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I. Overview

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

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

Assignment of Support Rights

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

Distribution Sequence in Former-Assistance Cases

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

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

Federal Tax Refund Offset Collections

Under former section 457(a)(2)(B)(iv) of the Act, Federal tax refund offset collections must be distributed to arrearages only, and must be applied first to any arrearages owed to the State to reimburse public assistance. If States choose the new distribution sequence for Former-Assistance cases under the DRA, States must treat Federal tax refund offset collections the same as any other collections for purposes of distribution. States choosing to follow the DRA

distribution rules will distribute Federal tax refund offset collections first to current support, then to arrearages. Also, for Former-Assistance families, States selecting this option will distribute these collections to Family Arrearages before Assigned Arrearages.

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

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

Child Support Pass-Through Payments

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

Discontinuation of Assignments²

As noted above, the DRA provides that States may not take any assignments of Pre-Assistance Arrearages in any new TANF cases, starting not later than October 1, 2009.³ However, older assignments of Pre-Assistance Arrearages in

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

² A State may only discontinue its own assignments.

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

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

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

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

II. Definitions used in this Action Transmittal

As used in this document:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁵ See section 457(c) of the Act.

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

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

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

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

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

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

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

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

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

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

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

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

(A) All arrearages in Never-Assistance cases;

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

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

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

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

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

⁸ See further discussion on Conditionally-Assigned arrearages under [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, 2009.⁹

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

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

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

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

through its assigned support collections in Current-Assistance cases¹¹ and/or in Former-Assistance cases.¹²

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. Distribution of child support collections under the DRA

(a) In General

For purposes of distribution in a IV-D case, amounts collected must be treated first as current support for the month in which the support was collected¹⁴ and if any amounts collected are in excess of such amount, these excess amounts shall be treated as amounts which represent payment on the required support obligation for previous months.

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

(b) Distribution of Federal Tax Refund Offset Payments

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

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

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

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

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

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

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

For further discussion on Federal tax refund offset distribution, see [Q&A 26](#) of this AT.

(c) Distribution in Never-Assistance Cases

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

(d) Distribution in Current-Assistance Cases

(1) Arrearage Categories

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

(i) Family Arrearages;

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

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

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

(iii) Permanently-Assigned Arrearages.

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

(2) Distribution Sequence²⁰

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

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

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

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

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

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

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

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

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

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

(e) Distribution in Former-Assistance Cases

(1) State Option

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

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

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

(2) Arrearage Categories for DRA Distribution States

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

(A) Family Arrearages;

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

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

(C) Permanently-Assigned Arrearages.

(3) Distribution Sequence for DRA Distribution States

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

- (A) First, distribute the amount collected to satisfy the current monthly support obligation and pay that amount to the family;
- (B) Second (unless a State elects to continue PRWORA Distribution),²⁵ pay to the family any amount above the current monthly support obligation to satisfy support arrearages not assigned;
- (C) Third, if the amount collected exceeds the amounts distributed in (A) and (B) above:
 - (i) Pay to the Federal government the Federal share of the amount applied to Assigned Arrearages (see sections 457(a)(2)(B)(ii)(I) and 457(a)(3)(A) of the Act),²⁶
 - (ii) Retain, or distribute to the family, the State share of the amount applied to Assigned Arrearages (see sections 457(a)(2)(B)(ii)(II) and 457(a)(3)(B) of the Act); and
 - (iii) Reduce the cumulative amount of unreimbursed assistance by the total amount collected and distributed under (i) and (ii) above, and distribute collections exceeding the amounts distributed under (i) and (ii) to the family. See section 457(a)(2)(B)(iii) of the Act.

(4) Arrearage Categories for PRWORA Distribution States

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

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

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

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

- (i) Never-Assigned Arrearages;
- (ii) Unassigned Pre-Assistance Arrearages;
- (iii) Conditionally-Assigned Arrearages;²⁷
- (iv) Permanently-Assigned Arrearages;²⁸ and
- (v) Unassigned During-Assistance Arrearages.

(5) Distribution Sequence for PRWORA Distribution States

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

(f) Comparing DRA Distribution and PRWORA Distribution Rules

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

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

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

²⁹ Action Transmittal [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. ³⁰ Once Assigned Arrearages are paid off, any remaining amount is paid to the family. 457(a)(1) and (3) ³¹	Apply Federal tax refund offset collections to Conditionally-Assigned Arrearages under a pre-DRA assignment and Permanently-Assigned Arrearages and then to past-due support owed to the family. Former 457(a)(2)(B)(iv)

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

³¹ [See Footnote 21.](#)

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

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.

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

(a) Current-Assistance Cases

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

(1) Up to \$100 per month, if the amount passed through to the family is disregarded in determining the amount and type of assistance provided to the family; or

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

(b) Former-Assistance Cases

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

VI. Discontinuation of assignments

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

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

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

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

Under section 457(b) of the Act, as amended by the DRA, a State has the option to discontinue any of its assignments that were in effect as of September 30,

1997.^{33 34} If a State chooses to discontinue such assignments, the State may treat amounts collected pursuant to the assignment as if the amounts had never been assigned, and pay these collections to the family. See section 457(b)(1)(B) of the Act.

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

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

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

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

VII. State options for the distribution of child support

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

³³ See section 457(b)(1) of the Act.

