Program Instruction:
Temporary Assistance for Needy Families Program
&
Action Transmittal:
Child Support Enforcement Program

U.S. Department of Health and Human Services
Administration for Children and Families
Office of Child Support Enforcement
Office of Family Assistance
Washington, DC 20447

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Date: MAY 18 2007

TO: State Agencies Administering Child Support Enforcement Plans and the Temporary Assistance for Needy Families (TANF) Program Under Titles IV-A and IV-D of the Social Security Act (the Act) and Other Interested Parties

SUBJECT: Questions and Responses on Coordination between the TANF and the Child Support Enforcement Programs since enactment of the Deficit Reduction Act of 2005 (DRA of 2005)

REFERENCES: Sections 401(a)(1)-(4), 404(a)(1), 408(a)(3), 409(a)(7), 454(4), 454(5), 454(25), 454B, 456(a)(1), and 457 of the Act; 45 CFR 260.31, 263.2(a), 302.32, and 302.33; Office of Child Support Enforcement (OCSE) PIQ-88-11, PIQ-05-06, PIQ-92-02, and OCSE-AT-99-10 and TANF funding guidance document, *Helping Families Achieve Self-Sufficiency.*

PURPOSE: Since enactment of the DRA of 2005 (Pub. L. 109-171), we have received questions from States on issues involving assignment of rights to support, provision of child support enforcement services and distribution of child support payments. This issuance addresses these inter-related issues between the TANF program and the Child Enforcement Support Program in a question/response format.

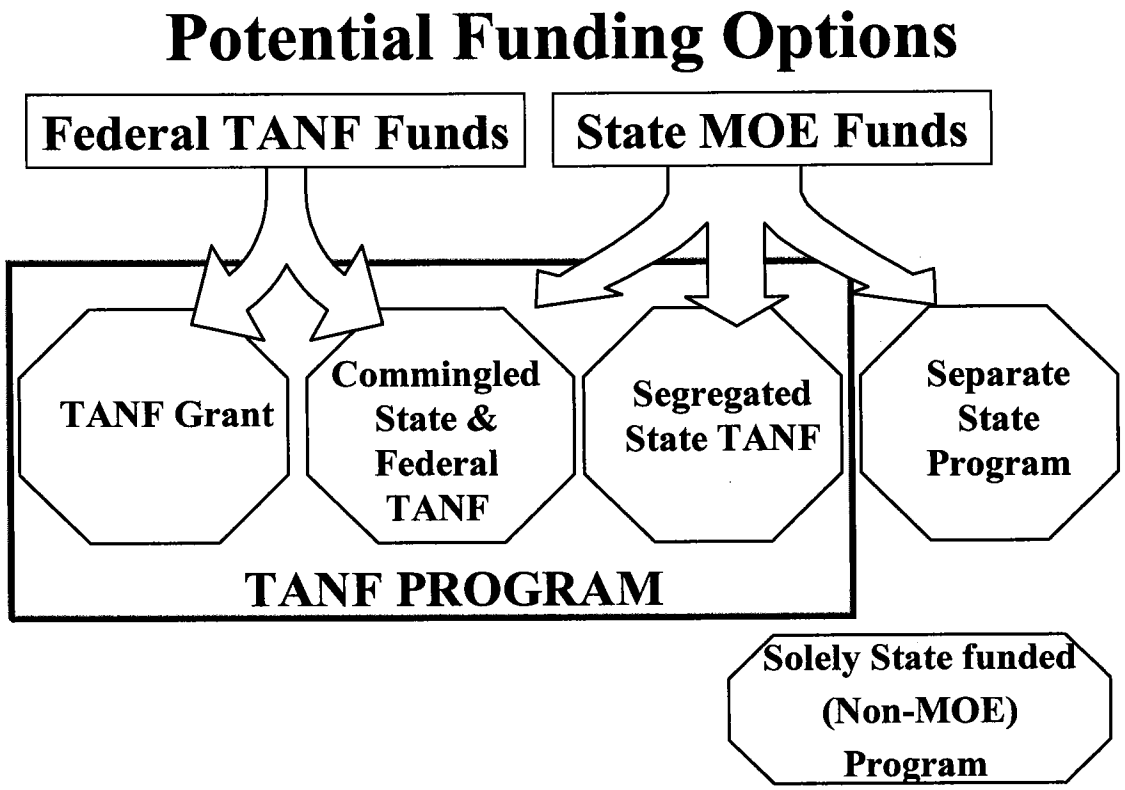
BACKGROUND:

The TANF program gives States the flexibility to decide whether to use Federal TANF funds, commingled Federal and State funds, or State funds to pay for ongoing assistance and other allowable benefits and services. In making their funding decisions, States know that they need to determine which TANF programmatic requirements apply to a particular funding stream and whether the activity under consideration would be allowable using those funds.[1]

[1] These issues are discussed in the original final TANF rule 64 FR 17816 (April 12, 1999) and the TANF funding guidance entitled, *Helping Families Achieve Self-Sufficiency* available at http://www.acf.dhhs.gov/programs/ofa/funds2.pdf and http://www.acf.hhs.gov/programs/ofa/finalru.htm

The TANF program also has a required annual cost-sharing requirement, known as maintenance-of-effort (MOE). Basically, every fiscal year (FY), States must spend a certain amount of their own money on "qualified State expenditures" with respect to eligible families. Essentially, States must expend their MOE funds to help eligible families in a manner that is reasonably calculated to accomplish a purpose of the TANF program. States may spend their MOE funds in all programs, not just the State's TANF program.[2]

The following figure depicts the possible funding options.[3]



The responses to the following questions assume the following:

A case becomes a IV-D case by virtue of a referral from a TANF, title IV-E foster care, Medicaid or Food Stamp agency for IV-D services pursuant to section 454(4)(A)(i) of the Act (including former TANF cases in accordance with section 454(25) of the Act), or by an application for services filed

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[2] See sections 401(a)(1) – (4), 404(a)(1) and 409(a)(7) of the Social Security Act

[3] States may also transfer a certain amount of their current fiscal year Federal TANF funds to the Child Care Discretionary Fund program and the Social Services Block Grant program. These funding decisions are irrelevant to the issues presented in this document.

with the IV-D agency in accordance with section 454(4)(A)(ii) of the Act and 45 CFR 302.33. Fees which may be assessed and the appropriate services which must be provided by the child support agency may depend upon the source of the referral or the voluntary application which is made for child support enforcement services. This joint TANF and child support enforcement document focuses upon these programs and several inter-related issues. All support collected by the State in IV-D cases is subject to distribution requirements in sections 457 and 1912 of the Act.

We have first addressed TANF programmatic questions on the applicability of the Federal requirement to assign rights to support and non-TANF case questions concerning possible assignments under State law and potential involvement of the IV-D agency. Then we address questions on distribution requirements, use of the statewide automated system and program income in the context of the child support enforcement program

QUESTIONS AND ANSWERS:

TANF Cases: include cases funded with: (a) segregated Federal TANF grant funds; (b) commingled State MOE and Federal TANF grant funds; or, (c) segregated State MOE funds, which are expended in the TANF program.

Q1. What is the scope of the requirement in section 408(a)(3) of the Act that a family assign to the State any rights to support the family may have from the individual(s) responsible for providing such support?

R1. This TANF programmatic requirement is intended to permit reimbursement of State and Federal expenditures of TANF *cash assistance payments and vouchers*. When a family member applies for TANF assistance for or on behalf of the family, s/he must assign to the State any rights to support the family members may have as a condition of receiving TANF-funded *assistance*. The TANF regulations at 45 CFR 260.31(a) define what constitutes *assistance*. For assignment and child support enforcement and collection purposes, *assistance,* as defined in 45 CFR 260.31(a), is limited to *amounts that have been paid to the family as assistance* (emphasis added). See section 457(a)(1) of the Act and OCSE Action Transmittal (AT) 99-10, dated September 15, 1999. OCSE AT-99-10 is available at http://www.acf.hhs.gov/programs/cse/pol/2007-at.html. Accordingly, if the State uses segregated Federal, commingled State MOE and Federal, or segregated State MOE funds to pay assistance to the family under the State's TANF program, the family must assign its rights to support to the State, but the State and Federal government may not retain collections which "exceed the total of the amounts that have been paid to the family as assistance by the State." See section 457(a)(1) of the Act

Q2. Suppose the State provides a TANF-funded benefit to the family that does not constitute *assistance,* per 45 CFR 260.31(b), such as a non-recurrent short-term benefit to deal with a crisis situation or episode of need. Is it permissible for the State, pursuant to its own State law, to require the family to assign its rights to support to the State as a condition of receiving such TANF-funded benefits?

