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**Comments by the Eastern Regional Interstate Child Support Association
Case Closure Regulations found at 45 CFR §303.11**

July 6, 2022

The Eastern Regional Interstate Child Support Association (ERICSA) is a not-for-profit organization whose mission is to build a stronger child support community to enhance the well-being of families. ERICSA membership is comprised of child support professionals from government agencies at the federal, state, tribal and local levels; private sector organizations; attorneys; and members of the judiciary. ERICSA's advocacy includes recommending and responding to changes in federal child support laws and regulations; reporting differences in child support policy and procedure among jurisdictions; and delivering innovative professional training to front-line child support staff and managers with particular emphasis on intergovernmental case processing.

ERICSA is pleased to submit a recommendation for OCSE to utilize Commissioner Gray's second 'P' – Process and revisit its policy interpretation of the case closure criteria as found at 45 CFR § 303.11 – Case closure criteria as it applies to case closure of interstate cases by the responding jurisdiction. We feel the recommended change would help Title IV-D agencies work more efficiently and effectively.

The current OCSE interpretation for how the case closure criteria applies to responding cases is that the only case closure criteria that are available to a responding jurisdiction to initiate case closure on a two-state intergovernmental child support case are #17, #18, and #19:

- (17) The responding agency documents failure by the initiating agency to take an action that is essential for the next step in providing services;*
- (18) The initiating agency has notified the responding State that the initiating State has closed its case under § 303.7(c)(11);*
- (19) The initiating agency has notified the responding State that its intergovernmental services are no longer needed;*

This is supported by the statement promulgated in AT-20-14, Updated Interstate Child Support Policy, particularly question 71:

Question 71: When can a responding state IV-D agency close its interstate case? Can a responding state agency close an interstate case when the initiating state agency will not provide information that the responding state needs in order to take the next step in case processing?

Answer 71: A responding state agency can only close a responding case using case closure criteria under 45 CFR 303.11 (b)(17) through (19): (17) The responding agency documents failure by the initiating agency to take an action that is essential for the next step in providing services; AT-20-14: Interstate Child Support Policy – date: 11/18/2020 37 (18) The initiating agency has notified the responding State that the initiating State has closed its case under § 303.7(c)(11); (19) The initiating agency has notified the responding State that its intergovernmental services are no longer needed. 45 CFR 303.11(b)(17) allows a responding agency to close an intergovernmental case if it documents failure by the initiating agency to take an action that is essential for the next step in providing services. Additionally, 45 CFR 303.11(d)(2) requires the responding agency to give 60- calendar-days’ notice to the initiating agency of the intent to close the case. If the initiating agency provides information in response to the notice that could lead to progress in the case, the responding agency must keep the case open. A responding state agency should use this case closure criterion sparingly and not as an automated action. States that experience systemic interstate case closure issues should elevate the concerns within their states and may contact their OCSE regional specialist

ERICSA feels there are additional items that must be considered when applying the case closure criteria to responding cases by the responding jurisdiction.

- The case closure regulations do not specifically identify closure reasons for use by an initiating state vs a responding state, with the exception of 303.11(b)17, and in that instance the designation is necessary as the closure reason is based on the relationship between the two states.
- Historically, the case closure regulations have undergone six updates since they were promulgated in 1989. It was not until AT-98-04 associated with Notice of Proposed Rulemaking, published in the **Federal Register** on February 24, 1998 (Volume 63, Number 36) that there was mention that a responding agency could not close a case without the initiating agency’s permission:

“Under Sec. 303.11, we propose to add a new subparagraph (12) to read, “The IV-D agency documents failure by the initiating State to take an action which is essential for the next step in providing services.” **Under the current regulations, a responding State is not free to close a case without the permission of the initiating State.** “

The AT further states that the proposed changes were intended “to make it easier for States to close unworkable cases, while ensuring that all viable cases remain opened.” The working group convened to address case closure requirements resulted in these revisions to the regulation. ERICSA encourages OCSE to once again review these requirements as sufficient time has passed between their implementation and now and states have new information regarding the impact of these regulation interpretations on their caseloads.

- Case closure is permissive, not required, and some states do not utilize all closure reasons while other states do. Requiring the responding jurisdiction to keep a case open solely at the behest of an initiating jurisdiction might force the responding jurisdiction to keep an interstate case open

when it would otherwise close a local case for the same reason. This seems to conflict with section 303.7 which requires a responding state to provide the same services to a responding case that it would an in-state case. It is reasonable to consider that if a state agency would initiate closure its own in-state or initiating case due to specific case situations, it would be inappropriate for that agency to continue trying to provide services on a responding case.

Consider the situation where a responding jurisdiction closes cases when the NCP is receiving SSI, but the initiating jurisdiction does not. The responding jurisdiction is expected to keep the two-state case open at the request of the initiating jurisdiction when the NCP's local case would be closed. Even if the two-state case remains open, the responding agency would not take any action under their procedures, resulting in inequality between the cases. If the case being kept open is unobligated, this has the potential to impact the responding agency's federal performance measures, especially if the state is a large interstate partner.

After discussing this item with multiple child support workers from many different states, it is ERICSA's opinion that it would be better if the responding jurisdiction could use ALL appropriate federal case closure criteria to close a case, not just #17 – 19.

Allowing the responding agency to initiate case closure on cases that meet the criteria in 45 CFR §303.11(d)(2), a 60-day case closure notice would be sent by the responding jurisdiction to the initiating jurisdiction informing them of their intent to close the interstate case, including the reasons for the case closure. This would give the initiating jurisdiction time to contact the responding jurisdiction if there is specific information available that should result in the two-state case remaining open. Even if the responding jurisdiction does close their case, the initiating jurisdiction could keep its local case open as it sees fit. If the case circumstances were to change in the future, a two-state case can be reopened.

It is therefore the recommendation of ERICSA that OCSE reconsider its interpretation of the case closure regulation as it relates to a responding jurisdiction only closing a two-state case if the initiating jurisdiction requests case closure, closes their own case, or fails to provide required documentation. We recommend allowing the responding jurisdiction to use all of its available case closure criteria when determining whether to keep a case open, or to close it.

The Board of Directors of ERICSA and its Officers appreciate OCSE's consideration of our request to reconsider the guidance provided related to federal case closure criteria as per 45 CFR §303.11.

Sincerely,



Tommy Howard
ERICSA President