

## **Supporting Statement for the “Request for Funding of a Computerized Tribal IV-D System through the Advance Planning Document (APD)” Information Collection Request**

### **A. Justification**

#### **1. Circumstances Making the Collection of Information Necessary**

Section 455(f) of the Social Security Act (the Act) as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA; P.L. 104- 193) authorizes the Secretary to make direct payments to an Indian Tribe or Tribal organization and to further promulgate regulations establishing requirements which must be met by an Indian Tribe or Tribal organization to be eligible for a grant under Section 455(f) of the Act.

This Information Collection Request (ICR) is associated with proposed rule 45 CFR Part 310 which is titled *Computerized Tribal IV-D Systems and Office Automation* and is currently under OMB review. Sections 310.20 and 310.25 of the proposed rule would require that a comprehensive Tribal IV-D agency must have submitted, and the Office of Child Support Enforcement must have approved, an Advance Planning Document (APD) in order to receive Federal financial participation in the costs of installation and enhancement of a Computerized Tribal IV-D System. (See Attachment A for proposed sections 310.20 and 310.25).

#### **2. Purpose and Use of the Information Collection**

The information collected on the APD is necessary to help OCSE meet its fiduciary responsibility to ensure that the costs associated with all ADP systems acquisitions are reasonable and necessary. Similarly, under OMB No. 0992-0005, OCSE currently requires States to request funding in an APD for acquisition of a computerized child support enforcement system, documenting such factors as project cost, risk, resources and schedule, those same factors equally apply to OCSE’s review and approval of the installation and enhancement of Computerized Tribal IV-D Systems. Proposed Part 310 would mark the first time that the APD process and Federal financial participation in the costs of automated systems would extend to Tribes and Tribal organizations operating comprehensive Tribal IV-D agencies.

#### **3. Use of Improved Information Technology and Burden Reduction**

The Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement (DHHS/ACF/OCSE) allows electronic transmission (i.e. email, diskettes) of documents such as the APD, as long as the cover letter transmitting the APD has a scanned or faxed signature of the authorized requestor. Proposed section 310.20(b) would require the approval and signature of the Comprehensive Tribal IV-D agency Director and the authorized representative of the Tribe or Tribal organization prior to submitting the APD to OCSE for approval. Additionally, OCSE is analyzing the possibility of a web-based APD submission process.

#### **4. Efforts to Identify Duplication and Use of Similar Information**

The collection of information requirements contained in this form does not duplicate any other reporting or recordkeeping requirements. In complying with those regulations that require information collection, agencies are specifically directed to use and build upon

existing information, whenever it exists. It is the intent of these regulations that duplicity of efforts be avoided, and that information collection occurs only when information is not available from another source.

5. Impact on Small Businesses or Other Small Entities

The collection of information requirements does not involve small businesses or entities.

6. Consequences of Collecting the Information Less Frequently

If the collection of information is not made, the Federal Government would have to seek other ways to determine if expenditures for Computerized Tribal IV-D Systems warrant federal funding. Without prior approval of the Advance Planning Documents (APD) and procurements, the risk of inappropriate expenditures and failed IT projects would be higher.

The APD would be submitted as a one-time project. Updates to the APD may be submitted annually if the Comprehensive Tribal IV-D Agency alters its automated data processing system significantly.

7. Special Circumstances Relating to the Guidelines of 5 CFR 1320.5

The collection of information does not involve any special circumstances.

8. Comments in Response to the Federal Register Notice and Efforts to Consult Outside Agency

The first notice in the Federal Register will be published in conjunction with the NPRM on *Computerized Tribal IV-D Systems and Office Automation*. This NPRM is currently in clearance with OMB and is expected to be published in the Federal Register during the Summer of 2008. Once the NPRM has been published, OCSE plans to hold four consultation meetings with interested Tribes and Tribal organizations.

The second notice will be published in the Federal Register after the NPRM (which includes the first notice) has been published.