R2. No. The requirement in section 408(a)(3) of the Act that the State take an assignment of "any rights" the family member may have is all-inclusive, and there are no remaining rights to support which may be assigned under State law. The amount that may be collected and

retained by the State pursuant to such an assignment is, however, limited to the amount of TANF assistance paid to the family (emphasis added), and may not include reimbursement of any other type of benefit under the TANF program. We purposefully defined the term *assistance paid to the family,* in accordance with Federal statutory child support distribution provisions, to make it clear that, whereas the family member must "assign to the State any rights the family member may have (emphasis added)," only certain ongoing benefits designed to meet the family's basic needs may be reimbursed through child support collections.

Q3. May a State count the State's share of the assigned support collected on behalf of the family paid TANF assistance toward its MOE requirement?

R3. Yes, this is permissible under the following conditions. Per section 409(a)(7)(B)(i)(I)(aa) and 457(a)(1)(B) of the Act and the TANF MOE regulations at 45 CFR 263.2(a)(1), a State may count for MOE purposes, the amount of the State's share of the assigned child support that it pays to the family, provided the State disregards this amount in determining the family's eligibility for and the amount of TANF assistance. Otherwise, this cash assistance expenditure would be negated.

Non-TANF Cases: include cases funded with: (a) separate State program MOE (SSP-MOE) funds (State funds expended in programs outside of the TANF program and counted toward the State's MOE requirement); and, (b) solely State-funded program (SSFP) funds (State funds expended in programs outside of the TANF program, but NOT counted toward the State's MOE requirement).

Q4. Response #1 states that the requirement in section 408(a)(3) of the Act to take an assignment of rights to support only applies to TANF-funded assistance paid to the family. Therefore, may a State invoke its own State law which requires that a family assign any rights to support as a condition of receiving a non-TANF benefit (assistance or non-assistance)?

R4. Yes, this is permissible if the State has such a law. In fact the State would have to take an assignment in accordance with its own statutory authority as the Federal requirement in section 408(a)(3) of the Act would not apply.[4] No child support enforcement services, of course, would be provided by the State agency unless there was an existing IV-D case or an application for IV-D services in accordance with section 454(4)(A)(ii).

Q5. Regarding the response to question #10 below, would any of the State's expenditures count toward the State's MOE requirement?

R5 Under the circumstances described in response #10, a State may not claim such administrative costs toward its MOE requirement. According to section 409(a)(7)(B)(i)(I)(dd) of the Act and the TANF regulations at 45 CFR 263.2(a)(5), administrative expenditures must be "in connection with" the State's other expenditures to

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[4] If a State previously had taken an assignment under section 408(a)(3), but the family no longer received TANF assistance, i.e. it was transferred or converted to a non-TANF SSP-MOE or SSFP case, the section 408(a)(3) assignment would have no continuing effect upon collections of current support.

provide benefits and services that have been claimed toward its MOE requirement. The described administrative costs are in connection with tracking assigned support collections that would be retained by the State, which would not be a qualified expenditure for MOE purposes.

Child Support Enforcement Program Questions

Q6. Would a State's requirement under State law to assign rights to child support, beyond the assignment required under section 408(a)(3) of the Act as a condition of receipt of TANF, allow the State to retain assigned support collections to reimburse the State for any non-assistance benefit(s) provided with Federal or State TANF funds that are not covered under the assignment in section 408(a)(3) of the Act?

R6. No. As stated in the responses to questions #1 and #2, a State may not require the assignment of support rights to child support to reimburse the State for any other TANF-funded benefit it provides to the family. The section 408(a)(3) assignment is all-inclusive and covers any rights which the family has to support from any other person. Accordingly, the State may not retain collections under its own additional assignment of rights to support.

Q7. If a State takes its own assignment in a non-TANF case (see response #4), and there is an application for IV-D services, is there a Federal share of support collections under the assignment taken under State law as a condition of receiving assistance provided with non-TANF funds?

R7. No. The Federal government has no right to reimbursement of any benefits provided by the State with non-TANF funds. If, however, the case is a former TANF, title IV-E foster care or Medicaid case in which there remains support assigned to the State as a condition of receipt of one or more of those programs, there may be a Federal share of support collections assigned previously under section 408(a)(3). All support collected by the IV-D agency must be distributed in accordance with sections 457 and 1912 of the Act.

Q8. Is there a Federal share of support collections assigned to the State under section 408(a)(3) of the Act if the individual that is currently receiving assistance with non-TANF funds is a former TANF recipient?

R8. Possibly. A former TANF case continues to receive IV-D services unless the family notifies the State to cease IV-D services in response to the notice to the family required under section 454(25) of the Act and 45 CFR 302.33(a)(4). Even if a former TANF family notifies the IV-D agency to stop providing IV-D services to the family, the IV-D agency must attempt to collect support assigned to the State under section 408(a)(3) of the Act, to reimburse the State for assistance paid to the family in accordance with section 457(a)(2) of the Act. If there are arrears which are covered by that assignment, support collections would be distributed in accordance with section 457 of the Act and the State and Federal governments might each be entitled to a share of such collections.

