to add new §§ 305.44 through 305.55 to the audit regulations to specify audit criteria OSCE will use to determine whether the State is in substantial compliance with the requirements of title IV-D of the Act as of the fiscal year 1986 audit period. The criteria prescribed in the proposed §§ 305.21 through 305.42, §§ 305.44 through 305.47 and §§ 305.49 through 305.54 apply to all States. However, the criteria prescribed in the proposed §§ 305.43, 305.48 and 305.55 only apply to States that have elected to implement the corresponding State plan provision. In addition, the criteria prescribed in § 305.42 only apply to States for fiscal year 1985 that elect to implement the corresponding State plan provision and will apply to all States effective October 1, 1985. Thus, OSCE will use audit criteria to determine whether a State is in compliance only with IV-D State plan requirements that apply to the State.

Finally, we issued proposed regulations in the **Federal Register** (48 FR 35468) on August 4, 1983 that amend the non-statutory State plan requirement at § 302.80 to specify that the IV-D agency shall perform certain medical support activities. States will be required, in order to be in compliance, to have and use written procedures which meet the requirements for medical support as published in the final regulations. Audit criteria will be effective upon publication of the final regulations. At the time that final medical support regulations are published, specific audit criteria will be published as interim final regulations.

Performance Indicators

In November, 1981, the Deputy Director, OSCE, established a task group to develop specific performance indicators to be used to evaluate State IV-D programs. During the development of these indicators, the task group reviewed the performance indicators used in several States. This review helped to identify indicators that are appropriate for evaluating all State IV-D programs. Also, contacts were made with other Federal agencies to identify systems and methodologies which could be used in conjunction with a performance indicator system; however, the agencies contacted did not run programs similar to the IV-D program. In addition, the task group solicited and received extensive input from State Child Support Enforcement agencies during the development of the performance indicators. In February, 1982, the proposed performance indicators were presented to the Executive Board of the National Council of State Support Enforcement Administrators at a meeting held in Alexandria, Virginia. In May, 1982, a revision of the proposed performance indicators were distributed to State IV-D Directors at the National Council of State Child Support Enforcement Administrators meeting held in Chevy Chase, Maryland. After that meeting, the Council conducted a survey of State IV-D Directors to determine their views on the proposed performance indicators. In July, 1982, the Executive Board of the IV-D Directors Council and OCSE representatives discussed the results of the survey at a meeting held in Kansas City, Missouri. In May, 1983, the IV-D Directors were again briefed on the proposed performance indicators at the National Council of State Child Support Enforcement Administrators meeting held in Crystal City, Virginia. Lastly, in August, 1983, the IV-D Directors were briefed at a National Reciprocal and Family Support Enforcement Association meeting in St. Louis. Several changes were made to the proposed performance indicators as a result of this meeting. The indicators proposed in this regulation are similar to those agreed to by the IV-D Directors.

In developing the seven performance indicators prescribed in the proposed § 305.58 (a) and (b), we took the following factors into consideration. First, the data necessary to use each performance indicator reflect State IV-D operations and are not overly burdensome to collect. Second performance indicators are as objective as possible at this point in time.

The House of Representatives, Committee on Appropriations, in House Report No. 97-894, page 83, indicates that the concept of child support enforcement is good social and fiscal policy; however, it (the committee) cannot indefinitely support a program with such a negative cost-benefit ratio. The Committee also indicates in House Report No. 98-357, page 93, that it remains concerned over the cost effectiveness of the Child Support Enforcement program. In addition, the House of Representatives, Committee on Ways and Means, in House Report No. 98-527, page 44, indicates that the Federal government pays 70 percent of the States' child support enforcement administrative costs and ought to be getting its money's worth in terms of firm and effective establishment and enforcement of AFDC and non-AFDC support obligations. OCSE also believes that the cost effectiveness of the IV-D

program is an important aspect of program operations. Therefore, we are proposing at § 305.58(a) (1) and (2) to prescribe two performance indicators OCSE will use to evaluate the cost effectiveness of State IV–D programs as of fiscal year 1986. These indicators are: (1) AFDC IV–D collections over total IV–D expenditures; and (2) non-AFDC IV–D collections over total IV–D expenditures. We believe that the use of these indicators will help to improve the cost effectiveness of State IV–D programs. The collection and expenditure data necessary to compute these indicators are currently submitted to the Federal government on the OCSE–34 and OCSE–41 reports. The States have been submitting these data to us since 1975. Thus, these performance indicators will not impose an additional burden on the States. In addition, the proposed performance indicators are as objective as possible at this point in time.

OCSE believes that the collection of support to reimburse assistance payments made to the family is an important aspect of the IV–D program. This is consistent with section 457 of the Act which provides for using support collections made with respect to AFDC recipients to reimburse both the State and Federal share of the current assistance payment. Therefore, we are proposing at § 305.58(a)(3) a performance indicator to evaluate the reimbursement rate of assistance payments made to those receiving AFDC for reasons other than unemployment. This indicator will be used beginning in fiscal year 1986. We believe that the use of this performance indicator will help to increase the percentage of assistance payments made to those receiving AFDC for reasons other than unemployment that are reimbursed via AFDC support collections. It should be noted that section 2640 of Pub. L. 98–369 requires the first $50 of support collected periodically which represents monthly support payments to be paid to the AFDC family. These payments will be treated and reported as AFDC IV–D collections. The collection and assistance payments data necessary to compute this indicator are submitted to the Federal government on the OCSE–34 and the SSA–41 reports. The States have been submitting both AFDC IV–D collection and AFDC assistance payment data to the Federal government since 1975. Thus, the proposed performance indicator will not place an additional burden on the States. We believe this indicator is also as objective as possible.

One basic purpose of the Child Support Enforcement program is to reduce or avert welfare costs by increasing the collection of support from absent parents. Since the collection of support is an important aspect of the IV–D program, we believe that State collection activity should be considered in determining whether a State has an effective IV–D program. Therefore, we are proposing at § 305.58(b) to prescribe four performance indicators OCSE will use to evaluate the collection of support as of fiscal year 1988. The indicators are: (1) Ratios designating either AFDC or non-AFDC collections on support due (for a fiscal year) as the numerator and either total AFDC or non-AFDC support due (for the same fiscal year) as the denominator; and (2) ratios designating either AFDC or non-AFDC collections on support due (for prior fiscal years) as the numerator and either total AFDC or non-AFDC support due (for prior fiscal years) as the denominator. Beginning with fiscal year 1986, section 13 of Pub. L. 98–378 requires the Secretary to report to Congress for each fiscal year the data necessary to compute these indicators. Since these indicators will not be effective until the audit period begining October 1, 1987 (fiscal year 1988) States will have sufficient time to prepare and report the necessary data (i.e., the amount of current support due during the fiscal year). We will amend the OCSE–34 report to accomplish this.

The performance indicators discussed above measure certain aspects of the IV–D program. We recognize that these indicators do not address IV–D functions such as non-AFDC avoidance and establishing paternity. We are not proposing performance indicators that address all IV–D functions at this time because many of the States cannot easily collect and maintain the data necessary to use performance indicators other than the indicators we are proposing. As State data collection systems and techniques improve and we evaluate results from research projects currently underway, we intend to propose additional performance indicators, including those measuring paternity establishment and cost avoidance. Nonetheless, we believe that the proposed performance indicators will better enable us to determine whether each State has an effective IV–D program. The proposed indicators are consistent with section 452(a)(1) of the Act which requires the Director, OCSE to establish standards to assure that State programs will be effective.

Audit Criteria Relating to Performance Indicators

In developing these proposed regulations, we considered two options regarding the use of performance indicators to evaluate State IV–D programs. In considering these options, we focused on identifying a system that would ensure that the AFDC and non-AFDC portions of the IV–D program be given equal weight. Under the first option considered, a national standard would be developed for the AFDFC portion of the IV–D program and a second standard would be developed for the non-AFDC portion of the program. Under this dual standard system, States could not compensate for unacceptable performance in one portion of the IV–D program with excellent performance in the other portion of the program. Nonetheless, we have decided to use a single standard system in which AFDC and non-AFDC indicators are given equal weight rather than the dual standard system for the following reasons. First, States, in general, do not have functioning cost accounting systems to allocate costs between the AFDC and non-AFDC portions of the IV–D program. Therefore, we cannot compare collections with actual AFDC expenditures or non-AFDC collections with actual non-AFDC expenditures. Our only meaningful expenditure data are for total expenditures. Second, we believe that there would be little difference in the States at a risk under a dual standard system and under a single standard.

We propose to combine the scores on the proposed performance indicators into a single composite score for each State and use a single national standard by which to assess program performance. We propose at § 305.58(c)(1) to evaluate the ratios of the performance indicators in paragraph (a) of this section on the basis of a 100 point scoring system. The tables in § 305.58(c)(1) (i) through (iii) show the scores States will receive for different levels of performance on each performance indicator. Under this scoring system, equal weight is given to the AFDC and non-AFDC components of the IV–D program. A maximum of 50 points can be scored on the two AFDC related performance indicators in § 305.58(a) (1) and (3) (25 points for each indicator). Similarly, a maximum of 50 points can be achieved on the single non-AFDC performance indicator in § 305.58(a)(2).

The proposed regulations at § 305.58(c)(2) specify that to be found to meet the audit criteria, a State's total

score must equal or exceed 70, as illustrated by the examples in the regulation. In developing this standard, our goal was to define a minimum level of acceptable performance. We believe that achievement of a score of 70 on these three performance indicators represents the minimum level of acceptable performance at this time. However, because of the changing and evolving nature of the program, we intend to revise this scoring system for fiscal year 1988 to reflect anticipated improvements in State program performance.

We are proposing at § 305.58(d) to evaluate State performance according to the indicators in § 305.58 (a) and (b) on the basis of a scoring system we will describe and update by regulation once every two years. In fiscal year 1987, we will publish the scoring system to be used during the following two fiscal years.

