

Fw: HHS/OCSE Expense Reporting/FFP Reimbursement Form Has a Significant Error

Veronica Ragland <veronica@lean6s4govt.com>

Tue 9/26/2023 10:53 AM

To: Julie.Hopkins@acf.hhs.gov <Julie.Hopkins@acf.hhs.gov>

Cc: infocollection@acf.hhs.gov <infocollection@acf.hhs.gov>

Dear Julie,

On July 9th, I sent an email to HHS OIG with two issues. For nearly 3 decades, the 54 local child support programs have been constructively prevented from reimbursement on a federal funding participation (FFP) allowable expense -- FPLS user fees -- because of an error on OCSE 396 Form and Instructions. By rough estimates, the 54 local child support programs have been under-reimbursed by approximately \$149 million, or more, because of the error on OCSE 396 Form and Instructions.

I don't recall meeting you the brief time that I served briefly as the DFS Director, but I heard that you have a clear command of child support program finance, administration and operations, and that you operate with integrity. Your role in Grants management is key to my inquiry.

1. Two years ago, I informed HHS/OCSE of the specific Line 10 error on the OCSE 396 Instructions and Form that has prevented the 54 local child support programs from claiming a statutorily-eligible FFP expense for nearly three decades -- FPLS user fees paid by the local programs to OCSE! In the email below, Molly Jones responded that the "issue was raised, researched, resolved and no further action" after Ed in your organization sent a response that missed the error and I referred him to you (see the email string below).

I replied to Molly, copied above, seeking additional information to the vague response, but have not yet received a response to the following questions:

- a. Has the OCSE 396 Form and Instructions been revised? If so, please send the revised form or a link where I can find it. If not, when will it be revised?
- b. Has a communication gone out to the states? If so, please send a copy of the communication that has gone out to the states. If not, please when will the communication go out to the states?
- c. Has the form been published? If so, please send a link to where it is published. If not, when will it be published?

2. Julie, I am certain that you understand the error in Part 1 above; but, Part 2 is more of your scope of responsibility.

For nearly 3 decades, the 54 local child support programs have not received reimbursement from HHS/ACF Grants for an FFP eligible expense because the OCSE 396 Form and Instructions tells them NOT to carry FPLS User Fees (Line 10 (previously Line 11 in the 1990s)), over to the REGULAR Admin Costs line (Line 1b) used to calculate FFP reimbursement!

Having come from a local child support program, I know the difference that FFP makes to a local program. By my rough estimates, the local programs paid OCSE some \$200 million in FPLS User Fees between 1990 and 2020. As such, the 54 local programs SHOULD HAVE received some \$149 million in FFP reimbursements!

- a. Has your office been made aware of and acknowledged the error on the OCSE 396 Form & Instructions? If so, may I see the acknowledgement? If not, please see the below string of email,

which includes details of the error.

b. Is your office aware of the impact that the error is having on FFP reimbursement to the 54 local programs? If so, may I get a copy of any records that assess and define the impact? If not, when, where, and how will the impact be determined and published?

B. Has your office issued a communication to the 54 local programs informing them of this error and providing them a plan or instructions to cure the error? If so, may I get a copy of the communication? If not, when, where and how will the communication to the 54 local programs be sent?

Please know that I have made the formal inquiries to HHS/OIG and the InfoCollection mailbox. The issue is so buried that I am giving HHS, for now, the benefit of the doubt that the non-responses that I've received are because they simply don't understand the extent of this error.

I have also sent inquiries to Senator Mark Kelly's office and made a Freedom of Information Act request, so you may have already been gathering information about this matter. If not, please anticipate both inquiries.

Thank you, in advance, for your response to Parts 1 and 2 above.

Regards,

Veronica Ragland
623.680.5933

From: InfoCollection (ACF) <infocollection@acf.hhs.gov>

Sent: Wednesday, September 20, 2023 6:56 AM

To: Veronica Ragland <veronica@lean6s4govt.com>

Cc: InfoCollection (ACF) <infocollection@acf.hhs.gov>

Subject: RE: HHS/OCSE Expense Reporting/FFP Reimbursement Form Has a Significant Error

Good afternoon Ms. Ragland,

We appreciate the narrative and documentation you provided. We have been informed by the Office of General Counsel (OGC) that this issue was raised, researched, resolved and no further action is required.

