DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 301, 302, 303 and 304

RIN 0970–AC24

Child Support Enforcement Program

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services

ACTION: Final rules.

SUMMARY: These rules implement provisions of title IV–D of the Social Security Act (the Act) as amended by the Deficit Reduction Act of 2005, Public Law 109–171 (DRA). The rules address use of the Federal tax refund offset program to collect past-due child support on behalf of children who are not minors, mandatory review and adjustment of child support orders for families receiving Temporary Assistance for Needy Families (TANF), reduction of the Federal matching rate for laboratory costs incurred in determining paternity, States' option to pay more child support collections to former-assistance families, and the mandatory annual $25 fee in certain child support enforcement (IV–D) cases in which the State has collected and disbursed at least $500 of support to the family. The rules also make other conforming changes necessary to implement changes to the distribution and disbursement requirements.

DATES: *Effective Dates:* These rules are effective February 9, 2009.

FOR FURTHER INFORMATION CONTACT: Paige Hausburg, Policy Specialist, OCSE, 202–401–5635, e-mail: *paige.hausburg@acf.hhs.gov.* Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. eastern time.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

These final rules are published under the authority granted to the Secretary of the U.S. Department of Health and Human Services (the Secretary) by section 1102 of the Act, 42 U.S.C. 1302. Section 1102 authorizes the Secretary to publish rules that may be necessary for the efficient administration of the functions for which he is responsible under the Act. The Deficit Reduction Act of 2005 (DRA), Title VII, Subtitle C—Child Support, sections 7301–7311 amends title IV–D of the Act.

Section 7301(b) of the DRA amends section 457 of the Act and the requirements for distribution of support payments to allow States to opt to increase child support payments to families and simplify child support distribution rules. We made minor conforming changes to the distribution requirements in these rules.

Section 7301(f) of the DRA amends section 464 of the Act to eliminate the restriction of access to the Federal tax refund offset program to disabled adult children and to allow States to collect past-due child support certified for offset to the Secretary of the Treasury on behalf of all children in the IV–D program who are not minors.

Section 7302 of the DRA amends section 466(a)(10) of the Act to require States to review and, if appropriate, adjust child support orders in cases receiving TANF at least once every three years. Previously, States needed only to review orders and adjust them, if appropriate, upon the request of either parent or, if there is an assignment of rights, upon the request of the State agency.

Section 7308 of the DRA amends section 455(a)(1)(C) of the Act to reduce the Federal reimbursement for the costs of genetic testing incurred in determining paternity from 90 percent to 66 percent of State IV–D program expenditures, effective October 1, 2006.

Section 7310 of the DRA amends section 454(6)(B) of the Act to require States to impose an annual fee of $25 in the case of an individual who has never received assistance under a State program funded under title IV–A of the Act and for whom the State has collected at least $500 of support. These rules also excludes from the fee those individuals who are receiving or have received Tribal IV–A assistance. This will have a minor impact on the program and it is consistent with the intent of the $25 fee that it not be imposed on the families who are the most at risk, *i.e.*, those who have received assistance under title IV–A of the Act. As discussed later in this preamble, Tribal IV–A assistance is not explicitly mentioned in the statute but is authorized under title IV–A of the Act. In addition, we amended these rules to prohibit collection of the $25 annual fee from individuals who are required to cooperate with the IV–D program as a condition of Food Stamp eligibility as defined at 7 CFR 273.11(o) and (p). In these cases, the fee would need to be collected from the non-Food Stamp eligible parent or to be paid by the State.

II. Summary Description of Regulatory Provisions and Changes Made in Response to Comments

The following is a summary of the regulatory provisions included in this final rule. The Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on January 24, 2007 (72 FR 3093). The comment period ended March 26, 2007.

Changes made in response to comments are discussed in more detail under the Response to Comments section of this preamble.

PART 301—STATE PLAN APPROVAL AND GRANT PROCEDURES

Section 301.1—General Definitions

Under § 301.1, the definition of *past-due support* and *qualified child* were amended. The changes in the definitions implement revised section 464(c) of the Act to eliminate the restriction of access to the Federal tax refund offset program to disabled adult children and to allow States to collect past-due child support certified for offset to the Secretary of the Treasury on behalf of all children in the IV–D program who are not minors. The definition of *past-due support* now reads: ''Past-due support means the amount of support determined under a court order or an order of an administrative process established under State law for support and maintenance of a child, or of a child and the parent with whom the child is living, which has not been paid. Through September 30, 2007, for purposes of referral for Federal tax refund offset of support due an individual who is receiving services under § 302.33 of this chapter, past-due support means support owed to or on behalf of a qualified child, or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent.''

The definition of *qualified child* now reads: ''*Qualified child,* through September 30, 2007, means a child who is a minor or who, while a minor, was determined to be disabled under title II or XVI of the Act, and for whom a support order is in effect.''

PART 302—STATE PLAN APPROVAL REQUIREMENTS

Section 302.32—Collection and Disbursement of Support Payments by the IV–D Agency

These rules make conforming changes to language in § 302.32 for consistency with certain changes made to sections 454 and 457 of the Act. Under new

section 454(34) of the Act, effective October 1, 2009, or up to a year earlier at State option, States have a choice to distribute collections first to satisfy support owed to families in IV–D cases. The rules make technical changes in §§ 302.32(b)(2)(iv) and (3)(ii) to delete reference to a specific statutory requirement for payments to families to simplify the language.

Section 302.33—Services to Individuals Not Receiving IV–A Assistance

Section 7310 of the DRA adds a new requirement in section 454(6)(B)(iii) of the Act to require States to impose an annual fee of $25 in the case of an individual who has never received assistance under a State program funded under title IV–A of the Act and for whom the State has collected at least $500 of support.

Under the proposed rule, § 302.33(e)(1) required that in the case of an individual who has never received assistance under a State or Tribal program funded under title IV–A of the Act and for whom the State has collected at least $500 of support in any given Federal fiscal year, an annual fee of $25 for each case in which services are furnished be imposed by the State. The structure of paragraph (e)(1) has been changed for clarity and a number of changes were made to (e)(1) in response to comments. We clarified in paragraph (e)(1)(i) that the first condition for the fee requirement is that the State has ''collected and'' disbursed at least $500 of support to the family. The proposed rule at § 302.33(e) did not specify that the State ''collected'' the money prior to disbursement to the family. In response to comments, we clarified in § 302.33(e)(1)(ii) that ''assistance'' includes former AFDC program assistance, assistance under a State TANF program as defined in the TANF rules at 45 CFR 260.31, and assistance under a Tribal TANF program is defined in the TANF rules at 45 CFR 286.10.

We also amended these rules at § 302.33(e)(3)(i) to prohibit collection of the $25 annual fee from a foreign obligee in an international case receiving IV–D services under section 454(32)(C) of the Act and individuals who are required to cooperate with the IV–D program as a condition of Food Stamp eligibility as defined at 7 CFR 273.11(o) and (p). In response to comments that the Federal statute allows a fee, charged to the noncustodial parent, to be retained from the collection, we revised paragraph (e)(3)(i) to cross-reference § 302.51(a)(5) which specifies the conditions under which the noncustodial parent may be charged the fee and the fee retained from a child support collection. Therefore, with respect to the collection of the $25 fee, a noncustodial parent need not have designated a portion of the support payment as the fee. We also amended § 302.33(e)(3)(ii) and (iii) to prohibit collection of the fee from individuals who are required to cooperate with the IV–D program as a condition of Food Stamp eligibility as defined at 7 CFR 273.11(o) and (p).

Section 302.51—Distribution of Support Collections

Section 7301(b) of the DRA amended section 457(a)(3) of the Act to require a State to pay to a family that has never received assistance under a title IV–A or IV–E program the portion of the amount collected that remains after withholding any $25 annual fee. This statutory requirement is addressed in this final rule by an amendment to § 302.51(a)(1) and by adding paragraph (a)(5).

The State plan requirement in section 454(34) of the Act concerning collection and distribution of support payments by the IV–D agency that requires a State to certify which option for distribution it chooses for collections in former-assistance cases is in the final rule at § 302.51(a)(3)(i) and (ii). In response to comments concerning an exemption from the fee for certain individuals required to cooperate with the IV–D program as a condition of Food Stamp eligibility, and the change to the rules at § 302.33(e)(3) to allow an annual $25 fee to be charged to the noncustodial parent and retained from a support collection under certain circumstances, we also revised the language in proposed § 302.51(a)(5) for consistency.

Section 302.70—Required State Laws

Section 7302 of the DRA amended section 466(a)(10) of the Act to require States to enact laws requiring the use of procedures to review and, if appropriate, adjust at least once every three years, child support orders for families receiving TANF in which there is an assignment of support under title IV–A of the Act. For consistency with section 466(a)(10) of the Act, these rules revise § 302.70(a)(10), under which the State must have in effect laws providing for the review and adjustment of child support orders. The requirements in current §§ 302.70(a)(10)(i) and (ii) are rendered obsolete by this final rule.

PART 303—STANDARDS FOR PROGRAM OPERATIONS

Section 303.7—Provision of Services in Interstate Title IV–D Cases

Section 454(6) of the Act as amended by section 7201 of the DRA does not specifically address which State is to impose and collect the $25 annual fee in accordance with the new requirement at § 302.33(e) in an interstate title IV–D case. Using the Secretary's rulemaking authority in section 1102 of the Act, this final rule amends § 303.7(e) to require that the title IV–D agency in the initiating State impose the annual $25 fee in accordance with the new requirement in § 302.33(e). The change is necessary to ensure consistency in the collection of the mandatory annual $25 fee in interstate cases.

Section 303.8—Review and adjustment of child support orders

Section 7302 of the DRA revised section 466(a)(10) of the Act to require States to review and, if appropriate, adjust orders in State title IV–A cases at least once every three years. In response to comments we amended these rules at § 303.8(b)(1) to clearly indicate that the time frame for the review of the order begins with the establishment of the order or the most recent review of the order, whichever is later.

Section 303.72—Request for Collection of Past-Due Support by Federal Tax Refund Offset

Section 7301(f) of the DRA amended the definition of ''past-due support'' at section 464(c) of the Act to allow, effective October 1, 2007, arrearages owed to adult children to be submitted for Federal tax refund offset. We amended the regulatory language at § 303.72(a)(3)(i), with respect to past-due support owed in cases in which the IV–D agency is providing services under § 302.33, to allow support owed to or on behalf of a child, or a child and a parent with whom the child is living if the same support order includes support for the child and the parent, to be submitted for Federal tax refund offset effective October 1, 2007. Therefore, the prior restriction from submitting past-due support owed to adult children is no longer in effect.

Section 7301(b)(2)(C) of the DRA amended section 454(34) of the Act, with respect to distribution options, to allow a State to choose either to apply amounts collected, including amounts offset from Federal tax refunds, to satisfy any support owed to the family first or to continue to distribute Federal tax refund offset amounts, as under current section 457(a)(2)(B)(iv), to

satisfy any past-due support assigned to the State first. This final rule revises § 303.72(h)(1) to refer simply to distribution in accordance with section 457 of the Act, and effective October 1, 2009, or up to a year earlier at State option, in accordance with section 454(34) of the Act, under which States elect which distribution priority in former-assistance cases to use under their IV–D programs.

In response to comments, proposed § 303.72(h)(3)(i) is revised to continue the requirement that a IV–D agency, except as provided in paragraph (ii), must inform individuals receiving services under § 302.33 in advance that amounts offset will be applied to satisfy any past-due support which has been assigned to the State and submitted for Federal tax refund offset. States may opt to continue to distribute in this manner with respect to collections made as a result of Federal tax refund offset. However, a State may opt, under section 454(34) of the Act, to apply amounts offset first to satisfy any current and past-due support which is owed to the family. Therefore, the regulatory language at § 303.72(h)(3)(ii), was changed to make clear that States are not required to send such notices if the State chooses the distribution option allowed under 454(34) of the Act.

PART 304—FEDERAL FINANCIAL PARTICIPATION

Section 304.20—Availability and Rate of Federal Financial Participation

Section 7308 of the DRA amends section 455(a)(1)(C) of the Act by reducing the previously enhanced Federal matching rate for laboratory costs to determine paternity from 90 percent to 66 percent, effective October 1, 2006. Accordingly, we revised § 304.20(d) to reflect the reduction in the matching rate for genetic testing costs for the determination of paternity.

Response to Comments

We received 28 letters from States, Tribes, advocacy groups, and other interested individuals. Below is a summary of the comments and our responses.

General Comments

1. *Comment:* One commenter said that the proposed rules are detrimental to the children and families that are being served by the IV–D program and that they are contradictory to the public policy of improving the lives of children and families.

Response: These rules reflect the statutory requirements of the DRA. We believe that the mandates and authorities in the DRA will have positive effects for families receiving child support enforcement services in that the changes in the law build on the successes of the 1996 welfare reform law, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), in strengthening families and promoting responsibility. The DRA provisions reflect the need for responsible deficit reduction while still retaining generous Federal funding of the child support enforcement program.

2. *Comment:* One commenter requested that an updated version of Action Transmittal 06–01, *Child Support Provision in the Deficit Reduction Act of 2005 (DRA),* dated May 7, 2006, be provided with Federal guidance on all of the DRA provisions. For example, section 7302 of the DRA which addresses assignment and distribution, has many aspects on which States need Federal guidance. Another commenter urged OCSE to provide guidance on distribution changes.

Response: We do not believe updating AT–06–01 is appropriate. We have worked diligently since March of 2006 to provide guidance to States in an effort to assist them in implementing the mandates of the DRA.

3. *Comment:* Two commenters asked how long States will have after the publication of these final rules to align IV–D computer data system designs to comply with the final Federal rules.

Response: The requirements of these final rules are effective 60 days from the date of publication.

There is no specific mandate that these statutory provisions be automated. With respect to the DRA requirements, States must meet the statutory effective date for each provision, subject to the authorized delay date: If the State requires legislation to meet the requirements imposed by the mandates of the DRA, the effective date of the amendments shall be 3 months after the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that began after the date of the enactment of the DRA (February 8, 2006). In the case of a State that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature. We recommend that should a State need to make changes to its automated system, those changes be made as soon as possible.

4. *Comment:* One commenter asked if OCSE will impose specific automated systems programming requirements on States that choose to pay the annual $25 fee themselves.

Response: OCSE is not imposing specific programming requirements on States that choose to pay the fee themselves. When these rules are published in final, States will already be imposing the $25 annual fee. Any changes to the way the State is imposing the fee that are required as a result of publication of the final rules should be made consistent with the effective date of the rules. States will not be penalized for systems changes for fee procedures they implement prior to issuance of these final rules that are reasonable and consistent with the statutory fee language. However, the effective date of these rules is 60 days from the date of publication in the **Federal Register** .

5. *Comment:* One commenter asked if the Secretary's rulemaking authority permits the Secretary to convert a mandatory fee assessed on the custodial parent, noncustodial parent, applicant, or State to a mandatory fee on the State in light of the fact that the State must pay the Federal portion of the fee to the Federal government if it is not collected through other means. The commenter said that Executive Order 12612, section three limits Federal action to instances where Constitutional authority for the action is clear and certain. The final rules should include the bases on which the Administration claims the Congressional intent behind the mandatory assessment of a fee translates to a requirement for a State to pay a program fee to the Federal government that was otherwise not collected.