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

³⁵ See section 457(b)(2) of the Act.

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

(a) Options regarding Current-Assistance cases

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

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

(b) Options regarding Former-Assistance cases

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

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

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

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

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

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

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

The table below summarizes the options discussed above:

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

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

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

State Options		Effective Date ³⁸	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 ³⁹	In Effect	Former 457(a)(2)(B)(iii)
	OR		
	Retain, or pay to Former-Assistance family, State share of collections applied to any of its Assigned Arrearages ⁴⁰	October 1, 2009	457(a)(2)(B)(ii)(II)
	If State pays to Former-Assistance family any amount applied to its Assigned Arrearages, the State is not required to pay to the Federal Government the Federal share.	October 1, 2008	457(a)(7)(A)

³⁹ PRWORA Distribution election.

⁴⁰ DRA Distribution election.

State Options		Effective Date ³⁸	Statutory Citation
CURRENT- & FORMER- ASSISTANCE CASES	Discontinue some or all pre-October 1997 assignments (Pre-Assistance and During-Assistance Arrearages)	October 1, 2009	457(b)(1)
	Discontinue some or all post-September 1997 assignments of Pre-Assistance Arrearages	October 1, 2009	457(b)(2)

VIII. Arrearage Category Conversions

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

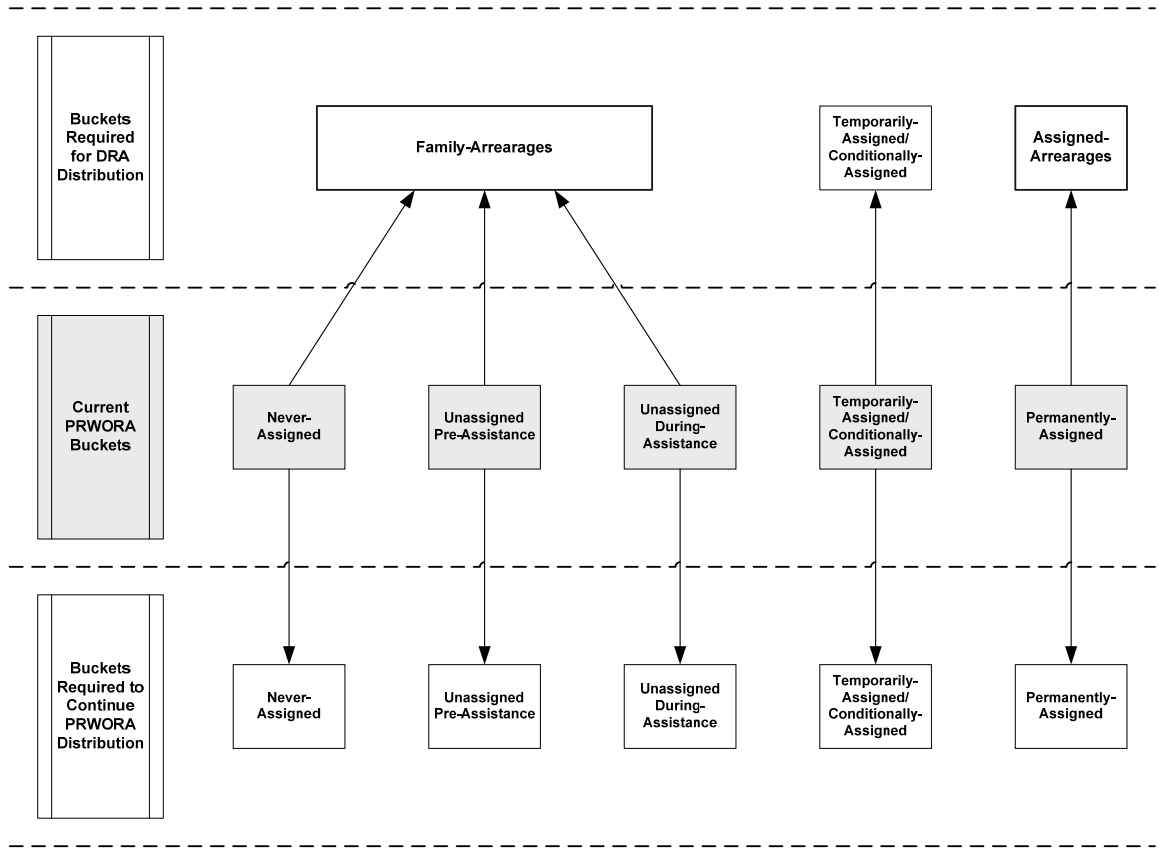
What follows are a series of figures that illustrate the conversion of arrearage categories, depending on the distribution and assignment discontinuation options selected by the State. These examples assume that, where assignments are discontinued, a State would discontinue all (rather than a portion)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

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

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

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

Figure 1: Arrearage Conversion for both DRA and PRWORA Distribution in Former-Assistance Cases, All Assignments Continued⁴²



