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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.<sup>1</sup> 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<sup>2</sup>

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.<sup>3</sup> However, older assignments of Pre-Assistance Arrearages in

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<sup>1</sup> 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.

<sup>2</sup> A State may only discontinue its own assignments.

<sup>3</sup> 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.<sup>4</sup>

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."

<sup>4</sup> 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.<sup>5</sup>

**(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.

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<sup>5</sup> 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,<sup>6</sup> 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;<sup>7</sup> 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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<sup>6</sup> These assignments are eligible for discontinuation under the authority in section 457(b)(1) of the Act, as amended by the DRA.

<sup>7</sup> 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.<sup>8</sup>

(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

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<sup>8</sup> See further discussion on Conditionally-Assigned arrearages under [Q&A 6](#) 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.<sup>9</sup>

**(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.<sup>10</sup>

**(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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<sup>9</sup> 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.

<sup>10</sup> 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<sup>11</sup> and/or in Former-Assistance cases.<sup>12</sup>

**(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.<sup>13</sup>

**(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:

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<sup>11</sup> See sections 457(a)(1)(B) and 457(a)(7)(B)(i) of the Act.

<sup>12</sup> See sections 457(a)(2)(B)(ii)(II) and 457(a)(7)(A) of the Act.

<sup>13</sup> 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<sup>14</sup> 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.<sup>15</sup> Therefore, for

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<sup>14</sup> 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.

<sup>15</sup> 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](#)<sup>16</sup> 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.<sup>17</sup> 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;

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<sup>16</sup> 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).

<sup>17</sup> 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;<sup>18</sup> 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.<sup>19</sup> See [Q&A 9](#).

## (2) Distribution Sequence<sup>20</sup>

(A) For the distribution of all support collected in Current-Assistance cases, including Federal tax refund offset payments,<sup>21</sup> 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);<sup>22</sup>

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

<sup>19</sup> 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.

<sup>20</sup> 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.

<sup>21</sup> 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.

<sup>22</sup> 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.<sup>23</sup>

#### **(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

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<sup>23</sup> 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,<sup>24</sup> 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),<sup>25</sup> 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),<sup>26</sup>
  - (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

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<sup>24</sup> 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.

<sup>25</sup> See [section IV\(e\)\(4\)](#) of this AT.

<sup>26</sup> 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;<sup>27</sup>
- (iv) Permanently-Assigned Arrearages;<sup>28</sup> and
- (v) Unassigned During-Assistance Arrearages.

(5) Distribution Sequence for PRWORA Distribution States

States making the PRWORA Distribution election in Former-Assistance cases must follow the guidance issued under OCSE-AT-97-17,<sup>29</sup> 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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<sup>27</sup> Conditionally-Assigned arrearages will continue to exist unless these assignments are discontinued pursuant to section 457(b)(2) of the Act

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

<sup>29</sup> 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."

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

| State Requirements for DRA Distribution Election |                                                                                                                                                                                                                                                                                   | State Requirements for PRWORA Distribution Election                                                                                                                                                                      |
|--------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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. <sup>30</sup> Once Assigned Arrearages are paid off, any remaining amount is paid to the family. 457(a)(1) and (3) <sup>31</sup> | 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) |

<sup>30</sup> 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).

<sup>31</sup> [See Footnote 21.](#)

| State Requirements for DRA Distribution Election |                                                                                                                                                                                                                                                                                                 | State Requirements for PRWORA Distribution Election                                                                                                                                                                                           |
|--------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| FORMER-ASSISTANCE CASES                          | <p>Apply collections, <u>including Federal tax refund offset</u>, first to current support and then to Family Arrearages before applying to Assigned Arrearages.</p> <p>Once assigned arrears are paid off, any remaining amount is paid to the family. 457(a)(2)(A), (a)(2)(B), and (a)(3)</p> | <p>Apply collections (except those from Federal tax refund offset) first to current support, then to arrearages in the following order:</p> <p>1) NA, 2) UPA and CA (in any order), 3) PA, 4) UDA<sup>32</sup></p> <p>Former 457(a)(2)(B)</p> |
|                                                  |                                                                                                                                                                                                                                                                                                 | <p>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.</p> <p>Former 457(a)(2)(B)(iv)</p>        |

## 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.

<sup>32</sup> 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.<sup>33</sup> <sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup>

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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<sup>33</sup> See section 457(b)(1) of the Act.

<sup>34</sup> See also discussion contained in [Question and Answer 19](#).

<sup>35</sup> See section 457(b)(2) of the Act.

<sup>36</sup> 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 [section V\(a\)](#) of this AT.<sup>37</sup>

### **(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 [section V\(b\)](#) 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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<sup>37</sup> 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 Options |                                                                   | Effective Date <sup>38</sup> | Statutory Citation |
|---------------|-------------------------------------------------------------------|------------------------------|--------------------|
| IN GENERAL    | Continue PRWORA Distribution in Former-Assistance cases;          | October 1, 2009              | 454(34)            |
|               | OR<br><br>Apply DRA Distribution rules in Former-Assistance cases | October 1, 2009              | 454(34)            |

<sup>38</sup> State option to accelerate effective date to no earlier than October 1, 2008, but no later than October 1, 2009.

| State Options            |                                                                                                                                                                        | Effective Date <sup>38</sup> | Statutory Citation       |
|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|--------------------------|
| 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 <sup>39</sup>                                           | In Effect                    | Former 457(a)(2)(B)(iii) |
|                          | OR<br>Retain, or pay to Former-Assistance family, State share of collections applied to any of its Assigned Arrearages <sup>40</sup>                                   | 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)             |

<sup>39</sup> PRWORA Distribution election.

<sup>40</sup> DRA Distribution election.

| State Options                      |                                                                                                        | Effective Date <sup>38</sup> | 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.<sup>41</sup>

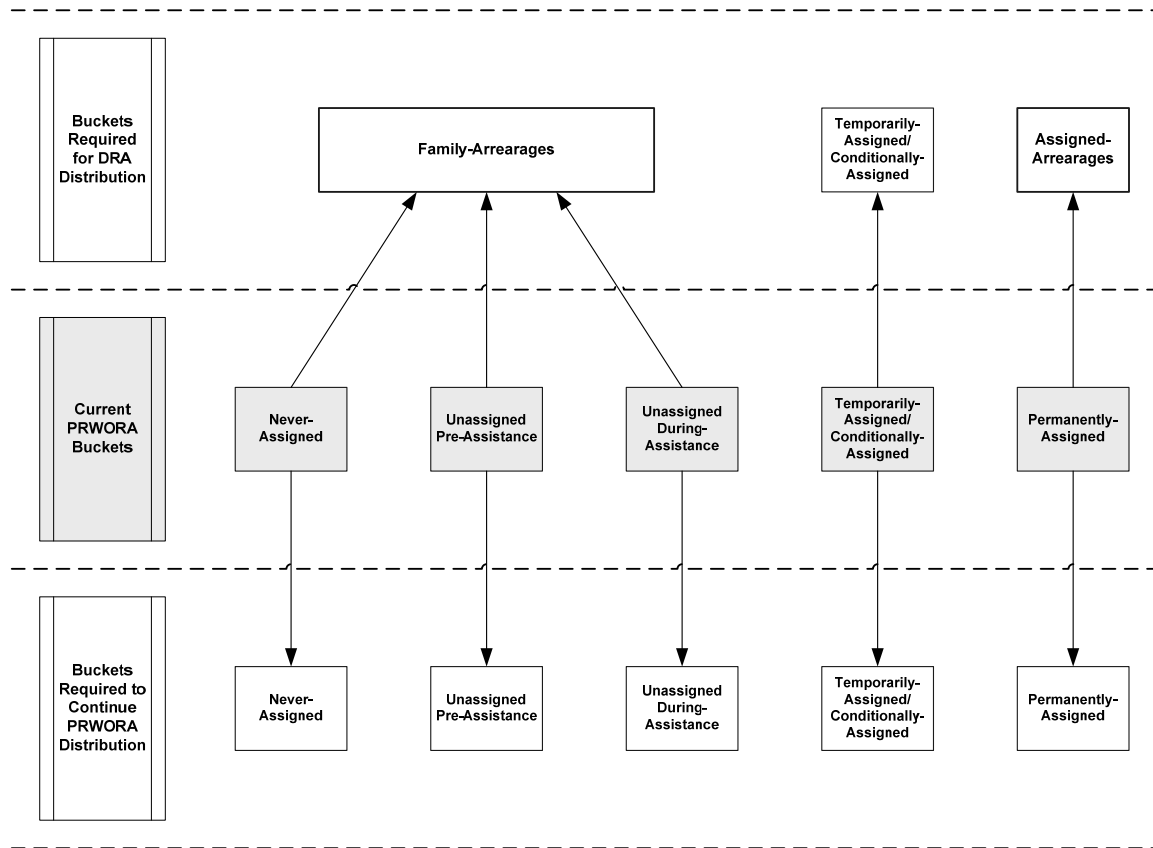
What follows are a series of figures that illustrate the conversion of arrearage categories, depending on the distribution and assignment discontinuation options selected by the State. These examples assume that, where assignments are discontinued, a State would discontinue all (rather than a portion)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

<sup>41</sup> Under DRA Distribution, Never-Assigned arrearages are a part of Family Arrearages. See [section II](#) of this AT for the definition of [Family Arrearages](#).

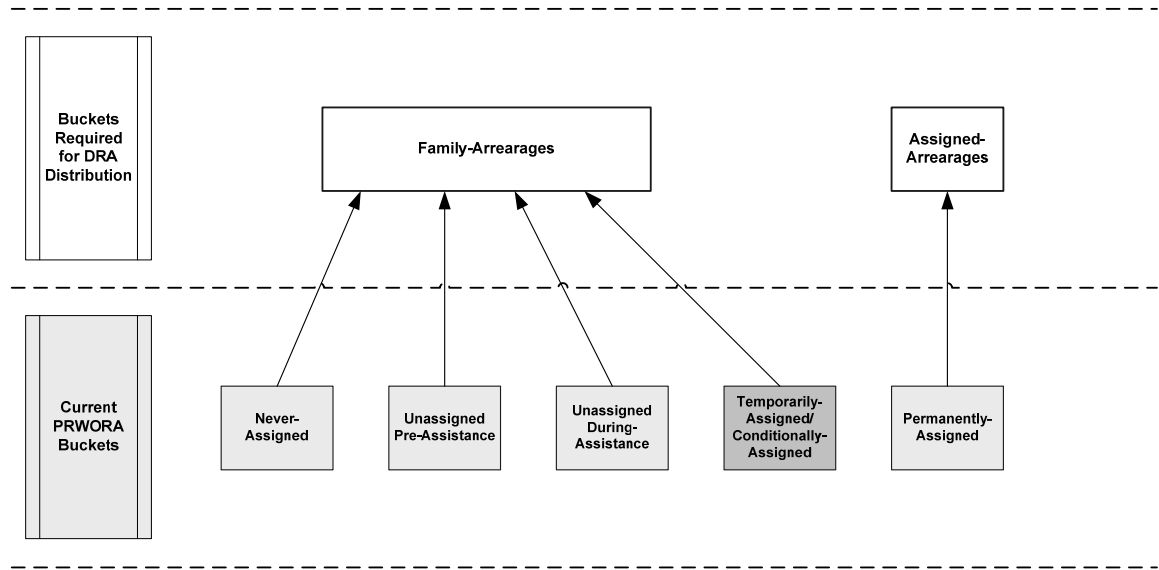
**Figure 1: Arrearage Conversion for both DRA and PRWORA Distribution in Former-Assistance Cases, All Assignments Continued<sup>42</sup>**