9. Explanation of any Payment or Gift to Respondents

No payment or gift is provided to respondents, other than remuneration of contractors or grantees.

10. Assurance of Confidentiality Provided to Respondent

We do not assure confidentiality of the information collected.

11. Justification for Sensitive Questions

The required information collection does not involve asking questions of a sensitive nature.

12. Estimates of Annualized Burden Hours and Costs

We estimate that preparing and submitting the APD and Acquisitions documents to OCSE will impose a new total annual burden of 4,464 hours in Year 1; 1,332 hours in Year 2; and 936 hours in Year 3 with total burden hours of 6,732 over the project's three-year period. The average cumulative cost burden on Tribal IV-D agencies will be \$12,117 - \$24,235, depending on the applicable matching rate (10% or 20% of total approved and allowed costs)

that the Tribe or Tribal organization receives as Federal financial participation in the costs of installing and enhancing the Computerized Tribal IV-D System (\$237 - \$473 per Respondent).

## 12.1 Respondents' Hour Burden

The estimate of burden to respondents is based on the following assumptions:

- The proposed rule would require information collection from Tribes and Tribal organizations operating a comprehensive Tribal IV-D program. The information collected would either be an APD or Acquisition submission letter.
- The 74 respondents from over the next three-year period as follows: Year 1 = 40 APDs and 6 Acquisitions; Year 2 = 11 APDs and 6 Acquisitions; Year 3 = 8 APDs and 3 Acquisitions. The staggered number of respondents over the coming years reflects the anticipated increase in Tribes and Tribal organizations that transition from the start-up phase to a fully comprehensive Tribal IV-D program.
- We expect some of the larger Tribes with comprehensive Tribal IV-D programs to make significant enhancements to their version of the Computerized Tribal IV-D System. Requests for such enhancements would be submitted to OCSE through acquisition submission letters. This is reflected in the above estimate for Acquisitions in years 1 through 3.
- Regional offices were polled to gain information about the amount of time required to complete and transmit the required information.

<b>Instrument</b>	<b>Number of Respondents</b>	<b>Number of Responses Per Respondent</b>	<b>Average Burden Hours Per Response</b>	<b>Total Burden Hours</b>
<b>Year 1: FY 2009</b>				
APD	40	2	108	8,640
Acquisitions (RFPs, Contracts, etc.)	6	2	24	288
<b>TOTAL</b>				<b>8,928</b>
<b>Year 2: FY 2010</b>				
APD	11	2	108	2,376
Acquisitions (RFPs, Contracts, etc.)	6	2	24	288
<b>TOTAL</b>				<b>2,664</b>
<b>Year 3: 2011</b>				
APD	8	2	108	1,728
Acquisitions (RFPs, Contracts, etc.)	3	2	24	120
<b>TOTAL</b>				<b>1,848</b>
<b>ESTIMATED TOTAL BURDEN HOURS:</b>				<b>13,440</b>

The average annual burden hours is 4,480 hours.

The annual burden hours estimated for the proposed Part 310 is 108 hours per APD and 24 hours per Acquisition submissions.

#### Annual Burden Hours Estimated for APDs

Number of respondents:	59
Hours per respondent:	108
Cost per respondent:	\$1,944.00 estimated at 108 hours x \$18.00 per hour.

#### Annual Burden Hours Estimated for Acquisitions

Number of respondents:	15
Hours per respondent:	24
Cost per respondent:	\$432.00 estimated at 24 hours x \$18.00 per hour.

