

FAMILY FIRST DISTRIBUTION UNDER PRWORA
(for internal use)

General Rules:

Implementation: Plan A (2 step: 10/1/97; 10/1/00) vs. Plan B (1 step (10/1/98))

[about half + half]

Assignment of support rights:

Amount that can be retained limited by total assistance paid to the family (URA)

Pre-welfare reform assigned support – permanently assigned

Post welfare reform (TANF) assigned support –

 During assistance arrearages permanently assigned

 Pre-assistance arrearages temporarily assigned during receipt of assistance, conditionally assigned thereafter → if collected by tax offset state gets them otherwise formula gets

 During assistance arrearages in excess of unreimbursed assistance (URA) balance unassigned when leaving-rolls

Hold Harmless: If State share is less than State share in FY1995, State receives FY1995 amount

Distribution rules:

Never Assistance Cases – Everything collected paid to the family

Current Assistance (TANF) Cases -

Includes Permanently assigned and temporarily assigned arrearages

Split collection between State/Federal share

Pay Federal govt its share

Keep or pass through to family State share

Excess over URA to family

Title IV-E foster care cases –

Rules remain as before welfare reform

Assigned support paid to agency responsible for child

Excess to benefit of the child

Cases under cooperative agreement between tribe and State CS agency

Per agreement but subject to section 457 distribution rules

Gap payment States (optional)

State pays family difference between assistance payment level and need standard for the State

1/2 4 states / since 75 - gap between payment level + standard of need

GASC, TN, Maine

Federal Income Tax Refund Offset Collections –

In all current and former assistance cases, applied to arrearages assigned to the State/Federal government first

Nancy Johnson wants to get rid of it
~ 750 mil over 5
→ formula off cost
→ once/year

Former Assistance Cases –

Current support - to family

Arrearages:

Pre-welfare reform: State option to pay arrears owed to State or to family first

Post-welfare reform (10/1/98)- Arrearages satisfied in this order:

Never assigned arrearages (post-assistance/never assigned) – to family

Unassigned pre-assistance arrearages (post 10/1/98 arrearages, assigned while on TANF,
then unassigned on leaving rolls) - to family

Conditionally assigned if collected thru Federal tax offset - to State/Feds
if collected thru other means - to family

Permanently assigned arrearages (arrears accrued and assigned pre-10/1/98 and
Arrearages which accrued during receipt of TANF assistance- to State/Feds

Unassigned during assistance arrearages (arrears which accrued during receipt of
TANF assistance but in excess of total URA) - to family



DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

ACTION TRANSMITTAL

OCSE-AT-98-24

August 19, 1998

TO: STATE AGENCIES ADMINISTERING A CHILD SUPPORT ENFORCEMENT PROGRAM APPROVED UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT.

SUBJECT: Instructions for the Distribution of Child Support Under Section 457(a)(6) of the Social Security Act (the Act), Definition of Assistance Paid to the Family for Child Support Purposes, and Additional Questions and Answers

ATTACHMENT: Subject instructions, definitions, and questions and answers

BACKGROUND: Effective October 1, 1996, section 302 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, revised section 457 of the Act, which governs the distribution of any support collected under the Child Support Enforcement Program under title IV-D of the Act. Section 103 of PRWORA revised title IV-A of the Act, in part, by replacing the assignment of rights provisions in former section 402(a)(26) of the Act, effective July 1, 1997, with new assignment of rights requirements in section 408(a)(3) of the Act. On October 21, 1997, the Federal Office of Child Support Enforcement (OCSE) issued OCSE-AT-97-17 which provides instructions for the distribution of child support under section 457 of the Act.

The Balanced Budget Act of 1997 (the BBA), P. L. 105-33, signed August 5, 1997, contained technical amendments to sections 408(a)(3) and 457 of the Act. Section 5532 of the BBA added section 457(a)(6) to give States the option of implementing distribution changes under section 457 which apply to former assistance cases in one step, effective October 1, 1998, and includes other minor technical corrections.

In addition, section 5547 of the BBA reinstates distribution requirements in former section 457 governing title IV-E foster care cases.