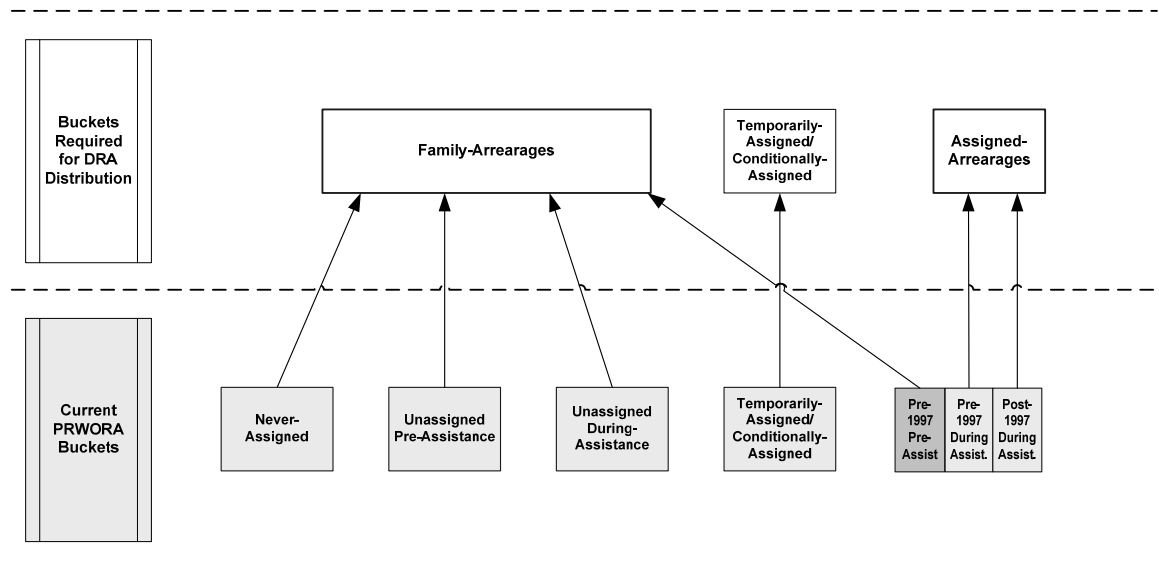
[Figures 2 through 6](#) show how a State may convert existing PRWORA arrearages to DRA Distribution arrearage categories in instances where the State has discontinued all of its post-1997 and/or pre-1997 assignments.

<sup>42</sup> 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.

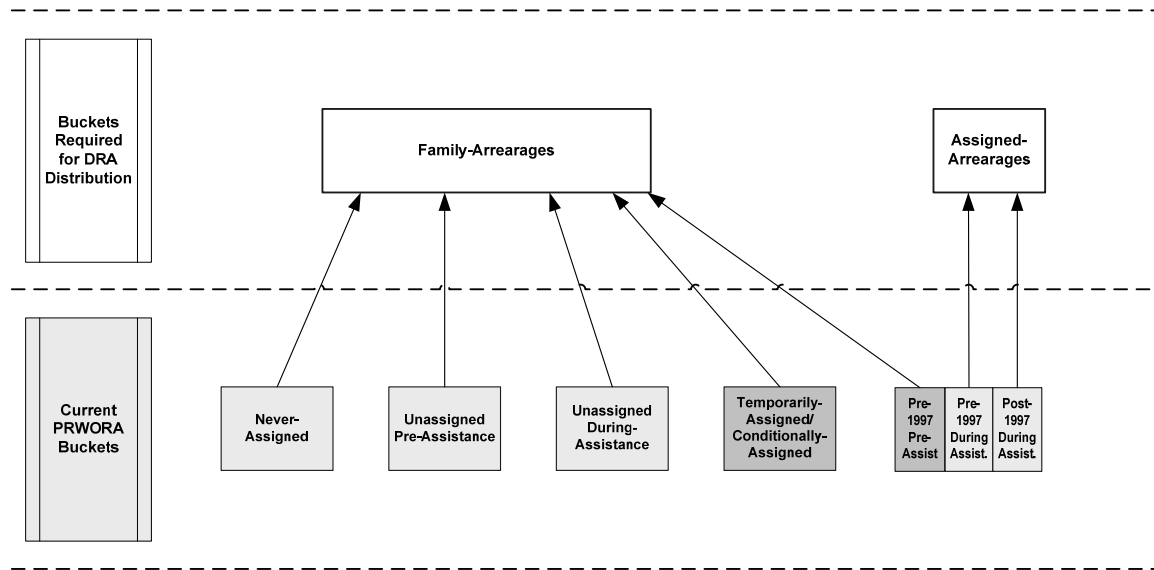
**Figure 2: Arrearage Conversion for DRA Distribution, Post-1997 Assignments Discontinued**



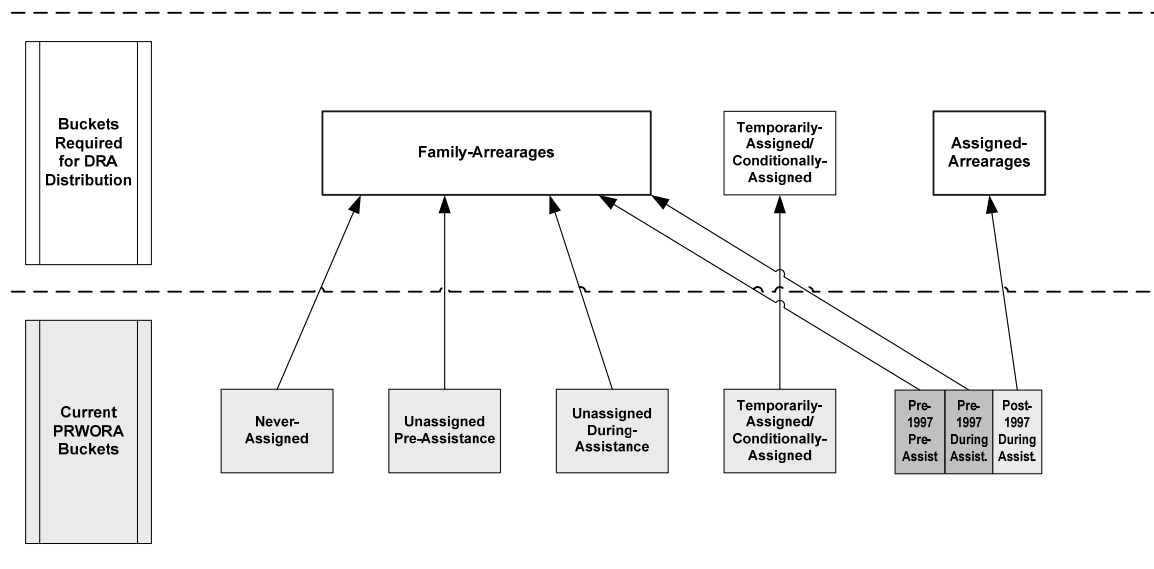
**Figure 3: Arrearage Conversion for DRA Distribution, Pre-1997 Assignments of a State's Pre-Assistance Arrearages Discontinued; (the State can Distinguish Between Pre-Assistance and During-Assistance Arrearages)**



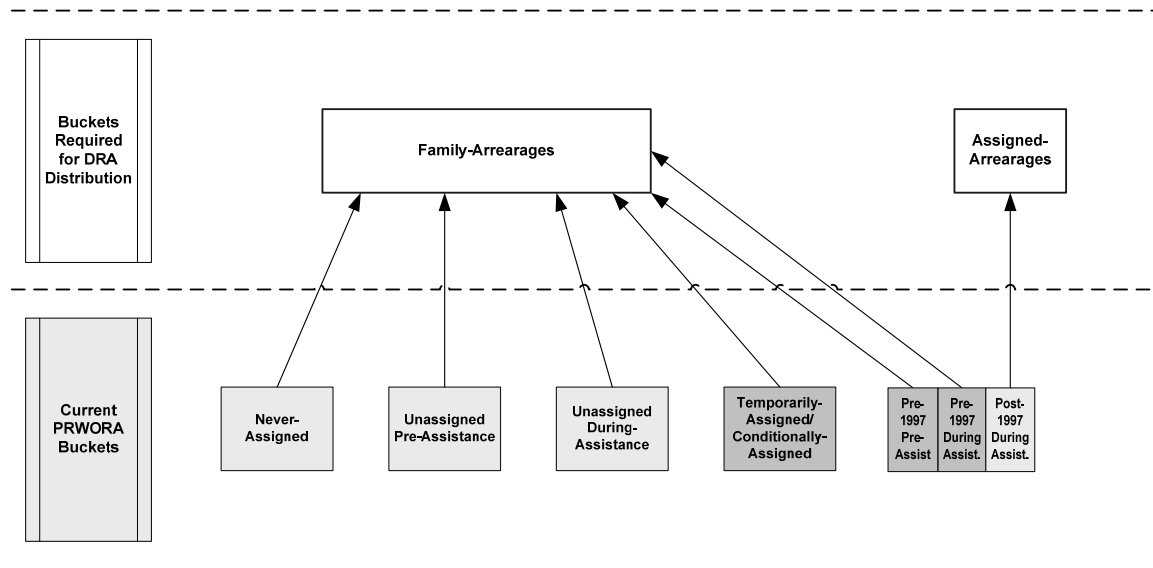
**Figure 4: Arrearage Conversion for DRA Distribution, All of a State's Pre-Assistance Assignments Discontinued; (the State can Distinguish Between Pre-Assistance and During-Assistance Arrearages)**