Table 1 shows the results of applying this scoring system to the States for fiscal year 1983. The table indicates the level of performance achieved by the States in each of the performance indicators in § 305.58(a), the scores which would be awarded for each of the performance indicators and the total score which would be used to determine whether a State meets the audit criteria.

The table also shows the level of performance of the nation as a whole. In fiscal year 1983, the national averages were $1.27, $1.65 and 6.6 percent on each of the three performance indicators in § 305.58(a). This would result in individual scores of 24, 50 and 20 for a total score of 94. The table indicates that 18 States would have achieved scores of less than 70 in fisical year 1983. These States are marked by an asterisk. Finally, we note that a score of 70 can be achieved by levels of performance as low as $.90, $.90 and 4.0 percent on the three performance indicators in § 503.58(a). Thus, we feel that a score of 70 is clearly achievable.

TABLE 1

State	Indicator one	Score	Indicator two	Score	Indicator three	Score	Total score
Alabama*	0.85	18	0.09	4	10.6	25	47
Alaska	0.44	10	1.97	50	5.9	15	75
Arizona*	0.25	6	1.55	50	2.3	5	61
Arkansas	1.01	22	0.62	28	13.3	25	75
California	1.08	22	0.92	40	4.6	10	72
Colorado	1.17	22	0.98	40	9.4	25	87
Connecticut	1.73	25	1.56	50	12.7	25	100
Delaware	0.69	14	1.76	50	8.4	25	89
Washington, D.C.*	0.49	10	0.22	12	3.0	5	27
Florida*	0.66	14	0.55	24	4.3	10	48
Georgia*	1.38	24	0.25	12	6.0	20	56
Guam*	0.82	18	0.42	20	6.1	20	58
Hawaii	1.21	24	1.51	50	5.3	15	89
Idaho	1.76	25	0.41	20	17.8	25	70
Illinois*	1.16	22	0.80	36	2.3	5	63
Indiana	2.61	25	0.46	20	12.1	25	70
Iowa	3.29	25	1.64	50	13.5	25	100
Kansas	1.50	25	0.41	20	8.6	25	70
Kentucky	0.82	18	1.74	50	5.0	15	83
Louisiana	0.75	16	1.25	48	7.2	25	89
Maine	2.86	25	0.62	28	13.3	25	78
Maryland	1.70	25	3.02	50	12.4	25	100
Massachusetts	2.04	25	1.61	50	13.6	25	100
Michigan	2.36	25	4.26	50	8.6	25	100
Minnesota	1.48	25	1.11	44	10.0	25	94
Mississippi*	1.55	25	0.12	8	8.0	25	58
Missouri	1.27	24	0.73	32	6.1	20	76
Montana	1.63	25	0.52	24	7.7	25	74
Nebraska	1.12	22	4.62	50	7.3	25	97
Nevada	0.53	12	1.09	44	16.8	25	81
New Hampshire	1.21	24	4.08	50	11.2	25	99
New Jersey	1.14	22	2.83	50	8.1	25	97
New Mexico*	0.90	20	0.53	24	6.7	20	64
New York*	0.79	16	1.22	48	3.9	5	69
North Carolina	1.53	25	0.98	40	16.3	25	90
North Dakota	1.55	25	0.55	24	13.5	25	74
Ohio*	1.68	25	0.07	4	5.1	15	44
Oklahoma*	0.60	14	0.26	12	4.7	10	36
Oregon	1.15	22	2.10	50	12.6	25	97
Pennsylvania	1.10	22	5.56	50	6.4	20	92
Puerto Rico*	0.27	6	9.21	50	2.9	5	61
Rhode Island	1.97	25	1.39	48	6.3	20	93
South Carolina	2.08	25	0.50	24	7.9	25	74
South Dakota	1.81	25	0.56	24	12.4	25	74
Tennessee	0.79	16	1.92	50	6.9	20	86
Texas*	0.72	16	0.47	20	7.0	25	61
Utah*	1.75	25	0.29	12	21.6	25	62
Vermont*	2.74	25	0.21	12	7.2	25	62
Virgin Islands	0.44	10	1.70	50	4.7	10	70
Virginia*	1.53	25	0.24		7.0	25	62
Washington	1.56	25	0.89	36	10.1	25	86
West Virginia*	1.30	24	0.05	4	5.8	15	43
Wisconsin	1.92	25	0.80	36	8.8	25	86
Wyoming	2.12	25	0.61	28	7.1	25	78
National average	1.27	24	1.65	50	6.6	20	94

Data as reported by States as of June 1, 1984.

Notice and Corrective Action Period

Current regulations at 45 CFR 305.50 provide that a State is subject to an immediate five percent reduction of its AFDC funds if, on the basis of an audit, a determination is made that the State failed to have an effective program meeting the requirements of section 402(a)(27) of the Act. Under this

requirement, the Secretary could not suspend penalties during corrective action periods or take into account subsequent improvements before imposing the penalty.

To implement the provision of the amended section 403(h)(2) of the Act regarding the corrective action period provided to the State, the proposed regulations at § 305.59, Notice and corrective action period, specify that, if a State is found by the Secretary on the basis of the results of the audit described in Part 305 not to comply substantially with the requirements of title IV–D of the Act, OCSE will notify the State in writing of such finding. The regulations further require the notice to cite the State for noncompliance, list the unmet audit criteria, apply the penalty and give the reasons for the Secretary's findings. The notice must also identify any audit criteria listed in § 305.20 (a)(2), (b)(2) or (c)(2) that the State met only marginally (that is, in 75 to 80 percent of the cases reviewed), specify that the penalty may be suspended if the State meets the conditions specified in § 305.59(c) and specify the conditions prescribed in § 305.59(d) that result in terminating the suspension of the penalty. The proposed § 305.59(c) specifies that the penalty will be suspended for a period of time not to exceed one year from the date of notice and, beginning with the fiscal year 1986 audit period, when the State fails to meet the audit critera relating to the performance indicators prescribed in § 305.58 the penalty will be suspended until the end of the fiscal year following the fiscal year in which a State failed to meet those criteria, if the following conditions are met: (1) The State submits a correc tive action plan to the appropriate Regional Office within 60 days of the date of the notice, which contains a corrective action period not to exceed one year from the date of the notice and which contains steps necessary to achieve substantial compliance with the requirements of title IV–D of the Act; (2) the corrective action plan and any amendments are approved by the Secretary within 30 days of receipt of the plan, or approved automatically because the Secretary took no action within the 30-day period; and (3) the Secretary finds that the plan (or any amendment approved by the Secretary) is being fully implemented by the State and that the State is progressing to achieve substantial compliance with the criteria cited in the notice. The proposed § 305.58(d) specifies that the penalty will remain suspended until the Secretary determines that the State has achieved substantial compliance, the State is no longer implementing its corrective action plan, or the State has implemented its corrective action plan but has failed to achieve or maintain substantial compliance with the criteria cited in the notice. In the event that a State fails to meet audit criteria relating to the performance indicators prescribed in § 305.58, the State must meet those criteria for the year succeeding the year in which the State failed to meet them. This is necessary because these criteria must be measured on a fiscal year basis. If the State achieves substantial compliance within the corrective action period, the State will not be subject to a reduction of its Federal AFDC funds. However, if the State is no longer implementing its corrective action plan or has implemented its corrective action plan but failed to achieve or maintain substantial compliance with the criteria cited in the notice, the State will be subject to a reduction of its Federal AFDC funds in accordance with § 305.60. For State plan-related criteria, this determination will be made as of the first full quarter after the end of the corrective action period. For performance-related criteria, this determination will be made as of the fiscal year following the fiscal year in which performance was not in substantial compliance.

The proposed § 305.59(e) specifies that a corrective action plan disapproved under § 305.59(b) is not subject to appeal. Because the Congress has given the Secretary discretion to determine whether or not to approve a corrective action plan, disapproval of a corrective action plan is not subject to appeal.

The proposed § 305.58(f) specifies that only one corrective action period is provided to a State in relation to a given criterion when consecutive findings of noncompliance are made on that criterion.

We believe that any State found to be operating a IV–D program which does not substantially comply with one or more of the requirements in the Act could, with diligent effort, develop and carry out a plan for bringing the program into substantial compliance within the specified period.

Imposition of the Penalty

Current regulations at 45 CFR 305.50 provide that if, on the basis of the audit, a determination is made that a State does not have an effective program meeting the requirements of section 402(a)(27) of the Act, the State is subject to a five percent reduction of its Federal AFDC funds. Under this provision, a State found not to have an effective IV–D program is subject to the flat five percent penalty regardless of whether it is the first or a subsequent occasion that such determination is made.

Under the new statute, a State found not to have an effective IV–D program is subject to a penalty only if the State fails to correct cited deficiencies or falls out of compliance in a marginal area for which the State was cited.

To implement the provision of the amended section 403(h) of the Act regarding the graduated penalty, we propose to amend § 305.50, Penalty for failure to have an effective Child Support Enforcement program, by redesignating the regulation as § 305.60, revising paragraph (a), redesignating paragraphs (b) and (c) as (e) and (f) and adding new paragraphs (b), (c) and (d). Section 305.60(a) specifies that if the Secretary determines, on the basis of the results of the audit conducted under Part 305, that a State does not substantially meet the requirements in title IV–D of the Act and failed to achieve substantial compliance with such requirements within the corrective action period approved by the Secretary under § 305.59, payments to the State under title IV–A of the Act must be reduced for the period prescribed in the new § 305.60 (c) and (d) by: (1) Not less than one nor more than two percent for a period beginning in accordance with paragraph (c) or (d) of this section and not to exceed the one-year period following the end of the suspension period; (2) not less than two nor more than three percent if it is the second consecutive finding made as a result of an audit for a period beginning as of the second one-year period following the suspension period and not to exceed one year; or (3) not less than three nor more than five percent if it is the third or a subsequent consecutive finding as a result of an audit for a period beginning as of the third one-year period following the suspension period.

