WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In This Box

2013 ... PM 3:57

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: THE BUREAU FOR CHILD SUPPORT ENFORCEMENT TITLE NUMBER: 97

RULE TYPE: LEGISLATIVE CITE AUTHORITY: W.VA. CODE § 48-18-105 (19)

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: N/A

TITLE OF RULE BEING AMENDED: ___

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 7

TITLE OF RULE BEING PROPOSED: DISTRIBUTION OF SUPPORT PAYMENTS

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 25, 2013 AT 12 Noon ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

HEIDI L. TALMAGE, ESQUIRE
GENERAL COUNSEL
BUREAU FOR CHILD SUPPORT ENFORCEMENT
350 CAPITOL STREET, ROOM 147
CHARLESTON, WV 25301-3703

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BUREAU FOR CHILD SUPPORT ENFORCEMENT

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

MEMORANDUM

TO: The Office of the Secretary of State
Administrative Law Division

FROM: Heidi L. Talmage, Esquire
General Counsel

DATE:

SUBJECT: Brief Summary of Proposed Legislative Rule 97-7

Pursuant to West Virginia Code § 48-8-105 (19), the Bureau for Child Support Enforcement is authorized to file rules to address issues related to the establishment of paternity, the establishment, modification, and enforcement of support obligations, and other issues required to maintain compliance with Federal IV-D requirements. This proposed Legislative Rule explains the methods that obligors may use to make payments to the Bureau, the methods that the Bureau shall use to disburse collections to obligees, sets forth the hierarchy of payment allocation, and establishes the amount of any collection that the State will pass through to obligees whose support is assigned to the State.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Distribution of Support Payments

Type of Rule: [X] Legislative [ ] Interpretive [ ] Procedural

Agency: The Bureau for Child Support Enforcement

Address: 350 Capitol Street, Room 147

Charleston, WV 25301-3703

Phone Number: 304-356-4730 Email: kim.s.rider@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The contents of the proposed legislative rule do not change the type of services provided by the Bureau. The proposed rule also does not change the method of delivery of services. The proposed rule simply places the pertinent contents of the Bureau's existing policy manual into legislative rule format in order to bring the Bureau into compliance with State law. There will be no effect on either the costs of the services or the revenue of the Bureau.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Distribution of Support Payments

Rule Title: Distribution of Support Payments

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

None anticipated, as this is merely placing the current Policy Manual into Legislative Rule format in order to bring the Bureau into compliance.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: 6/4/13

sign here

Signature of Agency Head or Authorized Representative

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: ______________________

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:(*Agency Name, Address & Phone No.*) THE BUREAU FOR CHILD SUPPORT ENFORCEMENT
350 CAPITOL STREET, ROOM 147
CHARLESTON, WV 25301-3703

LEGISLATIVE RULE TITLE: DISTRIBUTION OF SUPPORT PAYMENTS

1. Authorizing statute(s) citation § 48-18-105 (19)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

   June 25, 2013

   b. What other notice, including advertising, did you give of the hearing?

   c. Date of Public Hearing(s) *or* Public Comment Period ended:

   July 25, 2013

   d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

   Attached ______________ No comments received ______________

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Kim Rider, Assistant to General Counsel
Bureau for Child Support Enforcement
350 Capitol Street, Room 147
Charleston, WV 25301-3703

304-356-4730 - phone 304-558-4092 - fax kim.s.rider@wv.gov

g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Heidi L. Talmage, General Counsel
Bureau for Child Support Enforcement
350 Capitol Street, Room 147
Charleston, WV 25301-3703

304-558-3780 - phone 304-558-4092 - fax

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

   a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

____

d. Attach findings and determinations and reasons:

Attached ______________________________________

Title 97
Legislative Rules
The Bureau for Child Support Enforcement

Series 7

Distribution of Support Payments

§ 97-7-1. General.

1.1. Scope. – The purpose of this rule is to establish the methods that obligors can use to make payments to the bureau, the methods that the bureau shall use to disburse collections to obligees, sets forth the hierarchy of payment allocation, and establishes the amount of any collection that the state will pass through to obligees whose support is assigned to the state.

1.2. Authority. – W. Va. Code § 48-18-105 (19)

1.3. Filing Date. – June 25, 2013

1.4. Effective Date. –

§ 97-7-2. Definitions.

2.1. Bureau. - The Bureau for Child Support Enforcement. The Bureau for Child Support Enforcement is established by W.Va. Code § 48-18-101 and is designated as the single state agency to fulfill the obligations of the State of West Virginia under Title IV-D of the Social Security Act. Pursuant to W. Va. Code § 48-18-122, the bureau operates the central state case registry.

2.2. Cash public assistance. - Monetary benefits provided to eligible individuals under Title IV-A of the Social Security Act. Eligibility for these benefits involves meeting income, asset and household composition requirements.

2.3. Department. - The Department of Health and Human Resources. The Department of Health and Human Resources is established pursuant to W. Va. Code § 5F-1-2 and contains within it the Bureau for Child Support Enforcement.

2.4. Obligee. - An individual or the estate of a decedent to whom a duty of support is owed or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered; or a state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or an individual seeking a judgment determining parentage of the individual's child.

2.5. Obligor. - An individual or the estate of a decedent who owes or is alleged to owe a duty of support, or who is alleged, but has not been adjudicated to be a parent of a child, or who is liable under an order of support.

2.6. Order of Support. - A judgment, decree or order, whether temporary, final or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, or the support and maintenance of a spouse or former spouse, which provides for monetary support, health care, arrearage or reimbursements.

2.7. Support. - The payment of money, including interest, for a child or spouse, ordered by a court of competent jurisdiction or an administrative agency authorized to establish support obligations, whether the payment is ordered in an emergency, temporary, permanent or modified order, the amount of unpaid support shall bear simple interest from the date it accrued, at a rate of five percent per annum, and proportionately for a greater or lesser sum, or for a longer or shorter time; or a payment, including interest, to third parties on behalf of a child or spouse, including, but not limited to, payments to medical, dental or educational providers, payments to insurers for health and hospitalization insurance, payments of residential rent or mortgage payments, payments on an automobile or payments for day care; or the payment of money, including interest, to a mother for the necessary expenses incurred by or for the mother in connection with her confinement or of other expenses in connection with the pregnancy of the mother.

2.8. Voluntary cooperation Medicaid cases – Medicaid recipients who are not required to cooperate with the establishment of paternity or the establishment and enforcement of child support obligations. These include recipients of Transitional Medicaid, Child-Only Medicaid recipients, and Medicaid cases where a pregnant woman is the only recipient of the service.

§ 97-7-3. Methods by which an obligor may make support payments.

3.1. An obligor who wishes to make a support payment or a payment on fees and costs may do so in a variety of ways:

3.1.a. The bureau accepts payments made by cash, money order or check during normal business hours in the fifty-four (54) county offices operated by the department and in the bureau's central administrative office in Kanawha County;

3.1.b. The bureau accepts payments made by money order or check by mail;

3.1.b.1. The mailing address of the bureau may be obtained by calling any office of the bureau;

3.1.c. The bureau accepts payments by electronic check or credit card through its twenty-four hour telephone service;

3.1.d. The bureau accepts payments by electronic check or credit card through its website.

§ 97-7-4. Hierarchy for allocation of support payments when an obligor owes support to one obligee.

4.1. All amounts collected by the bureau for the payment of child support, spousal support, medical support, fees and costs shall be allocated or credited to individual cases according to the terms of 45 C.F.R. § 302.51, 45 C.F.R. § 302.52, and the attached chart.

4.1.a. When an obligor owes support to only one obligee, all payments collected from that obligor shall be credited to the account of the obligee.

§ 97-7-5. Hierarchy for allocation of support payments when an obligor owes support to more than one obligee.

5.1. When more than one obligee is owed support by the same obligor, allocation of the amounts collected is dependent upon the source of the payment, the status of the support order, and the character of the amounts owed. In addition to the federal regulations related to the hierarchy of allocation set forth in § 97-7-4, the following additional rules apply.

5.2. When the payment is received that is not from an income withholding or from a state or federal income tax refund offset:

5.2.a. If none of the cases have an income withholding in place and none have an order of support, any payments received shall be allocated proportionately among the cases, based upon the number of children in the obligor's cases for whom paternity is established.

5.2.b. If none of the cases have an income withholding in place but all have orders of support, any payments received shall be allocated proportionately among the cases, based upon each case's relative percentage of the total current support obligation owed by the obligor in all of his or her cases.

5.2.c. If all of the cases have an order of support but not all have income withholding notices issued, any payments shall be allocated to the case or cases where income withholding notices have not been issued. The funds shall be allocated proportionately, based upon each case's relative percentage of the total current support obligation owed by the obligor in all of his or her cases without income withholding notices in place.

5.2.c.1. If all of the cases have an order of support but not all have income withholding notices issued, and one or more of the cases without an income withholding notice issued becomes overpaid, any portion of a payment creating an overpayment on a case or cases without an income withholding can be reallocated to a case or cases for the obligor with an arrearage.

5.2.d. If one or more of the cases has an order of support but one or more do not, any payments shall be allocated to the case or cases with the orders of support. The funds shall be allocated proportionately, based upon each case's relative percentage of the total current support obligation owed by the obligor in all of his or her cases with an order of support.

5.2.e. Payments may be accepted in cases in which paternity of a child is not established. However, if the obligor has cases in which paternity has already been legally established, the child for whom paternity is not established will receive no distribution until paternity is established.

5.3. If the source of the payment is an income withholding, the payment shall be allocated only to the cases of that obligor that have an income withholding issued to the employer or source of income that remitted the payment.

5.3.a. The payment is first divided proportionately among the cases that have an unpaid current support obligation for the month in which the payment is received. The proportion is based upon each case's current support obligation in relation to the total amount of current support owed by the obligor on cases with an income withholding notice issued.

5.3.b. If the payment amount satisfies all of the current support due during the month in which the payment is received on cases with an income withholding in place for this source of income, the balance of the payment shall be divided equally among the obligor's cases with an income withholding issued for this source of income for which an arrearage exists.

5.3.b.1. If any cases with an arrearage are owed an amount less than an evenly divided portion of the payment, only the amount necessary to pay off that arrearage will be applied to that case. The remainder of the payment will be divided equally among the remaining cases owed an arrearage.

5.3.c. If all cases for the obligor with an income withholding in place are paid in full, the balance of any payment collected shall be allocated to any remaining case or cases of the obligor, regardless of whether an income withholding has been issued, so long as collection by income withholding is not prohibited by court order or operation of law in that case.

5.4. If the source of the payment is a state tax refund offset, the payment shall be allocated and distributed pursuant to 45 C.F.R. § 303.102.

5.5. If the source of the payment is a federal tax refund offset, the payment shall be allocated and distributed pursuant to 45 C.F.R. § 303.72.

§ 97-7-6. Exceptions to the allocation process.

6.1. When a payment is received from a case-specific enforcement action, such as the filing of a lien or a contempt action, and the obligor has more than one case open with the bureau, the bureau employee assigned to the case may authorize an exception to the normal allocation process to apply the payment to the specific case.

6.2. When a court orders that a specific payment be applied to a specific debt, the bureau shall comply with the terms of the order.

§ 97-7-7. Distribution of collections to a support obligee.

7.1. Obligees may choose between two methods for the receipt of support collected.

7.1.a. Support payments may be accessed by the obligee through the use of a bureau-issued debit card; or

7.1.b. Support payments may be deposited electronically to the obligee's bank account.

7.2. If an obligee fails to make a selection, the bureau shall issue a debit card to the obligee and shall disburse all support collected for the obligee through the debit card.

7.3. In order to minimize delay and allow the obligee the opportunity to choose between a debit card or direct deposit to a bank account, the first three payments received on any case are disbursed by the bureau to the obligee by check. Thereafter, payments are made through the use of the debit card or the direct deposit.

7.4. An obligee may change the method of receipt at any time by completing the appropriate form. Forms are available at any bureau office and on the bureau's website.

§ 97-7-8. Distribution when an obligee's whereabouts are unknown.

8.1. When an obligee is owed current support or an arrearage and the bureau is unable to locate a valid address for the obligee, the bureau shall continue to collect the support obligation through all legal methods while searching for an address. Money to be distributed to the obligee shall be held by the bureau and shall be distributed to the obligee when a valid address is obtained. The allocation and distribution hierarchy shall not be manually overridden to allow funds properly allocated to the missing obligee' s case to be disbursed to another obligee, if the obligor owes a support obligation to more than one individual, or to the state.

8.2. If, after sixty days, the bureau has been unable to locate a valid address for the obligee and the obligee is not required by law to receive services from the bureau, the bureau may send a notice by first-class mail to the last known address of the obligee to advise the obligee that closure of the case will occur if an address is not supplied to the bureau within sixty calendar days of the date of the letter.

8.3. Should the sixty days elapse without the location of a valid address for the obligee, the bureau shall close the case for the obligee and apply any sums held for this obligee to any other support obligation, court costs or fees owed by the obligor. If no other support obligation, court costs or fees are owed by the obligor, the balance shall be refunded to the obligor.

§ 97-7-9. Support assigned to the state.

9.1. When an obligee receives cash public assistance or certain types of Medicaid services and is owed child, spousal or medical support by an obligor, the obligee is required by law to assign to the state the right to retain his or her child or spousal support collected, up to the amount of the cash public assistance or Medicaid received by the obligee, as a reimbursement to the state and federal government for the assistance received. Persons who receive voluntary cooperation Medicaid services are not subject to the provisions of this section.

9.2. The amount assigned to the state as reimbursement for the cash public assistance, Medicaid benefits or foster care maintenance payments is governed by federal law. For obligees whose cash public assistance benefits began on or after July 1, 2009, the assignment of support is governed by 45 C.F.R. § 302.32, 45 C.F.R. § 302.50, 45 C.F.R. § 302.51, 45 C.F.R. § 303.72, and Action Transmittal 07-05 from the Federal Office of Child Support Enforcement, dated July 11, 2007.

§ 97-7-10. Payment collected in excess of the amount due.

10.1. When an order of support has been established and an amount is collected which is in excess of the amount due and owing on all cases for the obligor, including all current support, arrearages, fees and costs, the excess collection is considered to be future support.

10.2. If the obligor owes an on-going support obligation, the future support shall be retained by the bureau until the next month's support is due, and shall be applied to that debt.

§ 97-7-11. Documentation of support payments.

11.1. W. Va. Code § 48-18-115 requires that all support payments owed to an obligee who is a recipient of services from the bureau shall be paid through the bureau.

11.1.a. Except as provided below, when payments are made directly to the obligee, the obligee shall immediately provide the payment to the bureau for allocation and distribution.

11.1.a.1. The receipt of the following types of benefits paid on behalf of a child shall be reported to the bureau by the obligee but are not required to be redirected to the bureau for allocation and distribution:

11.1.a.1.A. Any benefits received on behalf of a minor child from the Social Security Administration;

11.1.a.1.B. Any benefits received on behalf of a minor child from the United States Department of Veterans Affairs;

11.1.a.1.C. Any benefits received on behalf of a minor child from the Railroad Retirement Board;

11.1.a.1.D. Any benefits received from the United States Department of Labor Black Lung Benefits program.

11.1.b. If the obligee is a recipient of cash public assistance and he or she fails to immediately provide the payment to the bureau for allocation and distribution, the bureau employee assigned to the case shall report this information to the IV-A agency when it is discovered.

11.1.c. If the obligee fails to provide the payment to the bureau for allocation and distribution, the bureau shall verify the receipt and amount of the payment before crediting the payment against any current support or arrearage owed by the obligor.

11.1.c.1. Verification may occur through a variety of methods.

11.1.c.1.A. The parties may agree on the amount and date of the payments made; or

11.1.c.1.B. A party may present payment receipts, cancelled checks, copies of money orders, or other documentation of payment.

11.1.d. Upon receiving documentation of alleged payments by one party to the case, the bureau employee assigned to the case shall provide copies of the documentation to the other party, giving him or her ten (10) days notice to object in writing to the offers of proof submitted.

11.1.d.1. If no objection is received, the payment shall be credited.

11.1.d.2. If an objection is received, either party to the action or the bureau may file a motion with the court of competent jurisdiction to determine the amount of the arrearage due and to grant a judgment for any support due and owing.

§ 97-7-12. Relating to the receipt of Social Security benefits by the minor child.

12.1. A child's Social Security benefits based upon the disability of his or her parent may only be applied against the parent's current child support obligation or arrearage if a court of competent jurisdiction enters an order which specifically authorizes such a set-off.

§ 97-7-13. Designation of Court-Ordered Support Amounts.

13.1. When an order of support specifies that the monthly support amount is "per child", the number of children in the household shall be multiplied by the per child amount to determine the monthly support obligation.

13.1.a. As each child reaches the age or circumstances for emancipation or if a child moves from the home, the monthly support obligation shall be automatically reduced by the "per child" amount.

13.2. If the order does not express the support amount as "per child", the monthly support amount is the support for all of the minor children of the obligor residing in the household. The support amount does not reduce automatically when a child leaves the home or is legally emancipated.

13.3. If an order of support states that the monthly support amount is for the minor child or children and the spouse or former spouse, and the order does not designate a specific amount as spousal support, the entire monthly support amount shall be considered to be child support until there is no eligible child in the household. When there is no eligible child in the household, the entire sum shall be designated as spousal support.

§ 97-7-14. Payments from obligors or employers returned for insufficient funds.

14.1. When the bureau receives a check that is dishonored due to insufficient funds, the bureau employee receiving notice of the dishonor shall cancel any disbursement pending within the bureau's payment system that is based upon the dishonored check.

14.2. If disbursement has already occurred to the obligee of any portion of the payment made by the dishonored check, the bureau shall send a demand letter to the maker of the check to demand payment of the disbursed portion of the check. This letter and the procedures to be followed by the bureau to attempt to collect any disbursed funds shall be in full compliance with W. Va. Code § 55-16-1.

14.3. If, within a twelve-month period commencing from the date of the first notice of dishonor of a check, the bureau receives a second dishonored check from the same maker, the bureau shall advise the maker by certified letter that future payments of support shall be made in the form of a certified check, cashier's check or by money order.

14.3.a. If the maker continues to remit payments to the bureau using a personal check, or a business check if the maker is an employer, the bureau shall cash the check or checks but shall not disburse the funds from the check until the bureau receives confirmation that the check has been honored by the maker's financial institution.

14.3.b. Upon receipt of six consecutive payments honored by the maker's bank, the bureau shall again disburse payments upon receipt.

§ 97-7-15. Checks reported as lost by the obligee or obligor.

15.1. When an obligee or obligor reports that a check issued to him or her by the bureau has been lost, the bureau shall issue a replacement check if the lost check has not been cashed and the payee shall sign an appropriate affidavit stating the circumstances surrounding the loss of the check. If the affidavit is not signed in the presence of a bureau employee, the affidavit shall be signed before a Notary Public.

15.2. If the check has been cashed, the bureau shall not replace the check but shall cooperate with law enforcement to assist in the investigation of the crime if a report is filed by the obligee with his or her law enforcement agency.

§ 97-7-16. Refunds to an obligor.

16.1. If the bureau receives properly withheld funds in excess of the amount due from an obligor, and the overpayment was caused by an error on the part of the bureau, the bureau shall refund the overpayment to the obligor, regardless of whether the overpayment has been collected from the obligee.

16.2. If the bureau receives funds in excess of the amount due from an obligor, and if the overpayment has already been disbursed to the obligee, and the overpayment was caused by a circumstance outside the control of the bureau, the bureau shall not refund the overpayment until the overpayment sum has been repaid by the recipient of the support payment. If any portion of the overpayment remains in the possession of the bureau, the bureau shall refund that portion of the overpayment.

16.2.a. Prior to issuing a refund to the obligor, the bureau employee assigned to the case shall attempt to contact the obligor to determine if he or she wishes to waive the return of the overpayment. If not waived, the funds shall be returned to the obligor within thirty days of the time that the obligee repays the bureau.

16.3. If the bureau receives funds in excess of the amount due from the obligor and the funds were properly withheld, the bureau shall apply the properly withheld funds to any unpaid current support obligation and arrearage owed by the obligor in any of his or her cases. The bureau shall also retain an amount no greater than one month of the obligor's current support obligation in all cases, and shall hold that sum until the support for the next month shall become due. Any funds in excess of one month of the obligor's current support obligation shall be refunded to the obligor within thirty days of their receipt.

16.4. An obligee who receives an overpayment or any other payment for which the obligee was not entitled to receive shall promptly return the sum of the overpayment to the bureau upon notice by the bureau that the amount received was in error.

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08000.15.15 Hierarchy

Once a payment is allocated to a case, the payment is processed through a hierarchy set by Federal regulations. [§457 of the Social Security Act and 45 CFR 302.51] The particular hierarchy for processing depends upon the Case Type. Each Case Type has its own hierarchy. These are as follows:

A. Distribution in Current TANF Cases

Payments collected shall be distributed in current TANF cases in the following manner:

1. The amount is applied first to current support owed and is retained by the State to reimburse the Current Period URA.
2. Current support paid that is in excess of the Current Period URA will be sent to the family. (EOC)
3. Any excess is applied to State arrears up to the amount of the Total URA and is retained by the State.
4. Any State arrearage amount paid in excess of the Total URA is sent to the family. (D7 check)
5. Any excess is applied to family arrears and is sent to the family.
6. Any amount paid in excess of the current support obligation, the State arrearage, and Family arrearage amounts is applied to future support.

The hierarchy for current TANF cases is as follows:

<u>**CURRENT TANF CASES - Case Type "A"**</u>

Type **General Rule**

Current Child Support
Current Medical Support
Current Spousal Support
IV-A Child Support Arrears
IV-A Medical Support Arrears
IV-A Medical Expense Arrears

IV-A Spousal Support Arrears
IV-A Child Support Interest
IV-A Medical Support Interest
IV-A Medical Expense Interest
IV-A Spousal Support Interest
Non IV-A Child Support Arrears
Non IV-A Medical Support Arrears
Non IV-A Medical Expenses Arrears
Non IV-A Spousal Support Arrears
Non IV-A Child Support Interest
Non IV-A Medical Support Interest
Non IV-A Medical Expenses Interest
Non IV-A Spousal Support Interest
BCSE AP Debt
Blood Test Fee
Genetic Test Fee
Court Cost Fee
Future Support

B. Distribution in Former TANF Cases

In former TANF cases, collections are distributed in the following order:

1. First, the amount collected is applied to the current support obligation and sent to the family.

2. Any amount in excess of the current support is applied as follows:

   a. Family Arrears and sent to the family;

   b. State Arrears and retained by the State;

c. Any amount paid in excess of the Family arrears and State arrears is placed in future support.

The hierarchy for former TANF cases is as follows:

FORMER TANF CASES - CASE TYPE "P"

Type

Current Child Support
Current Medical Support
Current Spousal Support
Non IV-A Child Support Arrears
Non IV-A Medical Support Arrears
Caretaker Medical Expense Arrears
Non IV-A Spousal Support Arrears
Non IV-A Child Support Interest
Non IV-A Medical Support Interest
Caretaker Medical Expense Interest
Non IV-A Spousal Support Interest
IV-A Child Support Arrears
IV-A Medical Support Arrears
Medicaid Medical Expense Arrears
IV-A Spousal Support Arrears
IV-A Child Support Interest
IV-A Medical Support Interest
Medicaid Medical Expense Interest
IV-A Spousal Support Interest
BCSE AP Debt
Blood Test Fee
Genetic Test Fee

Court Cost Fee
Future Support

C. Distribution in Non-TANF Cases

In non-TANF cases, collections are distributed in the following order:

1. First, the amount collected is applied to the current support obligation and sent to the family.

2. Any amount in excess of the current support is applied as follows:

   a. Family Arrears and sent to the family;

   b. Any amount paid in excess of the Family arrears is placed in futures.

The hierarchy for Non-TANF cases is as follows:

<u>Non-TANF Cases - Case Type "N"</u>

Type

Current Child Support
Current Medical Support
Current Spousal Support
Non IV-A Child Support Arrears
Non IV-A Medical Support Arrears
Caretaker Medical Expense Arrears
Non IV-A Spousal Support Arrears
Non IV-A Child Support Interest
Non IV-A Medical Support Interest
Caretaker Medical Expense Interest
Non IV-A Spousal Support Interest
Blood Test Fee

Genetic Test Fee
Court Cost Fee
Futures

LexisNexis

*** This section is current through the April 25, 2013 ***
*** issue of the Federal Register ***

TITLE 45 -- PUBLIC WELFARE
SUBTITLE B -- REGULATIONS RELATING TO PUBLIC WELFARE
CHAPTER III -- OFFICE OF CHILD SUPPORT ENFORCEMENT (CHILD SUPPORT ENFORCEMENT PROGRAM), ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES
PART 302 -- STATE PLAN REQUIREMENTS

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45 CFR 302.52

§ 302.52 Distribution of support collected in Title IV-E foster care maintenance cases.

Effective October 1, 1984, the State plan shall provide as follows:

(a) For purposes of distribution under this section, amounts collected in foster care maintenance cases shall be treated in accordance with the provisions of § 302.51(a) of this part.

(b) The amounts collected as support by the IV-D agency under the State plan on behalf of children for whom the State is making foster care maintenance payments under the title IV-E State plan and for whom an assignment under section 471(a)(17) of the Act is effective shall be distributed as follows:

(1) Any amount that is collected in a month which represents payment on the required support obligation for that month shall be retained by the State to reimburse itself for foster care maintenance payments. Of that amount retained by the State as reimbursement for that month's foster care maintenance payment, the State IV-D agency shall determine the Federal government's share so that the State may reimburse the Federal government to the extent of its participation in financing of the foster care maintenance payment.

(2) If the amount collected is in excess of the monthly amount of the foster care maintenance payment but not more than the monthly support obligation, the State must pay the excess to the State agency responsible for supervising the child's placement and care under section 472(a)(2) of the Act. The State agency must use the money in the manner it determines will serve the best interests of the child including:

(i) Setting aside amounts for the child's future needs; or

(ii) Making all or part of the amount available to the person responsible for meeting the child's daily needs to be used for the child's benefit.

(3) If the amount collected exceeds the amount required to be distributed under paragraphs (b)(1) and (2) of this section, but not the total unreimbursed foster care maintenance payments provided under title IV-E or unreimbursed assistance payments provided under title IV-A, the State shall retain the excess to reimburse itself for these payments. If past assistance or foster care maintenance payments are greater than the total support obligation owed, the maximum amount the State may retain as reimbursement for such payments is the amount of such obligation. If amounts are collected which represent the required support obligation for periods prior to the first month in which the family received assistance under the State's title IV-A plan or foster care maintenance payments under the State's title IV-E plan, such amounts may be retained by the State to reimburse the difference between such support obligation and such payments. Of the amounts retained by the State, the State IV-D agency shall determine the Federal government's share of the amount so that the State may reimburse the Federal government to the extent of its participation in financing the assistance payments and foster care maintenance payments.

(4) Any balance shall be paid to the State agency responsible for supervising the child's placement and care and shall be used to serve the best interests of the child as specified in paragraph (b)(2) of this section.

(5) If an amount collected as support represents payment on the required support obligation for future months, the amount shall be applied to those future months. However, no amounts shall be applied to future months unless amounts have been collected which fully satisfy the support obligation assigned under sections 408(a)(3) 471(a)(17) of the Act for the current month and all past months.