### 12.2 Respondents' Cost for Hour Burden

We estimate that preparing and submitting the APD and Acquisition

The estimate of costs to respondents is based on the following assumptions:

- Regional offices were polled to gain information about the average salary of an employee who would be working on Advance Planning Documents and Acquisitions (\$18 per hour).
- The cost to respondents is based on proposed section 310.20(a) which would allow for Federal financial participation at the applicable matching rate as defined in 45 CFR 309.130(c). (See Attachment A for proposed section 310.20 and Attachment B for 45 CFR 309.130(c)).
- The cost to respondents is 10% to 20% of the approved and allowed expenditures. Tribes or Tribal organizations within the first three years of the grant award to operate a comprehensive Tribal IV-D program would be responsible for 10% of the approved and allowed expenditures. Tribes and Tribal organizations beyond the first three years of the grant award would be responsible for 20% of the approved and allowed expenditures. This is due to the Federal financial participation aspect of the Child Support Enforcement system, whereas Tribes or Tribal organizations would receive Federal grant funds equal to 90% to 80% (depending on the applicable matching rate) towards expenditures made for the administration of the Tribal child support enforcement program.

12.2 Respondents' Cost for Hour Burden (*continued*)

<b>Instrument</b>	<b>Total Annualized Cost</b>	<b>Respondents Cumulative Share of Cost (10% - 20% depending on the applicable matching rate)</b>	<b>Average Annualized Share of Cost Per Respondent</b>
<b>Year 1: FY 2009</b>			
APD	\$77,760	\$7,776 - \$15,552	\$194 - \$389
Acquisitions (RFPs, Contracts, etc.)	\$2,592	\$259 - \$518	\$43 - \$86
<b>TOTAL</b>	<b>\$80,352</b>	<b>\$8,035 - \$16,070</b>	<b>\$237 - \$475</b>
<b>Year 2: FY 2010</b>			
APD	\$21,384	\$2,138 - \$4,276	\$194 - \$389
Acquisitions (RFPs, Contracts, etc.)	\$2,592	\$259 - \$518	\$43 - \$86
<b>TOTAL</b>	<b>\$23,976</b>	<b>\$2,397 - \$4,794</b>	<b>\$237 - \$475</b>
<b>Year 3: 2011</b>			
APD	\$15,552	\$1,555 - \$3,110	\$194 - \$389
Acquisitions (RFPs, Contracts, etc.)	\$1,296	\$130 - \$259	\$43 - \$86
<b>TOTAL</b>	<b>\$16,848</b>	<b>\$1,685 - \$3,369</b>	<b>\$237 - \$475</b>
<b>YEARS 1 – 3 IN THE AGGREGATE</b>			
<b>APD</b>	<b>\$114,696</b>	<b>\$11,469 - \$22,939</b>	<b>\$194 - \$389</b>
<b>Acquisitions (RFPs, Contracts, etc.)</b>	<b>\$6,480</b>	<b>\$648 - \$1,296</b>	<b>\$43 - \$86</b>
<b>TOTAL</b>	<b>\$121,176</b>	<b>\$12,117 - \$24,235</b>	<b>\$237 - \$475</b>

13. Estimates of Other Total Annual Cost Burden to Respondents and Record Keepers

There are no additional direct costs to respondents.

14. Annualized Cost to the Federal Government

The annualized costs to the Federal Government for the hour burdens are based on OCSE's administrative costs and the cost of Federal grant funds awarded to Tribal IV-D Agencies for the installation and enhancement of the Computerized Tribal IV-D System

OCSE's administrative cost is calculated at 1 GS-13, Step 5 full-time equivalent (FTE) federal employee for every 14.75 APDs and 3.75 Acquisitions. The GS-13, Step 5 (FTE) federal employees who would be required to oversee the program which includes: technical assistance to the comprehensive Tribal IV-D Agencies in complying with proposed Part 310

provided by central office staff in APD preparations, and reviewing RFPs and contracts submitted for review and approval. The average annualized cost for OCSE's administrative expenses is \$156,708 with a total cost of \$470,125 over a three-year period [Year 1 = \$94,025 (GS13-step5) x 3= \$282,075; Year 2 = \$94,025 9GS 13-step 5) x 1 = \$94,025; Year 3 = \$94,025 (GS 13-step 5) x 1 = 94,025].