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

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

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

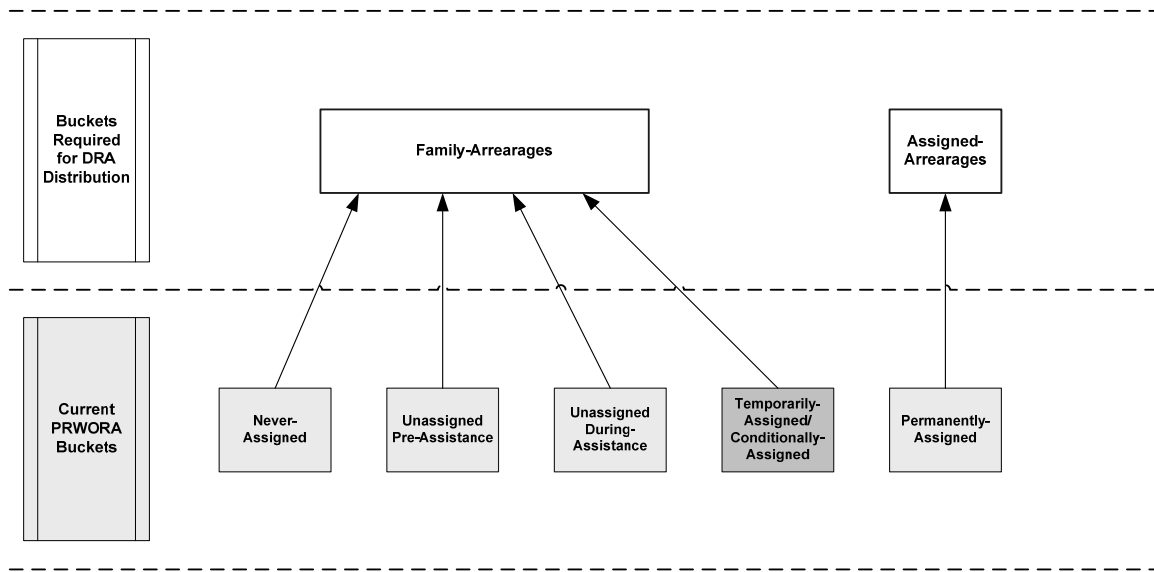


Figure 3: Arrearage Conversion for DRA Distribution, Pre-1997 Assignments of a State's Pre-Assistance Arrearages Discontinued; (the State can Distinguish Between Pre-Assistance and During-Assistance Arrearages)

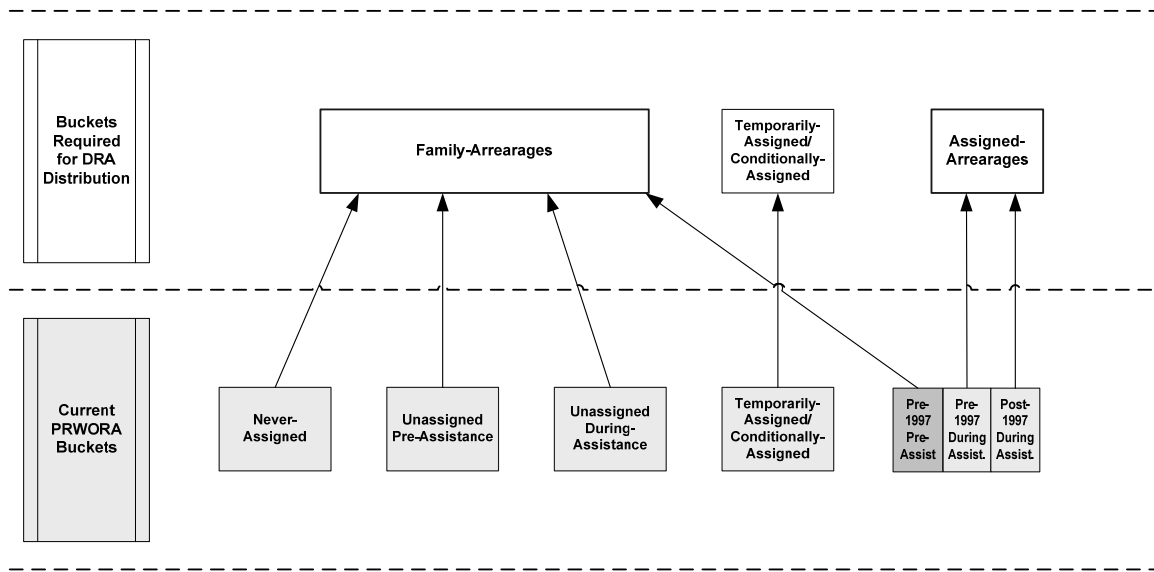


Figure 4: Arrearage Conversion for DRA Distribution, All of a State's Pre-Assistance Assignments Discontinued; (the State can Distinguish Between Pre-Assistance and During-Assistance Arrearages)