Under paragraph (b), the penalty will not be applied if the State achieves substantial compliance with those criteria identified in the notice within the corrective action period approved by the Secretary under § 305.59. Under paragraph (c), if the penalty suspension ends because the State is no longer implementing the corrective action plan, the penalty will be applied as if the suspension has not occurred. Under paragraph (d), if the penalty suspension ends because the State is implementing its corrective action plan but has failed to achieve substantial compliance with the criteria identified in the notice within the corrective action period approved by the Secretary under

§ 305.59, the penalty will be effective for any quarter that ends after the expiration of the suspension period until the first quarter througthout which the State IV–D program is in substantial compliance with the requirements of title IV–D of the Act.

This is illustrated by the following examples. OCSE conducts an audit of a State Child Support Enforcement program for fiscal year 1984 in the spring of 1985. After reviewing the audit findings, a determination is made that the State did not substantially comply with the requirements of title IV–D of the Act because it did not meet two of the audit criteria prescribed in § 305.20(a)(1). A notice dated July 1, 1985 is sent to the State in accordance with § 305.59. The notice indicates the criteria that resulted in the finding of noncompliance and the criteria that the State only marginally met, indicates that the penalty is in effect, specifies the conditions under which the penalty may be suspended and specifies the conditions that result in termination of suspension of the penalty. The State submits an approved corrective action plan which specifies a 10-month corrective action period (July 1, 1985 through April 30, 1986). After the corrective action period, OCSE conducts a follow-up on the initial audit to determine whether the State is now in substantial compliance with respect to the criteria identified in the notice. Based on the findings, a determination is made that the State implemented its corrective action plan but failed to achieve substantial compliance with the criteria identified in the notice during the suspension period. The State's Federal AFDC payments will be reduced by not less than one nor more than two percent of such payments from the beginning of the quarter in which the corrective action period expires (in this case, from April 1, 1986) and up to a year from the end of the corrective action period (April 30, 1987).

An audit will be conducted at least once a year in the case of a State that is being penalized. Suppose OCSE conducts a second consecutive audit in May, 1987 and a determination is made that the State has continued to fail to achieve substantial compliance during the audit period with those criteria specified in the initial notice. The State's Federal AFDC payments will be reduced between two and three percent as of May 1, 1987 for a period not to exceed one year.

Suppose OCSE conducts a third consecutive audit in May, 1988. After reviewing the audit findings, a determination is made that the State was in substantial compliance as of August 1, 1987 with the criteria on which it is being penalized. The reduction in Federal AFDC funds will cease as of October 1, 1987. The State's Federal AFDC payments were reduced between two and three percent from May 1, 1987 until October 1, 1987.

Since the penalty would be taken against the AFDC program administered by States under title IV–A of the Act, the Social Security Administration's Office of Family Assistance would assume responsibility for making the appropriate penalty reductions. Revisions to the penalty provisions at 45 CFR 205.146(d) are proposed to implement amendments to section 403(h) of the Act.

In the second example, OCSE conducts an audit of a State Child Support Enforcement program for fiscal year 1984 in the spring of 1985. After reviewing the audit findings, a determination is made that the State did not substantially comply with the requirements of title IV–D of the Act because it did not meet two of the audit criteria listed in § 305.20(a)(1). The finding also identifies two of the audit criteria listed in § 305.20(a)(2) that the State met only marginally (that is, in 75 to 80 percent of the cases reviewed). A notice dated July 1, 1985 is sent to the State in accordance with § 305.59. The notice lists the criteria that resulted in the finding of noncompliance and the criteria that the State marginally met, indicates that the penalty is in effect, specifies the conditions under which the penalty may be suspended, and specifies the conditions that result in termination of suspension of the penalty. The State submits an approved corrective action plan which specifies a 10-month corrective action period (July 1, 1985 through April 30, 1985). After the corrective action period, OCSE conducts a follow-up on the initial audit to determine whether the State is now in substantial compliance with respect to the criteria identified in the notice. Based on the findings, a determination is made that the State implemented its corrective action plan but is not in substantial compliance because, although it met the criteria in the notice that resulted in a finding of noncompliance, it failed to meet the criteria in the notice that it had previously met on a marginal basis. The State's Federal AFDC payments will be reduced by not less than one nor more than two percent of such payments from the beginning of the quarter in which the corrective action period expires (in this case, from April 1, 1986) and up to a year from the end of the corrective action period (April 30, 1987).

OCSE will immediately audit the aspects of the State Child Support Enforcement program not covered by the criteria identified in the notice. Based on the findings, a determination is made that the State did not achieve substantial compliance with one of the audit criteria listed in § 305.20(b)(1). A notice dated July 1, 1986 is sent to the State in accordance with § 305.59. The notice indicates the criterion that resulted in the finding of noncompliance, indicates that the penalty is in effect, specifies the conditions under which the penalty may be suspended and specifies the conditions that result in termination of suspension of the penalty. After the corrective action period, OCSE conducts an audit to determine whether the State in now in substantial compliance with respect to the two audit criteria listed in § 305.20(a)(1) in the initial notice and the one audit criterion listed in § 305.20(b)(1) in the second notice. After reviewing the audit findings, a determination is made that the State was in substantial compliance as of November 1, 1986 with the two criteria specified in the initial notice on which it is being penalized. The reduction in Federal AFDC funds will cease as of January 1, 1987. The State's Federal AFDC payments were reduced between on and two percent from April 1, 1986 through December 31, 1986. A determination is subsequently made that the State achieved substantial compliance with respect to the one audit criterion listed in § 305.20(b)(1) in the second notice. The increased penalty due to a subsequent audit finding is not applied.

Application of the Proposed Regulations

For program audits for any fiscal year beginning after October 1, 1983, OCSE is proposing to: (1) Conduct an audit of the effectiveness of State Child Support Enforcement programs at least once every three years (see § 305.10); (2) use the "substantial compliance" standard specified in § 305.20 to determine whether each State has an effective IV–D program; (3) provide any State found not to have an effective program in substantial compliance with the requirements of title IV–D of the Act with a corrective action period in accordance with § 305.59; (4) provide for the use of the graduated penalty prescribed in § 305.60; and (5) specify in § 305.60 the period during which the penalty is to be imposed.

OCSE is proposing to use the new audit criteria specified in §§ 305.37 through 305.43 for program audits

beginning with the October 1, 1984 through September 30, 1985 audit period. The new audit criteria specified in §§ 305.44 through 305.56 and § 305.58(c) would be effective for fiscal years beginning after September 30, 1985. The audit criteria referred to in § 305.58(d) would be effective for fiscal years beginning after September 30, 1987. OCSE has been conducting financial and statistical system reviews in the States to determine whether State systems for recording, summarizing and reporting financial and statistical data are reliable in terms of accuracy, completeness and timeliness. Although these proposed audit regulations do not address the review of State financial and statistical systems, OCSE, as part of the audit process, will review these systems during any audit conducted for a period beginning on or after October 1, 1984 to ensure that the data used to determine whether a State meets the performance-related audit criteria are reliable. The States are using these results to take corrective action prior to October 1, 1984. OCSE will continue to apply the current audit regulations to all program audits for fiscal years beginning prior to September 30, 1984.

Technical Changes to 45 CFR Part 305

We propose to make the following technical changes to the audit and penalty regulations to conform with the proposed revisions discussed above. We propose to revise § 305.0, Scope, by substituting descriptions of the new § 305.10, § 305.20, §§ 305.21 through 305.56, § 305.58 and § 305.60 for the descriptions of the current § 305.10, §§ 305.20 through 305.36 and § 305.50. In addition, we added a description of the new § 305.59. We propose to amend § 305.10, Timing and scope of audit, by making reference to criteria specified in §§ 305.21 through 305.56 and § 305.58 instead of §§ 305.20 through 305.36.

We also propose to revise § 305.11, Audit period, by deleting the description of the first audit period (January 1, 1977 through September 30, 1977) and the reference to an annual audit. Since the first compliance audit has been conducted, it is no longer necessary to describe the first audit period in the regulation. In addition, we propose to revise § 305.11 to specify that any audit conducted when the State is being penalized under § 305.60 may cover a period of less than one year.

We are proposing to revise the title of § 305.20 because the current title "Audit criteria" does not reflect the content of the regulation. We believe that the title "Effective support enforcement program" better reflects the content of the regulation. Currently, OCSE regulations at § 305.20(b) require the IV-D agency to be receiving notice from the IV-A agency pursuant to 45 CFR 235.70 and the State to be obtaining assignment of support rights in accordance with 45 CFR 232.11 in order for the State to be found to have an effective IV-D program. However, the corresponding audit criteria were deleted from 45 CFR Part 305 via final regulations published in the **Federal Register** (47 FR 24716) on June 8, 1982. Therefore, we are proposing to delete § 305.20(b).

We are proposing to amend the audit regulations at 45 CFR 305.24(b) to reflect the requirement in Pub. L. 98-378 that States have in effect laws providing for and implementing procedures for the establishment of paternity for any child at any time prior to the child's 18th birthday. We are also proposing to amend the audit regulations at 45 CFR 305.24(c) and 305.25(a)(1) to reflect the requirement in Pub. L. 98-378 that States provide support enforcement services to recipients of foster care maintenance assistance under title IV-E of the Act.

OCSE regulations at 45 CFR 305.33(f) require the States to have and use written procedures for collecting any fees required by 45 CFR 302.35(e). In final regulations published in the **Federal Register** (46 FR 54554) on November 3, 1981, OCSE moved the fee provision at 45 CFR 302.35(e) to 45 CFR 303.70(e)(2). Therefore, we are proposing to amend 45 CFR 305.33(f) to reflect this change.

45 CFR 305.12 and 305.13 are not amended by these proposed rules.

Paperwork Reduction Act

The performance indicators prescribed in 45 CFR 305.58 are not subject to Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1980 (Pub. L. 96-511). The State plan and disclosure requirements are subject to Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1986 (Pub. L. 96-511). The collection, expenditure and assistance payment reports referred to in this document have been reviewed and approved by OMB under the following approval numbers:

1. OCSE-34 (Quarterly Report of Collections) 0960-0238.
2. OCSE-41 (Financial Status Report) 0960-0235.
3. SSA-41 (Quarterly Statement of Expenditures) 0960-0294.