In addition, proposed Part 310 would make Federal grant funds available at the applicable matching rate (80% to 90% towards approved and allowed expenditures for the installation and enhancement of Computerized Tribal IV-D Systems) as defined in 45 CFR 309.130(c). (See Attachment B). The average annualized cost of the Federal grant fund awards would be \$32,313 - \$36,352, with a total cost of \$96,940 - \$109,058 over a three-year period. (The estimated cost is shown as a range in order to account for the applicable matching rate which may vary from 80% to 90%).

The total average annualized cost to the Federal Government (including OCSE's administrative costs and the Federal grant awards) would be \$189,021 - \$193,060, with a total project cost of \$567,063 - \$579,180 over a three-year period.

<b>Instrument</b>	<b>OCSE's Administrative Costs</b>	<b>Respondents Reimbursement Cost (90% - 80% depending on the applicable matching rate)</b>	<b>Administrative Cost Plus Respondent Reimbursement Cost</b>
<b>Year 1: FY 2009</b>			
APD	\$245,406	\$62,208 - \$69,984	\$307,614 - \$315,390
Acquisitions (RFPs, Contracts, etc.)	\$36,669	\$2,073 - \$2,332	\$38,742 - \$39,001
<b>TOTAL</b>	<b>\$282,075</b>	<b>\$64,281 - \$72,316</b>	<b>\$346,356 - \$354,391</b>
<b>Year 2: FY 2010</b>			
APD	\$61,117	\$17,107 - \$19,245	\$78,224 - \$80,362
Acquisitions (RFPs, Contracts, etc.)	\$32,908	\$2,073 - \$2,332	\$34,981 - \$35,240
<b>TOTAL</b>	<b>\$94,025</b>	<b>\$19,180 - \$21,577</b>	<b>\$113,205 - \$115,602</b>
<b>Year 3: 2011</b>			
APD	\$68,638	\$12,441 - \$13,996	\$81,079 - \$82,634
Acquisitions (RFPs, Contracts, etc.)	\$25,387	\$1,036 - \$1,166	\$26,423 - \$26,553
<b>TOTAL</b>	<b>\$94,025</b>	<b>\$13,477 - \$15,162</b>	<b>\$107,502 - \$109,187</b>
<b>YEARS 1 – 3 IN THE AGGREGATE</b>			
<b>APD</b>	<b>\$375,161</b>	<b>\$91,756 - \$103,226</b>	<b>\$466,917 - \$478,386</b>
<b>Acquisitions (RFPs, Contracts, etc.)</b>	<b>\$94,964</b>	<b>\$5,184 - \$5,832</b>	<b>\$100,146 - \$100,794</b>
<b>TOTAL</b>	<b>\$470,125</b>	<b>\$96,940 - \$109,058</b>	<b>\$567,063 - \$579,180</b>

15. Explanation of Program Changes or Adjustments

The new burden hours are due to proposed rule Part 310 entitled *Computerized Tribal IV-D Systems and Office Automation*. The proposed rule represents new opportunities for qualified Tribes and Tribal organizations operating a comprehensive Tribal IV-D program to automate case processing. Without the proposed rule and this information collection request, Tribal IV-D programs are limited to basic office automation through word processing and database software. We believe that encouraging automated case processing through Computerized Tribal IV-D Systems will enable Tribes and Tribal organizations to process child support cases in a more efficient and effective manner.

16. Plans for Tabulation and Publication and Project Time Schedule

Not applicable

17. Reason(s) Display of OMB Expiration Date is Inappropriate

Not applicable

18. Exception to Certification for Paperwork Reduction Act Submission

There are no exceptions to the certification statement.

SUPPORTING STATEMENT:

**PART B- COLLECTION OF INFORMATION EMPLOYING STATISTICAL  
METHODS**

The information collection requirements outlined in this report do not employ the use of statistical methods.