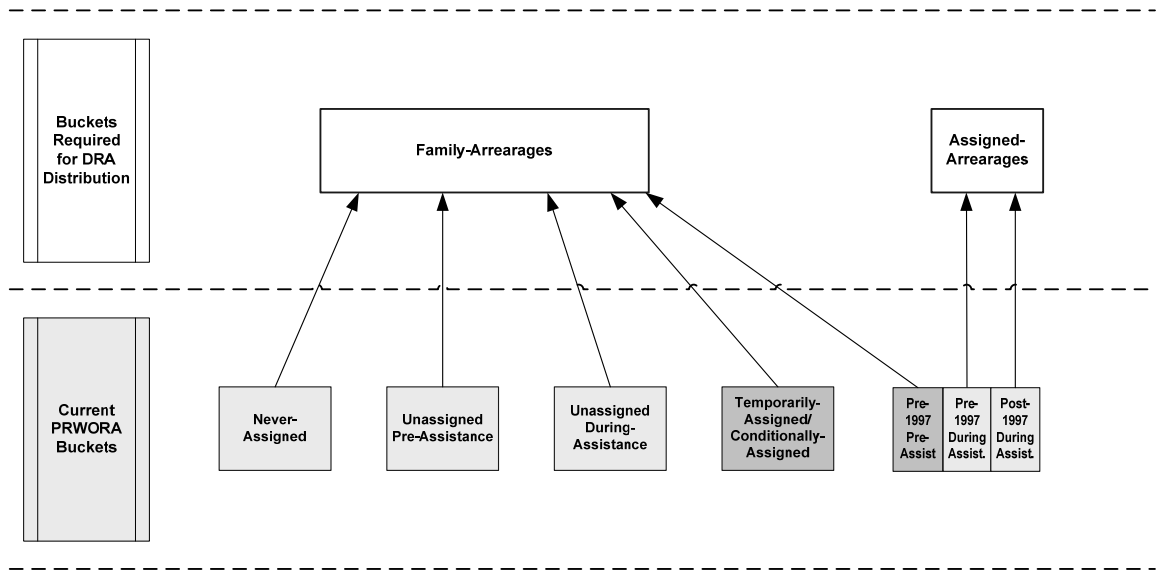


Figure 5: Arrearage Conversion for DRA Distribution, All of a State's Pre-1997 Assignments Discontinued

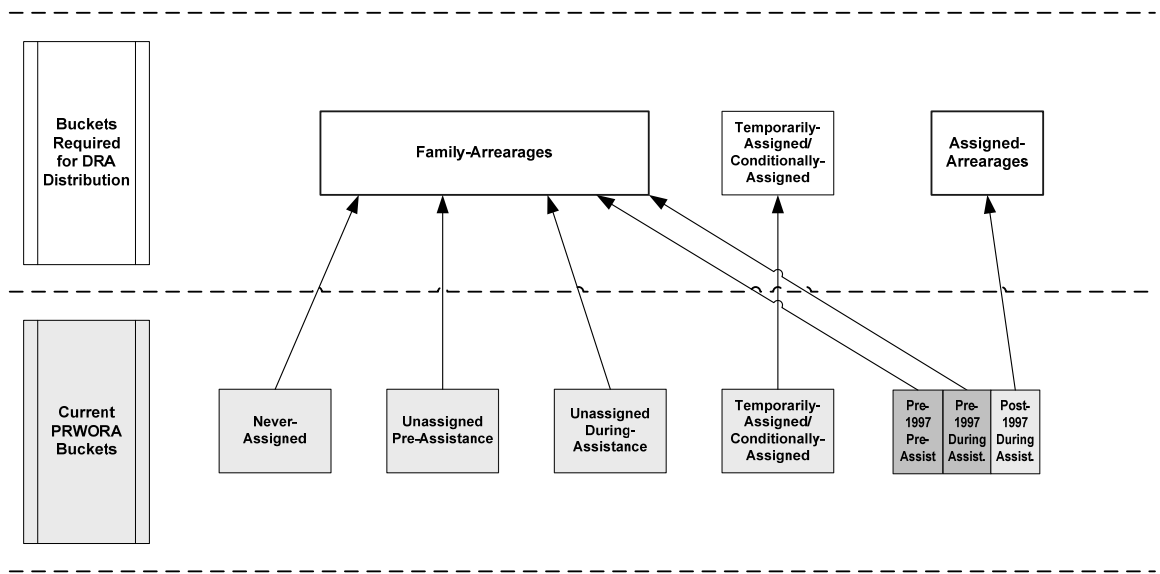
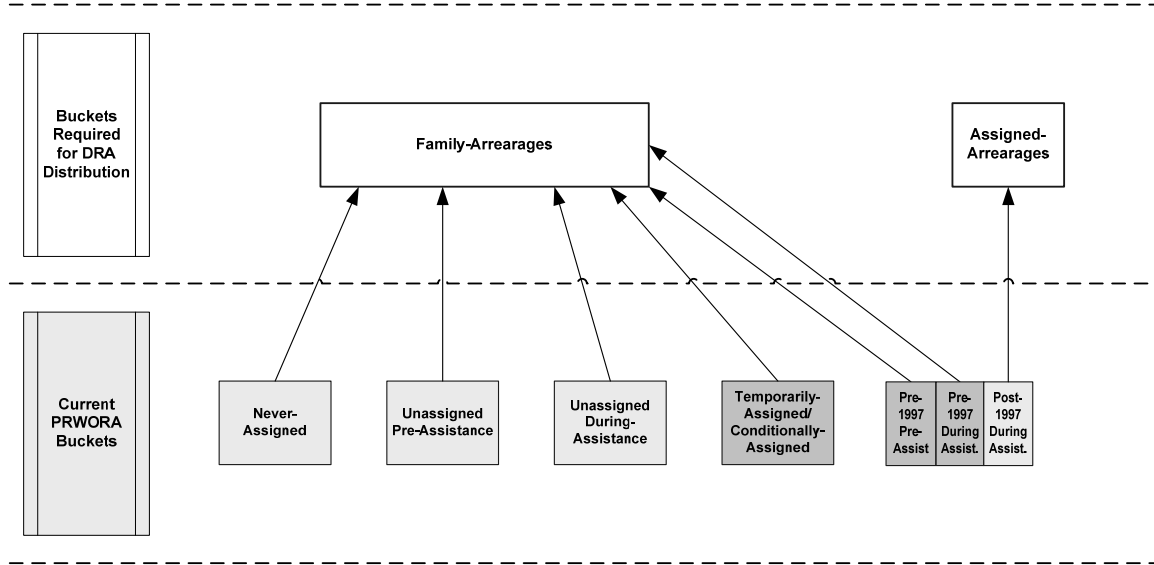