Response: The Federal responsibility is to ensure that Congressional intent is met. Requiring a State to charge the fee, but allowing a State to assert that collection efforts were unsuccessful would contravene the intent of the mandate.

6. *Comment:* One commenter stated that the Federal funding cuts imposed by the DRA are likely to tax the State IV–D agencies to such an extent that services and outreach to employers will suffer.

Response: The Federal funding of the IV–D program is generous and we expect that services to families and outreach to employers will not suffer. The Federal OCSE has an office that specifically works to provide outreach to employers. To access the internet site with information relevant to employers, please go to: *http://www.acf.hhs.gov/programs/cse/newhire/employer/home.htm*.

PART 301—STATE PLAN APPROVAL AND GRANT PROCEDURES

Section 301.1—General Definitions

1. *Comment:* One commenter said that in the discussion of § 301.1 of the proposed rule, the preamble says: ''this amendment will allow collection of past-due child support * * * on behalf of individuals who were owed child support as children but then aged out of the system without having collected the full amount of support owed to them'' and implies that the now emancipated child has the right to collect past-due support through the Federal tax refund offset program, not the custodial parent to whom the support was ordered to be paid.

Response: The provision allows IV–D cases with arrearages owed to emancipated minors to benefit from the highly successful Federal tax refund offset program. It does not impact the payee under the support order.

2. *Comment:* The wording of the definition of ''past-due support'' suggests the law change applies to cases where the children are minors as of October 1, 2007, and the authority for States to intercept arrearages for emancipated children only applies to children that reach majority after October 1, 2007. If this isn't the case, we suggest: ''*Effective October 1, 2007, past-due support accrued under a valid order for a qualified child can be submitted for FITRO [Federal Income Tax Refund Offset] until the past-dues support is paid in full.*''

Response: We have not changed the definition as suggested by the commenter. As drafted, the only limitation was with respect to past-due support submitted for offset until September 30, 2007. Subsequent to that date the definition of past-due support is no longer limited to support owed to a ''qualified child'' in a non-assistance case. A ''qualified child'' was, through September 30, 2007, a child who is a minor or who, while a minor, was determined to be disabled under title II or XVI of the Act, and for whom a support order is in effect.

3. *Comment:* One commenter asked that OCSE confirm that there is no requirement to distinguish between cases referred for tax refund offset under rules effective until September 30, 2007, and those referred for offset after October 1, 2007, because of the change to the definition of ''past-due support.'' Two commenters questioned whether the definition could be interpreted to mean that persons owed child support for non-minor children may apply for IV–D services to gain access to the Federal tax refund offset program without having received IV–D services when the child was a qualified child.

Response: There is no requirement to distinguish between cases referred for tax refund offset under rules effective until September 30, 2007, and those referred for offset after October 1, 2007, because of the change to the definition of ''past-due support.''

As of October 1, 2007, States may submit past-due support for any case that meets submittal requirements regardless of whether the past-due support is owed on behalf of a minor. The statute defines ''past-due support'' as the amount of a delinquency, determined under a court order, or an order of administrative process established under State law, for support and maintenance of a child (whether or not a minor), or of a child (whether or not a minor) and the parent with whom the child is living. The statute does not limit referral for Federal tax refund offset to past-due support owed in pre-existing IV–D cases or to cases in which IV–D services were provided while the obligee was a minor. Past-due support in a IV–D case may be submitted for Federal tax refund offset if it otherwise meets existing criteria in § 303.72(a).

4. *Comment:* One commenter asked if allocation, distribution, and disbursement could be defined in § 301.1, rather than in the preamble to § 302.32.

Response: We have not adopted the commenter's suggestion. We do not believe it is appropriate to add definitions of these terms in this final rule without allowing the public an opportunity to first comment on proposed definitions. However, as discussed in the preamble to the NPRM, the term ''distribution'' refers to how a support collection is allocated between families and the State and Federal government in accordance with Federal requirements. The term ''disbursement'' refers to the act of paying, by check or electronic transfer, support collections to families. The term ''allocation'' was never defined in the preamble to the NPRM, but was used in describing distribution. In that context, ''allocated'' refers to the apportionment of collections between or among different IV–D cases, or among various obligations within a support order (for example, withheld income between two income withholding orders for the same employee, or within the same case, child support and medical support, or child support and spousal support.)

5. *Comment:* One commenter stated that depending on how the Internal Revenue Service (IRS) will amend its rule of the definition of *qualified child* at 31 CFR 285.3, OCSE should delete the qualified child definition and restructure the past-due support definition to read: *Past-due support means the amount of the support determined under a court order or an order of an administrative process established under State law for support and maintenance of a child, or of a child and the parent with whom the child is living, that has not been paid. For purposes of cases referred prior to October 1, 2007, for Federal income tax refund offset of support due an individual who is receiving services under § 302.33 of this chapter, past-due support means support owed to or on behalf of a child who is a minor or who, while a minor was determined to be disabled under title II or XVI of the Act, and for whom a support order is in effect.*

Response: We believe it is appropriate to include the definition of qualified child in IV–D program rules because States and families are familiar with that term.

The Department of Treasury's Financial Management Service amended rules at 31 CFR 285.3 in accordance with section 7301(f) of the DRA by removing the definition of ''qualified child''. The rules were published in the **Federal Register** on October 22, 2007 (72 FR 59480), *http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/07-5175.pdf.*

6. *Comment:* One commenter supported the definition to allow use of the Federal tax refund offset program to collect past-due child support on behalf of children who are not minors. The commenter estimates that in his State an additional 3,631 cases will be eligible for offset and projects that this will generate over $2 million in collections in the caseload with emancipated children. Other commenters supported the changes that allow a State to continue to intercept Federal tax refunds in cases where children are no longer minors and where there are still arrearages owed to the custodial parent and/or the child.

Response: We agree that this change will garner much needed support for families not able to use this enforcement technique in the past and appreciate the support of the commenter. States have certified over 900,000 additional cases for Federal Tax Refund Offset, providing a tremendous boost to support collections for families for years to come. We expect to receive an additional $200 million in collections during processing year 2008.

PART 302—STATE PLAN APPROVAL REQUIREMENTS

Section 302.32—Collection and Disbursement of Support Payments by the IV–D Agency

1. *Comment:* Do States under proposed § 303.72 have the option to continue to keep the exception that allows Federal tax refund offsets to be applied first to satisfy any past-due support which has been assigned to the State or to choose to distribute the money in accordance with the rules under section 457 of the Act as amended by the DRA, which would allow the offset to be paid to the family first?

Response: Yes. Under current section 457(a)(2)(B)(iv) of the Act governing distribution of offsets in former-assistance cases, Federal tax refund offset collections must be distributed to arrearages only, and must be applied first to any arrearages assigned to the State to reimburse public assistance paid to the family. If a States chooses the new distribution sequence for former-assistance cases under revised section 457 of the Act, the State must distribute Federal tax refund offset collections to satisfy any unpaid current support and arrearages owed to families first before retaining offset amounts to satisfy arrearages assigned to the State.

States will be required to update State Plan Pre-Print page 2.4, *Collection and Distribution of Support Payments,* to indicate which option for distribution in former-assistance cases the State has adopted. The statute provides authority to States to make choices among a number of options which impact the amount of collections families receive. State choices may well vary.

Section 302.33—Services to Individuals Not Receiving Title IV–A Assistance General

1. *Comment:* One commenter encouraged OCSE to ensure that the final rule and the preamble to the final rule implementing the fee be as simple and flexible as possible. The commenter is concerned that if the rules for imposing and collecting the fee become too detailed or complex, it will become more difficult for State governments to collect the fees. OCSE should provide general guidance and leave States the flexibility to determine how the rule applies in specific case scenarios.

Response: OCSE has a longstanding partnership with States and the approach to developing rules and working with the States supports flexibility for State choices. We have responded to questions concerning some specific case scenarios in this section of the preamble.

2. *Comment:* One commenter is concerned with the fact that States must implement the $25 annual fee prior to issuance of the final rules. The cost could be significantly increased depending on the content of the final rules and could result in additional systems programming changes.

Response: As stated in DCL–06–16, section 7310 of the DRA amends section 454(6) of the Act to provide that a State child support plan must provide for the imposition of an annual fee of $25 in each case in which an individual has never received assistance under a State program funded under title IV–A of the Act and for whom the State has collected at least $500 of support, effective October 1, 2006.

In order to certify compliance with this new requirement, States are required to submit a State plan amendment certifying to the Secretary that the State has implemented the $25 annual fee requirement by the effective date in the particular State. States will not be penalized for fee procedures they implement to meet the statutory effective date that are reasonable and consistent with the statutory fee language. Additional changes for compliance with the final rule may be necessary and States must make any necessary changes required under the final rules. The effective date of the rule is 60 days from the date of publication.

Annual $25 Fee—Section 302.33(e)(1)

1. *Comment:* Four commenters asked for the definition of ''never-assistance'' for purposes of assessing the fee. Another commenter said that proposed § 302.33(e)(1) states that receipt of any type of TANF assistance exempts an individual from the $25 mandatory fee. The commenter goes on to say that OCSE–AT–99–10 includes types of IV–A benefits not included in the explanation of never-assistance in the proposed rule, and therefore not exempt from the fee. If a case receives assistance as defined in AT–99–10, but is not referred to the IV–D agency, the IV–D agency may not know whether the fee is required. One commenter opposed allowing an exemption from the fee for those cases which do not meet the definition of ''assistance'' at 45 CFR 260.31.

Response: We have determined that a definition of the term ''never-assistance'' is not appropriate because that term has different connotations within the IV–D program depending on the context in which it is used. OCSE–AT–99–10 transmitted the definition of ''assistance'' found in the TANF program rules. The term ''assistance'' is appropriately defined in the rules governing the TANF program and specifies what services are included in the definition of ''assistance'' as well as what benefits are not considered TANF assistance. Assistance is defined in the TANF rules at 45 CFR 260.31 as:

''(a)(1) The term ''assistance'' includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).

(2) It includes such benefits even when they are:

(i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and

(ii) Conditioned on participation in work experience or community service (or any other work activity under Sec. 261.30 of this chapter).

(3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and child care provided to families who are not employed.

(b) It excludes:

(1) Nonrecurrent, short-term benefits that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of the Act, to an individual who is not otherwise receiving assistance.

(c) The definition of the term assistance specified in paragraphs (a) and (b) of this section:

(1) Does not apply to the use of the term assistance at part 263, subpart A, or at part 264, subpart B, of this chapter; and

(2) Does not preclude a State from providing other types of benefits and services in support of the TANF goal at Sec. 260.20(a).''

In response to comments, the proposed rules at § 302.33(e)(1) have been amended to add reference to the receipt of assistance under the former AFDC programs as well as to include a cross-reference to the TANF rules definitions of assistance at 45 CFR 260.31. For consistency with the inclusion of the cross-reference to the definition of TANF assistance, we also included a cross-reference to the definition of Tribal TANF assistance 45 CFR 286.10.

2. *Comment:* One commenter asked if the Federal rules could be interpreted to indicate that the fee is not assessed any time there is an assignment of support rights to the State as a condition of receiving assistance under Title IV–A of the Act. The commenter also asked if the final rules will allow individual States to determine the definition of ''never IV–A assistance cases.''

Response: The answer to both questions is no. The Federal statute at section 454(6) of the Act does not limit those who are exempt from the fee to those who have assigned their support rights to the State under a State TANF program. We believe that a cross-reference to a definition of assistance in these rules is critical to ensure consistency across State IV–D programs. Any individual who is required to cooperate with the IV–D program as a condition of Food Stamp eligibility as defined at 7 CFR 273.11(o) and (p) will not be charged the fee (although, if all other conditions are met—an individual in the case receiving IV–D services has never received State AFDC, State or Tribal TANF assistance, and the State has collected and disbursed at least $500 of support to the family— the other parent or the State may ultimately be responsible for paying the fee). This is discussed in more detail later in the preamble. In addition, the TANF rules exclude from the definition of ''assistance'' under the TANF program, anything in 45 CFR 260.31(b)(1)–(7). If the only TANF benefits received by an individual fall into the categories listed in 45 CFR 260.31(b)(1)–(7), those individuals would not be considered to be receiving or to have received assistance under title IV–A of the Act unless they received assistance under the former AFDC program. Therefore, those individuals are subject to the fee if all other conditions for collecting the fee are met.

3. *Comment:* One commenter appreciated that OCSE has proposed a broad definition of IV–A assistance in order to allow States to exempt as many families as possible from the fee. However, this definition is broader than the definition of ''IV–A assistance paid to the family'' set forth in OCSE AT 99–10. Some States will only be able to identify families receiving assistance under this narrower definition, which essentially covers those who have been paid cash assistance and had their cases referred to the IV–D agency. We recommend that OCSE permit State flexibility in this area, so that States must exempt from the fee those cases in which IV–A assistance has been paid to the family, but may exempt cases receiving the broader type of IV–A benefits, as defined at 45 CFR 260.31(b), when a State can easily identify these cases.

Response: As discussed earlier, the definition of assistance under the State and Tribal TANF program rules is appropriate and a cross-reference has been added to ensure consistency among State definitions and similar treatment of families regardless of the State in which they live. Individuals in TANF cases that only receive benefits excluded from the TANF definition of assistance in 45 CFR 260.31 do not assign rights to support and should not be referred to the IV–D agency. An application for IV–D services would be required in such cases to be considered a IV–D case. See PIQ–05–06, dated December 22, 2005 [*http://www.acf.hhs.gov/programs/cse/pol/PIQ/2005/piq-05-06.htm*], for treatment of inappropriately referred cases.

4. *Comment:* One commenter wanted to know whether to assess the fee on a case that had received IV–A assistance, as defined by AT 99–10, but was not referred by the IV–A agency to the IV–D agency.

Response: Referral by the IV–A agency is irrelevant to the imposition of the $25 fee. If there is a IV–D case that otherwise meets the conditions for the imposition of the fee, the case is subject to the fee.

5. *Comment:* Two commenters stated that tracking whether someone (for example, in an interstate case) is receiving Tribal IV–A assistance will be problematic since many State IV–D agencies do not electronically communicate with Tribes. The commenter asked for suggestions for overcoming this barrier. One commenter proposed that OCSE require States to establish procedures so all former or current Tribal TANF clients can inform the State of their TANF status, so a State does not inadvertently impose the fee.

Response: Although States may not electronically communicate with Tribes operating Tribal TANF programs, ascertaining whether an individual has received Tribal IV–A assistance is not an insurmountable barrier. As the IV–D caseworker is soliciting information from the custodial parent in an application case, questions specific to receipt of IV–A assistance should be asked. States may want to develop specific questions related to IV–A assistance and benefits to determine what type of IV–A assistance, if any, a custodial parent or a child in the family receives/received. IV–D agencies will have necessary case records to identify current TANF cases referred to the IV–D agency and former TANF cases that continue to receive IV–D services. If a custodial parent tells the IV–D office that he or she or the child received Tribal IV–A assistance, the State would need to contact the Tribal IV–A office to confirm receipt of Tribal TANF. By the close of FY 2006, 52 Tribal TANF plans were approved to operate on behalf of 236 Tribal and Alaskan Native Villages. If a State finds it necessary to confirm receipt of Tribal TANF, the Tribal TANF contact list may be accessed on the ACF Internet via: *http://www.acf.dhhs.gov/programs/dts/ttanfcont_1002.htm* and, as appropriate, the exemption from the fee noted in the IV–D case record.