**May 1, 2008**

**Attachment A: Proposed Sections 310.20 and 310.25**  
**Preamble Language**

**§310.20 What are the conditions for funding the installation, operation, maintenance and enhancement of Computerized Tribal IV-D Systems and Office Automation?**

This section of the proposed rule would establish conditions that must be met in order for a comprehensive Tribal IV-D agency to obtain Federal funding in the costs of installation, operation, maintenance and enhancement of Computerized Tribal IV-D Systems and Office Automation. This section is derived from §§307.15 and 307.20, governing State automated systems, and is appropriately revised to specifically apply to the needs of comprehensive Tribal IV-D programs. Sections 307.15 and 307.20, respectively, address conditions for approval of Advance Planning Documents (APD) and submittal of APDs for State computerized support enforcement systems. Proposed §310.20 addresses procedures for submittal of an APD to the Department. The Office uses the APD process to help meet its fiduciary responsibility to ensure that the costs associated with all ADP systems acquisitions, including Computerized Tribal IV-D Systems, are reasonable and necessary. Just as the Office requires States to request funding in an APD for acquisition of a computerized child support enforcement system, documenting such factors as project cost, risk, resources, and schedule, those same factors equally apply to the Office's review and approval of the installation, operation, maintenance and enhancement of Computerized Tribal IV-D Systems. For this reason, the APD process is incorporated to this proposed rule as applicable and necessary to acquisitions of such systems in comprehensive Tribal IV-D programs.



The proposed content of paragraph (a) provides instructions for preparing an APD, streamlines the APD application process, and distinguishes between activities that require an APD submission and those that only require submission of annual budgets in accordance with §309.15(c). Proposed paragraph (a) lays out conditions that must be met for FFP in the costs of installation, operation, maintenance, and enhancement of a Computerized Tribal IV-D System at the applicable matching rate under §309.130(c). (As mentioned earlier in the preamble under the proposed §309.145(h)(1), the applicable matching rate as defined in §309.130(c) refers to the total amount of approved and allowable expenditures for which a comprehensive Tribal IV-D program would be eligible to receive Federal grant funds in the costs of administering the Tribal IV-D program, including Computerized Tribal IV-D Systems and Office Automation. The applicable matching rate would be ninety percent for comprehensive Tribal IV-D programs that are operating within the first three-year period of Federal funding; the applicable matching rate for comprehensive Tribal IV-D programs operating in all periods following the first three-year period would be eighty percent.)

Paragraph (a)(1) would state that a comprehensive Tribal IV-D agency must have submitted, and the Office must have approved, an APD for the installation and enhancement of a Computerized Tribal IV-D System. Under paragraph (a)(2), an APD for installation of a Computerized Tribal IV-D System must (i) represent the sole systems effort being undertaken by the comprehensive Tribal IV-D agency under part 310; (ii) describe the projected resource requirements for staff, hardware, software, network connections and other needs and the resources available or expected to be available to meet the requirements; (iii) contain a proposed schedule of project milestones with detail sufficient to describe the tasks, activities, and

complexity of the initial implementation project; (iv) contain a proposed budget including a description of expenditures by category and amount for items related to installing, operating, maintaining, and enhancing the Computerized Tribal IV-D System that are eligible for Federal funding at the applicable matching rate under §309.130(c); and (v) contain a statement that the comprehensive Tribal IV-D agency agrees in writing to use the Computerized Tribal IV-D System for a minimum period of time. This last requirement, to agree in writing to use the Computerized Tribal IV-D System for a minimum period of time, is derived from 45 CFR 95.619. Under §95.619, ADP systems designed, developed, or installed with FFP shall be used for a period of time specified in the advance planning document, unless the Department determines that a shorter period is justified. The requirement for the APD to contain an agreement by a Tribal IV-D program to use the Computerized Tribal IV-D System for a minimum period of time assures both the Federal and Tribal governments of a reasonable return on investment relative to the Total Acquisition Cost of the Computerized Tribal IV-D System.

In addition to the above requirements, proposed paragraph (a)(3) includes the following conditions which must be met to obtain FFP in the installation costs of access to a State or another comprehensive Tribal IV-D program's ADP system established under an Intergovernmental Service Agreement: The comprehensive Tribal IV-D agency must (i) maintain a copy of each intergovernmental cooperative agreement and Service Agreement in its files for Federal review. Under subparagraph (ii), the comprehensive Tribal IV-D agency must ensure that (A) the Service Agreement for which FFP is being sought meets the definition of a Service Agreement as defined in proposed §310.1; (B) claims for FFP conform to the timely claim provisions of 45 CFR Part 95, Subpart A; and (C) the Service Agreement was not

previously disapproved by the Department. In deriving from 45 CFR Part 95 Subpart A the requirements to be met to obtain FFP in the cost of access to another State or Tribal IV-D program's ADP system, we are ensuring a common understanding and consistency of approach to securing, documenting and maintaining FFP approval of such intergovernmental cooperative agreements.

In addition to the requirements proposed above, under paragraph (a)(4), the following conditions must be met in order for a comprehensive Tribal IV-D agency to obtain FFP in the costs of enhancements to its Computerized Tribal IV-D System: (i) the project's Total Acquisition Cost cannot exceed the comprehensive Tribal IV-D agency's total Tribal IV-D program grant award for the year in which the acquisition request is made; and (ii) the APD budget, schedule and commitment to use the Computerized Tribal IV-D System for a specified minimum period of time must be updated to reflect the enhancement project. These additional APD requirements to obtain FFP in the cost of enhancements to an existing Computerized Tribal IV-D System reflect the need to ensure both continued cost reasonableness and ongoing return on investment given a Computerized Tribal IV-D System's increased Total Acquisition Cost.

Paragraph (a)(5) of §310.20 proposes that to receive FFP in the costs of the operation and maintenance of a Computerized Tribal IV-D System installed under proposed Part 310 or an automated data processing system funded entirely with Tribal funds under proposed §309.145(h)(5), the comprehensive Tribal IV-D agency must include operation and maintenance costs in its annual Title IV-D program budget submission in accordance with §309.15(c) wherein requirements for annual budget submissions are detailed.

In addition, paragraph (a)(6) would require that in order to receive FFP in the costs of the installation, operation, and maintenance of essential Office Automation capabilities, the comprehensive Tribal IV-D agency must include such costs in its annual Title IV-D program budget submission in accordance with §309.15(c). States maintaining their computerized IV-D systems in an operations and maintenance-only mode may close their APD and thereafter request FFP for their operation and maintenance costs through specific line-item submissions in their “Quarterly Report of Expenditures and Estimates,” (OCSE Form 424A). Given the efficacy of this existing procedure used with States, and the predictability and general reasonableness of such costs, a similar process for Tribes to request FFP for operation and maintenance cost reimbursement is appropriate. Therefore, this rule will allow Tribes to request FFP in the costs of installation, operation, and maintenance of essential Office Automation capabilities, an inherently operational activity, through a comprehensive Tribal IV-D agency’s Title IV-D program budget submission, “Financial Status Report,” (OCSE Form 296A) in accordance with requirements listed at §309.15(c).

The graduated variation in conditions that must be met in order to obtain FFP in the costs of the activities under this proposed paragraph (a) are designed to reflect the varying automation levels of comprehensive Tribal IV-D agencies. For example, the conditions that a comprehensive Tribal IV-D agency would be required to meet in order to obtain FFP in the costs of installing Office Automation would be less involved than the conditions required for a comprehensive Tribal IV-D agency that is requesting FFP in the installation costs of accessing a State or another comprehensive Tribal IV-D program’s APD system. Proposed §310.20 provides comprehensive Tribal IV-D agencies with the flexibility to determine which automation

approaches and application procedures best suit the program-specific needs of that Tribe or Tribal organization. The provisions in proposed paragraph (a) are consistent with Tribal IV-D program staff input to reduce the burden of the APD application process.