(c) When a State ceases making foster care maintenance payments under the State's title IV-E State plan, the assignment of support rights under section 471(a)(17) of the Act terminates except for the amount of any unpaid support that has accrued under the assignment. The IV-D agency shall attempt to collect such unpaid support. Under this requirement, any collection made by the State under this paragraph must be distributed in accordance with paragraph (b)(3) of this section.

(Approved by the Office of Management and Budget under control number 0960-0385)

HISTORY: *[50 FR 19648*, May 9, 1985, as amended at *50 FR 31719*, Aug. 6, 1985; *51 FR 37731*, Oct. 24, 1986; *64 FR 6237, 6249*, Feb. 9, 1999, as confirmed at *68 FR 25293, 25303*, May 12, 2003]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
42 U.S.C. 651 through 658, 659a, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: Nomenclature changes to Chapter III appear at *66 FR 39450, 39452*, July 31, 2001.]

NOTES APPLICABLE TO ENTIRE PART:
[PUBLISHER'S NOTE: Nomenclature changes to part 302 appear at *64 FR 6237, 6247*, Feb. 9, 1999.]

CASE NOTES Applicable to entire Part:Part Note

Attachment (

OFFICE OF CHILD SUPPORT ENFORCEMENT

An Office of the Administration for Children & Families

http://www.acf.hhs.gov/programs/css/resource/assignment-and-distribution-of-child-support-under-sections-408a3-and-457

Assignment and Distribution of Child Support Under Sections 408(a)(3) and 457 of the Social Security Act

AT-07-05

July 11, 2007

Information About: Other Public Partners, TANF (IV-A), State/Local Child Support Agencies, Tribal Child Support Agencies
Topics: Case Management, Collections/Distribution/State Disbursement Unit (SDU)
Types: Policy, Action Transmittals (AT)
Tags: Deficit Reduction Act

ACTION TRANSMITTAL

AT-07-05

ATTACHMENT: Instructions for the Assignment and Distribution of Child Support Under Sections 408(a)(3) and 457 of the Social Security Act

DATE: July 11, 2007

TO: State and Tribal Agencies Administering Child Support Enforcement Plans under Title IV-D of the Social Security Act and Other Interested Individuals

SUBJECT: Instructions for the Assignment and Distribution of Child Support Under Sections 408(a)(3) and 457 of the Social Security Act (the Act)

PURPOSE: This Action Transmittal (AT) sets forth Federal guidance and provides examples relating to the provisions of sections 408(a)(3) and 457 of the Act for the assignment and distribution of child support

BACKGROUND: On February 8, 2006, the President signed into law the Deficit Reduction Act of 2005 (the DRA), Public Law 109-171. Effective October 1, 2009, or at State option, as early as October 1, 2008, section 7301 of the DRA will take effect, revising section 408(a)(3) and section 457 of the Act. Section 408(a)(3) pertains to the assignment of child support under title IV-A of the Act, and section 457 governs the distribution of child support under title IV-D of the Act

Regulations at 45 CFR 302.50, 302.51, 302.52 and 303.72 address assignment of rights to support as a condition of eligibility for assistance under title IV-A of the Act and distribution of support collections under title IV-D of the Act. 45 CFR 302.32 provides for the treatment of child support by the title IV-A and IV-D agencies. To the extent that these regulations are inconsistent with the new statute, they are superseded by the new statutory requirements. Existing regulations will be revised to delete any inconsistent requirements

Effective October 1, 2009, or as early as October 1, 2008 at State option, section 408(a)(3) of the Act is amended to limit the assignment of support rights to the amount of support that accrues during the period that a family receives assistance, not to exceed the cumulative amount of Unreimbursed Assistance (URA). Sections 457(b)(1)(A) and (2)(A) permit the state to retain rights to support obligations previously assigned

Also effective October 1, 2009, or as early as October 1, 2008 at State option, section 457 of the Act is amended to provide States with the option to:

1. Pay more child support to Former-Assistance families,
2. Pass through certain amounts of child support, including the Federal share, to Current-Assistance and Former-Assistance families,
3. Discontinue assignments executed prior to October 1, 1997,
4. Discontinue assignments executed from October 1, 1997 to September 30, 2009 (or September 30, 2008) for Pre-Assistance arrearages, and
5. Continue to distribute collections applied to arrearages in Former-Assistance cases according to the requirements contained in the former section 457(a)(2)(B) of the Act, rather than applying the amendments made to this section by the DRA

CONTENTS: This action transmittal provides guidance on sections 408(a)(3) and 457 of the Act for the assignment and distribution of child support collections

EFFECTIVE DATE: These instructions are effective October 1, 2009, or as early as October 1, 2008 at State option. Related Action Transmittals OCSE-AT-97-17 and OCSE-AT-98-24 remain in effect until these effective dates, and will continue to remain in effect after these dates to the extent the contents do not conflict with this AT

RELATED MATERIAL: Action Transmittal OCSE-AT-97-17, dated October 21, 1997, "Instructions for the distribution of child support under section 457 of the Social Security Act." Action Transmittal OCSE-AT-98-24, dated August 19, 1998, "Instructions for the Distribution of Child Support Under Section 457 (a)(6) of the Social Security Act, Definition of Assistance Paid to the Family for Child Support Purposes, and Additional Questions and Answers." Action Transmittal OCSE-AT-99-10, dated September 15, 1999, "Definition of 'Assistance Paid to the Family' for Child Support Enforcement Collection Purposes."

INQUIRIES: ACF OCSE Regional Program Managers

Margot Bean
Commissioner
Office of Child Support Enforcement

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I. Overview

The Deficit Reduction Act of 2005 (the DRA) establishes a number of new options and requirements for the assignment of support rights and the distribution of child support collections. Under the DRA provisions, State IV-D programs will have much greater flexibility in determining how much support is paid directly to Current-Assistance and Former-Assistance families, as well as the order in which assigned and unassigned arrearages are paid.

This Action Transmittal (AT) sets forth the requirements and the range of options available to States. An overview of these provisions follows.

Assignment of Support Rights

The DRA revises section 408(a)(3) of the Act to eliminate the assignment of Pre-Assistance Arrearages in new assistance cases, effective not later than October 1, 2009, or as early as October 1, 2008 at State option. Under this requirement, assignments executed on or after the effective date will be limited to the amount of support that accrues during the assistance period, not to exceed the cumulative amount of Unreimbursed Assistance (URA). Such support may include retroactive support for the period that the family received assistance. See Q&A 2.

Distribution Sequence in Former-Assistance Cases

Under the DRA, States must choose to distribute arrearages in Former-Assistance cases using PRWORA distribution rules, or using the new DRA distribution rules contained under the amended section 457(a)(2)(B) of the Act. The new DRA distribution rules for Former-Assistance cases require States to first pay all arrearages owed to the family before paying Assigned Arrearages.

States choosing DRA distribution in Former-Assistance cases will apply these rules regardless of the payment type, including payments received via the Federal tax refund offset program. There may be situations where both a PRWORA and a DRA State may collect support through Federal income tax refund offset. In such cases, each State would follow its own rules for distribution.

Federal Tax Refund Offset Collections

Under former section 457(a)(2)(B)(iv) of the Act, Federal tax refund offset collections must be distributed to arrearages only, and must be applied first to any arrearages owed to the State to reimburse public assistance. If States choose the new distribution sequence for Former-Assistance cases under the DRA, States must treat Federal tax refund offset collections the same as any other collections for purposes of distribution. States choosing to follow the DRA distribution rules will distribute Federal tax refund offset collections first to current support, then to arrearages. Also, for Former-Assistance families, States selecting this option will distribute these collections to Family Arrearages before Assigned Arrearages.

For those States that choose to continue using PRWORA distribution rules in Former-Assistance cases, payments received via Federal tax refund offset will apply the distribution rules contained under former section 457(a)(2)(B)(iv) of the Act. These distribution rules require that Federal tax refund offset payments be applied first to Conditionally- and/or Permanently-Assigned Arrearages, then to arrearages owed to the family, and never to current support.

For both PRWORA and DRA distribution States, section 464(a)(3)(B) of the Act and 45 CFR 303.72(h)(5) still apply and permit a delay in distribution of Federal tax refund offset amounts to satisfy non-IV-A past-due support for up to six months in joint return cases. This is an exception to the normal two-day disbursement rules under section 454B of the Act.

Child Support Pass-Through Payments

States may pass through both the Federal and State share of certain amounts of assigned support collections to both Current-Assistance and Former-Assistance families without paying to the Federal government the Federal share of the amounts passed through. In Current-Assistance cases, the Federal share will be waived for up to $100 per month for families with one child and up to $200 per month for families with two or more children, as long as both the Federal and State share of the Pass-Through is paid to the family and is disregarded in determining the type and amount of assistance provided to the family.[1] In Former-Assistance cases, the Federal share will be waived for any amounts applied to Assigned Arrearages as long as both the Federal and State share of those amounts are paid to the family, and not retained by the State.

Discontinuation of Assignments[2]

As noted above, the DRA provides that States may not take any assignments of Pre-Assistance Arrearages in any new TANF cases, starting not later than October 1, 2009.[3] However, older assignments of Pre-Assistance Arrearages in

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[1] The total amount of the Pass-Through which meets these criteria is called the "excepted portion" and is defined in section 457(a)(7)(B)(ii) of the Act.

[2] A State may only discontinue its own assignments.

[3] At state option, the effective date of the DRA provision may be as early as October 1, 2008, but no later than October 1, 2009. Reference throughout this Action Transmittal to October 1, 2009

effect when the State implements the DRA requirement will remain in effect, unless the State chooses to discontinue these assignments. The DRA permits States to discontinue some or all of its (PRWORA) assignments executed between October 1, 1997 and the date the State implements the DRA assignment change, to the extent that Pre-Assistance Arrearages were assigned.[4]

A State may also discontinue some or all of its assignments executed prior to October 1, 1997. Because assignments executed before October 1, 1997 encompass both Pre-Assistance and During-Assistance Arrearages without making any distinction between these two types of arrearages (both types are "permanently-assigned"), the discontinuation of these assignments allows States to discontinue the assignments of any or all of its Pre-Assistance and/or During-Assistance Arrearages that accrued under such assignments. See Question and Answer 23 for more discussion on this option.

States have wide discretion on which of the many DRA distribution options they choose to implement. Once the options become effective, as early as October 1, 2008, States may choose to implement these options at any time and may change options regarding DRA/PRWORA distribution or pass-through policies over time.

II. Definitions used in this Action Transmittal

As used in this document:

(a) ASSISTANCE PAID TO THE FAMILY – The term "assistance paid to the family" for child support enforcement collection purposes, means assistance under the Temporary Assistance for Needy Families (TANF) program as defined in 45 CFR 260.31, that is in the form of money payments in cash, checks, or warrants immediately redeemable at par (see Action Transmittal OCSE-AT-99-10, dated September 15, 1999). The definition of "Assistance Paid to the Family" includes assistance paid to the family under the former Aid to Families with Dependent Children (AFDC) program.

(b) ASSISTANCE FROM THE STATE – The term "assistance from the State" means TANF assistance under the State program funded under title IV-A of the Act as defined in 45 CFR 260.31.

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implementation dates should generally to be taken to mean "as early as October 1, 2008, but no later than October 1, 2009."

[4] These Pre-Assistance arrearages are also known as Temporarily-Assigned or Conditionally-Assigned arrearages.

The definition "Assistance from the State" also includes assistance paid to the family under the former Aid to Families with Dependent Children (AFDC) program.

(c) FEDERAL SHARE – The term "Federal share" means that portion of the amount collected, which does not exceed the cumulative unreimbursed assistance, resulting from the application of the Federal medical assistance percentage in effect for the fiscal year in which the amount is distributed.

(d) FEDERAL MEDICAL ASSISTANCE PERCENTAGE – The term "Federal medical assistance percentage" means--

(1) 75 percent, in the case of Puerto Rico, the Virgin Islands, Guam, and American Samoa; or

(2) The Federal medical assistance percentage (as defined in section 1905(b) of the Act, as such section was in effect on September 30, 1995) in the case of any other State.

(e) STATE SHARE – The term "State share" means 100 percent of the amount collected which does not exceed the cumulative unreimbursed assistance, minus the Federal share.

(f) CURRENT-ASSISTANCE CASE – The term "current-assistance case" means any IV-D case which is currently receiving assistance.

(g) FORMER-ASSISTANCE CASE – The term "former-assistance case" means any IV-D case which formerly received AFDC or TANF.

(h) NEVER-ASSISTANCE CASE – The term "never-assistance case" means any IV-D case which has never received AFDC or TANF.

(i) CURRENT SUPPORT – The term "current support" means, with respect to amounts collected as support on behalf of a family, the amount designated as the monthly support obligation of the noncustodial parent in the order requiring the support or calculated by the State based on the order.[5]

(j) ASSIGNED ARREARAGES – The term "assigned arrearages" means those arrearages assigned to the State under section 408(a)(3) of the Act that do not exceed the cumulative amount of unreimbursed assistance paid to the family on the date the family leaves assistance.

[5] See section 457(c) of the Act.

(1) For assignments executed before October 1, 2009, the term "assigned arrearages" could include:

(A) "Permanently-Assigned Arrearages" – The term "permanently-assigned arrearages" means those arrearages that do not exceed the cumulative amount of unreimbursed assistance paid to the family as of the date the family leaves the assistance rolls and include:

(i) Arrearages that are or were assigned under an assignment of support rights in effect on September 30, 1997, or 1998,[6] and

(ii) Arrearages that accrued under an assignment executed on or after October 1, 1997, or 1998, during the time a family received assistance;

(B) "Temporarily-Assigned Arrearages" – The term "temporarily-assigned arrearages" means those arrearages that do not exceed the cumulative amount of unreimbursed assistance paid to the family as of the date the family leaves the assistance rolls, which accrued prior to the family receiving assistance (pre-assistance) and which were assigned to the State after September 30, 1997, or 1998, and before October 1, 2009. These arrearages are not permanently assigned. However, the temporary assignment converts to a conditional assignment when the family leaves the assistance program. Under the DRA, there will be no new assignments in this category. Only Current-Assistance cases with Assigned Arrearages under assignments executed prior to October 1, 2009 may contain Temporarily-Assigned Arrearages;[7] and

(C) "Conditionally-Assigned Arrearages" – The term "conditionally-assigned arrearages" means those arrearages that do not exceed the cumulative amount of unreimbursed assistance paid to the family as of the date the family leaves the assistance rolls and which are owed to the family unless they are collected through Federal tax refund offset. They are arrearages which were temporarily assigned to the State under an assignment executed between October 1, 1997 and September 30, 2009 and became

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[6] These assignments are eligible for discontinuation under the authority in section 457(b)(1) of the Act, as amended by the DRA.

[7] Both Temporary and Conditional assignments are eligible for discontinuation under the authority in section 457(b)(2) of the Act, as amended by the DRA.

conditionally assigned to the State when the temporary assignment expired under PRWORA. If a Conditionally-Assigned Arrearage is collected through a Federal tax refund offset, the collection is retained by the State to reimburse the State and the Federal government up to the cumulative amount of unreimbursed assistance paid to the family. Collections of Conditionally-Assigned Arrearages by any other enforcement mechanism are paid to the family. Under the DRA, there will be no new assignments in this category.[8]

(2) For Assignments executed on or after October 1, 2009, the term "assigned arrearages" includes only those arrearages for support that accrues during the period that the family receives assistance.

(k) FAMILY ARREARAGES – The term "family arrearages" means those arrearages that are owed to the family. There is no prescribed distribution hierarchy for the different types of arrearages that comprise "family arrearages." Family Arrearages could include:

(1) "Never-Assigned Arrearages" – The term "never-assigned arrearages" means:

(A) All arrearages in Never-Assistance cases;

(B) "Pre-Assistance Arrearages," as defined in (l), that accrued prior to assignments executed on or after October 1, 2009 that were not previously assigned in Current-Assistance and Former-Assistance cases;

(C) "Post-Assistance Arrearages" as defined in (m); and

(D) Arrearages under "Discontinued Assignments" as defined in (n).

(2) "Unassigned Pre-Assistance Arrearages" – The term "unassigned pre-assistance arrearages" means all previously-assigned arrearages which exceed the cumulative amount of unreimbursed assistance paid to the family when the family leaves the assistance rolls, and which accrued prior to the receipt of assistance; and

(3) "Unassigned During-Assistance Arrearages" – The term "unassigned during-assistance arrearages" means all previously-assigned arrearages which exceed the cumulative amount of unreimbursed assistance paid to

[8] See further discussion on Conditionally-Assigned arrearages under <u>Q&A 6</u> in this AT.

the family when the family leaves the assistance rolls and which accrued during the receipt of assistance.

(l) PRE-ASSISTANCE ARREARAGES – The term "pre-assistance arrearages" means those arrearages that accrued prior to each period of assistance.

(m) POST-ASSISTANCE ARREARAGES – The term "post-assistance arrearages" means those arrearages that accrued after the family's most recent period of assistance.

(n) DISCONTINUED ASSIGNMENTS – The term "discontinued assignments" means those assignments that a State elects to discontinue under the authority in section 457(b)(1) and (b)(2) of the Act. The State may treat amounts collected pursuant to these discontinued assignments as if the amounts had never been assigned and may distribute the amounts to the family. Assignments that may be discontinued include:

(1) Pre-1997 Support Assignments – Any rights to support obligations assigned to a State as a condition of receiving assistance from the State under title IV-A of the Act and in effect on September 30, 1997 (or such earlier date on or after August 22, 1996, as the State may choose); and

(2) Post-1997 Support Assignments – Any rights to support obligations accruing before the date on which a family first receives assistance under title IV-A of the Act that are assigned to a State and in effect before October 1, 2009.[9]

(o) UNREIMBURSED ASSISTANCE or "URA" – The term "unreimbursed assistance" (URA) means the cumulative amount of assistance paid to a family for all months that has not been repaid by assigned support collections. The total amount of assistance paid to the family that a State may recover through the IV-D program is limited by the total amount of its assigned support obligation.[10]

(p) PASS-THROUGH – The term "pass-through" means an assigned support collection (applied to either current support or arrearages) that the State elects to pay to the family rather than retain to reimburse assistance. The State may pass

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[9] These support obligations would include Pre-Assistance arrearages that were Temporarily-Assigned or Conditionally-Assigned, but would not include Permanently-Assigned arrearages accruing during the period of assistance.

[10] URA includes assistance paid to the family for more than one period of receiving assistance. Also, the same family may have a URA balance in more than one state if the family has received assistance in more than one state.

through its assigned support collections in Current-Assistance cases[11] and/or in Former-Assistance cases.[12]

(q) EXCEPTED PORTION – The term "excepted portion" is one type of pass-through and means that portion of an amount collected on behalf of a family in a Current-Assistance case during a month that does not exceed an amount established by the State that is not more than $100 per month, or in the case of a family that includes two or more children, that does not exceed $200 per month. The "excepted portion" may include collections applied to current support and/or arrearages. A State shall not be required to pay the federal government the Federal share of the excepted portion.[13]

(r) DISREGARD – The term "disregard" is the amount of a pass-through payment to a family that is disregarded by the IV-A agency for the purposes of determining eligibility for and the amount of assistance from the State that is provided to the family.

III. Assignment of support rights under section 408(a)(3) of the Act

Prior to the enactment of the DRA, and until September 30, 2009, section 408(a)(3) of the Act reads in part as follows:

> "A State to which a grant is made under section 403 of this title shall require, as a condition of providing assistance to a family under the State program funded under this part, that a member of the family assign to the State any rights the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person, not exceeding the total amount of assistance so provided to the family, which accrue (or have accrued) before the date the family ceases to receive assistance under the program, which assignment, on and after such date, shall not apply with respect to any support (other than support collected pursuant to section 464 of this title) which accrued before the family received such assistance ..."

With the enactment of the DRA, section 408(a)(3) of the Act, effective October 1, 2009, reads as follows:

[11] See sections 457(a)(1)(B) and 457(a)(7)(B)(i) of the Act.

[12] See sections 457(a)(2)(B)(ii)(II) and 457(a)(7)(A) of the Act.

[13] See section 457(a)(7)(B) of the Act.

"A State to which a grant is made under section 403 shall require, as a condition of paying assistance to a family under the State program funded under this part, that a member of the family assign to the State any right the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person, not exceeding the total amount of assistance so paid to the family, **which accrues during the period that the family receives assistance** under the program." Emphasis provided.

The following is a summary of changes in the Act that are pertinent to the assignment of support rights. These changes will take effect on October 1, 2009, or as early as October 1, 2008 at State option.

(a) Assignment of support rights effective October 1, 2009.

Effective October 1, 2009, those families who execute an assignment of support rights as a condition of eligibility for assistance assign to the State only the support that accrues during the period the family receives assistance. See section 408(a)(3) of the Act.

(b) Assignment of support rights prior to October 1, 2009.

For guidance on assignments executed prior to October 1, 2009 (or earlier, if the State implements the new assignment after September 30, 2008), please refer to OCSE-AT-97-17.

(c) Section 457(a)(3) of the Act regarding limitations.

Section 457(a)(3) of the Act, added by the DRA, specifically limits the amounts retained by the State and Federal governments to amounts assigned under section 408(a)(3) of the Act. The limitation applies to the distribution of support in Current-Assistance and Former-Assistance cases as follows:

(1) The total amounts paid by the State to the Federal government in Current-Assistance and Former-Assistance cases shall not exceed the Federal share of the amount assigned under section 408(a)(3) of the Act.

(2) The total amounts retained by the State in Current-Assistance and Former-Assistance cases shall not exceed the State share of the amount assigned under section 408(a)(3) of the Act.

IV. Distribution of child support collections under the DRA

(a) In General

For purposes of distribution in a IV-D case, amounts collected must be treated first as current support for the month in which the support was collected[14] and if any amounts collected are in excess of such amount, these excess amounts shall be treated as amounts which represent payment on the required support obligation for previous months.

The requirement to apply collections first to satisfy the current support obligation is critical in all IV-D cases to ensure that payment records are consistent in interstate cases, regardless of whether the amount applied to current support is paid to the family or retained by the State to reimburse unreimbursed assistance in a Current-Assistance case.

(b) Distribution of Federal Tax Refund Offset Payments

The provision at the former section 457(a)(2)(B)(iv) of the Act requiring Federal tax refund offset collections to be applied first to Assigned Arrearages, then to arrearages owed to the family, and never to current support is deleted from the statute, effective October 1, 2009. Former section 457(a)(2)(B)(iv) read as follows:

> "Notwithstanding any other provision of this section, any amount of support collected pursuant to section 464 of this title shall be retained by the State to the extent past-due support has been assigned to the State as a condition of receiving assistance from the State, up to the amount necessary to reimburse the State for amounts paid to the family as assistance by the State. The State shall pay to the Federal Government the Federal share of the amounts so retained. To the extent the amount collected pursuant to section 464 of this title exceeds the amount so retained, the State shall distribute the excess to the family."

The former section 457(a)(2)(B)(iv) is the only provision in Federal statute that requires Federal tax refund offset payments to be applied to arrearages. Neither section 464 of the Act nor section 6402 of the Internal Revenue Code of 1986 address the distribution of Federal tax refund offset payments.[15] Therefore, for

[14] If the state elects to continue PRWORA Distribution in Former-Assistance Cases, this does not apply to Federal tax refund offset payments. See section IV(b) and section IV(e)(5) of this AT.

[15] While the DRA requires collections from Federal tax refund offset payments to be applied to current support and then to arrearages, states must still certify cases for Federal tax refund offset based on the amount of *past-due* support. See section 464 of the Act.

States electing to follow the new DRA Distribution rules[16] in Former-Assistance cases, Federal tax refund offset collections must be distributed as any other collection. This means that in Former-Assistance cases, Federal tax refund offset payments must be applied first to satisfy current support, but then to satisfy Family Arrearages before Assigned Arrearages may be satisfied.[17] In Current-Assistance cases, Federal tax refund offset collections must also be applied first to satisfy current support, then to Assigned Arrearages and last to any Family Arrearages.

States that elect to continue to follow PRWORA Distribution rules in Former-Assistance cases will not change the way Federal tax refund offset collections are distributed, but will instead follow the rules contained in former section 457(a)(2)(B)(iv) of the Act.

For further discussion on Federal tax refund offset distribution, see Q&A 26 of this AT.

(c) Distribution in Never-Assistance Cases

The State shall pay to the family the portion of the support collected in Never-Assistance cases that remains after withholding any $25 annual fee, pursuant to section 454(6)(B)(ii) of the Act.

(d) Distribution in Current-Assistance Cases

(1) Arrearage Categories

(A) The following arrearage categories will exist in Current-Assistance cases with DRA assignments executed on or after October 1, 2009, or up to a year earlier at State option:

(i) Family Arrearages;

[16] See section IV(e) for more information about the state election to be made regarding DRA vs. PRWORA distribution in Former-Assistance cases (section 454(34) of the Act).

[17] See 45 CFR 302.51(a). In addition, section 464(a)(3)(B) still applies and permits a delay in distribution in non-IV-A cases for up to six months in joint return cases. This is an exception to normal two-day disbursement requirement in section 454B of the Act.

(ii) Conditionally-Assigned Arrearages from pre-DRA assignments executed between October 1, 1997 and September 30, 2009;[18] and

(iii) Permanently-Assigned Arrearages.

(B) After September 30, 2009, Temporarily-Assigned Arrearages will continue to exist in Current-Assistance cases in which assignments were executed after September 30, 1997 but before October 1, 2009, until such time as the family leaves assistance.[19] See Q&A 9.

(2) Distribution Sequence[20]

(A) For the distribution of all support collected in Current-Assistance cases, including Federal tax refund offset payments,[21] the State shall (not exceeding the cumulative amount of unreimbursed assistance paid to the family):

(i) Pay to the Federal government the Federal share of the amount collected, not to exceed the Federal share of the amount assigned (see sections 457(a)(1)(A) and 457(a)(3)(A) of the Act);[22]

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[18] Conditionally-Assigned arrearages will continue to exist unless these assignments are discontinued pursuant to section 457(b)(2) of the Act

[19] See section VI of this AT for details on the discontinuation of assignments. Also see Example 1 for an illustration for how both Temporarily- and Conditionally-Assigned arrearages will exist in some cases after September 30, 2009.

[20] Once distributed, states may pay any Pass-Through payments to the family. See section V of this AT for more information about Pass-Through payments.

[21] Federal tax refund offset payments must be applied to current support first unless an election is made by the state to continue PRWORA Distribution in Former-Assistance Cases. Regulations contained at 45 CFR 302.51 will be amended for consistency with section 457 of the Act. See also section IV(b) and Question and Answer 26 of this AT.

[22] Section 457(a)(7)(B) of the Act provides that a state is not required to pay to the Federal Government the Federal share of the "excepted portion" of any amount collected on behalf of a family currently receiving assistance. If a State chooses to pass-through the Federal share of collections, it must also pass-through the State share of such collections and disregard the pass-through amount in determining the eligibility for and the amount of the TANF assistance paid to the family for that month. See Q&A 15 and Section V(a) of this AT.

(ii) Retain, or pay to the family, the State share of the amount collected. The total amount retained by the State shall not exceed the amount assigned (see sections 457(a)(1)(B) and 457(a)(3)(B) of the Act); and

(iii) Reduce the cumulative amount of unreimbursed assistance by the total amount collected and distributed under (i) and (ii), and distribute collections exceeding the amounts distributed under (i) and (ii) to the family (see section 457(a)(1)(C) of the Act).