Section 5549 of the BBA amends section 454B to define the date of collection as the date of receipt by the State disbursement unit (SDU), except that if current support is withheld by an employer in the month when due and is received by the SDU in a month other than the month when due, the date of withholding may be deemed to be the date of collection, at the option of the State.

Finally, section 5557 of the BBA provides that the amendments are effective as if included in the enactment of PRWORA.

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The Action Transmittal addresses implementation of sections 408(a)(3) and 457(a)(6) of the Act, as added by section 5532. Section 457(a)(6) allows States the option to implement changes to distribution in former assistance cases on October 1, 1998, rather than in two phases as required under section 457 as originally enacted under PRWORA. Section 5532 also made conforming changes to section 408(a)(3) for consistency with section 457(a)(6).

This Action Transmittal also addresses the definition of "assistance paid to the family" for child support distribution purposes. This is necessary because a distinction must be made between "assistance" under the Temporary Assistance for Needy Families (TANF) program under title IV-A and "assistance paid to the family" for child support distribution purposes under title IV-D.

Lastly, the Action Transmittal addresses publication of the Action Transmittal with respect to distribution in interstate, medical support, foster care and tribal child support cases.

RELATED REFERENCES: OCSE-AT-97-17, dated October 21, 1997

INQUIRIES TO: Regional Administrators, ACF/OCSE

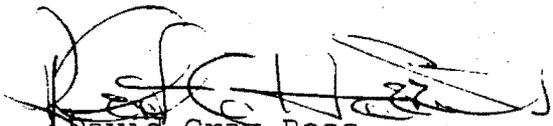

David Gray Ross
Commissioner
Office of Child Support
Enforcement

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I. Distribution of child support in States which implement section 457(a)(6) effective October 1, 1998

This Action Transmittal addresses the option under section 457(a)(6) of the Act for States to implement distribution requirements under section 457 for collections in former assistance cases on October 1, 1998, rather than in the two stages otherwise required under section 457 of the Act, i.e., October 1, 1997 and October 1, 2000. OCSE-AT-97-17 also addressed distribution in States which elect the option under section 457(a)(6). This Action Transmittal merely restates those requirements and responds to questions and answers received since publication of OCSE-AT-19-17. Therefore, OCSE-97-17 continues to apply to States which elect this option.

II. Definitions used in this Action Transmittal.

- (a) ASSISTANCE PAID TO THE FAMILY.--The term "assistance paid to the family" for child support enforcement collection purposes, means money payments in cash, checks, or warrants immediately redeemable at par to eligible families under a State plan approved under title IV-A.
- (b) ASSISTANCE.--The term "assistance from the State" means assistance under the State program funded under title IV-A of the Act (see also TANF-ACF-PA-97-1, dated January 31, 1997) or under the State plan approved under title IV-A (as in effect on August 21, 1996).
- (c) 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.
- (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 TANF assistance.
- (g) FORMER ASSISTANCE CASE. -- The term "former assistance case" means any IV-D case which formerly received AFDC or TANF assistance.
- (h) NEVER-ASSISTANCE CASE. -- The term "never-assistance case" means any IV-D case which has never received AFDC or TANF assistance.
- (i) PERMANENTLY-ASSIGNED ARREARAGES.--The term "permanently-assigned arrearages" means those arrearages which do not exceed the cumulative amount of unreimbursed assistance paid to the family as of the date the family leaves the assistance rolls: (1) which are or were assigned under an assignment of support rights in effect on September 30, 1997 and (2) which accrued, under an assignment entered into on or after October 1, 1997, while a family is receiving assistance.

If the State chooses the implementation option under section 457(a)(6) of the Act, permanently-assigned arrearages are those: (1) which are or were assigned under an assignment of support rights in effect on September 30, 1998, and (2) which accrued under an assignment entered into on or after October 1, 1998, while a family is receiving assistance.

- (j) TEMPORARILY-ASSIGNED ARREARAGES -- The term "temporarily-assigned arrearages" means those arrearages which 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 and which are assigned to the State after September 30, 1997. These arrearages are not permanently assigned and the temporary assignment will expire when the family leaves the assistance rolls or on October 1, 2000, whichever date is later.