The OCSE-34 will be revised to include data necessary to compute the performance indicators regarding collection activity and submitted for OMB approval in sufficient time to allow implementation consistent with the requirements of the rule.

Regulatory Impact Analysis

The Secretary has determined in accordance with Executive Order 12291, that this rule does not constitute a "major" rule. A major rule is one that is likely to result in:

—An annual impact on the economy of $100 million or more;
—A major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; or
—Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

These proposed regulations amend the OCSE audit regulations to: (1) Require OCSE to conduct an audit of the effectiveness of State Child Support Enforcement programs at least once every three years; (2) require OCSE to use a "substantial compliance" standard to determine whether each State has an effective IV-D program; (3) provide that any State found not to have an effective IV-D program in substantial compliance with the requirements of title IV-D of the Act be given an opportunity to take the corrective action necessary to be in substantial compliance with those requirements; (4) provide for the use of a graduated penalty of not more than five percent of a State's Federal AFDC funds; and (5) specify the period of time during which a penalty is effective. These proposed changes are a direct result of the statute.

In order to be found to have an effective program in substantial compliance with the requirements of title IV-D of the Act, a State must, beginning with the fiscal year 1984 audit period, meet audit criteria listed in § 305.20. If a State is found by the Secretary, on the basis of the results of an audit, not to comply substantially with the requirements of title IV-D of the Act, OCSE will notify the State that the penalty may be suspended for a period of time not to exceed one year from the date of the notice, to allow the State to take corrective action. If a State fails to take the corrective action necessary to achieve substantial compliance during the period prescribed in the notice, Federal AFDC funds to the State will be reduced in an amount not to exceed five percent until the first quarter throughout which the State IV-D program is found to substantially

comply with the requirements of title IV–D of the Act.

The proposed regulations may save some States funds they otherwise might have lost because a "substantial compliance" standard and corrective action period are used rather than the "full compliance" standard in determining whether a State meets the IV–D State plan requirements currently addressed in the audit regulations. However, the penalty under prior law was never assessed. Nonetheless, the new regulations may cost the State money because they are more workable and enforceable than the current regulations. Audit results will depend on State performance. If State performance improves in response to this audit system, States (as well as the Federal government) would save money due to increased collections and decreased administrative costs. We therefore have no basis for projecting either net costs or savings to States.

These regulations also propose performance indicators for evaluating State IV–D programs and new audit criteria related to the performance indicators that together will be used to assess State program effectiveness. The seven performance indicators we are proposing are designed to show: (1) The cost effectiveness of a State IV–D program; (2) the amount of IV–A assistance payments reimbursed by IV–D collections; and (3) the amount of support collected on the amount of support due for a fiscal year and the period prior to a fiscal year. The three indicators that will enable us to determine the cost effectiveness of State IV–D programs and the reimbursement rate for payments made to AFDC recipients will be effective as of the fiscal year 1986 audit period. The four performance indicators that will enable us to evaluate State collection activity will be effective as of the fiscal year 1988 audit period. To determine whether a State meets the performance-related criteria, its performance will be compared to the standards described earlier.

Finally, these regulations propose audit criteria based on IV–D State plan requirements, including criteria based on the Child Support Enforcement Amendments of 1984, not currently addressed in the audit regulations that will be used to assess State program effectiveness. These criteria are simular to the criteria in the current regulations for other State plan requirements. The criteria prescribed in §§ 305.37 through 305.43 will be effective as of the fiscal year 1985 audit period. The criteria prescribed in §§ 305.44 through 305.56 will be effective as of the fiscal year 1986 audit period.

Under these proposed regulations, a State must have an effective program in substantial compliance with the IV–D State plan requirements as measured by the audit criteria in § 305.20 in effect for the audit period and new performance indicators to aviod a reduction of its Federal AFDC funds. We cannot estimate the number of States that may avoid losing AFDC funds because a "substantial compliance" standard and corrective action period were used rather than the "full compliance" standard in determining whether a State meets the current IV–D State plan requirements. In addition, we cannot estimate the number of States that may lose AFDC funds because they failed to meet the new State plan-related audit criteria and performance-related audit criteria.

Beginning with the fiscal year 1988 audit period, we will compare 1988 State performance to a new national standard in determining whether a State meets the performance-related criteria. Again, we do not have data sufficient to allow us to estimate the number of States that could lose AFDC funds because they failed to meet the new national standard.

These proposed regulations could result in minor increases in Federal and State administrative costs. The States will not be required to perform any new program functions. Thus, additional Federal/State costs of conducting audits will be limited to the area of documenting State performance using criteria based on new IV–D State plan requirements and performance indicators for evaluating program effectiveness.

The Secretary certifies, under 5 U.S.C. 605(b) as enacted by 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 they primarily affect Federal and State governments.

List of Subjects

45 CFR Part 205

Administrative practice and procedure, Aid to families with dependent children, Family assistance office, Grant programs/social programs, Public assistance programs, Reporting requirements.

45 CFR Part 305

Child welfare, Grant programs/social programs, Accounting.

For the reasons discussed above, 45 CFR 205.146 is proposed to be amended as follows:

PART 205—[AMENDED]

Section 205.146 is amended by revising paragraphs (d)(1) and (2), and by adding a new paragraph (d)(3) to read as follows:

§ 205.146 [Amended]

* * * * *

(d) *Penalty for failure to have an effective child support enforcement program*—(1) *General.* Pursuant to section 403(h) of the Act, notwithstanding any other provision of this chapter, total payments to a State under title IV–A of the Act for any quarters in any fiscal year, shall be reduced if a State is found by the Secretary to have failed to have an effective child support enforcement program in substantial compliance with the requirements of section 402(a)(27), as implemented by Parts 302 and 305 of this title. The reduction for any quarter (calculated without regard to any other reduction under this section) shall be: (i) Not less than one nor more than two percent of such payments for a period beginning in accordance with § 305.60 (c) or (d) of this title not to exceed the one-year period following the end of the suspension period specified in the notice required by § 305.59 of this title; (ii) Not less than two nor more than three percent of such payments if the finding is the second consecutive finding made as a result of an audit for a period beginning as of the second one-year period following the suspension period specified in the notice required by § 305.59 of this title not to exceed one year; or (iii) Not less than three nor more than five percent of such payments if the finding is the third or subsequent consecutive finding as a result of an audit for a period beginning as of the third one-year period following the suspension period specified in the notice required by § 305.59 of this title.

(2) *Application of penalty.* (i) The penalty will be imposed for any quarter beginning after September 30, 1983.

(ii) The penalty will be imposed on the basis of the results of the audit conducted pursuant to Part 305 of this title.

(3) *Notice, suspension, corrective action period.* Notice, suspension and corrective action provisions are set forth at 45 CFR 305.59.

45 CFR Part 305 is proposed to be amended as follows:

1. The table of contents is revised to read as follows:

PART 305—AUDIT AND PENALTY

Authority: Secs. 403(h), 404(d), 452(a) (1) and (4), and 1102 of the Social Security Act; 42 U.S.C. 603(h), 604(d), 652(a) (1) and (4), and 1302.

2. Section 305.0 is revised to read as follows:

§ 305.0 Scope.

This part implements the requirements in sections 452(a)(4) and 403(h) of the Act for an audit, at least once every three years, of the effectiveness of State Child Support Enforcement programs under title IV–D and for a possible reduction in Federal reimbursement for a State title IV–A program pursuant to sections 403(h) and 404(d) of the Act. Sections 305.10 through 305.13 describe the audit. Section 305.20 defines an effective program for the purposes of this part. Sections 305.21 through 305.56 and § 305.58 establish audit criteria the Office will use to determine program effectiveness. Section 305.58 also establishes performance indicators the Office will use to determine State IV–D program effectiveness. Section 305.59 provides for the issuance of a notice and corrective action period is a State if found by the Secretary not to have had an effective IV–D program. Section 305.60 provides for the imposition of a penalty if a State is found by the Secretary not to have had an effective program and fails to take corrective action and achieve substantial compliance within the period prescribed by the Secretary.

3. Sections 305.10 and 305.11 are revised to read as follows:

§ 305.10 Timing and scope of audit.

(a) The Office will conduct an audit in accordance with sections 452(a)(4) and 403(h) of the Act, at least once every three years, to evaluate the effectiveness of each State's program in carrying out the purposes of title IV–D of the Act and to determine that the program meets the title IV–D requirements. The audit of each State's program will be a comprehensive review using the criteria prescribed in §§ 305.21 through 305.56 and § 305.58 of this part.

(b) The Office will conduct an annual comprehensive audit in the case of a State that is being penalized. For a State operating under a corrective action plan, the review at the end of the corrective action period will cover only the criteria specified in the notice of non-compliance as prescribed in § 305.59 of this part.

(c) During the course of the audit, the Office will:

(1) Make a critical investigation of the State's IV–D program through inspection, inquiries, observation, and confirmation; and

(2) Use the audit standards promulgated by the Comptroller General of the United States in the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

§ 305.11 Audit period.

The audit will cover the period October 1 through September 30 of each fiscal year audited and, when the State is operating under a corrective action plan, will cover the first full quarter after the corrective action period. The audit may cover a shorter period at State request when the State is being penalized under § 305.60 of this part.

4. Section 305.20 is revised to read as follows:

§ 305.20 Effective support enforcement program.