(B) The Federal statute does not specify the order in which collections are applied to satisfy Assigned Arrearages in Current-Assistance cases. The State must have procedures which specify the order in which Assigned Arrearages will be satisfied.[23]

(e) Distribution in Former-Assistance Cases

(1) State Option

States must elect to distribute arrearages in Former-Assistance cases:

(A) As specified in section 457(a)(2)(B) of the Act, as amended by the DRA (DRA Distribution); or

(B) As specified in former section 457(a)(2)(B) of the Act as in effect prior to the enactment of the DRA (PRWORA Distribution). See section 454(34) of the Act, and sections VII(b) and VIII of this Action Transmittal, for additional discussion relating to this option.

(2) Arrearage Categories for DRA Distribution States

For States electing to apply DRA Distribution rules, the following arrearage categories will exist in Former-Assistance cases effective October 1, 2009, or up to a year earlier at State option:

(A) Family Arrearages;

(B) Conditionally-Assigned Arrearages from pre-DRA assignments (unless these assignments are discontinued pursuant to section 457(b)(2) of the Act); and

[23] Each state with the responsibility to distribute a collection will apply its own rules, including a situation in which two states submit past-due support for Federal tax refund offset and each state receives an offset.

(C) Permanently-Assigned Arrearages.

(3) Distribution Sequence for DRA Distribution States

For the distribution of all support in Former-Assistance cases under DRA Distribution, including Federal tax refund offset payments,[24] the State shall:

(A) First, distribute the amount collected to satisfy the current monthly support obligation and pay that amount to the family;

(B) Second (unless a State elects to continue PRWORA Distribution),[25] pay to the family any amount above the current monthly support obligation to satisfy support arrearages not assigned;

(C) Third, if the amount collected exceeds the amounts distributed in (A) and (B) above:

(i) Pay to the Federal government the Federal share of the amount applied to Assigned Arrearages (see sections 457(a)(2)(B)(ii)(I) and 457(a)(3)(A) of the Act);[26]

(ii) Retain, or distribute to the family, the State share of the amount applied to Assigned Arrearages (see sections 457(a)(2)(B)(ii)(II) and 457(a)(3)(B) of the Act); and

(iii) Reduce the cumulative amount of unreimbursed assistance by the total amount collected and distributed under (i) and (ii) above, and distribute collections exceeding the amounts distributed under (i) and (ii) to the family. See section 457(a)(2)(B)(iii) of the Act.

(4) Arrearage Categories for PRWORA Distribution States

[24] Federal tax refund offset payments must be applied first to current support and then to family arrearages, unless an election is made by the state to continue PRWORA Distribution. See discussion under Question and Answer 26 of this AT.

[25] See section IV(e)(4) of this AT.

[26] New section 457(a)(7)(A) of the Act permits a state to pay to a Former-Assistance family any amount collected and applied to Assigned Arrearages. The state does not need to pay the Federal government the federal share of such passed-through amount as long as the state passes through both the state and Federal share. See Q&A 16 and Section V(b) of this AT.

(A) The following arrearage categories will exist in Former-Assistance cases for States electing to apply PRWORA Distribution rules, effective October 1, 2009, or up to a year earlier at State option:

(i) Never-Assigned Arrearages;

(ii) Unassigned Pre-Assistance Arrearages;

(iii) Conditionally-Assigned Arrearages;[27]

(iv) Permanently-Assigned Arrearages;[28] and

(v) Unassigned During-Assistance Arrearages.

(5) <u>Distribution Sequence for PRWORA Distribution States</u>

States making the PRWORA Distribution election in Former-Assistance cases must follow the guidance issued under OCSE-AT-97-17,[29] including the order in which various arrearage categories are satisfied. For states that make this election, Federal tax refund offset payments must be distributed to assigned past-due support first pursuant to the former section 457(a)(2)(B)(iv) of the Act.

(f) Comparing DRA Distribution and PRWORA Distribution Rules

The following table compares the State requirements that will apply to States electing to apply DRA or PRWORA Distribution rules once the limited assignment under section 403(a)(8) of the Act is effective October 1, 2009:

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[27] Conditionally-Assigned arrearages will continue to exist unless these assignments are discontinued pursuant to section 457(b)(2) of the Act

[28] Pre-1997 Permanently-Assigned arrearages will continue to exist unless they are discontinued pursuant to section 457(b)(1) of the Act.

[29] Action Transmittal <u>OCSE-AT-97-17</u>, dated October 21, 1997, "Instructions for the distribution of child support under section 457 of the Social Security Act."

Table 1: Comparison of DRA and PRWORA Distribution Rules Effective October 1, 2009

	[illegible]	[illegible]
CURRENT-ASSISTANCE CASES	Pre-Assistance Arrearages are not assigned when family goes on assistance. 408(a)(3)	Pre-Assistance Arrearages are not assigned when family goes on assistance. 408(a)(3)
	Collections in excess of Assigned Arrearages are distributed to the family. 457(a)(1)(C)	Collections in excess of Conditionally-Assigned Arrearages under a pre-DRA assignment and Permanently-Assigned Arrearages are distributed to the family. 457(a)(1)(C)
	Apply collections, <u>including Federal tax refund offset,</u> to current support and Assigned Arrearages before applying to Family Arrearages.[30] Once Assigned Arrearages are paid off, any remaining amount is paid to the family. 457(a)(1) and (3)[31]	Apply Federal tax refund offset collections to Conditionally-Assigned Arrearages under a pre-DRA assignment and Permanently-Assigned Arrearages and then to past-due support owed to the family. Former 457(a)(2)(B)(iv)

[30] If a state elects to implement DRA Distribution, Federal income tax refund offset collections will no longer be applied pursuant to the former 457(a)(2)(B)(iv).

[31] <u>See Footnote 21.</u>

<table>
<tr><th colspan="2">[illegible]</th><th>[illegible]</th></tr>
<tr><td rowspan="2">FORMER-ASSISTANCE CASES</td><td rowspan="2">Apply collections, <u>including Federal tax refund offset,</u> first to current support and then to Family Arrearages before applying to Assigned Arrearages.

Once assigned arrears are paid off, any remaining amount is paid to the family. 457(a)(2)(A), (a)(2)(B), and (a)(3)</td><td>Apply collections (except those from Federal tax refund offset) first to current support, then to arrearages in the following order:

1) NA, 2) UPA and CA (in any order), 3) PA, 4) UDA[32]

Former 457(a)(2)(B)</td></tr>
<tr><td>Apply Federal tax refund offset collections to Conditionally-Assigned Arrearages under a pre-DRA assignment and Permanently-Assigned Arrearages and then to past due support owed to the family.

Former 457(a)(2)(B)(iv)</td></tr>
</table>

V. Pass-Through payments

In addition to the continued authority to pass through the State share of an amount collected in Current and Former-Assistance cases, the DRA also provides States with a new option to pass through a portion of the Federal share of the amount collected in Current-Assistance cases and all or a portion of the Federal share in Former-Assistance cases. Therefore, the State does not have to pay to the Federal government the Federal share of the Pass-Through payment as long as the State passes through both the Federal and State share to the family, and in Current-Assistance cases, disregards the amount passed through in determining the amount and type of assistance provided to the family.

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[32] NA = Never-Assigned; UPA = Unassigned Pre-Assistance; CA = Conditionally-Assigned; PA = Permanently-Assigned; UDA = Unassigned During-Assistance. Any remaining arrearages should be paid to the family.

(a) Current-Assistance Cases

States shall not be required to pay to the Federal government the Federal share of amounts collected that are passed through to the family as follows:

> (1) Up to $100 per month, if the amount passed through to the family is disregarded in determining the amount and type of assistance provided to the family; or
>
> (2) In the case of a family that includes two or more children, up to $200 per month, if the amount is disregarded in determining the amount and type of assistance provided to the family. See section 457(a)(7)(B) of the Act.

(b) Former-Assistance Cases

In Former-Assistance cases, the State shall not be required to pay to the Federal government the Federal share of amounts applied to Assigned Arrearages and paid to the family, provided that the State passes through both the Federal and State share to the family. See section 457(a)(7)(A) of the Act.

VI. Discontinuation of assignments

Under the DRA a State now has the option to discontinue certain of its assignments of support. The discontinuation of these assignments allows a State to pay to the family some or all of the collections applied to its Assigned Arrearages that accrued under such assignments.

The following explains the options available to States in discontinuing assignments:

(a) State option to discontinue its assignments executed prior to October 1, 1997

A State may discontinue some or all of its assignments executed prior to October 1, 1997. Because assignments executed before October 1, 1997 encompass both Pre-Assistance and During-Assistance Arrearages without making any distinction between these two types of arrearages, the discontinuation of these assignments allows a State to discontinue its assignments of any or all Pre-Assistance and/or During-Assistance Arrearages that accrued under such assignments.

Under section 457(b) of the Act, as amended by the DRA, a State has the option to discontinue any of its assignments that were in effect as of September 30, 1997.[33] [34] If a State chooses to discontinue such assignments, the State may treat amounts collected pursuant to the assignment as if the amounts had never been assigned, and pay these collections to the family. See section 457(b)(1)(B) of the Act.

(b) State option to discontinue its assignments executed from October 1, 1997 through September 30, 2009

As noted above, the DRA provides that States may not take any new assignments of Pre-Assistance Arrearages in TANF cases, starting not later than October 1, 2009. However, a State's older assignments of Pre-Assistance Arrearages in effect when the State implements the DRA requirement will remain in effect, unless the State chooses to discontinue these assignments.[35] The DRA permits a State to discontinue some or all of its (PRWORA) assignments executed between October 1, 1997 and September 30, 2009 (or such earlier date after October 1 ,2008, that the State implements the DRA assignment change) to the extent that Pre-Assistance Arrearages were assigned.[36]

If a State chooses to discontinue these assignments, the State may treat amounts collected pursuant to the assignment as if the amounts had never been assigned, and pay these collections to the family. See section 457(b)(2)(B) of the Act.

The authority contained under section 457(b)(2) of the Act does not allow States to discontinue assignments of support that accrued during assistance periods if the assignment was executed after September 30, 1997.

VII. State options for the distribution of child support

Section 457 of the Act, as amended by the DRA, provides numerous State options with respect to the distribution of support and the discontinuation of assignments of support. The States' distribution options provided by the DRA are summarized below:

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[33] See section 457(b)(1) of the Act.

[34] See also discussion contained in Question and Answer 19.

[35] See section 457(b)(2) of the Act.

[36] These Pre-Assistance arrearages are also known as Temporarily-Assigned or Conditionally-Assigned arrearages.

(a) Options regarding Current-Assistance cases

(1) States may continue to elect to pay to the Current-Assistance family the State share of the amount collected on behalf of the family as support. See section 457(a)(1)(B) of the Act.

(2) States may elect to pay to the Current-Assistance family and disregard for purposes of determining the amount and type of assistance all or a portion of the amount collected up to $100 per month (or up to $200 for more than one child). If the State makes this election, the State is not required to pay the Federal share of such payment as long as the State passes through both the Federal and State share to the family, and disregards the amount passed through for purposes of determining the amount and type of assistance provided to the family. See section 457(a)(7)(B)(i) of the Act and <u>section V(a)</u> of this AT.[37]

(b) Options regarding Former-Assistance cases

(1) For States that elect to continue PRWORA Distribution – The State may retain or distribute to the family, the State share of the amount collected and applied to arrearages that accrued while the family received assistance. See former section 457(a)(2)(B)(iii) of the Act.

(2) For States that elect to follow DRA Distribution – To the extent that the amount collected in a Former-Assistance case exceeds both the current support amount and the amount used to satisfy Family Arrearages, the State may elect to pay to the family the State share of the excess. See section 457(a)(2)(B)(ii)(II) of the Act.

(3) For all States – The State is not required to pay the Federal share of an amount collected on behalf of a family that formerly received assistance from the State to the extent that the State pays both the Federal and State share of the amount to the family. See section 457(a)(7)(A) of the Act and <u>section V(b)</u> of this AT

(c) Options regarding both Current-Assistance and Former-Assistance cases

The State may elect to discontinue its assignments for one or both of the following categories of arrearages:

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[37] The effective date for this pass-through option is October 1, 2008.

(1) Permanently-Assigned Arrearages that accrued under assignments executed before October 1, 1997. See section 457(b)(1) of the Act and section VI(a) of this AT.

(2) Pre-Assistance arrearages that were Temporarily-Assigned or Conditionally-Assigned to the State under assignments executed on or after October 1, 1997, and before October 1, 2009. See section 457(b)(2) of the Act and section VI(b) of this AT.

(d) Summary of State Options for Distribution of Support and Discontinuation of Assignments

The table below summarizes the options discussed above:

Table 2: Matrix of State Options for Distribution of Support and Discontinuation of Assignments

State Option		Effective Date[38]	Statutory Citation
IN GENERAL	Continue PRWORA Distribution in Former-Assistance cases; OR	October 1, 2009	454(34)
	Apply DRA Distribution rules in Former-Assistance cases	October 1, 2009	454(34)

[38] State option to accelerate effective date to no earlier than October 1, 2008, but no later than October 1, 2009.

[illegible]		[illegible]	[illegible]
CURRENT-ASSISTANCE CASES	Retain or pay to family State share of collection	In Effect	457(a)(1)(B)
	Pay family and disregard "excepted portion" (as defined by the DRA) as a Pass-Through in Current-Assistance Cases (Federal Government waives its share of collection)	October 1, 2008	457(a)(7)(B)
FORMER-ASSISTANCE CASES	Retain, or pay to Former-Assistance family, State share of collections applied to During-Assistance Arrearages[39] OR	In Effect	Former 457(a)(2)(B)(iii)
	Retain, or pay to Former-Assistance family, State share of collections applied to any of its Assigned Arrearages[40]	October 1, 2009	457(a)(2)(B)(ii)(II)
	If State pays to Former-Assistance family any amount applied to its Assigned Arrearages, the State is not required to pay to the Federal Government the Federal share.	October 1, 2008	457(a)(7)(A)

[39] PRWORA Distribution election.

[40] DRA Distribution election.

State Options		Effective Date	Statutory Citation
CURRENT- & FORMER-ASSISTANCE CASES	Discontinue some or all pre-October 1997 assignments (Pre-Assistance and During-Assistance Arrearages)	October 1, 2009	457(b)(1)
	Discontinue some or all post-September 1997 assignments of Pre-Assistance Arrearages	October 1, 2009	457(b)(2)

VIII. Arrearage Category Conversions

When deciding which of the above options with respect to the distribution of support and the discontinuation of assignments of support to select, States must consider how the composition of the PRWORA arrearage categories may convert to new or existing arrearage categories. For example, if a State elects to discontinue post-1997 assignments of Pre-Assistance Arrearages, these Temporarily-Assigned or Conditionally-Assigned Arrearages would convert to Never-Assigned Arrearages.[41]

What follows are a series of figures that illustrate the conversion of arrearage categories, depending on the distribution and assignment discontinuation options selected by the State. These examples assume that, where assignments are discontinued, a State would discontinue all (rather than a portion) of its assignments contained under each type of discontinuation option.

A State has flexibility to determine which of its assignments within the statutory categories to discontinue, if any. Factors that a State may want to consider include how arrearage categories will convert, how statewide automated systems have tracked Assigned Arrearages over time, and other implications for automated systems.

Figure 1 provides an overview of how the arrearage categories would differ between States choosing DRA Distribution versus States choosing PRWORA Distribution, if all assignments are continued.

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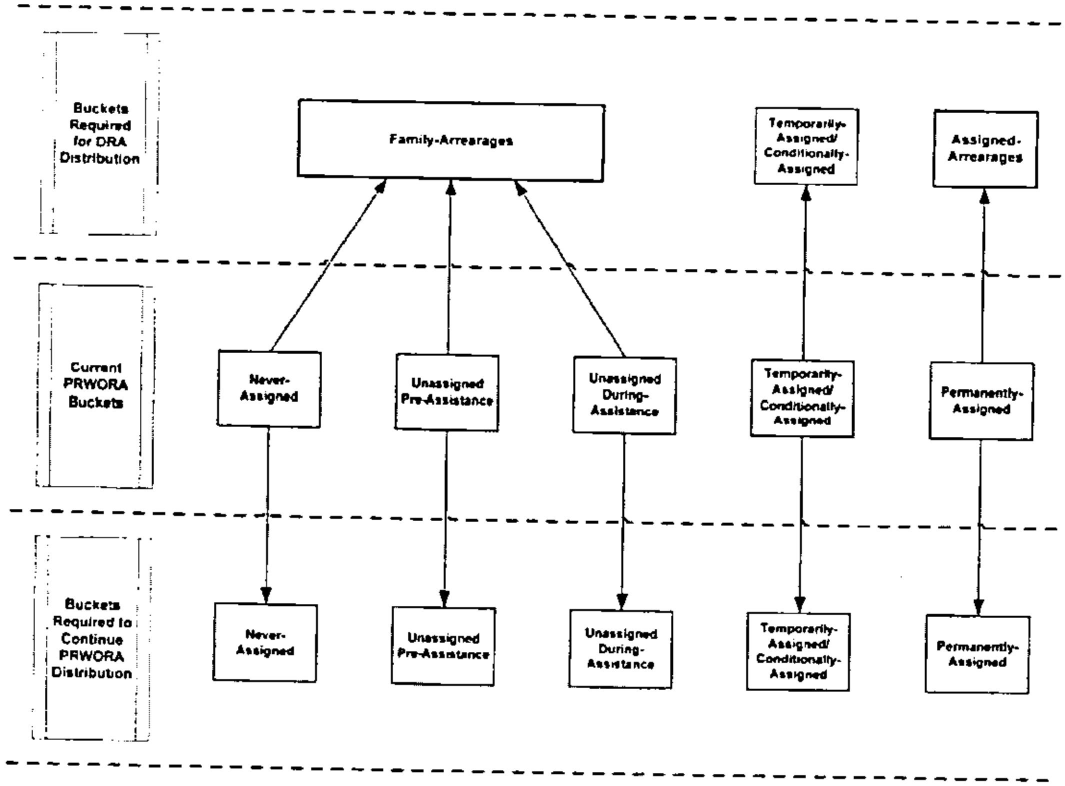
[41] Under DRA Distribution, Never-Assigned arrearages are a part of Family Arrearages. See section II of this AT for the definition of Family Arrearages.

Figure 1: Arrearage Conversion for both DRA and PRWORA Distribution in Former-Assistance Cases, All Assignments Continued[42]



Figures 2 through 6 show how a State may convert existing PRWORA arrearages to DRA Distribution arrearage categories in instances where the State has discontinued all of its post-1997 and/or pre-1997 assignments.

[42] Figures 3 through 6, and 8 through 11 show Permanently-Assigned arrearages as a 3-part bucket: (1) Pre-Assistance Pre-97 arrearages, (2) During-Assistance Pre-97 arrearages, and (3) During-Assistance Post-97 arrearages. Showing these arrearages in a 3-part graphic allows us to illustrate the variety in discontinued assignments the states may elect to implement.

Figure 2: Arrearage Conversion for DRA Distribution, Post-1997 Assignments Discontinued

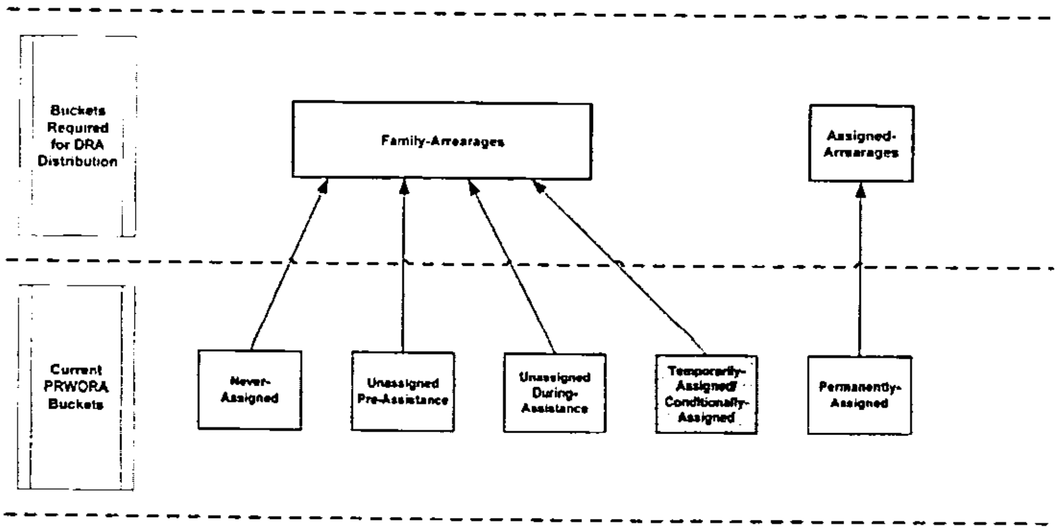


Figure 3: Arrearage Conversion for DRA Distribution, Pre-1997 Assignments of a State's Pre-Assistance Arrearages Discontinued; (the State can Distinguish Between Pre-Assistance and During-Assistance Arrearages)

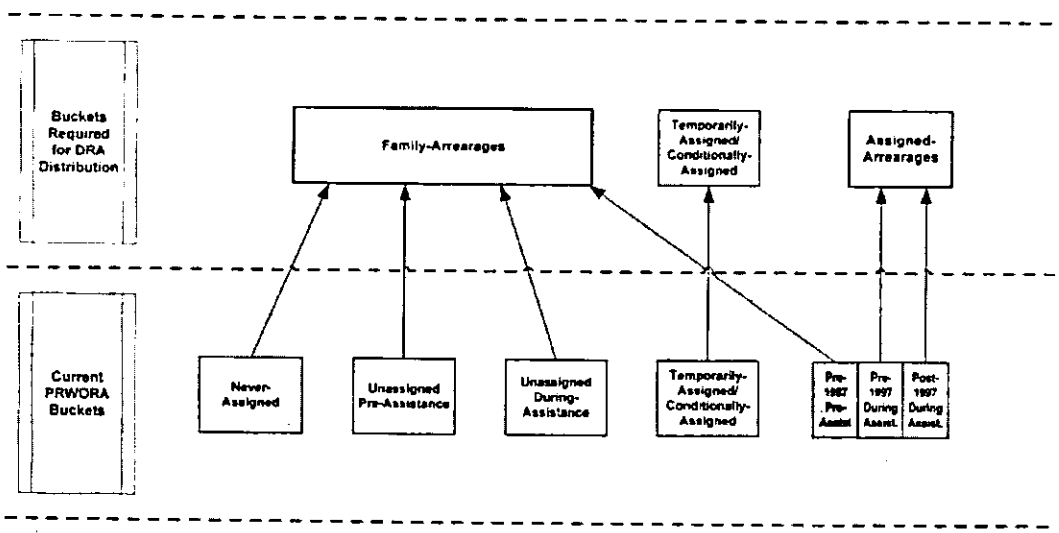


Figure 4: Arrearage Conversion for DRA Distribution, All of a State's Pre-Assistance Assignments Discontinued; (the State can Distinguish Between Pre-Assistance and During-Assistance Arrearages)

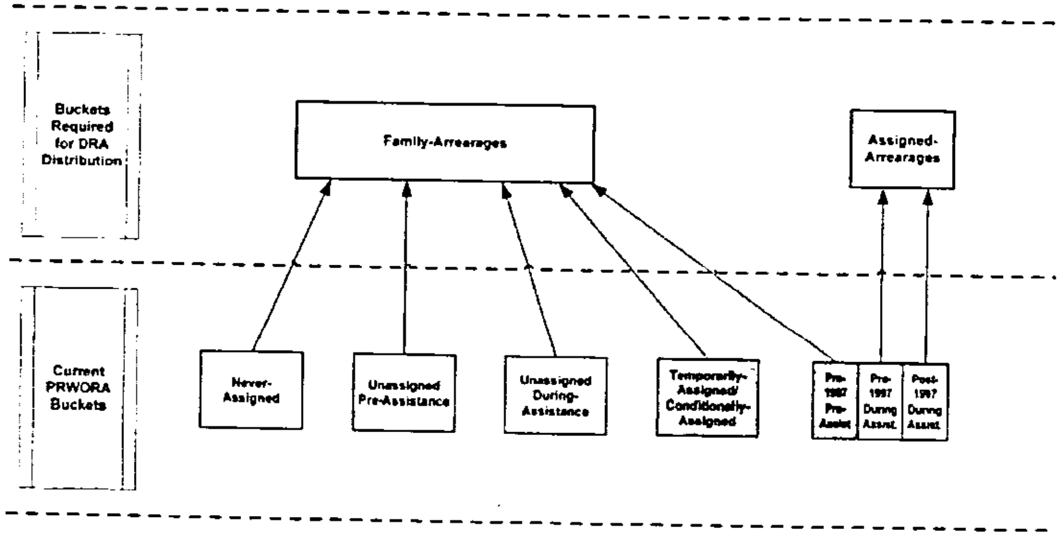


Figure 5: Arrearage Conversion for DRA Distribution, All of a State's Pre-1997 Assignments Discontinued

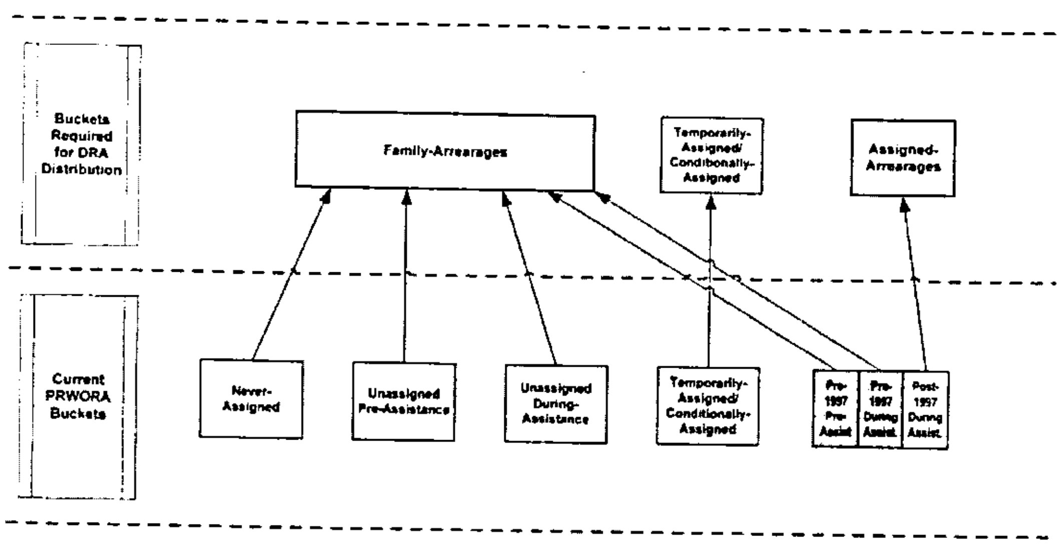
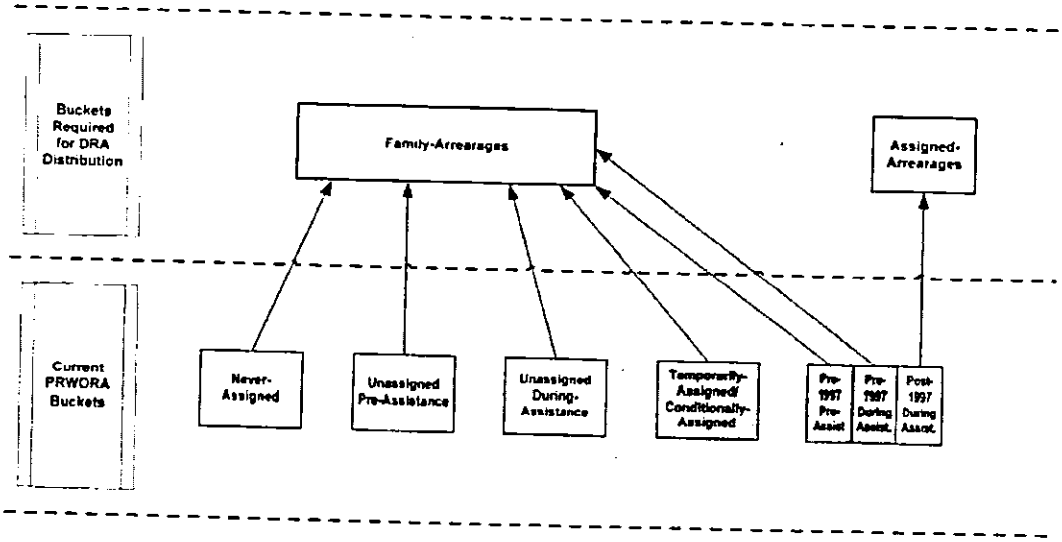


Figure 6: Arrearage Conversion for DRA Distribution, Both a State's Pre- and Post-1997 Assignments Discontinued



Figures 7 through 11 show how a State may convert existing PRWORA arrearages to various PRWORA Distribution arrearage categories if the State chooses to discontinue its post-1997 and/or pre-1997 assignments.