Thank you for bringing this to our attention.

Molly Jones

ACF PRA Lead

OPRE Office of the Director

Office of Planning, Research, and Evaluation

Administration for Children and Families

U.S. Department of Health and Human Services

330 C Street SW, Washington, D.C. 20201

Phone: (202) 205-4724





From: Veronica Ragland <veronica@lean6s4govt.com>
Sent: Monday, September 18, 2023 9:56 AM
To: Pniak, Edward (ACF) <Edward.Pniak@acf.hhs.gov>
Cc: InfoCollection (ACF) <infocollection@acf.hhs.gov>
Subject: Re: HHS/OCSE Expense Reporting/FFP Reimbursement Form Has a Significant Error

Dear HHS (Edward or InfoCollection mailbox monitor),

May I get an update on my assertion that the OCSE Form 396 & Instruction has errors that have constructively prevented states from claiming federal financial participation (FFP) reimbursement for Federal Parent Locator Service fees for several decades?

The most recent information that I presented to you, Ed, provides statements from HHS/OGC and HHS Contractor Counsel supporting my conclusion that the FPLS fee paid by 54 state and local child support programs IS eligible for reimbursement per the federal financial participation (FFP) statute, and that states have not received the reimbursement for decades. Further, my research found that the OCSE Form 396 & Instructions has errors that constructively prevent the local child support programs from reporting the FPLS user fees (EXPENSE) they pay to OCSE on the line used to calculate FFP reimbursement.

Again, the HHS resources who would know include Lisette Pedre HHS/OGC, Elizabeth Morgan, HHS Contractor Counsel, Jennifer Francis HHS Contractor Finance, and Julie in the Grants Management Office (I believe you report to her, Ed).

Regards,

Veronica Ragland

From: Veronica Ragland <veronica@lean6s4govt.com>
Sent: Wednesday, August 16, 2023 6:37 AM
To: Pniak, Edward (ACF) <Edward.Pniak@acf.hhs.gov>
Cc: InfoCollection (ACF) <infocollection@acf.hhs.gov>
Subject: Re: HHS/OCSE Expense Reporting/FFP Reimbursement Form Has a Significant Error

Edward,

Thank you, again, for looking into the matter of how OCSE 396 Form & Instructions constructively prevents 54 state and local child support programs' from claiming federal financial participation (FFP) on an eligible child support expense -- the use of the Federal Parent Locator System (FPLS).

Perhaps this will help. HHS/OGC Lisette Pedre, counsel for an OCSE Contractor Leidos Elizabeth Morgan, and I all arrived at the same conclusion separately that FFP IS available to the states for fees they pay to the federal Office of Child Support for the use of FPLS, a statutorily defined, eligible FFP expense per 45 CFR 304.20(b)(5)(ii). I discovered and reported that **the OCSE 396 Form & Instructions constructively prevents states from claiming FFP on the FPLS Expense**, however.

Please see Lisette's and Elizabeth's memos referencing statutes and commentary from 1975 to 2021 attached. Also attached for convenience is an unofficial spreadsheet of the fees paid by states to OCSE for use of the FPLS system -- an EXPENSE that states SHOULD HAVE been able to claim for FFP according to the separate legal review of 3 attorneys and child support professionals -- HHS/OGC, Leidos counsel, and me. Two of the three attachments were included in my initial email.

Ask yourself and others why the OCSE 396 Form & Instructions references an INCOME statute when the states are reporting an FPLS EXPENSE.

Regards,
Veronica Ragland
623.680.5933

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***Exhibit 4 FFP Historical Record dated September 26, 2018, Page 2:**

*NOTE: To date, the Data Access legal team has not found law prohibiting FFP for FPLS fees paid by the states. In fact, 45 CFR §304.20(a) appears to require it, as follows: "Federal financial participation at the applicable matching rate is available for: *** (5) The establishment and operation of the State parent locator service including: (i) Utilization of appropriate State and local locate sources to locate noncustodial parents; (ii) Utilization of the Federal Parent Locator Service;***"*

RECOMMENDATION: Refer issue to OGC to determine: (1) whether and with what specificity a rulemaking is required to charge certain fees where not required by OCSE-specific law but are authorized under the IOAA; and (2) whether OCSE may allow states to claim FFP for costs associated with technical assistance tools provided by OCSE, such as the FPLS, portal, and other applications and services. States currently do claim FFP for CSNet expenditures as authorized under the 1988 OMB guidance.