This situation may not occur in many cases. The State would only be required to verify whether an individual received this assistance in instances in which an individual had asserted that he or she had received or is receiving Tribal TANF. States should document in the case record whether an exemption is appropriate.

6. *Comment:* Three commenters asked for clarification on how to ascertain if an applicant for IV–D services formerly received or currently receives TANF. Another commenter said that the NPRM does not clarify the level of documentation a State IV–D program needs to exempt a case from a fee if a custodial parent says he or she received AFDC or TANF in another State or Tribal program. Such verification could include documentation from another State agency or language in a court order. The commenter suggested that if the IV–D agency receives a sworn statement from the custodial parent stating the parent received IV–A assistance in another State, that would be sufficient documentation for the family and for the State and Federal government. This would be comparable to requirements for signatures for the Federally approved interstate form ''Affidavit in Support of Establishing Paternity'' and a signature of a parent on a paternity acknowledgement under 42 U.S.C. 652(a)(7).

Response: In order for a State to determine that an individual never received assistance under a State or Tribal IV–A plan, the State should ask the individual applying for services. Current State TANF recipients do not apply for IV–D services. The State may also confirm with the State or Tribal IV–A program to ensure that assistance has not been provided. However, States are not required to have a confirmation from every State that the client has never received assistance; contacting the State or Tribal program named by the applicant would be sufficient.

Some States may determine it is in the best interest of the individual and for documentation purposes to develop a procedure for instances in which an individual claims receipt of TANF in another State. A State may consider a sworn statement from the custodial parent stating the parent received qualifying assistance under a former State AFDC program or the current TANF program (with the exception of emergency assistance as defined in 45 CFR 260.31(b)(1)–(7)) in another State to be adequate documentation for exemption from the fee.

7. *Comment:* One commenter recommended providing instructions to address situations such as when the individual custodial parent who has never received assistance as defined under § 302.33(e)(1) has a IV–D case and moves from one State where the fee is paid by the State, and applies for services in another State that collects the fee from the noncustodial parent or retains the fee from the collection made for the custodial parent, during the same fiscal year. The commenter asked for clarification as to whether both States will be required to impose the fee during the same fiscal year, regardless of which collection method or methods are used.

Response: In such a situation, the second State may document in the case record that the previous State collected the fee. The $25 annual fee may be imposed and paid or collected only once per year in a case in which the fee is assessed, regardless of where the individual lives. A sworn statement from a custodial parent would not be adequate in this instance because the State may have absorbed the fee or the noncustodial parent may have paid the fee without the custodial parent's knowledge. A IV–D agency should ask each applicant for services if the fee has already been collected or paid for the year. If an individual moves to a different State, the second State should confirm with the first State that the fee was collected or paid by the State and document that the fee was accounted for or paid to another State.

8. *Comment:* One commenter believes that the Food Stamp Act prohibits the collection of the annual $25 fee on Food Stamp-only cases when the State has elected to require IV–D services for families who receive food-stamps.

Response: The Food Stamp rule at 7 CFR 273.11(o)(1), *Option to disqualify custodial parent for failure to cooperate* provides the State Food Stamp agency the option to disqualify, or make ineligible for the Food stamp program an individual who refuses to cooperate with a State IV–D agency. This section further clarifies that if the State Food Stamp agency chooses to implement the provision to disqualify an individual for non-cooperation with the State child support agency, it must refer all appropriate individuals to the IV–D agency to establish paternity of the child and establish, modify, or enforce a support order with respect to the child and the individual in accordance with the cooperation provision in section 454(29) of the Act. If the individual is receiving TANF or Medicaid, or assistance from the State IV–D agency, and has already been determined to be cooperating, or has been determined to have good cause for not cooperating, then the State agency shall consider the individual to be cooperating for Food stamp purposes. Section 273.11(o)(4) of Title 7 says that a State agency electing to implement the provision to disqualify a custodial parent for failure to cooperate shall not require the payment of a fee or other costs for services provided under Part D of title IV–D of the Social Security Act. The Food Stamp agency issued guidance on August 22, 2007, to States to explain the impact of the fee provision in the DRA on the Food Stamp program. OCSE transmitted this through IM–07–09, dated September 24, 2007. This may be viewed at *http://www.acf.dhhs.gov/programs/cse/pol/2007-im.html*.

We are aware of five States that have opted to require cooperation by the custodial parent with the IV–D program in order to be eligible to receive Food Stamp services. Those States are Idaho, Wisconsin, Michigan, Mississippi, and Florida. Of those five States, Mississippi and Wisconsin also require cooperation by the noncustodial parent with the IV–D program in order to receive Food Stamp services.

The commenter asks whether it is a correct interpretation of the Food Stamp Act that in a ''Food Stamp-only'' case the IV–D agency will not require the payment of a fee or other costs for services provided under title IV–D of the Act. In a IV–D case in which the custodial parent is required to cooperate with the IV–D agency in order to be eligible for Food Stamps, even when the IV–D case otherwise meets the criteria for the imposition of the fee, the fee may not be assessed against the custodial parent. However, the statute provides four options for payment of the fee. In this instance, the fee would be required to be paid either by the State, by the noncustodial parent or charged to the noncustodial parent and deducted from a collection after current support and any payment on arrearages for the month under a court or administrative order have been disbursed to the family.

In instances in which the noncustodial parent in a IV–D case is receiving Food Stamps and is required to cooperate with the IV–D agency, if the custodial parent in the same case is not receiving Food Stamps, and the case otherwise meets the criteria for the fee assessment (i.e., an individual in the case receiving IV–D services has never received State AFDC, State or Tribal TANF assistance, and the State has collected and disbursed at least $500 of support to the family), the fee could be taken from the collection, charged to the custodial parent or paid by the State.

In a IV–D case in a State in which the Food Stamp agency requires cooperation with the IV–D agency and both the custodial and noncustodial parent are recipients of Food Stamps, and the case in which the noncustodial parent is involved otherwise meets the conditions for the imposition of the fee (i.e., the individual in the case has never received State AFDC, State or Tribal TANF assistance, and the State has collected and disbursed at least $500 of support to the family), the State would be required to pay the fee.

9. *Comment:* Seven commenters stated that the proposed rules are unclear on whether current or former IV–E assistance cases are exempt from the annual $25 fee assessment. These commenters believe that in some places, the proposed rules for the annual $25 fee appear not to exclude from the fee individuals who have received assistance under title IV–E while elsewhere in the rules reference to IV–E cases appears to exclude those cases from the fee. The commenters are seeking clarification on whether or not the proposed rules require the State to assess the annual fee in IV–E cases.

Response: In any current or former IV–E assistance case in which the criteria for imposition of the fee are met, a fee is required. As stated earlier, a fee is assessed for any case in which the individual has never received assistance under a former State AFDC program, or State or Tribal TANF and the State has

collected and disbursed at least $500 of support to the family. The impact of the use of the ''disbursed to the family'' regulatory language is that current IV–E cases will rarely, if ever, be subject to the fee because the family may never receive $500 in support collections in a Federal fiscal year. However, in instances in which an individual formerly received title IV–E assistance, and all conditions for imposition of the fee are met, including disbursement of $500 to the former IV–E family, then an annual fee is required.

10. *Comment:* One commenter stated that the proposed rule at § 302.33(e)(1) defines the cases charged the fee as those in which an individual has never received assistance under a State or Tribal title IV–A program, and for whom the State has disbursed to the family at least $500 of support in the fiscal year. Since one requirement for imposing the fee is that the payment is disbursed to the family and foster care payments are disbursed to a State agency, are IV–E foster care cases exempt from the fee?

Response: See preceding response. As explained in the preamble to the NPRM, the $500 in support collection must have been disbursed to the family in a title IV–D case before imposing the $25 fee because to allow otherwise would result in imposition of a fee in cases in which support is collected but not disbursed to the family. To allow the fee to be collected prior to the collection being disbursed to the family would be inconsistent with the statute's concept that a case subject to the $25 fee would have benefited from receipt of the $500 in support during the year before an annual $25 fee is imposed.

The impact of the use of the ''disbursed to the family'' regulatory language is that current IV–E cases and possibly other categories of cases, for example some former IV–E cases, will not be subject to the fee if $500 has not been disbursed to the family. We believe that this is reasonable since the family will not have received $500 in support if the support is assigned to the State and retained in whole or in part to reimburse the State and Federal government for the costs for assistance programs under the title IV–E.

11. *Comment:* One commenter asked for clarification as to whether or not cases in which an individual never received assistance under title IV–A of the Act but has received services from other means-tested programs like Food Stamps, IV–E foster care, and Medicaid are exempt from the fee. The commenter also requested confirmation that collections that are assigned and not disbursed to the family do not count towards the $500 of support in a year.

Response: As mentioned earlier in the preamble, an individual who has received assistance under a State AFDC program, assistance as defined in § 260.31 under a State TANF program, or assistance as defined in § 286.10 under a Tribal TANF program, is exempt from the $25 annual fee. As discussed above, in situations in which an individual in a IV–D case formerly received IV–E foster care services and $500 of support has been disbursed to the family that case would be subject to a fee. Similarly, Medicaid-only cases, in which child support collected is paid to the family and assigned cash medical support may be retained by the State may be subject to the fee if other conditions are met; i.e., the individual in the case has never received AFDC, State, or Tribal title IV–A assistance, is not required to cooperate with the IV–D agency in Food Stamp cases, and the State has collected and disbursed at least $500 of support to the family within the Federal fiscal year.

While the statute at section 454(6) of the Act does not specifically mention recipients of Food Stamps, individuals who are cooperating with and receiving services from the IV–D program as a condition of Food Stamp eligibility under 7 CFR 273.11(o) and (p) may not be charged the $25 annual fee. As discussed earlier, in such cases the collection of the $25 annual fee from the individual required to cooperate is prohibited. However, the fee must be assessed and accounted for if all conditions for assessing the fee are met. These final rules reflect this change to the proposed rule at § 302.33(e)(3)(i)(B), (ii) and (iii) to prohibit collecting the fee from individuals required to cooperate with the IV–D program as a condition of eligibility for Food Stamps.

12. *Comment:* One commenter stated that in the preamble, the terms ''family'' and ''caretaker relative'' are used rather than the term ''individual'' as stated in the proposed rule. The commenter asked if the determination of ''never received assistance'' is applied to any individual in the case.

Response: Yes, the determination that an individual never received assistance is applied to any individual in the case. If any individual in a IV–D case received assistance as defined in § 302.33(e), that case is exempt from the $25 annual fee.

13. *Comment:* One commenter is seeking clarification of the fee provision for title XIX Medicaid-only cases which are only receiving medical services under 45 CFR 302.33(a)(5). The proposed medical support rules will result in more orders for cash medical support in IV–D cases. Some of those IV–D cases will be Medicaid-only cases receiving IV–D services under § 302.33(a)(1)(ii). Some will already have support orders which will include a requirement for the noncustodial parent to pay both child support and cash medical support. Many will be cases in which the custodial parent has never received IV–A assistance. In some of the Medicaid-only cases, the custodial parents will inform the IV–D agency they only want medical support services, and not child support services. Because these are IV–D cases, though, all support payments under the support orders may be made through the State Disbursement Unit (SDU). However, the IV–D agency is not providing child support enforcement services, but merely receiving and disbursing child support payments through the SDU, so the custodial parent is not an individual ''for whom the State has collected at least $500 of support.''

Response: Because in these Medicaid-only cases IV–D child support services have been refused, the IV–D agency is not providing child support enforcement services to the family, but merely receiving and disbursing the child support payments through the SDU. In these cases, even when the custodial parent receives $500 of child support in the Federal fiscal year, that support is not considered to have been collected and disbursed to the family through IV–D program services and thus no fee is charged.

14. *Comment:* One commenter asked whether to assess the fee for a custodial parent who was on Medicaid one year, and the next year Medicaid ended, and the custodial parent (who declined child support enforcement services while receiving Medicaid) requests, in response to the notice, all IV–D services be provided including child support and medical support services. When the IV–D agency disburses at least $500 in the new year to the custodial parent, is a $25 annual fee due for that case that year?

Response: In accordance with 45 CFR 302.33(a)(4), whenever a family is no longer eligible for assistance under the State title IV–A, IV–E foster care, and Medicaid programs, the IV–D agency must notify the family, within 5 working days of the notification of ineligibility, that IV–D services will be continued unless the IV–D agency is notified by the family to the contrary. The notice must inform the family of the consequences of continuing to receive IV–D services, including the available services and the State's fees, cost recovery, and distribution policies.

If the scenario described by the commenter occurs, the fee would be

imposed in the case if all of the other conditions for imposing the fee are met; i.e., the individual in the case has never received AFDC, State, or Tribal title IV–A assistance, and the State has collected and disbursed at least $500 of support to the family within the Federal fiscal year. If the custodial parent or non-custodial parent is required to cooperate with the IV–D program as a condition of eligibility for Food Stamps, the fee could not be collected from such individual but could be collection from the other parent or be paid by the State.

15. *Comment:* One commenter requested that OCSE redefine public assistance in the rules to include recipients of means-tested programs outside of TANF such as Medicaid, SCHIP, and Food Stamps as exempt from the fee. Another commenter said that the proposed rules do not exempt Medicaid-only/former Medicaid-only cases from the fee and believes it is contrary to sound public policy because Medicaid-only recipients who are referred to IV–D for services do not have a choice whether or not to participate. They have limited income; Medicaid-only recipients are allowed to opt out of child support services.

Response: The Federal statute at section 454(6) of the Act does not provide for any additional categories of exempt individuals such as those who may be receiving, or who may have received in the past, other types of Federal, State or Tribal assistance. However, as discussed earlier, the impact of the use of the ''disbursed to the family'' regulatory language is that current IV–E cases and possibly other categories of cases, for example some former IV–E cases, will not be subject to the fee if $500 has not been disbursed to the family. We believe that this is reasonable since the family will not have received $500 in support if the support is assigned to the State and retained in whole or in part to reimburse the State and Federal government for the costs for assistance programs under the title IV–E. In addition, under specific circumstances, the fee would not be collected from individuals receiving Food Stamps based on language in the Food Stamp Act. *See Comment and Response 8* in this section of the preamble.

16. *Comment:* One commenter supports the exemption of individuals who have received Tribal IV–A assistance from the fee, but expressed concern that referring to Tribal IV–A programs in the State rules could lead to changes in the Tribal IV–D program. The commenter supports the protection of all Tribal individuals and programs from the demands the new rules would imply.

Response: The statute at section 454(6) of the Act and these rules do not apply to the Tribal IV–D program cases.

17. *Comment:* One commenter agrees with OCSE's decision to exempt current and former Tribal title IV–A assistance cases along with current and former State title IV–A cases from the fee.

Response: We appreciate the support of the commenter. As stated in the preamble to the NPRM, we believe that it is authorized and consistent with the purpose and the scope of the statutory exemption to exempt individuals who are receiving or have received Tribal title IV–A assistance as a subset of the category of those who are exempt from the fee.

