

Title IV-D Child Support Program Duties

I. Location of Noncustodial Parents and/or their Assets

Duty: If location of the non-custodial parent (NCP) or his/her assets is or becomes necessary, use *all* appropriate sources to locate the NCP or his/her assets.

Time: Within 75 days after the IV-D agency figures out it needs location information for the next step in the case.

Law: 45 C.F.R. § 303.3(b)(3).

Example of Failure: Custodial parent's (CP) case is open, she provides the IV-D agency with name of the NCP and certain location information, such as the NCP's home or business address, Social Security number, name of bank or location of property. The IV-D agency does nothing.

Duty: If initial location efforts fail, repeat as long as there is adequate identifying and other information to meet the requirements for submittal for location efforts.

Time: Every 90 days or immediately upon receipt of new information which may aid in location, whichever occurs sooner. Quarterly attempts may be limited to automated *sources*, but *must* include state Unemployment Insurance records.

Law: 45 C.F.R. § 303.3(b)(5)

Example of Failure: CP finds out that NCP has a new job and reports that information to the IV-D agency, preferably in writing. The IV-D agency does nothing within 75 days.

II. Establishment of Paternity and Support Orders

Duty: If a support order must be established, regardless of whether paternity has to be established, establish a support order *or* complete service of process *or* document unsuccessful attempts to serve process in accordance with state's guidelines for diligent efforts.¹

Time: Within 90 days of locating the NCP.

Law: 45 C.F.R. § 303.4(d)

Example of Failure: A support order is needed. The IV-D agency locates the NCP, but after 90 days has failed to establish support *or* serve with process *or* even diligently attempt to serve. Note, if the IV-D agency serves the NCP, but never follows up to get the support order, the IV-D agency may still be in compliance with federal regulations.

¹ Most states define "diligent efforts" as attempting all appropriate statutory mechanisms for serving process and repeating such attempts as soon as new information becomes available or yearly, whichever occurs first.

III. Enforcement of Support Orders

Duty: Maintain and use an effective system to monitor compliance with support orders and identify the date that an NCP fails to pay an amount equal to one month's support.

Time: N/A

Law: 45 C.F.R. § 303.6(a)

Example of Failure: This can be a systemic failure, or the failure of a worker to act on the case when it reports that the NCP is delinquent. This problem may be corrected by an administrative grievance and hearing process or the duty to monitor may be enforceable by an injunction or mandate in state court. This may be the kind of system or administrative requirement which may not be enforceable by a CP under *Blessing v. Freestone*, 117 S.Ct. 1353 (1997) especially since *Gonzaga University v. Doe*, 112 S.Ct. 2268 (2002)

Duty: Notify employer to start income withholding.

Time: Within 2 business days following entry of a support order *or* locating the employer *or* learning of a new employer.

Law: 42 U.S.C. § 654A(g)); 45 C.F.R. § 303.6(c)(1). [45 C.F.R. § 303.100.(e)(2) and (3) incorrectly still refer to 15 days.]

Example of Failure: The IV-D agency obtains a support order with an authorization for income assignment (required in every case), but does not know the NCP's employer. The IV-D agency later learns of the NCP's employer, from the CP or otherwise, but fails to send the Order/Notice to Withhold Income within 2 business days.

Duty: Enforce the child support order.

Time: If service of process is *not* required, within 30 days of identifying a delinquency or locating the NCP, whichever occurs *later*. If service of process is required,² service must be completed and enforcement action taken within 60 days of identifying delinquency or locating the noncustodial parent, whichever occurs *later* *or* the IV-D agency must document unsuccessful attempts to serve process in accordance with state's guidelines for diligent efforts. Use of income withholding and federal income tax refund intercepts is also required.

Law: 45 C.F.R. § 303.6(c)(2)

Example of Failure: The NCP misses support payments equal to one month's current support amount. He is self-employed and the IV-D agency knows where he is. Sixty days go by and the IV-D agency does nothing. Note, if just 30 days go by, the IV-D agency could argue that they were planning to take action that required service of process, such as a contempt proceeding. Note also that the CP is unlikely to know about (but can request in writing) other enforcement activities that the IV-D agency could (or must) take, such as initiating the process for driver's license or professional, or business license revocation.

² Service of process other than notice by mail is not required for most post-judgment enforcement actions. Action directed to assets held by third parties, such as a bank, or for criminal enforcement may require service of process.