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

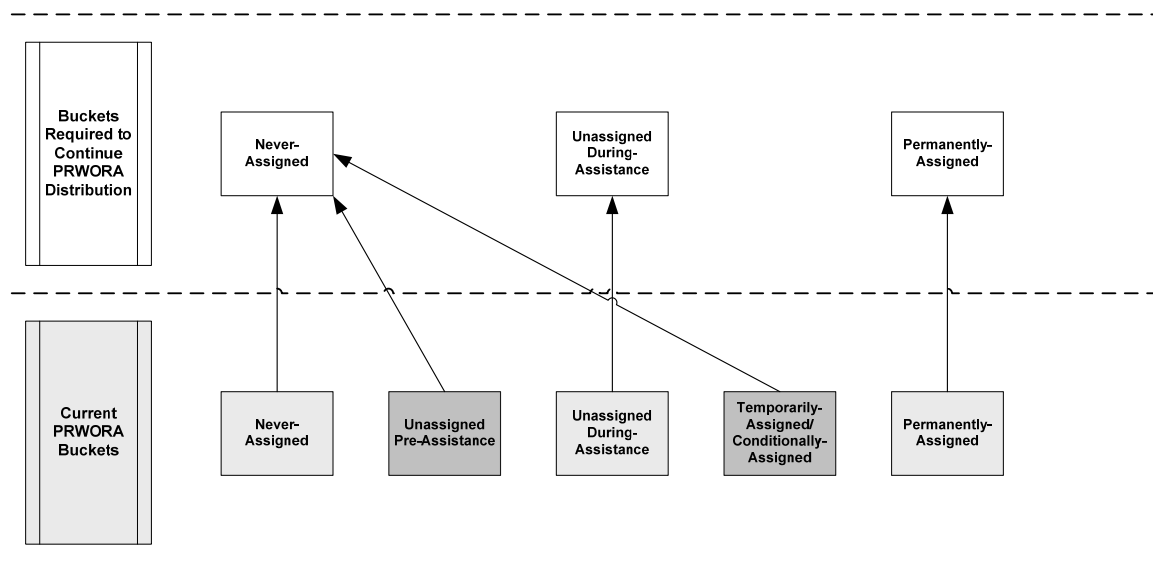


**Figure 6: Arrearage Conversion for DRA Distribution, Both a State's Pre- and Post-1997 Assignments Discontinued**

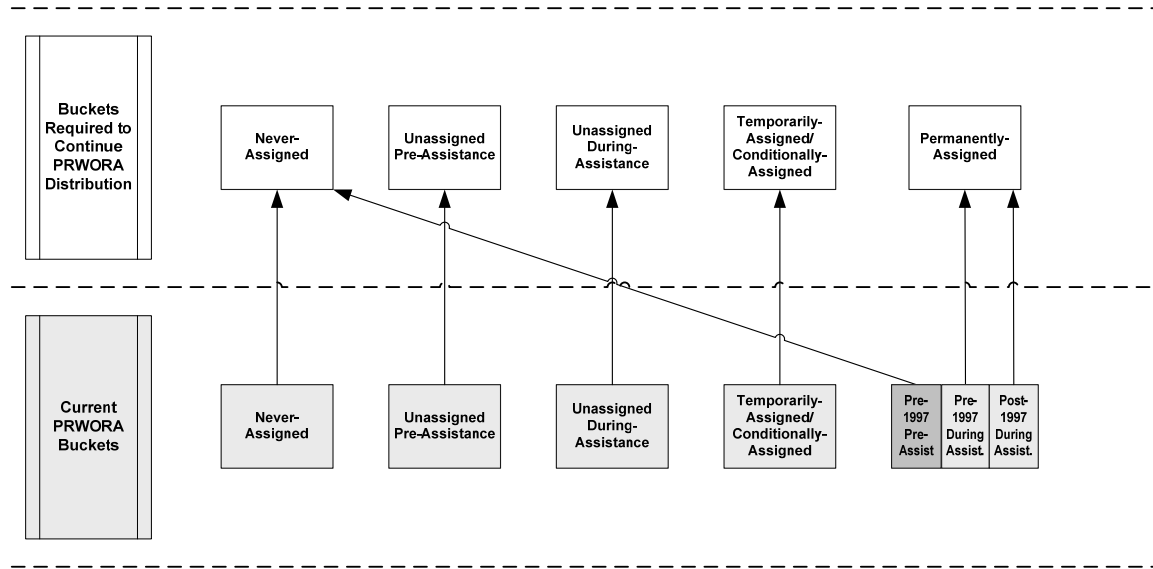


[Figures 7 through 11](#) show how a State may convert existing PRWORA arrearages to various PRWORA Distribution arrearage categories if the State chooses to discontinue its post-1997 and/or pre-1997 assignments.

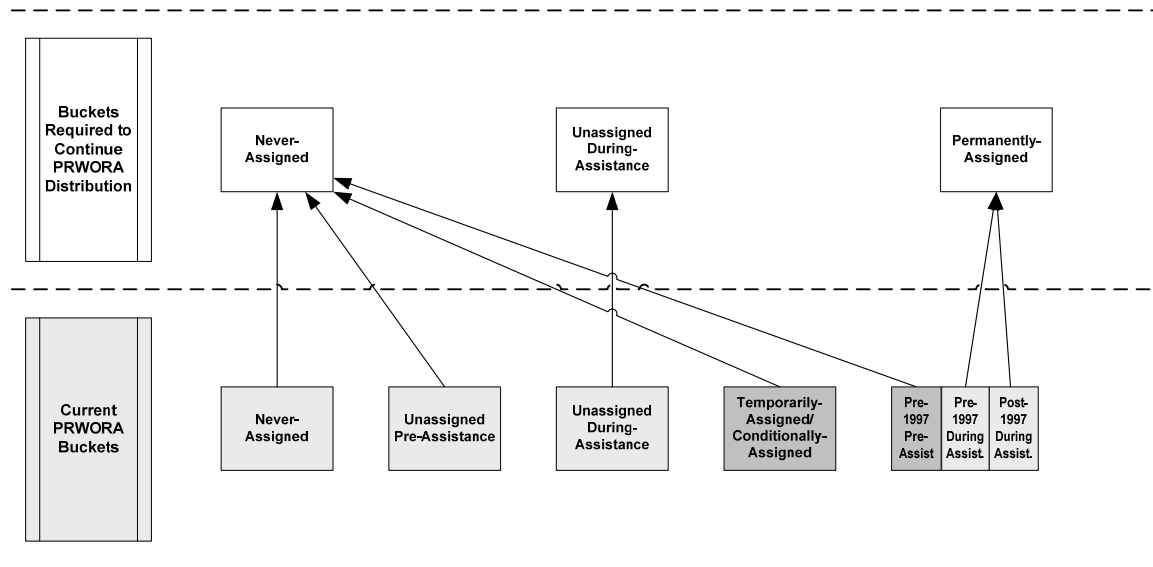
**Figure 7: Arrearage Conversion for PRWORA Distribution, a State's Post-1997 Assignments Discontinued**



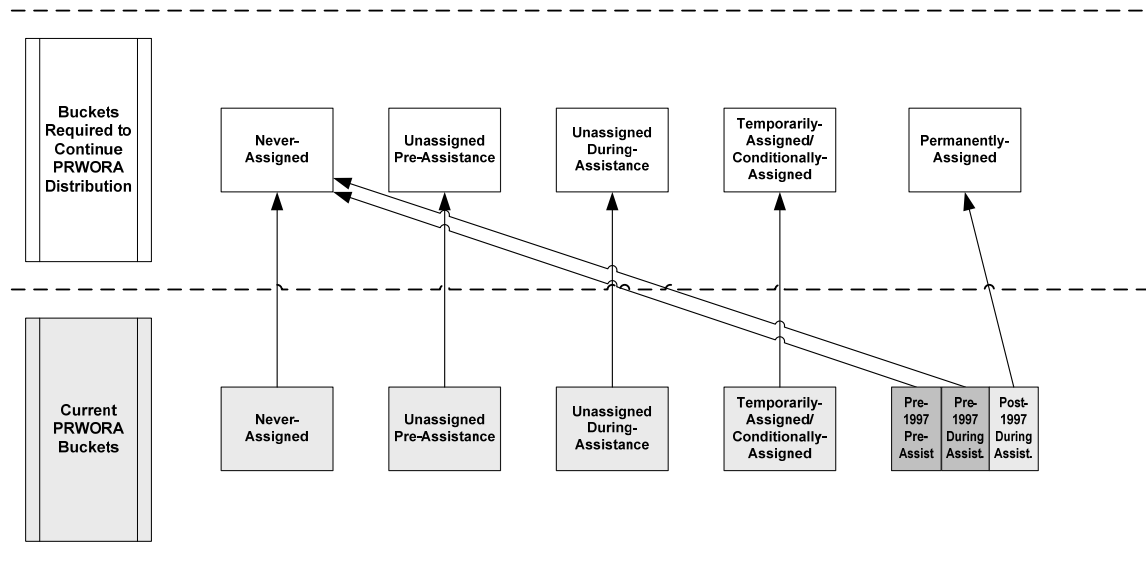
**Figure 8: Arrearage Conversion for PRWORA Distribution, a State's Pre-1997 Assignments of Pre-assistance Arrearages Discontinued; (the State can Distinguish Between Pre-Assistance and During-Assistance Arrearages)**



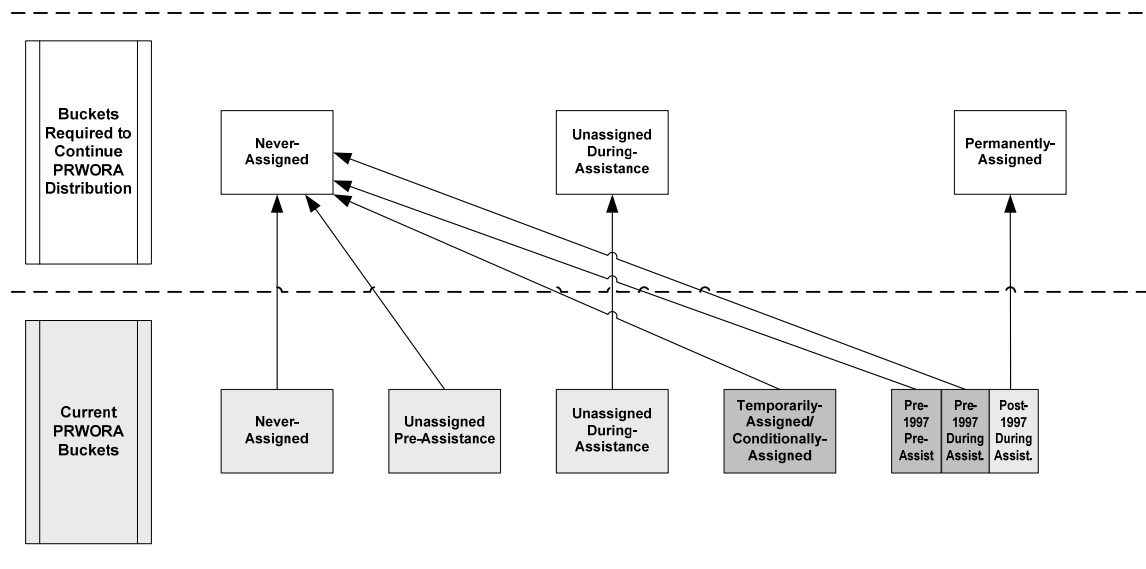
**Figure 9: Arrearage Conversion for PRWORA Distribution, All of a State's Pre-Assistance Assignments Discontinued; (the State can Distinguish Between Pre-Assistance and During-Assistance Arrearages)**



**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.

|              | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 ... |
|--------------|------|------|------|------|------|----------|
| Never Assist | NA   |      |      |      |      |          |

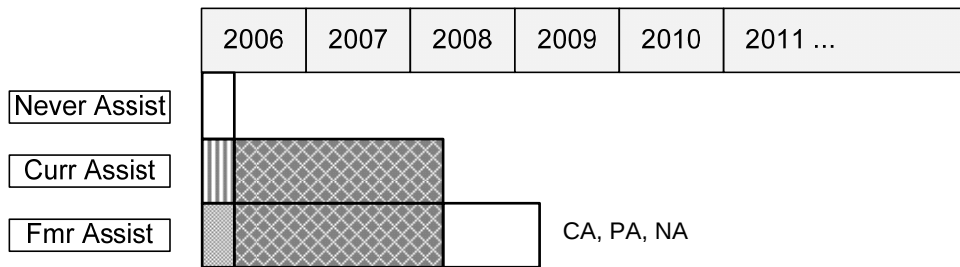
May 2006 – February 2008:

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

|              | 2006   | 2007   | 2008   | 2009 | 2010 | 2011 ... |
|--------------|--------|--------|--------|------|------|----------|
| Never Assist |        |        |        |      |      |          |
| Curr Assist  | TA, PA | TA, PA | TA, PA |      |      |          |

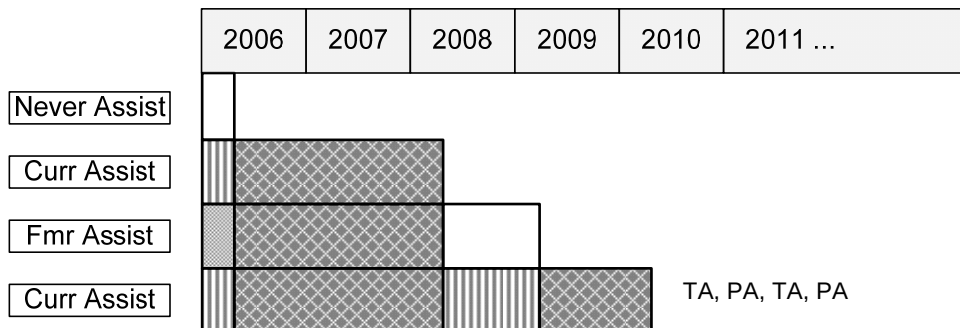
March 2008 – April 2009:

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



May 2009 – April 2010:

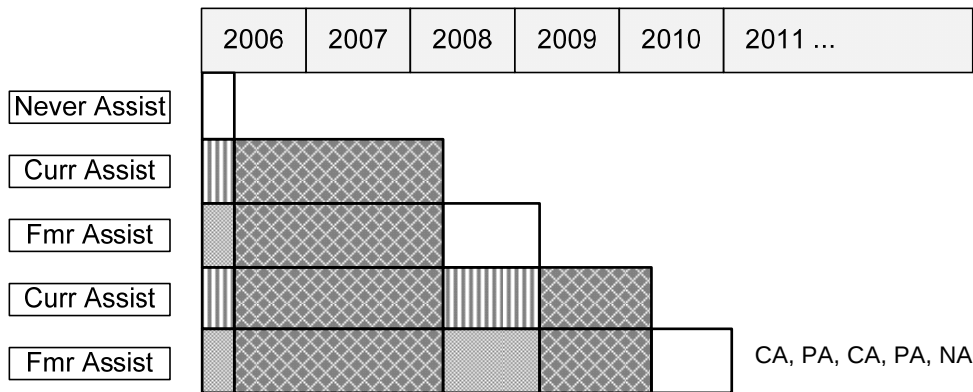
The family returns to assistance. Never-Assigned and Conditionally-Assigned Arrearages convert to Temporarily-Assigned Arrearages.<sup>43</sup>



May 2010 – January 2011:

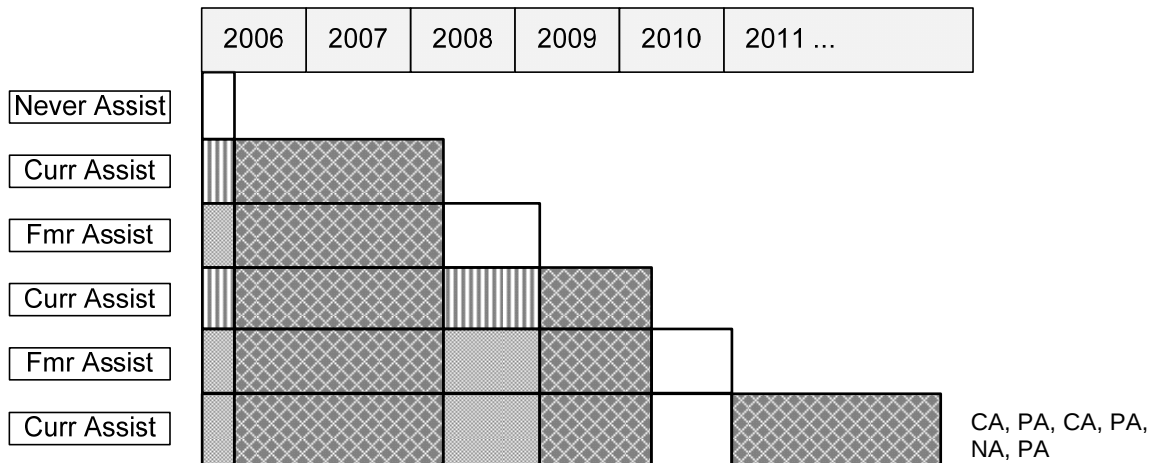
The Current-Assistance case closes and converts to a Former-Assistance case. The Temporarily-Assigned Arrearages convert to Conditionally-Assigned Arrearages.

<sup>43</sup> 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.

### EXAMPLE 2A

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.

### EXAMPLE 2B

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 [Conditionally-Assigned Arrearages](#) 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**

Key for Example 4:

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<br>End of Month |   |       |                 |
|-------|--------------|------------|----------------------------------------|---|-------|-----------------|
|       |              |            | Family                                 |   | State |                 |
| Month | Case<br>Type | Pmt<br>Amt | NA                                     | C | PA    | T <sup>44</sup> |
| 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<br>End of Month |   |       |                 |
|-------|--------------|------------|----------------------------------------|---|-------|-----------------|
|       |              |            | Family                                 |   | State |                 |
| Month | Case<br>Type | Pmt<br>Amt | NA                                     | C | PA    | T <sup>45</sup> |
| 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?

<sup>44</sup> When a family stops receiving assistance the Temporarily-Assigned arrearages would become Conditionally-Assigned arrearages.

<sup>45</sup> [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/<br>CONDITIONALLY-<br>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.<sup>46</sup> 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 | <p>Apply FTRO<sup>47</sup> to current support first, then to Assigned Arrearages, then to Family Arrearages</p> <p>(1) Current, (2) Assigned, (3) Family</p> | <p>Apply FTRO to arrearages only: first to Temporarily- and Permanently-Assigned Arrearages, then to arrearages owed to the family</p> <p>(1) Permanently-Assigned/Temporarily-Assigned, (2) Never-Assigned</p> |

<sup>46</sup> 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.

<sup>47</sup> FTRO = Federal tax refund offset.

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

For further discussion on Federal tax refund offset distribution, see [section IV\(b\)](#) 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 *and the State ensures that collections in Former-Assistance cases are applied to these buckets before 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.

## 42 USCS § 657

Current through Public Law 117-167, approved August 9, 2022.

*United States Code Service > TITLE 42. THE PUBLIC HEALTH AND WELFARE (Chs. 1 — 163) > CHAPTER 7. SOCIAL SECURITY (Titles I — XXI) > TITLE IV. GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES (Pts. A — F) > Part D. CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY (§§ 651 — 669b)*

### § 657. Distribution of collected support

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**(a) In general.** Subject to subsections (d) and (e), the amounts collected on behalf of a family as support by a State pursuant to a plan approved under this part [42 USCS §§ 651 et seq.] shall be distributed as follows:

**(1)** Families receiving assistance. In the case of a family receiving assistance from the State, the State shall—

**(A)** pay to the Federal Government the Federal share of the amount collected, subject to paragraph (3)(A);

**(B)** retain, or pay to the family, the State share of the amount collected, subject to paragraph (3)(B); and

**(C)** pay to the family any remaining amount.

**(2)** Families that formerly received assistance. In the case of a family that formerly received assistance from the State:

**(A)** Current support. To the extent that the amount collected does not exceed the current support amount, the State shall pay the amount to the family.

**(B)** Arrearages. Except as otherwise provided in an election made under section 454(34) [42 USCS § 654(34)], to the extent that the amount collected exceeds the current support amount, the State—

**(i)** shall first pay to the family the excess amount, to the extent necessary to satisfy support arrearages not assigned pursuant to section 408(a)(3) [42 USCS § 608(a)(3)];

**(ii)** if the amount collected exceeds the amount required to be paid to the family under clause (i), shall—

**(I)** pay to the Federal Government the Federal share of the excess amount described in this clause, subject to paragraph (3)(A); and

**(II)** retain, or pay to the family, the State share of the excess amount described in this clause, subject to paragraph (3)(B); and

**(iii)** shall pay to the family any remaining amount.

**(3)** Limitations.

**(A)** Federal reimbursements. The total of the amounts paid by the State to the Federal Government under paragraphs (1) and (2) of this subsection with respect to a family shall not

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exceed the Federal share of the amount assigned with respect to the family pursuant to section 408(a)(3) [42 USCS § 608(a)(3)].

**(B)** State reimbursements. The total of the amounts retained by the State under paragraphs (1) and (2) of this subsection with respect to a family shall not exceed the State share of the amount assigned with respect to the family pursuant to section 408(a)(3) [42 USCS § 608(a)(3)].

**(4)** Families that never received assistance. In the case of any other family, the State shall distribute to the family the portion of the amount so collected that remains after withholding any fee pursuant to section 454(6)(B)(ii) [42 USCS § 654(6)(B)(ii)].

**(5)** Families under certain agreements. Notwithstanding paragraphs (1) through (3), in the case of an amount collected for a family in accordance with a cooperative agreement under section 454(33) [42 USCS § 654(33)], the State shall distribute the amount collected pursuant to the terms of the agreement.

**(6) State option to pass through additional support with Federal financial participation.**

**(A)** Families that formerly received assistance. Notwithstanding paragraph (2), a State shall not be required to pay to the Federal Government 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 the amount to the family.

**(B)** Families that currently receive assistance.

**(i)** In general. Notwithstanding paragraph (1), in the case of a family that receives assistance from the State, a State shall not be required to pay to the Federal Government the Federal share of the excepted portion (as defined in clause (ii)) of any amount collected on behalf of such family during a month to the extent that—

**(I)** the State pays the excepted portion to the family; and

**(II)** the excepted portion is disregarded in determining the amount and type of assistance provided to the family under such program.

**(ii)** Excepted portion defined. For purposes of this subparagraph, the term “excepted portion” means that portion of the amount collected on behalf of a family during a month that does not exceed \$100 per month, or in the case of a family that includes 2 or more children, that does not exceed an amount established by the State that is not more than \$200 per month.

**(7)** [Redesignated]

**(b) Continuation of assignments.**

**(1)** State option to discontinue pre-1997 support assignments.

**(A)** In general. Any rights to support obligations assigned to a State as a condition of receiving assistance from the State under part A [42 USCS §§ 601 et seq.] and in effect on September 30, 1997 (or such earlier date on or after August 22, 1996, as the State may choose), may remain assigned after such date.

**(B)** Distribution of amounts after assignment discontinuation. If a State chooses to discontinue the assignment of a support obligation described in subparagraph (A), the State may treat amounts collected pursuant to the assignment as if the amounts had never been assigned and may distribute the amounts to the family in accordance with subsection (a)(4).

**(2)** State option to discontinue post-1997 assignments.

**(A)** In general. Any rights to support obligations accruing before the date on which a family first receives assistance under part A [42 USCS §§ 601 et seq.] that are assigned to a State under that part and in effect before the implementation date of this section may remain assigned after such date.

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**(B)** Distribution of amounts after assignment discontinuation. If a State chooses to discontinue the assignment of a support obligation described in subparagraph (A), the State may treat amounts collected pursuant to the assignment as if the amounts had never been assigned and may distribute the amounts to the family in accordance with subsection (a)(4).

**(c) Definitions.** As used in subsection (a):

**(1)** Assistance. The term “assistance from the State” means—

**(A)** assistance under the State program funded under part A [42 USCS §§ 601 et seq.] or under the State plan approved under part A of this title [42 USCS §§ 601 et seq.] (as in effect on the day before the date of the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [enacted Aug. 22, 1996]); and

**(B)** foster care maintenance payments under the State plan approved under part E of this title [42 USCS §§ 681 et seq.].

**(2)** Federal share. The term “Federal share” means that portion of the amount collected resulting from the application of the Federal medical assistance percentage in effect for the fiscal year in which the amount is distributed.

**(3)** Federal medical assistance percentage. The term “Federal medical assistance percentage” means—

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

**(B)** the Federal medical assistance percentage (as defined in section 1905(b) [former 42 USCS § 1396d(b)], as such section was in effect on September 30, 1995) in the case of any other State.

**(4)** State share. The term “State share” means 100 percent minus the Federal share.

**(5)** Current support amount. The term “current support amount” 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.

**(d) Gap payments not subject to distribution under this section.** At State option, this section shall not apply to any amount collected on behalf of a family as support by the State (and paid to the family in addition to the amount of assistance otherwise payable to the family) pursuant to a plan approved under this part [42 USCS §§ 651 et seq.] if such amount would have been paid to the family by the State under section 402(a)(28) [former 42 USCS § 602(a)(28)], as in effect and applied on the day before the date of the enactment of section 302 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [enacted Aug. 22, 1996].