18. *Comment:* One commenter asked if a case in which the only collection made is a Federal tax refund offset that is applied to satisfy an assigned arrearage, or a non-Federal tax refund offset that is applied to a case in which the only dollar amount owed is assigned to the Medicaid agency, is exempt from the $25 collection fee since a disbursement was not sent to the family.

Response: Yes, in the instance described, no annual fee would be due because the State had not disbursed at least $500 of support collected to the family.

19. *Comment:* One commenter asked for clarification of whether a case is eligible for the $25 annual fee if an individual in a current IV–D case had received IV–A assistance in a prior IV–D case. For example, if the noncustodial parent is currently in a case that does not qualify for the fee but formerly received AFDC as part of an entirely different family, is the current case eligible for the new $25 fee?

Response: If a noncustodial parent in a case who does not currently receive IV–A assistance formerly received assistance as part of an entirely different family, the current case is subject to the $25 annual fee if all conditions are met. The rules at § 302.33(e)(1) mandates the fee ''if there is an individual in the case to whom IV–D services are provided and for whom the State has collected and disbursed at least $500 of support in that year; who has never received assistance under a former State AFDC program, assistance as defined in § 260.31 under a State TANF program, or assistance as defined in § 286.10 under a Tribal TANF program * * *'' The collections must be disbursed to the individual receiving IV–D services. In the case of a noncustodial parent, the collections are not being disbursed to the noncustodial parent; a fee must be imposed if all of the other conditions are met (i.e., the individual in the case has never received AFDC, State or Tribal TANF assistance, or in certain Food Stamp cases, and the State has collected and disbursed at least $500 of support to the family within the Federal fiscal year).

20. *Comment:* One commenter asked whether the fee should be imposed in a IV–D case in the following situations:

- The child is the only individual in the household that has received or currently receives IV–A assistance. The custodial parent has never received assistance.
- The custodial parent received IV–A assistance as a child.
- The noncustodial parent received IV–A assistance as a custodial parent or as a child.
- The IV–A agency provides assistance or benefits to a custodial parent but there is no assignment of support rights or referral to IV–D agency.

Response: The fee requirements for the above scenarios, in the order listed are as follows:

- If the child is the only individual in the household that has received or currently receives IV–A assistance, the fee may not be imposed.
- If the custodial parent received public assistance as a child but has never received State or Tribal title IV–A assistance as an adult, the case is subject to the fee if all other conditions for imposing the fee are met (i.e., the State has collected and disbursed at least $500 of support to the family in the Federal fiscal year).
- The noncustodial parent is not an individual for whom $500 of support has been collected in the year in question. Therefore, neither the case nor the noncustodial parent is exempt from the fee even if he or she previously received IV–A assistance as a custodial parent or as a child, and the fee must be imposed if all other conditions are met.
- If the IV–A agency provides assistance to a custodial parent, a fee would not be required. If the custodial parent applies for IV–D services, qualifies for the fee and the IV–D agency collects and disburses $500 to the family in the Federal fiscal year, a fee would be imposed in this case, as the custodial parent is receiving title IV–A benefits excluded from the definition of TANF assistance at 45 CFR 260.31(b).

21. *Comment:* Four commenters supported the use of the calendar year for imposing and collecting the annual fee. These commenters indicated that charging a fee according to a calendar year is easier for the general public to understand. One commenter said that if

the fee was charged in accordance with the Federal fiscal year, the average child support order in a State is $250 per month, and the fee is collected from the noncustodial parent, then a noncustodial parent who pays current support in the first two months of the fiscal year would be assessed the fee in early December. This could impact holiday celebrations and take money from families just before Christmas. By shifting the year to calendar year, it is less likely to impact families at the December holidays. Six commenters supported the use of the Federal fiscal year and one commenter said that using a Federal fiscal year will assist States in computer re-programming because it will be consistent with current reporting of collections, disbursements, and undistributed collections on the Form OCSE–34A, Quarterly Report of Collections; with program income and expenditures reporting on the Form OCSE–396A, Child Support Enforcement Program Financial Report; and with reporting caseload size, court order percentage, and other performance measures data on the Form OCSE–157, Child Support Enforcement Annual Data Report. One commenter indicated that the definition of ''annual'' should be universal and not vary from State to State. One commenter indicated that the Federal fiscal year will best serve the State in the future, however, for the initial year the State will incur extraordinary expenses because of advance payment of the fee and the cost of technological improvement.

Response: The NPRM proposed that the annual fee be imposed and reported for the Federal fiscal year. OCSE specifically solicited comments on and a rationale for, an alternative 12-month period in order to provide more State flexibility.

While we support State flexibility, we agree that the Federal fiscal year will be more consistent with current reporting of collections, disbursements, and undistributed collections on the Form OCSE–34A, Quarterly Report of Collections; with program income and expenditures reporting on the Form OCSE–396A, Child Support Enforcement Program Financial Report; and with reporting caseload size, court-order percentage, and other performance measures data on the Form OCSE–157, Child Support Enforcement Annual Data Report. We agree with the commenter that a universal definition of ''annual'' is needed; therefore, the final rule retains the Federal fiscal year as the 12-month period in which the $25 annual fee must be imposed and reported.

22. *Comment:* Two commenters asked for States that require legislation to implement the fee, if in the first year of implementation the fee applies to all cases in which the individuals involved in the case never received title IV–A assistance and for which $500 has been disbursed to the family or if it only applies to cases in which $500 was disbursed to the family after the effective date of the State law. The commenters believe that a requirement to look at any period prior to the State's implementation date would be unreasonable and inconsistent with Congressional recognition that some States need time to obtain statutory authority for the new fee. Another commenter asked if a State is responsible for fees and program income for the entire year if the implementation date is later than the beginning of the fiscal year.

Response: The statutory effective date for the annual fee mandated in section 7310 of the DRA is October 1, 2006. If a State requires legislation in order to implement this provision, the effective date of the mandatory annual fee provision is three months after the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that began after February 8, 2006. In the case of a State that has a two-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature. The mandate for the collection of the fee does not apply to any period prior to the effective date of the State law in each State. For example, if in State A a law is needed and the legislative session for State A begins January 1, 2007 (after the February 8, 2006 enactment date of the DRA), and the close of the regular session is April 30, 2007, the fee provision must be implemented by October 1, 2007. If in State *B* a law is needed and the legislative session for State *B* begins January 1, 2007 (after the February 8, 2006 enactment date of the DRA), and the close of the regular session is December 30, 2007, the effective date for fee provision would be April 1, 2008. The State is not responsible for program income for fees for the entire fiscal year if the State's need for legislation requires that the implementation month for the $25 fee is other than the beginning of the Federal fiscal year.

23. *Comment:* One commenter said that its State legislators asked if the State could charge the annual fee to a former recipient of TANF when it has been a year since the former recipient of TANF received assistance. The commenter went on to ask if a State is limited to charging the $25 annual fee only for cases in which the individual involved never received assistance as defined under § 302.33(e) or if the State could choose to expand those cases subject to the fee.

Response: A State may not charge a former recipient of TANF the annual fee after the individual has been off TANF assistance for a year. The statute is clear that the fee is assessed in the case of an individual who has never received title IV–A assistance. An individual who has been off TANF assistance for a year is not an individual who has never received assistance under title IV–A of the Act. The State may not expand those cases which are subject to the $25 annual fee.

24. *Comment:* Seven commenters asked for clarification of whether or not to impose the fee in a case in which the individual never received State or Tribal title IV–A assistance prior to the disbursement of the $500 of support to the family for whom the support is owed, but begins to receive State or Tribal title IV–A assistance during the year after the disbursement of the $500 to the family for whom the support is owed. The commenters went on to ask for clarification in instances in which the individual becomes IV–A-eligible during a year after the fee has been collected and whether the State would be required to return the fee.

Response: If a fee has already been assessed and collected, there is no authority to reimburse the fee, because at the time the fee was assessed, the conditions for imposing the fee were met.

When the $500 of Support Threshold Is Reached—Section 302.33(e)(1)(i)

1. *Comment:* Several commenters wanted to know how the $500 support threshold will be calculated: When the money is collected or when it is disbursed to the family. The commenters are in support of calculating the threshold when the $500 is disbursed to the family. Allowing otherwise may result in imposition of the $25 fee in cases in which support is collected but not disbursed to the family, e.g. Federal tax intercepts held pending appeal which may overturn their collection. If this happens, and the State had already calculated that the $500 threshold is met from those intercepts, and collected the $25 fee amounts over the $500, the reversal of those two processes would be administratively challenging at best. In addition, the commenters believe this would be inconsistent with the concept that a family has benefited from

receiving $500 in support prior to the State receiving the annual $25 fee.

Response: We agree that the family must benefit from the receipt of the $500 collection of support made by the State before the fee is collected. It is clear in § 302.33(e)(1) that at least $500 of support must be collected and disbursed to the family prior to the imposition of the fee.

2. *Comment:* One commenter noted that the proposed rules say: ''In the case of an individual who has never received assistance under a State or Tribal title IV–A program, and for whom the State has disbursed to the family at least $500 of support * * *'' The statute says: ''* * * in the case of an individual who has never received assistance under a State program funded under Part A and for whom the State has collected at least $500 * * *''

The commenter said that the proposed rule is more prescriptive than Federal law. The final rule should use the word ''collected'' to mirror the Federal law or be changed to provide a State option to impose the annual fee either at the point of distribution or the point of disbursement.

Response: We disagree that these rules should be changed. We believe it is imperative that the family receive the $500 of support collected prior to the imposition and collection of the $25 annual fee. Collecting the annual fee prior to disbursing the child support collection means the family has not yet benefited from the collection.

3. *Comment:* Two commenters asked that OCSE define ''disbursed.'' The commenters asked if a payment received in one Federal fiscal year and held in escrow due to a pending legal matter and disbursed in the subsequent Federal fiscal year counts toward the $500 threshold in the Federal fiscal year in which the collection was made or the Federal fiscal year in which the disbursement was made. If a disbursement is held pending location of the custodial parent in one Federal fiscal year and the collection is not sent to the family until a subsequent Federal fiscal year, once the custodial parent is located, does the disbursement count toward the $500 threshold in the Federal fiscal year in which the support was collected or in the Federal fiscal year in which the custodial parent was located and the collection was disbursed? If a disbursement is returned as undeliverable in one Federal fiscal year or is lost in the mail, and the payment is received by the family due the payment in the subsequent Federal fiscal year, can a State deduct the $25 fee paid in the original Federal fiscal year from the total fee paid in the subsequent year? The commenter indicated that he thinks that the fees taken from the collections should be treated like disbursements and count toward the calculation of the $500 threshold.

Response: As stated earlier in the preamble, we did not define ''disbursement'' in § 301.1 of these rules. As noted, disbursement refers to the act of paying, by check or electronic transfer, support collections to a family. The rule language makes clear that the collection of the fee in a case in which the individual has never received assistance must occur after the $500 collection is disbursed to the family.

If a payment received in one Federal fiscal year is held in escrow due to a pending legal matter and released in a subsequent Federal fiscal year so that the disbursement of this payment also happens in the subsequent Federal fiscal year, the disbursement counts toward the $500 threshold in the Federal fiscal year in which the payment was disbursed.

If more than $500 is collected and disbursed and the $25 fee withheld in one Federal fiscal year but the disbursement to the family is returned as undeliverable in the Federal fiscal year subsequent to the year in which it was disbursed, a State may consider the $25 annual fee paid in the original Federal fiscal year as the fee paid in the subsequent year because the collection was disbursed to the family in the subsequent year and the conditions in which the $25 fee were imposed were met during the subsequent year.

We do not agree that fees taken from the collections should be treated as disbursement and count towards the calculation of the $500 because the $500 has to have been disbursed to the family. Fees taken from the $500 in collections reduce the amount disbursed to the family.

4. *Comment:* Several commenters requested clarification of the following statement: ''If $500 in support is collected in one year but not disbursed until the next year, the fee would be imposed in the year in which the collection was actually disbursed to the family.'' It is clear from this statement that if a single (and the only) $500 collection is received in one year but not disbursed until the following year; the fee would apply in the following year, because $500 is disbursed in that year. However, the statement could be read to require imposition of a fee in the following year when $500 total support is collected in one year, but only $450 is disbursed in that year, and $50 disbursed in the following year. It is clear to us that a fee should not be imposed in these circumstances, but the language of the referenced statement could imply to someone that a fee should be imposed in such a case.

Response: We agree that if only $500 is collected in one year, but the entire $500 is not disbursed to the family in the same year, there will be no fee imposed in that case for the year the $500 was collected. As stated earlier, the family must benefit from the entire $500 collection prior to the imposition and collection of the fee.

5. *Comment:* One commenter stated that the difference in the amount of fee collections would be negligible whether assessing the fee at the point of distribution or the point of disbursement and that for some States, levying the fee at the point of disbursement will be considerably more costly than imposing at the point of distribution.

Response: We believe that it is paramount that families benefit from the $500 collection prior to the imposition of the fee. Therefore, the fee must not be assessed and collected until after the disbursement of the $500 in collections to the family.

Collection of the Annual Fee: State Options To Retain, Charge, Recover or Pay the Annual Fee—Section 302.33(e)(3)

1. *Comment:* One commenter stated that if a State opts to impose the fee on the noncustodial parent, the conforming amendment made by section 7310(b) of the DRA to 42 U.S.C. 657(a)(3) allows a State to collect that fee by withholding it from collections and subsequently collecting an additional $25 in support from the noncustodial parent. The commenter stated that OCSE has a long-standing policy since 1989 precluding such withholding. The commenter believes that it is appropriate to withhold the fee from collections based on the following rationale: The DRA did amend the Federal statute on how money collected as support is distributed. The DRA amendment to section 457(a)(3) of the Act (which becomes section 457(a)(4) effective October 1, 2009, or up to a year earlier at State option) [1] allows States to take the fee from support collected before paying the rest to the family that never received assistance as defined under § 302.33(e). This applies regardless of whether the State chooses to have the custodial parent or noncustodial parent pay the fee. The 1989 policy is superseded by the new language which allows States to deduct the $25 fee

[1] Throughout the preamble, this provision will be referenced as 457(a)(4) for ease of understanding.

charged to the noncustodial parent before paying the remaining amount collected to the family. Therefore, Congress has specifically provided authority for taking the new fee from support collections and Congress did not limit that authority to instances in which only the custodial parent pays the fee.

Response: We believe that section 457(a)(3) of the Act (to become paragraph (a)(4) as explained above) can be read to allow the fee to be charged to the noncustodial parent and retained from a collection under certain circumstances. If a State opts to charge the fee to a noncustodial parent, the fee may be taken from a child support collection provided that $500 has been disbursed to the family in the Federal fiscal year, current support for the month in which the collection is received has been satisfied, and any specified arrearage payment for that month pursuant to an administrative or court order has been satisfied. In this way the family receives its current monthly support payment and an obligor who has been ordered to pay an additional amount each month to satisfy an outstanding arrearage will not fail to meet a court or administratively ordered payment. States are reminded that if they elect to collect the fee in this manner, the due process rights of the noncustodial parent must be protected.

Section 302.33(e)(3)(i) has been revised to read: ''Retained by the State from support collected in cases subject to the fee in accordance with the distribution requirements in § 302.51(a)(5) of this part, except that no cost will be assessed for such services against: (A) A foreign obligee in an international case receiving IV–D services pursuant to section 454(32)(C) of the Act; and (B) an individual who is required to cooperate with the IV–D program as a condition of Food Stamp eligibility as defined at § 273.11(o) and (p) of title 7.