For the purposes of this part and section 403(h) of the Act, in order to be found to have an effective program in substantial compliance with the requirements of title IV–D of the Act, a State must meet the IV–D State plan requirements contained in Part 302 of this chapter measured as follows:

(a) For the fiscal year 1984 audit period:

(1) The following audit criteria must be met:

Statewide operation. (45 CFR 305.21(d))
State financial participation. (45 CFR 305.22 (a) and (b))
Single and separate organizational unit. (45 CFR 305.23 (a) and (b))
Establishing paternity. (45 CFR 305.24(b))
Enforcement of support obligation. (45 CFR 305.26 (c) and (d))
Distribution of child support payment. (45 CFR 305.28(a))
State parent locator service. (45 CFR 305.33(e))
Cooperative arrangements. (45 CFR 305.34(a))
Reports and maintenance of records. (45 CFR 305.35 (a) and (b))
Fiscal policies and accountability. (45 CFR 305.36(a))

(2) The procedures required by the following audit criteria must be used in 75 percent of the cases reviewed for each criterion:

Establishing paternity. (45 CFR 305.24(c))
Support obligations. (45 CFR 305.25 (a) and (b))
Enforcement of support obligation. (45 CFR 305.26 (a), (b) and (e))
Support payments to the IV–D agency. (45 CFR 305.27 (a), (b) and (d))
Distribution of support payment. (45 CFR 305.28(b))
Payments to the family. (45 CFR 305.29)
Individuals not otherwise eligible. (45 CFR 305.31 (a), (b) and (c))
Cooperation with other States. (45 CFR 305.32 (a), (b), (c), (d), (e), (f), and (g))
State parent locator service. (45 CFR 305.33 (a) and (g))

(b) Beginning with the fiscal year 1985 audit period:

(1) The criteria prescribed in paragraph (a)(1) of this section and the following audit criteria must be met:

Bonding of employees. (45 CFR 305.37(a))
Separation of cash handling and accounting functions. (45 CFR 305.38(a))
Withholding of unemployment compensation. (45 CFR 305.39 (a) through (h))
Federal tax refund offset. (45 CFR 305.40(a))
Recovery of direct payments. (45 CFR 305.41(a))
Spousal support. (45 CFR 305.42(a))
90 percent Federal financial participation for computerized support enforcement systems. (45 CFR 305.43)

(2) The procedures required by the criteria prescribed in paragraph (a)(2) of this section and the following audit criteria must be used in 75 percent of the cases reviewed for each criterion:

Bonding of employees. (45 CFR 305.37(c))
Separation of cash handling and accounting functions. (45 CFR 305.38(c))
Withholding of unemployment compensation (45 CFR 305.39(i))
Federal tax refund offset. (45 CFR 305.40(b))
Recovery of direct payments (45 CFR 305.41(b))
Spousal support. (45 CFR 305.42(b))

(c) For the fiscal year 1986 and 1987 audit periods:

(1) The criteria prescribed in paragraphs (a)(1) and (b)(1) of this section and the following criteria must be met:

Publicizing the availability of support enforcement services. (45 CFR 305.44)
Notice of collection of assigned support. (45 CFR 305.45(a))
Incentive payments to States and political subdivisions. (45 CFR 305.46(a))
Guidelines for setting child support awards. (45 CFR 305.47)
Payment of support through the IV-D agency or other entity. (45 CFR 305.48 (a) and (b))
Wage or income withholding. (45 CFR 305.49(a))
Expedited processes. (45 CFR 305.50(a))
Collection of overdue support by State income tax refund offset. (45 CFR 305.51(a))
Imposition of liens against real and personal property. (45 CFR 305.52(a))
Post security, bond or guarantee to secure payment of overdue support. (45 CFR 305.53(a))
Making information available to consumer reporting agencies. (45 CFR 305.54(a))
Imposition of late payment fees on absent parents who owe overdue support. (45 CFR 305.55(a))
Medical support. (To be determined)

(2) The procedures required by the criteria prescribed in paragraphs (a)(2) and (b)(2) of this section and the following audit criteria must be used in 75 percent of the cases reviewed for each criterion:

Notice of collection of assigned support. (45 CFR 305.45(b))
Incentive payments to State and political subdivisions. (45 CFR 305.46(b))
Payment of support through IV-D agency or other entity. (45 CFR 305.48(c))
Wage or income withholding. (45 CFR 305.49(b))
Expedited processes. (45 CFR 305.50(b))
Collection of overdue support by State income tax refund offset. (45 CFR 305.51(b))
Imposition of liens against real and personal property. (45 CFR 305.52(b))
Posting security, bond or guarantee to secure payment of overdue support. (45 CFR 305.53(b))
Making information available to consumer reporting agencies. (45 CFR 305.54(b))
Imposition of late payment fees on absent parents who owe overdue support. (45 CFR 305.55(b))
Medical support. (To be determined)

(3) The criteria prescribed in § 305.58(c) of this part relating to the performance indicators prescribed in paragraph (a) of that section must be met.

(d) For fiscal year 1988 and future audit periods:

(1) The criteria prescribed in paragraphs (a)(1), (b)(1) and (c)(1) of this section must be met.

(2) The procedures required by the criteria prescribed in paragraph (a)(2), (b)(2) and (c)(2) of this section must be used in 75 percent of the cases reviewed for each criterion.

(3) The criteria referred to in § 305.58(d) of this part relating to the performance indicators prescribed in paragraphs (a) and (b) of that section must be met.

5. Section 305.24 is amended by revising paragraphs (b) and (c) to read as follows:

§ 305.24 Establishing paternity.

* * * * *

(b) Have established and use written procedures for establishing the paternity of any child at any time prior to the child's 18th birthday;

(1) By court order or other legal process established by State law; and

(2) By acknowledgment, if under State law such acknowledgment has the same legal effect as court ordered paternity including the rights to benefits other than child support.

(c) Be utilizing such written procedures to establish the paternity of any child born out of wedlock whose paternity has not previously been established and with respect to whom there is an assignment pursuant to § 232.11 of this title or section 471(a)(17) of the Act in effect or with respect to whom there is an application for child support services pursuant to § 302.33 of this chapter;

* * * * *

6. Section 305.25 is amended by revising paragraph (a)(1) to read as follows:

§ 305.25 Support obligations.

(a) * * *

(1) With respect to whom there is an assignment pursuant to § 232.11 of this title or section 471(a)(17) of the Act in effect or with respect to whom there is an application for child support services pursuant to § 302.33 of this chapter.

* * * * *

§ 305.28 [Amended]

7. Section 305.28 is amended by inserting a comma and the reference "302.52" after the reference "302.51" wherever it appears in that section.

§ 305.33 [Amended]

8. 45 CFR 305.33 is amended by removing the citation "§ 302.35(e)" where it appears in paragraph (f) and inserting in its place the citation "§ 303.70(e)(2)."

9. Sections 305.37 through 305.56 are added to read as follows:

§ 305.37 Bonding of employees.

For the purposes of this part, to be found in compliance with the State plan requirement for bonding of employees (45 CFR 302.19), a State must:

(a) Have written procedures to ensure that every person, including the individuals prescribed in § 302.19(b) of this chapter, who as a regular part of his or her employment, receives, disburses, handles or has access to or control over funds collected under the Child Support Enforcement program is covered by a bond against loss resulting from employee dishonesty;

(b) Have written procedures for obtaining a bond in an amout which the State IV-D agency deems adequate to indemnify the State IV-D program for loss resulting from employee dishonesty; and

(c) Use the written procedures specified above.

§ 305.38 Separation of cash handling and accounting functions.

(a) For the purposes of this part, to be found in compliance with the State plan requirement for the separation of cash handling and accounting functions (45 CFR 302.20), a State must have written administrative procedures:

(1) Designed to assure that persons, including the individuals specified in § 302.20(b) of this chapter, responsible for handling cash receipts of support do not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of support receipts; and

(2) Designed to assure use of generally accepted accounting principles.

(b) The requirements prescribed in paragraph (a) of this section do not

apply to sparsely geographic areas within the State granted a waiver under § 302.20(c) of this chapter by the Regional Office.

(c) The State must use the written procedures specified above.

§ 305.39 Withholding of unemployment compensation.

For the purposes of this part, to be found in compliance with the State plan requirement for the withholding of unemployment compensation (45 CFR 302.65), a State must:

(a) Have negotiated a cost effective cooperative agreement with the State Employment Security Agency (SESA) that provides for:

(1) Exchange of information;

(2) The withholding of unemployment compensation benefits to satisfy unmet support obligations;

(3) Payment of withheld unemployment compensation by the SESA to the IV-D agency; and

(4) Reimbursement of administrative costs of the SESA by the IV-D agency.

(b) Have written procedures to determine, based on information provided by the SESA, whether individuals who apply for or receive unemployment compensation owe support obligations that are being enforced by the IV-D agency;

(c) Have written procedures for arranging for the withholding of unemployment compensation:

(1) Pursuant to a voluntary agreement with the individual who owes support; or

(2) Pursuant to legal process under State or local law;

(d) Have written criteria for selecting cases to pursue by the withholding of unemployment compensation process for the collection of past-due support;

(e) Have written procedures for providing a receipt at least annually to an individual who requests a receipt for the support paid by the withholding of unemployment compensation, if receipts are not provided through other means;

(f) Have written procedures for maintaining direct contact with the SESA in its State as prescribed in § 302.65(c)(5) of this chapter;

(g) Have written procedures for the reimbursement of the administrative costs incurred by the SESA that are actual, incremental costs attributable to the process of withholding of unemployment compensation for support purposes insofar as these costs have been agreed upon by the SESA and the IV-D agency;

(h) Have written procedures to review and document, at least annually, the State withholding of unemployment compensation program, including the case selection criteria and costs of the withholding process versus the amounts collected and, as necessary, modify the procedures and renegotiate the services provided by the SESA to improve program and cost effectiveness;

(i) Use the written procedures specified above; and

(j) Have personnel performing the activities described above.

§ 305.40 Federal tax refund offset.

For the purposes of this part, to be found in compliance with the State plan requirement for Federal tax refund offset (45 CFR 302.60), a State must:

(a) Have written procedures to obtain payment of past-due support from Federal tax refunds in accordance with section 464 of the Act, § 303.72 of this chapter and regulations of the Internal Revenue Service at 26 CFR 301.6402-5;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

§ 305.41 Recovery of direct payments.

For the purposes of this part, to be found in compliance with the State plan requirement for recovery of direct payments (45 CFR 302.31(a)), a State must:

(a) Have written procedures to:

(1) Notify the IV-A agency whenever a determination is made that directly received payments have been retained, if the State elects the IV-A recovery method; or

(2) Recover retained direct support payments in accordance with the standards in § 303.80 of this chapter if the State elects the IV-D recovery method.