If the State chooses the implementation option under section 457(a)(6) of the Act, temporarily-assigned arrearages are those which accrued prior to the family receiving assistance and are assigned on or after October 1, 1998. These arrearages are not permanently assigned and the temporary assignment will expire when the family leaves the assistance rolls.

- (k) CONDITIONALLY-ASSIGNED ARREARAGES -- The term

"conditionally-assigned arrearages" means those arrearages which 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 income tax refund offset. They are arrearages which were temporarily assigned to the State and became conditionally assigned to the State when the temporary assignment expired. If a conditionally-assigned arrearage is collected through a Federal income 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.

- (l) NEVER-ASSIGNED ARREARAGES -- The term "never-assigned arrearages" means all arrearages in never-assistance cases, and, in former assistance cases, means those arrearages that accrued after the family's most recent period of assistance ends.
- (m) 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 the family when the family leaves the assistance rolls and which accrued during the receipt of assistance.
- (n) 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.
- (o) UNREIMBURSED ASSISTANCE or "URA". -- The term "unreimbursed assistance" means the cumulative amount of assistance paid to a family for all months which has not been repaid by assigned support collections. The total amount of unreimbursed assistance paid to the family which a State may recover through the IV-D program is limited by the total amount of the assigned support obligation.

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

If a State elects to implement on October 1, 1998, distribution requirements for former assistance cases that would otherwise be effective October 1, 2000,

- (a) For an assignment of support rights entered into prior to October 1, 1998, the applicant assigns to the State all rights to support which have previously accrued and which will accrue prior to the family leaving the assistance rolls.
- (b) For an assignment entered into on or after October 1, 1998, --
 - (1) with respect to collections by Federal income tax refund offset, the applicant assigns to the State all rights to support which have previously accrued and which will accrue prior to the family leaving the assistance rolls.
 - (2) with respect to collection by other than Federal income tax refund offset,
 - (A) the applicant assigns to the State all rights to support which will accrue while the family is receiving assistance; and
 - (B) the applicant temporarily assigns to the State all rights to support which accrued prior to the family receiving assistance, until the family leaves the assistance rolls.

IV. Distribution of collections through Federal income tax refund offset under section 457(a)(2)(B)(iv) of the Act

Collections through Federal income tax refund offset under section 457(a)(2)(B)(iv) must be distributed in accordance with section V of OCSE-AT-97-17, dated October 21, 1997.

V. Distribution of collections (except for Federal income tax refund offsets) in former assistance cases when State elects the option under section 457(a)(6) of the Act

- (a) For collections made prior to October 1, 1998 (other than through Federal income tax refund offset), the requirements of section 457 (other than section 457(b)(1) of the Act, as in effect and applied on August 21, 1996), apply. The State must:
 - (1) First, distribute the amount collected to satisfy the current monthly support obligation and pay that amount to the family.
 - (2) Second, distribute any amount above the current monthly support obligation to satisfy arrearages owed to the family or assigned to the State (see 45 CFR 302.32(f)(ii)). The Federal statute does

not specify the order in which collections are applied to satisfy these arrearages. The State must have procedures which specify the order in which assigned arrearages will be satisfied. If the State distributes any amount to assigned arrearages, the State must pay to the Federal Government the Federal share of the amount so collected and must retain the State share of the amount so collected with one exception. The State may retain or pay to the family the State share of collections applied to arrearages which accrued while the family was receiving assistance after October 1, 1996, in accordance with section 457(a)(1) and (2)(B)(iii) of the Act and section VI(b)(2) of OCSE-AT-97-17.

