

# Withdrawal/Redaction Sheet

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Morganelli comments on proposed appointment of Messiah-Jackson to Federal Bench (1 page)	ca. December, 1997	P6/b(6), b(6)

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**COLLECTION:**

Clinton Presidential Records  
 Domestic Policy Council  
 Cynthia Rice (Subject Files)  
 OA/Box Number: 15428

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**FOLDER TITLE:**

Child Support Enforcement-Computer Systems I [2]

rx12

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### RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



DATE: \_\_\_\_\_

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
200 INDEPENDENCE AVE., SW  
WASHINGTON, D.C. 20201

PHONE: (202) 690-6311

FAX: (202) 690-8425

OFFICE OF THE ASSISTANT SECRETARY FOR LEGISLATION  
HUMAN SERVICES LEGISLATION  
ROOM 413 H HUMPHREY BUILDING

**FROM:**

TO : Cynthia Rice  
OFFICE : \_\_\_\_\_  
ROOM NO : \_\_\_\_\_  
PHONE NO : \_\_\_\_\_  
FAX NO : 456-7431

- MARY M. BOURDETTE
- BARBARA P. CLARK
- GREG JONES
- PATRICIA SAVAGE
- LAUREN GRIFFIN
- LULA BARNES

TOTAL PAGES INCLUDING COVER): 24

REMARKS: Here is an updated DRAFT !  
\* Note: This does not include the  
statewideness language.



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TOTAL PAGES  
INCLUDING COVER) : \_\_\_\_\_

REMARKS:

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H.L.C.

105TH CONGRESS  
2D SESSION

# H. R. \_\_\_\_\_

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## IN THE HOUSE OF REPRESENTATIVES

Mr. SHAW introduced the following bill; which was referred to the Committee  
on \_\_\_\_\_

### A BILL

To provide for an alternative penalty procedure for States that fail to meet Federal child support data processing requirements, to reform Federal incentive payments for effective child support performance, and to provide for a more flexible penalty procedure for States that violate interjurisdictional adoption requirements.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Child Support Per-  
5 formance and Incentive Act of 1998".

1 **TITLE I—ALTERNATIVE PEN-**  
2 **ALTY PROCEDURE APPLICA-**  
3 **BLE TO FEDERAL CHILD SUP-**  
4 **PORT DATA PROCESSING RE-**  
5 **QUIREMENTS**

6 **SEC. 101. ALTERNATIVE PENALTY PROCEDURE.**

7 (a) **IN GENERAL.**—Section 455(a) of the Social Secu-  
8 rity Act (42 U.S.C. 655(a)) is amended by adding at the  
9 end the following:

10 “(4)(A) If—

11 “(i) the Secretary determines that a State plan  
12 under section 454 would (in the absence of this  
13 paragraph) be disapproved for the failure of the  
14 State comply with section 454(24)(A), and that the  
15 State has made and is continuing to make a good  
16 faith effort to so comply; and

17 “(ii) the State has submitted to the Secretary  
18 a corrective compliance plan that describes how the  
19 State will achieve such compliance, which has been  
20 approved by the Secretary,

21 then the Secretary shall not disapprove the State plan  
22 under section 454, and the Secretary shall reduce the  
23 amount otherwise payable to the State under paragraph  
24 (1)(A) of this subsection for the fiscal year by the penalty  
25 amount.

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1       “(B) In this paragraph:

2               “(i) The term ‘penalty amount’ means, with re-  
3       spect to a failure of a State to comply—

4               “(I) 4 percent of the penalty base, in the  
5       case of the 1st fiscal year in which such a fail-  
6       ure by the State occurs;

7               “(II) 8 percent of the penalty base, in the  
8       case of the 2nd such fiscal year;

9               “(III) 12 percent of the penalty base, in  
10       the case of the 3rd such fiscal year; or

11               “(IV) 20 percent of the penalty base, in  
12       the case of the 4th or any subsequent such fis-  
13       cal year.

14               “(ii) The term ‘penalty base’ means, with respect to  
15       a failure of a State to comply, the amount otherwise pay-  
16       able to the State under paragraph (1)(A) of this sub-  
17       section for the fiscal year that precedes the 1st fiscal year  
18       in which such a failure by the State occurs.

19               “(C)(i) The Secretary shall waive a penalty under  
20       this paragraph for any failure of a State to comply with  
21       section 454(24)(A) during fiscal year 1998 if the Sec-  
22       retary finds that the State has achieved compliance with  
23       such section by June 1, 1998.

24               “(ii) If a State with respect to which a reduction is  
25       made under this paragraph for a fiscal year achieves com-

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1 pliance with section 454(24)(A) by the beginning of the  
2 succeeding fiscal year, the Secretary shall increase the  
3 amount otherwise payable to the State under paragraph  
4 (1)(A) of this subsection for the succeeding fiscal year by  
5 an amount equal to 75 percent of the reduction.

6 “(D) The preceding provisions of this paragraph (ex-  
7 cept for subparagraph (C)(i)) shall apply, separately and  
8 independently, to a failure to comply with section  
9 454(24)(B) in the same manner in which the preceding  
10 provisions apply to a failure to comply with section  
11 454(24)(A).”.

12 (b) INAPPLICABILITY OF PENALTY UNDER TANF  
13 PROGRAM.—Section 409(a)(8)(A)(i)(III) of such Act (42  
14 U.S.C. 609(a)(8)(A)(i)(III)) is amended by inserting  
15 “(other than section 454(24))” before the semicolon.

## 16 TITLE II—CHILD SUPPORT 17 INCENTIVE SYSTEM

### 18 SEC. 201. INCENTIVE PAYMENTS TO STATES.

19 (a) IN GENERAL.—Part D of title IV of the Social  
20 Security Act (42 U.S.C. 651–669) is amended by inserting  
21 after section 458 the following:

#### 22 \*SEC. 458A. INCENTIVE PAYMENTS TO STATES.

23 “(a) IN GENERAL.—In addition to any other pay-  
24 ment under this part, the Secretary shall, subject to sub-  
25 section (f), make an incentive payment to each State for

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1 each fiscal year in an amount determined under subsection  
2 (b).

3 “(b) AMOUNT OF INCENTIVE PAYMENT.—

4 “(1) IN GENERAL.—The incentive payment for  
5 a State for a fiscal year is equal to the sum of the  
6 applicable percentages (determined in accordance  
7 with paragraph (3)) of the maximum incentive  
8 amount for the State for the fiscal year, with respect  
9 to each of the following measures of State perform-  
10 ance for the fiscal year:

11 “(A) The paternity establishment perform-  
12 ance level.

13 “(B) The support order performance level.

14 “(C) The current payment performance  
15 level.

16 “(D) The arrearage payment performance  
17 level.

18 “(E) The cost-effectiveness performance  
19 level.

20 “(2) MAXIMUM INCENTIVE AMOUNT.—

21 “(A) IN GENERAL.—For purposes of para-  
22 graph (1), the maximum incentive amount for  
23 a State for a fiscal year is—

24 “(i) with respect to the performance  
25 measures described in subparagraphs (A),

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1 (B), and (C) of paragraph (1), 0.49 per-  
2 cent of the State collections base for the  
3 fiscal year; and

4 “(ii) with respect to the performance  
5 measures described in subparagraphs (D)  
6 and (E) of paragraph (1), 0.37 percent of  
7 the State collections base for the fiscal  
8 year.

9 “(B) DATA USED TO CALCULATE RATIOS  
10 REQUIRED TO BE COMPLETE AND RELIABLE.—  
11 Notwithstanding subparagraph (A), the maxi-  
12 mum incentive amount for a State for a fiscal  
13 year with respect to a performance measure de-  
14 scribed in paragraph (1) is zero, unless the Sec-  
15 retary determines, on the basis of an audit per-  
16 formed under section 452(a)(4)(C)(i), that the  
17 data which the State submitted pursuant to  
18 section 454(15)(B) for the fiscal year and  
19 which is used to determine the performance  
20 level involved is complete and reliable.

21 “(C) STATE COLLECTIONS BASE.—For  
22 purposes of subparagraph (A), the State collec-  
23 tions base for a fiscal year is equal to the sum  
24 of—

25 “(i) 2 times the sum of—

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1                   “(I) the total amount of support  
2                   collected during the fiscal year under  
3                   the State plan approved under this  
4                   part in cases in which the support ob-  
5                   ligation involved is required to be as-  
6                   signed to the State pursuant to part  
7                   A or E of this title or title XIX; and

8                   “(II) the total amount of support  
9                   collected during the fiscal year under  
10                  the State plan approved under this  
11                  part in cases in which the support ob-  
12                  ligation involved was so assigned but,  
13                  at the time of collection, is not re-  
14                  quired to be so assigned; and

15                  “(ii) the total amount of support col-  
16                  lected during the fiscal year under the  
17                  State plan approved under this part in all  
18                  other cases.

19                  “(3) DETERMINATION OF APPLICABLE PER-  
20                  CENTAGES BASED ON PERFORMANCE LEVELS.—

21                  “(A) PATERNITY ESTABLISHMENT.—

22                  “(i) DETERMINATION OF PATERNITY  
23                  ESTABLISHMENT PERFORMANCE LEVEL.—

24                  The paternity establishment performance  
25                  level for a State for a fiscal year is, at the

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1 option of the State, the IV-D paternity es-  
 2 tablishment percentage determined under  
 3 section 452(g)(2)(A) or the statewide pa-  
 4 ternity establishment percentage deter-  
 5 mined under section 452(g)(2)(B).

6 **“(ii) DETERMINATION OF APPLICABLE**  
 7 **PERCENTAGE.—**The applicable percentage  
 8 with respect to a State’s paternity estab-  
 9 lishment performance level is as follows:

<b>“If the paternity establishment performance level is:</b>		<b>The applicable percentage is:</b>
<b>At least:</b>	<b>But less than:</b>	
80% .....	.....	100
79% .....	80% .....	98
78% .....	79% .....	96
77% .....	78% .....	94
76% .....	77% .....	92
75% .....	76% .....	90
74% .....	75% .....	88
73% .....	74% .....	86
72% .....	73% .....	84
71% .....	72% .....	82
70% .....	71% .....	80
69% .....	70% .....	79
68% .....	69% .....	78
67% .....	68% .....	77
66% .....	67% .....	76
65% .....	66% .....	75
64% .....	65% .....	74
63% .....	64% .....	73
62% .....	63% .....	72
61% .....	62% .....	71
60% .....	61% .....	70
59% .....	60% .....	69
58% .....	59% .....	68
57% .....	58% .....	67
56% .....	57% .....	66
55% .....	56% .....	65
54% .....	55% .....	64
53% .....	54% .....	63
52% .....	53% .....	62
51% .....	52% .....	61
50% .....	51% .....	60

"If the paternity establishment performance level is:		The applicable percentage is:
At least:	But less than:	
0% .....	50% .....	0.

1                   Notwithstanding the preceding sentence, if  
2                   the paternity establishment performance  
3                   level of a State for a fiscal year is less  
4                   than 50 percent but exceeds by at least 10  
5                   percentage points the paternity establish-  
6                   ment performance level of the State for the  
7                   immediately preceding fiscal year, then the  
8                   applicable percentage with respect to the  
9                   State's paternity establishment perform-  
10                  ance level is 50 percent.

11                  “(B) ESTABLISHMENT OF CHILD SUPPORT  
12                  ORDERS.—

13                         “(i) DETERMINATION OF SUPPORT  
14                         ORDER PERFORMANCE LEVEL.—The sup-  
15                         port order performance level for a State  
16                         for a fiscal year is the percentage of the  
17                         total number of cases under the State plan  
18                         approved under this part in which there is  
19                         a support order during the fiscal year.

20                         “(ii) DETERMINATION OF APPLICABLE  
21                         PERCENTAGE.—The applicable percentage

# Withdrawal/Redaction Marker

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**This marker identifies the original location of the withdrawn item listed above.  
For a complete list of items withdrawn from this folder, see the  
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Domestic Policy Council  
Cynthia Rice (Subject Files)  
OA/Box Number: 15428

**FOLDER TITLE:**

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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
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10

1 with respect to a State's support order per-  
 2 formance level is as follows:

If the support order performance level is:		The applicable percentage is:
At least:	But less than:	
80%	.....	100
79%	80% .....	98
78%	79% .....	96
77%	78% .....	94
76%	77% .....	92
75%	76% .....	90
74%	75% .....	88
73%	74% .....	86
72%	73% .....	84
71%	72% .....	82
70%	71% .....	80
69%	70% .....	79
68%	69% .....	78
67%	68% .....	77
66%	67% .....	76
65%	66% .....	75
64%	65% .....	74
63%	64% .....	73
62%	63% .....	72
61%	62% .....	71
60%	61% .....	70
58%	60% .....	69
58%	59% .....	68
57%	58% .....	67
56%	57% .....	66
55%	56% .....	65
54%	55% .....	64
53%	54% .....	63
52%	53% .....	62
51%	52% .....	61
50%	51% .....	60
0%	50% .....	0.

3 Notwithstanding the preceding sentence, if  
 4 the support order performance level of a  
 5 State for a fiscal year is less than 50 per-  
 6 cent but exceeds by at least 5 percentage  
 7 points the support order performance level  
 8 of the State for the immediately preceding

1 fiscal year, then the applicable percentage  
2 with respect to the State's support order  
3 performance level is 50 percent.

4 "(C) COLLECTIONS ON CURRENT CHILD  
5 SUPPORT DUE.—

6 "(i) DETERMINATION OF CURRENT  
7 PAYMENT PERFORMANCE LEVEL.—The  
8 current payment performance level for a  
9 State for a fiscal year is equal to the total  
10 amount of current support collected during  
11 the fiscal year under the State plan ap-  
12 proved under this part divided by the total  
13 amount of current support owed during the  
14 fiscal year in all cases under the State  
15 plan, expressed as a percentage.

16 "(ii) DETERMINATION OF APPLICABLE  
17 PERCENTAGE.—The applicable percentage  
18 with respect to a State's current payment  
19 performance level is as follows:

"If the current payment performance level is:		The applicable percentage is
At least:	But less than:	
80%	.....	100
78%	80% .....	98
78%	79% .....	96
77%	78% .....	94
76%	77% .....	92
75%	76% .....	90
74%	75% .....	88
73%	74% .....	86
72%	73% .....	84
71%	72% .....	82

*If the current payment performance level is:		The applicable percentage is:
At least:	But less than:	
70%	71%	80
69%	70%	79
68%	69%	78
67%	68%	77
66%	67%	76
65%	66%	75
64%	65%	74
63%	64%	73
62%	63%	72
61%	62%	71
60%	61%	70
59%	60%	69
58%	59%	68
57%	58%	67
56%	57%	66
55%	56%	65
54%	55%	64
53%	54%	63
52%	53%	62
51%	52%	61
50%	51%	60
49%	50%	59
48%	49%	58
47%	48%	57
46%	47%	56
45%	46%	55
44%	45%	54
43%	44%	53
42%	43%	52
41%	42%	51
40%	41%	50
0%	40%	0.

1 Notwithstanding the preceding sentence, if  
2 the current payment performance level of a  
3 State for a fiscal year is less than 40 per-  
4 cent but exceeds by at least 5 percentage  
5 points the current payment performance  
6 level of the State for the immediately pre-  
7 ceding fiscal year, then the applicable per-  
8 centage with respect to the State's current  
9 payment performance level is 50 percent.

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1           “(D) COLLECTIONS ON CHILD SUPPORT  
2           ARREARAGES.—

3           “(i) DETERMINATION OF ARREARAGE  
4           PAYMENT PERFORMANCE LEVEL.—The ar-  
5           rearage payment performance level for a  
6           State for a fiscal year is equal to the total  
7           number of cases under the State plan ap-  
8           proved under this part in which payments  
9           of past-due child support were received  
10          during the fiscal year and part or all of the  
11          payments were distributed to the family to  
12          whom the past-due child support was owed  
13          (or, if all past-due child support owed to  
14          the family was, at the time of receipt, sub-  
15          ject to an assignment to the State, part or  
16          all of the payments were retained by the  
17          State) divided by the total number of cases  
18          under the State plan in which there is  
19          past-due child support, expressed as a per-  
20          centage.