Figure 7: Arrearage Conversion for PRWORA Distribution, a State's Post-1997 Assignments Discontinued

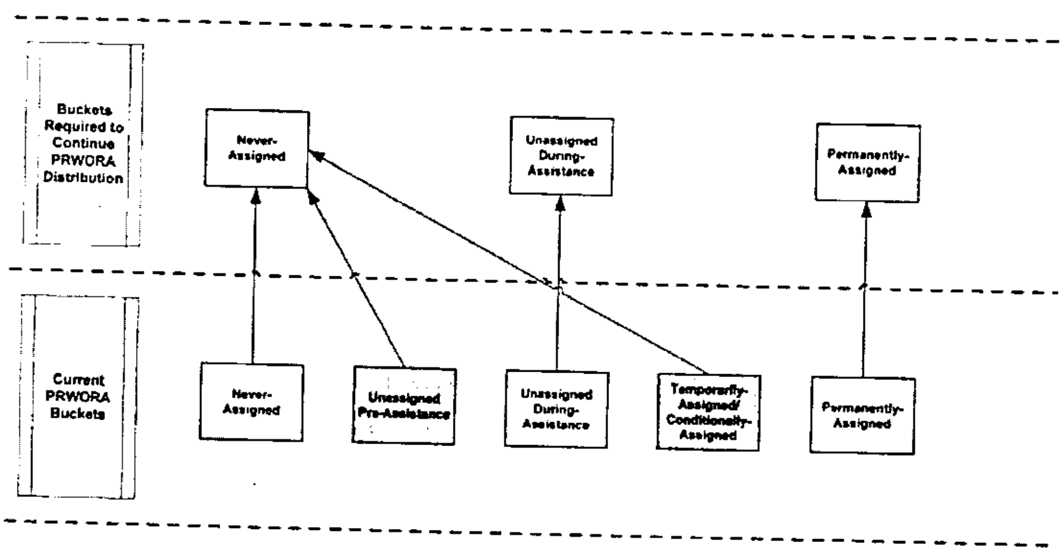


Figure 8: Arrearage Conversion for PRWORA Distribution, a State's Pre-1997 Assignments of Pre-assistance Arrearages Discontinued; (the State can Distinguish Between Pre-Assistance and During-Assistance Arrearages)

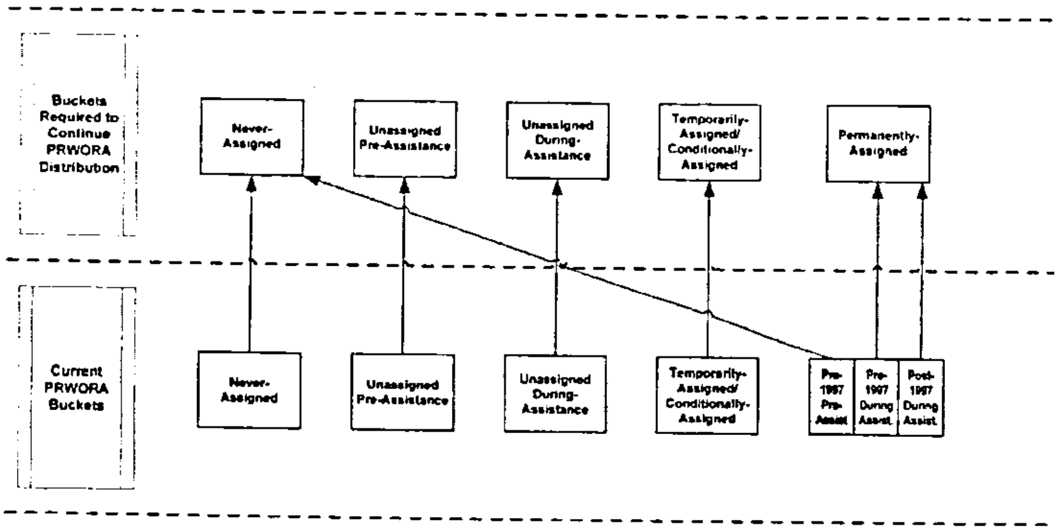


Figure 9: Arrearage Conversion for PRWORA Distribution, All of a State's Pre-Assistance Assignments Discontinued; (the State can Distinguish Between Pre-Assistance and During-Assistance Arrearages)

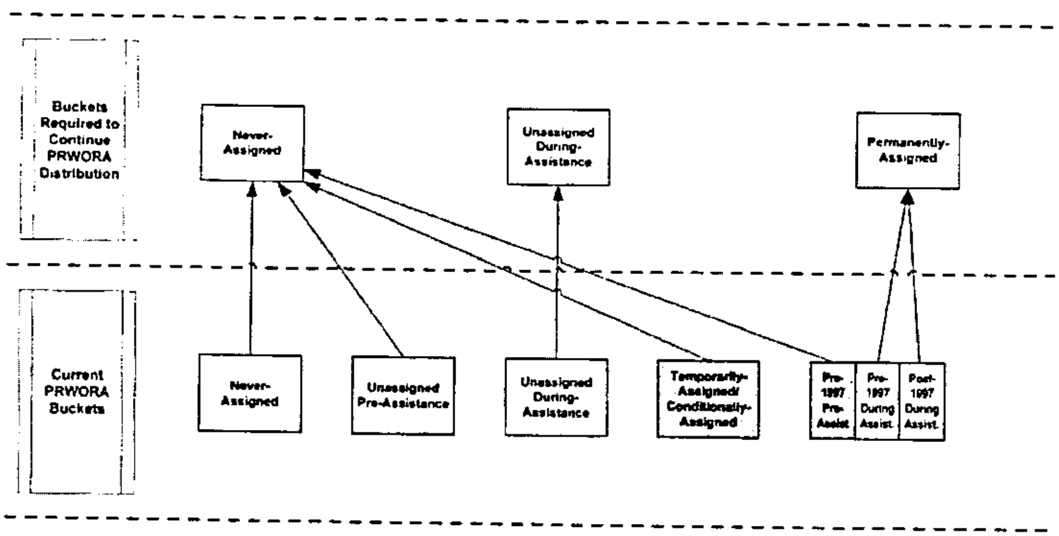


Figure 10: Arrearage Conversion for PRWORA Distribution, All of a State's Pre-1997 Assignments Discontinued

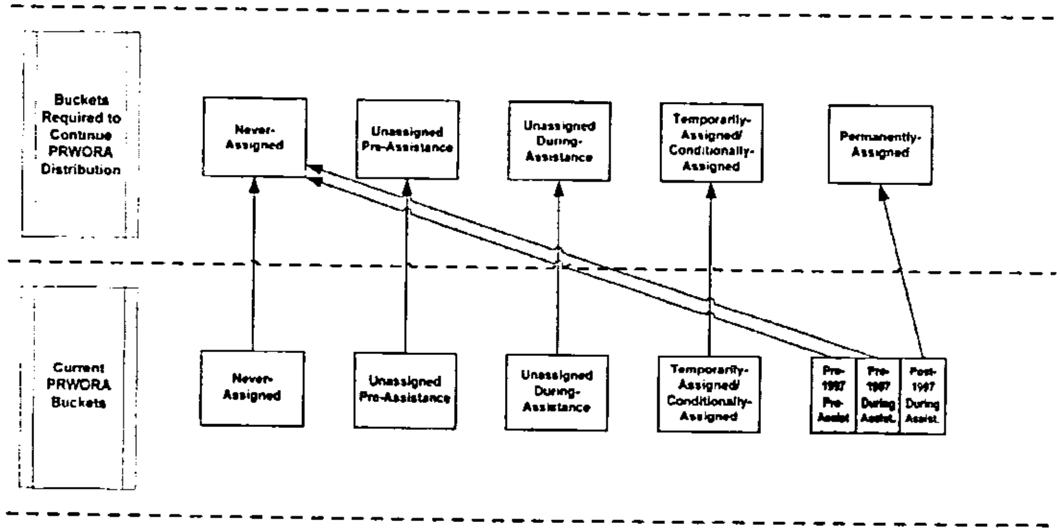
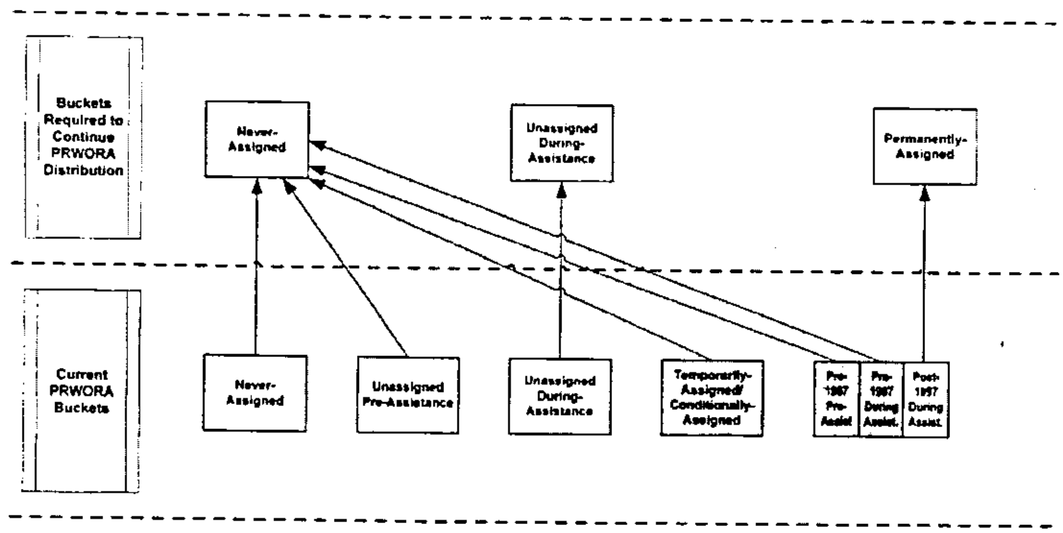


Figure 11: Arrearage Conversion for PRWORA Distribution, Both a State's Pre- and Post-1997 Assignments Discontinued



IX. Questions and answers

For the following set of questions and answers, all references to the DRA implementation date are October 1, 2009. States that have elected to implement at an earlier date on or after October 1, 2008, should change these dates to the appropriate date.

ASSIGNMENT OF RIGHTS TO SUPPORT

QUESTION 1: Were there any changes to the assignment of rights provision in section 408(a)(3) of the Act in the DRA of 2005?

ANSWER 1: Yes. The statute's provisions at section 408(a)(3) of the Act were amended to limit Assigned Arrearages to those that accrue while a family receives assistance, not to exceed the cumulative amount of Unreimbursed Assistance. See footnote 10.

QUESTION 2: In some instances, an agency cannot establish support during the period of assistance because the agency cannot successfully locate and serve notice on the noncustodial parent. For cases falling under the new DRA assignment, if the agency establishes a support order after the family leaves assistance, is retroactive support for the time period the family received assistance covered by the assignment?

ANSWER 2: Yes. The assignment pursuant to section 408(a)(3) of the Act includes any right a family member may have to support for the period that the family receives assistance.

QUESTION 3: If a State elects to continue PRWORA Distribution, would the Conditionally-Assigned Arrearages in a Former-Assistance case become Temporarily-Assigned again if the family returns to assistance after the effective date of the DRA provisions (October 1, 2009)?

ANSWER 3: No. The distribution option in Former-Assistance cases (PRWORA or DRA Distribution) only controls the order of distribution. It is the DRA assignment provision in the amended statute at section 408(a)(3) which controls the scope of the assignment of support. The amended statute limits the assignment prospectively to support obligations accruing while the family receives assistance, not to exceed the total amount of assistance paid to the family during that period. Therefore, any Never-Assigned or Unassigned Arrearages for prior periods will not be assigned under assignments executed on or after October 1, 2009. However, since any Conditionally-Assigned Arrearages accrued under assignments executed prior to October 1, 2009, these arrearages remain Conditionally-Assigned until they are satisfied, or until the assignment is discontinued.

CONDITIONALLY-ASSIGNED ARREARAGES

QUESTION 4: After the implementation of the DRA, do Conditionally-Assigned Arrearages continue to exist in Former-Assistance cases?

ANSWER 4: Yes. Conditionally-Assigned Arrearages continue to exist in Former-Assistance cases, until they are satisfied. Also, some Current-Assistance cases after October 1, 2009 may continue to operate with PRWORA assignments and may continue to have Conditionally-Assigned Arrearages after that date. See Footnote 43.

A State may opt to discontinue some or all of its assignments of Conditionally-Assigned Arrearages as provided under section 457(b)(2) of the Act. If all of these assignments are discontinued, Conditionally-Assigned Arrearages would no longer exist.

QUESTION 5: If a State elects to implement DRA Distribution in a Former-Assistance case, may the State add Conditionally-Assigned Arrearages to Family Arrearages rather than keeping them in a separate category?

ANSWER 5: No. The conditional assignment that attaches to this category of arrearages was not eliminated by the DRA. Only the distribution hierarchy was altered. If a State wants to combine Conditionally-Assigned Arrearages with Family Arrearages, then the State should elect to discontinue its post-1997 assignments of Pre-Assistance Arrearages. See section VI(b) and Q&A 7 of this Action Transmittal.

QUESTION 6: When a Former-Assistance family returns to assistance after the implementation of the limited assignment in section 408(a)(3) of the Act, as amended by the DRA, do its Conditionally-Assigned Arrearages continue to exist or do these arrearages convert to Family Arrearages?

ANSWER 6: Yes. Conditionally-Assigned Arrearages will continue to exist in these cases unless the State elects to discontinue its post-1997 assignments of Pre-Assistance Arrearages. The limited assignment operates prospectively and does not change the nature of prior assignments of support. Due to the change in the assignment statute that prohibits the assignment of Pre-Assistance Arrearages, Conditionally-Assigned Arrearages in a Former-Assistance case will not convert to Temporarily-Assigned Arrearages if the family returns to assistance after September 30, 2009.

See Example 1 below for an illustration of how Conditionally-Assigned Arrearages will continue to exist after September 30, 2009.

Example 1: Example of case with Conditionally-Assigned Arrearages after DRA implementation

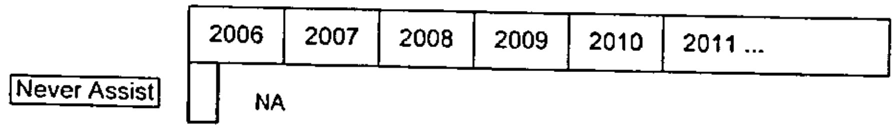
For the purposes of this example assume:

1. There is a support order in effect when the case is opened,
2. None of the State's assignments are discontinued,
3. No support is paid during periods shown,
4. URA exceeds the State's Assigned Arrearages, and
5. State elects to continue PRWORA Distribution.

KEY	
Never-Assigned Arrearages	NA
Permanently-Assigned Arrearages	PA
Temporarily-Assigned Arrearages	TA
Conditionally-Assigned Arrearages	CA

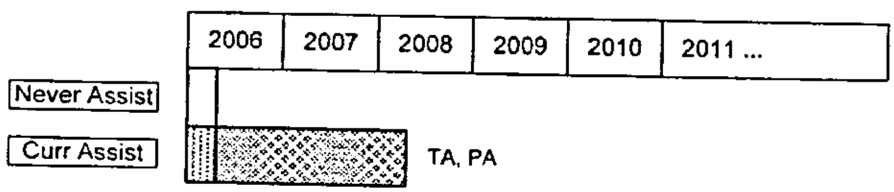
January 2006 – April 2006:

Family receives IV-D services in a Never-Assistance case.



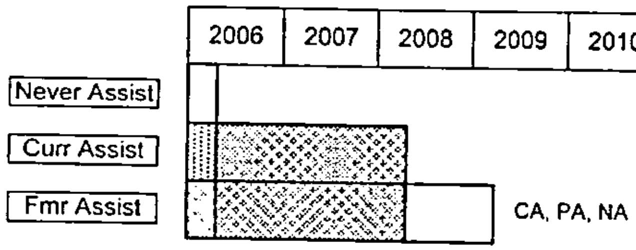
May 2006 – February 2008:

The family goes on assistance. Never-Assigned Arrearages are Temporarily-Assigned to the State and Permanently-Assigned Arrearages begin to accrue.



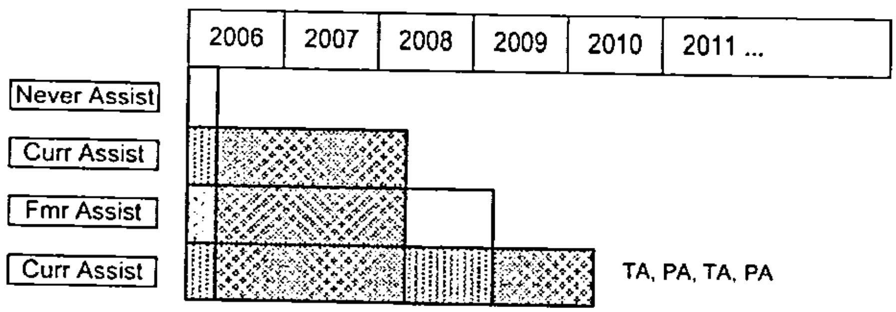
March 2008 – April 2009:

The Current-Assistance case closes and converts to a Former-Assistance case. Temporarily-Assigned Arrearages convert to Conditionally-Assigned Arrearages.



May 2009 – April 2010:

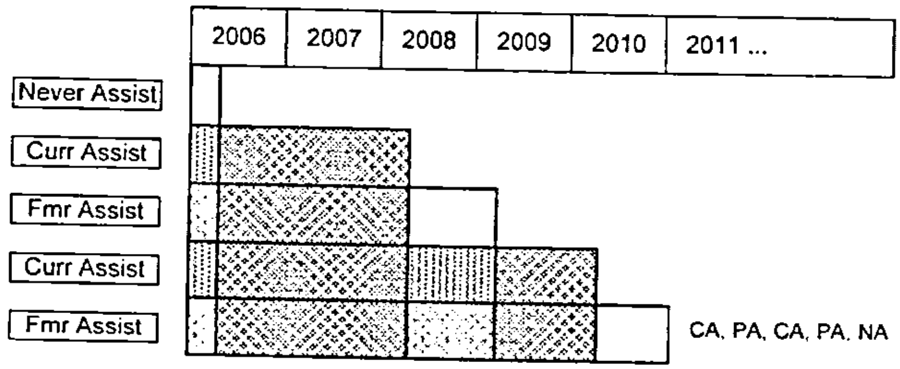
The family returns to assistance. Never-Assigned and Conditionally-Assigned Arrearages convert to Temporarily-Assigned Arrearages.[43]



May 2010 – January 2011:

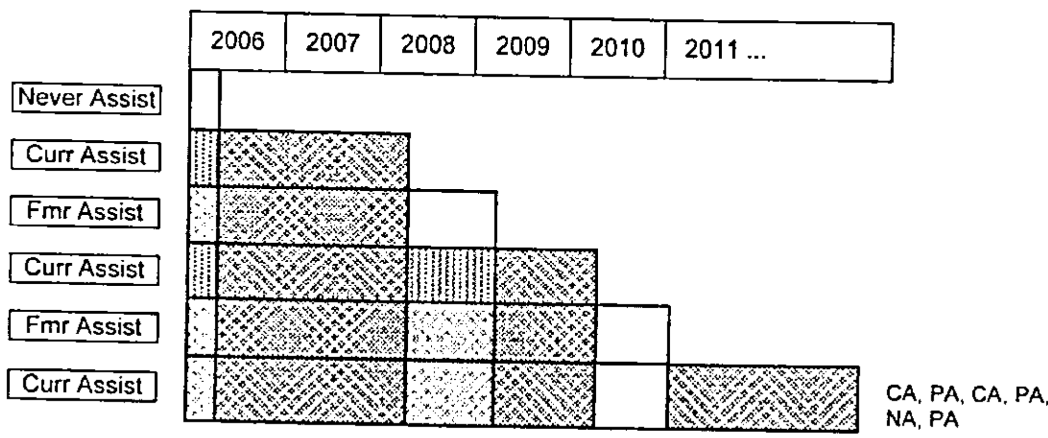
The Current-Assistance case closes and converts to a Former-Assistance case. The Temporarily-Assigned Arrearages convert to Conditionally-Assigned Arrearages.

[43] While the DRA limited assignment takes effect October 1, 2009, this case is still operating under a pre-DRA assignment. In such cases, it is not necessary to take a new assignment on October 1, 2009. Therefore, Temporarily-Assigned arrearages continue in this Current TANF case past September 30, 2009, until the family terminates from assistance (at which time the Temporarily-Assigned arrearages convert to Conditionally-Assigned arrearages).



February 2011:

The family returns to assistance under a new DRA assignment. All Never-Assigned Arrearages continue to belong to the family. Conditionally-Assigned Arrearages remain Conditionally-Assigned. Permanently-Assigned Arrearages remain Permanently-Assigned, and new Permanently-Assigned Arrearages begin to accrue only during the assistance period.



QUESTION 7: If the State elects to implement DRA Distribution, how will the distribution of collections from Federal tax refund offset payments affect the manner in which Conditionally-Assigned Arrearages are satisfied?

ANSWER 7: For States electing to apply the DRA Distribution rules, all collections, including Federal tax refund offset collections, must be applied to current support and Family Arrearages before Conditionally-Assigned Arrearages. See section IV(b), section III and footnote 23 of this AT.

Example 2 below illustrates how Federal tax refund offset collections would be distributed under DRA Distribution rules, and under PRWORA Distribution rules.

Example 2: Example of case with a Federal tax refund offset collection under DRA and PRWORA Distribution elections

Key for Example 2:

F = Family Arrearages; NA = Never-Assigned Arrearages; C = Conditionally-Assigned Arrearages; A = Assigned Arrearages; PA = Permanently-Assigned Arrearages.

For this example, we will assume we have a Former-Assistance family with an order for $100 per month. Arrearages are as follows: F or NA = $200; C = $500; A or PA = $500.

<u>EXAMPLE 2A</u>

The State has elected to apply DRA Distribution rules. A Federal tax refund offset payment of $300 is received; the payment is applied according to DRA Distribution rules. $100 is applied to Current Support; $200 is applied to Family Arrearages. Balances at month's end: F = $0; C = $500; A = $500.

<u>EXAMPLE 2B</u>

Now assume the same facts as above, but this time the State has elected to continue to apply PRWORA Distribution rules. All of the payment would be applied to Conditionally-Assigned Arrearages and retained by the State. Balances at month's end: NA = $300; C = $200; PA = $500.

QUESTION 8: If the State elects to implement DRA Distribution, is it possible that a family may receive all collections applied to Conditionally-Assigned Arrearages?

ANSWER 8: Yes. Under PRWORA assignments pursuant to former section 408(a)(3) of the Act, support rights which "accrued before the family received assistance" were Conditionally-Assigned. See definition of <u>Conditionally-Assigned Arrearages</u> in this AT. The assignment only applies, after the family ceases to receive assistance, with respect to any "**support collected pursuant to section 464"** of the Act (support collected by way of Federal Tax Refund Offset payments). Therefore, if payments other than Federal Tax Refund Offset (FTRO) payments are received and applied to Conditionally-Assigned Arrearages, these other payments could pay down the balance of Conditionally-Assigned Arrearages before a FTRO payment is received.

TEMPORARILY-ASSIGNED ARREARAGES

QUESTION 9: Will there be any new Temporarily-Assigned Arrearages for cases with an assignment entered subsequent to September 30, 2009?

ANSWER 9: No, there will be no new Temporarily-Assigned Arrearages for cases with assignments executed after September 30, 2009. However, if in a Current -Assistance case under a PRWORA assignment, there are Temporarily-Assigned Arrearages, those arrearages will remain temporarily assigned until the family leaves assistance, at which time they convert to Conditionally-Assigned Arrearages.

Example 4 below illustrates how a Current-Assistance case may or may not have Temporarily-Assigned Arrearages after September 30, 2009.

Example 4: Example of Current-Assistance cases with and without Temporarily-Assigned Arrearages after September 30, 2009

<u>Key for Example 4</u>:

CASE TYPES: NA = Never Assistance; CA = Current Assistance.

ARREARAGE TYPES: NA = Never-Assigned Arrearages; C = Conditionally-Assigned Arrearages; PA = Permanently-Assigned Arrearages; T = Temporarily-Assigned Arrearages.

In this example, both Family A and Family B have the same arrearage balances as of 7/31/2009 and both have current support obligations of $100 per month. However, Family A executes an assignment of support rights on 9/1/2009, and Family B executes an assignment of support rights on 10/1/2009. Here is how the two families' arrearages would accumulate from July 2009 through November 2009 under these two different assignments:

Family A (PRWORA assignment executed 9/1/2009):

			Cumulative Balances at End of Month			
			Family		State	
Month	Case Type	Pmt Amt	NA	C	PA	T[44]
7/09	NA	0	500			
8/09	NA	0	600			
9/09	CA	0			100	600
10/09	CA	0			200	600
11/09	CA	0			300	600

Family B (DRA assignment executed 10/1/2009):

			Cumulative Balances at End of Month			
			Family		State	
Month	Case Type	Pmt Amt	NA	C	PA	T[45]
7/09	NA	0	500			
8/09	NA	0	600			
9/09	NA	0	700			
10/09	CA	0	700		100	
11/09	CA	0	700		200	

UNASSIGNING ARREARAGES

QUESTION 10: Must a State continuously monitor Current-Assistance cases and unassign any excess Assigned Arrearages as soon as they appear?

[44] When a family stops receiving assistance the Temporarily-Assigned arrearages would become Conditionally-Assigned arrearages.

[45] See Footnote 43.

ANSWER 10: No. The amount of Assigned Arrearages may exceed the URA balance while the family is receiving assistance. It is not necessary to unassign the excess as soon as it occurs. Distribution rules prohibit States from retaining more than the URA. Amounts applied to Assigned Arrearages that exceed URA must be distributed to the family. However, if the family remains on assistance, Unreimbursed Assistance (URA) may continue to accrue in each subsequent month until the family leaves assistance. See footnote 10.

DISTRIBUTION IN CURRENT-ASSISTANCE CASES

QUESTION 11: Must URA under a DRA limited assignment be reduced by arrearage collections in a Current-Assistance case that are used to satisfy Family Arrearages?

ANSWER 11: No. The URA is not reduced by amounts applied to Family Arrearages because those arrearages are not assigned. However, if amounts are applied to Assigned Arrearages, URA must be reduced by those amounts (See Q&A 17).

QUESTION 12: Since Pre-Assistance Arrearages are no longer assigned when a TANF case opens after September 30, 2009, they remain Family, or Never-Assigned Arrearages while the family is receiving assistance. Can payments from collections applied to these arrearages, pursuant to section 457(a)(1)(C), be disregarded in determining the amount and type of TANF assistance paid to the family?

ANSWER 12: It is up to the State to determine which, if any payments made to a Current-Assistance family will be disregarded for purposes of determining eligibility for and payment of TANF assistance.

PASS-THROUGH PAYMENTS

QUESTION 13: How many "excepted portion" Pass-Through payments may a TANF family receive in a one-month period? For example, if a custodial parent (CP) is on a TANF assistance case with three children, two of the children with the same noncustodial parent (NCP) and one of the children with a different NCP, may the CP receive two "excepted portion" Pass-Through payments (one up to $200, plus another up to $100)?

ANSWER 13: The amount of the "excepted portion" is based on the total TANF family assistance unit(s), not the number of separate IV-D cases associated with the TANF assistance unit. Therefore under this scenario, the CP would only be entitled to one "excepted portion" Pass-Through payment of up to $200.

QUESTION 14: Must Pass-Through payments come out of current support?

ANSWER 14: No. Pass-Through payments allowed at section 457(a)(7)(B) of the Act are not required to come from current support collections. As stated at section 457(a)(7)(B)(ii) of the Act, the excepted portion is that portion of any amount collected on behalf of a Current-Assistance family, not exceeding $100 for one child per month, or $200 for two or more children in the family. Although the distribution rules require that collections must first be applied to current support, the Pass-Through payment may be paid from collections applied to either assigned current support or arrearages. For example, a State may choose to retain current support and pass through Assigned Arrearages, or retain arrearages and pass through payments applied to current support.

QUESTION 15: In a Current-Assistance case, what amounts may a State pass through to the family? Does the State owe the Federal share of amounts passed through?

ANSWER 15: As under prior law, the DRA permits States to pass through to the family the State share of amounts collected for families receiving assistance, with no dollar limitations. In general, the State still must pay the Federal government the Federal share of these passed-through amounts. However, new section 457(a)(7)(B) of the Act provides that a State is not required to pay the Federal share of an amount collected for a family receiving assistance under specific conditions. If a State passes through to the family up to $100 per month for a family with one child, or up to $200 per month for a family with two or more children, the Federal share of these amounts need not be paid to the Federal government to the extent the State disregards these amounts (the "excepted portion") in determining eligibility for and the amount of TANF assistance provided to the family. Therefore, a State only owes the Federal share of assigned amounts passed through to a Current-Assistance family that exceed these $100 or $200 limitations, or of assigned amounts that are not disregarded.

QUESTION 16: In a Former-Assistance case, what amounts may a State pass through to the family? Does the State owe the Federal share of amounts passed through?

ANSWER 16: New section 457(a)(7)(A) of the Act permits a State to pay to a Former-Assistance family any amount collected and applied to Assigned Arrearages. The State does not need to pay to the Federal government the Federal share of such passed-through amount as long as the State passes through both the State and Federal share. There is no dollar limit to the amount that may be passed through. Therefore, a State may pay some or all collections applied to Assigned Arrearages in a Former-Assistance case to the family and will not owe a Federal share of those collections.

QUESTION 17: Do Pass-Through payments in Current-Assistance cases under section 457(a)(7)(B) of the Act reduce URA?

ANSWER 17: Yes. The amount of assigned support, which could be retained but which is paid to the family from the State and Federal share of collections, must reduce URA.

The early, pre-PRWORA, $50 Pass-Through was a mandatory payment distributed to the family, and the first $50 of monthly collections could not be retained by the State. Accordingly, these payments did **not** reduce URA. Under PRWORA and DRA, Pass-Through payments are optional, and support collections must reduce URA. See OCSE-AT-97-17. The State may retain the collection, and share it with the Federal government, or pay it to the family. In Current-Assistance cases, the State share of such payments would be considered a "Qualified State Expenditure" and, if disregarded in determining eligibility for TANF, would count towards the State's Maintenance of Effort (MOE) requirement. See section 409(a)(7)(B)(i)(I)(aa) of the Act.

QUESTION 18: In a Current-Assistance case, if the State collects $125 on a case with one child, the DRA allows a Pass-Through payment and disregard of up to $100. If the State elects to limit the Pass-Through payment to $50 and disregards that amount, $50 of the $125 is sent to the family. A collection of $75 remains. Is the Federal share based upon that $75? Or is it based on the $25 difference between the collection of $125 and the $100 Pass-Through limit set by law?

ANSWER 18: The Federal share is based on the $75 remaining after the Pass-Through and disregard payment.

DISCONTINUED ASSIGNMENTS

QUESTION 19: If a State elects to discontinue its old assignments under section 457(b) of the Act, must it discontinue its assignments for all pre-1997 Assigned Arrearages or all post-1997 Pre-Assistance Arrearages? If not, how much flexibility does a State have in determining which of its assignments to discontinue?

ANSWER 19: A State is not required to discontinue all of its assignments of pre-1997 Assigned Arrearages or all of its assignments of post-1997 Pre-Assistance Arrearages. A State has maximum flexibility to discontinue some, all, or none of its assignments within the authorization of the DRA. Factors that States might consider could include how arrearage categories will convert to new categories under DRA distribution, how statewide automated systems have tracked Assigned Arrearages over time, and other implications for automated systems.

QUESTION 20: The State options regarding the discontinuation of older support assignments under section 457(b)(2)(A) of the Act refer only to "support obligations accruing before the date on which the family FIRST (emphasis added) receives assistance under part A ..." Does this provision allow a State to discontinue all of its Temporarily-Assigned or Conditionally-Assigned Arrearages or only those that accrued prior to the first date on which the family ever received assistance from the State?

ANSWER 20: Section 457(b) of the Act is intended to allow a State to discontinue some or all of its Conditionally-Assigned or Temporarily-Assigned Arrearages (whichever exists for the case at the time of discontinuation); these arrearages accrued prior to the first date of any given period of assistance. Support arrearages which accrue during the assistance period remain assigned.

QUESTION 21: If a State elects to discontinue any of its assignments authorized under the DRA, but the State has already collected and retained some or all of the arrearages under those assignments, will the State be required to now pay the family the arrearages it had retained?

ANSWER 21: No. The law applies prospectively to amounts as they are collected, not to amounts previously collected and retained by the State as required by prior law.

QUESTION 22: Does electing to follow the DRA Distribution sequence automatically trigger the discontinuation of assignments of Pre-Assistance Arrearages?

ANSWER 22: No. These choices are independent of each other. A State must decide whether to adopt DRA Distribution or to continue to follow PRWORA Distribution rules. The only way in which assignments of its Pre-Assistance Arrearages may be discontinued is through the authority provided in section 457(b) of the Act.

QUESTION 23: If a State elects to discontinue its assignments of pre-1997 arrearages under section 457(b)(1) of the Act, but is unable to distinguish its pre-1997 Assigned Arrearages from its post-1997 Permanently-Assigned Arrearages, may the State discontinue the assignment of a portion of those arrearages if the exact amount cannot be determined?

Example: A State's Permanently-Assigned Arrearages on a case prior to DRA implementation are $8,000 and the State knows at least some of its Assigned Arrearages accrued prior to the 1997 PRWORA implementation date, but cannot determine exactly how much. May the State discontinue $3,000 of the Assigned Arrearages?

Pre-1997		Post-1997	
Pre-Assistance Arrearages	During-Assistance Arrearages	During-Assistance Arrearages	Pre-Assistance Arrearages
PERMANENTLY ASSIGNED			TEMPORARILY/ CONDITIONALLY-ASSIGNED

ANSWER 23: No. In order for a State to discontinue its assignments of pre-1997 arrearages, the State must be able to differentiate between pre- and post-PRWORA Permanently-Assigned Arrearages because there is no statutory authority to discontinue the assignments of post-1997 During-Assistance (Permanently-Assigned) Arrearages.

QUESTION 24: If a State discontinues its assignment of arrearages should the URA be reduced by an equal amount?

ANSWER 24: No, URA is not reduced by discontinued assignments.

QUESTION 25: If a State elects to discontinue its pre-1997 assignments under section 457(b)(1) of the Act, would the State only discontinue its assignments of support obligations accruing before October 1, 1997?

ANSWER 25: No, not in all cases. If a State elects to discontinue all of its pre-1997 assignments pursuant to section 457(b)(1) of the Act, the discontinuation applies to support obligations falling under any of its assignments executed prior to October 1, 1997.

For example, if a family executes an assignment of support rights on September 1, 1997 and remains on assistance until June 30, 1998, all support that accrued prior to July 1, 1998 is assigned under a pre-1997 assignment and may be discontinued.

However, if a State wishes to limit the discontinuation of its assignments to support that accrued prior to October 1, 1997, the State may choose to do so (see Question and Answer 19 of this AT).

FEDERAL TAX REFUND OFFSET

QUESTION 26: What are the changes to the provisions regarding the distribution of collections resulting through the Federal tax refund offset program?

ANSWER 26: The treatment of Federal tax refund offset collections is the key difference between the DRA and PRWORA distribution rules. For States electing to follow DRA Distribution, Federal tax refund offset collections must be distributed in the same manner as any other collection. This means that in Former-Assistance cases, they must be applied first to current support, but then to Family Arrearages before Assigned Arrearages may be paid.[46] In Current-Assistance cases, Federal tax refund offset collections must also be applied first to current support, but then to Assigned Arrearages and last to any Family Arrearages.

For States that elect to continue to follow PRWORA Distribution, Federal tax refund offset collections must be applied to arrearages, not to current support. For both Current-Assistance and Former-Assistance cases under PRWORA Distribution, Federal tax refund offset collections must first be applied to arrearages assigned to the State with any remainder paid to the family

Displayed below is a chart that lays out the ways in which Federal tax refund offset collections should be distributed by case type and by distribution election (DRA Distribution vs. PRWORA Distribution).

Table 3: Distribution of Federal Tax Refund Offset Collections

	DRA Distribution Election	PRWORA Distribution Election
CURRENT-ASSISTANCE CASES	Apply FTRO[47] to current support first, then to Assigned Arrearages, then to Family Arrearages (1) Current, (2) Assigned, (3) Family	Apply FTRO to arrearages only: first to Temporarily- and Permanently-Assigned Arrearages, then to arrearages owed to the family (1) Permanently-Assigned/ Temporarily-Assigned, (2) Never-Assigned

[46] See 45 CFR 302.51(a). In addition, section 464(a)(3)(B) of the Act still applies and permits a delay in distribution for six months in cases in which a joint return has been filed. This is an exception to normal "two-day" disbursement rules in section 454B of the Act.

[47] FTRO = Federal tax refund offset.

	DRA Distribution Election	PRWORA Distribution Election
FORMER-ASSISTANCE CASES	Apply FTRO to current support first, then to Family Arrearages, then to Assigned Arrearages (1) Current, (2) Family, (3) Assigned	Apply FTRO to arrearages only: first to Conditionally- and Permanently-Assigned Arrearages, then to arrearages owed to the family. (1) Permanently-Assigned/ Conditionally-Assigned, (2) Never-Assigned

For further discussion on Federal tax refund offset distribution, see <u>section IV(b)</u> of this AT.

ARREARAGE CATEGORIES

QUESTION 27: Is the approach taken in the definitions section and the section regarding arrearage category conversion contained in this AT meant to dictate the actual terms and number of "buckets" used within a State's automated system? For example, is a State required to create a "family arrearages" bucket within its statewide system, or may the State maintain the Never-Assigned, Unassigned Pre-Assistance, and Unassigned During-Assistance categories as long as they function the same as the Family Arrearages category?

ANSWER 27: It is permissible for a State to maintain its Never-Assigned, Unassigned Pre-Assistance and Unassigned During-Assistance categories if the State has elected to implement DRA Distribution *<u>and</u> the State ensures that collections in Former-Assistance cases are applied to these buckets <u>before</u> applying anything to Assigned Arrearages.* States may opt to use the terms and the number of buckets it deems appropriate as long as it upholds the requirements under the DRA.

FEDERAL REPORTING REQUIREMENTS

QUESTION 28: Will collections on Current-Assistance and Former-Assistance cases continue to be counted twice in the collections base for Federal incentives purposes even if the collections are part of a Pass-Through or DRA distribution?

ANSWER 28: Yes. There is no change to the calculation of the collections base for Federal incentives purposes under section 458 of the Act.

MAINTENANCE OF EFFORT (MOE) UNDER TITLE IV-A

Question 29: Does the State share of any Pass-Through amounts in a Current-Assistance case count as a Qualified State Expenditure for purposes of the State's MOE requirement?

ANSWER 29: Yes. A State's share of the Pass-Through payment can be counted towards MOE when the Pass-Through is from the assigned support collection in a Current-Assistance case and the amount of the Pass-Through is disregarded in determining the eligibility for and the amount of TANF assistance. See section 409(a)(7)(B)(i)(I)(aa) of the Act. For further information on, or questions about, MOE requirements, please contact your TANF Regional Program Manager for the Office of Family Assistance, ACF.

DISTRIBUTION IN TITLE IV-E FOSTER CARE CASES

QUESTION 30: Are there any changes to section 457 of the Act in the DRA that would affect the distribution rules for title IV-E Foster Care case collections under section 457(e) of the Act and 45 CFR 302.52?

ANSWER 30: No. There are no changes contained in the DRA affecting the distribution of child support collections for IV-E Foster Care cases. Distribution for IV-E Foster Care cases is governed by section 457(e) of the Act and 45 CFR 302.52. See also guidance contained under question and answers 16 through 19 in OCSE-AT-98-24.

DISTRIBUTION IN TRIBAL IV-D CASES

QUESTION 31: Does anything contained in the DRA change how child support is distributed in Tribal IV-D cases?

ANSWER 31: No. Nothing contained in the DRA addresses distribution in Tribal IV-D cases. However an inter-governmental case with support assigned to a State may be impacted by the distribution options a State may select. Under 45 CFR 309.115, if the Tribal IV-D agency has received a request for assistance in collecting support on behalf of the family from a State under §309.120, the Tribal IV-D agency must send support collected to the State IV-D agency for distribution in accordance with section 457 of the Act and 45 CFR 302.51 and 302.52, unless the Tribal IV-D agency contacts the State and distributes the collection as directed by the State.

GAP PAYMENTS

QUESTION 32: What, if any, impact does the DRA have on the GAP payment provisions?

ANSWER 32: Former section 402(a)(28) of the Act provided for the payment to the family of child support collected by the State as a protection against reduction in the total income available to a family in a month. This section only applies to those States whose State title IV-A plan, in July 1975, permitted a portion of the monthly child support payment after application of appropriate disregards to be retained by a family receiving AFDC/TANF without causing a dollar-for-dollar reduction in the AFDC/TANF payment made to the family. There were no changes in the DRA that would affect the GAP payment provision.

MEDICAL SUPPORT

QUESTION 33: How is medical support assigned to the State under section 1912 of the Act distributed?

ANSWER 33: 45 CFR 302.51(c) addresses distribution of assigned medical support collections. See also question and answer 22 in OCSE-AT-98-24.

INTERSTATE

QUESTION 34: Which State is responsible for distribution in interstate cases?

ANSWER 34: 45 CFR 303.7(c)(7)(iv) requires responding States to forward collections to the location specified by the IV-D agency in the initiating State. Therefore, the IV-D agency in the initiating State is responsible for distribution of collections in an interstate case.

*** This section is current through the May 9, 2013 ***
*** issue of the Federal Register ***

TITLE 45 -- PUBLIC WELFARE
SUBTITLE B -- REGULATIONS RELATING TO PUBLIC WELFARE
CHAPTER III -- OFFICE OF CHILD SUPPORT ENFORCEMENT (CHILD SUPPORT ENFORCEMENT PROGRAM), ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES
PART 302 -- STATE PLAN REQUIREMENTS

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45 CFR 302.50

§ 302.50 Assignment of rights to support.

The State plan shall provide as follows:

(a) An assignment of support rights, as defined in § 301.1 of this chapter, constitutes an obligation owed to the State by the individual responsible for providing such support. Such obligation shall be established by:

(1) Order of a court of competent jurisdiction or of an administrative process; or

(2) Except for obligations assigned under *42 CFR 433.146*, other legal process as established by State laws, such as a legally enforceable and binding agreement.

(b) The amount of the obligation described in paragraph (a) of this section shall be:

(1) The amount specified in the order of a court of competent jurisdiction or administrative process which covers the assigned support rights.

(2) If there is no court or administrative order, an amount determined in writing by the IV-D agency as part of the legal process referred to in paragraph (a)(2) of this section in accordance with the requirements of § 302.56.

(c) The obligation described in paragraph (a) of this section shall be deemed for collection purposes to be collectible under all applicable State and local processes.

(d) Any amounts which represent support payments collected from an individual responsible for providing support under the State plan shall reduce, dollar for dollar, the amount of his obligation under this section.

(e) No portion of any amounts collected which represent an assigned support obligation defined under § 301.1 of this chapter may be used to satisfy a medical support obligation unless the court or administrative order designates a specific dollar amount for medical purposes.

HISTORY: *[40 FR 27159,* June 26, 1975, as amended at *50 FR 19648,* May 9, 1985; *51 FR 37731,* Oct. 24, 1986; *56 FR 8003,* Feb. 26, 1991; *56 FR 22353,* May 15, 1991; *64 FR 6237, 6248,* Feb. 9, 1999, as confirmed and amended at *68 FR 25293, 25303,* May 12, 2003]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
42 U.S.C. 651 through 658, 659a, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

NOTES: [EFFECTIVE DATE NOTE: *68 FR 25293, 25303,* May 12, 2003, amended this section, effective June 11, 2003.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: Nomenclature changes to Chapter III appear at *66 FR 39450, 39452,* July 31, 2001.]

NOTES APPLICABLE TO ENTIRE PART:
[PUBLISHER'S NOTE: Nomenclature changes to part 302 appear at *64 FR 6237, 6247,* Feb. 9, 1999.]

LexisNexis (R) Notes:

CASE NOTES

CASE NOTES Applicable to entire Part:Part Note

Jackson v. Rapps, 746 F. Supp. 934, 1990 U.S. Dist. LEXIS 12622 (WD Mo Aug. 13, 1990).

Overview: *The federal mandate that child support arrearagesbe calculated in accordance with a formula, clearly preempted the state agency director's policy to set an amount that was equal to the amount of public assistance paid out to the custodial parent.*

- The federal regulations provide a comprehensive scheme for the recovery from the non-custodial parent of funds expended by the state and the federal governments. Federal statutes require as a condition for federal funding that the state child support enforcement program comply with the requirements in the federal regulations promulgated by the U.S. Department of Health and Human Services. *42 U.S.C.S. §§ 601*, 652, 654. The federal regulations specifically mandate that in those instances where there is no court order, the state shall set the amount recoverable in accordance with a formula which meets the criteria prescribed in 45 C.F.R. § 302.53. *45 C.F.R. § 302.50(b)(2)*. That formula requires consideration of factors such as the non-custodial parent's financial situation and the needs of the child for whom public assistance has been supplied. Go To Headnote

Skelton v. Rapps, 1990 U.S. Dist. LEXIS 19481 (WD Mo Aug. 22, 1990).

Overview: *The policy of the individual directors of a state child support enforcement agency which failed to set child support arrearages according to federal regulations was held to be unconstitutional.*

- *45 C.F.R. § 302.50 (1989)* provides that: (a) the support rights assigned to the IV-D agency pursuant to 45 C.F.R § 232.11 of this title or § 471(a)(17) of the Social Security Act constitute an obligation owed to the state by the individual responsible for providing such support. Such obligation shall be established by: (1) Order of a court of competent jurisdiction, (2) Other legal process as established by State law, such as an administrative hearing process or a legally enforceable and binding agreement; (b) The amount of the obligation described in paragraph (a) of this section shall be: (1) The amount specified in the order of a court of competent jurisdiction which covers the assigned support rights; or (2) If there is no court order, an amount determined by the IV-D agency as part of the legal process referred to in paragraph (a)(2) of this section in accordance with a formula which meets the criteria prescribed in 45 C.F.R. § 302.53 (1989). Go To Headnote
- *45 C.F.R. § 302.50(b)(2) (1989)* provides that the amount of support obligation is determined in writing by the enforcement agency as part of the legal process referred to in paragraph (a)(2) of § 302.50 in accordance with a formula which meets the criteria prescribed in § 302.53. Go To Headnote

State Ex Rel. W. Va. Dep't of Health & Human Res. v. Sinclair, 210 W. Va. 354, 557 S.E.2d 761, 2001 W. Va. LEXIS 120 (W Va Nov. 8, 2001).

Overview: *Lower court had to conduct hearing in order to determine recipient's ability to pay back benefits, department had knowledge of the recipient's lack of income-earning potential during the time in which the benefits were paid.*

- The federal regulations provide an extensive list of factors to consider before collecting money from the parent. The applicable federal regulation, *45 C.F.R. § 302.50 (1984)*, provides that if there is no preexisting court order regarding child support, the amount of reimbursement to which the state would be entitled is to be determined through utilization of a formula which meets the criteria set forth in the federal regulations. Go To Headnote

Skelton v. Rapps, 1990 U.S. Dist. LEXIS 19481 (WD Mo Aug. 22, 1990).

Overview: *The policy of the individual directors of a state child support enforcement agency which failed to set child support arrearages according to federal regulations was held to be unconstitutional.*

- The federal regulations which determine child support obligations specifically mandate that in those instances where there is no court order, the state shall set the amount recoverable in accordance with a formula which meets the criteria prescribed in 45 C.F.R. § 302.53 (1989). *45 C.F.R. § 302.50(b)(2)*

(1989). That formula requires consideration of factors such as the non-custodial parent's financial situation and the needs of the child for whom public assistance has been supplied. Go To Headnote

Jackson v. Rapps, 746 F. Supp. 934, 1990 U.S. Dist. LEXIS 12622 (WD Mo Aug. 13, 1990).

Overview: *The federal mandate that child support arrearages be calculated in accordance with a formula, clearly preempted the state agency director's policy to set an amount that was equal to the amount of public assistance paid out to the custodial parent.*

- The federal regulations provide a comprehensive scheme for the recovery from the non-custodial parent of funds expended by the state and the federal governments. Federal statutes require as a condition for federal funding that the state child support enforcement program comply with the requirements in the federal regulations promulgated by the U.S. Department of Health and Human Services. *42 U.S.C.S. §§ 601, 652, 654*. The federal regulations specifically mandate that in those instances where there is no court order, the stateshall set the amount recoverable in accordance with a formula which meets the criteria prescribed in 45 C.F.R. § 302.53. *45 C.F.R. § 302.50(b)(2)*. That formula requires consideration of factors such as the non-custodial parent's financial situation and the needs of the child for whom public assistance has been supplied. Go To Headnote

Jackson v. Rapps, 1990 U.S. Dist LEXIS 18993 (WD Mo Aug. 13, 1990).

Overview: *Mother could maintain a § 1983 class action against the state for public assistance debt, but the class was restricted to non-custodial parents whose support obligations were not established by court order and whose debts were calculated after 1984.*

- *45 C.F.R. § 302.50 (1989)* provides two alternative methods of determining the amount of support owed. The support rights assigned to the Title IV-D of the Social Security Act (Act), *42 U.S.C.S. §§ 651-665*, agency pursuant to 45 C.F.R. § 232.11 or § 471(a)(17) of the Act constitute an obligation owed to the state by the individual responsible for providing such support. Such obligation is established by: (1) order of a court of competent jurisdiction; or (2) other legal process as established by state law, such as an administrative hearing process or a legally enforceable and binding agreement. The amount of the obligation is: (1) the amount specified in the order of a court of competent jurisdiction which covers the assigned support rights; or (2) if there is no court order, an amount determined by the Title IV-D of the Act agency as part of the legal process in accordance with a formula which meets the criteria prescribed in 45 C.F.R. § 302.53 (1989). Go To Headnote

Fenton v. Miller, 182 W. Va. 731, 391 S.E.2d 744, 1990 W. Va. LEXIS 39 (W Va Mar. 29, 1990).

Overview: *Circuit court was without jurisdiction to grant or dissolve preliminary injunction enjoining collection of AFDC child support benefits in favor of absent husband.*

- *45 C.F.R. § 302.50 (1984)* sets out the federal requirements for state proceedings for recoupment of Aid to Families with Dependent Children Program (AFDC) payments. The regulation provides: Such obligation to reimburse the State for AFDC payments shall be established by: (1) Order of a court of competent jurisdiction, or (2) Other legal process as established by state laws, such as an administrative hearing process or legally enforceable and binding agreement. Go To Headnote

State Ex Rel. W. Va. Dep't of Health & Human Res. v. Sinclair, 210 W. Va. 354, 557 S.E.2d 761, 2001 W. Va. LEXIS 120 (W Va Nov. 8, 2001).

Overview: *Lower court had to conduct hearing in order to determine recipient's ability to pay back benefits, department had knowledge of the recipient's lack of income-earning potential during the time in which the benefits were paid.*

- The federal regulations provide an extensive list of factors to consider before collecting money from the parent. The applicable federal regulation, *45 C.F.R. § 302.50 (1984)*, provides that if there is no preexisting court order regarding child support, the amount of reimbursement to which the state would be entitled is to be determined through utilization of a formula which meets the criteria set forth in the federal regulations. Go To Headnote

Jackson v. Rapps, 947 F.2d 332, 1991 U.S. App. LEXIS 24734 (8th Cir Oct. 17, 1991).

Overview: *State director of child support enforcement's policy of seeking reimbursement from noncustodial parents of all payments made under Aid to Families with Dependent Children Program violated guidelines of federal statute and was invalid.*

- *45 C.F.R. § 302.50(b)* explains that if there is no court order for support, the amount of the support obligation is determined in accordance with a formula which meets the criteria prescribed in 45 C.F.R. § 302.53. Go To Headnote

State Ex Rel. Department of Human Servs. v. Huffman, 175 W. Va. 401, 332 S.E.2d 866, 1985 W. Va. LEXIS 615 (W Va July 11, 1985).