- (b) For collections made on or after October 1, 1998 (other than collections through Federal income tax refund offset), the State must:
- (1) First, distribute the amount collected to satisfy the current monthly support obligation and pay that amount to the family;
 - (2) Second, distribute any amount above the current monthly support obligation to satisfy never-assigned arrearages and pay that amount to the family;
 - (3) Third, distribute any amount above amounts distributed in (1) and (2) to satisfy unassigned pre-assistance arrearages and conditionally-assigned arrearages and pay that amount to the family. The Federal statute does not specify the order in which collections are applied to satisfy these arrearages. The State must have procedures which specify the order in which assigned arrearages will be satisfied. If there are unassigned, previously permanently-assigned arrearages which were assigned under former section 402(a)(26) of the Act and the State cannot determine whether they were pre-assistance or during-assistance arrearages, those unassigned arrearages must be paid to the family.
 - (4) Fourth, distribute any amount above amounts distributed in (1), (2) and (3) to satisfy permanently-assigned arrearages. The State must pay the Federal Government the Federal share of the amount so collected. The State must retain the State share of the amount so collected with one exception. The State may retain or pay to the

family the State share of collections applied to arrearages which accrued while the family was receiving assistance after October 1, 1996, in accordance with section 457(a)(1) and (2)(B)(iii) of the Act, and section VI(b)(2) of OCSE-AT-97-17.

- (5) Fifth, reduce the cumulative amount of unreimbursed assistance paid to the family by the total amount distributed under (4), distribute collections exceeding the cumulative amount of unreimbursed assistance paid to the family to satisfy unassigned during-assistance arrearages and pay those amounts to the family.

QUESTIONS AND ANSWERS

Definition of assistance paid to the family for child support enforcement purposes

QUESTION 1: What assistance provided to a family under title IV-A must be reimbursed by States with assigned support collections?

ANSWER 1: As noted in section II.(a) of this action transmittal, the term "assistance paid to the family" has a particular meaning for child support distribution purposes. That definition derives from the definition of money payments that was used by the now defunct Aid to Families with Dependent Children (AFDC) program under title IV-A of the Act. Section 408 of the Act requires the assignment of any child support rights a family member applying for, or receiving Temporary Assistance for Needy Families (TANF) may have. In the legislative history of section 408, there is a reference to the AFDC program as a precedent for requiring an assignment of support rights as a condition of eligibility for benefits under the TANF replacement program. The Conference Report also indicates that "cash" benefits cannot be provided from block grant funds to a family with an adult who has not assigned child or spousal support rights to the State. "Cash" was the basis for assistance payments under the defunct AFDC program. The legislative history confirms Congressional intent to continue the AFDC practice of requiring reimbursement of "cash" assistance from child support collections in the replacement TANF program.

Accordingly, for child support purposes, we substituted the definition of "assistance" that appears in OCSE-AT-97-17 with that of "assistance paid to the family" which appears in section II.(a) of this action transmittal.

QUESTION 2: Do transportation and child care payments/assistance under title IV-A count as "assistance paid to the family" for child support enforcement purposes?

ANSWER 2: If the transportation and child care payments are included in amounts paid to the family (see definition in section II.(a)), then these amounts are considered as "assistance paid to the family." If these costs are not money payments to the family and are provided, for example, by voucher or direct payments to the vender for those services, then the value of these services does not count as "assistance paid to the family."

QUESTION 3: When a State sets up a community jobs program and routes TANF money to an employer who pays it out in salary to recipients and then makes a supplemental grant to the family, what counts as TANF assistance paid to the family which must be reimbursed from assigned child support collections, just the

supplemental grant, or both the supplemental grant and the earnings?

ANSWER 3: Just the supplemental grant

Categories of arrearages for systems purposes

QUESTION 4: Would it be allowable for a State to develop a distribution system which combines and maintains never-assigned arrearages and unassigned pre-assistance arrearages as one balance/category? By combining these two balances into one category it does not appear to affect how monies are distributed to the family, State, and/or Federal government. It also does not seem to affect the reassigning of these collections if the family reapplies for assistance because both arrearages become temporarily assigned at the time of application.