21          “(ii) DETERMINATION OF APPLICABLE  
22          PERCENTAGE.—The applicable percentage  
23          with respect to a State's arrearage pay-  
24          ment performance level is as follows:

If the arrearage payment performance level is:		The applicable percentage is:
At least:	But less than:	
80%	.....	100
79%	80% .....	98
78%	79% .....	96
77%	78% .....	94
76%	77% .....	92
75%	76% .....	90
74%	75% .....	88
73%	74% .....	86
72%	73% .....	84
71%	72% .....	82
70%	71% .....	80
69%	70% .....	79
68%	69% .....	78
67%	68% .....	77
66%	67% .....	76
65%	66% .....	75
64%	65% .....	74
63%	64% .....	73
62%	63% .....	72
61%	62% .....	71
60%	61% .....	70
59%	60% .....	69
58%	59% .....	68
57%	58% .....	67
56%	57% .....	66
55%	56% .....	65
54%	55% .....	64
53%	54% .....	63
52%	53% .....	62
51%	52% .....	61
50%	51% .....	60
49%	50% .....	59
48%	49% .....	58
47%	48% .....	57
46%	47% .....	56
45%	46% .....	55
44%	45% .....	54
43%	44% .....	53
42%	43% .....	52
41%	42% .....	51
40%	41% .....	50
0%	40% .....	0.

1 Notwithstanding the preceding sentence, if  
 2 the arrearage payment performance level  
 3 of a State for a fiscal year is less than 40  
 4 percent but exceeds by at least 5 percent-

1 age points the arrearage payment perform-  
 2 ance level of the State for the immediately  
 3 preceding fiscal year, then the applicable  
 4 percentage with respect to the State's ar-  
 5 rearage payment performance level is 50  
 6 percent.

7 **“(E) COST-EFFECTIVENESS.—**

8 **“(i) DETERMINATION OF COST-EF-**  
 9 **FECTIVENESS PERFORMANCE LEVEL.—**The  
 10 cost-effectiveness performance level for a  
 11 State for a fiscal year is equal to the total  
 12 amount collected during the fiscal year  
 13 under the State plan approved under this  
 14 part divided by the total amount expended  
 15 during the fiscal year under the State plan,  
 16 expressed as a ratio.

17 **“(ii) DETERMINATION OF APPLICABLE**  
 18 **PERCENTAGE.—**The applicable percentage  
 19 with respect to a State's cost-effectiveness  
 20 performance level is as follows:

<b>“If the cost effectiveness performance level is:</b>		<b>The applicable percentage is:</b>
<b>At least:</b>	<b>But less than:</b>	
5.00 .....		100
4.50 .....	4.99 .....	90
4.00 .....	4.50 .....	80
3.50 .....	4.00 .....	70
3.00 .....	3.50 .....	60
2.50 .....	3.00 .....	50
2.00 .....	2.50 .....	40

"If the cost effectiveness performance level is:		The applicable percentage is:
At least:	But less than:	
0.00 .....	2.00 .....	0.

1       “(c) TREATMENT OF INTERSTATE COLLECTIONS.—

2       In computing incentive payments under this section, sup-  
3       port which is collected by a State at the request of another  
4       State shall be treated as having been collected in full by  
5       both States, and any amounts expended by a State in car-  
6       rying out a special project assisted under section 455(e)  
7       shall be excluded.

8       “(d) ADMINISTRATIVE PROVISIONS.—The amounts  
9       of the incentive payments to be made to the States under  
10       this section for a fiscal year shall be estimated by the Sec-  
11       retary at or before the beginning of the fiscal year on the  
12       basis of the best information available. The Secretary shall  
13       make the payments for the fiscal year, on a quarterly basis  
14       (with each quarterly payment being made no later than  
15       the beginning of the quarter involved), in the amounts so  
16       estimated, reduced or increased to the extent of any over-  
17       payments or underpayments which the Secretary deter-  
18       mines were made under this section to the States involved  
19       for prior periods and with respect to which adjustment has  
20       not already been made under this subsection. Upon the  
21       making of any estimate by the Secretary under the preced-  
22       ing sentence, any appropriations available for payments  
23       under this section are deemed obligated.

1       “(e) REGULATIONS.—The Secretary shall prescribe  
2 such regulations as may be necessary governing the cal-  
3 culation of incentive payments under this section, includ-  
4 ing directions for excluding from the calculations certain  
5 closed cases and cases over which the States do not have  
6 jurisdiction.

7       “(f) REINVESTMENT.—A State to which a payment  
8 is made under this section shall expend the full amount  
9 of the payment—

10           “(1) to carry out the State plan approved under  
11 this part; or

12           “(2) for any activity (including cost-effective  
13 contracts with local agencies) approved by the Sec-  
14 retary, whether or not the expenditures for which  
15 are eligible for reimbursement under this part, which  
16 may contribute to improving the effectiveness or effi-  
17 ciency of the State program operated under this  
18 part.”.

19       “(b) TRANSITION RULE.—Notwithstanding any other  
20 provision of law—

21           “(1) for fiscal year 2000, the Secretary shall re-  
22 duce by  $\frac{1}{3}$  the amount otherwise payable to a State  
23 under section 458 of the Social Security Act, and  
24 shall reduce by  $\frac{2}{3}$  the amount otherwise payable to  
25 a State under section 458A of such Act; and

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H.L.C.

18

1           (2) for fiscal year 2001, the Secretary shall re-  
2       duce by  $\frac{2}{3}$  the amount otherwise payable to a State  
3       under section 458 of the Social Security Act, and  
4       shall reduce by  $\frac{1}{3}$  the amount otherwise payable to  
5       a State under section 458A of such Act.

6       (c) REGULATIONS.—Within 9 months after the date  
7       of the enactment of this section, the Secretary of Health  
8       and Human Services shall prescribe regulations governing  
9       the implementation of section 458A of the Social Security  
10      Act when such section takes effect and the implementation  
11      of subsection (b) of this section.

12      (d) STUDIES.—

13           (1) GENERAL REVIEW OF NEW INCENTIVE PAY-  
14      MENT SYSTEM.—

15           (A) IN GENERAL.—The Secretary of  
16      Health and Human Services shall conduct a  
17      study of the implementation of the incentive  
18      payment system established by section 458A of  
19      the Social Security Act, in order to identify the  
20      problems and successes of the system.

21           (B) REPORTS TO THE CONGRESS.—

22           (i) REPORT ON VARIATIONS IN STATE  
23      PERFORMANCE ATTRIBUTABLE TO DEMO-  
24      GRAPHIC VARIABLES.—Not later than Oc-  
25      tober 1, 2000, the Secretary shall submit

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H.L.C.

## 19

1 to the Congress a report that identifies any  
2 demographic or economic variables that ac-  
3 count for differences in the performance  
4 levels achieved by the States with respect  
5 to the performance measures used in the  
6 system, and contains the recommendations  
7 of the Secretary for such adjustments to  
8 the system as may be necessary to ensure  
9 that the relative performance of States is  
10 measured from a baseline that takes ac-  
11 count of any such variables.

12 (ii) INTERIM REPORT.—Not later than  
13 March 1, 2001, the Secretary shall submit  
14 to the Congress an interim report that con-  
15 tains the findings of the study required by  
16 subparagraph (A).

17 (iii) FINAL REPORT.—Not later than  
18 October 1, 2003, the Secretary shall sub-  
19 mit to the Congress a final report that  
20 contains the final findings of the study re-  
21 quired by subparagraph (A). The report  
22 shall include any recommendations for  
23 changes in the system that the Secretary  
24 determines would improve the operation of  
25 the child support enforcement program.

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H.L.C.

20

1           (2) DEVELOPMENT OF MEDICAL SUPPORT IN-  
2 CENTIVE.—

3           (A) IN GENERAL.—The Secretary of  
4 Health and Human Services, in consultation  
5 with State directors of programs operated  
6 under part D of title IV of the Social Security  
7 Act and representatives of children potentially  
8 eligible for medical support, shall develop a per-  
9 formance measure based on the effectiveness of  
10 States in establishing and enforcing medical  
11 support obligations, and shall make rec-  
12 ommendations for the incorporation of the  
13 measure, in a revenue neutral manner, into the  
14 incentive payment system established by section  
15 458A of the Social Security Act.

16           (B) REPORT.—Not later than October 1,  
17 1999, the Secretary shall submit to the Con-  
18 gress a report that describes the performance  
19 measure and contains the recommendations re-  
20 quired by subparagraph (A).

21 (e) TECHNICAL AMENDMENTS.—

22           (1) IN GENERAL.—Section 341 of the Personal  
23 Responsibility and Work Opportunity Reconciliation  
24 Act of 1996 (42 U.S.C. 658 note) is amended—

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H.L.C.

## 21

1 (A) by striking subsection (a) and redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively; and

2  
3  
4 (B) in subsection (c) (as so redesignated)—

5  
6 (i) by striking paragraph (1) and inserting the following:

7  
8 “(1) CONFORMING AMENDMENTS TO PRESENT  
9 SYSTEM.—The amendments made by subsection (a)  
10 of this section shall become effective with respect to  
11 a State as of the date the amendments made by section 103(a) (without regard to section 116(a)(2))  
12 first apply to the State.”; and

13  
14 (ii) in paragraph (2), by striking  
15 “(c)” and inserting “(b)”.

16 (2) EFFECTIVE DATE.—The amendments made  
17 by this section shall take effect as if included in the  
18 enactment of section 341 of the Personal Responsibility and Work Opportunity Reconciliation Act of  
19 1996.

20  
21 (f) ELIMINATION OF PREDECESSOR INCENTIVE PAY-  
22 MENT SYSTEM.—

23 (1) REPEAL.—Section 458 of the Social Security Act (42 U.S.C. 658) is repealed.

24  
25 (2) CONFORMING AMENDMENTS.—

1 (A) Section 458A of the Social Security  
2 Act (42 U.S.C. 658a) is redesignated as section  
3 458.

4 (B) Subsection (d)(1) of this section is  
5 amended by striking "458A" and inserting  
6 "458".

7 (3) EFFECTIVE DATE.—The amendments made  
8 by this subsection shall take effect on October 1,  
9 2001.

10 (g) GENERAL EFFECTIVE DATE.—Except as other-  
11 wise provided in this section, the amendments made by  
12 this section shall take effect on October 1, 1999.

13 **TITLE III—PENALTY PROCEDURE APPLICABLE TO INTER-**  
14 **JURISDICTIONAL ADOPTION**

16 **SEC. 301. MORE FLEXIBLE PENALTY PROCEDURE TO BE AP-**  
17 **PLIED FOR FAILING TO PERMIT INTERJURIS-**  
18 **DICTIONAL ADOPTION.**

19 (a) Section 474(d) of the Social Security Act (42  
20 U.S.C. 674(d)) is amended in each of paragraphs (1), (2),  
21 and (3)(A) by inserting "or subsection (e) of this section"  
22 after "section 471(a)(18)".

23 (b) Section 474(e) of such Act (42 U.S.C. 674(e))  
24 is amended—

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H.L.C.

1 (1) by striking all that precedes paragraph (1)  
2 and inserting the following:

3 “(e) As a condition of receiving funds under this part,  
4 a State shall not—”;

5 (2) in paragraph (1), by striking “denied or de-  
6 layed” and inserting “deny or delay”; and

7 (3) in paragraph (2), by striking “failed” and  
8 inserting “fail”.

9 **SEC. 302. RETROACTIVITY.**

10 The amendments made by this title shall take effect  
11 as if included in section 202(b) of the Adoption and Safe  
12 Families Act of 1997.

Tom  
Chris  
Jore  
Cynthia  
Mike  
Telle

JAN - 9 1998 5:35 pm

THE WHITE HOUSE  
WASHINGTON

THE PRESIDENT HAS SEEN  
1-12-98

January 9, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed  
Elena Kagan

SUBJECT: DPC Weekly Report

revised  
Reed  
Kagan  
COS-

**1. Child Care -- Response to Announcement:** We are pleased with the response so far to your child care initiative. Children's advocates and child care experts are overjoyed at both the level of funding and the composition of the package (e.g., the ratio of subsidies to tax cuts). Hill Democrats and some moderate Republicans are enthusiastic about the package, as you heard at Thursday's congressional meeting. Governors -- including a few Republicans -- have praised the extent of state flexibility in the plan. Even conservative Republicans in Congress had a hard time attacking your proposal. Rep. Pryce, whom Speaker Gingrich asked to respond to the proposal for the House Republican leadership, admitted that you had "resisted the urge to have the federal government control child care." Some Republicans alternated between accusing you of spending too much money and trying to claim that they had spent even more for child care in the past.

The most serious criticism, which we knew we would face, is that the package does little to help parents who want to stay at home to care for their children. (A similar point was made in the opinion piece by David Blankenhorn appearing in the New York Times that you recently asked us about; as you recall, he criticizes tax cuts for child care and supports expanding the child tax credit to help parents of young children stay at home.) As you know, we can blunt this charge somewhat by coming out for an expansion of the FMLA in the State of the Union to allow more workers to stay at home for longer periods with their newborns. We are also open to discussing with members of Congress an expansion of the child tax credit, although we found such proposals too expensive to incorporate into our package. Most important, we cannot let anyone forget your consistent record of providing families with real opportunity and choices -- for example, through the child tax credit, FMLA, EITC, minimum wage, and CHIP.

**2. Health -- Response to Medicare Buy-in Announcement:** Your Medicare buy-in proposal provoked a great deal of comment. Some Republicans, including Senator Gramm and Rep. Bill Thomas, were extremely critical of the proposal, arguing that it would exacerbate Medicare's financial problems. (Gramm compared Medicare to the Titanic and warned about putting extra passengers on board.) The base Democrats were very pleased with the proposal -- particularly after Republicans strongly opposed it. Though liberal groups also were pleased that we are addressing this issue, they believe we must include some kind of subsidy for low-income Americans. Elite validators gave this policy mixed reviews: while uniformly recognizing the

need of this population for affordable insurance, some (including the New York Times) praised the self-financing feature of the program, while others expressed concern that the proposal would create the demand for further, less fiscally responsible subsidization.

**3. Drugs -- Substance Abuse and Prisoners:** The National Center on Addiction and Substance Abuse released a study on Thursday finding that drug or alcohol use helped lead to the incarceration of 80 percent of all inmates in the nation's prisons and jails. According to the report, 1.4 million prisoners (out of a total 1.7 million) were high on drugs or alcohol when they committed their crimes, stole property to buy drugs; and/or had a history of drug and alcohol abuse.

As you know, the 1994 Crime Law mandates that 100 percent of all federal prisoners defined as eligible receive substance abuse treatment by 1997. According to the Bureau of Prisons, the federal prison system has met this requirement. Since 1994, we have made some form of substance abuse treatment available in every federal prison facility, tripled the total number of inmates treated in the federal system, and increased the number of residential treatment centers in federal prisons by 30 percent (from 32 to 42). In addition, legislation you offered requires states to submit comprehensive plans of testing, sanctions, and treatment by March 1998 as a condition of receiving prison construction funding.

*But will be...  
of the...-...  
Our needs...  
Not's...  
✓*

To build on these efforts, we are preparing a directive from you to the Attorney General to: (1) require states, as part of their testing and treatment plans, to estimate current drug use in prisons and measure progress yearly; (2) draft legislation to allow states to use prison construction funds to implement their testing and treatment plans; and 3) draft legislation to require states to enact increased penalties for smuggling drugs into prisons as a condition of receiving prison construction monies. An event focusing on this directive is tentatively scheduled for Monday.

**4. Drugs -- Anti-Drug Media Campaign:** The anti-drug media campaign began on Thursday in Washington, D.C. -- the first city in the 12-city pilot. Anti-drug advertisements have started to air in the District during prime-time network television shows, with radio and Internet ads to commence next week. ONDCP will roll out the media campaign in the remaining pilot cities throughout the month of January. The other 11 pilot cities and rollout dates are as follows: Atlanta (1/20), Baltimore (1/13), Boise (1/13), Denver (1/16), Hartford (1/23), Houston (1/15), Milwaukee (1/21), Portland (1/22), San Diego (1/9), Sioux City (1/20), and Tucson (1/15).

**5. Crime -- Brady Checks:** As you know, Arkansas remains the only state that is not conducting background checks prior to handgun sales. Although Attorney General Winston Bryant issued an opinion saying that state police have the legal authority to conduct checks, Governor Huckabee has ordered the police not to do so. In response, Bryant has asked the Treasury and Justice Departments to make him (rather than the state police) the designated chief law enforcement officer for the entire state; under this scheme, federally licensed dealers would refer the names of potential handgun purchasers to the AG's office, and employees of that office

*cc: Baker  
1st time to  
Make a big  
deal of this -  
Management  
+ do  
insurance  
✓*

would check the names in the FBI's NCIC (rather than the state police's) database. Justice and Treasury are currently inclined to grant Bryant's request later this month. This action may provoke a strong response from Huckabee, who is currently not aware of Bryant's request.

