

## Mandatory Laws and Procedures Exemption Instructions

### I. MANDATORY LAWS AND PROCEDURES

Since the inception of the child support enforcement program, certain laws and procedures have measurably increased the efficiency and effectiveness of some states' programs. To improve the nationwide child support effort, Congress required states to implement the particular laws and procedures responsible for the success of those state programs. [Section 466 of the Social Security Act](#) describes the following 21 categories of required state laws:

1. Income withholding
2. Expedited process including administrative actions by the state agency, substantive and procedural rules, and coordination with ERISA
3. State income tax refund offset
4. Liens against real and personal property and full faith and credit for such liens
5. Procedures concerning paternity establishment
6. Posting of security, bonds, or other guarantee to secure payment of overdue support
7. Reporting arrearages to credit bureaus
8. Providing for income withholding in orders
9. Requiring that any payment or installment of support is a final judgment by operation of law
10. Review and adjustment of child support orders upon request
11. Giving of full faith and credit to a determination of paternity made by any other state, whether established by voluntary acknowledgment or administrative or judicial processes
12. Locator information from interstate networks
13. Recording of Social Security numbers in certain family matters
14. Administrative enforcement in interstate cases
15. Procedures to ensure that persons owing overdue support either work or have a plan for payment of such support
16. Authority to withhold or suspend licenses
17. Financial institution data matches
18. Enforcement of orders against paternal or maternal grandparents
19. Health care coverage
20. Uniform Interstate Family Support Act
21. Laws voiding fraudulent transfer

If a state can demonstrate to the satisfaction of the Secretary that any one, or all, of the required laws and procedures will not increase the effectiveness and efficiency of the state's child support enforcement program, the Secretary may grant the state an exemption from implementing one or more of the required procedures. Additionally, an exemption is available if a state has and uses a similar procedure that does not fully comply with the mandate, law, or procedure and the state shows evidence that implementation of the mandatory procedure would not increase the efficiency and effectiveness of the state's existing procedure. With respect to procedures for expedited processes, a state may apply for an exemption for one or more political subdivisions of the state.

Please submit your exemption request according to the following instructions, which only apply to the mandatory and procedures in [section 466 of the Act](#). Contact your Regional Program Manager if you have any questions.

## **II. EXEMPTION PROCESS AND SUBMISSION MATERIAL**

### **A. Process**

States must submit the exemption request or renewal to the OCSE Regional Program Manager. The OCSE Regional Program Manager will review the state's submission and recommend approval or disapproval of the exemption to the Central Office.

To request or renew an exemption via the online state plan system, complete the following steps:

1. Select New Amendment and input the required information on the Transmittal Details tab.
2. Select Mandatory State Law and Procedures Exemption Request Amendment for the type of plan material.
3. Click Save then click Next.
4. Select the plan requirement that corresponds to exemption request on the Choose Plan Requirement to Change screen. The mandatory laws and procedures fall under the 2.12 series of plan requirements.
5. Click Go.
6. Upload a PDF version of the exemption request materials to the plan page by clicking Add New File/URL.
7. Click Save then click Next after successfully uploading the file. For new requests, OCSE will select the exemption indicator on the plan requirement page after approval.
8. Input the required information on the final Transmittal Details tab then click Save then click Submit. The state plan system will notify OCSE of the state's exemption submission.

If OCSE needs additional information, the Regional Office will request it from the state in writing or through the online state plan system. The state must provide the additional material

within two weeks from the date of the Regional Office's correspondence. If the state's submission remains incomplete or insufficient in response to questions raised by the request for additional information, OCSE will make a decision based upon the material submitted.

The OCSE Commissioner will notify states in writing that exemptions have been approved or disapproved and the basis for the decision. OCSE's approval letter will specify whether the exemption period will be unlimited or granted for a period of up to five years. Disapprovals of requests for exemptions are not subject to administrative appeal. Exemptions are subject to review at any time during the exemption period. If circumstances change, the OCSE Commissioner may terminate the exemption. (See Section IV for information on disapproval or revocation of an exemption.)

States must apply for an extension of time-limited exemptions or enact and implement the necessary laws and procedures prior to expiration of the exemption period. When applying for an extension, the state must submit the exemption request 90 days before the current exemption period expires via the state plan system. The state's submission for an extension must meet the applicable information requirements in Section III.

### **B. Materials for Submission of Requests for Exemptions and Requests for Extension of Previously Approved Exemptions**

States must submit the following materials to request an exemption or an extension of a previously approved exemption.

- **Cover Letter** – The state's cover letter must specify the mandatory procedure(s) from which the state is requesting an exemption.
- **Justification and Documentation** – A state must submit the justification and documentation addressed under Section III, as appropriate, for each exemption request and for each request for an extension of a previously approved exemption.

## **III. EXEMPTION CATEGORIES**

An exemption authorizes a state not to implement a mandatory procedure or to operate a procedure that does not comply with all of the requirements in the statute and regulations but contributes to an effective and efficient child support program. The following three categories of exemptions have different criteria a state must meet, as described below, for approval:

- Authority exemption
- Exemption not to implement a procedure
- Exemption to operate a similar procedure

### **A. Authority Exemption**

There are two types of authority exemptions that relieve a state from the requirement to enact a law in connection with a mandatory procedure as follows. States do not need to apply for extensions of existing authority exemptions.