Figure 6: Arrearage Conversion for DRA Distribution, Both a State's Pre- and Post-1997 Assignments Discontinued



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

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

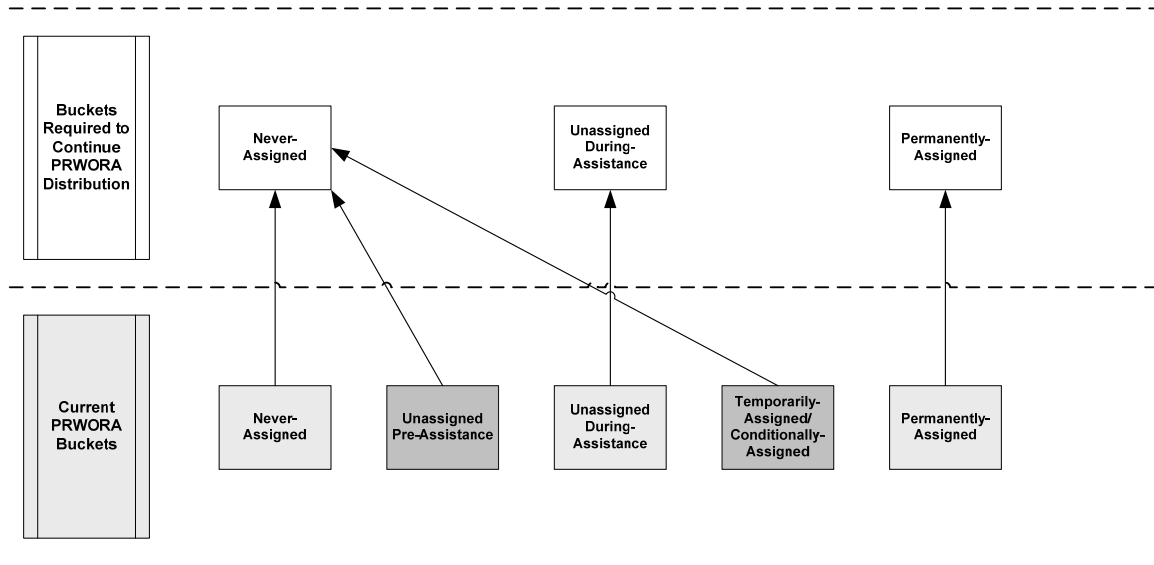


Figure 8: Arrearage Conversion for PRWORA Distribution, a State's Pre-1997 Assignments of Pre-assistance Arrearages Discontinued; (the State can Distinguish Between Pre-Assistance and During-Assistance Arrearages)

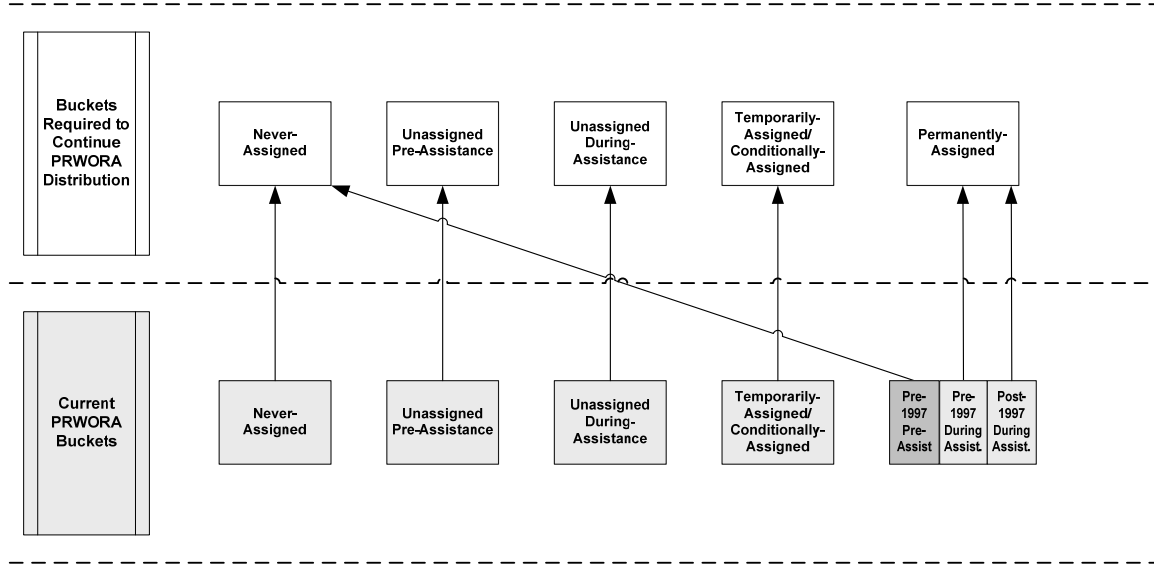


Figure 9: Arrearage Conversion for PRWORA Distribution, All of a State's Pre-Assistance Assignments Discontinued; (the State can Distinguish Between Pre-Assistance and During-Assistance Arrearages)