**(e) Amounts collected for child for whom foster care maintenance payments are made.**

Notwithstanding the preceding provisions of this section, amounts collected by a State as child support for months in any period on behalf of a child for whom a public agency is making foster care maintenance payments under part E [42 USCS §§ 670 et seq.]—

**(1)** shall be retained by the State to the extent necessary to reimburse it for the foster care maintenance payments made with respect to the child during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

**(2)** shall be paid to the public agency responsible for supervising the placement of the child to the extent that the amounts collected exceed the foster care maintenance payments made with respect to the child during such period but not the amounts required by a court or administrative order to be paid as support on behalf of the child during such period; and the responsible agency may use the payments in the manner it determines will serve the best interests of the child, including setting such payments aside for the child’s future needs or making all or a part thereof available to the person responsible for meeting the child’s day-to-day needs; and

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(3) shall be retained by the State, if any portion of the amounts collected remains after making the payments required under paragraphs (1) and (2), to the extent that such portion is necessary to reimburse the State (with appropriate reimbursement to the Federal Government to the extent of its participation in the financing) for any past foster care maintenance payments (or payments of assistance under the State program funded under part A [42 USCS §§ 601 et seq.]) which were made with respect to the child (and with respect to which past collections have not previously been retained);

and any balance shall be paid to the State agency responsible for supervising the placement of the child, for use by such agency in accordance with paragraph (2).

## History

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### HISTORY:

Aug. 14, 1935, ch 531, Title IV, Part D, § 457, as added Jan. 4, 1975, P. L. 93-647, Part B, § 101(a), 88 Stat. 2356; Nov. 12, 1977, P. L. 95-171, § 11, 91 Stat. 1357; Aug. 13, 1981, P. L. 97-35, Title XXIII, Subtitle A, ch 2, § 2332(e), 95 Stat. 862; July 18, 1984, P. L. 98-369, Division B, Title VI, Subtitle B, Part 2, § 2640(b), 98 Stat. 1145; Aug. 16, 1984, P. L. 98-378, §§ 7(a), 11(a)(1), (2), 98 Stat. 1315, 1317, 1318; Oct. 22, 1986, P. L. 99-514, Title XVIII, Subtitle B, Ch 1, § 1883(b)(6), Subtitle C, Ch 3, § 1899(a), 100 Stat. 2917, 2957; Dec. 22, 1987, P. L. 100-203, Title IX, Subtitle B, Part 3, § 9141(a)(1), 101 Stat. 1330-321; Oct. 13, 1988, P. L. 100-485, Title I, Subtitle A, § 102(b), 102 Stat. 2346; Aug. 22, 1996, P. L. 104-193, Title III, Subtitle A, § 302(a), 110 Stat. 2200; Aug. 5, 1997, P. L. 105-33, Title V, Subtitle F, Ch 3, §§ 5532(a), (b)(1), (c)–(h), 5547, 111 Stat. 626, 632; Dec. 14, 1999, P. L. 106-169, Title III, § 301(a), (c), Title IV, § 401(j), (k), 113 Stat. 1857, 1858; Feb. 8, 2006, P. L. 109-171, Title VII, Subtitle C, §§ 7301(b)(1)(A), (B)(i), (iii), (2), (c), 7310(b), 120 Stat. 141, 143, 147.

Annotations

## Notes

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### HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

Effective date of section:

Amendment Notes

1977.

1981.

1984.

1986.

1987.

1988.

1996.

1997.

1999.

**2006.**

**Other provisions:**

**References in text:**

The “Personal Responsibility and Work Opportunity Reconciliation Act of 1996”, referred to in this section, is Act Aug. 22, 1996, P. L. 104-193, 110 Stat. 2105. For full classification of such Act, consult USCS Tables volumes.

**Effective date of section:**

This section took effect on August 1, 1975, pursuant to § 101(f) of Act Jan. 4, 1975, P. L. 93-647, which appears as 42 USCS § 651 note.

**Amendment Notes**

**1977.**

Act Nov. 12, 1977, in subsec. (c)(1) and (2), substituted “amounts of child support payments which represent monthly support payments” for “such support payments”, and added “, which represent monthly support payments”; in subsec. (c)(2), substituted the comma at the end for a period; and, at the end of subsec. (c), added “and so much of any amounts of child support so collected as are in excess of the payments required to be made in paragraph (1) shall be distributed in the manner provided by subsection (b)(3)(A) and (B) with respect to excess amounts described in subsection (b).”.

**1981.**

Act Aug. 13, 1981 (effective 10/1/81, as provided by § 2336(a) of such Act, which appears as 42 USCS § 651 note), in subsec. (b), in the introductory matter, deleted “child” following “collected as”; and in subsec. (c), in the introductory matter, deleted “child” following “for whom”, in para. (1), deleted “child” following “amounts of”, and in para. (2), deleted “child” following “amounts of” both places such phrase appears. For the application of these amendments, see § 2336(b) of such Act, which appears as 42 USCS § 651 note.

**1984.**

Act July 18, 1984 (effective 10/1/84, as provided by § 2646 of such Act, which appears as a note to this section) in subsec. (b), redesignated paras. (1)–(3) as paras. (2)–(4), and added para. (1), in para. (2), as redesignated, inserted “which are in excess of any amount paid to the family under paragraph (1)”, in para. (3), as redesignated, substituted “paragraph (2)” for “paragraph (1)”, and in para. (4) as redesignated, substituted “paragraphs (1), (2), and (3)” for “paragraphs (1) and (2)”.

Act Aug. 16, 1984, § 11(a) (effective 10/1/84 and applicable as provided by § 11(e) of such Act, which appears as 42 USCS § 654 note), in subsec. (b), in the introductory matter, inserted “(subject to subsection (d))” and added subsec. (d).

Section 7(a) of such Act, (effective 10/1/84, as provided by § 7(b) of such Act, which appears as a note to this section), in subsec. (c), in the introductory matter, substituted “shall” for “may”, and, in para. (2), deleted “the net amount of” following “parent and pay” and substituted “to the family (without requiring any formal reapplication and without the imposition of any application fee) on the same basis as in the case of other individuals who are not receiving assistance under part A of this title,” for “to the family after deducting any costs incurred in making the collection from the amount of any recovery made”.

**1986.**

Act Oct. 22, 1986 (effective on enactment as provided by § 1899(b) of such Act, which appears as a note to this section), in subsec. (b)(3), inserted “or administrative”.

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Such Act further (effective on enactment as provided by § 1883(f) of such Act, which appears as 42 USCS § 402 note), in subsec. (c), in the concluding matter, substituted “subsection (b)(4)(A) and (B)” for “subsection (b)(3)(A) and (B)”.

**1987.**

Act Dec. 22, 1987 (effective upon enactment as provided by § 9141(b) of such Act, which appears as 42 USCS § 454 note) substituted subsec. (c) for one which read:

“(c) Whenever a family for whom support payments have been collected and distributed under the plan ceases to receive assistance under part A of this title, the State shall—

“(1) continue to collect amounts of support payments which represent monthly support payments from the absent parent for a period of not to exceed three months from the month following the month in which such family ceased to receive assistance under part A of this title, and pay all amounts so collected, which represent monthly support payments, to the family; and

“(2) at the end of such three-month period, if the State is authorized to do so by the individual on whose behalf the collection will be made, continue to collect amounts of support payments which represent monthly support payments from the absent parent and pay any amount so collected, which represents monthly support payments, to the family (without requiring any formal reapplication and without the imposition of any application fee) on the same basis as in the case of other individuals who are not receiving assistance under part A of this title,

and so much of any amounts of child support so collected as are in excess of the payments required to be made in paragraph (1) shall be distributed in the manner provided by subsection (b)(4)(A) and (B) with respect to excess amounts described in subsection (b).”.

**1988.**

Act Oct. 13, 1988 (effective on the first day of the first calendar quarter which begins after the date of the enactment of this Act, as provided by § 102(c) of such Act, which appears as a note to this section), in subsec. (b)(1), substituted “of such amounts as are collected periodically which represent monthly support payments, the first \$50 of any payments for a month received in that month, and the first \$50 of payments for each prior month received in that month which were made by the absent parent in the month when due”, for “the first \$50 of such amounts as are collected periodically which represent monthly support payments”.

**1996.**

Act Aug. 22, 1996 (effective as provided by § 302(c) of such Act, which appears as a note to this section, but subject to § 395(b) and (c) of such Act, which appear as 42 USCS § 654 note) substituted this section for one which read:

“Distribution of proceeds.

“(a) Amount collected during fifteen month period beginning July 1, 1975. The amounts collected as child support by a State pursuant to a plan approved under this part during the 15 months beginning July 1, 1975, shall be distributed as follows:

“(1) 40 per centum of the first \$50 of such amounts as are collected periodically which represent monthly support payments shall be paid to the family without any decrease in the amount paid as assistance to such family during such month;

“(2) such amounts as are collected periodically which are in excess of any amount paid to the family under paragraph (1) which represent monthly support payments shall be retained by the State to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

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“(3) such amounts as are in excess of amounts retained by the State under paragraph (2) and are not in excess of the amount required to be paid during such period to the family by a court order shall be paid to the family; and

“(4) such amounts as are in excess of amounts required to be distributed under paragraphs (1), (2), and (3) shall be (A) retained by the State (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the State has not been reimbursed or (B) if no assistance payments have been made by the State which have not been repaid, such amounts shall be paid to the family.

“(b) Amount collected during fifteen month period beginning July 1, 1976. The amounts collected as support by a State pursuant to a plan approved under this part during any fiscal year beginning after September 30, 1976, shall (subject to subsection (d)) be distributed as follows:

“(1) of such amounts as are collected periodically which represent monthly support payments, the first \$50 of any payments for a month received in that month, and the first \$50 of payments for each prior month received in that month which were made by the absent parent in the month when due, 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;

“(2) such amounts as are collected periodically which are in excess of any amount paid to the family under paragraph (1) and which represent monthly support payments shall be retained by the State to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

“(3) such amounts as are in excess of amounts retained by the State under paragraph (2) and are not in excess of the amount required to be paid during such period to the family by a court or administrative order shall be paid to the family; and

“(4) such amounts as are in excess of amounts required to be distributed under paragraphs (1), (2), and (3) shall be (A) retained by the State (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the State has not been reimbursed or (B) if no assistance payments have been made by the State which have not been repaid, such amounts shall be paid to the family.

“(c) Collection after termination of assistance; distribution of support proceeds. Whenever a family with respect to which child support enforcement services have been provided pursuant to section 454(4) ceases to receive assistance under part A of this title, the State shall provide appropriate notice to the family and continue to provide such services, and pay any amount of support collected, subject to the same conditions and on the same basis as in the case of the individuals to whom services are furnished pursuant to section 454(6), except that no application or other request to continue services shall be required of a family to which this subsection applies, and the provisions of section 454(6)(B) may not be applied.

“(d) Child support enforcement for certain children in foster care. Notwithstanding the preceding provisions of this section, amounts collected by a State as child support for months in any period on behalf of a child for whom a public agency is making foster care maintenance payments under part E—

“(1) shall be retained by the State to the extent necessary to reimburse it for the foster care maintenance payments made with respect to the child during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

“(2) shall be paid to the public agency responsible for supervising the placement of the child to the extent that the amounts collected exceed the foster care maintenance payments made with respect to the child during such period but not the amounts required by a court or administrative order to be paid as support on behalf of the child during such period; and the responsible agency may use the payments in the manner it determines will serve the best interests of the child, including setting such payments aside for the child's

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future needs or making all or a part thereof available to the person responsible for meeting the child's day-to-day needs; and

“(3) shall be retained by the State, if any portion of the amounts collected remains after making the payments required under paragraphs (1) and (2), to the extent that such portion is necessary to reimburse the State (with appropriate reimbursement to the Federal Government to the extent of its participation in the financing) for any past foster care maintenance payments (or payments of aid to families with dependent children) which were made with respect to the child (and with respect to which past collections have not previously been retained);

and any balance shall be paid to the State agency responsible for supervising the placement of the child, for use by such agency in accordance with paragraph (2).”.