ANSWER 4: This would be an acceptable method for accounting for collections made on or after October 1, 2000. This would also be an acceptable method for collections made on or after October 1, 1998, for those States that have selected the one-time implementation of distribution changes allowed under section 457(a)(6) of the Act. However, for States that are planning to implement distribution changes twice (October 1, 1997/October 1, 2000), this would be an acceptable method for treating collections received prior to October 1, 2000 only for those States who have opted to distribute monies to unassigned pre-assistance arrearages before any other arrearages outlined in section VI(c)(2)(C) of OCSE-AT-97-17, dated October 21, 1997. For States that are implementing the distribution rules on October 1, 1997 and again on October 1, 2000 and are not opting to distribute collections received prior to October 1, 2000 to satisfy unassigned pre-assistance arrearages first, these States would have to separately maintain the balance of never-assigned arrearages and unassigned pre-assistance arrearages until October 1, 2000, at which time these arrearages could be combined.

QUESTION 5: Would it be allowable for a State to develop a distribution system which maintains only one balance/category for both temporarily-assigned arrearages and conditionally-assigned arrearages? Because both of these balances cannot exist simultaneously, it would be quite beneficial for States to only maintain one category and have their system programmed to distribute these balances based on the type and date of each payment and whether the recipient of services has a current or former assistance case. By combining these categories it would eliminate the necessity for States to move the balances back and forth between the two different arrearage types based on the status of each case.

ANSWER 5: Yes, this would be an acceptable method, provided

that the programming is sufficient to identify and make the proper distribution based on whether or not it was a Federal income tax refund offset, the date of each payment and whether or not the recipient of IV-D services is receiving assistance.

QUESTION 6: Would it be allowable for a State to develop a distribution system which maintains only one balance/category for both unassigned pre-assistance arrearages and unassigned during-assistance arrearages?

ANSWER 6: No, this would not be an acceptable method. These arrearages must be calculated and maintained separately to ensure that the arrearages are paid in the proper order. According to section VI(c)(3) of OCSE-AT-97-17, dated October 21, 1997, when a non-IRS collection is received after October 1, 2000 (or October 1, 1998, for States that are opting for the one-time implementation allowed under section 457(a)(6) of the Act) in former assistance cases, the following distribution order must apply: 1) current support, 2) never-assigned arrearages, 3) unassigned pre-assistance arrearages and conditionally-assigned arrearages, (any order), 4) permanently-assigned arrearages, and 5) unassigned during-assistance arrearages. By combining these two arrearage balances, the system would not be able to apply collections in accordance with the statutorily prescribed ordering rules outlined in the OCSE-AT-97-17.

QUESTION 7: According to OCSE-AT-97-17, dated October 21, 1997, States are given the option to pay to the family, in former assistance cases, the State's share of collections applied to satisfy assigned arrearages if: 1) the arrearages have accrued while the family was receiving assistance, and 2) the arrearages accrued after October 1, 1996, (see sections VI(c)(1)(B), (2)(C), and (3)(D) of OCSE-AT-97-17). If a State opted to pay their share of these arrearages to the family, it would seem that they would need to track these during-assistance arrearages that accrued after October 1, 1996 separately, thus creating another category of arrears.

ANSWER 7: Yes, those States that select and implement this option must be able to determine the arrearages that accrued during the receipt of assistance after October 1, 1996.

QUESTION 8: Would it be allowable for a State to develop a distribution system which combines permanently-assigned arrearages and unassigned during-assistance arrearages into one balance/category, provided that: 1) any amounts collected which exceed URA are paid to the family, after all other arrearages have been satisfied, and 2) once the family reapplies for assistance, any portion of the arrearages that exceeds URA is then transferred to temporarily-assigned arrearages. By utilizing this process it does not appear to affect how monies are distributed to the family, State, and/or Federal government.

ANSWER 8: Yes, this would be an acceptable method, provided that: 1) Any amounts which exceed the unreimbursed assistance paid to the family balance must be considered non-TANF arrearages and collections for Federal reporting purposes and must also meet the non-TANF thresholds, and be submitted as non-TANF arrearages for IRS income tax refund offset certification purposes, and 2) Any amounts which do not exceed the unreimbursed assistance paid to the family balance must be considered TANF arrearages and collections for Federal reporting purposes and must also meet the TANF thresholds, and be submitted as TANF arrearages for IRS income tax refund offset certification purposes.