(b) Use the written procedures specified above.

(c) Have personnel performing the functions specified above.

§ 305.42 Spousal support.

For the purposes of this part, to be found in compliance with the State plan provision for the collection of spousal support (45 CFR 302.31(a)), a State must:

(a) Have written procedures for the collection of spousal support from a legally liable person when:

(1) A support order has been established for the purpose;

(2) The spouse or former spouse is living with the child(ren) for whom the individual is liable for child support; and

(3) The support order established for the child(ren) is being enforced under the IV-D plan.

(b) Use the written procedures specified above.

(c) Have personnel performing the functions specified above.

§ 305.43 90 percent Federal financial participation for computerized support enforcement systems.

For the purposes of this part, to be found in compliance with the State plan requirement for the establishment of a computerized support enforcement system eligible for 90 percent Federal financial participation (45 CFR 302.85), a State's system must be:

(a) Planned, designed, developed, installed, or enhanced in accordance with an initial and annually updated advance planning document approved under § 303.65 of this chapter; and

(b) Planned, designed developed, installed, or enhanced to control, account for, and monitor all the factors in the support collection and paternity determination processes under the State plan including the factors prescribed in § 302.85(c)(2) of this chapter.

§ 305.44 Publicizing the availability of support enforcement services.

For the purposes of this part, to be found in compliance with the State plan requirement for publicizing the availability of support enforcement services (45 CFR 302.30), a State must publicize regularly and frequently the availability of support enforcement services under the State plan through public service announcements that include:

(a) Information on any application fees imposed for such services; and

(b) A telephone number or postal address where further information may be obtained.

§ 305.45 Notice of collection of assigned support.

For the purposes of this part, to be found in compliance with the State plan requirement for providing notice of collection of assigned support (45 CFR 302.54), a State must:

(a) Have written procedures for:

(1) Sending, at least annually, a notice of the amount of support payments collected during the past year to individuals who have assigned rights to support under § 232.11 of this title; and

(2) Listing separately in the notice support payments collected from each absent parent when more than one absent parent owes support to the family;

(3) Indicating in the notice the amount of support collected which was paid to the family;

(b) Use the written procedures specified above.

(c) Have personnel performing the functions specified above.

§ 305.46 Incentive payments to States and polical subdivisions.

For the purposes of this part, to be found in compliance with the State plan requirement for incentive payments to States and polical subdivisions (45 CFR 303.52), the State must:

(a) Have written procedures:

(1) To require that, if one or more political subdivisions of the State participate in the costs of carrying out the activities under the State plan during any period, each such subdivision shall be paid an appropriate share of any incentive payments made to the State for such period, as determined by the State in accordance with § 303.52(d) of this chapter, and

(2) To consider the efficiency and effectiveness of the political subdivision in carrying out the activities under the State plan in determining the amount of the incentive payments made to the political subdivision.

(b) Use the written procedures specified above.

(c) Have personnel performing the functions specified above.

§ 305.47 Guidelines for setting child support awards.

For the purposes of this part, to be found in compliance with the State plan requirement for guidelines for setting child support awards (45 CFR 302.56), a State must:

(a) Establish guidelines by law or by judicial or administrative action for setting child support award amounts within the State;

(b) Have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts, but the guidelines need not be binding on those persons; and

(c) Include a copy of the guidelines in its State plan.

§ 305.48 Payment of support through the IV-D agency or other entity.

For purposes of this part, to be found in compliance with the optional State plan provision for payment of support through the IV-D agency or other entity (45 CFR 302.57), a State must:

(a) Have written procedures for the payment of support through the State IV-D agency or entity designated to administer the State's withholding system upon request of either the absent parent or custodial parent, regardless of whether or not arrearages exist or withholding procedures have been instituted;

(b) Have written procedures to:

(1) Monitor all amounts paid and dates of payments and record them on an individual IV-D payment record;

(2) Ensure prompt payment to the custodial parent when appropriate; and

(3) Require the requesting parent to pay a fee for the cost of providing the service not to exceed $25 annually and not to exceed State costs;

(c) Use the written procedures specified above; and

(d) Have personnel performing the functions specified above.

§ 305.49 Wage or income withholding.

For the purposes of the part, to be found in compliance with the State plan requirement for wage or income withholding (45 CFR 302.70(a)(1)), a State must:

(a) Have written procedures for carrying out a program of withholding in accordance with § 303.100 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

§ 305.50 Expedited processes.

For the purposes of this part, to be found in compliance with the State plan requirement for expedited process (45 CFR 302.70(a)(2)), a State must:

(a) Have written expedited procedures to establish and enforce child support obligations having the same force and effect as those established through full judicial process in accordance with § 303.101 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

§ 305.51 Collection of overdue support by State income tax refund offset.

For the purposes of this part, to be found in compliance with the State plan requirement for collection of overdue support by State income tax refund offset (45 CFR 302.70(a)(3)), a State must:

(a) Have written procedures for obtaining overdue support from State income tax refunds on behalf of recipients of aid under the State's title IV-A or IV-E plan with respect to whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective, and on behalf of individuals who apply for services under § 302.33 of this part, in accordance with § 303.102 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

§ 305.52 Imposition of liens against real and personal property.

For the purposes of this part, to be found in compliance with the State plan requirement for the imposition of liens against real and personal property (45 CFR 302.70(a)(4)), a State must:

(a) Have written procedures for the imposition of liens against the real and personal property of absent parents who owe overdue support in accordance with § 303.103 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

§ 305.53 Posting security, bond or guarantee to secure payment of overdue support.

For the purposes of this part, to be found in compliance with the State plan requirement for posting security, bond or guarantee to secure payment of overdue support (45 CFR 302.70(a)(6)), a State must:

(a) Have written procedures which require that an absent parent give security, post a bond, or give some other guarantee to secure payment of support in accordance with § 303.104 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

§ 305.54 Making information available to consumer reporting agencies.

For the purposes of this part, to be found in compliance with the State plan requirement for making information available to consumer reporting agencies (45 CFR 302.70(a)(7)), a State must:

(a) Have written procedures for making information regarding the amount of overdue support owed by an absent parent available to consumer reporting agencies in accordance with § 303.105 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

§ 305.55 Imposition of late payment fees on absent parents who owe overdue support.

For the purposes of this part, to be found in compliance with the optional State plan requirement for imposing late payment fees on absent parents who owe overdue support (45 CFR 302.75), a State must:

(a) Have written procedures for uniformly applying the late payment fee in accordance with § 302.75 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

§ 305.56 Medical support.

For the purposes of this part, to be found in compliance with the State plan requirement for medical support, a State must meet requirements that will be published as final regulations on medical support effective upon publication of the requirements.

10. Section 305.58 is added to read as follows:

§ 305.58 Performance indicators and audit criteria.

(a) Beginning with this fiscal year 1986 audit period, the Office will use the following performance indicators in determining whether each State has an effective IV–D program.

(1) *AFDC IV–D collections*
Total IV–D expenditures;
(2) *Non-AFDC IV–D collections*
Total IV–D expenditures; and
(3) *AFDC IV–D collections*
IV–A assistance payments
(Less payments to unemployed parents).

(b) Beginning with the fiscal year 1988 audit period, the Office will use the performance indicators prescribed in paragraph (a) of this section and the following performance indicators in determining whether each State has an effective IV–D program.

(1) *AFDC IV–D collections on support due (for a fiscal year)*
Total AFDC support due (for the same fiscal year)
(2) *Non-AFDC IV–D collections on support due (for a fiscal year)*
Total non-AFDC support due (for the same fiscal year)
(3) *AFDC IV–D collections on support due (for prior fiscal year)*
Total AFDC support due (for the same fiscal years)
(4) *Non-AFDC IV–D collections on support due (for prior fiscal years)*
Total Non-AFDC support due (for prior fiscal years)

(c) The Office shall use the following procedures and audit criteria to measure State performance in fiscal years 1986 and 1987.

(1) The ratio for each of the performance indicators in paragraph (a) of this section will be evaluated on the basis of the scores in the tables in paragraphs (c)(1) (i) through (iii) of this section. The tables show the scores the States will receive for different levels of performance.

(i) Dollar of AFDC IV–D collections per dollar of total IV–D expenditures.

Level of performance	Score
$0.00 to $0.0	
$0.01 to $0.09	2
$0.10 to $0.19	4
$0.20 to $0.29	6
$0.30 to $0.39	8
$0.40 to $0.49	10
$0.50 to $0.59	12
$0.60 to $0.69	14
$0.70 to $0.79	16
$0.80 to $0.89	18
$0.90 to $0.99	20
$1.00 to $1.19	22
$1.20 to $1.39	24
$1.40 or more	25

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(ii) Dollar of non-AFDC IV–D collections per dollar of total IV–D expenditures.

Level of performance	Score
$0.00	0
$0.01 to $0.09	4
$0.10 to $0.19	8
$0.20 to $0.29	12
$0.30 to $0.39	16
$0.40 to $0.49	20
$0.50 to $0.59	24
$0.60 to $0.69	28
$0.70 to $0.79	32
$0.80 to $0.89	36
$0.90 to $0.99	40
$1.00 to $1.19	44
$1.20 to $1.39	48
$1.40 or more	50

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(iii) AFDC IV–D collections divided by IV–A assistance payments (less payments to unemployed parents).

Level of performance (in percent)	Score
0 to 1.9	0
2 to 3.9	5
4 to 4.9	10
5 to 5.9	15
6 to 6.9	20
7 or more	25

Amt - 25

(2) To be found to meet the audit criteria, a State's total score must equal or exceed 70.

Example. A State achieves levels of performance of $1.22, $1.35 and 6.5 percent on the performance indicators in paragraph (a) of this section. The State would receive individual scores of 24, 48 and 20 on these performance indicators. The State would be found to meet the audit criteria because the total score is 92.

A State achieves levels of performance of $.65, $.65 and 2.5 percent on the performance indicators in paragraph (a) of this section. The State would receive individual scores of 14, 28 and 5 on these performance indicators. The State would be found not to meet the audit criteria because the total score is 47.