Q9 If a State provides benefits to a family with non-TANF funds and requires an assignment of rights to support from the client as a condition of receiving a non-TANF benefit, may the

State retain assigned support collections up to the amount of the non-TANF funded benefit paid to the family?

R9. Yes, subject to the following conditions. First, if services are provided by the IV-D agency, it must be a IV-D case. Second, support collected by the IV-D agency must be distributed pursuant to section 457 of the Act, but the family may direct that payments be made to a State agency.

Existing policy (see PIQ-88-11, dated August 25, 1988), allows States to receive IV-D services in SSP-MOE and SSFP cases in which support rights are assigned to the State as a condition of eligibility for the State-funded only assistance, if an application is filed with the State IV-D agency and the application fee is paid according to State policy. Once the support collections in such IV-D case are distributed in accordance with section 457 and 1912 of the Act and implementing regulations, disbursement of the State-assigned collection may be impacted by State law requiring assignment of support rights to the State, to the extent that the family has not assigned support rights to the State as a condition of receiving TANF, title IV-E foster care or Medicaid assistance.

While State IV-D agencies must distribute support collections in accordance with sections 457 and 1912 of the Act, there are separate rules governing disbursement of collections under section 454B of the Act. Since 1992, OCSE policy has clearly stated that "[n]othing in federal law precludes States from sending child support payments to an entity requested by the custodial parent if authorization to do so has been obtained. Such practices would be governed by State law." See PIQ-92-02, December 4, 2002. That policy is reiterated in PIQ-02-02, which is available online at .http://www.acf.hhs.gov/programs/cse/pol/PIQ/2002/piq-02-02.htm.

Therefore, a State could require a custodial parent, as a condition of receipt of a non-TANF funded benefit to direct the IV-D program to send support collections, distributed to him or her under section 457 and 1912 of the Act but assigned to the State under State law, to the non-TANF program. Any such requirements would have to be communicated by the appropriate State agency to the IV-D agency. The IV-D agency may need a copy of the assignment of rights and/or a written authorization to redirect payments for its records.

In sum, a State may retain a portion of support collected, once distribution requirements under sections 457 and 1912 have been met, under the following conditions:

a The support collected by the IV-D program is distributed in accordance with section 457 and 1912 of the Act;
b. There is an assignment of rights to support to the State under State law as a condition of receipt of a non-TANF funded benefit; and,
c. The custodial parent directs the State IV-D agency to disburse to the State the support distributed to the custodial parent but assigned to the State.

Q10. May the State use the statewide automated child support enforcement system under the State's IV-D program to collect, distribute and disburse child support collections and to track non-TANF benefits paid to a family and support assigned to a State under State law governing receipt of those non-TANF benefits?

R10. The State may use the IV-D automated system to record collections and disbursement of payments on child support obligations in IV-D cases, and of collections and disbursement of collections in non-IV-D income withholding cases. A State may also use the IV-D automated system to track unreimbursed TANF assistance paid to a family in a IV-D case. Federal financial participation (FFP) is available for the costs of these activities.

If certain conditions are met, the State may use the Federal IV-D automated system to track non-TANF funded benefits paid to a family and assigned support collections not received as a result of income withholding that are retained by the State as a condition of receiving such non-TANF funded benefits paid to the family. The State would have to fund, entirely from State funds, the costs of any change to the Statewide IV-D automated system required to track benefits and retained collections assigned to the State under State law in a non-TANF funded benefits program. In addition, the State would be required to allocate all costs associated with tracking these benefits and amounts retained by the State. FFP is not available for these costs of providing non-IV-D services.

Q11. If a State operates a non-TANF funded program, and the State statute requires an assignment of support and an application for IV-D services as a condition of eligibility for a non-TANF funded benefit, is the assigned support that is collected by the IV-D agency considered child support program income which must be used to offset IV-D program expenditures?

R11. No. In the situation described, these collections are not income to the Federal IV-D program. The case is treated in all respects as if it were a voluntary application for services under section 454(4)(A)(ii). An application for services must be taken, fees must be paid as required, and support is distributed pursuant to Federal requirements.

EFFECTIVE: Immediately

INQUIRIES: Inquiries should be directed to the appropriate ACF OCSE or TANF Regional Program Managers

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