Provisions under §310.20(b) would describe the required procedures for submittal of an APD. Proposed paragraph (b) states that the comprehensive Tribal IV-D agency must submit an APD for a Computerized Tribal IV-D System to the Commissioner of the Office, Attention: Division of State and Tribal Systems. The APD submitted by the comprehensive Tribal IV-D agency must be approved and signed by the comprehensive Tribal IV-D agency Director and the authorized representative of the Tribe or Tribal organization prior to submission to the Office for approval. The above procedures for submitting an APD would ensure that the proper authorities representing the Tribe or Tribal organization agree with the details in the APD application documents and that the Program Director and appropriate Tribal officials are aware of responsibilities in acquiring automation for the Tribal IV-D program.

#### **§310.25 What conditions apply to acquisitions of Computerized Tribal IV-D Systems?**

This proposed section details specific conditions that must be met in the acquisition process of Computerized Tribal IV-D Systems. Comprehensive Tribal IV-D agencies that have elected to automate program activities through Office Automation or another alternative to Computerized Tribal IV-D Systems as discussed in proposed §310.5, would not be subject to the requirements presented in proposed §310.25. This section is derived from and comparable to §307.31 and 45

CFR 95.617 which are respectively entitled *FFP at the 80 Percent Rate for Computerized [State] Support Enforcement Systems* and *Software and Ownership Rights*.

In proposed paragraph (a) of this section entitled *APD Approval*, a comprehensive Tribal IV-D agency must have an approved APD in accordance with the applicable requirements of proposed §310.20. This paragraph (a) would establish protocol for when a comprehensive Tribal IV-D agency may engage in acquisition procedures in the purchase of a Computerized Tribal IV-D System. The requirement that a comprehensive Tribal IV-D agency must have an approved APD prior to initiating acquisition of a Computerized Tribal IV-D System safeguards all parties involved by ensuring that authorities from the Tribe or Tribal organization and the Department are in agreement about the use, funding, and parameters of each comprehensive Tribal IV-D agency's specific plan for automating case-processing and record-keeping program activities.

Under proposed paragraph (b), which is entitled *Procurements*, Requests for Proposals (RFP) and similar procurement documents, contracts, and contract amendments involving costs eligible for FFP, must be submitted to the Office for approval prior to release of the procurement document, and prior to the execution of the resultant contract when a procurement is anticipated to or will exceed the Simplified Acquisition Threshold. The Simplified Acquisition Threshold for ADP systems, equipment, and service acquisitions is defined in proposed §310.1(a)(10) as a Tribe or Tribal organization's monetary threshold for determining whether competitive acquisition rules are required for a given procurement or \$100,000, whichever is less. The Simplified Acquisition Threshold represents the maximum amount of monies that a comprehensive Tribal IV-D agency may expend without submitting the subject solicitation

document (RFP, etc.) and resultant contract to the Office for review and written approval prior to its execution. As previously stated in the proposed rule, this threshold is derived from 45 CFR 92.36(d)(1), which references *small purchase procedures* as a procurement method for securing items of cost not exceeding the Simplified Acquisition Threshold fixed at 41 U.S.C. 403(11) (\$100,000). This is appropriately adapted for this rule because of the need to ensure full and open competition in acquisitions in accordance with 45 CFR 92.36(c), and to ensure consistency with regulations at 45 CFR 95.611(b) governing State ADP acquisitions funded at enhanced FFP rates of reimbursement.

Beyond just ensuring consistency with regulations governing State acquisitions funded at enhanced FFP rates, in proposing a Simplified Acquisition Threshold at \$100,000 or the threshold set by a Tribe or Tribal organization, whichever is less, we determined that such monies would meet the funding needs of the majority of comprehensive Tribal IV-D agencies which service moderate caseloads. Therefore, under this proposed paragraph (b), only those comprehensive Tribal IV-D agencies with significantly larger caseloads would likely be impacted by the requirement to submit RFP's and contracts to the Office for approval prior to their respective release or execution if they are anticipated to exceed the Simplified Acquisition Threshold.