A State achieves levels of performance of $.92, $.96 and 4.2 percent on the performance indicators in paragraph (a) of this section. The State would receive individual scores of 20, 40 and 10 on these performance indicators. The State would be found to meet the audit criteria because the total score is 70.

(d) Beginning in fiscal year 1988, the Office shall evaluate State performance according to the indicators in paragraphs (a) and (b) of this section on the basis of a scoring system that will be described and updated in regulation once every two years beginning in fiscal year 1987.

11. Section 305.59 is added to read as follows:

§ 305.59 Notice and corrective action period.

(a) If a State is found by the Secretary on the basis of the results of the audit described in this part not to comply substantially with the requirements of title IV–D of the Act, as implemented by Chapter III of this title, the Office will notify the State in writing of such finding.

(b) The notice will:

(1) Cite the State for noncompliance, list the unmet audit criteria, apply a penalty and give the reasons for the Secretary's finding;

(2) Identify any audit criteria listed in § 305.20 (a)(2), (b)(2) or (c)(2) of this part that the State met only marginally (that is, in 75 to 80 percent of the cases reviewed);

(3) Specify that the penalty may be suspended if the State meets the conditions specified in paragraph (c) of this section; and

(4) Specify the conditions that result in terminating the suspension of the penalty as specified in paragraph (d) of this section.

(c) The penalty will be suspended for a period not to exceed one year from the date of the notice and, beginning with the fiscal year 1986 audit period, when a State fails to meet audit criteria relating to the performance indicators prescribed in § 305.58 of this part the penalty will be suspended until the end of the fiscal year following the fiscal year in which a State failed to meet those criteria if the following conditions are met:

(1) Within 60 days of the date of the notice, the State submits a corrective action plan to the appropriate Regional Office which contains a corrective action period not to exceed one year from the date of the notice and which contains steps necessary to achieve substantial compliance with the requirements of title IV–D of the Act;

(2) The corrective action plan and any amendment are:

(i) Approved by the Secretary within 30 days of receipt of the corrective action plan; or

(ii) Approved automatically because the Secretary took no action within the period specified in paragraph (b)(2)(ii)(A) of this section; and

(3) The Secretary finds that the corrective action plan (or any amendment to it approved by the Secretary) is being fully implemented by the State and that the State is progressing to achieve substantial compliance with the criteria cited in the notice.

(d) The suspension of the penalty will continue until such time as the Secretary determines that:

(1) The State has achieved substantial compliance with the criteria cited in the notice;

(2) The State is not implementing its corrective action plan; or

(3) The State has implemented its corrective action plan but has failed to achieve or maintain substantial compliance with the criteria cited in the notice. For State plan-related criteria, this determination will be made as of the first full quarter after corrective action period. For performance-related criteria this determination will be made as of the fiscal year following the fiscal year in which performance was not in substantial compliance.

(e) A corrective action plan disapproved under paragraph (c) of this section is not subject to appeal.

(f) Only one corrective action period is provided to a State in relation to a given criterion when consecutive findings of noncompliance are made on that criterion.

12. Section 305.50 is redesignated as § 305.6 and revised to read as follows:

§ 305.60 Penalty for failure to have an effective support enforcement program.

(a) If the Secretary finds, on the basis of the results of the audit described in this part, that a State's program does not substantially meet the requirements in title IV–D of the Act, as implemented by Chapter III of this title, and the State does not achieve substantial compliance with those requirements identified in the notice within the corrective action period approved by the Secretary under § 305.59(c) of this part and maintain compliance in areas cited in the notice as marginally acceptable under § 305.59(b)(2) of this part, total payments to the State under title IV–A of the Act will be reduced for the period prescribed in paragraph (c) or (d) of this section by:

(1) Not less than one nor more than two percent of such payments for a period beginning in accordance with paragraph (c) or (d) of this section not to exceed the one-year period following the end of the suspension period;

(2) Not less than two nor more than three percent of such payments if the finding is the second consecutive finding made as a result of an audit for a period beginning as of the second one-year period following the suspension period not to exceed one year; or

(3) Not less than three nor more than five percent of such payments if the finding is the third or subsequent consecutive finding as a result of an audit for a period beginning as of the third one-year period following the suspension period.

(b) In the case of a State that has achieved substantial compliance with the criteria identified in the notice within the corrective action period approved by the Secretary under § 305.59 of this part, the penalty will not be applied.

(c) In the case of a State whose penalty suspension ends because the State is not implementing its corrective action plan, the penalty will be applied as if the suspension had not occured.

(d) In the case of a State whose penalty suspension ends because the State is implementing its corrective action plan but has failed to achieve substantial compliance with the criteria identified in the notice within the corrective action period approved by the Secretary under § 305.59 of this part, the penalty will be effective for any quarter that ends after the expiration of the suspension period until the first quarter throughout which the State IV–D program is in substantial compliance with the requirements of title IV–D of the Act.

(e) Any reduction required to be made under this section shall be made pursuant to § 205.146(d) of this title.

(f) The reconsideration of penalty imposition provided for by § 205.146(e) of this title shall be applicable to any reduction made pursuant to this section.

(Sec.1102 of the Social Security Act (42 U.S.C. 1302) and secs. 403(h) and 452(a) (1) and (4) of the Social Security Act (42 U.S.C. 603(h) and 652(a) (1) and (4))

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program.)

Dated: September 15, 1984.

Martha A. McSteen

Acting Director, Office of Child Support Enforcement, Acting Commissioner of Social Security.

Approved: October 3, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84–26570 Filed 10–4–84; 8:45 am]

BILLING CODE 4190–11–M

(This sheet to be used by those testifying on a bill.)

NAME: Carol Kimble DATE: 1-24-85

ADDRESS: 1429 Chateau Helena

PHONE: 443-1893

REPRESENTING WHOM? myself

APPEARING ON WHICH PROPOSAL: SB119

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 10
DATE 012485
BILL NO. SB 119

TESTIMONY OF CAROL KIMBLE
FOR THE SENATE JUDICIARY COMMITTEE
ON SENATE BILL 119
HELENA, MONTANA

I AM A SINGLE PARENT BEING THE MOTHER OF TWO AND HAVE BEEN FACED WITH RECEIVING NO CHILD SUPPORT FOR THESE CHILDREN. I FELT THERE WERE THREE OPTIONS LEFT TO ME TO GET THE COURT-DECREED SUPPORT AMOUNT; 1) TAKE MY FORMER HUSBAND TO COURT AND THEREFORE HAVE TO BEAR THE COST OF ATTORNEY FEES, 2) CONTACT THE DEPARTMENT OF REVENUE AND PAY THE APPLICATION FEE FOR PROCESSING, OR 3) TALK WITH MY FORMER HUSBAND AND HOPE HE WOULD START PAYING THE CHILD SUPPORT IF HE KNEW THE OTHER TWO OPTIONS.

THE SALARY I EARN DOES NOT ALLOW ME THE EXPENSE OF AN ATTORNEY SO THEREFORE I HAD TO SEEK HELP ELSEWHERE. I CONTACTED THE COUNTY ATTORNEY, AND SINCE I AM NOT RECEIVING ANY TYPE OF WELFARE ASSISTANCE, THE ONLY OTHER OPTION I HAD WAS TO SEEK HELP FROM THE DEPARTMENT OF REVENUE CHILD SUPPORT BUREAU. I OBTAINED THE PAPERS FROM THE BUREAU BUT DID NOT SUBMIT THEM BECAUSE OF THE FILING FEE. I WOULD HAVE A DIFFICULT TIME COMING UP WITH THE APPLICATION FEE AT ONE TIME BECAUSE I HAVE BEEN THE CHILDREN'S SOLE SUPPORT. IS IT RIGHT THAT I MUST USE MONEY THAT SHOULD GO TO MY CHILDREN TO OBTAIN COURT-DECREED CHILD SUPPORT? PAYING THE APPLICATION FEE OR ATTORNEY FEES, TENDS TO DEFEAT THE PURPOSE OF CHILD SUPPORT BY USING MONEY NEEDED FOR THE SUPPORT OF THE CHILDREN. I FEEL MY FORMER SPOUSE SHOULD HAVE TO BEAR THE EXPENSE FOR NOT FOLLOWING THE JUDGES ORDER IN THE DIVORCE DECREE.

THEREFORE I AM IN SUPPORT OF SENATE BILL 119.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 10
DATE 012485
BILL NO. SB 119

(This sheet to be used by those testifying on a bill.)

NAME: Raylynn Lauderdale DATE: 1-24-85

ADDRESS: 3000 Villard #70 Helena

PHONE: 442-9418

REPRESENTING WHOM? myself

APPEARING ON WHICH PROPOSAL: SB 119

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 012485
BILL NO. SB 119

TESTIMONY OF RAYLYNN LAUDERDALE
FOR THE SENATE JUDICIARY COMMITTEE
ON SENATE BILL 119
HELENA, MONTANA

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, THANK YOU FOR THE OPPORTUNITY TO TESTIFY IN SUPPORT OF A BILL THAT COULD POSSIBLY HELP MANY STRUGGLING SINGLE PARENTS.

I AM A SINGLE PARENT WITH ONE CHILD IN MY CUSTODY. ON FEBRUARY 14, 1983 THE COURT DECREED THAT THE FATHER OF MY CHILD SHOULD PAY ME $150 PER MONTH FOR HER SUPPORT. THIS MONEY WAS ALLOCATED BECAUSE THE COURT SAW FIT THAT I NEEDED THAT AMOUNT IN ORDER TO SUPPORT HER. I RECEIVED THE SUPPORT UNTIL JULY OF THAT YEAR AT WHICH TIME MY EX-HUSBAND LEFT THE STATE. THE COUNTY ATTORNEY SAID THAT HE COULD TRY TO ENFORCE THE COURT ORDER BUT WITH HIM OUT OF STATE, IT WOULD BE NEXT TO IMPOSSIBLE, DEPENDING UPON MANY FACTORS. IN THE MEANTIME, MY CHILD STILL REQUIRED SUPPORT.