Section 302.51(a)(5) has been revised to allow the fee to be collected prior to the support collection being distributed to a family that has never received assistance as defined under § 302.33(e) and now reads: ''(i) Except as provided in paragraph (a)(5)(ii), a State must pay to the family that has never received assistance under a program funded or approved under title IV–A and to an individual who is not required to cooperate with the IV–D program as a condition of Food Stamp eligibility as defined at § 273.11(o) and (p) of title 7 the portion of the amount collected that remains after withholding any annual $25 fee that the State imposes under § 302.33(e) of this part. (ii) If a State charges the noncustodial parent the annual $25 fee under § 302.33(e) of this part, the State may retain the $25 fee from the support collected after current support and any payment on arrearages for the month under a court or administrative order have been disbursed to the family provided the non-custodial parent is not required to cooperate with the IV–D agency as a condition of eligibility for Food Stamps.''

2. *Comment:* One commenter noted that the preamble to the NPRM states that the fee will reduce IV–D administrative costs. The commenter does not agree and says this is only true for the Federal government. The requirement that the State must pay the fee to the Federal government even if the State has not collected the fee is essentially a ''bill for services'' to the States from the Federal government.

Response: The State is not required to absorb the fee by paying it out of State funds. The statute provides for four options for collecting or accounting for the fee. The fee may be retained by the State from support collected on behalf of the custodial parent, paid by the custodial parent applying for services, recovered from the noncustodial parent or collected by the State out of its own funds. Regardless of which method the State chooses, the fee is reported as program income and is used to offset both the State and Federal shares of the IV–D program expenses.

3. *Comment:* One commenter stated that the rules allow four options to collect the fee and wants to know why a State must identify the exact method of collecting the fee when there are four options. The commenter suggests limiting the State plan preprint to indicate the State will impose and collect the fee and not identify the method to be used.

Response: State plan preprint pages indicate options chosen when States have authority to choose among various options. We often get requests for information on State choices with respect to the various State plan options including fee and cost recovery policy. Having this information available to us will allow us to track the information without asking the States directly. A State is free to indicate it will use more than one method to account for fees assessed.

4. *Comment:* One commenter noted the preamble to the NPRM indicates that: ''If a State * * * collects less than $25 in excess of the first $500 * * *, the State must collect the fee using one of the other methods, and, if all else fails, pay the fee itself * * *'' The commenter questions whether a State must make other attempts to collect before paying the fee itself. The commenter also asked if a State would have to develop and administer a secondary billing system to collect small (under $25) unpaid amounts from custodial parents and noncustodial parents. The commenter recommended that States have the option to use other methods to collect unpaid amounts, or to pay the fee itself.

Response: A State does not have to make other attempts to collect the fee before paying the fee itself. The statute allows for four options for collecting the fee. Nor is a State required to develop and administer a secondary billing system, but should a State determine that it is a viable option for collecting and tracking the fee, it may do so.

5. *Comment:* A number of commenters proposed that the rule eliminate the four payment options and require that the fee only be deducted from collections and noted that the preamble states that ''* * * retaining the annual fee from support collected * * * may be the least administratively burdensome method * * *'' Payment of the fee can only be guaranteed if it is deducted from collections or if it is paid by the State.

Response: The statute allows four options for collecting the annual fee. While retaining the annual fee from the support collected may be the least administratively burdensome method for collection of the fee, we have no discretion to eliminate any of the options authorized by the statute.

6. *Comment:* One commenter stated that by allowing four payment methods, there will not be uniformity among the States which will result in less fees being collected. For example, if one State law requires the fee to be collected from the noncustodial parent and it is an interstate case, then the fee could not be collected by that State. Further, if the noncustodial parent resides in a State that is only permitted to deduct the fee from collections, then the noncustodial parent is not paying the fee at all.

Response: The statute allows State discretion and we agree it will result in different policies in different States. As discussed later in the preamble, in an interstate case, the application fee is charged by the State in which the individual applies for services. Only the initiating State has all the information necessary to know whether the $25 annual fee should be imposed in a particular case. Therefore, it is appropriate for the initiating State to impose the annual $25 fee in eligible cases after the $500 threshold is met, and to report the amount of the fees imposed as required.

As discussed earlier in the preamble, if a State opts to charge the fee to a noncustodial parent, the fee may be taken from a child support collection provided that $500 has been disbursed to the family in the Federal fiscal year, current support for the month in which the collection is received has been satisfied and any specified arrearage payment for the month pursuant to an administrative or court order has been satisfied. Allowing collection of the fee in this manner will help ensure the appropriate amount of fees are collected and reported.

7. *Comment:* One commenter asked that OCSE provide guidance concerning potential conflicts of law between the initiating and responding State. If the responding State's law requires the custodial parent to pay the fee, but the initiating State's laws require the noncustodial parent to pay, whose law governs? If the initiating State's law governs, the responding State, by its law, cannot collect the fee, because the noncustodial parent is not liable in that State.

Response: As stated in the preamble to the NPRM, we believe it is appropriate for the initiating State to impose the annual $25 fee in eligible cases after the $500 threshold is met, and to report the amount of the fees imposed as required. The initiating State will collect and impose the fee; therefore it is the initiating State law which governs.

8. *Comment:* One commenter said that the preamble to the NPRM states that the noncustodial parent must designate a portion of a subsequent payment as the $25 annual fee before the State retains a portion of the support collection as payment for the fee. The commenter asked for clarification of whether a State may retain the fee from the noncustodial parent's support payment.

Response: We believe that section 457(a)(4) of the Act can be read to allow the fee to be charged to the noncustodial parent under certain circumstances, as discussed earlier in the preamble. Therefore, with respect to the $25 annual fee, the noncustodial parent does not have to designate a portion of the payment as the $25 annual fee.

9. *Comment:* One commenter stated that should a State select one of the first three options outlined in the statute, the language in the U.S. Code does not appear to authorize the mandatory payment interpretation of the State paying the fee in the rules. Several commenters stated that section 7310 of the DRA does not require States to pay the fee for services. It specifically allows States to collect the fee from either the custodial or noncustodial parent. The recovery of the fee is never certain and they believe Congress contemplated that some fees would not be collected or paid. The preamble and rules make States the guarantors for payment of the fee. There is no authority for OCSE to use its regulatory powers to contravene the statutory provisions. Congress allowed States to pay the fee or collect it from the parents. The commenters asked that OCSE reconsider this issue and amend the rules accordingly. Many commenters stated that billing the custodial parent or the noncustodial parent for the fee will be administratively impractical. If they do not pay, the State will have to resort to retaining the fee from collected support or paying it from its own funds.

Response: Section 454(6)(B)(ii) of the Act conveys a clear expectation that the $25 fee will actually be imposed and retained, collected, or paid in all eligible cases in which at least $500 of support was collected in a year. Therefore, each State is responsible for imposing, retaining, collecting or paying the fee, and reporting the total amount of annual $25 fees imposed in all cases in which the fee is required to be imposed during the Federal fiscal year.

10. *Comment:* Several commenters requested clarification if a IV–D agency chooses to collect the annual fee from a custodial parent. If the IV–D agency does not collect enough (only collects $510 in a fiscal year) to cover the fee, the rules require the State to make up the difference. In such cases, can the State seek to recoup that fee? May the fee be deducted from subsequent payments that occur in the next year, without specific authorization from the custodial parent? Another commenter asked, if the custodial parent is assessed the fee and the collections made on the case amounts to only $510 in the year the fee is assessed, does the State have to wait until it collects in excess of $525 in the next year before collecting the remaining $15 of the fee? The commenters are seeking clarity on the status of the debt to the State.

Response: If the State pays the fee for a qualifying case in the preceding year, it may recoup the fee from the custodial parent responsible for the fee under State procedures in the subsequent year without the custodial parent's specific authorization. However, in accordance with § 303.2(a)(2), the State IV–D agency must notify the applicant that the cost recovery will be made. The State does not have to wait until it collects in excess of $525 in the next year to recoup the $15 fee it paid in the previous year.

11. *Comment:* Many commenters asked for clarification of the following situation: The $500 threshold is met and the collection is disbursed at the end of Year A and the $25 fee to be deducted from the next collection has not been collected. The State pays the $25 fee in Year A. How is the $25 fee retained by the State in the subsequent year (Year B) to reimburse the State for paying the fee the year before (Year A) counted for the purposes of the threshold in Year B? Does the State need to collect $525 in Year B before the next $25 is collected?

Response: Yes. If the State pays the fee for a qualifying case in the preceding year, it may recoup the fee from the custodial parent responsible for the fee under State procedures in the subsequent year. The fee that is recouped by the State in the next year would not be counted towards the $500 threshold because that fee is kept by the State and not disbursed to the family. Collections must be disbursed to the family in order for them to count towards the $500 threshold.

12. *Comment:* One commenter stated that the proposed rule authorizes that the fee may be ''retained'' by the State and believes the use of the term ''retained'' is incorrect. The correct terminology should be ''distributed'' as defined in the preamble, specifically in § 302.32 where the term ''distribution'' is defined as how a support collection is allocated between families and the State and the Federal government in accordance with requirements. Once collections are received on behalf of the individual receiving services, the money must be ''distributed,'' ''disbursed,'' or accounted for as ''undistributed.'' Saying in § 302.51(a)(5) that ''the State must pay to a family that has never received assistance * * * after withholding any $25 fee that the State imposes * * *'' understates the ''distribution'' impact of this option.

Response: The regulatory language in § 302.51(a)(5) is consistent with the statutory language at section 457(a)(4) of the Act, which says: ''In the case of any other family, the State shall distribute to the family the portion of the amount so collected that remains after withholding any fee pursuant to section 454(6)(B)(ii).'' Distribution in cases in which the family has never received assistance as defined under § 302.33(e) is not complex because, other than the authority to withhold the $25 annual fee, all collections go to the family.

13. *Comment:* One commenter requested clarification on how IV–D agencies can ''recover'' the $25 annual fee from a noncustodial parent, if the noncustodial parent is to be responsible for the fee. The commenter specifically asked if the State can employ typical IV–D collection tools such as income

withholding, Financial Institution Data Match and Federal tax offset to recover the fee from the noncustodial parent. If so, will the annual fee be at the bottom of the distribution hierarchy after current support and arrearages? In States that charge interest, this could create a situation where interest could potentially accrue on the fee in addition to the child support arrearages.

Response: Since section 457(a)(4) of the Act can be read to allow the State to charge the noncustodial parent the fee and take the fee from the child support collection, we have revised § 302.33(e)(3)(i) to recognize that the fee may be retained by the State from a collection in accordance with the distribution requirements in § 302.51(a)(5) which require that current support and any payment on arrearages for the month under a court or administrative order have been disbursed to the family before the fee is retained. Whether assessing the fee against the noncustodial parent or the custodial parent, the fee may be retained from the collection provided that the requirements for assessing the fee are met, i.e., the individual has never received assistance as defined in § 302.33(e) and the State has collected and disbursed $500 in the Federal fiscal year to the family. However, States may also use IV–D enforcement techniques, including income withholding, to collect the fee.

14. *Comment:* One commenter asked if, in instances in which a State must use IV–D enforcement efforts to collect the $25 annual fee from the noncustodial parent, the resources used to collect the fee are eligible for IV–D Federal financial participation.

Response: Yes, the resources used to collect the annual fee are allowable costs attributable to the program and eligible for IV–D Federal financial participation.

15. *Comment:* One commenter asked if when using the standard Federal income withholding form to collect the annual fee an employer must follow the $25 annual fee rules of the State issuing the income withholding order, or whether the employer must follow the $25 annual fee rules of the State of the principal place of employment of the noncustodial parent.

Response: Employers must continue to comply with the terms of income withholding orders. If the order indicates that the employer must retain a $25 fee from the employee's wages, in addition to the amount of the collection, the employer must follow those instructions.

16. *Comment:* Several commenters stated that the preamble to the NPRM indicates that a State's option to account for a fee, if not collected through one of the other allowable methods, at the end of the Federal fiscal year in which the threshold was met is limited to paying the fee out of State funds. States would not be able to exercise options to collect the fee by retaining the fee from collections in situations in which they are unable to collect the fee by the end of the Federal fiscal year. The State should not be held accountable for a fee that it cannot collect using an allowable option under the DRA.

Response: The preamble indicates that if the $500 threshold is reached toward the end of a Federal fiscal year, the methods available to the State to collect the fee may be limited to retaining the fee from a subsequent collection, if there is one made and disbursed before the end of the year or paying the fee out of State funds. As indicated earlier, if there is not a $25 collection in excess of the $500 and the State pays the fee, the State can recoup that payment from the individual responsible for making the payment in the following year.

17. *Comment:* One commenter asked if, in an instance in which the State elects to recover the fee from one of the parties, the fee is not collected from that party in the year in which it was due, and the State has to pay the fee, cost recovery, as described under § 302.33(d), could be used.

Response: Section 302.33(d) allows States to recover costs in excess of any fees collected to cover administrative costs. If a State elects to recover the annual $25 fee from one of the parties, and the threshold for imposing the fee is met during the year, but the fee is not paid by the party in that same year, the State is required to pay the fee. The State may then recover the fee from a subsequent collection to reimburse itself. As discussed earlier in this preamble, we agree that the language in the DRA provides the State the ability to retain the fee in accordance with § 302.33(e)(3), from the collection to the family that has never received assistance as defined under § 302.33(e) and section 457(a)(4) of the Act. If the State opts to charge the fee to the noncustodial parent and retains the first $25 of the collection in excess of $500 and in accordance with § 302.51(a)(5), the amount of support paid to the family will be reduced.

18. *Comment:* One commenter asked if the Federal tax refund intercept is the only collection a State gets in excess of $500 in the Federal fiscal year, will both the $25 intercept fee and the $25 annual fee be assessed on that case. In other words, would the State be required to charge the custodial parent the $25 annual fee and then the custodial parent would receive the IRS intercept amount minus $50?

Response: These rules at § 303.72(i)(1) provide that the Secretary of the Treasury may impose a fee with respect to non-IV–A tax offset submittals which shall not exceed $25 per submittal. The rules at § 303.72(i)(2) allow the State IV–D agency to charge an individual who is receiving services a fee not to exceed $25 for submitting past-due support for Federal tax refund offset. These fees are distinct from the $25 annual fee required in § 302.33(e). It is conceivable that a custodial parent who receives a Federal tax refund offset could be charged three different fees of $25 each, totaling $75 for one case: A $25 fee each from the Secretary of Treasury and the State IV–D agency, both for the tax refund offset, and the $25 annual fee because the case meets the criteria for charging the fee.

One $25 Fee for Each Qualifying Case—Section 302.33(e)(1)

1. *Comment:* One commenter said that at § 302.33(e)(1) the proposed rules state ''* * * in the case of an individual who has never received assistance * * *'' and asked how the concept of tying the applicability of the fee to an individual reconciled with the concept of tying the applicability of the fee to a case.

