

TABLE 5—PERFORMANCE STANDARDS FOR ORDER ESTABLISHMENT—Continued  
(Use this table to determine the level of performance for the order establishment measure that will incur a penalty.)

Performance level	Increase over previous year	Incentive/Penalty
	w/out 5% increase .....	Penalty equal to 1-2% of TANF funds for the first failure, 2-3% for second failure, and so forth, up to a maximum of 5% of TANF funds.

(3) The *current collections* performance measure is set forth in §305.2 of this part. There is a threshold of 35 percent below which a State will be penalized unless an increase of 5 percent over the previous year is achieved (that qualifies it for an incentive). Performance

in the 35 percent to 40 percent range with no significant increase will not be penalized but neither will it qualify for an incentive payment. Table 6 shows at which level of performance the State will incur a penalty under the current collections measure.

TABLE 6—PERFORMANCE STANDARDS FOR CURRENT COLLECTIONS  
(Use this table to determine the level of performance for the current collections measure that will incur a penalty.)

Performance level	Increase over previous year	Incentive/Penalty
40% or more .....	no increase over previous year required	Incentive.
35% to 39% .....	w/5% increase over previous year .....	Incentive.
	w/out 5% increase .....	No Incentive/No Penalty.
less than 35% .....	w/5% increase over previous year .....	Incentive.
	w/out 5% increase .....	Penalty equal to 1-2% of TANF funds for the first failure, 2-3% for second failure, and so forth, up to a maximum of 5% of TANF funds.

(b) The provisions listed under §305.32 of this part also apply to the penalty performance measures.

**§305.42 Penalty phase-in.**

States are subject to the performance penalties described in §305.40 based on data reported for FY 2001. Data reported for FY 2000 will be used as a base year to determine improvements in performance during FY 2001. There will be an automatic one-year corrective action period before any penalty is assessed. The penalties will be assessed and then suspended during the corrective action period.

**§305.60 Types and scope of Federal audits.**

(a) OCSE will conduct audits, at least once every three years (or more frequently if the State fails to meet performance standards and reliability of data requirements) to assess the completeness, authenticity, reliability, accuracy and security of data and the systems used to process the data in calculating performance indicators under this part;

(b) Also, OCSE will conduct audits to determine the adequacy of financial management of the State IV-D program, including assessments of:

(1) Whether funds to carry out the State program are being appropriately expended, and are properly and fully accounted for; and

(2) Whether collections and disbursements of support payments are carried out correctly and are fully accounted for; and

(c) OCSE will conduct audits for such other purposes as the Secretary may find necessary.

(1) These audits include audits to determine if the State is substantially complying with one or more of the requirements of the IV-D program (with the exception of the requirements of section 454(24) of the Act relating to statewide-automated systems and section 454(27)(A) and (B)(i) relating to the State Disbursement Unit) as defined in §305.63 of this part. Other audits will be conducted at the discretion of OCSE.

(2) Audits to determine substantial compliance will be initiated based on substantiated evidence of a failure by

the State to meet IV-D program requirements. Evidence, which could warrant an audit to determine substantial compliance, includes:

(i) The results of two or more State self-reviews conducted under section 454(15)(A) of the Act which: Show evidence of sustained poor performance; or indicate that the State has not corrected deficiencies identified in previous self-assessments, or that those deficiencies are determined to seriously impact the performance of the State's program; or

(ii) Evidence of a State program's systemic failure to provide adequate services under the program through a pattern of non-compliance over time.

(d) OCSE will conduct audits of the State's IV-D program through inspection, inquiries, observation, and confirmation and in accordance with standards promulgated by the Comptroller General of the United States in "Government Auditing Standards."

**§ 305.61 Penalty for failure to meet IV-D requirements.**

(a) A State will be subject to a financial penalty and the amounts otherwise payable to the State under title IV-A of the Act will be reduced in accordance with § 305.66:

(1) If on the basis of:

(i) Data submitted by the State or the results of an audit conducted under § 305.60 of this part, the State's program failed to achieve the paternity establishment percentages, as defined in section 452(g)(2) of the Act and § 305.40 of this part, or to meet the support order establishment and current collections performance measures as set forth in § 305.40 of this part; or

(ii) The results of an audit under § 305.60 of this part, the State did not submit complete and reliable data, as defined in § 305.1 of the part; or

(iii) The results of an audit under § 305.60 of this part, the State failed to substantially comply with one or more of the requirements of the IV-D program, as defined in § 305.63; and

(2) With respect to the immediately succeeding fiscal year, the State failed to take sufficient corrective action to achieve the appropriate performance levels or compliance or the data sub-

mitted by the State are still incomplete and unreliable.

(b) The reductions under paragraph (c) of this section will be made for quarters following the end of the corrective action year and will continue until the end of the first quarter throughout which the State, as appropriate:

(1) Has achieved the paternity establishment percentages, the order establishment or the current collections performance measures set forth in § 305.40 of this part;

(2) Is in substantial compliance with IV-D requirements as defined in § 305.63 of this part; or

(3) Has submitted data that are determined to be complete and reliable.

(c) The payments for a fiscal year under title IV-A of the Act will be reduced by the following percentages:

(1) One to two percent for the first finding under paragraph (a) of this section;

(2) Two to three percent for the second consecutive finding; and

(3) Not less than three percent and not more than 5 percent for the third or a subsequent consecutive finding.

(d) The reduction will be made in accordance with the provisions of 45 CFR 262.1(b)-(e) and 262.7.

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

A State subject to a penalty under § 305.61(a)(1)(ii) or (iii) of this part may be determined, as appropriate, to have submitted adequate data or to have achieved substantial compliance with one or more IV-D requirements, as defined in § 305.63 of this part, if the Secretary determines that the incompleteness or unreliability of the data, or the noncompliance with one or more of the IV-D requirements, is of a technical nature which does not adversely affect the performance of the State's IV-D program or does not adversely affect the determination of the level of the State's paternity establishment or other performance measures percentages.