Unassigning arrearages

QUESTION 9: Must a State unassign the amount of conditionally-assigned arrearages that, along with any other assigned arrearages, exceeds the total amount of unreimbursed assistance paid to the family (URA)?

ANSWER 9: Yes. See OCSE-AT-97-17, section IV.(b) (2): The cumulative amount of assigned arrearages in former assistance cases may not exceed the cumulative amount of unreimbursed assistance paid to the family under all assignments.

QUESTION 10: With respect to a former assistance case, how should old AFDC arrearages be converted when the existing balance exceeds the URA? For example, should the portion below the URA level be converted to permanently-assigned arrearages and the portion above the URA level be converted to unassigned pre-assistance arrearages?

ANSWER 10: Yes.

QUESTION 11: When a recipient of TANF later leaves the assistance rolls, the portion of any permanently-assigned arrearages existing from when the recipient received AFDC which are in excess of the URA will become unassigned pre-assistance arrearages. Permanently-assigned arrearages that accrue while the family receives TANF assistance become unassigned during-assistance arrearages when the family leaves the TANF assistance rolls. Are States required to determine those permanently-assigned arrearages that accrued during the receipt of TANF assistance?

ANSWER 11: Yes. However, States are only required to track during assistance arrearages in TANF cases, and not in AFDC cases.

Interstate distribution

QUESTION 12: What are the responding State's responsibilities with respect to collections sent to the initiating State and for tracking arrearages balances, including showing distribution in current assistance, former assistance and never assistance cases?

ANSWER 12: Responding States are not responsible for distribution in interstate cases. The initiating State must distribute amounts received from responding States in accordance with section 457 of the Act, OCSE-AT-97-17 and this Action Transmittal.

Under 45 CFR 303.7(c)(7)(iv), the responding State is responsible for collecting and monitoring any support payments from the noncustodial parent and forwarding payments to the location specified by the IV-D agency in the initiating State. Effective October 1, 1998, (or October 1, 1999, in States in which courts were processing child support collections on August 21, 1996), the responding State's State Disbursement Unit (SDU) must, within 2 days of receipt in the SDU, send the amount collected in an interstate IV-D case to the SDU in the initiating State.

The responding State IV-D agency must include sufficient information to identify the case, indicate the date of collection (see Q&A 23) and include the responding State's FIPS code. Under 45 CFR 303.7(d)(5), the responding State IV-D agency must identify any fees or costs deducted from support payments when forwarding payments to the IV-D agency in the initiating State.

QUESTION 13: If multiple States have arrearages owed to them or to families, which arrearages are satisfied first?

ANSWER 13: Any State which is seeking to collect support to satisfy arrearages, whether they are assigned to the State or owed to a family, may use any appropriate IV-D enforcement technique to collect past-due support, e.g., Federal income tax refund offset, direct or regular income withholding. With the exception of 45 CFR 302.51(a), (requirement for payment to current support first) and 303.100(g), (allocation across orders in withholding cases), Federal law and regulations do not address distribution of collections when there are multiple support orders with arrearages.

QUESTION 14: When a State collects support in an interstate IV-D case, to which State should the collection be sent and which State is responsible for distribution under section 457 of the Act - the initiating State or the State which issued the order?

ANSWER 14: 45 CFR 303.7(c)(7)(iv) requires the responding

State in an interstate IV-D case to forward collections to the initiating State. As indicated in Answer 12 above, the initiating State is responsible for distribution in accordance with section 457 of the Act, OCSE-AT-97-17 and this Action Transmittal.

QUESTION 15: If State A sends State B a request for High-Volume Administrative Enforcement in Interstate (AEI) action (see OCSE-AT-98-05), and State B already has a case for the same NCP, how must State B distribute collections after State B takes the AEI action (e.g., bank account levy or other asset seizure)? Must State B apply the entire collection to State A's AEI case?