A FEW MONTHS LATER, I LEARNED ABOUT THE CHILD SUPPORT ENFORCEMENT BUREAU OF THE DEPARTMENT OF REVENUE, BUT THROUGH MY INQUIRY I FOUND THAT I MUST PAY A $20 APPLICATION FEE IN ORDER FOR THEM TO ENFORCE MY COURT-ORDERED SUPPORT. SUPPORTING MY CHILD ON MY SALARY ALONE I WAS UNABLE TO BUDGET $20 AT ONE TIME FOR THIS PURPOSE. OVER A PERIOD OF TIME, I SAVED THIS AMOUNT AND GAVE ENFORCEMENT RIGHTS TO THE DEPARTMENT OF REVENUE. WITH MY ASSISTANCE, OVER A PERIOD OF MONTHS, THE COURT ORDER WAS FINALLY ENFORCED AND I BEGAN RECEIVING $150 PER MONTH LESS 10% FOR ADMINISTRATIVE COSTS. WITHIN A YEAR'S TIME THE CHILD SUPPORT BUREAU WILL HAVE RETAINED $180 OF MY COURT-ORDERED SUPPORT THAT WAS DEEMED NECESSARY FOR ME TO SUPPORT MY CHILD. I ASK YOU, IS THIS RIGHT? SHOULD I OR MY CHILD SUFFER FOR HER FATHER'S LACK OF RESPONSIBILITY? YES, I HAVE CUSTODY AND AM RESPONSIBLE FOR MY DAUGHTER, BUT THE CHILD WAS NOT CONCEIVED BY ME ALONE. WHETHER OR NOT HE CARES FOR THE CHILD OR WANTS TO BE A

SENATE JUDICIARY COMMITTEE
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SB 119

PART OF THE CHILD'S LIFE IS HIS CHOICE, BUT HE ALSO MADE A CHOICE AT THE TIME OF CONCEPTION -- THE CHILD DID NOT.

IF I MUST SEEK HELP IN OBTAINING MY COURT-ORDERED SUPPORT THEN IT IS MY CONTENTION THAT THE "FEE FOR CHILD SUPPORT ENFORCEMENT SERVICES BE PAID FOR BY THE PERSON FROM WHOM THE SUPPORT IS COLLECTED RATHER THAN BY THE APPLICANT FOR THE SERVICES."

THEREFORE, I URGE YOU TO SUPPORT THE PASSAGE OF SENATE BILL 119.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 012485
BILL NO. SB 119

(This sheet to be used by those testifying on a bill.)

NAME: Nancy McNutt DATE: 1/24/85

ADDRESS: AC3 Box 6 Clancy Mt

PHONE: none

REPRESENTING WHOM? myself

APPEARING ON WHICH PROPOSAL: SB 119

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: I am a displaced homemaker currently attending CTI. I went to Child Enforcement for help only to find out, because I was not on welfare, I would have to pay $20 application fee, which I do not have. In addition, 10% of all collections are retained. This child support is exactly that. The support of our children should be a shared responsibility. It should not be used as a tool to destroy the life and home I am trying to provide for our children. I could not absorb a $300 a month loss of income. I lost our home and my credit rating which I had been building for the past 4yrs by working 2 jobs. I was layed off my jobs because of the stress this put me under. We now live on my unemployment and have to depend on government help for food stamps & fuel assistance. Child Support Enforcement should be available for all of us to use. I should not have to be penalized for another's irresponsibility.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 12
DATE 012485
BILL NO. SB 119

WOMEN'S LOBBYIST FUND

January 24, 1985

TESTIMONY IN SUPPORT OF SB 119

Mr. Chairman and members of the Senate Judiciary Committee:

My name is Anne Brodsky and I am here today on behalf of the Women's Lobbyist Fund (WLF). The WLF recognizes that the problem of non-payment of child support orders (perhaps better said, child non-support) is a very serious one, the onus for which, for many reasons, most often falls on women. The 1980 U.S. Census reported that less than one half of those known to have been owed child support in 1978 were actually receiving the full amount (averaging $1800 - $2300 per year for 2 children); 23% received partial payment; and 28% received no payment at all. Here in Montana, the Department of Revenue now has a caseload of over 36,000 for child support enforcement services.

Rather than going away, the problem is increasing. It was predicted in an article by the National Conference of State Legislatures in July, 1983, that by the 1990's, less than 50% of children will spend their entire childhood with both parents and over 95% of the children with single parents will live with their mothers.

The problem of collecting child support obligations -- which becomes a societal problem -- is based on many factors. One of these factors is that the burden already born by the person attempting to obtain what is owed the child is continually frustrated by the cost the person must incur to obtain what is rightfully owed. In an article entitled "Child Support? Forget It!" (Working Mother, Feb. 1983), one woman recounted her story: "I've been to court so many times in the last five years that I've lost count. Each time I go back I lose at least half a day's work and usually a full day....Right now Steve hasn't paid me anything in two months...but I don't want to go to court again. I get so uptight each time that I can't sleep and my stomach's in knots....I wonder, should I just forget about child support and try to make it on my own? But as Luke grows older, my expenses grow too. You can't imagine the anxiety."

SB 119 attempts to address part of this problem. The bill requires the person who is responsible for the state's enforcement of owed child support payments to pay for the enforcement done by the state. It takes the burden off of the person who is the victim of the problem and places the burden on the person responsible for the problem.

The WLF urges you to pass SB 119.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 13
DATE 012485
BILL NO. SB119

(This sheet to be used by those testifying on a bill.)

NAME: Lynn Bahnsen DATE: 1-24-85

ADDRESS: P.O. Box 419 Helena

PHONE: 442-5891

REPRESENTING WHOM? myself

APPEARING ON WHICH PROPOSAL: SB119

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 14
DATE 012485
BILL NO. SB 119

(This sheet to be used by those testifying on a bill.)

NAME: Jana Logan DATE: 1-24-85

ADDRESS: 425 Sage Helena

PHONE: 458 9039

REPRESENTING WHOM? myself

APPEARING ON WHICH PROPOSAL: SB 119

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 15
DATE 012485
BILL NO. SB 119

(This sheet to be used by those testifying on a bill.)

NAME: Wilbur W. Rehmann DATE: 1/24

ADDRESS: 913 Wauksha Helena

PHONE:

REPRESENTING WHOM? myself

APPEARING ON WHICH PROPOSAL: SB119

DO YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE?

COMMENTS: Support the amendments proposed by Dorothy Eck, and support the bill as amended.

Child support should be a fair and equitable contract between the two parents for the benefit of their children. Whichever spouse does not abide by their part of the contract should bear the cost of legal remedies to enforce the contract. The principal of "fairness" ought to apply.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 16
DATE 012485
BILL NO. SB 119

(This sheet to be used by those testifying on a bill.)

NAME: Louise Kunz DATE: 1/24

ADDRESS: 107 Lawrence

PHONE: 449-8801

REPRESENTING WHOM? MLC

APPEARING ON WHICH PROPOSAL: SB 119

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: We support the bill and the proposed amendments by Dorothy Eck.

This bill will help to put inroads into the feminization of poverty. While it affects both male & female parents realistically women will be the most affected.

Currently many women do without adequate child support as they cannot afford to take their cases to court.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
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Oppose the bill:

1. This bill will burden the CSE collection effort as it will penalize and recover only from those obligors who pay. Costs incurred for litigation which does not result in a collection will continue to be a program expense. This additional burden will hamper our ability to collect.

2. Additional financial burden will be placed on obligors due to recipients choosing to utilize the DOR services.

    a) application fee, $20.00,
    b) collection fee, 10%,
    c) sheriffs service fees, cost plus mileage,
    d) employer cost recovery on wage assignment, $5.00 per check,
    e) IRS and Montana income tax offset fees, up to $25.00
    f) 3% to 6% late payment fee,
    g) 10% judgment interest fee.

3. This bill will create an accounting nightmare due to the fact that fees must be added at the end of collection. The state must monitor and accumulate service fees for each payment made. The account status must be changed every time the recipient goes on or off AFDC or into or out of IVD Program. Large debts will accrue that will be paid only when 100% of child support is collected. Past practices have shown that entire debts do not get paid. The fees would never be collected.

4. There must be a distinction between application and service fees, and fees "costs" for specialized work which require up front payment by the state. The new federal regulations will call for a fee of up to $25.00 for NAFDC federal tax offsets and a fee for offsets performed by other states. If an applicant wants this service they should pay the pass through cost.

5. New federal regulations require a state to charge a fee for Non AFDC up to $25.00. The fee can be paid by the obligor, the recipient, or the state. If we keep the existing fee structure we would suggest:

    1) That the fee be charged to the recipient of the specialized state services to include:

        a) federal tax offset
        b) state tax offset
        c) sheriff services - deducted from obligors payment

SENATE JUDICIARY COMMITTEE
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d) locate only fee
e) wage assignment fee
f) monitor payment fee

2) That if the fee is charged to the obligor it be deducted from each monthly payment and then credit be given for the balance only. This however would reduce the payment to the family in the amount of the fee.

3) That the state charge a $1.00 application fee and no ongoing fees for service except where there is a special fee attached, Sec. 1. This situation would cost the state approximately $20,000 general fund a year. In FY84 the fees brought the state $16,297 and that amount should grow. The $1.00 fee paid by the state would be 100% general fund as it cannot be counted as a program cost for federal reimbursement.

We would suggest the following amendment to SB 119:

Page 1, line 25:
Stike period after obligation and insert a comma. After the comma starting on page 2 line 5 change to read "except where a special service is requested by the applicant to which a specialized cost is associated. In these cases the cost must be paid in advance by the applicant. Application for service fees that is required by the federal government will be established and paid by the Department." Strike the remainder of paragraph (3).

Legally the proposed bill could be challenged on the grounds that the obligors due process rights have been denied. The legal process to force obligors to pay would take valuable resources away from the effort of support collection and direct it toward collection of fees.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 18
DATE 012485
BILL NO. SB 119