Response: The statute says ''* * * in the case of an individual who has never received assistance under a State program funded under part A and for whom the State has collected at least $500 of support, the State shall impose an annual fee of $25 *for each case in which services are furnished,* which shall be retained by the State from support collected on *behalf of the individual* (but not from the first $500 so collected), paid by the individual applying for the services, recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and the fees shall be considered income to the program).'' It is our interpretation that the determination of whether a fee should be assessed in a IV–D case is dependent on whether any individual in that IV–D case receives or has received AFDC, State, or Tribal TANF assistance under title IV–A of the Act. The statutory language refers to both an individual receiving IV–D services and a case in which IV–D services are furnished.

2. *Comment:* One commenter opposes charging a $25 annual fee because if the $25 annual fee is charged to the

custodial parent, the annual fee, and other fees required by a State could deter a custodial parent from requesting needed services. The $25 annual fee, coupled with administrative fees charged to the noncustodial parent in some States, will cause further financial burdens to parents already struggling to meet child support obligations. Whether the fee is charged to the custodial parent or noncustodial parent, it is a burden.

Response: As discussed earlier, the imposition of the $25 annual fee is limited to circumstances in which an individual has never received assistance under a State AFDC program; State or Tribal TANF program; and the State has successfully collected and disbursed $500 to the family in a Federal fiscal year. Section 454(6) of the Act requires some fees and authorizes States to charge other fees and recover costs. This requirement implements the $25 annual fee required by the statute. We believe that the language in the statute and rules appropriately exempts categories of individuals who are low-income or who have not benefited adequately from receipt of child support and offers alternative methods of collection to allow States to determine who should pay the fee.

3. *Comment:* One commenter stated that a $25 fee may be assessed on cases submitted for Federal tax refund offset and that it would be beneficial to allow States to refrain from assessing the fee on those cases. At State option, the State may charge an individual who is receiving IV–D services a fee not to exceed $25 for submitting past-due support for Federal tax refund offset. The Department of Treasury Federal tax refund offset program is already allowed to deduct a $25 fee from collections made on behalf of non-public assistance custodial parents. The commenter does not feel it benefits families to add the additional $25 annual fee. However, the commenter supports allowing Federal tax refund offset dollars to be used in calculating the $500 threshold.

Response: We believe that the fees charged are reasonable and commensurate with the receipt of successful child support services.

4. *Comment:* One commenter noted that the proposed rules at 45 CFR § 302.33(e) require that States impose the fee in international cases, but that States are not able to retain the fee from collections. The commenter does not believe a State should be responsible for imposing a fee which it is not able to collect by using one of the allowable fee collection options allowed under the section 7310 of the DRA which amends section 454(6)(B) of the Act and that international cases should be exempt from the fee.

Response: Under section 454(32) of the Act, any request for services by a foreign reciprocating country or a foreign country with which a State has an arrangement is treated like a request from a State and foreign obligees may not be charged fees. However, as discussed earlier in the preamble, we believe that the language in section 7310 of the DRA which amends section 457(a)(4) of the Act can be read to allow the fee to be charged to the noncustodial parent and retained from a collection under certain circumstances. Therefore, the fee assessed in qualifying international cases may be retained from a collection before the distribution of the collection to the family, provided that $500 has been disbursed to the family in the Federal fiscal year, current support for the month in which the collection is received has been satisfied, and any specified arrearage payment pursuant to an administrative or court order for that month has been satisfied. A State also has the option to charge the noncustodial parent or pay the fee itself in incoming international cases. Because the statute and rules provide these alternative methods to collect and account for the fee, imposition of the fee in appropriate cases is fitting.

Who Imposes the Fee in Interstate, International and Intergovernmental Tribal Title IV–D Cases?—Section 302.33(e)(2)

1. *Comment:* Three commenters agreed with the selection of the initiating State as the one to impose and report the annual fee in interstate IV–D cases, as proposed in § 303.7(e). A commenter went on to say that there must be a consistent Federal standard, and the initiating State is in the best position to determine when it is appropriate to impose the fee.

Response: We appreciate the comments. As stated in the preamble to the proposed rule, only the initiating State has all the information necessary to know whether the annual $25 fee should be imposed in a particular case.

2. *Comment:* One commenter noted that the NPRM preamble language says: ''A State may not impose a fee in a Tribal IV–D case that is referred to the State IV–D program for assistance in securing support from a Tribal IV–D program.'' The commenter questions why a Tribal IV–D program would refer a case to the State to secure child support from another Tribal IV–D program and asked if this was a typographical error.

Response: There is a typographical error in the sentence. The phrase ''from a Tribal IV–D program'' at the end of the phrase should not have been included. The sentence should have read: ''A State may not impose a fee in a Tribal IV–D case that is referred to the State IV–D program for assistance in securing support.''

3. *Comment:* One commenter said that the preamble to the proposed rule states that if the $25 annual fee is not addressed in a cooperative agreement between a Tribal IV–D program and a State IV–D program, the State IV–D program would be responsible for collecting the fee in any case where the State is the jurisdiction receiving the application or receiving a referral from a State TANF, Foster care, or Medicaid program. However, there is an exemption from the fee for current or former State TANF cases.

Response: The preamble language was misleading. We agree that there is an exemption from the fee for individuals who are receiving or have ever received AFDC or State or Tribal TANF, as defined in § 302.33(3)(1). If a State were to receive a referral from a TANF agency, the individual in the TANF case would clearly be receiving title IV–A services and would not be assessed a fee.

4. *Comment:* One commenter said that if a State imposes the annual fee and a Tribe is required to collect the fee, the fee becomes an administrative burden for the Tribe, and may actually result in an increase in program expenditures. Tribes do not have automated systems, and imposing and tracking the fee will be labor intensive.

Response: Section 454(6)(B)(ii) of the Act is a State plan requirement and as such is not applicable to Tribal IV–D programs. A Tribe would only be required to impose and collect the annual fee if the Tribe is not operating a Tribal IV–D program but has entered into a cooperative agreement with a State IV–D agency under section 454(33) of the Act and § 302.34 to assist the State in delivering title IV–D services. The fee is not applicable to the Tribal IV–D program.

5. *Comment:* One commenter opposes the requirement that forces a Tribe to charge the fee when working cooperatively with a State to provide IV–D services. The commenter noted that this may cause Tribal IV–D programs not to work cooperatively with States.

Response: A Tribe that is under a cooperative agreement with the State under section 454(33) of the Act is providing IV–D services under a State program that is subject to State IV–D requirements and receives reimbursement from the State IV–D

agency for providing services specified in the cooperative agreement. The statute requires the annual fee where appropriate in State IV–D cases. We have no discretion to allow an exception to the fee requirement for State IV–D programs working with Tribes to provide IV–D services under a cooperative agreement in accordance with section 454(33) of the Act because services provided by the Tribe are provided in a State IV–D program and the $25 annual fee requirement is a State plan requirement at section 454(6)(B)(ii) of the Act. The fee is not applicable to Tribal IV–D programs operating under section 455(f) of the Act.

6. *Comment:* One commenter noted that the preamble indicates that a State may not impose the fee on an individual residing in a foreign country in an international case and asked why the noncustodial parent in a foreign country is exempt from the fee.

Response: The noncustodial parent in a foreign country is not exempt from the fee. Section 454(32)(C) of the Act only prohibits States from charging application fees or assessing costs against the foreign reciprocating country or foreign obligee.

7. *Comment:* Two commenters noted that the proposed method of handling the $25 annual fee for international cases causes an additional burden to implement, track, report, and pay the fee, due to further system programming to define and separate international cases because fees in international cases would have to be paid differently, that is, the State would either pay out of general funds or would have to charge the noncustodial parent. This would be an additional burden both for reporting and paying.

Response: There are three methods of accounting for fees in appropriate international cases: Retaining the fee from the support collection, paying the fee out of State funds, or charging the fee to the noncustodial parent.

8. *Comment:* One commenter stated that the rules are unclear with respect to ''responding'' international cases. The preamble says the proposed rules at § 302.33(e) would require the State that receives the request from the Foreign Reciprocating Country to impose the fee. Earlier, the preamble states that the State cannot impose the fee due to section 454(32)(C) of the Act. Does this mean that the State must pay the fee or require the noncustodial parent to pay the fee?

Response: Yes. However, as stated earlier in the preamble, we believe that section 457(a)(4) of the Act can be read to allow the fee to be charged to the noncustodial parent and retained from a collection under certain circumstances. If the State opts to retain the fee in accordance with § 302.33(e)(3) and § 302.51(a)(5) before sending remaining amounts collected to the family, the noncustodial parent does not have to designate a portion of the support payment as the fee. Therefore, the issue of collecting a fee on an incoming international case should be resolved by allowing the fee charged to the noncustodial parent to be retained from the collections provided that $500 has been disbursed to the family in the Federal fiscal year, current support for the month in which the collection is received has been satisfied, and any specified arrearage payment for that month pursuant to an administrative or court order has been satisfied.

9. *Comment:* Several commenters said that international cases should be excluded from the fee or the party in the other country should pay the fee. The annual fee is a user fee to be paid after services are received and custodial parents residing in foreign countries and receiving child support services should also be subject to the fee. There is disparity if a custodial parent cannot be charged the fee when living in a foreign country.

Response: As stated in the preamble to the NPRM, section 454(32)(C) of the Act provides that ''no applications will be required from, and no costs will be assessed for such services against, the foreign reciprocating country or foreign obligee (but costs may at State option be assessed against the obligor).'' We have no discretion to allow States to charge the custodial parent living in a foreign reciprocating country the annual fee. However, as noted in the previous response, allowing States to take the $25 fee from the collection may alleviate problems in collecting the fee from the noncustodial parent. In addition, the restriction under section 454(32)(C) of the Act does not apply to applicants for services who live in foreign countries but apply directly to a State for IV–D services, rather than through the country in which they live. Custodial parents in these direct application cases would be subject to the fee if all other conditions for imposing the fee are met.

10. *Comment:* One commenter stated that if the State imposes a fee in international cases, but cannot collect the fee from the custodial parent because the custodial parent is living in a foreign country, the States automated system would not ''know'' which custodial parents are residing abroad and which are residing in the States.

Response: As stated earlier in the preamble, we have no discretion to allow States to impose the fee on obligees exempt from the fee pursuant to section 454(32)(C) of the Act. And, because of the expanding IV–D program role in international cases, States are required to distinguish international cases on the Form OCSE–157, Child Support Enforcement Annual Data Report beginning October 1, 2009. Therefore, States should be able to identify incoming and outgoing international cases by 2009.

11. *Comment:* One commenter asked if the State could assess and collect the fee from an individual living in Canada who applies for services directly with a State.

Response: Yes. As stated earlier, in any instance in which the applicant for services living in another country applies for IV–D services directly with a State IV–D agency, if all conditions for imposing the fee are met, the case is subject to the annual fee and the State may assess and collect the fee from the applicant.

Reporting the $25 Annual Fee—Section 302.33(e)(4)

1. *Comment:* Several commenters stated that under Executive Order 13132, the annual fee appears to impose substantial direct compliance costs on State and local governments and has federalism impacts as defined in the Executive Order. The requirement that the State pay the $25 mandatory fee in the absence of collecting it can be looked at as nothing other than direct compliance costs on the State government. OCSE should revise the preamble to acknowledge the burden these rules are putting on the States and take other steps to comply with Executive Order 13132.

Response: We disagree. Section 454(6)(B)(ii) of the Act provides the State with four options to collect this mandatory fee. The fee may be withheld from the amount collected, paid by the custodial parent, paid by the noncustodial parent or paid by the State. We anticipate that most States will select the first option. Nevertheless, even where a State chooses to pay the fee itself, a portion of the fee will be retained by the State as its share (currently 34 percent) of program income. In addition, the State retains the option of reimbursing itself by withholding the amount from a future collection.

Over the next 5 years, the Federal Government will provide $20 billion in Federal funds for child support program costs, including more than $2 billion in Federal incentive payments to States. The Federal Government continues to pay 66 percent of State costs to operate

child support enforcement programs. This is a generous matching rate, exceeding the administrative matching rate of other programs such as Medicaid and Food Stamps. Therefore, we do not believe that the annual fee amounts to direct compliance costs on States and local governments, nor does it have a federalism impact.

2. *Comment:* Two commenters stated that the proposed rules require that the total amount of the annual fees imposed be reported, whereas other fees are reported at the Federal Financial Participation rate of 66 percent. The commenters asked why these fees are being reported differently.

Response: All fees are reported as program income in an identical manner. OCSE has always required that any mandatory or optional fees collected by States or other program income in the operation of this program be used to offset program expenses on a dollar-for-dollar basis. Program expenditures are reduced by program income before calculating the Federal and State share of expenditures. This new annual fee is treated no differently and is reported on the quarterly expenditure report both as the total amount collected ($25 in the case of the new annual fee) and as the Federal share of the amount collected (or $16.50 for every $25 fee reported, at the current 66-percent Federal financial participation rate). The statutory language at section 454(6)(B)(ii) of the Act is also clear that the payment of the annual fee by a State shall not be considered as an administrative cost of the State for the operation of the plan, and that the fee shall be considered solely as program income.

3. *Comment:* Several commenters asked where the fee should be recorded on the Form OCSE–34A, Quarterly Report of Collections, if the custodial parent is assessed the fee; if the noncustodial parent is assessed the fee; if the applicant is assessed the fee; or if the State pays the fee. Others indicated that OCSE should provide directions or instructions in the final rules about the appropriate way to fill out the Form OCSE–34A, Quarterly Report of Collections, to record support collections from the noncustodial parent that are not actually support payments to the custodial parent. Another commenter stated that the amount collected/receipted by the State Disbursement Unit must be recorded in the top portion of the form (Form OCSE–34A, Quarterly Report of Collections) and the noncustodial parent must get credit for paying the support when the State is charging the custodial parent the fee. All collections on the top portion (collection) of the 34A must be accounted for in the lower portions (distributions) of the 34A, but there is no place to record ''fees'' distribution.

Response: On November 27, 2007, OCSE issued Action Transmittal 07–08, *Implementation of Revised Financial Reporting Forms: Form OCSE–396A and Form OCSE–34A*. This AT may be viewed electronically at: *http://www.acf.hhs.gov/programs/cse/pol/AT/2007/at-07-08.htm*. To accommodate these comments concerning the reporting of fees, we revised Form OCSE–34A, the Quarterly Report of Collections, to enable States to report those fees withheld from child support collections in the ''distributions'' section of the report. This new data entry line, Line 7e, assures that each State accurately reports the amount of the collection distributed in accordance with the requirements of section 457 of the Act and separately reports the portion withheld to comply with the new fee requirements. However, this new data collection line will only be for a fee retained from a child support collection; fees collected separately from either parent or paid by the State will not be reported on Form OCSE–34A, Quarterly Report of Collections. All fees, including these, regardless of the method of collection, are treated as program income and are reported on Line 2a of the quarterly expenditure report, Form OCSE–396A, Child Support Enforcement Program Financial Report.

4. *Comment:* One commenter noted that it would be most beneficial to all parties if States reported the $525 as collected and disbursed on the Form OCSE–34A, Quarterly Report of Collections, as if the State were sending $525 to the custodial parent and the custodial parent was remitting the $25 fee to State. This way the noncustodial parent will receive credit for total payment of $525 and the State will get credit for $525 towards the collection base. In addition the $25 fee would be reported as required on the Form OCSE–396A, Child Support Enforcement Program Financial Report.