IV. Modification of Support Orders

Duty: Notify all CPs that modification services are available. Review support orders for modification if requested by the CP, the NCP (or The LCSA if the CP is on CalWORKS). Send notice of any proposed modification to the parents and then adjust the order, as appropriate.

Time: Within 15 days of a request from the custodial parent or NCP the agency must determine if a review is necessary. Within 180 days of determining that a review is necessary or of locating the non-requesting parent, whichever occurs *later*, complete review and obtain modified order from the court, if appropriate.

Law: 45 C.F.R. § 303.8

Example of Failure: Custodial parent has asked in writing for a review and has provided the IV-D agency with all requested information. The IV-D agency knows where the non-custodial parent is and has sufficient information about his/her income to proceed. The modification will increase the order by the amount set out in DCSS guidelines and/or medical support will be ordered. 180 days have passed and the IV-D agency has not completed a requested modification or notified the CP or NCP that it will not seek modification and provided a notice of appeal rights.

V. Timely Distribution of Support.

Duty:

- As of 10/1/98, the time limit for distribution of current support became two business days, provided there is sufficient information to identify the CP and there is no appeal on amount of arrearages. 42 U.S.C. § 654B(c)(1).

Law: 45 C.F.R. §§ 302.32(f), 302.5; (OCSE Action Transmittal 97-13, Sept. 15, 1997, details the obligations of a State Distribution Unit. CA lacks both a single automated system and a single SDU.

Example of Failure: The LCSA receives a support collection for a CP (except support collected from a federal tax refund intercept), knows to whom it must be sent, but fails to send the support on to the CP within 2 business days. (Business days are days the State agency is open for business.)

VI. Accurate Distribution of Support.

Duty: Accurately distribute child support collected on behalf of families receiving IV-D agency services.

- A family *not* receiving TANF - CalWORKS cash benefits should get all support collected each month up to the amount ordered for current support in the order.
- Effective 10/1/98, post-TANF families must be paid all past-due support owed to the family before the state receives any welfare recoupment (unreimbursed assistance) except for permanently assigned arrears arising from periods of AFDC prior to October 1998. The total amount of child support kept to repay unreimbursed assistance must never exceed the dollar total of all aid previously provided.
- If a family *is* receiving TANF - CalWORKS cash benefits, the CP should get the first fifty dollars of support collected. This is a single month maximum amount for the CP and all the children of which she has custody, no matter how many court orders the CP has, or how many NCPs pay.

VII. Accessing IV-D agency Files

Obtaining information from the IV-D agency concerning an individual case can be frustrating. For all cases, the IV-D agency must, within 20 days following the application for services or referral from the welfare department, establish a case record, and determine the necessary actions to be taken. 45 C.F.R. § 303.2(b). Under 45 C.F.R. § 303.2(c) the IV-D agency has a continuing duty to supplement the case record “with all information and documents pertaining to the case, as well as all relevant facts, dates, actions taken, contacts made and results in a case.”

We suggest using standard DCSS or other record release forms and requests and that the cover letter quote and cite the above regulation. You also may want to target your requests to the record of case actions necessary to determine if the IV-D agency has taken timely action. You may want to state that you are not seeking any information or records which may be protected because they are from the IRS, contain confidential address information in domestic violence cases or otherwise are required to be held confidential by law. Ask that any LCSA claim of confidentiality or privilege should be specific as to the nature or source of the document or information and the privilege or confidentiality law invoked to deny release or review of the record.

VIII. Legal Resources:

Rulings in the Harp distribution, processing fees, recoupment and notices case
<http://www.Divorcetn.com>

Federal Office of Child Support Enforcement (OCSE)
<http://www.acf.dhhs.gov/programs/cse/>

National Electronic Child Support Resource System (NECSRS)
<http://ocse.acf.dhhs.gov/necsrspub/>

OCSE regulations, action transmittals and policy documents
<http://www.acf.dhhs.gov/programs/cse/poldoc.htm>

ACF Action Transmittals - Listed by Year (1975-2002) - for example, AT 97-13 deals with State Distribution Units (central collections); AT 97-17 deals with the distribution of support, etc.
<http://ocse.acf.dhhs.gov/necsrspub/federal/at/chrono.cfm>

Action Transmittal OCSE-AT-98-24 - re distribution of support collected to TANF families
<http://www.acf.dhhs.gov/programs/cse/pol/at-9824.htm>

Financial Institutions Data Match (to find assets):
<http://www.acf.dhhs.gov/programs/cse/fct/fidm/index.htm>

(Revised: November 25, 2002)