**6. Crime -- Slain Officers:** The National Law Enforcement Officers Memorial Fund (NLEOMF) reported last week that the number of officers killed in the line of duty increased by nearly 40% in 1997, from 116 in 1996 (the lowest number since 1959) to 159 last year. The 1997 figure exceeds the 1990s average of 151 line-of-duty deaths per year. NLEOMF attributes the rise in deaths to: (1) an increase in firearms-related deaths (70 in 1997, as compared to 56 in 1996); (2) an unusually high number of traffic fatalities; and (3) 10 multiple-death incidents, in which a total of 22 officers were killed.

**7. Welfare -- Child Support Computer Systems:** We are working closely with a House-Senate group convened by Rep. Clay Shaw's staff on the child support computer systems issue you discussed with Senator Feinstein this fall. Our goal is to put in place a new system of penalties that are large enough to ensure that states develop effective computer systems, but not so large as to disrupt states' child support collection efforts. As you know, current law requires us to withhold all federal child support funds from a state without a statewide child support computer system -- a penalty we intend to retain in the legislation (at least as a threat) for egregious cases. Shaw's initial proposal, which we think makes sense, would impose an initial penalty of 4 percent of federal child support funds in the first year, with higher penalties in later years. Once a state's system is complete, it could earn back a portion of the penalty. Shaw wants to introduce legislation the first day of Congress and move it through the House by the second week of February. As always, the Senate is expected to move more slowly, but could pass the legislation by April. By then, HHS expects nine states to remain without statewide computer systems: California, Michigan, Illinois, Ohio, Pennsylvania, Indiana, Hawaii, Oregon, and New Mexico.

**8. Welfare -- Welfare Recipients in College:** You recently asked us about a report in the Washington Post that some college students on welfare are dropping out of school to meet new work requirements. As you know, the welfare law does not count education that is not directly related to a job toward the work participation rates. States, however, have significant flexibility to excuse college students from work, given that the required participation rate is now at 30 percent and peaks at 50 percent. In addition, welfare recipients can combine work with their studies (as most college students do), particularly if work-study jobs are available. To encourage this result, we asked Secretaries Riley and Shalala to write to the nation's college presidents in September to explain the law and stress the importance of providing work-study jobs to welfare recipients enrolled in their schools. (Most work-study jobs are only 10 hours per week, but the letter explained that this is not a legal requirement.)

**9. Welfare -- Delaware Evaluation:** Governor Carper released on Monday an evaluation of the state's welfare reform waiver program called A Better Chance (ABC). The program began in 1995 as one of the first comprehensive statewide waivers granted by the

1-12-98

Administration. Initial results are encouraging: by the fourth quarter after the program started, program participants had 24 percent higher employment, 16 percent higher earnings, and 18 percent lower average benefits than the participants in the control group. The evaluation found a fairly high rate of sanctioning: 49 percent of the participants were sanctioned at least once for failing to comply with the program's employment or family responsibility (immunization, school attendance) requirements. It is interesting to note in evaluating these results that Delaware's caseloads have not gone down as dramatically as those of many other states; the decline since January 1993 has been 21 percent. This relatively low decline may result from ABC's "make work pay" incentive that allows recipients to keep more earnings and still remain eligible for welfare.

**10. Education -- California Math Standards:** Proposed new math standards in California have provoked a heated debate in the last few months, pitting educators who emphasize problem solving against those who favor a more basic skills approach. The California State Board of Education last month adopted the more conservative view, over the objection of Superintendent Delaine Eastin. The head of the Education Directorate at the National Science Foundation subsequently sent a letter to the Chair of the California State Board strongly criticizing the decision and implying that it would jeopardize continued NSF funding for six Urban Systemic Improvement sites in California. The letter upset conservatives (and others), who viewed it -- in our view, correctly -- as an example of inappropriate federal intrusion in state curriculum matters. Diane Ravitch warned us immediately that it could give Bill Bennett a pretext for withdrawing his support of your national testing initiative. As a result, we worked with NSF this week to draft a letter from NSF Director Lane to the California State Board clarifying that NSF would not second-guess state standards and emphasizing the importance of basic skills. Based on recent conversations with Ravitch, we believe this step has been sufficient to prevent Bennett's reversal.

**11. Education -- Urban Education Report:** Education Week issued its annual report on education reform in the 50 states on Thursday, focusing on the plight of urban school districts. The study noted that approximately 40 percent of students in urban districts reached the basic level on the most recent NAEP 4th grade reading and 8th grade math and science exams in 1994 and 1996, compared to over 60 percent in each of these subjects in non-urban areas. The study also found discrepancies in resources, with urban districts spending about \$500 less per child annually than non-urban districts. The Education Week issue also detailed a dozen promising reform strategies to raise achievement in districts around the nation -- e.g., setting high standards; holding schools accountable for results and giving schools greater flexibility; creating small, more intimate schools or schools-within-schools; recruiting well-prepared teachers and providing them with continuing training and support; training principals to be effective school leaders; and promoting school choice. Your existing and planned initiatives -- including the new Education Opportunity Zones proposal that you previewed in December -- match up very well with these reform prescriptions.

1-12-98

12. Education -- Life-long Learning Card: You recently asked us about Bob Reich's idea of a life-long learning card -- essentially a bank card consolidating all federal education benefits (Pell, IRAs, education tax credits and deductions, and job-training funds), against which education expenses could be deducted. DPC and NEC staff have begun to look into this proposal, but we do not yet have a specific recommendation. The Education Department is currently intending to begin a pilot project by October 2000 to use bank cards to disburse federal aid to post-secondary students. Our instinct is that bank cards may be effective to deliver grants and loans, but less useful for tax credits and deductions. We will continue to explore this issue.

→ This is an exciting possibility - may not be practical but worth exploring



Cynthia A. Rice

01/13/98 11:07:29 AM

Haskins plans to  
Introduce Jan. 27th  
? Shaw-Levin?  
Senate too?

Record Type: Record

To: See the distribution list at the bottom of this message  
cc: Diana Fortuna/OPD/EOP, Andrea Kane/OPD/EOP  
Subject: Child Support Computer Systems Update

On Thursday, Ron Haskins has asked HHS to a meeting in which he will give them legislative language for us to review which contains:

- 1) Revised computer systems penalties language
- 2) House passed incentives bill language, revised to make it cost neutral
- 3) A proposal on state-wideness
- 4) Proposal re: IVE penalties regarding inter-jurisdictional adoptions

HHS will get one copy each to me, to Emil and to Keith/Edwin. My assistant Donna will schedule a meeting for us to discuss on Tuesday 1/20 (probably 3:00).

Haskins' planned schedule is as follows:

- Jan. 29th hearing -- inviting Judge Ross to testify
- Feb 3rd 4:30 subcommittee markup
- Feb 25th full committee markup
- 1st week of March -- House floor

Message Sent To:

Emil E. Parker/OPD/EOP  
Keith J. Fontenot/OMB/EOP  
Edwin Lau/OMB/EOP  
Emily Bromberg/WHO/EOP  
Sky Gallegos/WHO/EOP

Lauren Buffon

1/13

Haddins

Jan 29th hearing

→ invited Judge Ross

Feb 3rd 4:30 Subcmte markup

Feb 25th Full cmte markup

1st week of March - House floor

Thursday mtg

Con will have new lang

- in certus + cost neutral  
statewide res

- revised penalties 4/8/12/20

- IVE penalty procedure  
applicable to inter-jurisdictional  
adoptions

Tent mtg Tues 3:00

→

1/6/98  
2:30-3:30

1/8/20

**FACSIMILE TRANSMITTAL**

**DATE/TIME:**

1/5

**TO:**

John Monahan

fax 401-4678

**FROM:**

Ron Haskins

tel: 225-1025

**RE:**

Per our conversation

**NUMBER OF PAGES (including this page)**

4

[DISCUSSION DRAFT]

105TH CONGRESS  
2D SESSION

H. R. \_\_\_\_\_

IN THE HOUSE OF REPRESENTATIVES

Mr. SHAW introduced the following bill; which was referred to the Committee  
on \_\_\_\_\_

**A BILL**

To provide for an alternative penalty procedure which may be instituted against States whose child support enforcement programs fails to meet Federal data processing requirements.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. ALTERNATIVE PENALTY PROCEDURE.**

4 (a) IN GENERAL.—Section 455(a) of the Social Secu-  
5 rity Act (42 U.S.C. 655(a)) is amended by adding at the  
6 end the following:

1 “(4)(A)(i) If—

2 “(I) the Secretary determines that a State plan  
3 under section 454 for fiscal year 1998 or any suc-  
4 ceeding fiscal year would (in the absence of this  
5 paragraph) be approved but for the failure of the  
6 State plan to comply with section 454(24), and that  
7 the State has made and is continuing to make a  
8 good faith effort to comply with section 454(24);  
9 and

10 “(II) the State has submitted to the Secretary  
11 a corrective compliance plan for the fiscal year that  
12 describes how the State will achieve compliance with  
13 section 454(24), which has been approved by the  
14 Secretary,

15 then the Secretary shall approve the State plan under sec-  
16 tion 454 for the fiscal year, and reduce by the applicable  
17 percentage the amount otherwise payable to the State  
18 under paragraph (1)(A) of this subsection for the preced-  
19 ing fiscal year.

20 “(ii) As used in clause (i), the term ‘applicable per-  
21 centage’ means—

22 “(I) 4 percent, if the preceding fiscal year is  
23 fiscal year 1997;

24 “(II) 8 percent, if the preceding fiscal year is  
25 fiscal year 1998;

1           “(III) 12 percent, if the preceding fiscal year is  
2           fiscal year 1999;

3           “(IV) 16 percent, if the preceding fiscal year is  
4           fiscal year 2000; and

5           “(V) 20 percent, if the preceding fiscal year is  
6           fiscal year 2001 or any subsequent fiscal year.

7           “(B) If a State with respect to which a reduction is  
8           made under subparagraph (A) for a fiscal year comes into  
9           compliance with section 454(24) by the beginning of a  
10          subsequent fiscal year, the Secretary shall reduce by 75  
11          percent the reduction most recently imposed under sub-  
12          paragraph (A) of this paragraph with respect to the  
13          State.”.

14          (b) INAPPLICABILITY OF PENALTY UNDER TANF  
15          PROGRAM.—Section 409(a)(8)(A)(i)(III) of such Act (42  
16          U.S.C. 609(a)(8)(A)(i)(III)) is amended by inserting  
17          “(other than section 454(24))” before the semicolon.

1/8

John M.

Haskins mtg

→ for petty looked into  
- penalty level 4 8 12  
advocates wanted 5 10 15  
- structure  
Stats → penalties & to get IVD agencies

→ On state wide basis, for passed us  
Wants is a connected linked system  
w/ same cost + functionality

~~for state wide agencies~~

Ended up = Monday @ 2:00

4 staff start draft + 2 HHIS people  
introduce first day of Congress  
1st wk Feb -  
2nd wk Feb - pass House

## Single state

How wants to know

→ do fact that don't pay for  
country part in law or reg

→ what would list of things be

- equal in X function

- equal in Y function

---

## Conference call

→ Statewide

### Options

1) we could volunteer  
to Drop

2) support

3) hold out

### Tactical

Monday = Admin doesn't have  
prohibit move from

1) Hold harmless

2) Lower 90% pat  
est to 66%

3) Cut most visitation  
grants in half

→

1/9

John M.

Current policy

→ ab grant waiver for linked system  
will provide funds for core federal  
system

→ policy on HHS rep  
~~→ but by charo~~

Ron pushed hard

→ but Ron could not give  
Calif what it wants w/o changing  
statute

---

~~Express~~ Expressions reservations

→ help <sup>part</sup> alternative

→ equal cost  
→ equal functioning

DRAFT

**ESTIMATED STATE CSE SYSTEM PENALTIES  
WAYS AND MEANS DRAFT BILL  
(\$ millions)**

	Est. Date	Est. FY 97 State	4%	8%	12%	16%	20%	TOTAL
	Complete	Admin. Exp.	Penalty	Penalty	Penalty	Penalty	Penalty	PENALTY
			(FY98)	(FY99)	(FY00)	(FY01)	(FY02)	
CA	Oct-01	341	13.6	27.3	40.9	54.6	17.1	153.5
MI	Oct-00	106	4.2	8.5	12.7	4.2		29.7
IL	?	76	?	?	?	?	?	?
OH	Feb-99	127	5.1	2.5				7.6
PA	Oct-98	75	3.0	1.5				4.5
IN	Oct-98	28	1.1	0.6				1.7
HI	Jul-98	19	0.2					0.2
OR	Jun-98	26	0.3					0.3
NM	Jun-98	15	0.2					0.2
NV	Apr-98	19	0.2					0.2
MD	Apr-98	59	0.6					0.6
MO	Apr-98	58	0.6					0.6
SC	Apr-98	18	0.2					0.2
ND	Mar-98	5	0.1					0.1
SD	Jan-98	4	0.0					0.0
AK	Apr-98	15	0.2					0.2
DC	Mar-98	10	0.1					0.1
MA	Dec-97	41	0.4					0.4

Numbers in italics show penalty for that year reduced by 75% to reflect system completion within the fiscal year.

This table based on FY 97 Federal share of State admin. expenditures as contained in the FY 98 Congressional Justification; these data will be updated shortly.

Estimated system completion dates as of 11/97; these will be updated shortly.

6-Dec-98  
OCSE/OASP  
HASKINS.XLS

1/6

CSE

- 1) States ~~not~~ in compliance  
before enactment will not have  
penalty

Start date - date of enactment?

- 2) Annual (quarterly increasing)

- 3) Calif - 27 systems

None Year 2000 compliant

Cobbiering ADP by end of Jan

Thanks Legislature for funding

(Hopefully w/ HHS-drawn plan)

- 4) Allocates

5 - 15 - 25% yearly/

prefer quarterly

Expect major means Thus

1) size of penalty

2) state-wide

Stats were 1-5%

1 to 5 years

Center for Law and Social Policy

**CLASP**VICKI TURETSKY  
SENIOR STAFF ATTORNEY**MEMORANDUM**

DATE: December 19, 1997

TO: Ron Haskins  
Deborah Colton

FROM: Vicki Turetsky

RE: Child Support Computer Penalty

Please forgive the informal nature of this memorandum, but I want to get something to you on the penalty today, since I will be out of the office for the next two weeks. (Also attached are some preliminary results from a survey I am conducting of state IV-D directors that asks their opinion on the single statewide system requirement.)

Ron, I think your basic approach to the penalty makes sense, but I worry that the penalty amounts are too low to effectively break the logjams in states like California, Michigan, and Pennsylvania. In those states, I think it will take a penalty in the neighborhood of 20 percent to do the job.

- The penalty must be substantial enough to worry state legislators but should not financially ruin the child support program. In other words, the penalty must strike the right balance between (1) the goal of convincing state and local players that they must proceed with a single statewide system with (2) the negative impact of withdrawing resources from the state program.
- Some states may require the state IV-D agency to absorb the full penalty, without providing a supplemental appropriation or requiring that the penalty be shared by the counties. This will more likely be the case if the penalty is small. The state agency will be forced to cut costs, but none of the other players will have to deal with the penalty consequences.
- The penalty will set the framework for future computerization efforts. If the penalty is too light, states may conclude that they can afford to miss future deadlines. If the penalty is too severe, state efforts to comply with future deadlines may be compromised.
- The penalty should recognize that the failure of states to automate their programs on time

1

has resulted in financial losses for families and the program, and missed opportunities for improved performance.