Overview: *Where a father's ability to pay child support had never been determined, the West Virginia Department of Human Services was not entitled to recoup AFDC payments made to the mother without a prior hearing determining the father's ability to pay.*

- *45 C.F.R. § 302.50 (1984)* provides in part: The State plan shall provide as follows: (a) The support rights assigned to the title IV-D of the federal Social Security Act of 1965 agency pursuant to § 232.11 of this title constitute an obligation owed to the State by the individual responsible for providing such support. Such obligation shall be established by: (1) Order of a court of competent jurisdiction, (2) Other legal process as established by State laws, such as an administrative hearing process or legally enforceable and binding agreement; or, (b) The amount of the obligation described in § 302.50(a) shall be: (1) The amount specified in the order of a court of competent jurisdiction which covers the assigned support rights; or (2) If there is no court order, an amount determined in writing by the IV-D agency as part of the legal process referred to in § 302.50(a)(2) in accordance with the formula which meets the criteria prescribed in § 302.53. Go To Headnote
- 45 C.F.R. § 302.53 (1984) provides a formula for determining the amount of obligation at either administrative hearing or court hearing. The regulation provides in part: The State plan shall provide as follows: (a) There shall be a formula to be utilized by the title IV-D of the federal Social Security Act of 1965 agency in determining the amount of support obligation pursuant to *45 C.F.R. § 302.50 (1984)* when there is no court order covering the obligation. Such formula must take into consideration the following criteria: (1) All earnings, income and resources of the absent parent including real and personal property; (2) The earnings potential of the absent parent; (3) The reasonable necessities of the absent parent; (4) The ability of the absent parent to borrow; (5) The needs of the child for whom the support is sought; (6) The amount of assistance which would be paid to the child under the full standard of need of the State's IV-A plan; (7) The existence of other dependents; and, (8) Other reasonable criteria which the State may choose to incorporate. (c) The formula described in § 302.53(a) shall be utilized to determine the required monthly support obligation, the amount of support obligation arrearage, if any, and the amount to be paid periodically against such arrearage. Go To Headnote

Jackson v. Rapps, 746 F. Supp. 934, 1990 U.S. Dist. LEXIS 12622 (WD Mo Aug. 13, 1990).

Overview: *The federal mandate that child support arrearages be calculated in accordance with a formula, clearly preempted the state agency director's policy to set an amount that was equal to the amount of public assistance paid out to the custodial parent.*

- The federal regulations provide a comprehensive scheme for the recovery from the non-custodial parent of funds expended by the state and the federal governments. Federal statutes require as a condition for federal funding that the state child support enforcement program comply with the requirements in the federal regulations promulgated by the U.S. Department of Health and Human Services. *42 U.S.C.S. §§ 601*, 652, 654. The federal regulations specifically mandate that in those instances where there is no court order, the state shall set the amount recoverable in accordance with a formula which meets the criteria prescribed in 45 C.F.R. § 302.53. *45 C.F.R. § 302.50(b)(2)*. That formula requires consideration of factors such as the non-custodial parent's financial situation and the needs of the child for whom public assistance has been supplied. Go To Headnote

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Overview: *Mother could maintain a § 1983 class action against the state forpublic assistance debt, but the class was restricted to non-custodial parents whose support obligations were not established by court order and whose debts were calculated after 1984.*

- *45 C.F.R. § 302.50 (1989)* provides two alternative methods of determining the amount of support owed. The support rights assigned to the Title IV-D of the Social Security Act (Act), *42 U.S.C.S. §§ 651-665*, agency pursuant to 45 C.F.R. § 232.11 or § 471(a)(17) of the Act constitute an obligation owed to the state by the individual responsible for providing such support. Such obligation is established by: (1) order of a court of competent jurisdiction; or (2) other legal process as established by state law, such as an administrative hearing process or a legally enforceable and binding agreement. The amount of the obligation is: (1) the amount specified in the order of a court of competent jurisdiction which covers the assigned support rights; or (2) if there is no court order, an amount determined by the Title IV-D of the Act agency as part of the legal process in accordance with a formula which meets the criteria prescribed in 45 C.F.R. § 302.53 (1989). Go To Headnote

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Overview: *Circuit court was without jurisdiction to grant or dissolve preliminary injunction enjoining collection of AFDC child support benefits in favor of absent husband.*

- *45 C.F.R. § 302.50 (1984)* sets out the federal requirements for state proceedings for recoupment of Aid to Families with Dependent Children Program (AFDC) payments. The regulation provides: Such obligation to reimburse the State for AFDC payments shall be established by: (1) Order of a court of competent jurisdiction, or (2) Other legal process as established by state laws, such as an administrative hearing process or legally enforceable and binding agreement. Go To Headnote

*** This section is current through the May 9, 2013 ***
*** issue of the Federal Register ***

TITLE 45 -- PUBLIC WELFARE
SUBTITLE B -- REGULATIONS RELATING TO PUBLIC WELFARE
CHAPTER III -- OFFICE OF CHILD SUPPORT ENFORCEMENT (CHILD SUPPORT ENFORCEMENT PROGRAM), ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES
PART 302 -- STATE PLAN REQUIREMENTS

Go to the CFR Archive Directory

45 CFR 302.51

§ 302.51 Distribution of support collections.

The State plan shall provide as follows:

(a)(1) For purposes of distribution in a IV-D case, amounts collected, except as provided under paragraphs (a)(3) and (5) of this section, shall be treated first as payment on the required support obligation for the month in which the support was collected and if any amounts are collected which are in excess of such amount, these excess amounts shall be treated as amounts which represent payment on the required support obligation for previous months.

(2) In title IV-A and title IV-E foster care cases in which conversion to a monthly amount is necessary because support is ordered to be paid other than monthly, the IV-D agency may round off the converted amount to whole dollar amount for the purpose of distribution under this section and § 302.52 of this part.

(3)(i) Except as provided in paragraph (a)(3)(ii), amounts collected through Federal tax refund offset must be distributed as arrearages in accordance with § 303.72 of this chapter, and section 457 of the Act;

(ii) Effective October 1, 2009, or up to a year earlier at State option, amounts collected through Federal tax refund offset shall be distributed in accordance with § 303.72 of this chapter and the option selected under section 454(34) of the Act.

(4)(i) Effective October 1, 1998 (or October 1, 1999 if applicable) except with respect to those collections addressed under paragraph (a)(3) of this section and except as specified under paragraph (a)(4)(ii) of this section, with respect to amounts collected and distributed under title IV-D of the Act, the date of collection for distribution purposes in all IV-D cases is the date of receipt in the State disbursement unit established under section 454B of the Act.

(ii) If current support is withheld by an employer in the month when due, and received by the State in a month other than the month when due, the date of withholding may be deemed to be the date of collection.

(iii) When the date of collection pursuant to this subparagraph is deemed to be the date the wage or other income was withheld, and the employer fails to report the date of withholding, the IV-D agency must reconstruct that date by contacting the employer or comparing actual amounts collected with the pay schedule specified in the court or administrative order.

(5)(i) Except as provided in paragraph (a)(5)(ii), a State must pay to a family that has never received assistance under a program funded or approved under title IV-A or foster care under title IV-E of the Act and to an individual who is not required to cooperate with the IV-D program as a condition of Food Stamp eligibility as defined at § 273.11(o) and (p) of title 7 the portion of the amount collected that remains after withholding any annual $ 25 fee that the State imposes under § 302.33(e) of this part.

(ii) If a State charges the noncustodial parent the annual $ 25 fee under § 302.33(e) of this part, the State may retain the $ 25 fee from the support collected after current support and any payment on arrearages for the month under a court or administrative order have been disbursed to the family provided the noncustodial parent is not required to cooperate with the IV-D program as a condition of Food Stamp eligibility as defined at § 273.11(o) and (p) of title 7.

(b) If an amount collected as support represents payment on the required support obligation for future months, the amount shall be applied to such future months. However, no such amounts shall be applied to future months unless amounts have been collected which fully satisfy the support obligation assigned under section 403(a)(8) of the Act for the current month and all past months.

(c)(1) The amounts collected by the IV-D agency which represent specific dollar amounts designated in the support order for medical purposes that have been assigned to the State under *42 CFR 433.146* shall be forwarded to the Medicaid agency for distribution under *42 CFR 433.154*.

(2) When a family ceases receiving assistance under the State's title XIX plan, the assignment of medical support rights under section 1912 of the Act terminates, except for the amount of any unpaid medical support obligation that has accrued under such assignment. The IV-D agency shall attempt to collect any unpaid specific dollar amounts designated in the support order for medical purposes. Under this requirement, any medical support collection made by the IV-D agency under this paragraph shall be forwarded to the Medicaid agency for distribution under *42 CFR 433.154*.

HISTORY: [*40 FR 27159*, June 26, 1975, as amended at *47 FR 37889*, Aug. 27, 1982; *47 FR 57281*, Dec. 23, 1982; *49 FR 35605*, Sept. 10, 1984; *50 FR 19648*, May 9, 1985; *50 FR 31719*, Aug. 6, 1985; *51 FR 37731*, Oct. 24, 1986; *53 FR 21644*, June 9, 1988; *54 FR 32309*, Aug. 4, 1989; *54 FR 32309*, Aug. 4, 1989; *56 FR 8004*, Feb. 26, 1991; *56 FR 22353*, May 15, 1991; *64 FR 6237, 6248*, Feb. 9, 1999, as confirmed and amended at *68 FR 25293, 25303*, May 12, 2003; *73 FR 74898, 74920*, Dec. 9, 2008]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
42 U.S.C. 651 through 658, 659a, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

NOTES: [EFFECTIVE DATE NOTE: *73 FR 74898, 74920*, Dec. 9, 2008, amended this section, effective Feb. 9, 2009.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: Nomenclature changes to Chapter III appear at *66 FR 39450, 39452*, July 31, 2001.]

NOTES APPLICABLE TO ENTIRE PART:
[PUBLISHER'S NOTE: Nomenclature changes to part 302 appear at *64 FR 6237, 6247*, Feb. 9, 1999.]

NOTES TO DECISIONS: COURT AND ADMINISTRATIVE DECISIONS SIGNIFICANTLY DISCUSSING SECTION --
Lawyer v Valdez (1990, DC NM) 763 F Supp 1562
Desrochers v Desrochers (2002) 173 Vt 312, 795 A2d 1171

LexisNexis (R) Notes:

CASE NOTES

CASE NOTES Applicable to entire Part:Part Note

King v. Wright, 1995 U.S. Dist. LEXIS 12138 (ND Ill Aug. 18, 1995).

Overview: Class of clients of Child Enforcement Act (Act) had enforceable rights and standing to have pursued action to enforce state officials who oversaw and administered child support enforcement program to comply with statutory requirements of the Act.

- Support payments collected by Department of Child Support Enforcement (DCSE) are distributed to clients in the following manner. Title IV-D clients who are not receiving Aid to Families with Dependent Children (AFDC) benefits receive the full payment. *42 U.S.C.S. § 657*(c); *45 C.F.R. § 302.51(e)*. Title IV-D clients receiving AFDC benefits are entitled to a "pass-through" of the first $ 50 of each timely monthly payment. *42 U.S.C.S. §§ 657*(b)(1), 692(a)(8)(A)(vi); *45 C.F.R. § 302.51(b)(1)*. The Illinois Department of Public Aid retains the remainder of the monthly payment to reimburse AFDC for benefits distributed to the client presently or in the past. *42 U.S.C.S. § 657*(b)(2); *45 C.F.R. § 302.51(b)(2)*. If the monthly payment minus the $ 50 pass-through exceeds the amount of the total monthly AFDC benefit, the client also receives the excess amount. *42 U.S.C.S. § 657*(b)(3); *45 C.F.R. § 302.51(b)(3)*. However, DCSE may retain the excess amount to reimburse AFDC funds paid to the client in the past. *42 U.S.C.S. § 657*(b)(4); *45 C.F.R. § 302.51(b)(4)*, (b)(5). Go To Headnote

Hornbeck v. Caplinger, 712 S.E.2d 779, 2011 W. Va. LEXIS 44 (W Va June 14, 2011).

Overview: *The Bureau of Child Support Enforcement's rule allocating excess child support payments first to overdue principal before allocating them to interest on the overdue principal was upheld because the rule was within the agency's authority under W. Va. Code § 48-18-105 (2003), as it closely adhered to a legislative purpose for child support payments.*

- When allocating child support payments, *45 C.F.R. § 302.51* requires that current support be paid first. There is no federal requirement regarding interest on support payments, and the matter of interest accrual and distribution of payments to interest is completely subject to the law of each state. Go To Headnote

Barnes v. Healy, 980 F.2d 572, 1992 U.S. App. LEXIS 30913 (9th Cir Nov. 25, 1992).

Overview: *Scope of preliminary injunction was improperly defined because it did not require that the notice of annual child support disbursements given to custodial parents had to specify a federally defined collection date.*

- Except for tax refund intercepts, any money collected during a month is treated as payment of the support obligation for that month, up to the court-ordered amount of current support. *45 C.F.R. § 302.51(a)(1) (1991)*. The state may retain the remainder as reimbursement for past Aid to Families with Dependant Children payments. *45 C.F.R. § 302.51(b)(2) (1991)*. Go To Headnote

State by & Through Dep't of Social Servs. v. Sucec, 924 P.2d 882, 1996 Utah LEXIS 84 (Utah Sept. 24, 1996).

Overview: *Custodial parents' assignments of past due child support to a private collection agency were valid.*

- Utah Code Ann. § 62A-9-121(1)(a) provides that the department of human services shall obtain an assignment of support from each applicant or recipient regardless of whether the payment is court ordered. The requirement of an assignment is further subject to the limitations of *45 C.F.R. § 302.51(f)*, which provides that an approved state plan for the implementation of the Aid to Families with Dependent Children (AFDC) program shall contain the requirement that when a family ceases receiving assistance under the AFDC program, the assignment of support rights under 45 C.F.R. § 232.11 terminates, except with respect to the amount of any unpaid support obligation that has accrued under such assignment. Go To Headnote

King v. Wright, 1995 U.S. Dist. LEXIS 12138 (ND Ill Aug. 18, 1995).

Overview: *Class of clients of Child Enforcement Act (Act) had enforceable rights and standing to have pursued action to enforce state officials who oversaw and administered child support enforcement program to comply with statutory requirements of the Act.*

- Support payments collected by Department of Child Support Enforcement (DCSE) are distributed to clients in the following manner. Title IV-D clients who are not receiving Aid to Families with Dependent Children (AFDC) benefits receive the full payment. *42 U.S.C.S. § 657*(c); *45 C.F.R. § 302.51(e)*. Title IV-D clients receiving AFDC benefits are entitled to a "pass-through" of the first $ 50 of each timely monthly payment. *42 U.S.C.S. §§ 657*(b)(1), 692(a)(8)(A)(vi); *45 C.F.R. § 302.51(b)(1)*. The Illinois Department of Public Aid retains the remainder of the monthly payment to reimburse AFDC for benefits distributed to the client presently or in the past. *42 U.S.C.S. § 657*(b)(2); *45 C.F.R. § 302.51(b)(2)*. If the monthly payment minus the $ 50 pass-through exceeds the amount of the total monthly AFDC benefit, the client also receives the excess amount. *42 U.S.C.S. § 657*(b)(3); *45 C.F.R. § 302.51(b)(3)*. However, DCSE may retain the excess amount to reimburse AFDC funds paid to the client in the past. *42 U.S.C.S. § 657*(b)(4); *45 C.F.R. § 302.51(b)(4)*, (b)(5). Go To Headnote

Barnes v. Healy, 980 F.2d 572, 1992 U.S. App. LEXIS 30913 (9th Cir Nov. 25, 1992).

Overview: Scope of preliminary injunction was improperly defined because it did not require that the notice of annual child support disbursements given to custodial parents had to specify a federally defined collection date.

- Except for tax refund intercepts, any money collected during a month is treated as payment of the support obligation for that month, up to the court-ordered amount of current support. *45 C.F.R. § 302.51(a)(1) (1991)*. The state may retain the remainder as reimbursement for past Aid to Families with Dependant Children payments. *45 C.F.R. § 302.51(b)(2) (1991)*. Go To Headnote

Hill v. Ibarra, 954 F.2d 1516, 1992 U.S. App. LEXIS 920 (10th Cir Jan. 28, 1992).

Overview: Grant of summary judgment was proper because recipient did not have a priority interest in monies collected by department of social services pursuant to a judgment department obtained because she failed to authorize department to take such action.

- The cited provisions that require priority to be given to collection of current monthly child support payments, 42U.S.C.S. § 654(11) and *45 C.F.R. 302.51(a)*, apply to situations where the state is collecting such support on behalf of a welfare recipient, not where it is simply collecting on its own judgment for arrearages. And, *42 U.S.C.S. § 657*(c)(2) applies to situations where a former Aid to Families with Dependent Children recipient has authorized a state Title IV-D agency to continue to collect current child support. Go To Headnote

Kenyon v. Sullivan, 761 F. Supp. 951, 1991 U.S. Dist. LEXIS 5121 (D RI Apr. 10, 1991).

Overview: A class of public aid recipients successfully challenged the state's method of distributing pass-through payments from the child support received by the state on behalf of the public aid recipients.

- The Secretary of the United States Department of Health and Human Services modified *45 C.F.R. § 302.51(a)*, effective June 9, 1988, to state that the date of collection shall be the date on which that payment is received by the Child Support Enforcement Program, of the Social Security Act Title IV-D agency or the legal entity of any state or political subdivision actually making the collection, whichever is earliest. This amendment means that in cases of interstate collection, the support payment shall be deemed made when received by the state responsible for collecting payment, not, as was the case previously, when received by the state in which the recipient resided. Go To Headnote

Beasley v. Ginsberg, 1989 U.S. Dist. LEXIS 16682 (D Conn Oct. 3, 1989).

Overview: State and federal regulations improperly implemented the child support "pass-through" provisions of the Social Security Act by placing the burden on AFDC recipients to prove when child support was paid.

- To the extent *45 C.F.R. § 302.51* limits the Title IV-D agency's obligation to pay only one "pass-through" payment in a month in which two or more support payments are collected by the home state, it is in violation of *42 U.S.C.S. § 657*(b)(1). A support payment made within a given month, but not forwarded to the State Department of Administrative Services (Connecticut) in the same month because of bureaucratic or postal delays is certainly no basis to penalize the Aid to Families with Dependent Children family. No rational purpose is served by denying child support to a needy family because the state itself has not promptly entered the money into its books. Go To Headnote

Mosley v. Bowen, 703 F. Supp. 1288, 1989 U.S. Dist. LEXIS 311 (SD Ohio Jan. 6, 1989).

Overview: Regulations promulgated by Secretary of United States Department of Health and Human Services limiting AFDC recipient to one pass-through payment per month and only when support payment was received in month when due, violated Social Security Act.

- *45 C.F.R. § 302.51(a)* provides that the date of collection of child support payments is the date the support payment is received by an authorized Title IV-D agency or legal entity of the state or other political subdivision actually making the collection, whichever is earlier. *53 Fed. Reg. 21,642* (June 9, 1988). Go To Headnote

Hornbeck v. Caplinger, 712 S.E.2d 779, 2011 W. Va. LEXIS 44 (W Va June 14, 2011).

Overview: The Bureau of Child Support Enforcement's rule allocating excess child support payments first to overdue principal before allocating them to interest on the overdue principal was upheld because the rule was within the agency's authority under W. Va. Code § 48-18-105 (2003), as it closely adhered to a legislative purpose for child support payments.

- When allocating child support payments, *45 C.F.R. § 302.51* requires that current support be paid first. There is no federal requirement regarding interest on support payments, and the matter of interest accrual and distribution of payments to interest is completely subject to the law of each state. Go To Headnote

State by & Through Dep't of Social Servs. v. Sucec, 924 P.2d 882, 1996 Utah LEXIS 84 (Utah Sept. 24, 1996).

Overview: Custodial parents' assignments of past due child support to a private collection agency were valid.

- As a condition of eligibility for assistance, each applicant for or recipient of Aid to Families with Dependent Children (AFDC) shall assign to the state any rights to support which have accrued at the time such assignment is executed. Utah has complied with and codified this requirement in Utah Code Ann. § 62A-9-121(1)(a) which provides that the department shall obtain an assignment of support from each applicant or recipient regardless of whether the payment is court ordered. The federal regulations governing AFDC further provide that a state plan for the administration of AFDC shall provide that when a family ceases receiving assistance under the AFDC program, the assignment of support rights under 45 C.F.R. § 232.11 terminates, except with respect to the amount of any unpaid support obligation that has accrued under such assignment. *45 C.F.R. § 302.51(f)*. Go To Headnote
- 45 C.F.R. § 232.11 states that to receive AFDC payments, the applicant must assign to the state any past-due support that has accrued up to the time the assignment is made. Even if the language of § 232.11 were subject to more than one interpretation, *45 C.F.R. § 302.51(f)* clearly states that the assignment under 45 C.F.R. § 232.11, whatever its scope may be, terminates when a family ceases receiving public assistance, except with respect to the amount of any unpaid support obligation that has accrued under such assignment. Go To Headnote

Barnes v. Healy, 980 F.2d 572, 1992 U.S. App. LEXIS 30913 (9th Cir Nov. 25, 1992).

Overview: Scope of preliminary injunction was improperly defined because it did not require that the notice of annual child support disbursements given to custodial parents had to specify a federally defined collection date.

- Custodial parents who receive Aid to Families with Dependant Children are entitled to receive the first $ 50 of any support payment collected in the month when due, even if the Title IV-D of the Social Security Act agency's receipt of the funds is delayed. *45 C.F.R. § 302.51(b)(1) (1991)*. Go To Headnote
- The California Department of Social Services is required by law to determine the federally defined date of collection for its own use in distributing payments. *45 C.F.R. § 302.51(a)(4) (1991)*. Go To Headnote

Comm'r of Soc. Servs. Ex Rel. Wandel v. Segarra, 78 N.Y.2d 220, 78 N.Y.2d 220, 1991 N.Y. LEXIS 1011 (NY July 2, 1991).

Overview: In the Commissioner's action for child support, it was held that a father's financial resources were a relevant factor in determining the amount owed, and the amount of support was not limited to the amount of public assistance the child received.

- The 1975 amendments to the Federal Aid to Families with Dependent Children Act, *42 U.S.C.S. § 602*(a)(26)(A), includes a scheme for the distribution of court-ordered support collected on behalf of Aid to Families with Dependent Children (AFDC) recipients. The scheme provides for reimbursement to the states for past, as well as present, AFDC payments. This distribution scheme is adopted in the New York State regulations, 18 N.Y. C.R.R. 347.13, and contemplates that all assigned support payments be paid directly to the Commissioner of Social Services, *45 C.F.R. 302.32*; 18 N.Y. C.R.R. 347.12(a). The Commissioner must then determine if the current support payment makes the family ineligible for AFDC, 45 C.F.R. 232.20, *302.32(b)*; 18 N.Y. C.R.R. 347.12(b) and if so, the Commissioner's assignment terminates, except to the extent of unpaid support obligations that have accrued under such assignment, *45 C.F.R. 302.51(f)*; 18 N.Y. C.R.R. 347.13(f). Go To Headnote
- Both federal and state regulations provide for the distribution of support collected on behalf of an Aid to Families with Dependent Children (AFDC) recipient in excess of an AFDC grant. The regulations establish a tiered distribution scheme, *42 U.S.C.S. §§ 657*(b)(1)-(4); *45 C.F.R. 302.51(b)(1)*-(5); 18 N.Y. C.R.R. 347.13(b)(2)-(4), pursuant to which the first $ 50 of monthly support collected pursuant to a court order is distributed to the family and is disregarded as income. If the amount collected exceeds $ 50, the state is entitled to retain, as reimbursement, an amount equal to that month's assistance payment. Any amount collected in excess of that month's assistance payment is paid to the family to the limit of the amount required by the court order, and if any amount is collected in excess of the amount required to be paid by court order, it is applied to reimburse the state for past assistance payments made to that recipient. Once the state is reimbursed for AFDC assistance payments, any excess remaining is paid to the subject family. Go To Headnote

Hull v. State Dep't of Public Welfare, 515 So. 2d 1205, 1987 Miss. LEXIS 2930 (Miss Nov. 25, 1987).

Overview: The Department of Public Welfare, by virtue of having provided public assistance benefits for minor children, was empowered to bring suit against the non-supporting parent who had failed to comply with a previous order of support.

- *45 C.F.R. 302.51(f)* (1986 Add.) states that when a family ceases receiving assistance under the state's Title IV-A Plan, the assignment of support rights under 45 C.F.R. § 232.11 of this title terminates, except with respect to the amount of any unpaid support obligation that accrued under such assignment. From this accrued amount, the IV-D Agency shall attempt to collect such unpaid obligations. Under this regulation: such collection shall be used to reimburse any amounts of past assistance which have not been reimbursed. Only amounts collected pursuant to this paragraph which exceed the amount of unreimbursed past assistance shall be paid to the family. Go To Headnote

Beasley v. Harris, 671 F. Supp. 911, 1987 U.S. Dist. LEXIS 9258 (D Conn Oct. 14, 1987).

Overview: In action by aid recipients protesting state agencies' handling of "pass through" payments of child support, court declined to dismiss all but one of recipient's claims, found that agencies did not have immunity, and provisionally certified a class.

- *45 C.F.R. § 302.51*, to the extent it limits a Title IV-D agency's obligation to pay only one pass-through payment in a month where two or more support payments are collected by the home state, is invalid. Go To Headnote

Greene v. Iowa Dist. Court, 312 N.W.2d 915, 1981 Iowa Sup. LEXIS 1080 (Iowa Nov. 25, 1981).

Overview: When the parties to a dissolution action remarry, the remarriage did not nullify the enforceability of an order that was valid when entered, and the district court had jurisdiction to enforce back child support award.

- When a family ceases receiving assistance the assignment of support rights terminates, except with respect to the amount of any unpaid support obligation that has accrued under such assignment. From this accrued amount, the state agency shall attempt to collect such unpaid obligation (1) Such collections shall be used to reimburse any amounts of past assistance which have not been reimbursed. *45 C.F.R. § 302.51(f)(1) (1980)*. Go To Headnote

Levesque v. Sheehan, 821 F. Supp. 779, 1993 U.S. Dist. LEXIS 6693 (D Me May 12, 1993).

Overview: Because pass-through child support payments were welfare benefits and did not constitute property, there was no taking of a welfare recipient's property in violation of the Takings Clause of the Fifth Amendment.

- Federal regulations interpreting *42 U.S.C.S. § 657*(b)(1) provide that except for specifically enumerated situations: (i) Effective June 9, 1988, the date of collection for distribution purposes in all IV-D cases shall be the date on which the payment is received by the IV-D agency or the legal entity of any state or political subdivision actually making the collection, whichever is earliest; and (ii) Effective January 1, 1989, a state may use on a statewide bails either the definition of the date of collection in *45 C.F.R. § 302.51(a)(5)(i)* or the date the payment is mailed, as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier, as the date of collection in all IV-D cases. *45 C.F.R. § 302.51(a)(5)(i)* and (ii). Another subsection of this regulation requires that the date of collection of child support payments made by withholding from wages or other income must be the date the wages or other income are withheld to meet the support obligation. *45 C.F.R. § 302.51(a)(4)*. Go To Headnote

Hill v. Ibarra, 954 F.2d 1516, 1992 U.S. App. LEXIS 920 (10th Cir Jan. 28, 1992).

Overview: Grant of summary judgment was proper because recipient did not have a priority interest in monies collected by department of social services pursuant to a judgment department obtained because she failed to authorize department to take such action.