ANSWER 15: Section 404 of the Child Support Performance and Incentive Act of 1998 (Pub.L.105-200) redefined "high-volume automated administrative enforcement in interstate cases" by amending section 466(a)(14)(B) to read as follows: "the term high volume means, on request of another State, the identification by a State, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in other States, and the seizure of such assets by the State, through levy or other appropriate processes." Upon receipt of an AEI request, the assisting State does not develop this request into an interstate case and does not provide the full scope of IV-D services provided to interstate cases. Federal law and regulations do not address distribution of collections when there are multiple support orders with arrearages (with the exception of payments on current support obligations, pursuant to 45 CFR 302.51(a) and allocation across orders in withholding cases pursuant to 45 CFR 303.100(g)). States should follow State law for guidance on distribution between cases.

Distribution of support collected in tribal child support cases

QUESTION 16: What effect do the Federal distribution requirements have on child support collected as a result of a cooperative agreement between a State-operated IV-D program and a tribe or tribal organization under section 454(33) of the Act?

ANSWER 16: State IV-D programs and tribes are authorized to negotiate cooperative agreements for the delivery of child support services in Indian country, but these agreements must be consistent with title IV-D of the Act. Section 454(33) of the Act authorizes cooperative agreements between State IV-D programs and tribes or tribal IV-D programs. Section 454(33) also requires that support collected be distributed in accordance with the terms of the cooperative agreement. Under section 457(a)(4) of the Act, States and tribes have flexibility to determine whether the State or the tribe will disburse support under a State-tribal cooperative agreement under section 454(33) as long as the support is distributed in accordance with the Act.

In cases where Indian families are receiving TANF assistance from the tribe, but which formerly received assistance from the State under title IV-A of the Act, support must be distributed pursuant to section 457(a)(2) of the Act. In such cases if there is no assignment of support rights as a condition of receiving the Tribal TANF assistance, the family would be paid current support. Collections applied to satisfy arrearages assigned to the State would be distributed pursuant to under section 457(a)(2)(B) and sections V and VI(c) or (d) of OCSE-AT-97-17.

In cases where Indian families never received title IV-A tribal or State assistance, all collected support must be paid to the family pursuant to 457(a)(3). State-tribal cooperative agreements may not abrogate Indian families' rights under a support order in these cases.

Distribution in title IV-E foster care cases

QUESTION 17: What rules govern distribution in title IV-E foster care cases?

ANSWER 17: States must distribute support collected in title IV-E foster care cases in accordance with 45 CFR 302.52.

QUESTION 18: What rules govern distribution in former IV-E foster care cases?

ANSWER 18: States must distribute collections in former IV-E foster care cases in accordance with 45 CFR 302.52(c) under which:

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

Section 302.52(b)(3) requires that if the amount of support collected exceeds the amount of the monthly support obligation, but not the total unreimbursed foster care maintenance payments provided under title IV-E or unreimbursed assistance payments under title IV-A,

"the State shall retain the excess to reimburse itself for these payments. If past assistance or foster care maintenance payments are greater than the total support obligation owed, the maximum amount the State may retain as reimbursement for such payments is the amount of such

obligation. If amounts are collected which represent the required support obligation for periods prior to the first month in which the family received assistance from the State's title IV-A plan or foster care maintenance payments under the State's title IV-E plan, such amounts may be retained by the State to reimburse the difference between such support obligation and such payments. Of the amounts retained by the State, the State IV-D agency shall determine the Federal government's share of the amount so that the State may reimburse the Federal government to the extent of its participation in financing the assistance payments and foster care maintenance payments."

In a former IV-E case in which there are also assigned IV-A arrearages, the State must distribute collections to satisfy current support and any never-assigned support, before applying any collections to satisfy unreimbursed IV-A or IV-E assistance payments.

QUESTION 19: If a family has three children that start to receive IV-A assistance on November 1, 1998, all of the family's pre-assistance arrearages are temporarily assigned to the State. One child starts to receive IV-E assistance rather than the IV-A assistance on January 1, 1999. Are the pre-assistance arrearages for only that child that were temporarily assigned under the IV-A assignment now permanently assigned with the IV-E assignment?