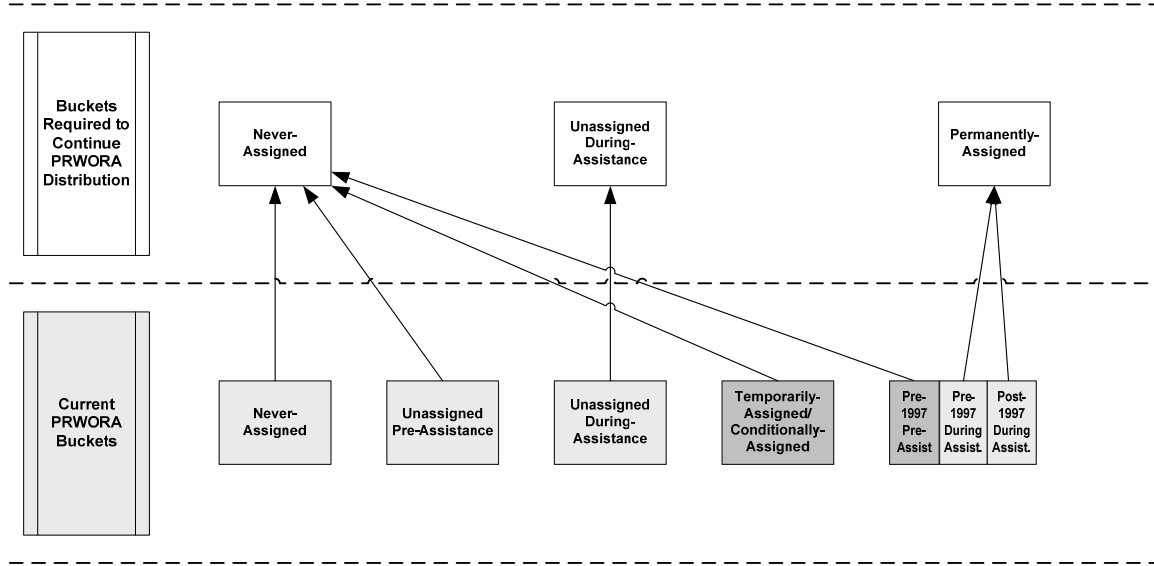


Figure 10: Arrearage Conversion for PRWORA Distribution, All of a State's Pre-1997 Assignments Discontinued

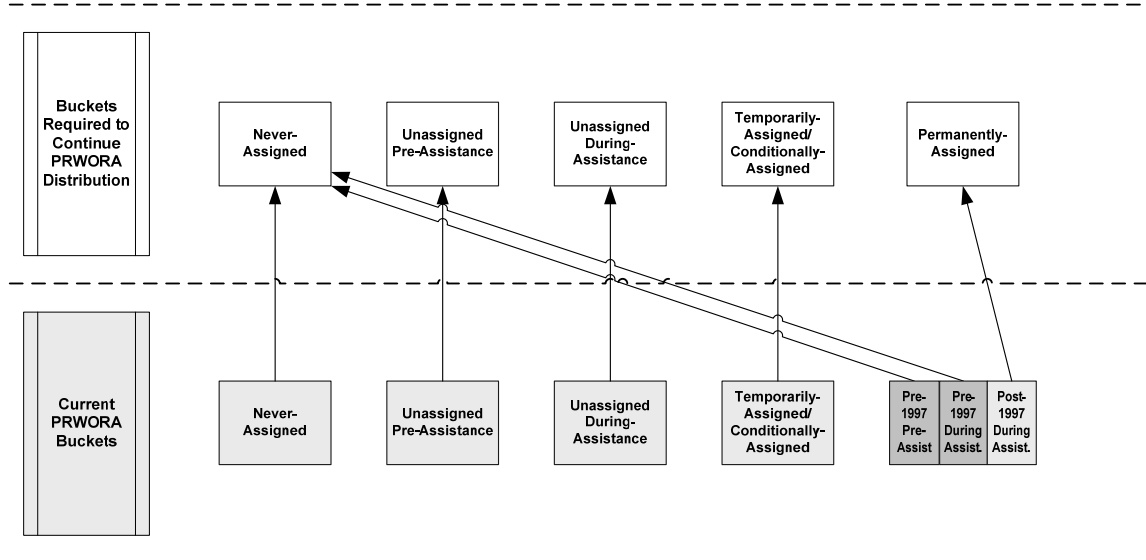
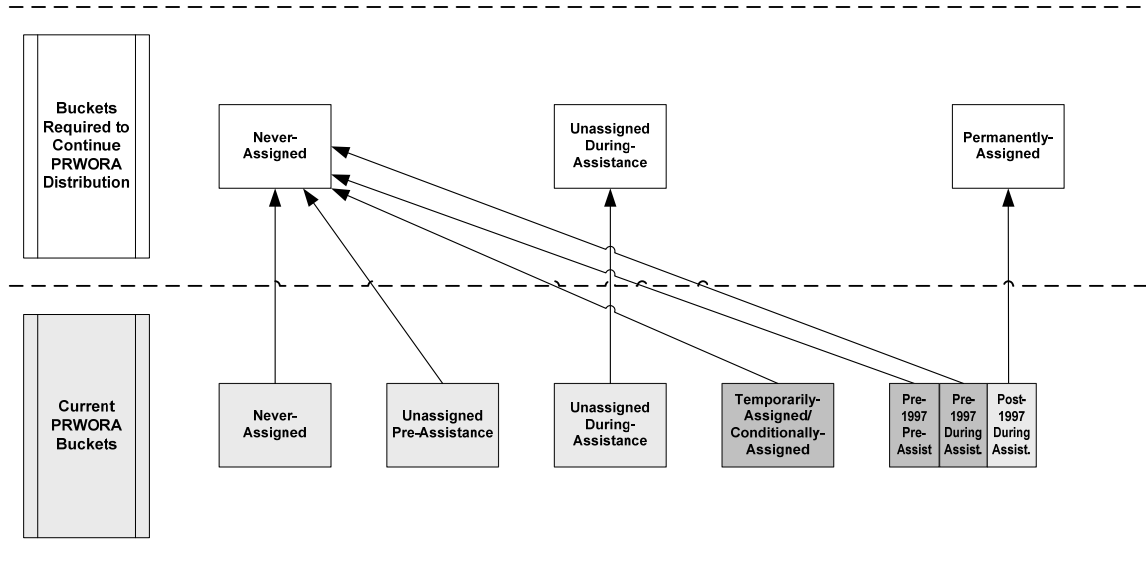