(See also an excerpt from Page 4)

*45 CFR §304.20(a). Federal financial participation at the applicable matching rate is available for: *** (5) The establishment and operation of the State parent locator service including: (i) Utilization of appropriate State and local locate sources to locate noncustodial parents; (ii) **Utilization of the Federal Parent Locator Service;******

Note: Only the fees paid by the State pursuant to 453(e)(2) are considered program income. The fees paid under 454(17) and 453(k)(3) are not considered program income. Also see 45 CFR 304.23(e): "any expenditures which have been reimbursed by fees collected as required by this chapter" are not available for FFP.

***Exhibit 4a OGC Meeting Notes dated 2021-8-25, Pages 1-2:**

...(however, see also 45 CFR 304.20(a)(5)(ii) which

indicates that FFP is available to states "for ... utilization of the [FPLS]". If states were able to claim FFP for more of our fees, it would help mitigate increasing state fees.

Based on this understanding of our fees and the ability of states to claim FFP, we have these questions...

(continued to bottom of Page 1...)

...Lisette reviewed the initial questions and requested a meeting to discuss further. Lisette's initial comments, sent by e-mail to OCSE on 7/30/2021 are below:

Perhaps some costs could be characterized as CSENet fees; depends on what the cost is attributed to in modernizing the DFS system. We should discuss this further? It is unclear what the DFS legacy system entails. Is it just operation of the FPLS or does it include the other systems of records that OCSE maintains?

(Continues to top of Page 2)

See the 2017 memo from DFS regarding eligibility of FFP for the cost of fees paid by states to HHS that I think you're familiar with, attached. (Note: OGC has not commented on the 2017 memo or the 1988 OMB letter attached to the memo.

The fee that states pay under section 453(e)(2), 45 CFR 303.70(f)(2)(iii) and 302.35(c)(3)(iv) to furnish FPLS information to a resident parent, legal guardian, attorney or agent of a child not receiving TANF is not eligible for FFP. If the state receives reimbursement from the individual, then the state must declare the payment as program income.

The costs that states incur to use the FPLS, including the fee states pay under section 453(k)(3) of the Act is available for FFP pursuant to 45 CFR 304.20(b)(5)(ii). This regulation has been in effect since 1975 when the first child support regulations were issued

*State FPLS Fees 1990-2020:

I pulled the fees from data published on OCSE's website. Eighteen of the 30-years reported were published on OCSE's website. I used a state average fee amount for the 12 years where no data was published. As such, this is an "unofficial" accounting of FPLS fees paid by 54 state and territory, local child support programs for the use of the FPLS system and should be used for illustrative purposes only.

From: Veronica Ragland <veronica@lean6s4govt.com>
Sent: Tuesday, August 15, 2023 5:32 PM
To: Pniak, Edward (ACF) <Edward.Pniak@acf.hhs.gov>
Cc: InfoCollection (ACF) <infocollection@acf.hhs.gov>
Subject: Re: HHS/OCSE Expense Reporting/FFP Reimbursement Form Has a Significant Error

Please see the following written by the HHS/OGC attorney Lisette Pedre in 2018 supporting that the states are paying FPLS fees (EXPENSE) and that the states should be reimbursed for this EXPENSE.

This comes from the attachment that I shared in my initial email labeled Exhibit 4 Historical Records.

*NOTE: To date, the Data Access legal team has not found law prohibiting FFP for FPLS fees paid by the states. In fact, 45 CFR §304.20(a) appears to require it, as follows: "Federal financial participation at the applicable matching rate is available for: *** (5) The establishment and operation of the State parent locator service including: (i) Utilization of appropriate State and local locate sources to locate noncustodial parents; (ii) Utilization of the Federal Parent Locator Service,***"*

From: Veronica Ragland <veronica@lean6s4govt.com>
Sent: Tuesday, August 15, 2023 1:40 PM
To: Pniak, Edward (ACF) <Edward.Pniak@acf.hhs.gov>
Cc: InfoCollection (ACF) <infocollection@acf.hhs.gov>
Subject: Re: HHS/OCSE Expense Reporting/FFP Reimbursement Form Has a Significant Error

Edward,

Thank you for highlight the EXACT error and misunderstanding.

In 1992 and shortly thereafter, states COLLECTED FPLS fees from the public who sought FPLS information. When the national FPLS systems were developed, states received fewer public requests and began PAYING fees to the federal government (OCSE) to support the national FPLS system and receive interstate (now intergovernmental) child support data.

As such, states are no longer COLLECTING FPLS fees from the public...rather, they are now PAYING FPLS fees to OCSE. (See my original attachment that showed the amount of fees being paid. Also, see the memo from Lisette Pedre, HHS' own attorney.)

I refer you to back to 45 CFR 304.20(b)(5)(ii), which defines FPLS as an FFP eligible expense for states to receive child support data from the FPLS system.

The statute you cited is no longer relevant, but the form has not reflected the switch from states RECEIVING fees from the general public (INCOME) to the states not PAYING fees to the federal government (EXPENSE).

You might want to double check. There is an additional inquiry coming...

Regards,
Veronica Ragland

From: Pniak, Edward (ACF) <Edward.Pniak@acf.hhs.gov>
Sent: Tuesday, August 15, 2023 1:17 PM
To: Veronica Ragland <veronica@lean6s4govt.com>
Cc: InfoCollection (ACF) <infocollection@acf.hhs.gov>
Subject: RE: HHS/OCSE Expense Reporting/FFP Reimbursement Form Has a Significant Error

Ms. Ragland,

In response to your inquiry, we refer you to 45 CFR 303.70(f)(2)(iii) which states:

(iii) State funds used to pay the fee under section 453(e)(2) of the Act are not program expenditures under the State plan but are program income under § 304.50 of this chapter.

OCSE-AT-92-01 provides additional background information about this regulation as well as the types of administrative expenditures that may be claimed under 45 CFR 304.20 for utilizing the FPLS.

The OCSE-396 Form is accurate and aligns with the above mentioned guidance, OCSE-AT-92-01. Therefore, changes to the form are not required.

In addition, 304.20(b)(5) was promulgated in 1975 and has never been revised or deleted. OCSS recognizes the need for a regulatory technical fix which will be addressed.

Thank you and we hope this response addresses your concerns.

From: InfoCollection (ACF) <infocollection@acf.hhs.gov>
Sent: Friday, August 4, 2023 12:47 PM
To: Veronica Ragland <veronica@lean6s4govt.com>; InfoCollection (ACF) <infocollection@acf.hhs.gov>
Subject: RE: HHS/OCSE Expense Reporting/FFP Reimbursement Form Has a Significant Error

Ms. Ragland,

I just wanted to provide a brief update. The program office is discussing the issue and I will provide an update once next steps are decided upon. Due to vacation schedules, the response may be a bit delayed, but the issue is being looked into and we will be in touch as soon as possible with an update.

Thank you for your patience.

Best,

Molly Jones

ACF PRA Lead
OPRE Office of the Director
Office of Planning, Research, and Evaluation
Administration for Children and Families
U.S. Department of Health and Human Services
330 C Street SW, Washington, D.C. 20201
Phone: (202) 205-4724



From: Veronica Ragland <veronica@lean6s4govt.com>
Sent: Thursday, August 3, 2023 6:07 PM
To: InfoCollection (ACF) <infocollection@acf.hhs.gov>
Subject: Re: HHS/OCSE Expense Reporting/FFP Reimbursement Form Has a Significant Error

Dear ACF/HHS Representative:

I would appreciate an acknowledgement that this request has been received.

Regards,

Veronica Ragland

From: Veronica Ragland <veronica@lean6s4govt.com>
Sent: Sunday, July 9, 2023 4:49 PM
To: infocollection@acf.hhs.gov <infocollection@acf.hhs.gov>
Cc: Veronica Ragland <veronica@lean6s4govt.com>
Subject: Fw: HHS/OCSE Expense Reporting/FFP Reimbursement Form Has a Significant Error

Attn: Mary B. Jones
Re: HHS/ACF/OCSE Form 396 & Instructions

From: Veronica Ragland
Sent: Sunday, July 9, 2023 4:29 PM
To: fedreg.legal@nara.gov <fedreg.legal@nara.gov>; fedreg.info@nara.gov <fedreg.info@nara.gov>
Cc: Veronica Ragland <veronica@lean6s4govt.com>
Subject: HHS/OCSE Expense Reporting/FFP Reimbursement Form Has a Significant Error

re: Paperwork Reduction Act/Data Quality Act

Dear Federal Register Legal Team :

I would appreciate any guidance on where to report the following matter for review. Please acknowledge receipt of this email.

The Health & Human Services, Office of Child Support Enforcement (HHS/OCSE) OCSE 396 Form and Instruction used by 54 state and territory child support programs to report expenses and request federal

financial participation (FFP) reimbursement have significant errors that constructively exclude the states from receiving an FFP-eligible expense. OCSE 396 Form and Instruction errors have resulted in several decades of underpayments, an estimated \$149 million, to the 54 state and territory child support programs. OCSE 396 Form and Instructions is an Office of Management and Budget form.

According to HHS Office of General Counsel (HHS/OGC) communication records addressed to Linda Boyer, OCSE Division of Federal Systems Director, HHS/OGC informed Ms. Boyer that expenses associated with the Federal Parent Locator Service (FPLS) are FFP-eligible. Despite the multiple cycles that occurred between the 2007 and 2018 historical conversations, OCSE did not correct the 396 Form & Instructions when State FPLS "INCOME" shifted to State FPLS "EXPENSES" with the introduction of the National FPLS systems (somewhere around the adoption of PWRORA in 1996). Search Federal Register for OCSE 396 Form and Instructions review cycles.

I learned about and raised the matter to OCSE as Linda Boyer's successor during the 2021 OCSE Form and Instruction review cycle and publication in the Federal Register. The error remains on the OCSE 396 Form and Instruction, although I was assured that the Tribal child support programs' expense and FFP reimbursement form allows Tribal child support programs to claim FFP for FPLS expenses.

FFP Eligible Expenses: 45 CFR 304.20(b)(5)(ii) states the use of FPLS as an FFP eligible expense for child support operations.

HHS/OGC FFP for FPLS Historical Record dated September 26, 2018: See pages 2 and 4 of the attached where HHS/OGC tells Ms. Boyer that FPLS is an FFP-eligible expense per 45 CFR 304.20(b)(5)(ii).

OCSE 396 (and 396A) Instructions: (See 2021, 2007 and 2000 Form and Instructions.)

*Line 1B, p. 4, 2021 version: This line is assigned for Admin Costs and used to calculate FFP reimbursement amounts at 66%. Instruction for Line 1B, "DO NOT INCLUDE" section refer form preparers to a Special Reporting section on page 8.

****Special Reporting, p. 8, ALL VERSIONS: Instructions state that fees paid by States for FPLS are not considered administrative expenditures and should not be included on any other line on the report. The Instructions cite Social Security Act Section 453(e)(2) -- the FPLS INCOME statute. As a result, 54 states and territories have been constructively prevented from submitting FPLS EXPENSES for FFP reimbursement.***

*Line 10, p. 9, 2021 version: Fees for the use of FPLS (Originally Line 11 as seen in the 2000 version).

Social Security Act Section 453(e)(2): This section is cited as the reason for excluding State FPLS expenses from FFP; HOWEVER, this section refers to the HHS Secretary's authority to request FPLS information *from* the States, NOT State expenses for using the FPLS system.

OCSE Form: (See 2021 and original version.)

*Line 1B: Used to calculate FFP reimbursement at 66% (Originally Line 1a in the 2000 version)

*Line 10: State FPLS Fee line (Originally, the State FPLS Fee was reported on Line 11 as seen in the 2000 version)

Thank you for either directing or forwarding this concern to the correct place. I would like to see these errors corrected so that the 54 State and Territory child support programs receive the FFP reimbursement expected by their adherence to Child Support State Plan agreement/requirements.

Regards,

Veronica Ragland