Proposed paragraph (c)(1) is entitled *Software and Ownership Rights* and requires that all procurement and contract instruments must include a clause that provides that the comprehensive Tribal IV-D agency will have all ownership rights to Computerized Tribal IV-D System software

or enhancements thereof and all associated documentation designed, developed, or installed with FFP. Intergovernmental Service Agreements are not subject to this requirement. This exception for Intergovernmental Service Agreements ensures consistent application of current policy among all grantees, State and Tribal, and is derived from current Federal regulations at 45 CFR 95.613(b) that exempt Service Agreements from the procurement standards applicable to State acquisitions of ADP equipment and services. Additionally, proposed paragraph (c)(2), states that the Department reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, enhancements and documentation developed under this part. Under paragraph (c)(3) FFP would not be available for the costs of rental or purchase of proprietary application software developed specifically for a Computerized Tribal IV-D System. Commercial-off-the-shelf (COTS) software packages that are sold or leased to the general public at established catalog or market prices are not subject to the ownership and license provisions of this requirement. The requirements stated in this proposed paragraph (c) are not unique to Child Support Enforcement regulations. Rather, the proposed requirements would be a restatement of current Departmental regulations that have applied to all automated systems acquisitions, and not just those in the IV-D program. Federal policy in this area, as stated in Federal regulations at 45 CFR 92.34 and 95.617, and as restated in child support automation regulations for State IV-D programs at 45 CFR 307.30 and 45 CFR 307.31, is appropriate and best protects the Federal interest in IV-D and other Federal systems development efforts.

In proposed paragraph (d) of this section, a comprehensive Tribal IV-D agency is not required to submit procurement documents, contracts, and contract amendments for acquisitions



under the Simplified Acquisition Threshold set by the Tribe or Tribal organization or \$100,000, whichever is less, unless specifically requested to do so in writing by the Office. The Office believes that procurement activities which fall under the Simplified Acquisition Threshold amount would not require submittal of procurement documents, contracts, and contract amendments because such acquisitions already fall under the existing procurement regulations of 45 CFR 92.36 (*Procurement*) and because applying such a threshold ensures a consistency of approach between State and Tribal grantees relative to procurements funded at enhanced rates of FFP.

## **Attachment B: 45 CFR 309.130(c) Reference to Applicable Matching Rate**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) 10 percent of approved and allowable expenditures during the 3-year period specified in paragraph (c)(2) of this section or;
- (2) 20 percent of approved and allowable expenditures during the subsequent periods specified in paragraph (c)(3) of this section.
- (3) The non-Federal share of program expenditures must be provided either with cash or with in-kind contributions and must meet the requirements found in 45 CFR 74.23.

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

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

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

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

- (i) A statement of the amount of the non-Federal share that the Tribe is requesting be waived;
- (ii) A narrative statement describing the circumstances and justification for the waiver request;
- (iii) Portions of the Tribal budget for the funding period sufficient to demonstrate that any funding shortfall is not limited to the Tribal IV-D program and that any uncommitted Tribal reserve funds are insufficient to meet the non-Federal funding requirement;
- (iv) Copies of any additional financial documents in support of the request;
- (v) A detailed description of the attempts made to secure the necessary funds and in-kind contributions from other sources and the results of those attempts, including copies of all relevant correspondence; and
- (vi) Any other documentation or other information that the Secretary may require to make this determination.

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

- (i) Lacks sufficient resources to provide the required non-Federal share of costs;
- (ii) Has made reasonable, but unsuccessful, efforts to obtain non-Federal share contributions; and
- (iii) Has provided all required information requested by the Secretary.

(4) All statements in support of a waiver request must be supported by evidence including, but not limited to, a description of how the Tribe or Tribal organization's circumstances relate to its capacity to provide child support enforcement services. The

following statements will be considered insufficient to merit a waiver under this section without documentary evidence satisfactory to the Secretary:

- (i) Funds have been committed to other budget items;
- (ii) A high rate of unemployment;
- (iii) A generally poor economic condition;
- (iv) A lack of or a decline in revenue from gaming, fishing, timber, mineral rights and other similar revenue sources;
- (v) A small or declining tax base; and
- (vi) Little or no economic development.

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

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

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

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

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

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

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

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