1. The state already has an existing law or other legal authority for procedures under which it is operating in compliance with the intent of the federal mandatory procedure, although the state does not have a statute specifically addressing the matter. Under this circumstance, a state may request an exemption by submitting copies of the existing law or legal authority and explaining why the procedures under its law or legal authority demonstrate that the state complies with the federal mandatory requirement. For example, the Montana Supreme Court has ruled that there is no right to a jury trial for equity matters. This decision has been interpreted as covering paternity establishment proceedings; thus, there have been no jury trials for paternity establishment in Montana, and Montana received a corresponding state plan exemption on this basis.
2. There is currently one area where categorical authority exemptions are issued:
  - The state does not have authority to have a state income tax. Then the state may request an authority exemption from state income tax refund offset requirements by submitting an attestation from the appropriate state official that the state does not have a state income tax.

## **B. Exemption Not to Implement a Procedure**

A state may apply for an exemption from implementing any of the required procedures in [section 466\(a\) of the Act](#). The state must meet the two criteria below:

1. The state must provide a description of its existing method of operation or existing procedures that make the mandatory procedure unnecessary.
2. The state must submit evidence that implementation of a particular procedure would not increase the efficiency and effectiveness of the state's child support enforcement program.

A state must show why implementation of the particular mandated procedure would not be cost effective over a five-year period (for example, estimated increase or decrease in estimated collections or performance resulting from the procedure is less than estimated costs). Data must be provided to show estimated collections from and costs of the procedure over a five-year period, where appropriate.

The justification must include an estimate of these data:

- Developmental costs specific to implementation of the procedure.
- Operating costs specific to implementation of the procedure compared to any increase or decrease in performance as a result of implementing the procedure.
- Change in staffing levels required to operate the procedure.

Additionally, the state must compare the effectiveness of its current program to the effectiveness of the program were it to implement the procedure. Explain why and how the required procedure would either increase or decrease these areas:

- Average length of time to take an action in a case
- Number of support orders enforced
- Amount of collections

A state applying for an extension of an exemption not to implement a procedure must provide information on any changes in the state's operations or tools, procedures, or techniques available to the state that could alter the need or justification for the exemption or could change the level of performance, collections, or length of time for taking actions since its exemption request was previously granted.

### **Statistical Requirements**

A state must fully document the request and define any methodologies used to reach its conclusions. Methodologies must be conceptually sound and supported by data that are reliable and representative. For estimates, the state must identify any assumptions made or the sampling approaches used.

### **C. Exemption to Operate a Similar Procedure**

This exemption includes situations in which a state has already implemented a required law but wishes to change its law or procedure to operate an alternate procedure that will be as or more efficient and effective than the required procedure (for example, using the last four digits of a Social Security number would be as efficient and effective as using the full Social Security number). If a state applies for an exemption to operate a similar procedure, it must meet the two criteria below:

1. The state must provide a description of the similar procedure, including identification of those parts that conform to the statutory and regulatory requirements and those that do not conform.

Therefore, a state must describe its system. The description should address procedures used for the handling and processing of cases. The state must also identify those aspects of the similar procedure that do not conform to the statutory and regulatory requirements.

2. The state must submit evidence that implementation of the mandatory procedure would not increase the efficiency and effectiveness of the state's procedure or, if the state wishes to change to an alternate procedure, evidence that the alternate procedure will not decrease the efficiency and effectiveness of the state's program or that it will be at least as efficient and effective as the required procedure.

The state's evidence must include these estimates:

- Developmental costs of implementing the additional or alternate statutory or regulatory requirements.
- Operating costs compared to any increase or decrease in collections or performance as a result of the additional or alternate statutory or regulatory requirements.
- Change in staffing levels required to operate the additional or alternate statutory or regulatory requirements.

Additionally, the state must compare the effectiveness of its current program to the effectiveness of the program were it to implement the additional or alternate statutory or regulatory provisions, by responding to the following questions and explain how and why, as appropriate. Explain how and why the provision or alternate procedure would either increase or decrease these areas:

- Average length of time to take an action in a case
- Number of support orders enforced
- Amount of collections

A state applying for an extension of an exemption to operate a similar procedure must provide information on any changes in the state's operations or tools, procedures, or techniques available to the state that could alter the need or justification for the exemption or could change the level of performance, collections, or length of time for taking actions since its exemption request was previously granted.

### **Statistical Requirements**

A state must fully document the request and define any methodologies used to reach its conclusions. Methodologies must be conceptually sound and supported by data that are reliable and representative. For estimates, the state must identify any assumptions made or the sampling approaches used.

## **IV. REVOCATION OF EXEMPTION OR DISAPPROVAL OF REQUEST FOR EXTENSION**

As stated previously, exemptions are subject to review at any time. If circumstances change, the OCSE Commissioner may revoke an exemption. The regulations at [45 CFR 302.70\(d\)](#) state that if an exemption is revoked, or an extension of an exemption is not granted, the state must enact the appropriate laws and implement the mandatory practice by the beginning of the fourth month after the end of the first regular, special, budget or other session of the state's legislature that ends after the date the exemption is revoked or the extension is denied. If no state law is necessary, the state must establish and be using the procedure by the beginning of the fourth month after the date the exemption is revoked or the extension is denied.

## **V. CERTIFICATION OF IMPLEMENTATION OF MANDATORY PROCEDURES**

To ensure that states fully implement each mandatory procedure required under sections [454\(20\)](#) and [466 of the Act](#) and [45 CFR 302.70](#), states must submit for approval copies of all required laws, written policies and procedures, and administrative regulations or court rules as attachments to their IV-D state plan page for each mandated procedure.

The OCSE Regional Program Manager will review each submittal to ensure that all requirements are met. An approval of a state plan preprint page by the OCSE Regional Program Manager indicates that the state has fully implemented a procedure or has an exemption consistent with Section III of this document.