- However, the penalty also should recognize that computer implementation is a long, arduous process. Despite a well-laid plan and steady progress, the state can not bring the computer into existence overnight. In that sense, computer implementation is different from other state plan requirements, which require the state legislature to enact laws.
- The consequences of failing to complete the system should escalate over time. This can be accomplished by (1) imposing graduated penalties, and/or (3) providing for substantial, but partial, forgiveness. Graduated penalties should start low, but increase steadily every quarter. Alternatively, penalties could jump every year. A penalty which increases every quarter will be more calibrated to state progress than one that increases every year, and will be tied to the program's quarterly accounting cycle.
- The computer penalty ought to run against IV-D funds only, not TANF funds. The penalties should be applied against FFP payments only because they would be (1) administratively simpler, and (2) more evenly distributed across states, since incentive payments vary considerably from state to state.
- States that are nearing completion should receive a small penalty, but states more than a year away should face a more serious penalty. The magnitude of the maximum penalty (applied against seriously delayed states) should have some congruity both with the size of existing penalties and the amount of IV-D funds. In the end, these states should incur a penalty consistent with the 1 to 5 percent penalties against TANF funds. If a state fails a IV-D audit, it is subject to a 1 to 5 percent penalty against federal TANF funds. If a state fails to enforce IV-D noncooperation penalties, the state is subject to penalties up to 5 percent. If a state fails to participate in the income verification system, the state is subject to penalties up to 2 percent. If the state fails to meet work participation rates, the penalties start at 5 percent and increase to 21 percent.
- However, the 5 percent TANF penalty is too severe when applied against the smaller IV-D pot of funds. The equivalent penalty against IV-D funds would be 70 percent cut in FFP. A penalty equivalent to 1 to 2 percent of TANF funds strikes a better balance. An equivalent cut in FFP would be 15 to 30 percent. The following chart gives roughly equivalent penalties:

	California's penalty amount would be:	The penalty is equivalent to the following % of California's 1995 savings:	FFP payments would be cut by:
1% of TANF funds	\$37 million	33%	15%
2% of TANF funds	\$75 million	68%	30%
3% of TANF funds	\$112 million	100%	40%
4% of TANF funds	\$149 million	135%	55%
5% of TANF funds	\$187 million	167%	70%

- If partial forgiveness is built into the penalty structure, the penalty scale should be set higher than if there is no forgiveness. Forgiveness must be tied to completion, not simply "good faith" progress or compliance with a corrective plan. The following chart shows the effect on California of a 50% and 75% forgiveness rate on an FFP penalty:

If FFP payments were cut by:	California's initial penalty amount would be:	After 50% forgiveness, the net penalty would be equivalent to:		After 75% forgiveness, the net penalty would be equivalent to:	
2%	\$5.4 million	\$2.7 million	1% of FFP	\$500,000	0.5% of FFP
5%	\$13.5 million	\$6.8 million	2.5% of FFP	\$3.4 million	1.3% of FFP
10%	\$27 million	\$13.5 million	5% of FFP	\$6.7 million	2.5% of FFP
15%	\$40.5 million	\$20.3 million	7.5% of FFP	\$10.1 million	3.8% of FFP
20%	\$54 million	\$27 million	10% of FFP	\$13.5 million	5% of FFP
25%	\$67.5 million	\$33.7 million	12.5% of FFP	\$16.9 million	6.3% of FFP
30%	\$81 million	\$40.5 million	15% of FFP	\$20.3 million	7.5% of FFP

- I think that states that complete their systems during the first year should receive a penalty against FFP payments in the 5 percent range. States that take more than a year should receive a penalty in the 15 to 25 percent range (assuming a 50% or 75% forgiveness rate). For example, states could be penalized 2 percent of FFP the first quarter, 4 percent the second quarter, 6 percent the third quarter, 8 percent the fourth quarter, and so forth. By the end of the second year, the penalty would be 16 percent, and by the end of the third year, the penalty would be 24 percent. Alternatively, states could be penalized 5 percent the first year, 15 percent the second year, and 25 percent the third year. Although these rates are considerably higher than a 2-4-8 percent penalty scale, I am concerned that this amount would not be treated seriously by state legislatures. A 4-8-12 percent scale may or may not be enough. A 4-8-16 scale is better.

## CLASP SURVEY PRELIMINARY RESULTS

I am in the process of surveying state IV-D directors regarding their program structure and funding. The survey includes a confidential set of question, where I agreed to keep individual state responses confidential, but stated that I might publish aggregated responses or responses that did not identify the state. So far, 27 states have responded. The states include a mix of large, medium, and small states, with centralized and decentralized program structures. Some are certified and some are not. While it is premature to draw conclusions, it may be helpful to you to know what the states have reported so far.

One of the confidential questions asks:

**What have been the benefits and drawbacks in your state of the federal requirement that the state have a "single statewide automated system"?**

Responding states made the following comments:

### Benefits

- "No drawbacks." (6 states)
- All agencies can view the same case data, regardless of jurisdiction. (6 states)
- More uniform application of policy and procedures. (6 states)
- Improves case management and tracking. (5 states)
- Better and easier data collection and retrieval. (5 states)
- More accurate recordkeeping. (5 states)
- State has had a single statewide computer for several years. (4 states)
- Allows management to review any case. (4 states)
- Program changes can be implemented quickly and uniformly. (4 states)
- Improves interface with other agencies. (4 states)
- Increases timely support disbursements (4 states)
- Simplifies computer development and programming. (3 states)
- Increases accountability. (3 states)
- Allows for rapid response to inquiries and complaints; better customer service (3 states)

- Improves overall performance. (3 states)
- Increases collections. (3 states)
- Reduces worker time spent on routine actions. (2 state)
- Integration with automated voice response system. (2 states)
- Protects against breaches of confidentiality. (1 state).
- Better location of parents. (1 state)
- Maximizes efficiency and effectiveness of resources. (1 state).

#### **Drawbacks**

- Cost. (4 states)
- System design is overly complex for the state's needs. (2 states)
- Requires replacement of existing county computers. (1 state)
- Requires conversion from multiple systems (1 state)
- Increases training needs. (1 state)
- Imposes inflexible business practices on every local office. (1 state)
- Lack of field input/appreciation (1 state)
- Continual changes in federal regulations (1 state)

#### **General comments**

- IV-D program control over the computer is important. (2 states)
- "The requirement for a single statewide automated system will now be a tremendous help to our program. It has been a very difficult transition from planning through implementation of a prototype system for child support....We are finally at the stage where it will impact our program positively over the next decade." (1 state)
- "Many, many benefits -- it is great!" (1 state)

E CLAY SHAW, JR., FLORIDA, CHAIRMAN  
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RON HASKINS, SUBCOMMITTEE STAFF DIRECTOR

JANICE MAYS, MINORITY CHIEF COUNSEL  
DEBORAH G. COLTON, SUBCOMMITTEE MINORITY

## COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES  
WASHINGTON, DC 20515

SUBCOMMITTEE ON HUMAN RESOURCES  
December 22, 1997

Mr. Wendell E. Primus  
Center on Budget and Policy Priorities  
820 First Street, N.E., Suite 510  
Washington, D.C. 20002

Dear Wendell:

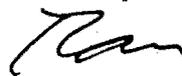
On behalf of the Ways and Means and Finance Committees, I invite you to a meeting being held in Washington, DC on January 8, 1998. The meeting will be held in Room B-318 of the Rayburn House Office Building beginning at 11:00 a.m. and ending by 1:00 p.m. The purpose of the meeting is to discuss legislation that would change the existing penalty for states that did not meet the October 1, 1997 deadline for child support data processing systems.

Staff from the two Committees will meet with state child support directors before our 11:00 meeting to discuss the draft legislative proposal on the child support penalty (see enclosed). We see this meeting with state directors as more or less equivalent to the meeting we held with advocates on December 1. The 11:00 meeting will provide an opportunity for state directors, advocates, the Administration, and Congressional Committee staff and support staff to talk directly to each other.

Both Committees intend to introduce legislation addressing the penalty issue early in February and to move a single bill through the Congress as rapidly as possible. We hope the legislation will be bipartisan, bicameral, and supported by the Administration. Hence, we hope to reach agreement between the various parties as a result of our meetings on January 8. Enclosed is a draft document that provides an overview of the legislation we are now considering.

I look forward to your participation in a productive discussion on January 8.

Cordially,



Ron Haskins  
Staff Director

RH/mp  
Enclosure

cc: Dennis Smith      Carmen Solomon-Fears  
Deborah Colton      Joel Willemssen  
Doug Steiger      Sheila Dacey  
✓ Mary Bourdette      Kelly Thompson

Same letter to:

Ron Henry  
Joan Entmacher  
Nancy Ebb  
Vicki Turétsky  
Nancy Duff Campbell

E. CLAY SHAW, JR., FLORIDA, CHAIRMAN  
SUBCOMMITTEE ON HUMAN RESOURCES

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RON HASKINS, SUBCOMMITTEE STAFF DIRECTOR

JANICE MAYS, MINORITY CHIEF COUNSEL  
DEBORAH G. COLTON, SUBCOMMITTEE MINORITY

## COMMITTEE ON WAYS AND MEANS

U. S. HOUSE OF REPRESENTATIVES  
WASHINGTON, DC 20515

### SUBCOMMITTEE ON HUMAN RESOURCES

December 22, 1997

Ms. Leslie Frye  
Chief, Child Support Enforcement  
Department of Social Services  
744 P Street, Mail Stop 17-29  
Sacramento, CA 95814

Dear Leslie:

On behalf of the Ways and Means and Finance Committees, I invite you to two meetings being held in Washington, D.C. on January 8, 1998. Both meetings will be held in Room B-318 of the Rayburn House Office Building. The purpose of both meetings will be to discuss legislation that would change the existing penalty for states that did not meet the October 1, 1997 deadline for child support data processing systems.

The first meeting, which will begin at 9:00 a.m., will involve staff from Ways and Means and Finance, state directors, and support staff from the Congressional Research Service, Congressional Budget Office and General Accounting Administration. We assume this meeting will last about two hours. The second meeting, which will begin at 11:00 a.m., will include advocates and representatives of HHS. We expect this second meeting, which will give state directors, advocates, the Administration, and Congressional Committee staff and support staff an opportunity to talk directly to each other, to also last about two hours.

Both Committees intend to introduce legislation addressing the penalty issue early in February and to move a single bill through the Congress as rapidly as possible. We hope the legislation will be bipartisan, bicameral, and supported by the Administration. Hence, we hope to reach agreement between the various parties as a result of our meetings on January 8. Enclosed is a draft document that provides an overview of the legislation we are now considering.

I look forward to your participation in a productive discussion on January 8.

Cordially,



Ron Haskins  
Staff Director

RH/mp  
Enclosure

cc: Dennis Smith      Carmen Solomon-Fears  
Deborah Colton      Joel Willemssen  
Doug Steiger      Sheila Dacey  
Mary Bourdette      Kelly Thompson

CA  
Same letter to:

Marilyn Smith - MA  
Jim Hennessey - IA  
Robert Doar - MI  
Wallace Dutkowski - Mich

IL

Tentative Draft  
Child Support Enforcement Data Processing Legislation  
December 1997

1. Reform penalty procedures:

- leave current penalty (termination of federal IV-D and IV-A funds) in place
- allow Secretary to use the new penalty if:
  - a) the state has made a good faith effort to meet the data processing requirements of the 1988 Act, and
  - b) the state has entered into a corrective compliance plan that is approved by the Secretary for the current fiscal year

2. Overview of new penalty:

- states that missed October 1 deadline are penalized at the rate of [4%] of their FY 1997 IV-D administrative reimbursement
- states may enter into a corrective compliance plan with the Secretary for the 1-year period 1 October, 1997 to 1 October, 1998
- states that fulfill the terms of their corrective compliance plan and that have a certified system by 1 October, 1998 will have [75%] of their 1997 penalty forgiven
- states that have not completed their corrective compliance plan or do not have a certified system on 1 October, 1998 will be penalized [8%] of their FY 1998 IV-D administrative reimbursement
- states may enter into a corrective compliance plan with the Secretary for the 1-year period 1 October, 1998 to 1 October, 1999
- states that fulfill the terms of their corrective compliance plan and that have a certified system on 1 October, 1999 will have [75%] of their 1998 penalty forgiven
- after 1 October, 1999, any state that has not been certified will have their penalty increased by [4] percentage points each year; the maximum penalty would be 20% in the 5<sup>th</sup> year and thereafter; in the year that such states meet their corrective plan and have a certified system, [75%] of their penalty for that year will be forgiven.

3. This new penalty procedure will be applied to the data processing requirements of both the 1988 Act and to those of the 1996 Act when they become effective in fiscal year 2001.

4. The Secretary must apply the penalty procedures outlined above to violations of the data processing requirements of the 1988 and 1996 Acts; all other violations of child support provisions come under the penalty procedures established at sec. 409(a)(8) of the Temporary Assistance for Needy Families program.

5. The Ways and Means and Finance Committees are also considering proposals that would help states meet the statewideness requirements of the 1988 legislation. One proposal of this type that has been recommended by California and the American Public Welfare Association is to allow states to link local data processing systems. Advocates and others oppose this proposal. This proposal is now under consideration by the Committees.

**FACSIMILE TRANSMISSION**

**ADMINISTRATION FOR CHILDREN AND FAMILIES  
OFFICE OF THE ASSISTANT SECRETARY  
370 L'ENFANT PROMENADE, S.W.  
WASHINGTON, D.C. 20447**

DATE:

1/5/97

Name:

C. Rice

Telephone:

456-5593

Fax:

456-7431

Number of Pages (excluding cover):

3

FROM:

JOHN MONAHAN

Office of the Assistant Secretary

Telephone:

(202) 401-5180

Fax:

(202) 401-4678

MESSAGE:

ID:

DEC 18 '97

18:21 No. 016 P.02

**Tentative Draft  
Child Support Enforcement Data Processing Legislation  
December 1997**

**1. Reform penalty procedures:**

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**4. The Secretary must apply the penalty procedures outlined above to violations of the data processing requirements of the 1988 and 1996 Acts; all other violations of child support provisions come under the penalty procedures established at sec. 409(a)(8) of the Temporary Assistance for Needy Families program.**

**5. The Committees are also considering proposals that would help states meet the statewide requirements of the 1988 legislation. One proposal of this type that has been recommended by California and the American Public Welfare Association is to allow states to link local data processing systems. Advocates and others oppose this proposal. This proposal is now under consideration by the Ways and Means and Finance Committees.**

penalty

December 30, 1997

Section 1:

- "good faith effort" -- while there would be concern if the amount of the penalty depended on the HHS Secretary's making a subjective judgment about a State's having made a "good faith effort," this provision is probably OK in this context, i.e., merely as a precondition to allowing the Secretary to use the alternative penalty. It appears that all States have made a good faith effort to implement systems.
- Corrective Compliance Plan (CCP) "for the current fiscal year." Legislative language should be clear that a State, if necessary, may enter into a CCP that spans several years, as long as there are measurable milestones that coincide with the penalty assessment; e.g., annually. (See, however, the second bullet under "Section 2," below.) CA and perhaps a few other states likely will need more than one year to complete a system. It would be helpful to the State and HHS to have a CCP that encompasses a State's complete systems development effort, not just one year.
- To avoid confusion and delay in implementation, the CCP language should cross-reference 45 CFR Part 95, e.g., the CCP should be consistent with the requirements for an Advance Planning Document under 45 CFR Part 95. This would avoid the time and uncertainty that would result if HHS had to issue separate guidelines for the development of CCP's.

Section 2:

- The starting date for the alternative penalty should be the date of enactment; enacting a financial penalty retroactively would be problematic from a legal (ex post facto law) and state partnership perspective. Only a very small number of states are likely ever to be in any real danger of state plan disapproval. Making the alternative penalty retroactive would mean imposing a financial penalty on roughly 10 states that, under current law, will miss the deadline but incur no penalty.
- The "earn back" should be predicated only on a State's meeting system certification requirements. Allowing a State to earn back most of the penalty if it meets negotiated milestones will delay the development of certified systems, as States will have a strong incentive to set milestones that they are sure to meet, as opposed to setting aggressive milestones that entail some risk. Further, tying the earn back to the attainment of milestones adds another element of uncertainty, as States and HHS may disagree about whether a State has or hasn't met a milestone. The current

certification requirement, on the other hand, is widely understood and less ambiguous.

Section 3:

- The term "data processing requirements" is vague. Suggest sticking with the language in 454(24)
- Reference to FY 2001 could be a bit misleading; deadline is 10/1/2000, i.e., the first day of FY 2001.

Section 4:

- Provision that all non-systems "violations" are handled under 409(a)(8) is problematic. Section (409(a)(8) is the penalty imposed against TANF funds when a State fails a child support audit. The outline appears to remove all non-systems violations, e.g., failure to enact required legislation, from the State plan disapproval process and to substitute the audit penalty. Some might oppose elimination of State plan disapproval as a tool for dealing with other (non-systems) "violations."

Section 5:

- There is concern about both the ability of states to build "linked" systems quickly (CA has been attempting this with their "SAWS" system for years) and about the cost implications (it's cheaper to build and operate one system than several systems). This section needs further discussion.



Cynthia A. Rice

01/05/98 07:49:06 PM

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Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc:

Subject: Child Support Computer Systems

Ron Haskins has apparently drafted a proposal on child support computer systems problem, and he has invited HHS to a meeting on Thursday to discuss. While I will be discussing the legislation in more detail with HHS tomorrow, the proposal does seem to adhere to have the following features, which I like:

- 1) Penalties that are simple to administer and automatic, with little HHS discretion.
- 2) An up-front penalty imposed immediately upon failure, which should be large enough to motivate states to improve their systems development, but not so large as to severely disrupt states' child support efforts or to lead states to believe the penalty would never be imposed.
- 3) The penalties should include an incentive for early completion, either by providing an earn-back of the initial penalty or by imposing subsequent incremental penalties, or both.
- 4) HHS should retain the ability to disapprove the state child support plan and withhold all federal child support funds.