- The cited provisions that require priority to be given to collection of current monthly child support payments, *42 U.S.C.S. § 654*(11) and *45 C.F.R. 302.51(a)*, apply to situations where the state is collecting such support on behalf of a welfare recipient, not where it is simply collecting on its own judgment for arrearages. And, *42 U.S.C.S.§ 657*(c)(2) applies to situations where a former Aid to Families with Dependent Children recipient has authorized a state Title IV-D agency to continue to collect current child support. Go To Headnote

Comm'r of Soc. Servs. Ex Rel. Wandel v. Segarra, 78 N.Y.2d 220, 78 N.Y.2d 220, 1991 N.Y. LEXIS 1011 (NY July 2, 1991).

Overview: In the Commissioner's action for child support, it was held that a father's financial resources were a relevant factor in determining the amount owed, and the amount of support was not limited to the amount of public assistance the child received.

- The 1975 amendments to the Federal Aid to Families with Dependent Children Act, *42 U.S.C.S. § 602*(a)(26)(A), includes a scheme for the distribution of court-ordered support collected on behalf of Aid to Families with Dependent Children (AFDC) recipients. The scheme provides for reimbursement to the states for past, as well as present, AFDC payments. This distribution scheme is adopted in the New York State regulations, 18 N.Y. C.R.R. 347.13, and contemplates that all assigned support payments be paid directly to the Commissioner of Social Services, *45 C.F.R. 302.32*; 18 N.Y. C.R.R. 347.12(a). The Commissioner must then determine if the current support payment makes the family ineligible for AFDC, 45 C.F.R. 232.20, *302.32(b)*; 18 N.Y. C.R.R. 347.12(b) and if so, the Commissioner's assignment terminates, except to the extent of unpaid support obligations that have accrued under such assignment, *45 C.F.R. 302.51(f)*; 18 N.Y. C.R.R. 347.13(f). Go To Headnote

Schwendeman v. Ives, 1990 U.S. App. LEXIS 20425 (1st Cir Nov. 7, 1990).

Overview: Judgment for Commissioner of the Maine Department of Human Services and the Secretary of Health and Human Services was proper in action by families for declaration to invalidate 45 C.F.R. § 302.51(b)(1) because 42 U.S.C.S. § 657(b)(1) was facially unclear as to whether more than one $ 50 pass-through payment was called for under the circumstances.

- Under *45 C.F.R. § 302.51(b)(1)*, the state pays only one $ 50 monthly child support pass-through payment to each Aid to Families with Dependent Children household notwithstanding the state's receipt of child support payments from more than one parent for the same household. Go To Headnote

Luyando v. Grinker, 8 F.3d 948, 1993 U.S. App. LEXIS 28859 (2d Cir Nov. 3, 1993).

Overview: Decision invalidating regulation governing pass-through benefits under Aid to Families with Dependent Children program was reversed because Secretary of Health and Human Services' interpretation of statute was not impermissible.

- Under 45 C.F.R. pt. 302.51(b)(1), the family receives the $ 50 pass-through only if the state receives the payment in the month it is due. N.Y. Comp. R. & Regs. tit. 18, § 352.15(a) (1986) mirror the federal pass-through regulation. Go To Headnote

Levesque v. Sheehan, 821 F. Supp. 779, 1993 U.S. Dist. LEXIS 6693 (D Me May 12, 1993).

Overview: Because pass-through child support payments were welfare benefits and did not constitute property, there was no taking of a welfare recipient's property in violation of the Takings Clause of the Fifth Amendment.

- If an employer fails to report the date of withholding, the IV-D agency must reconstruct that date by contacting the employer or comparing actual amounts collected with the pay schedule specified in the court or administrative order. *45 C.F.R. § 302.51(a)(4)*. Requiring the recording of the postmark date of payments received is not too much of a burden to impose on the state agency, even when the volume of those payments is high. Go To Headnote

Kenyon v. Sullivan, 761 F. Supp. 951, 1991 U.S. Dist. LEXIS 5121 (D RI Apr. 10, 1991).

Overview: A class of public aid recipients successfully challenged the state's method of distributing pass-through *payments from the child support received by the state on behalf of the public aid recipients.*

- The Secretary of the United States Department of Health and Human Services modified *45 C.F.R. § 302.51(a)*, effective June 9, 1988, to state that the date of collection shall be the date on which that payment is received by the Child Support Enforcement Program, of the Social Security Act Title IV-D agency or the legal entity of any state or political subdivision actually making the collection, whichever is earliest. This amendment means that in cases of interstate collection, the support payment shall be deemed made when received by the state responsible for collecting payment, not, as was the case previously, when received by the state in which the recipient resided. Go To Headnote

Luyando v. Bowen, 1989 U.S. Dist. LEXIS 177 (SD NY Jan. 13, 1989).

Overview: *In a parent's proposed class action against state and federal officials challenging regulations that limited the "pass-through" of child support payments to participants in the Aid to Families With Dependent Children program, classes were certified.*

- *45 C.F.R. § 302.51(b)(1)* provides: Of any amount that is collected in a month which represents payment on the required support obligation for that month, the first $ 50 of such amount shall be paid to the family. If the amount collected includes payment on the required support obligation for a previous month or months, the family shall only receive the first $ 50 of the amount which represents the required support obligation for the month in which the support was collected. Go To Headnote

Beasley v. Harris, 671 F. Supp. 911, 1987 U.S. Dist. LEXIS 9258 (D Conn Oct. 14, 1987).

Overview: *In action by aid recipients protesting state agencies' handling of "pass through" payments of child support, court declined to dismiss all but one of recipient's claims, found that agencies did not have immunity, and provisionally certified a class.*

- *45 C.F.R. § 302.51*, to the extent it limits a Title IV-D agency's obligation to pay only one pass-through payment in a month where two or more support payments are collected by the home state, is invalid. Go To Headnote

King v. Wright, 1995 U.S. Dist. LEXIS 12138 (ND Ill Aug. 18, 1995).

Overview: *Class of clients of Child Enforcement Act (Act) had enforceable rights and standing to have pursued action to enforce state officials who oversaw and administered child support enforcement program to comply with statutory requirements of the Act.*

- Support payments collected by Department of Child Support Enforcement (DCSE) are distributed to clients in the following manner. Title IV-D clients who are not receiving Aid to Families with Dependent Children (AFDC) benefits receive the full payment. *42 U.S.C.S. § 657*(c); *45 C.F.R. § 302.51(e)*. Title IV-D clients receiving AFDC benefits are entitled to a "pass-through" of the first $ 50 of each timely monthly payment. *42 U.S.C.S. §§ 657*(b)(1), 692(a)(8)(A)(vi); *45 C.F.R. § 302.51(b)(1)*. The Illinois Department of Public Aid retains the remainder of the monthly payment to reimburse AFDC for benefits distributed to the client presently or in the past. *42 U.S.C.S. § 657*(b)(2); *45 C.F.R. § 302.51(b)(2)*. If the monthly payment minus the $ 50 pass-through exceeds the amount of the total monthly AFDC benefit, the client also receives the excess amount. *42 U.S.C.S. § 657*(b)(3); *45 C.F.R. § 302.51(b)(3)*. However, DCSE may retain the excess amount to reimburse AFDC funds paid to the client in the past. *42 U.S.C.S. § 657*(b)(4); *45 C.F.R. § 302.51(b)(4)*, (b)(5). Go To Headnote

Levesque v. Sheehan, 821 F. Supp. 779, 1993 U.S. Dist. LEXIS 6693 (D Me May 12, 1993).

***Overview:** Because pass-through child support payments were welfare benefits and did not constitute property, there was no taking of a welfare recipient's property in violation of the Takings Clause of the Fifth Amendment.*

- Federal regulations interpreting *42 U.S.C.S. § 657*(b)(1) provide that except for specifically enumerated situations: (i) Effective June 9, 1988, the date of collection for distribution purposes in all IV-D cases shall be the date on which the payment is received by the IV-D agency or the legal entity of any state or political subdivision actually making the collection, whichever is earliest; and (ii) Effective January 1, 1989, a state may use on a statewide bails either the definition of the date of collection in *45 C.F.R. § 302.51(a)(5)(i)* or the date the payment is mailed, as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier, as the date of collection in all IV-D cases. *45 C.F.R. § 302.51(a)(5)(i)* and (ii). Another subsection of this regulation requires that the date of collection of child support payments made by withholding from wages or other income must be the date the wages or other income are withheld to meet the support obligation. *45 C.F.R. § 302.51(a)(4)*. Go To Headnote

Luyando v. Sullivan, 808 F. Supp. 283, 808 F. Supp. 283, 1992 U.S. Dist. LEXIS 16877 (SD NY Nov. 4, 1992).

***Overview:** Recipients of Aid to Families with Dependent Children were entitled to summary judgment in their action challenging federal and state regulations interpreting an amendment to the program because the regulations contradicted the statutory scheme.*

- *45 C.F.R. § 302.51(b)(1)* interprets *42 U.S.C.S. § 657*(b)(1) to require the state to distribute the first $ 50 of child support collected only when the state or local entity receives that payment in the month in which it is due. Go To Headnote
- The United States District Court for the Southern District of New York finds that *45 C.F.R. § 302.51(b)* violates the statutory mandate of *42 U.S.C.S. § 657*(b)(1). Go To Headnote

Hill v. Ibarra, 954 F.2d 1516, 1992 U.S. App. LEXIS 920 (10th Cir Jan. 28, 1992).

***Overview:** Grant of summary judgment was proper because recipient did not have a priority interest in monies collected by department of social services pursuant to a judgment department obtained because she failed to authorize department to take such action.*

- The cited provisions that require priority to be given to collection of current monthly child support payments, *42 U.S.C.S. § 654*(11) and *45 C.F.R. 302.51(a)*, apply to situations where the state is collecting such support on behalf of a welfare recipient, not where it is simply collecting on its own judgment for arrearages. And, *42 U.S.C.S. § 657*(c)(2) applies to situations where a former Aid to Families with Dependent Children recipient has authorized a state Title IV-D agency to continue to collect current child support. Go To Headnote

Comm'r of Soc. Servs. Ex Rel. Wandel v. Segarra, 78 N.Y.2d 220, 78 N.Y.2d 220, 1991 N.Y. LEXIS 1011 (NY July 2, 1991).

***Overview:** In the Commissioner's action for child support, it was held that a father's financial resources were a relevant factor in determining the amount owed, and the amount of support was not limited to the amount of public assistance the child received.*

- Both federal and state regulations provide for the distribution of support collected on behalf of an Aid to Families with Dependent Children (AFDC) recipient in excess of an AFDC grant. The regulations establish a tiered distribution scheme, *42 U.S.C.S. §§ 657*(b)(1)-(4); *45 C.F.R. 302.51(b)(1)*-(5); 18 N.Y.

C.R.R. 347.13(b)(2)-(4), pursuant to which the first $ 50 of monthly support collected pursuant to a court order is distributed to the family and is disregarded as income. If the amount collected exceeds $ 50, the state is entitled to retain, as reimbursement, an amount equal to that month's assistance payment. Any amount collected in excess of that month's assistance payment is paid to the family to the limit of the amount required by the court order, and if any amount is collected in excess of the amount required to be paid by court order, it is applied to reimburse the state for past assistance payments made to that recipient. Once the state is reimbursed for AFDC assistance payments, any excess remaining is paid to the subject family. Go To Headnote

Kenyon v. Sullivan, 761 F. Supp. 951, 1991 U.S. Dist. LEXIS 5121 (D RI Apr. 10, 1991).

Overview: A class of public aid recipients successfully challenged the state's method of distributing pass-through payments from the child support received by the state on behalf of the public aid recipients.

- Title *42 U.S.C.S. § 602*(a)(8)(A)(vi) required the agency to disregard the first $ 50 when determining the families' eligibility for Aid to Families with Dependent Children benefits. *42 U.S.C.S. § 602*(a)(8)(A)(vi), amended by *42 U.S.C.S. § 602*(a)(8)(A)(vi). Pursuant to the statute, the Secretary of the United States Department of Health and Human Services promulgated *45 C.F.R. § 302.51(b)(1)*, interpreting *42 U.S.C.S. § 657*(b)(1) as allowing only one $ 50 payment per month, and then only if the support payment was received by the recipient's state in the month when due. Go To Headnote

Vanscoter v. Sullivan, 920 F.2d 1441, 1990 U.S. App. LEXIS 20899 (9th Cir Dec. 5, 1990).

Overview: Recipients of Aid to Families with Dependent Children were not entitled to delinquent pass-through child support payments where the controlling statute was ambiguous and the administrative interpretation thereof was not inconsistent therewith.

- Until amended by the Family Support Act of 1988, Pub. L. No. 100-485, *102 Stat. 2343* (codified as amended at *42 U.S.C.S. § 657*(b)(1)), *42 U.S.C.S. § 657*(b)(1) provided as follows: the first $ 50 of such amounts as are collected periodically which represent monthly support payments shall be paid to the family without affecting its eligibility for assistance or decreasing any amount otherwise payable as assistance to such family during such month. To implement this pass-through program, the Secretary of the United States Department of Health and Human Services promulgated *45 C.F.R. § 302.51(b)*, which interpreted former § 657(b)(1) to permit the state to pass through only $ 50 per month, and only from a support payment collected by the recipient's state in the month it was due. Go To Headnote

Beasley v. Ginsberg, 1989 U.S. Dist. LEXIS 16682 (D Conn Oct. 3, 1989).

Overview: State and federal regulations improperly implemented the child support "pass-through" provisions of the Social Security Act by placing the burden on AFDC recipients to prove when child support was paid.

- To the extent *45 C.F.R. § 302.51* limits the Title IV-D agency's obligation to pay only one "pass-through" payment in a month in which two or more support payments are collected by the home state, it is in violation of *42 U.S.C.S. § 657*(b)(1). A support payment made within a given month, but not forwarded to the State Department of Administrative Services (Connecticut) in the same month because of bureaucratic or postal delays is certainly no basis to penalize the Aid to Families with Dependent Children family. No rational purpose is served by denying child support to a needy family because the state itself has not promptly entered the money into its books. Go To Headnote

Mosley v. Bowen, 703 F. Supp. 1288, 1989 U.S. Dist. LEXIS 311 (SD Ohio Jan. 6, 1989).

Overview: Regulations promulgated by Secretary of United States Department of Health and Human Services limiting AFDC recipient to one pass-through payment per month and only when support payment was received in month when due, violated Social Security Act.

- The Secretary of the Department of Health and Human Services' regulations define the date of collection under *42 U.S.C.S. § 657*(b)(1) as the date the payment is received by the Title IV-D Agency or state entity making the collection on behalf of the IV-D agency. *45 C.F.R. § 302.51*. If the amount collected includes the required support payment for a prior month, the family is entitled to receive only one $ 50 pass-through payment that represents the support obligation for the month in which the support has been collected. Go To Headnote

State by & Through Dep't of Social Servs. v. Succc, 924 P.2d 882, 1996 Utah LEXIS 84 (Utah Sept. 24, 1996).

Overview: Custodial parents' assignments of past due child support to a private collection agency were valid.

- 45 C.F.R. § 232.11 states that to receive AFDC payments, the applicant must assign to the state any past-due support that has accrued up to the time the assignment is made. Even if the language of § 232.11 were subject to more than one interpretation, *45 C.F.R. § 302.51(f)* clearly states that the assignment under 45 C.F.R. § 232.11, whatever its scope may be, terminates when a family ceases receiving public assistance, except with respect to the amount of any unpaid support obligation that has accrued under such assignment. Go To Headnote

Levesque v. Sheehan, 821 F. Supp. 779, 1993 U.S. Dist. LEXIS 6693 (D Me May 12, 1993).

Overview: Because pass-through child support payments were welfare benefits and did not constitute property, there was no taking of a welfare recipient's property in violation of the Takings Clause of the Fifth Amendment.

- Federal regulations interpreting *42 U.S.C.S. § 657*(b)(1) provide that except for specifically enumerated situations: (i) Effective June 9, 1988, the date of collection for distribution purposes in all IV-D cases shall be the date on which the payment is received by the IV-D agency or the legal entity of any state or political subdivision actually making the collection, whichever is earliest; and (ii) Effective January 1, 1989, a state may use on a statewide bails either the definition of the date of collection in *45 C.F.R. § 302.51(a)(5)(i)* or the date the payment is mailed, as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier, as the date of collection in all IV-D cases. *45 C.F.R. § 302.51(a)(5)(i)* and (ii). Another subsection of this regulation requires that the date of collection of child support payments made by withholding from wages or other income must be the date the wages or other income are withheld to meet the support obligation. *45 C.F.R. § 302.51(a)(4)*. Go To Headnote

Barnes v. Healy, 980 F.2d 572, 1992 U.S. App. LEXIS 30913 (9th Cir Nov. 25, 1992).

Overview: Scope of preliminary injunction was improperly defined because it did not require that the notice of annual child support disbursements given to custodial parents had to specify a federally defined collection date.

- Custodial parents who receive Aid to Families with Dependant Children are entitled to receive the first $ 50 of any support payment collected in the month when due, even if the Title IV-D of the Social Security Act agency's receipt of the funds is delayed. *45 C.F.R. § 302.51(b)(1) (1991)*. Go To Headnote
- Except for tax refund intercepts, any money collected during a month is treated as payment of the support obligation for that month, up to the court-ordered amount of current support. *45 C.F.R. § 302.51(a)(1) (1991)*. The state may retain the remainder as reimbursement for past Aid to Families with Dependant Children payments. *45 C.F.R. § 302.51(b)(2) (1991)*. Go To Headnote

Comm'r of Soc. Servs. Ex Rel. Wandel v. Segarra, 78 N.Y.2d 220, 78 N.Y.2d 220, 1991 N.Y. LEXIS 1011 (NY July 2, 1991).

Overview: In the Commissioner's action for child support, it was held that a father's financial resources were a relevant factor in determining the amount owed, and the amount of support was not limited to the amount of public assistance the child received.

- The 1975 amendments to the Federal Aid to Families with Dependent Children Act, *42 U.S.C.S. § 602*(a)(26)(A), includes a scheme for the distribution of court-ordered support collected on behalf of Aid to Families with Dependent Children (AFDC) recipients. The scheme provides for reimbursement to the states for past, as well as present, AFDC payments. This distribution scheme is adopted in the New York State regulations, 18 N.Y. C.R.R. 347.13, and contemplates that all assigned support payments be paid directly to the Commissioner of Social Services, *45 C.F.R. 302.32*; 18 N.Y. C.R.R. 347.12(a). The Commissioner must then determine if the current support payment makes the family ineligible for AFDC, 45 C.F.R. 232.20, *302.32(b)*; 18 N.Y. C.R.R. 347.12(b) and if so, the Commissioner's assignment terminates, except to the extent of unpaid support obligations that have accrued under such assignment, *45 C.F.R. 302.51(f)*; 18 N.Y. C.R.R. 347.13(f). Go To Headnote
- Both federal and state regulations provide for the distribution of support collected on behalf of an Aid to Families with Dependent Children (AFDC) recipient in excess of an AFDC grant. The regulations establish a tiered distribution scheme, *42 U.S.C.S. §§ 657*(b)(1)-(4); *45 C.F.R. 302.51(b)(1)*-(5); 18 N.Y. C.R.R. 347.13(b)(2)-(4), pursuant to which the first $ 50 of monthly support collected pursuant to a court order is distributed to the family and is disregarded as income. If the amount collected exceeds $ 50, the state is entitled to retain, as reimbursement, an amount equal to that month's assistance payment. Any amount collected in excess of that month's assistance payment is paid to the family to the limit of the amount required by the court order, and if any amount is collected in excess of the amount required to be paid by court order, it is applied to reimburse the state for past assistance payments made to that recipient. Once the state is reimbursed for AFDC assistance payments, any excess remaining is paid to the subject family. Go To Headnote

Kenyon v. Sullivan, 761 F. Supp. 951, 1991 U.S. Dist. LEXIS 5121 (D RI Apr. 10, 1991).

Overview: A class of public aid recipients successfully challenged the state's method of distributing pass-through payments from the child support received by the state on behalf of the public aid recipients.

- Although there are no federal regulations on wage withholding cases, the federal Secretary of the Department of Health and Human Services did amend *45 C.F.R. § 302.51(a)* to provide that in cases involving interstate collection of support, payment is made when it is received by the collecting state rather than the Aid to Families to Dependent Children recipient's state. Go To Headnote

Beasley v. Ginsberg, 1989 U.S. Dist. LEXIS 16682 (D Conn Oct. 3, 1989).

Overview: State and federal regulations improperly implemented the child support "pass-through" provisions of the Social Security Act by placing the burden on AFDC recipients to prove when child support was paid.

- To the extent *45 C.F.R. § 302.51* limits the Title IV-D agency's obligation to pay only one "pass-through" payment in a month in which two or more support payments are collected by the home state, it is in violation of *42 U.S.C.S. § 657*(b)(1). A support payment made within a given month, but not forwarded to the State Department of Administrative Services (Connecticut) in the same month because of bureaucratic or postal delays is certainly no basis to penalize the Aid to Families with Dependent Children family. No rational purpose is served by denying child support to a needy family because the state itself has not promptly entered the money into its books. Go To Headnote

Mosley v. Bowen, 703 F. Supp. 1288, 1989 U.S. Dist. LEXIS 311 (SD Ohio Jan. 6, 1989).

Overview: *Regulations promulgated by Secretary of United States Department of Health and Human Services limiting AFDC recipient to one pass-through payment per month and only when support payment was received in month when due, violated Social Security Act.*

- *45 C.F.R. § 302.51(a)* provides that the date of collection of child support payments is the date the support payment is received by an authorized Title IV-D agency or legal entity of the state or other political subdivision actually making the collection, whichever is earlier. *53 Fed. Reg. 21,642* (June 9, 1988). Go To Headnote

Hull v. State Dep't of Public Welfare, 515 So. 2d 1205, 1987 Miss. LEXIS 2930 (Miss Nov. 25, 1987).

Overview: *The Department of Public Welfare, by virtue of having provided public assistance benefits for minor children, was empowered to bring suit against the non-supporting parent who had failed to comply with a previous order of support.*

- *45 C.F.R. 302.51(f)* (1986 Add.) states that when a family ceases receiving assistance under the state's Title IV-A Plan, the assignment of support rights under 45 C.F.R. § 232.11 of this title terminates, except with respect to the amount of any unpaid support obligation that accrued under such assignment. From this accrued amount, the IV-D Agency shall attempt to collect such unpaid obligations. Under this regulation: such collection shall be used to reimburse any amounts of past assistance which have not been reimbursed. Only amounts collected pursuant to this paragraph which exceed the amount of unreimbursed past assistance shall be paid to the family. Go To Headnote

State by & Through Dep't of Social Servs. v. Sucec, 924 P.2d 882, 1996 Utah LEXIS 84 (Utah Sept. 24, 1996).

Overview: *Custodial parents' assignments of past due child support to a private collection agency were valid.*

- Utah Code Ann. § 62A-9-121(1)(a) provides that the department of human services shall obtain an assignment of support from each applicant or recipient regardless of whether the payment is court ordered. The requirement of an assignment is further subject to the limitations of *45 C.F.R. § 302.51(f)*, which provides that an approved state plan for the implementation of the Aid to Families with Dependent Children (AFDC) program shall contain the requirement that when a family ceases receiving assistance under the AFDC program, the assignment of support rights under 45 C.F.R. § 232.11 terminates, except with respect to the amount of any unpaid support obligation that has accrued under such assignment. Go To Headnote
- As a condition of eligibility for assistance, each applicant for or recipient of Aid to Families with Dependent Children (AFDC) shall assign to the state any rights to support which have accrued at the time such assignment is executed. Utah has complied with and codified this requirement in Utah Code Ann. § 62A-9-121(1)(a) which provides that the department shall obtain an assignment of support from each applicant or recipient regardless of whether the payment is court ordered. The federal regulations governing AFDC further provide that a state plan for the administration of AFDC shall provide that when a family ceases receiving assistance under the AFDC program, the assignment of support rights under 45 C.F.R. § 232.11 terminates, except with respect to the amount of any unpaid support obligation that has accrued under such assignment. *45 C.F.R. § 302.51(f)*. Go To Headnote

Kenyon v. Sullivan, 761 F. Supp. 951, 1991 U.S. Dist. LEXIS 5121 (D RI Apr. 10, 1991).

Overview: A class of public aid recipients successfully challenged the state's method of distributing pass-through payments from the child support received by the state on behalf of the public aid recipients.

- Title *42 U.S.C.S. § 602*(a)(8)(A)(vi) required the agency to disregard the first $ 50 when determining the families' eligibility for Aid to Families with Dependent Children benefits. *42 U.S.C.S. § 602*(a)(8)(A)(vi), amended by *42 U.S.C.S. § 602*(a)(8)(A)(vi). Pursuant to the statute, the Secretary of the United States Department of Health and Human Services promulgated *45 C.F.R. § 302.51(b)(1)*, interpreting *42 U.S.C.S. § 657*(b)(1) as allowing only one $ 50 payment per month, and then only if the support payment was received by the recipient's state in the month when due. Go To Headnote

State by & Through Dep't of Social Servs. v. Sucec, 924 P.2d 882, 1996 Utah LEXIS 84 (Utah Sept. 24, 1996).

Overview: Custodial parents' assignments of past due child support to a private collection agency were valid.

- Utah Code Ann. § 62A-9-121(1)(a) provides that the department of human services shall obtain an assignment of support from each applicant or recipient regardless of whether the payment is court ordered. The requirement of an assignment is further subject to the limitations of *45 C.F.R. § 302.51(f)*, which provides that an approved state plan for the implementation of the Aid to Families with Dependent Children (AFDC) program shall contain the requirement that when a family ceases receiving assistance under the AFDC program, the assignment of support rights under 45 C.F.R. § 232.11 terminates, except with respect to the amount of any unpaid support obligation that has accrued under such assignment. Go To Headnote
- As a condition of eligibility for assistance, each applicant for or recipient of Aid to Families with Dependent Children (AFDC) shall assign to the state any rights to support which have accrued at the time such assignment is executed. Utah has complied with and codified this requirement in Utah Code Ann. § 62A-9-121(1)(a) which provides that the department shall obtain an assignment of support from each applicant or recipient regardless of whether the payment is court ordered. The federal regulations governing AFDC further provide that a state plan for the administration of AFDC shall provide that when a family ceases receiving assistance under the AFDC program, the assignment of support rights under 45 C.F.R. § 232.11 terminates, except with respect to the amount of any unpaid support obligation that has accrued under such assignment. *45 C.F.R. § 302.51(f)*. Go To Headnote

*** This section is current through the May 9, 2013 ***
*** issue of the Federal Register ***

TITLE 45 -- PUBLIC WELFARE
SUBTITLE B -- REGULATIONS RELATING TO PUBLIC WELFARE
CHAPTER III -- OFFICE OF CHILD SUPPORT ENFORCEMENT (CHILD SUPPORT ENFORCEMENT PROGRAM), ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES
PART 303 -- STANDARDS FOR PROGRAM OPERATIONS

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45 CFR 303.32

§ 303.32 National Medical Support Notice.

(a) Mandatory State laws. States must have laws, in accordance with section 466(a)(19) of the Act, requiring procedures specified under paragraph (c) of this section for the use, where appropriate, of the National Medical Support Notice (NMSN), to enforce the provision of health care coverage for children of noncustodial parents and, at State option, custodial parents who are required to provide health care coverage through an employment-related group health plan pursuant to a child support order and for whom the employer is known to the State agency.

