

**§ 304.40**

(b) Public funds used by the IV-D agency for its child support enforcement program may not be considered as the State's share in claiming Federal reimbursement where such funds are:

- (1) Federal funds, unless authorized by Federal law to be used to match other Federal funds;
- (2) Used to match other Federal funds.

[41 FR 7105, Feb. 17, 1976]

**§ 304.40 Repayment of Federal funds by installments.**

(a) *Basic conditions.* When a State has been reimbursed Federal funds for expenditures claimed under title IV-D, which is later determined to be unallowable for Federal financial participation, the State may make repayment of such Federal funds in installments provided:

- (1) The amount of the repayment exceeds 2½ percent of the estimated annual State share of expenditures for the IV-D program as set forth in paragraph (b) of this section; and
- (2) The State has notified the OCSE Regional Office in writing of its intent to make installment repayments. Such notice must be given prior to the time repayment of the total was otherwise due.

(b) *Criteria governing installment repayments.* (1) The number of quarters over which the repayment of the total unallowable expenditures will be made will be determined by the percentage the total of such repayment is of the estimated State share of the annual expenditures for the IV-D program as follows:

Total repayment amount as percentage of State share of annual expenditures for the IV-D program	Number of quarters to make repayment
2.5 percent or less .....	1
Greater than 2.5, but not greater than 5 .....	2
Greater than 5, but not greater than 7.5 .....	3
Greater than 7.5, but not greater than 10 .....	4
Greater than 10, but not greater than 15 .....	5
Greater than 15, but not greater than 20 .....	6
Greater than 20, but not greater than 25 .....	7
Greater than 25, but not greater than 30 .....	8
Greater than 30, but not greater than 47.5 .....	9
Greater than 47.5, but not greater than 65 .....	10
Greater than 65, but not greater than 82.5 .....	11
Greater than 82.5, but not greater than 100 .....	12

**45 CFR Ch. III (10-1-11 Edition)**

The quarterly repayment amounts for each of the quarters in the repayment schedule shall not be less than the following percentages of estimated State share of the annual expenditures for the program against which the recovery is made.

For each of the following quarters	Repayment installment may not be less than these percentages
1 to 4 .....	2.5
5 to 8 .....	5.0
9 to 12 .....	17.5

If the State chooses to repay amounts representing higher percentages during the early quarters, any corresponding reduction in required minimum percentages would be applied first to the last scheduled payment, then to the next to the last payment, and so forth as necessary.

(2) The latest required financial reports submitted by the State shall be used to estimate the State's share of annual expenditures for the IV-D program. That estimated share shall be the sum of the State's share of the estimates for four quarters, beginning with the quarter in which the first installment is to be paid.

(3) In case of termination of the program, the actual State share—rather than the estimate—shall be used for determining whether the amount of the repayment exceeds 2½ percent of the annual State share for the IV-D program. The annual State share in these cases will be determined using payments computable for Federal funding as reported for the program by the State on its Quarterly Report of Expenditures and Estimates submitted for the last four quarters preceding the date on which the program was terminated.

(4) Repayment shall be accomplished through adjustment in the quarterly grants over the period covered by the repayment schedule.

(5) The amount of the repayment for purpose of paragraphs (a) and (b) of this section may not include any amount previously approved for installment repayment.

(6) The repayment schedule may be extended beyond 12 quarterly installments if the total repayment amount exceeds 100% of the estimated State share of annual expenditures.

In these circumstances, the criteria in paragraphs (b) (1) and (2) or (3) of this section, as appropriate, shall be followed for repayment of the amount equal to 100% of the annual State share. The remaining amount of the repayment shall be in quarterly amounts not less than those for the 9th through 12th quarters.

(7) The amount of a retroactive claim to be paid a State will be offset against any amounts to be, or already being, repaid by the State in installments, under the same title of the Social Security Act. Under this provision the State may choose to:

(i) Suspend payments until the retroactive claim due the State has, in fact, been offset; or

(ii) Continue payments until the reduced amount of its debt (remaining after the offset), has been paid in full. This second option would result in a shorter payment period.

A retroactive claim for the purpose of this regulation is a claim applicable to any period ending 12 months or more prior to the beginning of the quarter in which the payment is to be made by the Service.

[42 FR 28885, June 6, 1977, as amended at 52 FR 273, Jan. 5, 1987; 64 FR 6253, Feb. 9, 1999; 68 FR 25305, May 12, 2003]

#### § 304.50 Treatment of program income.

The IV-D agency must exclude from its quarterly expenditure claims an amount equal to:

(a) All fees which are collected during the quarter under the title IV-D State plan; and

(b) All interest and other income earned during the quarter resulting from services provided under the IV-D State plan.

[49 FR 36772, Sept. 19, 1984]

#### § 304.95 [Reserved]

### PART 305—PROGRAM PERFORMANCE MEASURES, STANDARDS, FINANCIAL INCENTIVES, AND PENALTIES

Sec.

305.0 Scope.

305.1 Definitions.

305.2 Performance measures.

305.31 Amount of incentive payment.

305.32 Requirements applicable to calculations.

305.33 Determination of applicable percentages based on performance levels.

305.34 Payment of incentives.

305.35 Reinvestment.

305.36 Incentive phase-in.

305.40 Penalty performance measures and levels.

305.42 Penalty phase-in.

305.60 Types and scope of Federal audits.

305.61 Penalty for failure to meet IV-D requirements.

305.62 Disregard of a failure which is of a technical nature.

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

305.64 Audit procedures and State comments.

305.65 State cooperation in the audit.

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

AUTHORITY: 42 U.S.C. 609(a)(8), 652(a)(4) and (g), 658 and 1302.

SOURCE: At 65 FR 82208, Dec. 27, 2000, unless otherwise noted.

#### § 305.0 Scope.

This part implements the incentive system requirements as described in section 458A (to be redesignated as section 458 effective October 1, 2001) of the Act and the penalty provisions as required in sections 409(a)(8) and 452(g) of the Act. This part also implements Federal audit requirements under sections 409(a)(8) and 452(a)(4) of the Act. Sections 305.0 through 305.2 contain general provisions applicable to this part. Sections 305.31 through 305.36 of this part describe the incentive system. Sections 305.40 through 305.42 and §§ 305.60 through 305.66 describe the penalty and audit processes.

#### § 305.1 Definitions.

The definitions found in § 301.1 of this chapter are also applicable to this part. In addition, for purposes of this part: