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one or more IV-D requirements, as defined in §305.63 of this part, if the Secretary determines that the incompleteness or unreliability of the data, or the noncompliance with one or more of the IV-D requirements, is of a technical nature which does not adversely affect the performance of the State’s IV-D program or does not adversely affect the determination of the level of the State’s paternity establishment or other performance measures percentages.

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

For the purposes of a determination under §305.61(a)(1)(ii) of this part, in order to be found to be in substantial compliance with one or more of the IV-D requirements as a result of an audit conducted under §305.60 of this part, a State must meet the standards set forth below for each specific IV-D State plan requirement or requirements being audited and contained in parts 302 and 303 of this chapter, measured as follows:

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

(1) Statewide operations, §302.10 of this chapter;

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

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

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

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

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

(2) Case closure criteria, §303.11 of this chapter.

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

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

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

(3) Enforcement of support obligations, including, in all appropriate cases: establishment of a case under §303.2(b) of this chapter; services to individuals not receiving TANF or title IV-E foster care assistance, under §303.33(a)(1) through (4) of this chapter; provision of services in interstate IV-D cases under §303.7(a), (b) and (c)(1) through (6) and (c)(8) through (10) of this chapter; location of non-custodial parents under §303.3 of this chapter; enforcement of support obligations under §303.6 of this chapter and State laws enacted under section 466 of the Act, including submitting once a year all appropriate cases in accordance with §303.6(c)(3) of this chapter to State and Federal income tax refund offset; and wage withholding under §303.100 of this chapter. In cases in which wage withholding cannot be implemented or is not available and the non-custodial parent has been located, States must use or attempt to use at least one enforcement technique available under State law in addition to Federal and State tax refund offset, in accordance with State laws and procedures and applicable State guidelines developed under §302.70(b) of this chapter;

(4) Review and adjustment of child support orders, including: Establishment of a case under §303.2(b) of this chapter; services to individuals not receiving TANF or title IV-E foster care assistance, under §303.33(a)(1) through (4) of this chapter; provision of services
in interstate IV-D cases under §303.7(a), (b) and (c)(1) through (6) and (c)(8) through (10) of this chapter; location of non-custodial parents under §303.3 of this chapter; guidelines for setting child support awards under §303.3 of this chapter; and review and adjustment of support obligations under §303.8 of this chapter; and

(5) Medical support, including: establishment of a case under §303.2(b) of this chapter; services to individuals not receiving TANF or title IV-E foster care assistance, under §302.33(a)(1) through (4) of this chapter; provision of services in interstate IV-D cases under §303.7(a), (b) and (c)(4) through (6), (c)(8) and (9) of this chapter; and location and enforcement of support obligations in §303.3(b)(3) and (5), and §303.6 of this chapter; and

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

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

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

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

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

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

(e) The State must meet the requirements for expedited processes under §303.101(b)(1) and (ii), and (e) of this chapter.

[65 FR 82208, Dec. 27, 2000, as amended at 73 FR 42442, July 21, 2008]

Effective Date: At 75 FR 38644, July 2, 2010, §305.63 was amended by removing “interstate” and adding “intergovernmental” in its place wherever it occurs in paragraphs (c)(2) through (5) and paragraphs (d)(1) through (4); removing “§303.7(a), (b) and (c)(1) through (6) and (8) through (10)” and adding “§303.7(a), (b), (c), (d)(1) through (5) and (7) through (10), and (e)” in its place wherever it occurs in paragraphs (c)(2) through (5); and removing “§303.7(a), (b) and (c)(4) through (6), (c)(8) and (9)” and adding “§303.7(a)(4) through (6), (b), (c), (d)(2)
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§ 305.64 Audit procedures and State comments.

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

(b) At the conclusion of audit fieldwork, Federal auditors will afford the State IV-D agency an opportunity for an audit exit conference at which time preliminary audit findings will be discussed and the IV-D agency may present any additional matter it believes should be considered in the audit findings.

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

§ 305.65 State cooperation in audit.

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

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

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

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

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

(b) The notice will:

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

(2) Specify that the penalty will be assessed in accordance with the provisions of 45 CFR 262.1(b) through (e) and 262.7 if the State is found to have failed to correct the deficiency or deficiencies cited in the notice during the automatic corrective action year (i.e., the succeeding fiscal year following the year with respect to which the deficiency occurred.)

(c) The penalty under §305.61 of this part will be assessed if the Secretary determines that the State has not corrected the deficiency or deficiencies cited in the notice by the end of the corrective action year.

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

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