ANSWER 19: No. Section 471(a)(17) allows the IV-E agency to require an assignment, "where appropriate". Title IV-E of the Act does not otherwise define assignment of rights in title IV-E cases.

Support accruing subsequent to the child ceasing to receive IV-A assistance may or may not be assigned to the State under the IV-E program depending on State law. An assignment under section 408(a)(3) of the Act however continues until the family ceases to receive assistance under title IV-A of the Act. Therefore, support assigned with respect to the child who ceases to receive IV-A assistance which was assigned prior to the child ceasing to receive IV-A assistance remains assigned until the family ceases to receive IV-A assistance.

Miscellaneous: order of arrearages, interest, medical support collections, and date of collection

QUESTION 20: Where a court order on arrearages exists, are States permitted to satisfy these orders ahead of other balances, even if this conflicts with the PRWORA payoff priorities? For example, a former AFDC case has \$500 in never-assigned arrearages and \$1000 in permanently-assigned arrearages. The court order indicates that a \$30 per month order on arrearages exists for the permanently-assigned arrearages. Can the State satisfy the order

on arrearages after satisfying all current support but before applying any remainder to the never-assigned arrearages?

ANSWER 20: No. The State must follow distribution requirements in section 457 of the Act, OCSE-AT-97-17 and this Action Transmittal.

QUESTION 21: Does a State that charges interest on arrearages, which by statute is considered "child support," have the option to apply collections in excess of current support to either the interest first or to the arrearages first?

ANSWER 21: Interest on arrearages would also be classified as an arrearage payment. State law would determine when the interest accrued and it would be distributed as any other arrearage accruing during that time period (i.e. pre-assistance, during-assistance, or post-assistance arrearages). State law would also determine whether the original arrearage or the interest accrued for that time period was paid first, but States must determine the ownership and distribution of such collections in accordance with sections 402(a)(8) and 457 of the Act and OCSE-AT-97-17.

QUESTION 22: How does a State distribute medical support collections under the new distribution rules? In a TANF case, a Medicaid-only case, and in a former assistance case?

ANSWER 22: Section 457 of the Act does not address specifically distribution of medical support collections. However, section 459(i)(2) of the Act defines child support to include orders which provide "for monetary support, health care, arrearages or reimbursement..." In addition, Federal regulations at 45 CFR 302.51 address disbursement of assigned medical support and require that:

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

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

Federal distribution regulations at 45 CFR 302.51 apply to both child and medical support payments which are ordered to be paid in specific dollar amounts. In the preamble to the final regulations published in the Federal Register on February 26, 1991 (56 FR 7988) and issued by OCSE-AT-91-01 on March 8, 1991, we stated that: "When less than the total amount of the obligation is collected, the IV-D agency should allocate the amount collected between the child support and the medical support specified in the order in proportionate shares. Current support must be given priority over past-due support, except with respect to collections made through the Federal income tax refund offset process." The allocation of collections between child support and medical support would apply to payments on arrearages as well as current support. See also OCSE-PIQ's-93-05 and 93-06.

Once a State allocates the amount collected between child support and medical support designated in the support order, distribution of any medical support collection must be in accordance with 45 CFR 302.51, section 457 of the Act and OCSE-AT-97-17, including the order in which assigned financial and medical support collections are distributed and the forwarding to the title XIX agency of any amount of assigned medical support.

QUESTION 23: Are States required to distribute child support collected on or after October 1, 1996 according to the date of collection rules at 45 CFR 302.51(a)(4)?

ANSWER 23: States must continue to use the date of collection as defined in 45 CFR 302.51(a)(4) until there is a State Disbursement Unit in the State which meets the requirements of section 454B of the Act. Section 5549 of the BBA amended Federal requirements at section 454B(c) of the Act governing State Disbursement Units (SDUs) to redefine the date of collection as the date of receipt by the State Disbursement Unit. However, if current support is withheld by an employer in the month when due and is received by the SDU in a month other than the month when due, the date of withholding may be deemed to be the date of collection at the option of the State. SDU requirements are effective October 1, 1998, unless the State qualifies for the one-year delay to continue to process the receipt of child support payments through local courts.