Response: See the response to Comment #3. Although we received comments suggesting different ways to report these fees, we decided to include a separate reporting line for any fee withheld from a collection. In this way, the State will be able to accurately report the portion of the collection distributed and disbursed to the custodial parent and the portion retained from the collection as the fee paid by the custodial parent. Both the amount distributed to the custodial parent and the $25 fee retained by the State will be considered as ''distributed collections'' when computing the State's collection base for purposes of calculating its annual incentive payment; the noncustodial parent receives full credit for the amount paid. In the example cited by the commenter, the State would report $500 as distributed to the family and $25 as retained by the State as the custodial parent's fee; the State also would report the $25 fee as program income. The State would be credited with $525 in distributed collections and the noncustodial parent would be credited with a $525 child support payment.

Alternately, if the State opts to charge the fee to the noncustodial parent and collect it by retaining the $25 annual fee from a collection before sending the remaining amount to the custodial parent, the noncustodial parent would not get credit for the total amount paid. For example, a State makes a collection of over $500, in this instance it is $550, and $25 is retained from the collection as the fee charged to the noncustodial parent. The State then sends the remaining $525 to the custodial parent and the noncustodial parent is credited as making a support payment of $525.

5. *Comment:* One commenter stated that the preamble discusses the reporting of the fees as the total amount of $25 fees imposed during the Federal fiscal year on line 2a of the Form OCSE–396A, Child Support Enforcement Program Financial Report. That reporting requirement will commingle the $25 fee amount with other amounts reported for other fees, costs recovered, and interest and asks how that will be audited. If States collect the fee from either party, how will the reporting of the fee be reconciled with State reporting of collections on the Form OCSE–34A, Quarterly Report of Collections? The commenter stated that Federal guidance is necessary on how the fee should be accounted for and reconciled with all relevant Federal reporting forms.

Response: The quarterly financial reports States are required to submit are cumulative reports of the State's financial activities related to this program during the fiscal quarter. Each State always is expected to maintain full and complete accounting records and documentation in accordance with Generally Accepted Accounting Principles (GAAP) available for review. Such documentation would include a record of each annual fee reported on the quarterly collection report, the quarterly expenditure report, or both. Specifically, if a State elects to collect the fee from either parent or pay the fee itself, it is reported as program income

on the Form OCSE–396A, Child Support Enforcement Program Financial Report. If a State elects to withhold the fee from a collection, it is reported as a retained fee on the reporting line being added for that purpose on Form OCSE–34A, Quarterly Report of Collections, and also reported as program income on the Form OCSE–396A, Child Support Enforcement Program Financial Report.

6. *Comment:* One commenter asked, if the State elects to recover the fee from the custodial parent through retaining support collections, will the fee be reported as distributed collections on Form OCSE–34A, Quarterly Report of Collections, and the Form OCSE–157, Child Support Enforcement Annual Data Report, and reported as program income on the Form OCSE–396A, Child Support Enforcement Program Financial Report?

Response: Yes, if the State elects to recover the fee from the custodial parent through retaining support collections, the fee will be reported on Form OCSE–34A, Quarterly Report of Collections, and Form OCSE–157, Child Support Enforcement Annual Data Report, and reported as program income on the Form OCSE–396A, Child Support Enforcement Program Financial Report.

7. *Comment:* One commenter said that to the extent that OCSE determines that changes are needed to either Form OCSE–396A, Child Support Enforcement Program Financial Report or Form OCSE–34A, Quarterly Report of Collections, to accommodate the reporting of fee collections, OCSE should refer such issues to an appropriate workgroup with OCSE and State representatives, rather than addressing such form issues in the final rules. The commenter also recommended against requiring States to report on Form OCSE–34A, Quarterly Report of Collections, when the State is paying the fee itself. Because both the DRA and the rules provide States with flexibility about how to collect the fee, OCSE should provide States with the flexibility to use the reporting method that best supports the collection method that the State selects. One commenter said if States must report program income when assessed for this fee only, then a new field should be developed on the Form OCSE–396A, Child Support Enforcement Program Financial Report.

Response: OCSE revised both the Form OCSE–396A: Child Support Enforcement Program Financial Report and OCSE–34A: Quarterly Report of Collections. On December 4, 2006, the Proposed Information Collection Activity with Comment Request was published in the **Federal Register** (71 FR 70407). The notice indicated that the DRA contains a number of provisions that will impact the States' completion and submission of the quarterly financial reports and opened a formal 60-day comment period for the public. OCSE assembled a workgroup of Federal and State staff to recommend any changes to improve and update these forms, including revisions necessary to accommodate the DRA.

In response to the commenter's second suggestion, fees paid by the State itself are not reported on Form OCSE–34A, Quarterly Report of Collections, but will be reported as program income on Form OCSE–396A, Child Support Enforcement Program Financial Report.

8. *Comment:* Two commenters asked for clarification of reporting for interstate cases. In an interstate case, the responding State collects all support from the noncustodial parent and sends it to the initiating State. If the initiating State chooses to assess the fee against the noncustodial parent, the initiating State cannot count that collection as a support payment on the Form OCSE–34A, Quarterly Report of Collections. The commenter asked how the responding State would know that the collection went to the fee, and not to the support. If the responding State does not change the collection from a support payment to a fee collection, the responding State gets credit for the support payment in the incentives collection base amount, whereas the initiating State is penalized for having a fee in the collections base amount.

Response: From the responding State's perspective, the entire amount is a child support collection and the responding State properly receives credit for the full amount collected and forwarded to the initiating State. The responding State reports the full amount collected and sent to the initiating State on the appropriate lines of Form OCSE–34A, Quarterly Report of Collections (Lines 2 and 5, respectively) in the quarter in which each transaction occurs. The initiating State subsequently reports the full amount of the collection received on Line 2f of Form OCSE–34A, Quarterly Report of Collections. The amount disbursed to the custodial parent is reported by the initiating State on Line 7d of its Form OCSE–34A, Quarterly Report of Collections. The fee is reported as program income by the initiating State on Line 2a of Form OCSE–396A, Child Support Enforcement Program Financial Report, and, if the fee is withheld from the collection, also reported on (proposed) Line 7e of Form OCSE–34A, Quarterly Report of Collections.

9. *Comment:* One commenter asked if States can rely on the definition of ''never-assistance'' for Federal reporting purposes to determine whether a case is exempt from the fee.

Response: No. A State must identify cases subject to the fee in accordance with § 302.33(e). All conditions for charging the fee under § 302.33(e) must be met before imposing the $25 annual fee.

10. *Comment:* Two commenters said that it seems that with the new annual fee, States will be required to commingle two different accounting styles: Accrual-based and cash-based accounting. Another commenter said that it is inappropriate to hold a State responsible for the fee by requiring the State to report the fee as program income before it is actually collected unless the State has elected to pay the fee from State funds. The fee is not program income as defined in 45 CFR 92.25 unless and until the fee is collected.

Response: OCSE uses a cash-basis for accounting for financial transactions. Transactions are reported in the quarter in which they occur, i.e., when cash changes hands (when the check is dated or the electronic transfer occurs). Fees are no different and are reported in the quarter collected, not assessed. In most cases, fees will likely be assessed and collected in the same quarter. Fees are reported as collected when either paid by the custodial parent, paid by the noncustodial parent, paid by the State (transferred from one State account to another) or retained by the State from the collection.

11. *Comment:* One commenter asked if the Tribal IV–D agency or the State IV–D agency was responsible for reporting and paying the annual fee if there are both Tribal and State IV–D agencies in a State.

Response: Section 454(6)(B)(ii) of the Act is a State plan requirement and as such is not applicable to Tribal IV–D programs. The State IV–D agency is responsible for collecting the fee on State cases that meet the criteria for collection of the fee.

12. *Comment:* One commenter asked if the intent is that States will be reporting, as program income, the total amount of the fees imposed for each Federal fiscal year on the 4th quarter expenditure report, rather than reporting quarterly.

Response: Fees are reported on Line 2a of Form OCSE–34A, Quarterly Report of Collections, in the quarter in which they are received, not assessed. As stated earlier, the child support enforcement program is a cash-based system: Expenditures are reported as paid when the check is written or funds transferred to pay the invoice, not when

the service is provided. Some States that are electing to pay the fee from State funds have requested that they be permitted to claim as program income all mandatory fees for all cases on a ''lump sum'' basis once a year. That is an acceptable reporting methodology in those circumstances; States that elect to collect the fee from either parent or withhold the fee from a collection must report the fees as collected on a quarter-by-quarter basis.

13. *Comment:* One commenter said that the preamble specifies that all fees imposed under the DRA need to be reported as program income and treated in accordance with 45 CFR 302.15. The commenter asked if that means that if the State decides to collect the fee from a noncustodial parent and is not successful, it still needs to report the full amount as program income, give the Federal government its share and use the State share to offset administrative expenses. The commenter went on to say that if that is the case, it means that if the State is not able to collect the fee, it not only has to use its own funds to provide program income to the Federal government, it also has to use State funds to offset administrative expenses before seeking reimbursement.

Response: This is a mandatory fee. If the State elects to collect the fee directly from either parent and is unsuccessful, it is required to pay the fee itself and report the full amount as program income.

Section 302.51—Distribution of Support Collections

The comments received concerning distribution of past-due support collected via the Federal tax refund offset program are addressed in the *Response to Comments* at § 303.72, Federal tax refund offset.

1. *Comment:* One commenter requested confirmation that if the State elects to increase its pass-through and disregard from $50 to $100 that the Federal share of the entire $100 does not have to be paid.

Response: This is confirmation that if a State elects to increase its pass-through and disregard from $50 to $100 that the Federal share of the entire $100 does not have to be paid.

PART 303—STANDARDS FOR PROGRAM OPERATIONS

Section 303.7—Provision of Services in Interstate Title IV–D Cases

1. *Comment:* One commenter stated that the proposed rule would require that it is the initiating State's responsibility to impose the fee in an interstate case. The commenter stated that the initiating State is not always aware of collections in a timely manner and should only be held responsible for imposition of fees when aware of qualifying collections in a timely manner.

Response: Under 45 CFR 303.7(c)(7)(iv), in an interstate case, the responding State is responsible for collecting and monitoring any support payments from the noncustodial parent and forwarding payments to the location specified by the IV–D agency in the initiating State. Under section 457 of the Act, effective October 1, 1998 (or October 1, 1999, in States in which courts were processing child support collections on August 21, 1996), the responding SDU must, within 2 days of receipt in the SDU, send the amount collected in an interstate IV–D case to the SDU in the initiating State.

Section 303.8—Review and Adjustment of Child Support Orders

1. *Comment:* Five commenters asked for clarification on how to identify the beginning of the three-year period for review and adjustment of child support orders as required by revised section 466(a)(10) of the Act. Two commenters indicated support for the three-year review period to begin with the date of the last review or modified order, and asked that OCSE clarify the beginning of time period for the review of an order.

Response: When this provision requiring review and adjustment of child support orders was first mandated by the Family Support Act of 1988, it required that the State implement a process whereby orders enforced under title IV–D were reviewed within 36 months after establishment of the order or the most recent review of the order and adjusted in accordance with the State's guidelines for support award amounts. The requirement for three-year reviews in TANF cases was removed with the passage of PRWORA.

The statutory change in the DRA to section 466(a)(10) of the Act on review and adjustment of child support orders does not explicitly tie the three-year timeframe to any starting point, as the 1988 legislation did. However, the intent of the change was to revert back to the previous policy. Therefore, the timeframe for the review and adjustment of an order, if appropriate, would begin within 36 months after establishment of the order or the most recent review of the order.

In response to comments, we have amended the rules at § 303.8(b)(1) to read: ''(1) The State must have procedures under which, within 36 months after establishment of the order or the most recent review of the order (or such shorter cycle as the State may determine), if there is an assignment under part A, or upon the request of either parent, the State shall, with respect to a support order being enforced under title IV–D of the Act, taking into account the best interests of the child involved:

(i) Review and, if appropriate, adjust the order in accordance with the State's guidelines established pursuant to section 467(a) of the Act if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines.''

2. *Comments:* One commenter said that the NPRM suggests that the requirement to review orders in TANF cases every 3 years will cost the states $10 million in FY 2008, but save them $40 million over the next 4 years. The commenter is in a State with a two-year time limit on TANF benefits and is interested in learning more about the methodology OCSE used in arriving at the cost savings due to increased orders among TANF recipients.

Response: These costs reflect the upfront increased administrative costs in reviewing these cases and, as appropriate, updating the orders every 3 years and the savings that will result over time in the way of increased revenues (Federal and State shares of the larger collection amounts in TANF cases). This provision is also beneficial to families in terms of ensuring that support orders remain fair and equitable over time and reflect the noncustodial parent's current ability to pay.

Section 303.72—Requests for Collection of Past-Due Support by Federal Tax Refund Offset

1. *Comment:* Several commenters said that the proposed rules require the State to inform individuals in advance if the State chooses to continue to apply offset collections to State-assigned arrearages and asked if the intent of the requirement is to now proactively notify the individuals of this option. A number of other commenters indicated that, under current rules, States are required to advise persons receiving services of the order of distribution of funds collected through the Federal tax refund offset program. The proposed change to require a notice that the State has opted to continue this distribution priority is unnecessary.

Response: The current rules at § 303.72(h)(3) require that the IV–D agency must inform individuals receiving services under § 302.33 in advance that amounts offset will be applied to satisfy any past-due support which has been assigned to the State

and submitted for Federal tax refund offset. States that elect to continue to apply section 457(a)(2)(B) of the Act as in effect until October 1, 2009, for distribution of collections in former-assistance cases in the future must continue to inform individuals that the State chooses to apply amounts offset to satisfy any past-due support which has been assigned to the State. The intent of the rule is not to proactively notify individuals, but to continue to notify them, as currently required, if the State does not choose to use Federal tax refund offset first to satisfy current support due and past-due support owed to a family in former-assistance cases effective October 1, 2009, or up to a year earlier at State option.

We changed the regulatory language at § 303.72(h)(3) for clarity. It now reads:

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

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

2. *Comment:* Two commenters asked for verification regarding the application of IRS tax intercepts towards current support if the State chooses to change the distribution hierarchy in former-assistances cases. The commenter asked if the intent of the distribution requirements in § 302.51 is to pay current support on collections that have been intercepted because of their delinquency.

Response: The manner in which child support payments collected through Federal tax refund intercepts are distributed depends on the distribution options that a State chooses with respect to former-assistance cases. Section 454(34) of the Act as amended by the DRA allows States to determine whether to follow PRWORA distribution rules or DRA distribution rules in former-assistance cases.

If a State elects to follow PRWORA distribution rules, then IRS tax intercepts must be distributed in accordance with former section 457(a)(2)(B)(iv) of the Act. 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 assistance paid to the former-assistance family.

Effective October 1, 2009, or up to a year earlier at State option, if States choose the new distribution rules for former-assistance cases under section 457(a)(2)(B) of the Act as amended by the DRA, States must treat Federal tax refund offset collections the same as any other collections for purposes of distribution in all IV–D cases. States choosing to follow the DRA distribution rules will distribute Federal tax refund offset collections first to current support, then to arrearages owed to the family.

Please see Action Transmittal–07–05, *Instructions for the Assignment and Distribution of Child Support Under Sections 408(a)(3) and 457 of the Social Security Act (the Act)* dated July 11, 2007: *http://www.acf.dhhs.gov/programs/cse/pol/AT/2007/at-07-05.htm*.