(b) Exception. States are not required to use the NMSN in cases with court or administrative orders that stipulate alternative health care coverage to employer-based coverage.

(c) Mandatory procedures. The State must have in effect and use procedures under which:

(1) The State agency must use the NMSN to transfer notice of the provision for health care coverage of the child(ren) to employers.

(2) The State agency must transfer the NMSN to the employer within two business days after the date of entry of an employee who is an obligor in a IV-D case in the State Directory of New Hires.

(3) Employers must transfer the NMSN to the appropriate group health plan providing any such health care coverage for which the child(ren) is eligible (excluding the severable Notice to Withhold for Health Care Coverage directing the employer to withhold any mandatory employee contributions to the plan) within twenty business days after

the date of the NMSN.

(4) Employers must withhold any obligation of the employee for employee contributions necessary for coverage of the child(ren) and send any amount withheld directly to the plan.

(5) Employees may contest the withholding based on a mistake of fact. If the employee contests such withholding, the employer must initiate withholding until such time as the employer receives notice that the contest is resolved.

(6) Employers must notify the State agency promptly whenever the noncustodial parent's and, at State option, custodial parent's employment is terminated in the same manner as required for income withholding cases in accordance with § 303.100(e)(1)(x) of this part.

(7) The State agency must promptly notify the employer when there is no longer a current order for medical support in effect for which the IV-D agency is responsible.

(8) The State agency, in consultation with the custodial parent, must promptly select from available plan options when the plan administrator reports that there is more than one option available under the plan.

(d) Effective date. This section is effective October 1, 2001, or, if later, the effective date of State laws described in paragraph (a) of this section. Such State laws must be effective no later than the close of the first day of the first calendar quarter that begins after the close of the first regular session of the State legislature that begins after October 1, 2001. For States with 2-year legislative sessions, each year of such session would be regarded as a separate regular session.

HISTORY: [*65 FR 82154, 82165,* Dec. 26, 2000; *66 FR 8074,* Jan. 26, 2001; *73 FR 42416, 42442,* July 21, 2008]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
42 U.S.C. 651 through 658, 659a, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

NOTES: [EFFECTIVE DATE NOTE: *73 FR 42416, 42442,* July 21, 2008, amended paragraphs (a) and (c)(6), effective July 21, 2008.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: Nomenclature changes to Chapter III appear at *66 FR 39450, 39452,* July 31, 2001.]

NOTES APPLICABLE TO ENTIRE PART:
[PUBLISHER'S NOTE: Nomenclature changes to part 303 appear at *64 FR 6237, 6249,* Feb. 9, 1999.]

CASE NOTES Applicable to entire Part:Part Note

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TITLE 45 -- PUBLIC WELFARE
SUBTITLE B -- REGULATIONS RELATING TO PUBLIC WELFARE
CHAPTER III -- OFFICE OF CHILD SUPPORT ENFORCEMENT (CHILD SUPPORT ENFORCEMENT PROGRAM), ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES
PART 303 -- STANDARDS FOR PROGRAM OPERATIONS

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45 CFR 303.72

§ 303.72 Requests for collection of past-due support by Federal tax refund offset.

(a) Past-due support qualifying for offset. Past-due support as defined in § 301.1 of this chapter qualifies for offset if:

(1) There has been an assignment of the support rights under section 408(a)(3) of the Act or section 471(a)(17) of the Act to the State making the request for offset or the IV-D agency is providing services under § 302.33 of this chapter.

(2) For support that has been assigned to the State under section 408(a)(3) of the Act or section 471(a)(17) of the Act, the amount of the support is not less than $ 150. The State may combine assigned support amounts from the same obligor in multiple cases to reach $ 150. Amounts under this paragraph may not be combined with amounts under paragraph (a)(3) of this section to reach the minimum amounts required under this paragraph or under paragraph (a)(3) of this section.

(3) For support owed in cases where the title IV-D agency is providing title IV-D services under § 302.33 of this chapter:

(i) The support is owed to or on behalf of a child, or a child and the parent with whom the child is living if the same support order includes support for the child and the parent.

(ii) The amount of support is not less than $ 500. The State may combine support amounts from the same obligor in multiple cases where the IV-D agency is providing IV-D services under § 302.33 of this chapter to reach $ 500.

Amounts under this paragraph may not be combined with amounts under paragraph (a)(2) of this section to reach the minimum amounts required under this paragraph or under paragraph (a)(2) of this section.

(iii) At State option, the amount has accrued since the State IV-D agency began to enforce the support order; and

(iv) The State has checked its records to determine if a title IV-A or foster care maintenance assigned arrearage exists with respect to the non-IV-A individual or family.

(4) The IV-D agency has in its records:

(i) A copy of the order and any modifications upon which the amount referred is based which specify the date of issuance and amount of support;

(ii) A copy of the payment record, or, if there is no payment record, an affidavit signed by the custodial parent attesting to the amount of support owed; and

(iii) In non-IV-A cases, the custodial parent's current address.

(5) Before submittal, the State IV-D agency has verified the accuracy of the name and social security number of the noncustodial parent and the accuracy of the past-due support amount. If the State IV-D agency has verified this information previously, it need not reverify it.

(6) A notification of liability for past-due support has been received by the Secretary of the U.S. Treasury as prescribed by paragraph (c)(2) of this section.

(b) Notification to OCSE of liability for past-due support. (1) A State IV-D agency shall submit a notification (or notifications) of liability for past-due support to the Office according to the timeframes and in the manner specified by the Office in instructions.

(2) To the extent specified by the Office in instructions, the notification of liability for past-due support shall contain with respect to each delinquency:

(i) The name of the taxpayer who owes the past-due support;

(ii) The social security number of that taxpayer;

(iii) The amount of past-due support owed;

(iv) The State codes as contained in the Federal Information Processing Standards (FIPS) publication of the National Bureau of Standards and also promulgated by the General Services Administration in Worldwide Geographical Location Codes; and

(v) Whether the past-due support is due an individual who applied for services under § 302.33 of this chapter.

(3) The notification of liability for past-due support may contain with respect to each delinquency the taxpayer's IV-D identifier.

(c) Review of requests by the Office. (1) The Deputy Director will review each request to determine whether it meets the requirements of this section.

(2) If a request meets all requirements, the Deputy Director will transmit the request to the Secretary of the U.S. Treasury and will notify the State IV-D agency of the transmittal.

(3) If a request does not meet all requirements, the Deputy Director will attempt to correct the request in

consultation with the State IV-D agency.

(4) If a request cannot be corrected through consultation, the Deputy Director will return it to the State IV-D agency with an explanation of why the request could not be transmitted to the Secretary of the U.S. Treasury.

(d) Notification of changes in case status. (1) The State referring past-due support for offset must, in interstate situations, notify any other State involved in enforcing the support order when it submits an interstate case for offset and when it receives the offset amount from the Secretary of the U.S. Treasury.

(2) The State IV-D agency shall, within timeframes established by the Office in instructions, notify the Deputy Director of any deletion of, or any change in, the arrears balance, if the change is significant according to the guidelines developed by the State. The notification shall contain the information specified in paragraph (b) of this section.

(e) Notices of offset -- (1) Advance. The State IV-D agency, or the Office, if the State requests and the Office agrees, shall send a written advance notice to inform a noncustodial parent that the amount of his or her past-due support will be referred to the Secretary of the U. S. Treasury for collection by Federal tax refund offset. The notice must inform noncustodial parents:

(i) Of their right to contest the State's determination that past-due support is owed or the amount of past-due support;

(ii) Of their right to an administrative review by the submitting State or at the noncustodial parent's request the State with the order upon which the referral for offset is based;

(iii) Of the procedures and timeframe for contacting the IV-D agency in the submitting State to request administrative review; and

(iv) That, in the case of a joint return, the Secretary of the U. S. Treasury will notify the noncustodial parent's spouse at the time of offset regarding the steps to take to protect the share of the refund which may be payable to that spouse. If the IV-D agency sends the notice, it must meet the conditions specified by the Office in instructions.

(2) At offset. The Secretary of the U. S. Treasury will notify the noncustodial parent that the offset has been made. The Secretary of the U. S. Treasury will also notify any individual who filed a joint return with the noncustodial parent of the steps to take in order to secure a proper share of the refund.

(f) Procedures for contesting in intrastate cases. (1) Upon receipt of a complaint from a noncustodial parent in response to the advance notice required in paragraph (e)(1) of this section or concerning a tax refund which has already been offset, the IV-D agency must send a notice to the noncustodial parent and, in non-IV-A cases the custodial parent, of the time and place of the administrative review of the complaint and conduct the review to determine the validity of the complaint.

(2) If the complaint concerns a joint tax refund that has not yet been offset, the IV-D agency must inform the noncustodial parent that the Secretary of the U. S. Treasury will notify the noncustodial parent's spouse at the time of offset regarding the steps to take to secure his or her proper share of the refund. If the complaint concerns a joint tax refund which has already been offset, the IV-D agency must refer the noncustodial parent to the Secretary of the U. S. Treasury.

(3) If the administrative review results in a deletion of, or change in, the arrears balance, the IV-D agency must notify OCSE within timeframes established by the Office and include the information specified in paragraph (b) of this section.

(4) If, as a result of the administrative review, an amount which has already been offset is found to have exceeded

the amount of past-due support owed, the IV-D agency must take steps to refund the excess amount to the noncustodial parent promptly.

(g) Procedures for contesting in interstate cases. (1) If the noncustodial parent requests an administrative review in the submitting State, the IV-D agency must meet the requirements in paragraph (f) of this section.

(2) If the complaint cannot be resolved by the submitting State and the noncustodial parent requests an administrative review in the State with the order upon which the referral for offset is based, the submitting State must notify the State with the order of the request for an administrative review and provide that State with all necessary information, including the information listed under paragraph (a)(4) of this section, within 10 days of the noncustodial parent's request for an administrative review.

(3) The State with the order must send a notice to the noncustodial parent and, in non-IV-A cases the custodial parent, of the time and place of the administrative review, conduct the review and make a decision within 45 days of receipt of the notice and information from the submitting State.

(4) If the administrative review results in a deletion of, or change in, the arrears balance, the State with the order upon which the referral for offset is based must notify the submitting State within timeframes established by the Office and include the information specified in paragraph (b) of this section. The submitting State must then notify the Office within timeframes established by the Office and include the information specified in paragraph (b) of this section.

(5) Upon resolution of a complaint after an offset has been made, the State with the order must notify the submitting State of its decision promptly.

(6) When an administrative review is conducted in the State with the order, the submitting State is bound by the decision made by the State with the order.

(7) Based on the decision of the State with the order, the IV-D agency in the submitting State must take steps to refund any excess amount to the noncustodial parent promptly.

(8) In computing the arrearage collection performance level under § 305.2(a)(4) of this chapter, if the case is referred to the State with the order for an administrative review, the collections made as a result of Federal tax refund offset will be treated as having been collected in full by both the submitting State and the State with the order.

(h) Distribution of collections. (1) Collections received by the IV-D agency as a result of Federal tax refund offset to satisfy title IV-A or non-IV-A past-due support shall be distributed as required in accordance with section 457 and, effective October 1, 2009, or up to a year earlier at State option, in accordance with the option selected under section 454(34) of the Act.

(2) Collections received by the IV-D agency in foster care maintenance cases shall be distributed as past-due support under § 302.52(b) (3) and (4) of this chapter.

(3)(i) Except as provided in paragraph (h)(3)(ii), the IV-D agency must inform individuals receiving services under § 302.33 of this chapter in advance that amounts offset will be applied to satisfy any past-due support which has been assigned to the State and submitted for Federal tax refund offset.

(ii) Effective October 1, 2009, or up to a year earlier at State option, the IV-D agency need no longer meet the requirement for notice under paragraph (h)(3)(i) if the State has opted, under section 454(34) of the Act, to apply amounts submitted to Federal tax refund offset first to satisfy any current support due and past-due support owed to the family.

(4) If the amount collected is in excess of the amounts required to be distributed under section 457 of the Act, the

IV-D agency must repay the excess to the noncustodial parent whose refund was offset or to the parties filing a joint return within a reasonable period in accordance with State law.

(5) In cases where the Secretary of the U.S. Treasury, through OCSE, notifies the State that an offset is being made to satisfy non-IV-A past-due support from a refund based on a joint return, the State may delay distribution until notified that the unobligated spouse's proper share of the refund has been paid or for a period not to exceed six months from notification of offset, whichever is earlier.

(6) Collections from offset may be applied only to cases that were being enforced by the IV-D agency at the time the advance notice described in paragraph (e)(1) of this section was sent.

(i) Payment of fee. (1) A refund offset fee, in such amount as the Secretary of the U.S. Treasury and the Secretary of Health and Human Services have agreed to be sufficient to reimburse the U.S. Department of Treasury for the full cost of the offset procedure, shall be deducted from the offset amount and credited to the U.S. Department of Treasury appropriations which bore all or part of the costs involved in making the collection. The full amount of the offset must be credited against the obligor's payment record. The fee which the Secretary of the U.S. Treasury may impose with respect to non-IV-A submittals shall not exceed $ 25 per submittal.

(2) The State IV-D agency may charge an individual who is receiving services under § 302.33(a)(1) (i) or (iii) of this chapter a fee not to exceed $ 25 for submitting past-due support for Federal tax refund offset. The State must inform the individual in advance of the amount of any fee charged.

(3) Any State which requests the Office to send the advance written notice under paragraph (e)(1) of this section will be charged a fee, in an amount established by the Office in instructions, for printing and mailing of pre-offset notices. This fee shall be credited to the Health and Human Services appropriations which bore all or part of the costs involved in making the collection.

(j) Each State involved in a referral of past-due support for offset must comply with instructions issued by the Office.

(Approved by the Office of Management and Budget under control number 0960-0385)

HISTORY: *[50 FR 19651*, May 9, 1985; *50 FR 31719*, Aug. 6, 1985, as amended at *51 FR 37731*, Oct. 24, 1986; *53 FR 47710*, Nov. 25, 1988; *54 FR 32312*, Aug. 4, 1989; *56 FR 8005*, Feb. 26, 1991; *58 FR 41437*, Aug. 4, 1993; *64 FR 6237, 6249, 6251*, Feb. 9, 1999, as confirmed and amended at *68 FR 25293, 25303, 25304*, May 12, 2003, as corrected at *68 FR 53052*, Sept. 9, 2003; *68 FR 37978, 37980*, June 26, 2003; *69 FR 62413, 62415*, Oct. 26, 2004; *73 FR 74898, 74920*, Dec. 9, 2008]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
42 U.S.C. 651 through 658, 659a, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

NOTES: [EFFECTIVE DATE NOTE: *73 FR 74898, 74920*, Dec. 9, 2008, amended this section, effective Feb. 9, 2009.]

NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: Nomenclature changes to Chapter III appear at *66 FR 39450, 39452*, July 31, 2001.]

NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: Nomenclature changes to part 303 appear at *64 FR 6237, 6249*, Feb. 9, 1999.]

LexisNexis (R) Notes:

CASE NOTES

CASE NOTES Applicable to entire Part:Part Note

Kandlbinder v. Reagen, 713 F. Supp. 337, 1989 U.S. Dist. LEXIS 5965 (WD Mo May 8, 1989).

Overview: *Tax Refund Intercept Program did not deprive father of his due process rights because the notice mailed to him was reasonably calculated to apprise him of the pending tax refund interception and to afford him an opportunity to present his objections.*

- For non-AFDC cases in which child support arrears are at least $ 500, *45 C.F.R. § 303.72(a)(3)(ii)*, the Missouri Division of Child Support Enforcement submits names, Social Security numbers, and amount owed of individuals who meet this criteria to the Federal Office of Child Support Enforcement. *45 C.F.R. § 303.72(b)(2)*. Then the pre-intercept notice is sent during the month of October, *45 C.F.R. § 303.72(e)*, and the Internal Revenue Service is notified and attaches the taxpayer's refund. Go To Headnote

Anderson v. White, 888 F.2d 985, 1989 U.S. App. LEXIS 16678 (3rd Cir Nov. 6, 1989).

Overview: *Order dismissing delinquent fathers' suit challenging state's operation of its tax refund intercept program on due process grounds was modified and vacated in part due to the failure to provide one father with a timely hearing or a written decision*

- Under the tax refund intercept program, federal income tax refunds due persons who owe past-due child support can be intercepted by the Internal Revenue Service and ultimately sent instead to the state in which the children live. The state can then apply the refund money against welfare benefits previously paid to the delinquent's children or distribute it to the person who has lawful custody of the children. *26 U.S.C.S. § 6402(c)*; *42 U.S.C.S. § 664*; *26 C.F.R. § 301.6402-5 (1988)*; *45 C.F.R. §§ 302.60, 303.72 (1988)*. Go To Headnote

Kandlbinder v. Reagen, 713 F. Supp. 337, 1989 U.S. Dist. LEXIS 5965 (WD Mo May 8, 1989).

Overview: Tax Refund Intercept Program did not deprive father of his due process rights because the notice mailed to him was reasonably calculated to apprise him of the pending tax refund interception and to afford him an opportunity to present his objections.

- For non-AFDC cases in which child support arrears are at least $ 500, *45 C.F.R. § 303.72(a)(3)(ii)*, the Missouri Division of Child Support Enforcement submits names, Social Security numbers, and amount owed of individuals who meet this criteria to the Federal Office of Child Support Enforcement, *45 C.F.R. § 303.72(b)(2)*. Then the pre-intercept notice is sent during the month of October, *45 C.F.R. § 303.72(e)*, and the Internal Revenue Service is notified and attaches the taxpayer's refund. Go To Headnote

Knisley v. Bowman, 656 F. Supp. 1540, 1987 U.S. Dist. LEXIS 14516 (WD Mich Apr. 14, 1987).

Overview: The court certified a limited class of taxpayers but, because there was no continuing violation of due process rights of the prospective plaintiff class, summary judgment in favor of Michigan Department of Treasury was appropriate.

- A past-due support obligation qualifies for the federal offset program if it satisfies the provisions of *45 C.F.R. § 303.72(a)*. Go To Headnote

Jahn v. Regan, 610 F. Supp. 1269, 1985 U.S. Dist LEXIS 19653 (ED Mich May 21, 1985).

Overview: Procedures in consent judgment, which required the Internal Revenue Service to give spouses notice and a hearing before transferring joint tax refunds to state agencies to pay support obligations of one spouse, satisfied procedural due process.

- To procure a tax refund for one owing the state child support payments, the responsible state agency is required to certify to the Department of Social Services: (i) that the amount of the arrearage reported is accurate; (ii) that the arrearage is owed to the state; (iii) that the arrearage is at least three months old; and (iv) that reasonable efforts have been made to collect the arrearage amount. This requirement is pursuant to *42 U.S.C.S. § 644*(b) and *45 C.F.R. § 303.72(b)*. Go To Headnote

Jahn v. Regan, 584 F. Supp. 399, 1984 U.S. Dist. LEXIS 17487 (ED Mich Apr. 18, 1984).

Overview: The taxpayers' lawsuit against federal and state officials, seeking recovery of a federal income tax overpayment transferred to the state owing to husband taxpayer's past due child support, were permitted to continue.

- *45 C.F.R. § 303.72(b) (1982)* states that past-due child support qualifies for offset of a tax refund if (1) there has been an assignment of the support obligation under 45 C.F.R. 232.11 to the state making the request for offset and that state has made reasonable efforts to collect the amount of the obligation; (2) the amount of the past-due support is not less than $ 150; (3) the support has been delinquent for three months or longer; and (4) a notification of liability for past-due support has been received by the Secretary of the Treasury. Go To Headnote

Anderson v. White, 888 F.2d 985, 1989 U.S. App. LEXIS 16678 (3rd Cir Nov. 6, 1989).

Overview: Order dismissing delinquent fathers' suit challenging state's operation of its tax refund intercept program on due process grounds was modified and vacated in part due to the failure to provide one father with a timely hearing or a written decision.

- If the local agency determines that a modification or deletion is warranted after administrative review, it submits the appropriate information to the state bureau, which in turn forwards it to the federal office. *45 C.F.R. § 303.72(d)(2)*, (f)(3), (g)(4). The federal office then contacts the Internal Revenue Service, and the intercept order is changed. If the individual's tax return has not yet been processed, an intercept will be avoided. If, on the other hand, an inappropriate intercept has already occurred, the refund due to the individual is restored. *45 C.F.R. § 303.72(h)(4)*. Go To Headnote

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Overview: Order dismissing delinquent fathers' suit challenging state's operation of its tax refund intercept program on due process grounds was modified and vacated in part due to the failure to provide one father with a timely hearing or a written decision.

- Under the tax refund intercept program, federal income tax refunds due persons who owe past-due child support can be intercepted by the Internal Revenue Service and ultimately sent instead to the state in which the children live. The state can then apply the refund money against welfare benefits previously paid to the delinquent's children or distribute it to the person who has lawful custody of the children. *26 U.S.C.S. § 6402*(c); *42 U.S.C.S. § 664*; *26 C.F.R. § 301.6402-5 (1988)*; *45 C.F.R. §§ 302.60, 303.72 (1988)*. Go To Headnote

Rogers v. Bucks County Domestic Relations Section, 773 F. Supp. 768, 1991 U.S. Dist. LEXIS 9542 (ED Pa July 12, 1991).

Overview: Claims for unpaid interest pursuant to the state's interception of federal income tax refund payments and delayed payment to satisfy delinquent child support payments were dismissed, as claimants failed to establish a cognizable property interest.

- The federal statutes creating the Tax Refund Intercept Program (TRIP), *42 U.S.C.S. § 664* and *26 U.S.C.S. § 6402*, contain no explicit schedule for general distribution of intercepted funds, nor do they contain any requirement for the payment of interest. The federal regulations are similarly silent on any requirement to pay interest. *45 C.F.R. § 303.72*. There is no express provision to the effect that the funds are to be held in trust or that a fiduciary relationship, benefiting the support recipient, is created by a state's participation in TRIP. There is, however, specific provision made for a state to delay, for up to six months in the case of a jointly-filed tax return, the payment of a refund to a support recipient, so that a state may be ensured that the unobligated spouse has received his or her proper share of a joint refund. *42 U.S.C.S. § 664* (a)(B), *45 C.F.R. § 303.72(h)(5)*. Go To Headnote

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Kandlbinder v. Reagen, 713 F. Supp. 337, 1989 U.S. Dist. LEXIS 5965 (WD Mo May 8, 1989).

***Overview:** Tax Refund Intercept Program did not deprive father of his due process rights because the notice mailed to him was reasonably calculated to apprise him of the pending tax refund interception and to afford him an opportunity to present his objections.*

- For non-AFDC cases in which child support arrears are at least $ 500, *45 C.F.R. § 303.72(a)(3)(ii)*, the Missouri Division of Child Support Enforcement submits names, Social Security numbers, and amount owed of individuals who meet this criteria to the Federal Office of Child Support Enforcement. *45 C.F.R. § 303.72(b)(2)*. Then the pre-intercept notice is sent during the month of October, *45 C.F.R. § 303.72(e)*, and the Internal Revenue Service is notified and attaches the taxpayer's refund. Go To Headnote

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*** This section is current through the May 9, 2013 ***
*** issue of the Federal Register ***

TITLE 45 -- PUBLIC WELFARE
SUBTITLE B -- REGULATIONS RELATING TO PUBLIC WELFARE
CHAPTER III -- OFFICE OF CHILD SUPPORT ENFORCEMENT (CHILD SUPPORT ENFORCEMENT PROGRAM), ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES
PART 303 -- STANDARDS FOR PROGRAM OPERATIONS

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45 CFR 303.102

§ 303.102 Collection of overdue support by State income tax refund offset.

(a) Overdue support qualifying for offset. Overdue support qualifies for State income tax refund offset if:

(1) There has been an assignment of the support obligation under section 408(a)(3) of the Act or section 471(a)(17) of the Act or the IV-D agency is providing services under § 302.33 of this chapter, and

(2) The State does not determine, using guidelines it must develop which are generally available to the public, that the case is inappropriate for application of this procedure.

(b) Accuracy of amounts referred for offset. The IV-D agency must establish procedures to ensure that:

(1) Amounts referred for offset have been verified and are accurate; and

(2) The appropriate State office or agency is notified of any significant reductions in (including an elimination of) an amount referred for collection by State income tax refund offset.

(c) Procedures for contesting offset and for reimbursing excess amounts offset. (1) The State must establish procedures, which are in full compliance with the State's procedural due process requirements, for a noncustodial parent to use to contest the referral of overdue support for State income tax refund offset.

(2) If the offset amount is found to be in error or to exceed the amount of overdue support, the State IV-D agency must take steps to refund the excess amount in accordance with procedures that include a mechanism for promptly

reimbursing the noncustodial parent.

(3) The State must establish procedures for ensuring that in the event of a joint return, the noncustodial parent's spouse can apply for a share of the refund, if appropriate, in accordance with State law.

(d) Notice to custodial parent. The IV-D agency must inform individuals receiving services under § 302.33 of this chapter, in advance. That, for cases in which medical support rights have been assigned under *42 CFR 433.146*, and amounts are collected which represent specific dollar amounts designated in the support order for medical purposes, amounts offset will be distributed under § 302.51(c) of this chapter.

(e) Advance notice to noncustodial parent. The State must send a written advance notice to inform the noncustodial parent of the referral for State income tax refund offset and of the opportunity to contest the referral.

(f) Fee for certain cases. The State IV-D agency may charge an individual who is receiving services under § 302.33(a)(1) (i) or (iii) of this chapter a reasonable fee to cover the cost of collecting past-due support using State tax refund offset. The State must inform the individual in advance of the amount of any fee charged.

(g) Distribution of collections. (1) The State must distribute collections received as a result of State income tax refund offset:

(i) In accordance with section 457 of the Act and §§ 302.51 and 302.52 of this chapter; and

(ii) For cases in which medical support rights have been assigned under *42 CFR 433.146*, and amounts are collected which represent specific dollar amounts designated in the support order for medical purposes, under § 302.51(c) of this chapter.

(2) If the amount collected is in excess of the amounts required to be distributed under paragraph (g)(1) of this section, the IV-D agency must repay the excess to the noncustodial parent whose State income tax refund was offset within a reasonable period in accordance with State law.

(3) The State must credit amounts offset on individual payment records.

(h) Information to the IV-D agency. The State agency responsible for processing the State tax refund offset must notify the State IV-D agency of the noncustodial parent's home address and social security number or numbers. The State IV-D agency must provide this information to any other State involved in enforcing the support order.

(Approved by the Office of Management and Budget under control number 0960-0385)

HISTORY: *[50 FR 19655*, May 9, 1985; *50 FR 31720*, Aug. 6, 1985, as amended at *51 FR 37731*, Oct. 24, 1986; *54 FR 32312*, Aug. 4, 1989; *56 FR 8005*, Feb. 26, 1991; *64 FR 6237, 6249, 6252*, Feb. 9, 1999, as confirmed and amended at *68 FR 25293, 25303, 25305*, May 12, 2003]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
42 U.S.C. 651 through 658, 659a, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:
[PUBLISHER'S NOTE: Nomenclature changes to Chapter III appear at *66 FR 39450, 39452*, July 31, 2001.]

NOTES APPLICABLE TO ENTIRE PART:
[PUBLISHER'S NOTE: Nomenclature changes to part 303 appear at *64 FR 6237, 6249*, Feb. 9, 1999.]

CASE NOTES Applicable to entire Part:Part Note