**1997.**

Act Aug. 5, 1997 (effective as if included in the enactment of Title III of Act Aug. 22, 1996, as provided by § 5557 of the 1997 Act, which appears as 42 USCS § 608 note), in subsec. (a), in the introductory matter, substituted “subsections (e) and (f)” for “subsection (e)”, in para. (1), added the concluding matter, in para. (2)(B), in cls. (i)(I) and (ii)(I), deleted “(other than subsection (b)(1))” following “this section” and inserted “(other than subsection (b)(1) (as so in effect))”, substituted para. (4) for one which read: “(4) Families under certain agreements. In the case of a family receiving assistance from an Indian tribe, distribute the amount so collected pursuant to an agreement entered into pursuant to a State plan under section 454(33).”, in para. (5), in the introductory matter, substituted “1999” for “1998”, and added para. (6); in subsec. (b), substituted “assigned” for “which were assigned” and substituted “and in effect on September 30, 1997 (or such earlier date, on or after August 22, 1996, as the State may choose), shall remain assigned after such date.” for “and which were in effect on the day before the date of the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, shall remain assigned after such date.”; in subsec. (c), in para. (2), substituted “distributed” for “collected”, in para. (3), in subpara. (A), substituted “75 percent” for “the Federal medical assistance percentage (as defined in section 1118)” and, in subpara. (B), substituted “as such section was in effect on September 30, 1995” for “as in effect on September 30, 1996”; and added subsec. (f).

**1999.**

Act Dec. 14, 1999 (effective with respect to calendar quarters occurring during the period beginning on 10/1/98 and ending on 9/30/01, as provided by § 301(b) of such Act, which appears as a note to this section), substituted subsec. (d) for one which read: “(d) Hold harmless provision. If the amounts collected which could be retained by the State in the fiscal year (to the extent necessary to reimburse the State for amounts paid to families as assistance by the State) are less than the State share of the amounts collected in fiscal year 1995 (determined in accordance with section 457 as in effect on the day before the date of the enactment of the Personal Responsibility and Work Opportunity Act of 1996, the State share for the fiscal year shall be an amount equal to the State share in fiscal year 1995.”.

Such Act further (effective as provided by § 401(q) of such Act, which appears as 42 USCS § 602 note), in subsec. (a), in para. (2)(B)(i)(I), substituted “Reconciliation Act” for “Act Reconciliation” and, in paras. (5)(C) and (6), substituted “Opportunity Reconciliation Act” for “Opportunity Act”; and, in subsec. (c)(1)(A), substituted “Opportunity Reconciliation Act” for “Opportunity Act”.

Such Act further (effective 10/1/01, as provided by § 301(c) of such Act, which appears as a note to this section), in subsec. (a), substituted “subsections (d) and (e)” for “subsections (e) and (f)”; deleted subsec. (d), which read:

“(d) Hold-harmless provision. If—

“(1) the State share of amounts collected in the fiscal year which could be retained to reimburse the State for amounts paid to families as assistance by the State is less than the State share of such amounts collected in fiscal year 1995 (determined in accordance with section 457 as in effect on August 21, 1996); and

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“(2)(A) the State has distributed to families that include an adult receiving assistance under the program under part A at least 80 percent of the current support payments collected during the preceding fiscal year on behalf of such families, and the amounts distributed were disregarded in determining the amount or type of assistance provided under the program under part A; or

“(B) the State has distributed to families that formerly received assistance under the program under part A the State share of the amounts collected pursuant to section 464 that could have been retained as reimbursement for assistance paid to such families,

then the State share otherwise determined for the fiscal year shall be increased by an amount equal to one-half of the amount (if any) by which the State share for fiscal year 1995 exceeds the State share for the fiscal year (determined without regard to this subsection).”;

in subsec. (e), deleted “For purposes of subsection (d), the State share of such amount paid to the family shall be considered amounts which could be retained by the State if such payments were reported by the State as part of the State share of amounts collected in fiscal year 1995.” following the concluding period; and redesignated subsecs. (e) and (f) as subsecs. (d) and (e), respectively.

**2006.**

Act Feb. 8, 2006 (effective 10/1/2006, as provided by § 7310(c) of such Act, which appears as 42 USCS § 654 note), in subsec. (a), substituted para. (3) for one which read: “(3) Families that never received assistance. In the case of any other family, the State shall distribute the amount so collected to the family.”.

Such Act further (effective 10/1/2008, as provided by § 7301(b)(1)(B)(ii) of such Act, which appears as a note to this section), in subsec. (a), added para. (7).

Such Act further (effective and applicable as provided by § 7301(e) of such Act, which appears as 42 USCS § 608 note), in subsec. (a), substituted paras. (1)–(5) for paras. (1)–(6), which read:

“(a) In general. Subject to subsections (d) and (e), an amount collected on behalf of a family as support by a State pursuant to a plan approved under this part shall be distributed as follows:

“(1) Families receiving assistance. In the case of a family receiving assistance from the State, the State shall—

“(A) pay to the Federal Government the Federal share of the amount so collected; and

“(B) retain, or distribute to the family, the State share of the amount so collected.

In no event shall the total of the amounts paid to the Federal Government and retained by the State exceed the total of the amounts that have been paid to the family as assistance by the State.

“(2) Families that formerly received assistance. In the case of a family that formerly received assistance from the State:

“(A) Current support payments. To the extent that the amount so collected does not exceed the amount required to be paid to the family for the month in which collected, the State shall distribute the amount so collected to the family.

“(B) Payments of arrearages. To the extent that the amount so collected exceeds the amount required to be paid to the family for the month in which collected, the State shall distribute the amount so collected as follows:

“(i) Distribution of arrearages that accrued after the family ceased to receive assistance.—

“(I) Pre-October 1997. Except as provided in subclause (II), the provisions of this section as in effect and applied on the day before the date of the enactment of section 302 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [enacted Aug. 22, 1996] (other

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than subsection (b)(1) (as so in effect)) shall apply with respect to the distribution of support arrearages that—

“(aa) accrued after the family ceased to receive assistance, and

“(bb) are collected before October 1, 1997.

“(II) Post-September 1997. With respect to the amount so collected on or after October 1, 1997 (or before such date, at the option of the State)—

“(aa) In general. The State shall first distribute the amount so collected (other than any amount described in clause (iv)) to the family to the extent necessary to satisfy any support arrearages with respect to the family that accrued after the family ceased to receive assistance from the State.

“(bb) Reimbursement of governments for assistance provided to the family. After the application of division (aa) and clause (ii)(II)(aa) with respect to the amount so collected, the State shall retain the State share of the amount so collected, and pay to the Federal Government the Federal share (as defined in subsection (c)(2)) of the amount so collected, but only to the extent necessary to reimburse amounts paid to the family as assistance by the State.

“(cc) Distribution of the remainder to the family. To the extent that neither division (aa) nor division (bb) applies to the amount so collected, the State shall distribute the amount to the family.

“(ii) Distribution of arrearages that accrued before the family received assistance.

“(I) Pre-October 2000. Except as provided in subclause (II), the provisions of this section as in effect and applied on the day before the date of the enactment of section 302 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (other than subsection (b)(1) (as so in effect)) shall apply with respect to the distribution of support arrearages that—

“(aa) accrued before the family received assistance, and

“(bb) are collected before October 1, 2000.

“(II) Post-September 2000. Unless, based on the report required by paragraph (5), the Congress determines otherwise, with respect to the amount so collected on or after October 1, 2000 (or before such date, at the option of the State)—

“(aa) In general. The State shall first distribute the amount so collected (other than any amount described in clause (iv)) to the family to the extent necessary to satisfy any support arrearages with respect to the family that accrued before the family received assistance from the State.

“(bb) Reimbursement of governments for assistance provided to the family. After the application of clause (i)(II)(aa) and division (aa) with respect to the amount so collected, the State shall retain the State share of the amount so collected, and pay to the Federal Government the Federal share (as defined in subsection (c)(2)) of the amount so collected, but only to the extent necessary to reimburse amounts paid to the family as assistance by the State.

“(cc) Distribution of the remainder to the family. To the extent that neither division (aa) nor division (bb) applies to the amount so collected, the State shall distribute the amount to the family.

“(iii) Distribution of arrearages that accrued while the family received assistance. In the case of a family described in this subparagraph, the provisions of paragraph (1) shall apply with respect to the distribution of support arrearages that accrued while the family received assistance.

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“(iv) Amounts collected pursuant to section 464. Notwithstanding any other provision of this section, any amount of support collected pursuant to section 464 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 exceeds the amount so retained, the State shall distribute the excess to the family.

“(v) Ordering rules for distributions. For purposes of this subparagraph, unless an earlier effective date is required by this section, effective October 1, 2000, the State shall treat any support arrearages collected, except for amounts collected pursuant to section 464, as accruing in the following order:

“(I) To the period after the family ceased to receive assistance.

“(II) To the period before the family received assistance.

“(III) To the period while the family was receiving assistance.

“(3) Families that never received assistance. In the case of any other family, the State shall distribute to the family the portion of the amount so collected that remains after withholding any fee pursuant to section 454(6)(B)(ii).

“(4) Families under certain agreements. In the case of an amount collected for a family in accordance with a cooperative agreement under section 454(33), distribute the amount so collected pursuant to the terms of the agreement.

“(5) Study and report. Not later than October 1, 1999, the Secretary shall report to the Congress the Secretary’s findings with respect to—

“(A) whether the distribution of post-assistance arrearages to families has been effective in moving people off of welfare and keeping them off of welfare;

“(B) whether early implementation of a pre-assistance arrearage program by some States has been effective in moving people off of welfare and keeping them off of welfare;

“(C) what the overall impact has been of the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 with respect to child support enforcement in moving people off of welfare and keeping them off of welfare; and

“(D) based on the information and data the Secretary has obtained, what changes, if any, should be made in the policies related to the distribution of child support arrearages.

“(6) State option for applicability. Notwithstanding any other provision of this subsection, a State may elect to apply the rules described in clauses (i)(II), (ii)(II), and (v) of paragraph (2)(B) to support arrearages collected on and after October 1, 1998, and, if the State makes such an election, shall apply the provisions of this section, as in effect and applied on the day before the date of enactment of section 302 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193, 110 Stat. 2200), other than subsection (b)(1) (as so in effect), to amounts collected before October 1, 1998.”,

and redesignated para. (7) as para. (6); substituted subsec. (b) for one which read: “(b) Continuation of assignments. Any rights to support obligations, assigned to a State as a condition of receiving assistance from the State under part A and in effect on September 30, 1997 (or such earlier date, on or after August 22, 1996, as the State may choose), shall remain assigned after such date.”; and, in subsec. (c), added para. (5).

#### Other provisions:

**Effective date of amendments made by subtitle B of Act July 18, 1984.** Act July 18, 1984, P. L. 98-369, Division B, Title VI, Subtitle B, Part 2, § 2646, 98 Stat. 1147, provided: “Except as otherwise specifically provided in this

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subtitle, the provisions of parts 1 and 2 and the amendments made thereby [amending this section, among others; for full classification, consult USCS Tables volumes] shall take effect on October 1, 1984.”.

**Effective date of Aug. 16, 1984 amendment.** Act Aug. 16, 1984, P. L. 98-378, § 7(b), 98 Stat. 1315, provides: “The amendments made by subsection (a) [amending this section] shall become effective October 1, 1984.”.

**Effective date of Oct. 22, 1986 amendment.** Act Oct. 22, 1986, P. L. 99-514, Title XVIII, Subtitle C, Ch. 3, § 1899(b), 100 Stat. 2957, provides: “The amendment made by this section [amending this section] shall become effective on the date of the enactment of this Act [October 22, 1986].”.

**Effective date of 1987 amendment of subsec. (c).** Act Dec. 22, 1987, P. L. 100-203, Title IX, Subtitle B, Part 3, § 9141(b), 101 Stat. 1330-321, which appears as 42 USCS § 654 note, provides that the amendment made to subsec. (c) of this section by such Act is effective upon enactment.