Under Haskins' proposal, states without completed, statewide computer systems would get a penalty starting at 4 percent of FY 1997 Federal CSE matching funds, a penalty which would rise by 4 percentage points each year, up to a high of 20 percent in the fifth year and thereafter. We were contemplating somewhat larger penalties--5 or 10 percent. Under the Haskins proposal, a State would earn back 75 percent of the most recent penalty (but not earlier penalties) once its system was certified--this is also similar in principle to the approach we had discussed internally. How does this sound to you?

Haskins systems mtgs

1/5

Thursday a.m.

9-11 Haskins  
Debrah  
Doug St  
Dennis Smith

---

w/ 6 states

---

Ken 11-

HHS  
6 states  
Advocates

} Discussion  
of one  
page

HHS  
- Lauren  
- John

- Judy  
- Norm

- ? Betsey

---

He thinks

- we're comfortable w/ Pa
- would support higher penalties
- push for change - single state  
now

# FAX TRANSMISSION

The Office of Child Support Enforcement  
Administration for Children & Families  
Department of Health & Human Services  
370 L'Enfant Promenade, SW  
Washington, DC 20447



FAX NO. (202) 401-5539

This transmission consists of this cover sheet plus 2 page(s)  
FAX to:

DATE: 1/5/98

TO: Cynthia Rice { FAX 456-7431  
{ M. 456-5593

FROM: Norm Thompson at Request of John Monahan

MESSAGE:  
Attached are the notes re: the  
Systems Legislative proposal discussion  
w/ Ron Huskins on 12/30/97.  
If you have problems with  
transmission, please call me at  
202 260-0877.  
Anne Gould

Attachments 2

To: David G Ross@OCSE.OD, Lance Simmens@IOS.IGA@OS.DC, Lauren Griffin@ASL@OS.DC, Mary Bourdette@ASL@OS.DC, Mary Cohen@OLAB  
From: Norman L Thompson@OPS.OD  
Cc: Anne F Donovan@OCSE.OD, Elizabeth C Matheson@OCSE.DPP, John Monahan@OAS, Paul Legler@OCSE.OD, Robert C Harris@OCSE.OD, Robin Rushton@OPS.OSS.CSIS  
Bcc:  
Subject: Conversation with Ron Haskins re: alt. CSE system penalty  
Attachment:  
Date: 12/30/97 3:09 PM

John Monahan, Paul Legler and I had a brief conversation with Ron Haskins this afternoon to (1) find out more about Ron's plans for the meeting on 1/8 to discuss alternative CSE systems penalties and (2) to let Ron know about some issues raised in his Dec. 97 "tentative draft" outline.

Ron confirmed the meeting on the 8th -- 9-11: Hill staff and selected State representatives and 11-2: Hill staff, states, advocates, and HHS. GAO, CBO, and CRS will also be there. (Ron said that the alternative systems penalty will have costs in the outyears, according to preliminary analysis by CBO.)

Ron suspects that the biggest issue will be "linked systems," i.e., the system configuration that CA counties have been pushing.

Ron noted that his proposed penalty levels - 4%/8%/12%, etc. is already a compromise. John M. mentioned that our internal discussions had focused on higher numbers. Ron referenced a memo by Vicki Turetsky, which we need to get. That memo compares different penalty levels to 1% of State TANF grants (i.e., the penalty level associated with CSE audit penalties).

Ron said he had draft bill language, but hadn't read it yet. He said he'd fax it to John on Monday. Ron asked that it not be widely circulated. Ron did not plan to make the draft legislation available at Thursday's meeting.

Ron said that W&M was "concerned" about CA and was inclined to help CA. (This in the context of legislation to allow more funding for "alternative system configurations," i.e., linked county systems.) The Chairman works well with Wilson. However, Ron said that doing something legislatively for CA was definitely not a done deal and noted that any legislation was subject to amendment, esp. in the Senate.

Ron said that he'd emphasized to CA the need for CA to put on paper specifically what it is proposing in terms of a "linked system" -- technical specifications, time frame, data definitions, esp. for the "data warehouse," etc.

We summarized for Ron our meeting two weeks ago w/CA representatives. Told Ron they (and we) were concerned that county systems don't meet FSA requirements and aren't Year-2000 compliant. CA wanted a blank check for interim fixes for these systems. We told CA we would work with them so that whatever systems had to be operational on an interim basis (i.e. until CA had a statewide -- however defined -- system) would continue to be

functional, but could make funds available for this only in the context of an overall plan for building a statewide system. We noted that we and Ron were both telling CA that they needed to put their plan on paper quickly.

We went over the comments on Ron's outline, per our 12/30 paper. Ron is amenable to a corrective compliance plan that extends for more than a year, but wants to be sure that States know that if they don't have a system in place at the end of a year, they lose money and can't get it back. We told him we had no problem with that concept, but felt strongly that we could not deal with plans on a year-to-year basis, esp. for States like CA that will take several years to get a system in place. Ron also agreed to cross-reference Part 95 (our current systems management regulations) to define what had to be in a corrective compliance plan.

Ron clarified that to earn back 75% of the current year's penalty, a state had to complete its system, not just meet milestones in its corrective compliance plan.

Ron agreed that it was probably better to take the penalty as of the date of enactment of the legislation, rather than retroactively to 10/1/97. His concept now is that '98 will be a "short year," i.e., date of enactment until 10/1/98. After that, we'll be back on an 12-month cycle for the penalty.

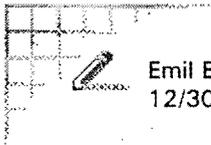
We discussed whether the penalty would be assessed in full at the beginning of the 12-month cycle or at the end. Ron leaned toward imposing it at the beginning of the cycle, which is consistent with the "up-front" penalty approach we'd discussed internally.

Ron clarified that he did not mean to substitute the audit penalty for state plan disapproval for, e.g., States' failure to enact required legislation. State plan disapproval would remain the penalty for such "violations."

Ron is amenable to working with us to be clear about the areas in which the Secretary has discretion and to craft those sections so as to make this easier for us to implement.

John's thoughts on next steps internally are:

- Quick review of draft legislation -- should receive it on Monday. I will get copies to appropriate folks.
- Prebrief and then discussion Tuesday with DPC and OMB
- Brief HHS staff at Weds. welfare reform meeting
- Brief Kevin on Friday.



Emil E. Parker  
12/30/97 05:17:38 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Cynthia A. Rice/OPD/EOP, Gene B. Sperling/OPD/EOP, Peter A. Weissman/OPD/EOP, Cathy R. Mays/OPD/EOP  
Subject: Child support enforcement update

Cynthia asked me to update you on child support enforcement (CSE) issues in her absence.

Block grant. As you know, OMB has been assuming a child support enforcement offset of \$60 million in FY 1999 and \$300 million over five years. OMB proposes to achieve these savings by converting the CSE program, under which the Federal government reimburses States for 66 percent of their child support collection costs (without a cap) and provides incentive payments, into a block grant. Under the current structure, many States make a profit on the child support enforcement program--Federal payments (matching and incentive) and the State share of TANF collections exceed State child support enforcement spending--making the program an attractive target for savings.

A proposal to convert the CSE program into a block grant would likely be poorly received by both States and child support advocates. The OMB proposal would endanger the Administration's hard-won and well-deserved legacy in the child support area; I also doubt the Congressional Republicans would embrace this approach. Cynthia and I are in complete agreement that there are better ways to achieve this relatively modest level of savings from the CSE program, and we have urged HHS to develop an alternative package that generates comparable savings.

With Barbara Chow away for vacation, I have been unable to determine the status of the OMB proposal. There is a rumor that OMB is no longer carrying the \$300 million in savings but that the policy change remains very much alive. To my knowledge, none of the principals in the budget process except possibly Director Raines has focused on this issue. To put forward a block grant proposal without any external or even much internal vetting would be most unwise.

Systems penalty. On another note, HHS staff met with Ron Haskins today to provide technical assistance regarding his child support enforcement automated systems penalty proposal. His approach is quite similar to the options we have been discussing internally--replacing the current penalty (termination of Federal child support enforcement and possibly TANF funding) for failure to put an automated system in place with a smaller sanction. The proposed penalty would start at 4 percent of FY 1997 Federal CSE matching funds and rise by 4 percentage points each year, up to a high of 20 percent in the fifth year

and thereafter. We were contemplating somewhat larger penalties--5 or 10 percent. Under the Haskins proposal, a State would earn back 75 percent of the most recent penalty (but not earlier penalties) once its system was certified--this is also similar in principle to the approach under consideration internally.

Haskins was receptive to the HHS comments, which were largely technical in nature (e.g., would the new reduced penalty apply to failure to enact required legislation, as well as to automated system development--answer was no; could States enter into multi-year corrective action plans--answer was yes). He intends to hold a meeting including Republican and Democratic House and Senate staff, States, advocates and the Administration on January 8 to discuss his systems penalty proposal. Health and Human Services would like to arrive at a firm Administration position prior to that meeting; they suggest a pre-meeting on January 6.

Please let me know if you have questions.



Cynthia A. Rice

12/04/97 04:40:44 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Diana Fortuna/OPD/EOP, Andrea Kane/OPD/EOP, Laura Emmett/WHO/EOP  
Subject: I need your input on child support enforcement

I need your input on several areas of child support enforcement:

### 1. Raines Child Support Idea

I've spoken with OMB at greater length about this issue. Attached is an analysis of the options and what I see as their advantages and disadvantages. My questions are:

**a.) Do you agree that we should oppose including these options in the budget?**

I do oppose converting to a block grant -- but I do think a version Keith and I devised ("revised match") may be worth pursuing -- see attached.

**b.) Should we should have a broader process to consider them i.e., a DPC-OMB-IGA-NEC mtg?** I do, because I fear that unless people understand what these policies do, they will be tempted simply by the prospect of a \$1.8 to \$3.0 billion saver.



cse1204.wpd

### 2. Child Support Computer Systems Penalty Legislation

As you know, I have brought NEC, HHS, and OMB together several times since September to discuss the child support computer systems situation and possible solutions. Many of the issues are analogous to the penalty issues we discussed in the TANF regulations. With some pushing from me and from OMB, HHS now agrees that a new penalty structure should include:

- 1) Penalties that are simple to administer and automatic, with little HHS discretion.
- 2) An up-front penalty imposed immediately upon failure, which should be large enough to motivate states to improve their systems development, but not so large as to severely disrupt states' child support efforts or to lead states to believe the penalty would never be imposed.
- 3) The penalties should include an incentive for early completion, either by providing an earn-back of the initial penalty or by imposing subsequent incremental penalties, or both.
- 4) A "system completion plan" should be signed by the governor.
- 5) HHS should retain the ability to disapprove the state child support plan and withhold all federal child support funds.

HHS has prepared several, more detailed options based on these principles. We have not authorized HHS to share any of these options with the Hill because 1) we hadn't run them up the flagpole; 2) Haskins offered to take a first cut at drafting and to send it to us for our reaction. Monahan and others from HHS have met with Haskins and company to provide background information on the problem and to share our general principles (mainly to tell Ron -- much to his surprise -- that we think giving HHS a lot of discretion is a bad idea).

### **Do you think we should be taking a more pro-active approach? Any comments/ suggestions?**

You should know that we will have a delicate line to walk in our budget, even without including the new Raines idea. Here's why. If the budget assumes we will withhold all federal child support funds from states without computer systems, it will show child support savings, giving any legislative fix a cost -- not what we want. If the budget assumes no savings from denying funds to states without computer systems, then we have to explain why this doesn't fit with our "get tough" rhetoric. The answer will have to hinge on the length of the administrative and judicial appeal process (up to three years) with an assumption that by the end of those three years all states will have in place the required state wide computer systems.

### **3. Response to Senator Feinstein**

As you may recall, Senator Feinstein raised the idea of a six month moratorium on child support penalties when she met with the President on crime issues in September, and then she subsequently sent him a letter. I wanted to wait until the end of the session to reply to her.... and finally I've drafted the attached. I think similar language can be used in replies to Rep. Clay Shaw (who sent a letter to the President arguing against Feinstein) and to the LA County Board of Supervisors (who sent a letter making the same arguments as Feinstein). Please comment on this version, and then I will send a revised copy with the incoming letters to you via Cathy.



fein1204.wpd

### **4. California Letter**

On November 20th, California and Lockheed Martin mutually decided to cancel their child support computer systems contract due to operational problems and cost overruns. This puts the state out of compliance with what is called the Advance Planning Document -- the plan that the state submits to HHS for approval in order to get federal funds to help pay for the computer systems costs. HHS has drafted a letter from one of their OCSE staff to the state saying that the feds will not pay for any more computer systems development until the state submits, and has approved, a new Advanced Planning Document. (The rest of federal financial support for child support enforcement will continue to be provided.) Although this letter is from a mid-level staffer, I reviewed it for content and tone and plan to show it to Emily, before telling HHS they can send it. It is in unquotable bureaucratize. **Should I do anything else? I need to respond to HHS Monday.**

Keep in mind that this letter is particular to California, because of its problems with its contractor. However, after January 1, HHS will need to send to all the states that do not have operating statewide computer systems a notice of intent to disapprove their child support enforcement plans. As you know, states without approved state plans get no federal child support dollars of any kind. However, states will continue to receive federal funds until the appeal process is concluded, which could last until 1999 (longer for judicial appeals).

### **5. Thompson Idea**

What did you think of Gov. Thompson's idea that he and Carper and you should barnstorm the country on child support enforcement? I kind of like the idea....I think we do need to pump up the volume on this issue. **Should I try to flesh out an idea for a campaign that could be a bipartisan State of the Union announcement?**



Cynthia A. Rice

12/18/97 03:33:55 PM

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Record Type: Record

To: jmonahan @ acf.dhhs.gov @ INET @ LNGTWY  
cc:  
bcc:  
Subject: Re: Re: ...no subject...

jmonahan @ acf.dhhs.gov



jmonahan @ acf.dhhs.gov  
12/18/97 10:46:00 AM

Record Type: Record

To: Cynthia A. Rice  
cc:  
Subject: Re: Re: ...no subject...

That is OK with me, since you know of our general preference for option #1 and its earn-back provision. My biggest concern, as you know, is to make sure that nobody else in WH (like Bruce or Raines or Chow) have notions different from Options #1 and 2 which we discover later in the negotiations with Ron. As long as you are comfortable, though, that is terrific. In addition to Ron, I think we might want to more carefully scope out where some of the other players are in the game.

John



Cynthia A. Rice

12/02/97 10:29:29 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Diana Fortuna/OPD/EOP, Andrea Kane/OPD/EOP, Laura Emmett/WHO/EOP  
Subject: Raines child support idea

Wednesday I will write you a more comprehensive note about child support enforcement... but I can't leave tonight without telling you that apparently, as part of a directors review, Frank Raines brainstormed his way to an idea of how to completely revamp the financial structure of the child support system, and OMB wants to put this on the table for the budget discussions. Before you get too jazzed, Elena, he does not want to hand over responsibility to the IRS!

Below is a quick summary... They view this as a possible saver in the budget (although why we would want to be seen as cutting funding for child support enforcement, I don't know). Process-wise, I think it's critical that we have an OMB-DPC discussion before this becomes part of the larger budget discussion. HHS doesn't know any of this yet, but OMB wants to tell them they're adding it to the list for consideration.

#### **Current Structure**

There are three basic parts to the current financial structure:

- 1) The federal government reimburses states for 66 percent of their child support expenditures, with an enhanced match for certain expenses.
- 2) The federal government gives states incentive payments based on performance. We have a proposal with bipartisan support on the Hill now which would revise the measures on which performance is based.
- 3) At the same time as the federal government pays states funds for child support, it collects from states a share of child support collections from AFDC families -- under the theory that the federal government helped (through AFDC, and now TANF) to support these families when the absent parent would not, and should therefore obtain a share of the support later collected from that absent parent. Overall, the federal government gives states about \$1 billion more a year in child support funds than it obtains in collections.

#### **Proposed Structure**

Raines' idea is to provide states with a block grant, and require them to maintain their current spending in exchange for being able to keep all the collections from welfare families. In addition, the feds would distribute incentive funds based on performance. The block grant amount would be set so that overall, the federal government saves money compared to current spending. Keith Fontenot says that even though this would provide states with less money to collect child support, they could easily make up the difference by add a fee to the child support collected from non-custodial parents of non-welfare families.

It seems to me that this could get us into an enormous pissing match with states just when we're trying to threaten, prod, and cajole them into focusing on getting their state-wide computer systems up and running and implementing the new child support rules we enacted last year. Even if we make the new

structure revenue neutral at the national level, it will not be revenue neutral at the state level, since a block grant will hurt states incurring large new expenses and help those that already invested, say, in computer systems.

Keith

12/2

Frank why are we in this business?