Figure 11: Arrearage Conversion for PRWORA Distribution, Both a State's Pre- and Post-1997 Assignments Discontinued



IX. Questions and answers

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

ASSIGNMENT OF RIGHTS TO SUPPORT

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

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

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

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

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

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

CONDITIONALLY-ASSIGNED ARREARAGES

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

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

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

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

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

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

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

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

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

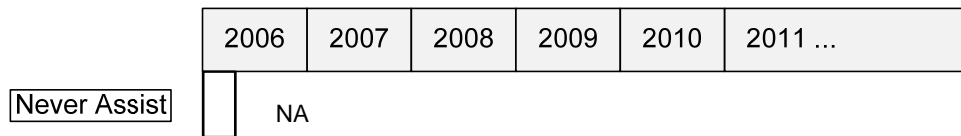
For the purposes of this example assume:

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

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

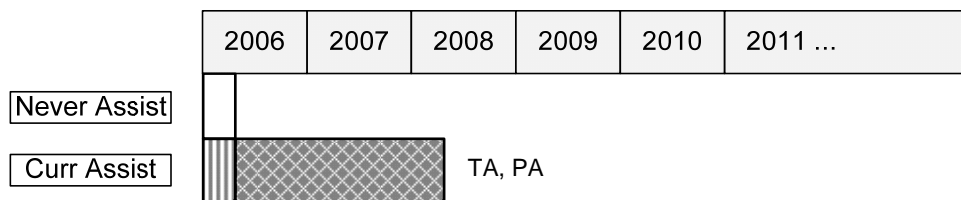
January 2006 – April 2006:

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



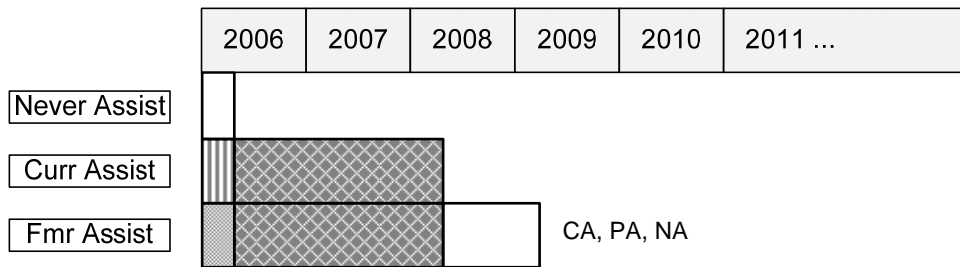
May 2006 – February 2008:

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



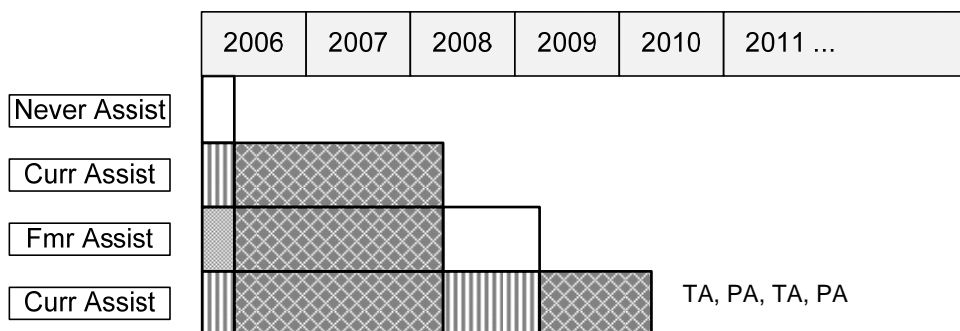
March 2008 – April 2009:

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



May 2009 – April 2010:

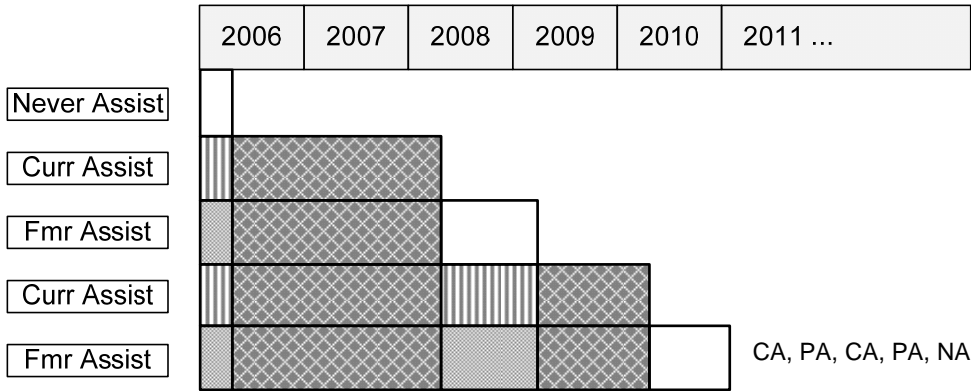
The family returns to assistance. Never-Assigned and Conditionally-Assigned Arrearages convert to Temporarily-Assigned Arrearages.⁴³



May 2010 – January 2011:

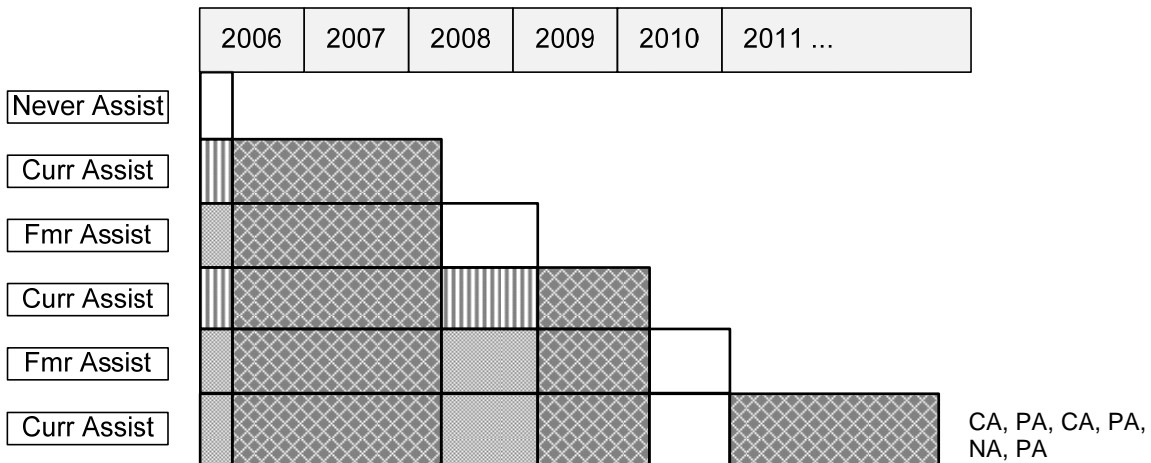
The Current-Assistance case closes and converts to a Former-Assistance case. The Temporarily-Assigned Arrearages convert to Conditionally-Assigned Arrearages.

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



February 2011:

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



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

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

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

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

Key for Example 2:

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

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

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

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

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

UNASSIGNING ARREARAGES

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

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

⁴⁵ [See Footnote 43.](#)

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

DISTRIBUTION IN CURRENT-ASSISTANCE CASES

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

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

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

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

PASS-THROUGH PAYMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

DISCONTINUED ASSIGNMENTS

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

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

QUESTION 20: The State options regarding the discontinuation of older support assignments under section 457(b)(2)(A) of the Act refer only to “support obligations accruing before the date on which the family **FIRST** (emphasis added) receives assistance under part A ...” Does this provision allow a State to

discontinue all of its Temporarily-Assigned or Conditionally-Assigned Arrearages or only those that accrued prior to the first date on which the family ever received assistance from the State?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FEDERAL TAX REFUND OFFSET

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

ANSWER 26: The treatment of Federal tax refund offset collections is the key difference between the DRA and PRWORA distribution rules. For States electing to follow DRA Distribution, Federal tax refund offset collections must be

distributed in the same manner as any other collection. This means that in Former-Assistance cases, they must be applied first to current support, but then to Family Arrearages before Assigned Arrearages may be paid.⁴⁶ In Current-Assistance cases, Federal tax refund offset collections must also be applied first to current support, but then to Assigned Arrearages and last to any Family Arrearages.

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

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

Table 3: Distribution of Federal Tax Refund Offset Collections

	DRA Distribution Election	PRWORA Distribution Election
CURRENT-ASSISTANCE CASES	<p>Apply FTRO⁴⁷ 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>

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

⁴⁷ FTRO = Federal tax refund offset.

	DRA Distribution Election	PRWORA Distribution Election
FORMER-ASSISTANCE CASES	<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.