**Effective date of § 102 of Act Oct. 13, 1988.** Act Oct. 13, 1988, P.L. 100-485, Title I, Subtitle A, § 102(c), 102 Stat. 2346, provides: “The amendments made by this section [amending subsec. (b)(1) of this section and former 42 USCS § 602] shall become effective on the first day of the first calendar quarter which begins after the date of the enactment of this Act.”.

**Effective dates of amendments made by § 302 of Act Aug. 22, 1996.** Act Aug. 22, 1996, P. L. 104-193, Title III, Subtitle A, § 302(c), 110 Stat. 2204, provides:

“(1) In general. Except as provided in paragraph (2), the amendments made by this section [amending 42 USCS §§ 654(11), 657, and 664(a)(1)] shall be effective on October 1, 1996, or earlier at the State’s option.

“(2) Conforming amendments. The amendments made by subsection (b)(2) [amending 42 USCS § 654(11)] shall become effective on the date of the enactment of this Act.”.

**Effective date of amendment made by § 301(a) of Act Dec. 14, 1999.** Act Dec. 14, 1999, P. L. 106-169, Title III, § 301(b), 113 Stat. 1857, provides: “The amendment made by subsection (a) [amending subsec. (d) of this section] shall be effective with respect to calendar quarters occurring during the period that begins on October 1, 1998, and ends on September 30, 2001.”.

**Effective date of amendment made by § 301(c) of Act Dec. 14, 1999.** Act Dec. 14, 1999, P. L. 106-169, Title III, § 301(c), 113 Stat. 1857, provides that the amendments made by such § 301(c) [amending this section] shall be effective October 1, 2001.

**Effective date of amendment made by § 7301(b)(1)(B)(i) of Act Feb. 8, 2006.** Act Feb. 8, 2006, P. L. 109-171, Title VII, Subtitle C, § 7301(b)(1)(B)(ii), 120 Stat. 143, provides: “The amendment made by clause (i) [adding subsec. (a)(7) of this section] shall take effect on October 1, 2008.”.

**Effective date of amendment made by § 7301(b)(1)(B)(iii) of Act Feb. 8, 2006.** Act Feb. 8, 2006, P. L. 109-171, Title VII, Subtitle C, § 7301(b)(1)(B)(iii), 120 Stat. 143, provides that the amendment made by such section (redesignating subsec. (a)(7) of this section as subsec. (a)(6)) is effective October 1, 2009.

## NOTES TO DECISIONS

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### 1. Generally

### 2. Constitutional issues

### 3. Construction

### 4. Private right of action

**5.Obligations and authority of state****6.Notice and hearing****7.Miscellaneous****1. Generally**

Plaintiffs satisfied requirements for class certification, in case in which they challenged state policy of refusing to pass through allotment when absent parent's child support installments were delayed. *Wilcox v. Petit*, 117 F.R.D. 314, 1987 U.S. Dist. LEXIS 9260 (D. Me. 1987).

**2. Constitutional issues**

Certification of plaintiff (AFDC recipients) and defendant (social service commissioners) classes was appropriate in action alleging that state and federal regulations, which provide that state pass through first \$50 of child support payment to AFDC participant only if collected in month due, violated participants' rights under 42 USCS § 657 and constitution. *Luyando v. Bowen*, 124 F.R.D. 52, 1989 U.S. Dist. LEXIS 177 (S.D.N.Y. 1989).

**3. Construction**

42 USCS § 657, providing that first \$50 of such amounts as are collected periodically, representing monthly support payments, shall be paid to family without affecting its eligibility for assistance, is inconsistent with and rejects HHS regulation that limits state agency to paying only one pass-through payment in month where multiple child support payments are collected by home state; for HHS Secretary's position to be valid, "periodically" would have to be synonymous with "monthly," which is contrary to plain meaning of words. *Wilcox v. Ives*, 864 F.2d 915, 1988 U.S. App. LEXIS 17205 (1st Cir. 1988).

In changing wording of 42 USCS §§ 602 and 657, to require remittance of passthrough payments to AFDC families if payment is made in month when due regardless of whether it is received by agency within that month or later, Congress intended to avoid restrictions on amounts paid to AFDC families where amounts are overpaid in some months and not paid in others. *Mosley v. Hairston*, 920 F.2d 409, 1990 U.S. App. LEXIS 20915 (6th Cir. 1990), reh'g denied, 1991 U.S. App. LEXIS 478 (6th Cir. Jan. 9, 1991).

Former language of 42 USCS § 657 was ambiguous, and court cannot determine whether Congress intended recipients to receive \$50 pass-through payment for every monthly check support payment collected in particular month, or to limit pass-through payments to monthly support payments collected in month they were due; court will therefore refer to Secretary's implementing latter interpretation even though Congress subsequently amended statute to reflect former interpretation. *Vanscoter v. Sullivan*, 920 F.2d 1441, 90 Cal. Daily Op. Service 8905, 90 D.A.R. 13799, 1990 U.S. App. LEXIS 20899 (9th Cir. 1990).

42 USCS § 657, prior to its 1988 amendment, was susceptible to various interpretations, and court will not say that Secretary's interpretation to permit "pass-throughs" for months in which payments were not received in order to mitigate hardship was compelled or that contrary interpretation was impermissible; thus, regulation implementing interpretation did not violate mandate of § 657. *Luyando v. Grinker*, 8 F.3d 948, 1993 U.S. App. LEXIS 28859 (2d Cir. 1993).

State must look to time child support payment was "made," not when it was "received" by state agency, to determine if Aid to Families with Dependent Children recipient is entitled to \$50 "pass-through" payment, since no rational purpose is served by denying support to needy family when payment was mailed by absent parent in month when due but did not arrive at agency until later month. *Levesque v. Sheehan*, 821 F. Supp. 779, 1993 U.S. Dist. LEXIS 6693 (D. Me. 1993).

**4. Private right of action**

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Right to distribution in strict compliance with 42 USCS § 657 is not unambiguously imposed in § 657(a) as binding obligation on states and, moreover, is too vague and amorphous for judicial enforcement; therefore, § 657(a) does not create individually-enforceable federal right. *Walters v. Weiss*, 392 F.3d 306, 2004 U.S. App. LEXIS 26264 (8th Cir. 2004).

Where parents, who received child support payments collected, distributed, and disbursed by state, alleged that state officials violated their rights in failing to distribute funds in strict compliance with 42 USCS § 657, their claims failed to survive summary judgment because § 657(a) did not create individually-enforceable federal right under 42 USCS § 1983. *Walters v. Weiss*, 392 F.3d 306, 2004 U.S. App. LEXIS 26264 (8th Cir. 2004).

## 5. Obligations and authority of state

State Department of Public Welfare violated federal law and regulations concerning collection and refund of child support obligations for former welfare recipients, where Department failed to reassign court orders upon termination of welfare benefits, failed to insure that state court promptly paid support collected after assistance terminates, failed promptly to pay excess support collected, improperly collected support for more than 3 months after assistance terminated, and failed to notify recipients that state court will continue to collect support after benefits terminate. *Bennett v. White*, 671 F. Supp. 343, 1987 U.S. Dist. LEXIS 8941 (E.D. Pa. 1987).

State agency is ordered to notify each member of plaintiff class of welfare/child support recipients that federal suit found regulation limiting child support pass-through payments invalid, that federal court can provide class members with no further relief, but that state agency has established administrative fair hearing process for recipients who claim improperly withheld pass-through payments. *Wilcox v. Ives*, 676 F. Supp. 355, 1987 U.S. Dist. LEXIS 12307 (D. Me. 1987), *aff'd*, 864 F.2d 915, 1988 U.S. App. LEXIS 17205 (1st Cir. 1988).

Defendants were entitled to summary judgment on plaintiffs' claim that 42 USCS § 657 conferred specific right to plaintiffs to be free from administrative costs and fees that were taken from support payments and to be free from practice of recoupment to recover for agency errors because plaintiffs had no right to disbursement of any amount that was not collected on behalf of family as support; accordingly, even if § 657 conferred right on them, plaintiffs had not articulated cognizable cause of action in that state was under no duty to disburse more than actual amount that was collected on behalf of family. *Walters v. Weiss*, 349 F. Supp. 2d 1160, 2003 U.S. Dist. LEXIS 26257 (E.D. Ark. 2003), *aff'd*, 392 F.3d 306, 2004 U.S. App. LEXIS 26264 (8th Cir. 2004).

In order to participate in AFDC program, states must require that recipient family assign its right to child support to state; states are then required to collect any child support money and to offset them against amounts paid out in AFDC; procedure requiring AFDC applicants, who own real or personal property, to agree, as condition of receiving published assistance, to reimburse state for assistance received and to give state lien on property as security is valid condition for receiving public assistance. *Commonwealth v. Baldassari*, 279 Pa. Super. 491, 421 A.2d 306, 1980 Pa. Super. LEXIS 2923 (Pa. Super. Ct. 1980).

## 6. Notice and hearing

District Court should have allowed state department of social services opportunity to present its own proposal for modification of notices to recipients of pass-through child support payments once court declared existing scheme unconstitutional. *Schwartz v. Dolan*, 86 F.3d 315, 1996 U.S. App. LEXIS 15127 (2d Cir. 1996).

Custodial parents who received child support payments distributed by state failed to establish that 42 USCS § 657 created individual rights, enforceable under 42 USCS § 1983, to distribution of child support payments in strict compliance with § 657; custodial parents had been charged with sufficient notice of right to request hearing upon enrolling in Department of Human Resources child support program, and they could have learned more about this right by calling child support unit. *Arrington v. Helms*, 438 F.3d 1336, 19 Fla. L. Weekly Fed. C 271, 2006 U.S. App. LEXIS 3434 (11th Cir.), *reh'g*, *en banc*, *denied*, 179 Fed. Appx. 685, 2006 U.S. App. LEXIS 24201 (11th Cir. 2006).

Parents having duty of paying child support need not be given hearing prior to entry of order directing that child support payments be paid to state so long as person receiving payments has exercised valid assignment of said

## 42 USCS § 657

payments and so long as amount to be paid is unaffected by court order. *Commonwealth v. Baldassari*, 279 Pa. Sup. 491, 421 A.2d 306, 1980 Pa. Super. LEXIS 2923 (Pa. Super. Ct. 1980).

## 7. Miscellaneous

Custodial parents were granted preliminary injunction where they had enforceable right to intercepted state tax refunds under 42 USCS § 657 and they demonstrated substantial likelihood of success. *Arrington v. Fuller*, 237 F. Supp. 2d 1307, 2002 U.S. Dist. LEXIS 22173 (M.D. Ala. 2002).

42 USCS §§ 654(11), 657 demonstrate that it was intent of Congress for AFDC recipient to receive incentive payments as result of having turned over support orders to state and that recipient would only be reimbursed for sums actually collected by state; therefore, failure of state to pursue support orders precluded payment of incentive payments. *Prescott v. Commonwealth*, Dep't of Public Welfare, 36 Pa. Commw. 251, 387 A.2d 498, 1978 Pa. Commw. LEXIS 1095 (Pa. Commw. Ct.), modified, 388 A.2d 1136 (Pa. Commw. Ct. 1978).

## Research References & Practice Aids

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### Cross References:

This section is referred to in 42 USCS §§ 608, 609, 652, 654, 654b, 664, 666.

### Code of Federal Regulations:

Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services—State plan approval and grant procedures, 45 CFR 301.0 et seq.

Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services—State plan requirements, 45 CFR 302.0 et seq.

Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services—Standards for program operations, 45 CFR 303.0 et seq.

Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services—Federal financial participation, 45 CFR 304.10 et seq.

Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services—Computerized support enforcement systems, 45 CFR 307.0 et seq.

### Am Jur:

24A Am Jur 2d, Divorce and Separation § 793.

### Law Review Articles:

Brustin. The Intersection between Welfare Reform and Child Support Enforcement: D.C.'s Weak Link. 52 Cath UL Rev 621, Spring 2003.