Why not

- block grant w/ MOE
- on top - venture

→ then fixed overall amount

(a) '98 level indexed for inflation

Takes care of:

- greater venture - keep all TANF collections
- washes our hands of state only problem

Re: systems

~~Re: systems~~

- Tell HHS - going into list for consideration

Since we're still going then \$1.6b/yr, still have leverage

Net fed cost \$1.36: - 800-900m admin grant  
- 400m ~~...~~ ~~...~~ ~~...~~

11/20 CSE

Today

Ron

Deborah

Dennis

Doug St

Mary B

Laurin G

John M, others

① Walked through facts

10-15 will miss deadline

Calif

Mich

Illinois in biggest trouble

② Ron - ready to introduce 1<sup>st</sup> part of session

- discussion to Scott

- some relief to Calif / statewide

- montev's proposal

- IVE ??

③ HTS - why discretion board

- schedule of practices

④ He left meeting

= 4 staff people to write draft +  
store draft for technical assist

Ron not sold on real fir  
D to single state; has  
asked groups/state - Calif -  
for ideas

But Ron hasn't gotten anything

Calif to buy/announced

- mutual amicable termination
- split contract w/ Calhead
- arbitration
- won't have plan till Feb
- Look
- likely meeting in Dec.

Baseline Budget issues

- 1) State has right to invoke  
appeals - could take 18 months
- 2) Then have right to go to  
Court of Appeals - another  
18 months

3) ~~By~~ By the end of 3 years, all  
states but Calif would  
be in compliance

d) could transfer  
FSASystem  
rights from other  
State

- a) but Calif could be ready  
in 3 years or
- b) Alternative systems config  
under waiver

PHOTOCOPY  
PRESERVATION

Keith

Wouldn't people say = no law at  
in 3 years, why need laws?

John

Rather have Calif focus on  
getting systems  
Also process certainty

CR

Legis - encourage it to happen  
quicker

Keith

we could also lose litigation

Norm

- did not tie systems completion  
to incentives

Betzler

H Bill says states can't get  
money unless they have  
reliable data

PHOTOCOPY  
PRESERVATION

of program disapproved, no  
fed \$, including ~~the~~ incentives

John

Calif not in compliance

In next  
compliance

HHS will send signal how fed funds  
for these

11/20

Keith F.

+ Child Support Computer Systems

They want (if Frank agrees) (talk Moran)

Upfront penalty that increases overtime

But ~~that~~ new Q: should we give incentives anyone

Not to tell FHHS =

in budget

- show current law baseline

- story: expect litigation would slow it down

- Retain current law baseline

- Retain nuclear threat

- Support legislation

in theory - ~~to~~ show what happens when turn off switch

Set determined should better to seek legislation + give congress time to act

DRAFT  
November 7, 1997**DRAFT CSE SYSTEMS PENALTY OPTIONS**

This paper is divided into three parts which describe various penalty options and various system completion plan approaches to dealing with the difficulties that States are experiencing implementing statewide automated systems for child support enforcement.

- I. Development Status, Principles, and Assumptions
- II. Overview of Financial Penalty and System Completion Plan Options
- III. Detailed Descriptions of Each Financial Penalty and System Completion Plan Option

Next mtg / Ron asked for

- D+R bipartisan staff
- Re-cap of situation in states
- Guidance from us on practice

## I. Development Status, Principles, and Assumptions

### The Current Child Support System Situation

Congress passed the Family Support Act (FSA) in 1988, which required States to develop and implement information systems which would serve the child support program. All States must meet the systems-related requirements of the Family Support Act no later than October 1, 1997. Since establishment of a statewide automated system is a requirement of the Title IV-D Federal Child Support Enforcement program, Federal law provides that any State which fails to operate such a system may lose all Federal child support enforcement funding. In addition, the operation of a CSE system under an approved State plan is a requirement of the Temporary Assistance for Needy Families program (TANF), so State TANF funds would also be at risk.

Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), States must implement statewide automated systems that meet certain additional requirements by 10/1/2000.

Congressman Shaw has expressed interest in giving ACF credible, appropriate tools via legislation, as such tools aren't available under the current statute. This paper provides approaches to structuring such tools.

### A Three-Part Approach

ACF envisions a three-part approach to dealing with States' failure to meet CSE systems requirements:

- o **Up-front Penalty**- An up-front penalty sends a clear, immediate message about the importance of automated CSE systems. This penalty should be designed to be easy to explain, simple to administer, and largely automatic in implementation. The penalty should be large enough to motivate States to improve their systems development efforts, but not so large as to severely disrupt States' CSE programs or systems development efforts or lead States to believe that the penalty would never actually be imposed.
- o **Incentive for Early Completion**- The penalty should be structured to provide an incentive for early completion by either providing for an earn-back of the initial penalty, imposition of subsequent incremental penalties, or both.
- o **System Completion Plan (SCP)**- A "system completion plan" process would guide States' future systems development efforts. A key part of the systems completion plan process is a proposed legislative requirement that the governor

personally sign the plan, thus ensuring the commitment of all affected State agencies.

ACF envisions this approach as largely, but not entirely, replacing the current State plan disapproval process for systems-related compliance. A State that does not enter into or make a good faith effort to comply with its systems completion plan would still be subject to having its State CSE plan disapproved.

### Assumptions

1. The legislation needed to implement Options 1, 2, or 3 is unlikely to be enacted until second quarter of FY 1998, so we assume that the alternative penalty provisions will begin with the third quarter of FY 1998, (i.e., April 1, 1998).
2. The final legislative proposal would be a mixture of the financial penalty and system completion plan options. 2
3. The current system certification process continues for FSA requirements and the Advance Planning Document (APD) process remains in place as the vehicle by which States secure funding for system development efforts. Pending legislative change, ACF will proceed with Advance Planning Document requirements and begin working with States to submit revised APDU budget and schedules for completing their automated systems with respect both to FSA and PRWORA requirements. This may include suspension of some States' systems development funding as a means to get States' system development efforts on track and to safeguard Federal funds.
4. Financial penalty and (SCP) options will apply to States missing PRWORA deadlines as well as the Family Support Act deadline (10/1/97). A State that failed to meet both deadlines would be subject to two penalties. 1
5. ACF will not modify the current certification requirements that measure States' compliance with FSA requirements. However, ACF will continue its current effort, through a joint Federal-State work group, to develop certification criteria with respect to PRWORA requirements that focus on outcomes, are less detailed, allow greater flexibility with respect to unique State business practices, and that mandate only cost-effective measures.
6. States would not be penalized for any delay between the date the State tells ACF that it has a certifiable system and the date ACF completes its review, provided that the review shows that the system was certifiable and was operating statewide at the time the State so notified ACF.

7. States will meet FSA certification requirements by the following dates:

California: 10/2001\*  
Michigan: 10/2000\*  
Illinois: ?  
Ohio: 2/1999  
Pennsylvania: 10/1998  
Indiana: 10/1998  
Hawaii: 7/1998  
Oregon: 6/1998  
New Mexico: 6/1998  
Nevada: 4/1998  
Maryland: 4/1998\*  
Missouri: 4/1998  
South Carolina: 4/1998  
North Dakota: 3/1998  
South Dakota: 1/1998  
Alaska: 12/1997  
D.C.: 12/1997\*  
Massachusetts: 12/1997

\* Date very uncertain

Note that these dates are based on ACF's assessment of States' current status and progress. These dates are merely estimates and may differ from State estimates.

These dates are factored into the tables that accompany each penalty option. Using these dates provides an estimate of the amount of penalty each State is likely to sustain and helps illustrate that the penalties are graduated with respect to the degree of work a State must perform to achieve compliance with FSA requirements.

We have not attempted in this paper to make projections about which States will fail to meet PRWORA requirements.

## II. OVERVIEW OF FINANCIAL PENALTY & SYSTEM COMPLETION PLAN OPTIONS

ACF has developed four financial penalty options and three options for a system completion plan. Overviews of each option are presented below. More detailed explanations follow.

### Financial Penalty Options

- OPTION 1 - Initial Penalty; Earn-Back; Subsequent Incremental Penalty
- OPTION 2 - Initial penalty followed by subsequent incremental penalties
- OPTION 3 - Adaptation of Audit Penalty to Systems Completion
- OPTION 4 - State Plan disapproval process under current law.

#### **PENALTY OPTION 1**

#### **Initial Penalty; Earn-Back; Subsequent Incremental Penalty**

ACF would impose an initial penalty based on the Federal share of a State's FY 1997 CSE administrative expenditures. States would have an opportunity to earn back some of the penalty depending on when they complete the system. If the State has not met the FSA requirements by 10/1/1999, then the ability to earn-back any portion of the initial penalty ends. If the State fails to have an FSA-certified system by the PRWORA deadline of 10/1/2000, additional incremental penalties would be imposed for each quarter during which the State failed to have in place a system that met FSA requirements. *Calif. Med. all?*

*18 mos.*

If the State misses the PRWORA deadline, an immediate penalty would be imposed with respect to PRWORA requirements. The State would be given the opportunity to earn back some of this penalty through 4/1/2002. If the State fails to meet PRWORA certification requirements by 10/1/2002, additional incremental penalties would be imposed for each quarter during which the State failed to have in place a system that met PRWORA requirements.

#### **PENALTY OPTION 2 -**

#### **Initial penalty followed by subsequent incremental penalties**

ACF would impose an initial up-front penalty, plus additional incremental penalties with respect to each quarter during which a State failed to have a certified system. States would not have the opportunity to earn back any portion of the initial penalty. The penalty would apply independently to the FSA and PRWORA; *what about subsequent?*

? Must a state spend \$ to make up difference à la PRWORA? 5

i.e., a State that failed to meet both requirements would be subject to two penalties.

**PENALTY OPTION 3 -  
Application of Audit Penalty to Systems Requirements**

With appropriate statutory changes, ACF would impose the penalty authorized in section 409(a)(8) of the Social Security Act if a State failed to meet systems implementation deadlines. (This section specifies penalties for States which, as a result of audits under section 452(a)(4) are found not to be in compliance with child support program requirements.) The statute provides States with an automatic one-year corrective action period in order to come into compliance with program requirements. For systems, this would effectively extend the statutory deadlines by a year or more.

*Not immediate*

*may be less*

If the State failed to come into compliance by the end of the corrective action period, ACF would impose a penalty of between 1% and 2% of the State's annual TANF grant. (Audit penalties are collected from States' TANF grants; CSE funding is not affected, although this could be changed by statute.) If the State, as of the next audit, still has not complied, then the penalty increases to between 2 and 3%. If, after the third audit, the State still is not in compliance, the penalty is increased to 3 to 5%.

**PENALTY OPTION 4 -  
State Plan disapproval process under current law**

In early CY 1998, ACF will notify States that did not have FSA compliant systems in place by December 31st that it intends to disapprove their State CSE plans.<sup>1</sup> After due process, ACF will terminate a State's CSE funding, assuming that the State has not by that time completed its system. Between six and 18 months could elapse between the time ACF notifies a State of its intent to disapprove its plan and the cessation of CSE funding.

If a State did not have an approved State plan, ACF could not approve TANF funding for that State. The timing of cessation of TANF funding would depend on each State's TANF state plan cycle. By law, a State must submit a TANF State plan at least every two years, which means that new State plans would be required between September 1998 and June 1999, depending on when a State initially submitted its current TANF plan. Submission of a new plan by a State without an approved CSE plan, or failure of a State to submit a TANF plan, could result in cessation of TANF funding.

<sup>1</sup> Under current policies, States have until the end of a quarter to submit a State plan amendment certifying that they are in compliance with new requirements.

System Completion Plan (SCP) Options

**OPTION 1- Use existing Advance Planning Document Update (APDU) process.**

**OPTION 2- Develop an SCP jointly with the State**

**OPTION 3- Restrict funding approval to key milestones achieved and verified by ACF on-site monitoring**

Each of these options assume the following legislative changes:

- If the State fails to enter into a SCP, ACF will proceed to terminate CSE (and TANF) funds using the State plan disapproval process.
- The statute will require that the Governor sign the initial SCP and any substantial modifications to the SCP, i.e., those that would impact on the date by which the system would be completed.

ACF will enforce the SCP using the existing process under 45 CFR Part 95, viz., suspending systems development funding if the State fails to meet the milestones enumerated in the SCP.<sup>2</sup> (The "clock" for the financial penalty would continue to run even if ACF suspended systems development funding.) In cases where a State fails to make a good faith effort to carry out its SCP, ACF would retain the authority to invoke the State plan disapproval process.

**SCP Option 1 -  
Use existing APDU (Advance Planning Document Update) process**

States submit a revised APDU plan that includes a revised budget and schedule for completing the automated system (i.e. meeting FSA and PRWORA deadlines) and ACF approves, disapproves or asks for additional documentation.

**SCP Option 2 -  
Partner with State to jointly develop an SCP Plan**

For States that miss the FSA deadline, implement a more pro-active involvement in the development of the system completion plan. Schedule a series of teleconferences, video-conferences and meetings with States to mutually develop a reasonable SCP.

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<sup>2</sup> Note that suspension of systems development funding does not impact on the remainder of a State's CSE administrative funding, nor does it trigger termination of TANF funding.

Approval of the SCP does not constitute forgiveness of the penalties imposed. ACF recommends that any legislative change require that the Governor sign the SCP if the State failed to meet a deadline, or if HHS determines that the State is likely to miss a deadline. However, the States failure to comply with the SCP may trigger the Secretary's decision to begin the State Plan Disapproval process. HHS responsibility for approval of a SCP is the same as HHS responsibility for approval of any Advance Planning Document submission. In the SCP plans, ACF is likely to commit to additional technical assistance, on-site visits and monitoring as part of its commitment to the SCP. ACF is procuring a contractor to provide independent validation and verification of the State's SCP plan. A similar approach would be used for States that miss the PRWORA deadline.

SCP Option 3 -

Restrict funding approval to key milestones achieved and verified by ACF on-site monitoring.

Implement GAO recommendations on restricting funding approval to successful implementation of key milestones as evidenced by ACF's on-site monitoring and increased documentation submissions by the States. This approach is more intrusive and intimately involves Federal staff in the management of State's system development efforts. GAO's approach does not distinguish between States with good track records for systems development and those that experience problems.

Is there a #2 + #3  
combs?

Don't need legis authority  
but would be good for Congress to bless

Would need legis to say:  
if state fails in good faith to carry out  
system completion

→ w  
→ need option to disapprove plan

**III. Detailed Proposals for Each Financial Penalty and System Completion Plan Option**

**Penalty Option 1**

**Initial Penalty; "Earn-Back;" Subsequent Incremental Penalties**

This approach imposes a substantial immediate penalty if a State fails to meet FSA requirements. A similar penalty would also be imposed if a State failed to meet the PRWORA systems deadline. (A State that failed to meet both deadlines would be subject to two penalties. In either case, States could recoup part of the initial penalty if they completed their systems quickly, e.g., within two to three years. If it takes longer for the State to come into compliance, it loses its ability to recoup any part of the initial penalty. In addition, ACF would impose an additional penalty for each quarter in which the State failed to meet FSA and/or PRWORA requirements.

For FSA requirements:

**Initial Penalty:** Impose a penalty in April 1998 equal to 10% of the Federal share of the State's total annual CSE administrative expenses in FY 1997.

**Earn-Back Provision:** If the State completes its system within 2 years, it would receive back some of the penalty. The amount of the earn-back would decrease over time. However, the minimum penalty would be 2.5% of its FY 1997 total CSE administrative expenses.

*can't earn back all*

If the State completed its system by 10/1/98, i.e., within six months of ACF imposing the penalty, it would receive back 75% of the penalty; if it completed its system by 4/1/99, i.e., a year after ACF imposed the penalty, it would receive back 50% of the initial penalty; if it completed its system by 10/1/99, it would receive back 25% of the initial penalty; if the State completed its system after 10/1/99, there would be no return of the initial penalty.

Other than the possibility of earning back part of the initial penalty, the State's matching rate subsequent to imposition of the initial penalty is unaffected, at least up until 10/1/2000.

**Subsequent Incremental Penalties:** As a further incentive, ACF proposes a smaller incremental penalty would be imposed with respect to each quarter after 10/1/2000 during which the State failed to have a system that met FSA requirements. The penalty could be a constant (e.g., 5%) or increasing (see Option 2, below) percentage of the Federal share of the State's prior quarter expenditures. This approach has the effect of reducing a

State's effective matching rate.

For PRWORA Requirements:

**Initial Penalty:** If a State fails to meet PRWORA requirements by 10/1/2000, ACF would impose an immediate penalty equal to 10% of the Federal share of a State's FY 1999 total CSE administrative expenditures.