PART 304—FEDERAL FINANCIAL PARTICIPATION

Section 304.20—Availability and Rate of Federal Financial Participation

1. *Comment:* One commenter opposes reducing the Federal financial participation in IV–D program expenditures for paternity establishment for States from 90 percent to 66 percent. The commenter states that this further burdens the State budgets which could eventually trickle down to the families and thereby reduce the Paternity Establishment Performance for States. The commenter encouraged the repeal of the proposed rules pursuant to section 654 of the Treasury and General Government Appropriations Act of 1999 that requires Federal agencies to determine whether a proposed policy or rule may negatively affect the well-being of families.

Response: This is a statutory mandate. Section 7303 of the DRA amended section 455 of the Act to reduce the previously enhanced Federal matching rate for laboratory costs to determine paternity. The enhanced matching rate was originally implemented in 1988 because of the high costs of genetic testing for the determination of paternity. However, the cost of genetic testing has significantly declined since 1988 and enhanced funding is no longer necessary.

III. Impact Analysis

Paperwork Reduction Act of 1995

This rule references information collection requirements that have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA). Under this Act, no persons are required to respond to a collection of information unless it displays a valid OMB control Number.

There is a reporting requirement for a State's IV–D plan in section 454(34) of the Act, with respect to distribution options, to allow a State to choose either to apply amounts collected, including amounts offset from Federal tax refunds, to satisfy any support owed to the family first or to continue to distribute Federal tax offsets amounts, to satisfy any past-due support assigned to the State first. A new State plan preprint page was developed for States to indicate their distribution choice under section 454(34) of the Act. This information collection was set to expire on November 11, 2007. The notice to amend the form was published on August 21, 2007. OMB approved this collection tool on July 3, 2008 under OMB # 0970–0017.

States must submit a State IV–D preprint plan page to indicate that a State will impose a $25 annual fee in accordance with 454(6)(B)(ii) and how the fee will be collected. Because of the October 1, 2006 effective date for the mandate that States implement and collect a $25 annual fee in specified cases, the second notice for the State plan preprint page was published prior to the final rule. The notice was published in the **Federal Register** on November 6, 2007. OMB approved this collection tool on February 1, 2008 under OMB # 0970–0017.

States also are required to keep track of the total amount of $25 fees that must be included as program income reported on Form OCSE–396A, Child Support Enforcement Program Financial Report. In addition, States are required to report the collection of the total amount of $25 fees that are retained for a child support collection on Form 34A, Quarterly Report of Collections. The requirement to track fees is not a new requirement; the $25 annual fee is tracked and reported the same way other fees associated with the Child Support Enforcement Program are tracked and reported. These two forms were approved as a package by OMB under # 0970–0181 on November 16, 2007.

If a State elects to recover a fee from the custodial parent through retaining child support collections, it must be reported on the OCSE–157. This form was approved by OMB under # 0970–0177 on September 8, 2008.

The burden associated with these collection tools has not changed as a result of this regulation. The DRA made

changes to various sections of the Social Security Act and mandated implementation of those various sections *prior* to promulgation of final regulations. As a result, the respondents were required to comply with the paperwork burden before the publication of this regulation. The appropriate notice and comment period was provided and OMB approved these collection tools. The burden described in the final rule for these collections is the same as the currently approved ICR.

The respondents are State IV–D agencies.

The total estimated burden for the entire State Plan and Financial Report Forms are:

Requirement	Number of respondents	Yearly submittals	Average burden hour per response	Total burden hours
State Plan (OCSE–100)	54	1	.25	13.5
State Plan Transmittal (OCSE–21–U4)	54	1	.25	13.5
Financial Form 396A (tracking the $25 fee)	54	4	1	*216
OCSE form 34A	54	4	1	*216
OCSE Form 157	54	1	7	*378
Total	54	11	9.50	837

*These hours represent the total burden associated with the reporting form. Incremental increases applicable to the provisions of this regulation were not calculated but are estimated to be less than 1% of the total burden shown.

Regulatory Flexibility Analysis

The Secretary certifies that, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Act.

Regulatory Impact Analysis

Executive Order 12866 requires that rules be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that these rules are consistent with these priorities and principles and is an economically significant rule as defined by the Executive Order because it will have an estimated $500 million impact on the economy over a 5-year period and, potentially, a $100 million impact on the economy in any given year. The impacts discussed for provisions below have been carried in the program's base since enactment of the DRA and are most currently reflected in the FY 2009 President's Mid-Session Review Budget baseline estimates.

Specifically, when the DRA was enacted we estimated that the requirement for review and adjustment of child support orders in TANF cases every 3 years will cost the Federal government approximately $15 million in FY 2008 but result in approximately $40 million in savings over 4 years. Similarly, this provision was estimated to cost State governments approximately $10 million in FY 2008 but save States almost $40 million over 4 years with a net government impact of approximately $25 million in costs in FY 2008 and approximately $80 million in savings by FY 2011. These costs reflect the upfront increased administrative costs involved in reviewing these cases and, as appropriate, updating the orders every 3 years, and the savings that will result over time in the way of increased revenues (Federal and State shares of the larger collections amounts). This provision is also beneficial to families in terms of ensuring that support orders remain fair and equitable over time and reflect the noncustodial parent's current ability to pay support.

The provision on imposition of a $25 annual collection fee for never-IV–A cases with at least $500 in collections was estimated to save the Federal government, when DRA was enacted, a little less than $50 million in FY 2007 and result in approximately $270 million in Federal savings over 5 years. The provision was estimated to save State governments approximately $25 million in FY 2007 and approximately $140 million over 5 years. These fees will partially offset the government's costs of providing services and are representative of Federal and State cost sharing in the program (66 and 34 percent, respectively). The clarification included in this regulation which exempts additional Tribal Title IV–A populations from this provision has negligible impacts on these estimates.

Finally, the provision eliminating enhanced Federal funding for the cost of paternity testing was estimated to save the Federal government almost $8 million in FY 2007 and approximately $40 million over 5 years, and will result in a dollar-for-dollar increase in State costs. In other words, each dollar saved by the Federal government because of the decrease in Federal financial participation will result in a dollar in State costs. Enhanced Federal funding for paternity testing is no longer necessary because the cost of these tests has decreased significantly over time.

All together these provisions were estimated to save the Federal and State governments approximately $66 million in FY 2007 and approximately $495 million over 5 years. As each of these provisions was mandated under the Deficit Reduction Act of 2005, alternatives to this rulemaking are limited. We could have chosen not to update program rules to reflect these statutory changes, but that would be confusing to the public and would ultimately have no budgetary impact since these provisions are effective without regard to the issuance of rules.

In the end, the rule remains consistent with the statute and the underlying budget implications.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $120 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The Department has determined that this rule, in implementing the new statutory requirements of the Deficit Reduction Act, would not impose a

mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Rather, we estimate that combined the provisions will result in savings to States. Over 5 years, the Federal government is estimated to save approximately $315 million as a result of the review and adjustment and collection fee provisions of the rules and States to save almost $180 million. States are estimated to receive approximately $40 million less in Federal reimbursement for laboratory costs associated with paternity establishment over 5 years. Thus, the estimated net impact of the rules on States is a savings of almost $140 million over 5 years.

Congressional Review

The final rule being issued here is a major rule subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to the Congress and the Comptroller General for review.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may negatively affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. The required review of the rules and policies to determine their effect on family well-being has been completed, and these rules will have a positive impact on family well-being as defined in the legislation because expanded access to the Federal tax refund offset, mandatory three-year reviews of support orders in TANF cases, and State options to pay more collections to families will ensure more child support is paid to families.

Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments or is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. These rules do not have federalism implications for State or local governments as defined in the Executive Order.

List of Subjects

45 CFR Part 301

Child support, Grants programs/social programs.

45 CFR Part 302

Child support, Grants programs/social programs.

45 CFR Part 303

Child support, Grant programs/social programs.

45 CFR Part 304

Child support, Grants programs/social programs.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program)

Dated: April 1, 2008.

Daniel C. Schneider,

Acting Assistant Secretary for Children and Families.

Approved: August 13, 2008.

Michael O. Leavitt,

Secretary of Health and Human Services.

■ For the reasons discussed above, title 45 chapter III of the Code of Federal Regulations is amended as follows:

PART 301—STATE PLAN APPROVAL AND GRANT PROCEDURES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1301, and 1302.

■ 2. In § 301.1, revise the definitions of ''Past-due support'' and ''Qualified child'' to read as follows:

§ 301.l General Definitions.

* * * * *

Past-due support means the amount of support determined under a court order or an order of an administrative process established under State law for support and maintenance of a child, or of a child and the parent with whom the child is living, which has not been paid. Through September 30, 2007, for purposes of referral for Federal tax refund offset of support due an individual who is receiving services under § 302.33 of this chapter, past-due support means support owed to or on behalf of a qualified child, or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent.

* * * * *

Qualified child, through September 30, 2007, means a child who is a minor or who, while a minor, was determined to be disabled under title II or XVI of the Act, and for whom a support order is in effect.

* * * * *

PART 302—STATE PLAN APPROVAL REQUIREMENTS

■ 1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396k.

■ 2. In § 302.32, revise paragraphs (b) introductory text, (b)(2)(iv), and (b)(3)(ii) to read as follows:

§ 302.32 Collection and disbursement of support payments by the title IV–D Agency.

* * * * *

(b) Timeframes for disbursement of support payments by the State disbursement unit (SDU) under section 454B of the Act.

* * * * *

(2) * * *

(iv) Collections as a result of Federal tax refund offset paid to the family or distributed in title IV–E foster care cases under § 302.52(b)(4) of this part, must be sent to the title IV–A family or title IV–E agency, as appropriate, within 30 calendar days of the date of initial receipt by the title IV–D agency, unless State law requires a post-offset appeal process and an appeal is filed timely, in which case the SDU must send any payment to the title IV–A family or title IV–E agency within 15 calendar days of the date the appeal is resolved.

(3) * * *

(ii) Collections due the family as a result of Federal tax refund offset must be sent to the family within 30 calendar days of the date of initial receipt in the title IV–D agency, except:

(A) If State law requires a post-offset appeal process and an appeal is timely filed, in which case the SDU must send any payment to the family within 15 calendar days of the date the appeal is resolved; or

(B) As provided in § 303.72(h)(5) of this chapter.

■ 3. In § 302.33, revise the section heading and add new paragraph (e) to read as follows:

§ 302.33 Services to individuals not receiving title IV–A assistance.

* * * * *

(e) *Annual $25 fee.*

(1) A State must impose in, and report for, a Federal fiscal year an annual fee of $25 for each case if there is an individual in the case to whom IV–D services are provided and:

(i) for whom the State has collected and disbursed to the family at least $500 of support in that year; and

(ii) no individual in the case has received assistance under a former State AFDC program, assistance as defined in § 260.31 under a State TANF program, or assistance as defined in § 286.10 under a Tribal TANF program.

(2) The State must impose the annual $25 fee in international cases under section 454(32) of the Act in which the criteria for imposition of the annual $25 fee under paragraph (1) of this section are met.

(3) For each Federal fiscal year, after the first $500 of support is collected and disbursed to the family, the fee must be collected by one or more of the following methods:

(i) Retained by the State from support collected in cases subject to the fee in accordance with distribution requirements in § 302.51(a)(5) of this part, except that no cost will be assessed for such services against:

(A) a foreign obligee in an international case receiving IV–D services pursuant to section 454(32)(C) of the Act; and

(B) an individual who is required to cooperate with the IV–D program as a condition of Food Stamp eligibility as defined at § 273.11(o) and (p) of title 7;

(ii) Paid by the individual applying for services under section 454(4)(A)(ii) of the Act and implementing regulations in this section, provided that the individual is not required to cooperate with the IV–D program as a condition of Food Stamp eligibility as defined at § 273.11(o) and (p) of title 7;

(iii) Recovered from the noncustodial parent, provided that the noncustodial parent is not an individual required to cooperate with the IV–D program as a condition of Food Stamp eligibility as defined at § 273.11(o) and (p) of title 7; or

(iv) Paid by the State out of its own funds.

(4) The State must report, in accordance with § 302.15 of this part and instructions issued by the Secretary, the total amount of annual $25 fees imposed under this section for each Federal fiscal year as program income, regardless of which method or methods are used under paragraph (3) of this section.

(5) State funds used to pay the annual $25 fee shall not be considered administrative costs of the State for the operation of the title IV–D plan, and all annual $25 fees imposed during a Federal fiscal year must be considered income to the program, in accordance with § 304.50 of this chapter.

■ 4. In § 302.51, revise paragraphs (a)(1) and (a)(3) and add paragraph (a)(5) to read as follows:

§ 302.51 Distribution of support collections.

* * * * *

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

* * * * *

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

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

* * * * *

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

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

* * * * *

■ 5. In § 302.70, revise paragraph (a)(10) in its entirety to read as follows:

§ 302.70 Required State laws.

(a) * * *

(10) Procedures for the review and adjustment of child support orders in accordance with § 303.8(b) of this chapter.

* * * * *

PART 303—STANDARDS FOR PROGRAM OPERATIONS

■ 1. The authority citation for part 303 is revised to read as follows:

Authority: 42 U.S.C. 651 through 658, 659, 659A, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396k.

■ 2. In § 303.7, add new paragraph (e) to read as follows:

§ 303.7 Provision of services in interstate cases.

* * * * *

(e) *Imposition and reporting of annual $25 fee in interstate cases.* The title IV–D agency in the initiating State must impose and report the annual $25 fee in accordance with § 302.33(e) of this chapter.

* * * * *

■ 3. In § 303.8, revise paragraphs (b) introductory text, (b)(1) introductory text, and (b)(1)(i) to read as follows:

§ 303.8 Review and adjustment of child support orders.

* * * * *

(b) *Required procedures.* Pursuant to section 466(a)(10) of the Act, when providing services under this chapter:

(1) The State must have procedures under which, within 36 months after establishment of the order or the most recent review of the order (or such shorter cycle as the State may determine), if there is an assignment under part A, or upon the request of either parent, the State shall, with respect to a support order being enforced under title IV–D of the Act, taking into account the best interests of the child involved:

(i) Review and, if appropriate, adjust the order in accordance with the State's guidelines established pursuant to section 467(a) of the Act if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines;

* * * * *

■ 4. In § 303.72 revise paragraphs (a)(3) introductory text, (a)(3)(i), and (h)(1) and (h)(3) to read as follows:

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

(a) * * *

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

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

* * * * *

(h) * * *

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

* * * * *

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

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

* * * * *

PART 304—FEDERAL FINANCIAL PARTICIPATION

■ 1. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396k.

§ 304.20 [Amended]

■ 2. In § 304.20, revise paragraph (d) to read as follows:

§ 304.20 Availability and rate of Federal financial participation.

* * * * *

(d) Federal financial participation at the 90 percent rate is available for laboratory costs incurred in determining paternity on or after October 1, 1988, and until September 30, 2006, including the costs of obtaining and transporting blood and other samples of genetic material, repeated testing when necessary, analysis of test results, and the costs for expert witnesses in a paternity determination proceeding, but only if the expert witness costs are included as part of the genetic testing contract.

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