Turetsky. What If All the Money Came Home?: Welfare Cost Recovery in the Child Support Program. 43 Fam Ct Rev 402, July 2005.

Fines. From Representing "Clients" to Serving "Recipients": Transforming the Role of the IV-D Child Support Enforcement Attorney. 67 Fordham L Rev 2155, April 1999.

Cammett. Expanding Collateral Sanctions: The Hidden Costs of Aggressive Child Support Enforcement Against Incarcerated Parents. 13 Geo J Poverty Law & Pol'y 313, Summer 2006.

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Brito. The Welfarization of Family Law. 48 Kan L Rev 229, January 2000.

**Annotations:**

Determination of paternity of child as within scope of proceeding under uniform reciprocal enforcement of support act. 81 ALR3d 1175.

Propriety of decree in proceeding between divorced parents to determine mother's duty to pay support for children in custody of father. 98 ALR3d 1146.

**Hierarchy Notes:**

42 USCS, Ch. 7, IV USCS, Pt. D

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# Child Support Pass-Through and Disregard Policies for Public Assistance Recipients

5/29/2020



Under federal law, families receiving public assistance, known as Temporary Assistance for Needy Families (TANF), must cooperate with child support establishment and enforcement efforts.

In addition, TANF recipients must assign their rights to child support payments to the state. When a state collects child support on behalf of a TANF recipient, the state is permitted to keep the money to reimburse itself and the federal government for TANF assistance. States, however, have the option of allowing some of the child support payment to be passed through to the parent and child and disregarded when determining TANF assistance, meaning the amount would not be considered income for purposes of determining TANF eligibility.

Half of states have chosen various ways of passing through child support without reducing the family's TANF assistance. Some states pass through up to \$50. In others, the pass-through is \$100-\$200 based on the number of children. In 2014, states distributed more than \$118 million dollars in child support payments to families receiving Temporary Assistance for Needy Families.

Washington is the most recent state to implement child support pass-through payments, passing Senate Bill 5144 in 2020. That legislation requires that the first \$50 of child support received each month for a family with one child and the first \$100 of child support received each month for a family with two or more children pass through to a family seeking public assistance. This bill becomes effective June 11, 2020.

Colorado is the first state to enact a full pass-through and disregard policy, meaning that 100% of the child support collected on behalf of TANF recipients is passed through to the family and disregarded for purposes of TANF eligibility. Since passage of that legislation in 2015, the Colorado Department of Human Services has been evaluating the program and recently released a one-page overview of the initial findings as well as a recorded presentation. Colorado House Bill 1100, sent to the governor on March 23, 2020, ensures child support payments are not passed through to temporary assistance for needy families (TANF) recipients if the general assembly does not appropriate an amount of money that is at least 90% of the total county share of collections passed through to the custodial party after the full federal share is paid.

Below is a chart of 52 states and territories and whether they have a pass-through and disregard policy, the amount of the pass-through and the statutory or code citation.

### State Pass-Through and Disregard Policies

| State                       | Pass-Through          | Is that amount disregarded? | Statute                              |
|-----------------------------|-----------------------|-----------------------------|--------------------------------------|
| <b>Alabama</b>              | No                    | No                          |                                      |
| <b>Alaska</b>               | Yes, \$50             | Yes                         | Alaska Stat. § 47.27.040             |
| <b>Arizona</b>              | No                    | No                          |                                      |
| <b>Arkansas</b>             | No                    | No                          |                                      |
| <b>California</b>           | Yes, \$50             | Yes                         | Cal. Fam. Code § 17504               |
| <b>Colorado</b>             | Yes, All <sup>1</sup> | Yes                         | 2015 SB 12; 2020 HB 1100             |
| <b>Connecticut</b>          | Yes, \$50             | Yes                         | Conn. Gen. Stat. § 17b-112(d)        |
| <b>Delaware</b>             | Yes, \$50             | Yes                         | Del. Admin. Code tit. 16, §5100-3005 |
| <b>District of Columbia</b> | Yes, \$150            | Yes                         | D.C. Stat. § 4-205.19                |
| <b>Florida</b>              | No                    | No                          |                                      |

| <b>State</b>         | <b>Pass-Through</b>                                                       | <b>Is that amount disregarded?</b>                       | <b>Statute</b>                                                 |
|----------------------|---------------------------------------------------------------------------|----------------------------------------------------------|----------------------------------------------------------------|
| <b>Georgia</b>       | Yes, up to unmet need for purposes of fill-the-gap budgeting <sup>2</sup> | Yes                                                      |                                                                |
| <b>Guam</b>          | No                                                                        | No                                                       |                                                                |
| <b>Hawaii</b>        | No                                                                        | No                                                       |                                                                |
| <b>Idaho</b>         | No                                                                        | No                                                       |                                                                |
| <b>Illinois</b>      | Yes, \$100 for one child/\$200 for two or more children                   | Yes                                                      | 2015-2016 SB 2340; Ill. Rev. Stat. ch. 305 § 5/4-1.6           |
| <b>Indiana</b>       | No                                                                        | No                                                       |                                                                |
| <b>Iowa</b>          | No                                                                        | No                                                       |                                                                |
| <b>Kansas</b>        | No                                                                        | No                                                       |                                                                |
| <b>Kentucky</b>      | No                                                                        | No                                                       |                                                                |
| <b>Louisiana</b>     | No                                                                        | No                                                       |                                                                |
| <b>Maine</b>         | Yes, \$50                                                                 | Yes                                                      | Me. Rev. Stat. Ann. tit. 22, § 3762                            |
| <b>Maryland</b>      | Yes                                                                       | Yes, \$100 for one child, \$200 for two or more children | Md. Hum. Serv. Code § 5-310 <sup>9</sup> ; 2017 HB 1469/SB1009 |
| <b>Massachusetts</b> | Yes, \$50                                                                 | Yes                                                      | 106 Mass. Code Regs. 705.900                                   |
| <b>Michigan</b>      | No <sup>3</sup>                                                           | No                                                       |                                                                |
| <b>Minnesota</b>     | Yes, Full <sup>4</sup>                                                    | Yes, \$100 for one child, \$200 for two or more children | Minn. Stat. § 256.741; Minn. Stat. §256J.21                    |
| <b>Mississippi</b>   | No                                                                        | No                                                       |                                                                |
| <b>Missouri</b>      | No                                                                        | No                                                       |                                                                |
| <b>Montana</b>       | Yes, \$100 <sup>5</sup>                                                   | Yes                                                      | Mont. Code Ann. § 53-4-260                                     |
| <b>Nebraska</b>      | No                                                                        | No                                                       |                                                                |

| State                 | Pass-Through                                                                 | Is that amount disregarded? | Statute                             |
|-----------------------|------------------------------------------------------------------------------|-----------------------------|-------------------------------------|
| <b>Nevada</b>         | No                                                                           | No                          |                                     |
| <b>New Hampshire</b>  | No                                                                           | No                          |                                     |
| <b>New Jersey</b>     | Yes, \$100                                                                   | Yes                         | N.J. Stat. Ann. § 44:10-49          |
| <b>New Mexico</b>     | Yes, Up to \$100 for one child/\$200 for two or more children if funds allow | Yes                         | N.M. Stat. Ann. § 27-2B-7           |
| <b>New York</b>       | Yes, Up to \$100 for one child/\$200 for two or more children                | Yes                         | N.Y. Social Services Law § 111-c(d) |
| <b>North Carolina</b> | No                                                                           | No                          |                                     |
| <b>North Dakota</b>   | No                                                                           | No                          |                                     |
| <b>Ohio</b>           | No                                                                           | No                          |                                     |
| <b>Oklahoma</b>       | No                                                                           | No                          |                                     |
| <b>Oregon</b>         | Yes , \$50 per child, per month, up to \$200 per family                      | Yes                         | Or. Rev. Stat. § 412.007(3)         |
| <b>Pennsylvania</b>   | Yes, \$100 for one child, \$200 for two or more children                     | Yes                         | Pa. Cons. Stat. tit. 23 § 4374[c]   |
| <b>Puerto Rico</b>    | Yes, \$50                                                                    | Yes                         |                                     |
| <b>Rhode Island</b>   | Yes, \$50                                                                    | Yes                         | R.I. Gen Laws § 40-5.2-35           |
| <b>South Carolina</b> | Yes, up to unmet need for purposes of fill-the-gap budgeting <sup>6</sup>    | Yes                         |                                     |
| <b>South Dakota</b>   | No                                                                           | No                          |                                     |
| <b>Tennessee</b>      | Yes, up to unmet need <sup>7</sup>                                           | Yes                         | Tenn. Code Ann. § 71-3-108(e)       |
| <b>Texas</b>          | Yes, \$75                                                                    | Yes                         | Tex. Admin. Code tit. 1, § 372.753  |

| <b>State</b>          | <b>Pass-Through</b>                                                        | <b>Is that amount disregarded?</b> | <b>Statute</b>                            |
|-----------------------|----------------------------------------------------------------------------|------------------------------------|-------------------------------------------|
| <b>Utah</b>           | No                                                                         | No                                 |                                           |
| <b>Vermont</b>        | Yes, \$50                                                                  | Yes                                | Vt. Stat. Ann. tit. 33, § 1105            |
| <b>Virginia</b>       | Yes, Up to \$100                                                           | Yes                                |                                           |
| <b>Virgin Islands</b> | No                                                                         | No                                 |                                           |
| <b>Washington</b>     | Yes <sup>8</sup> , Up to \$50 for one child/\$100 for two or more children | Yes                                | 2019 SB 5144; Wash. Rev. Code § 26.23.035 |
| <b>West Virginia</b>  | Yes, Up to \$100 for one child/\$200 for two or more children              | Yes                                | 2018 State TANF Plan                      |
| <b>Wisconsin</b>      | Yes, 75%                                                                   | Yes                                | Wis. Stat. Ann. § 49.145(2)(s)            |
| <b>Wyoming</b>        | No                                                                         | No                                 |                                           |

<sup>1</sup> Colorado Enacted Senate Bill 12 during the 2015 legislative session, making the pass-through effective as of January 1, 2017. House Bill 1100 was passed by the legislature and sent to the governor on March 23, 2020 which ensures child support payments are not passed through to temporary assistance for needy families (TANF) recipients if the general assembly does not appropriate an amount of money that is at least 90% of the total county share of collections passed through to the custodial party after the full federal share is paid.

<sup>2</sup> Georgia is a fill-the-gap state meaning that the amount of child support distributed to the family is equal to the difference between the maximum eligibility standard and the recipient's income; essentially to fill the gap between income and need. The countable income and TANF payment amount are added together and subtracted from the standard of need amount. The difference is filled by child support up to 100% of the current support amount.

<sup>3</sup> Michigan discontinued implementing its \$50 pass through and disregard statute effective 10/1/2011 due to budgetary constraints.

<sup>4</sup> Minnesota passed 2015 SB 1458, creating a disregard of \$100 for one child or \$200 for two or more children. For more about the full pass-through, [click here](#).

<sup>5</sup> Montana's pass-through is considered a \$100 addition to the recipient's TANF payment, not as a separate payment.

<sup>6</sup> South Carolina statute (S.C. Code Ann. § 43-5-222) indicates that there is a \$75 pass-through.

<sup>7</sup> Tennessee is a fill-the-gap state meaning that the countable income and TANF payment amount will be added together and subtracted from the standard of need amount. The difference will be filled by child support up to 100% of the current support amount.

<sup>8</sup> Effective June 11, 2020

## Contact Us

For more information or to request technical assistance on state or federal child support policies and programs, please send a message to Children & Families staff. As a membership organization serving state legislators and legislative staff, we do not respond to inquiries or provide legal advice related to individual child support or family law cases.

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## Additional Resources

- Child Support and Family Law
- Child Support Resource Directory

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