**Earn-Back Provision:** If the State completed its system by 4/1/2001, it would receive back 75% of this penalty; if it completed its system by 10/1/2001, it would receive back 50% of the additional penalty; if it completed the system by 4/1/2002, it would receive back 25% of the penalty. There would be no recoupment of the initial penalty after 4/1/2002.

**Subsequent Incremental Penalties:** ACF proposes a smaller incremental penalty would be imposed with respect to each quarter after 10/1/2002 during which the State failed to have a system that met PRWORA requirements. The penalty could be a constant (e.g., 5%) or increasing (see Option 2, below) percentage of the Federal share of the State's prior quarter expenditures.

As FY 1999 CSE administrative expenditures by State aren't available at this time, the table above can be used as an approximation of the penalty that those States might face.

The table on the following page illustrates the impact of this option on the States likely to miss the 10/1/1997 deadline. The first column shows the estimated Federal share of total FY 1997 State CSE expenditures, including enhanced systems expenditures. This information is provided for reference.

The second column shows the initial penalty, i.e., 10% of the first column. The next column, "Less Earn-Back" shows the amount of the initial penalty that the State would earn back if it completed its FSA-compliant system within the time frame shown under "Assumptions" earlier in this paper. The "Total Incremental Penalty" column shows the additional penalty that would be levied if the State failed to complete an FSA-compliant system by 10/1/2000, i.e., 5% for the Federal share of State CSE administrative expenditures for the previous quarter for each quarter during which the State fails to have a compliant system. Based on our current estimates, only California would be assessed this additional penalty. That, of course, could change.

The next column shows the total penalty and the final column expresses the total penalty as a percentage of the Federal share of the State's FY 1997 CSE administrative expenditures.

OPTION 1: INITIAL PENALTY; EARN-BACK; INCREMENTAL PENALTY						
(\$millions)						
	Est. FY 97 State Admin. Exp.	Initial Penalty	Earn Back	Total Incremental Penalty	TOTAL PENALTY	Penalty as % of St. Exp
CA	341	34.1	0.0	68.2	102.3	30.00%
MI	106	10.6	0.0	0	10.6	10.00%
IL	76	7.6	?	?	?	?
OH	127	12.7	6.4	0	6.4	5.00%
PA	75	7.5	3.8	0	3.8	5.00%
IN	28	2.8	1.4	0	1.4	5.00%
HI	19	1.9	1.4	0	0.5	2.50%
OR	26	2.6	2.0	0	0.7	2.50%
NM	15	1.5	1.1	0	0.4	2.50%
NV	19	1.9	1.4	0	0.5	2.50%
MD	59	5.9	4.4	0	1.5	2.50%
MO	58	5.8	4.4	0	1.5	2.50%
SC	18	1.8	1.4	0	0.5	2.50%
ND	5	0.5	0.4	0	0.1	2.50%
SD	4	0.4	0.3	0	0.1	2.50%
AK	15	0.0	0.0	0	0.0	0.00%
DC	10	0.0	0.0	0	0.0	0.00%
MA	41	0.0	0.0	0	0.0	0.00%
Initial penalty is 10% of Federal share of State's annual CSE admin. expenditures						
Earn back provision:		75% if completed by 10/1/98				
		50% if completed by 10/1/99				
		25% if completed by 10/1/00				
Incremental penalty is 5% for each quarter in which State fails to have an FSA-certified system after 10/1/2000.						
This table based on FY 97 Federal share of State admin. expenditures as contained in the FY 98 Congressional Justification						
Alaska, DC, and Massachusetts are likely to complete their systems prior to ACF's imposing any penalty.						

*in one year?*

**Penalty Option 2****Initial Plus Incremental Penalty; No "Earn-Back"**

This approach imposes an initial up-front penalty if a State misses the FSA deadline. A separate penalty would be imposed if a State misses the PRWORA deadline. In either case, the amount of the penalty is increased for each quarter during which the State fails to have in place an FSA- and/or PRWORA-compliant system. The amount of the quarterly penalty increases over time.

**For FSA Requirements:**

**Initial Penalty:** Impose an initial penalty as of 4/1/1998 equal to 5% of the Federal share of the State's FY 1997 total CSE administrative expenditures.

**Incremental penalties:** For each quarter in which a State fails to have a system meeting FSA certification requirements, ACF would impose an increasing penalty based on the Federal share of the State's CSE expenditures in the prior quarter. The penalty would begin at 5% and increase one percentage point per quarter.

For example, if the State didn't have an FSA certified system by the end of the third quarter of FY 1998, it would be assessed an additional penalty equal to 5% of the Federal share of its total CSE administrative expenditures in the second quarter of FY 1998.

If the State failed to have an FSA certified system by the end of the fourth quarter of FY 1998, ACF would assess an additional penalty equal to 6% of the States third-quarter expenditures.

The penalty would continue to escalate one percentage point per quarter until the State met FSA certification requirements. The effect of this penalty structure is a reduction in the matching rate for the State.

**For PRWORA Requirements:**

**Initial Penalty:** ACF would impose an immediate penalty equal to 5% of the Federal share of a State's FY 1999 total CSE administrative expenditures if the State failed to have a system that met PRWORA requirements in place by 10/1/2000.

**Incremental Penalties:** For each quarter in which a State fails to have a system meeting PRWORA certification requirements, ACF would impose an increasing penalty based on the Federal share of the State's CSE expenditures in the prior quarter. The penalty would begin at 5% and increase one percentage point per quarter.

For example, if the State didn't have a PRWORA certified system by the end of the second quarter of FY 2001, it would be assessed an additional penalty equal to 5% of the Federal share of its

total CSE administrative expenditures in the first quarter of FY 2001.

If the State failed to have a PRWORA certified system by the end of the third quarter of FY 2001, ACF would assess an additional penalty equal to 6% of the States second quarter expenditures.

The penalty would continue to escalate one percentage point per quarter until the State met PRWORA certification requirements. This penalty structure reduces the effective matching rate for the State.

The table on the following page illustrates how the penalty would be applied to those States likely to miss the 10/1/1997 FSA deadline. The first column shows the Federal share of estimated State CSE expenditures, including enhanced system funding, in FY 1997. The second column shows the initial 5% penalty, i.e., 5% of the first column. The next column, "Total Incremental Penalty," shows the cumulative amount of the quarterly incremental penalties that would be assessed to a State if it completed its FSA-compliant system according to the time frame shown in the "Assumptions" section earlier in this paper. The next column shows the total amount of the penalties assessed against a State. The last column expresses the total penalty as a percentage of the Federal share of the State's FY 1997 CSE administrative expenditures.

<b>OPTION 2: INCREMENTAL PENALTY</b>					
<b>(\$ millions)</b>					
			<b>Total</b>		
	<b>Est. FY 97 State Admin. Exp.</b>	<b>Initial Penalty</b>	<b>Incremental Penalty</b>	<b>TOTAL PENALTY</b>	<b>Penalty as % of St. Exp</b>
CA	341	17.1	121.9	139.0	40.75%
MI	106	5.3	25.2	30.5	28.77%
IL	76	3.8	?	?	?
OH	127	6.4	5.7	12.1	9.49%
PA	75	3.8	0.9	4.7	6.20%
IN	28	1.4	0.4	1.8	6.43%
HI	19	1.0	0.2	1.2	6.05%
OR	26	1.3	0	1.3	5.00%
NM	15	0.8	0	0.8	5.00%
NV	19	1.0	0	1.0	5.00%
MD	59	3.0	0	3.0	5.00%
MO	58	2.9	0	2.9	5.00%
SC	18	0.9	0	0.9	5.00%
ND	5	0.3	0	0.3	5.00%
SD	4	0.2	0	0.2	5.00%
AK	15	0.8	0	0.8	5.00%
DC	10	0.5	0	0.5	5.00%
MA	41	2.1	0	2.1	5.00%
<b>Initial penalty is 5% of Federal share of State's annual CSE admin. expenditures</b>					
<b>The incremental penalty is 5% of the Federal share of the State's prior quarter CSE admin. expenditures for the first quarter after 4/98 in which the State fails to have an FSA-certified system. The penalty increases by one percentage point during each subsequent quarter in which the State fails to have a certified system.</b>					
<b>This table based on FY 97 Federal share of State admin. expenditures as contained in the FY 98 Congressional Justification</b>					

### Penalty Option 3 Application of Audit Penalty to Systems

There has been some question as to whether the audit process in section 452(a)(4) of the Social Security Act could be applied to a State's failure to have FSA- or PRWORA-compliant systems. OGC has advised that while there might be some support for this approach, it could not, under current law, replace the State plan disapproval remedy. In other words, even if ACF imposed a penalty pursuant to the audit process, a non-compliant State would still be subject to losing all of its IV-D and TANF funding. In addition, the systems certification process is not a clean "fit" under the current audit statute and regulations.

The penalty under the audit process is defined in section 409(a)(8) of the SSA. That section imposes a penalty of between 1 and 2% of a State's State Family Assistance Grant under TANF for each quarter in which the State was found, as a result of the CSE audit, not to have complied substantially with IV-D requirements. (The penalty is taken in the form of a reduced TANF grant; CSE funding is not affected.) The penalty increases to 2 to 3% if the situation that lead to the initial penalty still obtains when the next audit is conducted, and further increases to 3 to 5% if the situation still obtains in the third audit. The penalty is applied only if the State fails to achieve compliance within an automatic one-year corrective action period.

#### For FSA Requirements:

Assuming that the legislative changes "deems" our systems certification review as falling under 452(a)(4), ACF would be able to place States on notice of non-compliance beginning in January, 1998. States would not be subject to penalties for one year because of the automatic one-year corrective action period provided for by statute. At the end of that period, if the State still did not have an FSA-compliant system, we would assess a penalty of between 1% and 2% of the State's quarterly TANF/SFAG grant for each quarter in which the State fails to have a compliant system. This would continue until the next review, at which point the penalty would increase to between 2 and 3 percent. If, at the time ACF conducts the third review, the State still does not have a compliant system, the penalty would increase to 3 to 5 percent.

#### For PRWORA Requirements:

The same procedures would be followed for PRWORA requirements. The earliest HHS could take a penalty would be late in CY 2001.

The table on the following page shows the penalties States would be likely to face if they completed FSA-compliant systems within the time frames shown under "Assumptions" earlier in this paper.

OPTION 3: ADAPTATION OF AUDIT PENALTY							
(\$millions)							
	SFAG	FY 98 Penalty	FY 99 Penalty	FY 2000 Penalty	FY 2001 Penalty	TOTAL PENALTY	Penalty as % of SFAG
CA	3,374	0	9.3	46.7	84.0	140.0	4.15%
MI	775	0	1.9	9.7	0.0	11.6	1.50%
IL	585	0	?	?	?	?	?
OH	728	0	1.8	0	0	1.8	0.25%
PA	719	0	0	0	0	0	0
IN	207	0	0	0	0	0	0
HI	99	0	0	0	0	0	0
OR	168	0	0	0	0	0	0
NM	126	0	0	0	0	0	0
NV	44	0	0	0	0	0	0
MD	229	0	0	0	0	0	0
MO	217	0	0	0	0	0	0
SC	100	0	0	0	0	0	0
ND	26	0	0	0	0	0	0
SD	22	0	0	0	0	0	0
AK	64	0	0	0	0	0	0
DC	93	0	0	0	0	0	0
MA	459	0	0	0	0	0	0
Penalty assumed to be the least amount that could be imposed under current law, i.e., 1% for the first period, 2% for the second, and 3% for the third. The penalty theoretically could be as high as 2% in the first period, 3% in the second, and 5% in the third.							
Penalty is imposed with respect to any quarter in which the State fails to have a certified system for the full quarter.							
Calculations assume that: States are notified 4/98; States submit a corrective action plan within 60 days; ACF approves the plan within 30 days; and, all CAPs are for one year. Effectively, this means that any State that meets FSA certification requirements by 8/99 escapes any penalty.							

**Penalty Option 4  
Current Law -- State Plan Disapproval process.**

For FSA Requirements:

Disapproval of a State's CSE plan due to its failure to meet the 10/1/1997 deadline doesn't occur automatically on October 1, 1997. Action Transmittal 96-08 provides that the State has until the end of the quarter beginning on October 1, 1997, i.e., until December 31, 1997, to submit a State plan amendment attesting to its meeting the FSA deadline. In addition, if a State requested before December 31 that ACF conduct a certification review, ACF would hold the State plan disapproval process in abeyance until after it had completed the review. If the review found that the State did not have a certified system, the State plan disapproval process would be triggered.

The process is set forth in 45 CFR 301.13, and summarized in Action Transmittal 97-05 (April 28, 1997). Once ACF determines that a State does not meet a State plan requirement, including having an FSA compliant statewide system, ACF notifies the State of its intent to disapprove the State's CSE plan.

The letter of intent to disapprove contains the State's appeal rights. The State may, within 60 days, request either reconsideration or a predecisional hearing. Our experience is that most States request a hearing.

The hearing is before the Departmental Appeals Board. OCSE has 30 days to notify the State of the time and place of the hearing and the hearing must be scheduled between 30-60 days of the hearing notice. The hearing officer's decision is due 60 days after the hearing.

At any point that the State indicates that they feel that they are in compliance, we would schedule an on-site certification review to determine their compliance.

If the Hearing Officer concludes that the State's plan is not approvable, ACF moves to terminate a State's IV-D funding.

This process can take between 6-18 months from the date of the intent to disapprove letter to the final decision to terminate funding.

For PRWORA Requirements:

The same process would be followed if a State failed to meet the 10/1/2000 PRWORA systems requirements.

The table on the following page shows the Federal share of States' FY 1997 CSE administrative expenditures. This is an indication of the annual amount of Federal funds a State would

stand to lose if we disapproved its CSE State plan. The table shows the amount of each State's State Family Assistance Grant (SFAG) under TANF and the date each State started TANF. TANF plans are good for two years; our assumption is that a State's TANF funds would be at risk with respect to ACF's disapproving its CSE plan only when a new TANF plan was due, i.e., within two years of a State's TANF start date. For example, if ACF disapproved California's CSE state plan in October 1998, California's TANF funding would be at risk the following month. On the other hand, if ACF's disapproval occurred in December, 1998, California's TANF funding would not be at risk until November, 2000 (assuming California submitted an approvable TANF plan in November, 1998).

OPTION 4: CURRENT LAW			
(\$millions)			
	Fed. Share FY 97	State Family	TANF Start
	CSE Admin. Exp.	Assistance Grant	Date
CA	341	3,374	11/26/96
MI	106	775	9/30/96
IL	76	585	7/1/97
OH	127	728	10/1/96
PA	75	719	3/3/97
IN	28	207	10/1/96
HI	19	99	7/1/97
OR	26	168	10/1/96
NM	15	126	7/1/97
NV	19	44	12/3/96
MD	59	229	12/9/96
MO	58	217	12/1/96
SC	18	100	10/12/96
ND	5	26	7/1/97
SD	4	22	12/1/96
AK	15	64	7/1/97
DC	10	93	3/1/97
MA	41	459	9/30/96

System Completion Plan Options -- Detail

The various options differ in the degree of Federal involvement and oversight. The degree of Federal involvement will also affect the degree in which the Federal government is considered culpable or responsible for failure if the SCP doesn't result in a certifiable CSE system. ACF, in its existing role of reviewing and approving Advance Planning Documents and funding systems development already shares responsibility for success or failure of the CSE automated system. If we consider more of a pro-active role in the development of the SCP, or micromanagement of the process, DHHS/ACF would also assume more responsibility for the system development's success or failure.

**Assumptions:**

ACF needs to begin discussions with States regarding updates to their Advance Planning Documents in October 1997, before enactment of any legislation or regulatory change.

For these States who have already demonstrated problems with system development, the SCP option selected would also include system development for PRWORA requirements.

ACF will procure contract support independent validation and verification to supplement the Federal monitoring and oversight activities.

**SCP Option 1**

**Existing APDU Documentation, Monitoring and Suspension authority**

Under the current statute and regulations, ACF has the authority to:

- Suspend the APDU and FFP for the system development effort. Suspension should be seriously considered for several of these States, especially California, Michigan and Illinois. California is not operating under its approved APDU.
- Develop a revised implementation schedule and budget for completing the system development effort in conjunction with the State. In order have an approved APD and continued system development funding, the APD must have a current schedule and budget (see 45 CFR 307.15). Any cost increase of 10% or schedule extension of more than 60 days for major milestones requires that the State submit an updated As-Needed APDU.
- Fund the State system development effort on a phased implementation basis. Funding approval would be limited to

initial life cycle methodology and additional funding is tied to the State's successful completion of those key milestones.

- Require States to submit additional documentation as a prerequisite to additional funding approvals.

#### SCP Option 2

Implement a more pro-active involvement in the development of the system completion plan (SCP).

ACF could take a more proactive role in the joint of an SCP with States by:

- Initiating and scheduling a series of teleconferences, video-conferences and meetings with States to mutually develop a reasonable SCP, including revised budget and schedule.
- Committing to additional technical assistance, on-site visits and monitoring as part of ACF's commitment to the SCP.
- Retaining the Secretary's discretion to begin the State Plan Disallowance process, if States miss major milestones in the SCP, seeking legislation if necessary.
- Securing contractor support for Independent Validation and Verification (IV&V) to supplement Federal staff efforts in reviewing the States' progress in both establishing realistic system completion plans and meeting the milestones in those SCPs. ACF has already taken steps to secure this contractor support as soon as possible.
- Exploring the feasibility of developing a test deck for the statistical information reported to OCSE. One of the new roles for OCSE Auditors under PRWORA will be to test the validity and reliability of the data related to performance measures.

#### SCP Option 3

Implement GAO recommendations for at-risk States

ACF could implement some or all of the GAO recommendations for States that miss the Family Support Act deadline of 10/1/97.

GAO Recommendations:

- Develop and implement a structured approach for reviewing automation projects to ensure that significant systems

development milestones are identified and that project decisions are cost-justified during the entire effort. Each major systems phase should be reviewed and, at these critical points-analysis, design, coding, testing, conversion, and acceptance-OCSE should, according to preestablished criteria, formally report to the state whether it considers the state ready to proceed to the next milestone or phase.

- Develop a mechanism with which to verify that states follow generally accepted systems development practices during projects to minimize risks and costly errors. OCSE should revise the guidance for the APDs and APDUs to ensure that these documents provide information needed to assess different phases of development and are consistent from year to year. This information should include clearly defined requirements, schedules reflecting the status of how much data has been converted, code written, modules produced, and the results of testing, and other measures to quantify progress, such as the amount of data converted.
- Use an evaluative approach for States' planned and ongoing information technology projects that focuses on expected and actual costs, benefits, and risks. OCSE should require States to implement needed system completions for federally funded systems when problems and major discrepancies in cost and benefits are first identified. If the States experience delays and problems, and are not following generally accepted systems development practices, OCSE should suspend funding until the State redirects its approach.

DRAFT

November 6, 1997

**Possible State Positions/Reactions to Penalty Options**

The following are possible State positions or reactions to the approach to CSE systems penalty options that have been discussed within ACF. Also included are possible responses and rationales.

Essentially, ACF's approach involves options that would:

- Impose a substantial up-front penalty
- Require the State to agree to a corrective action plan
- Provide incentive for early completion by allowing a State to earn back a portion of the up-front penalty and/or imposing additional incremental penalties until the system is completed

*renamed systems completion plan*

This penalty should be a total substitute for State Plan Disapproval process; the CSE systems deadline should be removed from the State Plan altogether and be replaced with this lesser penalty.

The systems requirements are integral to achieving our goals for Child Support Enforcement. The continue to deserve the visibility provided by inclusion as State plan requirements.

ACF agrees that other approaches to penalties for failure to meet these requirements, i.e., penalties other than complete cessation of CSE funding, would be appropriate.

While the deadlines in that statute may prove difficult for some States to meet, we would not favor removing the deadlines altogether, as this would severely set back needed improvements in States' CSE automated systems.

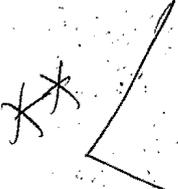
*should be stronger*

Shouldn't impose the penalty until you give a State a chance to comply with its corrective action plan. The financial penalty should be applied only if the State fails to comply with its CAP.

It's important to maintain position that we are serious about CSE system development. A CAP with no penalty for a State that already has missed the deadline is no penalty; rather, it's merely an extension of the deadline.

The penalty should be tied to the degree that the State is out of compliance with Functional requirements. ACF shouldn't penalize a State whose only deficiency is not having EFT/EDI to the same degree as CA who doesn't even have a system.

The options that have been discussed within ACF assume that there is rough correlation between the degree of a State's non-compliance and the time that the State will need to complete its system. Thus, the financial penalty for States that take longer to complete their systems, i.e., those that have a way to go, are higher than for State's that will complete their systems in only a few months.

XX  If the legislation gives HHS discretion, regulations almost undoubtedly will be required before penalties can be imposed, in effect precluding the imposition penalties. Any legislation needs to be self-implementing in order to provide a timely response to current problems.

The penalty and accompanying corrective action plan should recognize the unique problems that large States, and especially States with county-based child support programs, have implementing a State-wide system and adjust the CAP and penalty accordingly.

The penalty options focus on results, i.e., whether States have met the 10/1/97 deadline for meeting the requirements established in the 1988 Family Support Act. There are a variety of reasons why an individual State may miss the deadline. The purpose of the penalty options is to stimulate the rapid completion of these systems.

Other large States (TX, NY, FL) and other county-based States (WI, NC,) were able to address the problems they encountered.

The States need to have a mechanism to appeal the imposition of the penalty. They should be given an appeal process at least equal to State Plan Disapproval.

The approaches discussed within ACF focus on the current certification requirements, i.e., a process that's known, well documented, and flexible. So, the issue for a State to appeal would be whether its system is certifiable or not. That should be a relatively straightforward factual determination. We suggest allowing the Departmental Appeals Board to hear appeals.

Any appeal process should be quicker and less complex than the State Plan Disapproval process because the penalty is much smaller under ACF's options.

The penalty shouldn't be retroactive to October 1. It should be effective after the date of enactment of the legislation.

This penalty is a substitute for an existing penalty the deadline for which has already passed. The retroactive penalty could be addressed by not imposing it until after the effective date but the percentage could take into account the date. For example, instead of applying a 1% penalty beginning 10/1/97, and increasing a percentage point each quarter, the penalty could be imposed on any State not operational as of 4/1/98 but the penalty would start at 3%.

Penalty shouldn't be imposed on States that requested a review before October 1, 1997 (or December 31, 1997) but ACF didn't conduct that review or issue the report until much later. For those States the penalty shouldn't be imposed until after ACF conducts the review and issues a report and then a penalty should be issued only if State is not certified.

A State should not be penalized by ACF's review schedule. However, if a State is found not to have a compliant system in, say, January, it's safe to assume it didn't have one on October 1. ACF would propose to impose a penalty only after its review was completed. States that requested a review prior to December 31 and which were found to have a compliant system would not be subject to a penalty.

Certification Requirements for CSE systems: (a) are too strict and detailed; (b) should be performance-based; (c) should be

replaced with a flexible process that recognizes unique State business practices; and/or (d) should be rewritten because they conflict with PRWORA requirements.

The current certification requirements, i.e., those based on the Family Support Act of 1988, have been known for a long time and are written into almost all States' contracts. The certification requirements per se are not the reason some States are missing the 10/1/97 deadline. Changing the rules at this point would be a disservice to those States that met the deadline. Changing the certification requirements quickly and arbitrarily risks losing important system functions. Bottom line, ACF doesn't recommend lessening certification standards for the States that missed the deadline. Reducing the FSA-88 standards at this point would primarily benefit vendors, who would be let off the hook for contractual commitments, not the States.

Conflicts with PRWORA already are being addressed; ACF isn't making any State conform currently to requirements that changed under PRWORA. In other words, if a certification requirement conflicts with a PRWORA requirement, e.g., distribution, then ACF is certifying the system even if it doesn't meet the conflicting FSA-88 requirement.

ACF has convened a State/Federal work group which is currently addressing PRWORA certification requirements and is attempting to develop performance-based measures and provide flexibility in State business practices. ACF's goal is to ensure that the PRWORA certification requirements are cost-effective, make good business sense, and allow States the flexibility of encompassing their own unique business practices while at the same time accommodating the reality that CSE is a national program with substantial intra- and interstate connections.

The penalty shouldn't be so severe that it adversely affects a State's ability to complete the project. The States are already having to finish CSE system without any additional 90% enhanced funding and cutting into already inadequate 80% enhanced funding allocation. In effect, States already are being financially penalized.

The proposed penalty is considerably less than elimination of total CSE and possibly TANF funding, as is provided for under current law. ACF has attempted to calibrate the penalty both to send a strong message that missing the deadline was important and to avoid creating situations where the program is adversely impacted by the penalty.

The options for alternative penalties discussed by ACF would not affect the allocation of the \$400 million in enhanced (80%) funding under PRWORA.

HHS should allow States to link county systems together in order to meet statewideness requirement.

The statute requires a single statewide system. That requirement derives from the well-founded belief that a single statewide system will be the most cost-effective way of achieving the functionality that States will need from their automated systems if they are to meet CSE program goals and mandated processing time frames.

HHS could accept conceptually the notion of linking county systems together provided that the resulting system would cost no more than developing a single statewide systems and provided that the resulting system had the same functionality as a single statewide system. However, HHS would be very concerned about both the technical and management feasibility of such an undertaking. In effect, a linked system multiplies the number of systems development efforts that a State would have to monitor. Difficulties in project management have been one of the major obstacles to timely system implementation in a number of States.

Moreover, linking multiple systems multiplies the technical complexity of designing an overall system. Building interfaces among systems is one of the more problematic areas in systems design. In addition, linking multiple systems creates data definition and data base synchronization problems that are largely absent from single system development efforts. For example, in designing the part of a linked system that collected data for program or reporting purposes, care would have to be taken to ensure that the disparate terms and concepts used by multiple jurisdictions were somehow made consistent at the state

level. Likewise, ensuring that the data for a case that's contained in the "linking" system that is shared with other jurisdictions is consistent with the data on that case in the cognizant county's system presents development and operational problems.

Norm Thompson

11/12

Did not incorporate OMB suggestions:

① Link to incentives

→ because 2000 kicked in

→ because still in legis

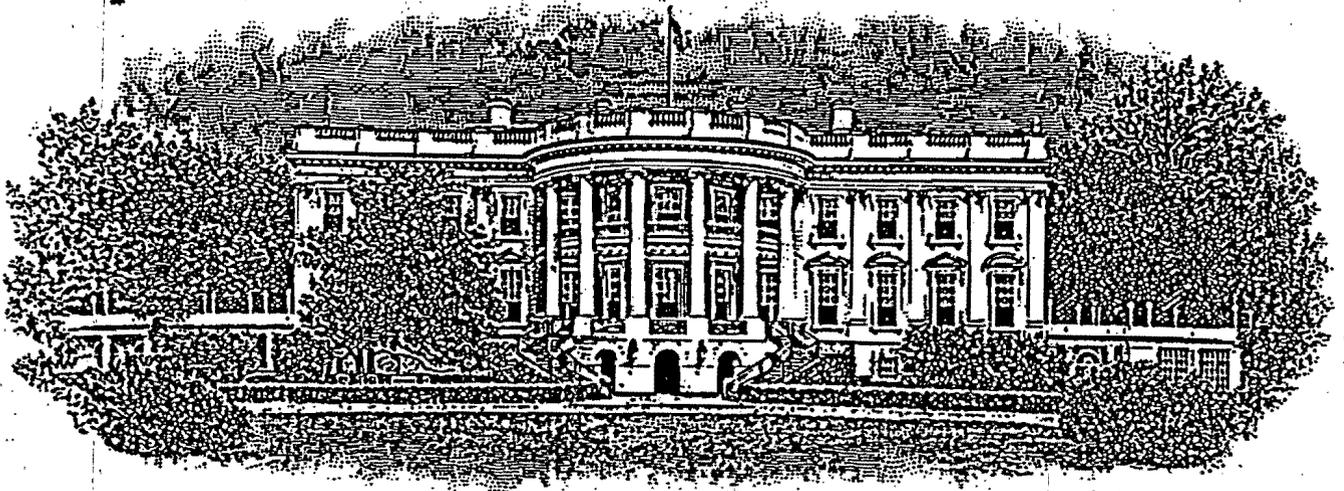
② Move to new agency if original agency fails

→ want to do as cooperative action plan; and have your sign

Keith =

you guys tell us why you are still the right agency

# The White House



DOMESTIC POLICY

## FACSIMILE TRANSMISSION COVER SHEET

TO: John Monahan, HHS

FAX NUMBER: 401-4678

TELEPHONE NUMBER: 401-5180

FROM: Cynthia Rice

TELEPHONE NUMBER: 456-2846 (p) 456-7431 (f)

PAGES (INCLUDING COVER): 2

COMMENTS: Sorry for the delay.

Please send the California letter  
with these changes.

ADMINISTRATION FOR CHILDREN AND FAMILIES  
Office of the Assistant Secretary, Suite 600  
370 L'Enfant Promenade, S.W.  
Washington, D.C. 20447

Ms. Eloise Anderson  
Director  
Department of Social Services  
744 P Street, M.S. 17-08  
Sacramento, CA 95814

Dear Ms. Anderson:

The purpose of this letter is to notify you that in accordance with 45 CFR 307.40 the Office of Child Support Enforcement (OCSE) is suspending approval of, and funding for, California's Advance Planning Document (APD) for the Statewide Automated Child Support System (SACSS) project. We must take this step because ~~which makes~~ California ~~is~~ out of compliance with the approved SACSS APD to develop and implement a single statewide system to meet the requirements of the Family Support Act of 1988.

Suspension of the State's APD is separate from the State plan disapproval process. A suspension of a State's APD may be imposed as of the date that the system ceases to comply substantially with the criteria, requirements and other provisions of the APD. The APD suspension is limited to suspending approval for Federal financial participation (FFP) at both the enhanced and regular rate for systems development funding approved under the applicable APD. This differs from the State plan disapproval process which results from a State not having an operational, statewide computerized support enforcement system that meets all requirements enacted on or before the date of enactment of the Family Support Act of 1988 by the October 1, 1997 statutory deadline. ACF will separately make a determination to disapprove the States plan pursuant to 45 CFR 301.13, which if disapproved will result in cessation of all Federal payments for the State's child support enforcement program.

In light of the recent termination of the contract between the State and Lockheed Martin IMS, and other problems related to the SACSS implementation, all SACSS project funding is suspended. Regulations at 45 CFR 307.40(a) authorize OCSE to suspend APD approval "...as of the date that the system ceases to substantially comply with the criteria, requirements, and other provisions in the APD." We have determined that the SACSS did not meet the requirements as of the date of termination with the implementation contractor. Therefore the effective date of this suspension will be November 20, 1997.

Lockheed Martin

Which involves suspending all federal funds and

**DEPARTMENT OF HEALTH & HUMAN SERVICES**

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Ms. Eloise Anderson

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We see the need for California to submit within the next 30 days at least two documents:

- A Planning APD

If California chooses to start over with its child support enforcement automation effort, the State must submit a planning APD. Our review and prior written approval of the planning APD is required for Federal financial participation (FFP) of any planning activities associated with the State's new systems effort. My staff and staff in our San Francisco regional office are available for, and are eager to provide consultation on the requirements of a planning APD. ACF commits to expeditious review of your planning APD on an emergency basis.

- A Close-out APDU

It appears from your termination of the Lockheed Martin contract that California has abandoned SACSS as the State's CSE automated systems efforts. You will therefore need to submit a close-out APDU to initiate closing out the SACSS project. During the closeout process, we will determine which costs previously claimed at the enhanced FFP rate would now qualify for reimbursement only at the regular FFP rate.

In addition, California should be advised that enhancements or modifications to existing county systems, such as implementing Calendar Year 2000 compliance remedies or meeting Family Support Act of 1988 or Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requirements, are subject to prior written Federal approval, in accordance with 45 CFR 95.611. Federal policy is to fund only the single statewide system being developed under an approved APD. You should not assume that we would automatically approve requests for FFP to enhance or modify existing systems. If such efforts are necessary, you should address them as part of your overall systems development and implementation APD.

We, like you, are most eager to see California move ahead to develop a fully functional and cost-effective single statewide child support automated system. In addition to statutory deadlines, there are the added considerations of delayed or foregone child support collections resulting from inadequate automated systems, and the potential additional costs that the State of California may have to incur to maintain its existing systems.

Ms. Eloise Anderson

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If you or your staff need further clarification on any of the points raised in this letter, please feel free to call me or Robin Rushton, Director, Division of Child Support Information Systems. I can be reached at (202) 260-0339; Ms. Rushton's phone number is (202) 690-1244. We look forward to working with you to implement an automated system that meets the needs of California's children and families.

Sincerely,

Norman L. Thompson  
Associate Deputy Director  
for Automation and Special Projects

cc: Mr. David Ross, Deputy Director, OCSE  
Ms. Sharon Fujii, Regional Administrator/ACF  
Ms. Leslie Frye, Chief, Office of Child Support  
Mr. Russell Bohart, Director, HWDC