

# Child Support Provisions in the Deficit Reduction Act

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# Deficit Reduction Act of 2005

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- ❑ Signed into law on February 8, 2006 after close vote.
- ❑ Passed as S. 1932.
- ❑ Became Pub. L. 109-171.



# Overview of DRA

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- Funding provisions
  - Federal match eliminated on incentive payments
  - Federal match reduced for paternity testing
  - New service fee
- Assignment and distribution changes
- Mandatory TANF review and adjustment
- Medical support provisions
- Enforcement provisions
  - Reduced passport denial threshold
  - Federal tax offset procedure for adult children



# Federal match cut on incentive payments under DRA

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- ❑ Under CSPIA, incentive funds must be used to carry out IV-D state plan or other HHS-approved activities.
- ❑ Effective Oct. 1, 2007, HHS will no longer pay a 66% match on incentive payments spent on IV-D activities.
- ❑ CBO score in 2006: \$4.9 federal savings over 10 years (\$8.4 billion in lost collections).
- ❑ CBO score assumed states would replace half of cut funds.

Cite: 42 U.S.C. 655(a)(1) as amended; 658a(f).



# Repeal of incentive match cut?

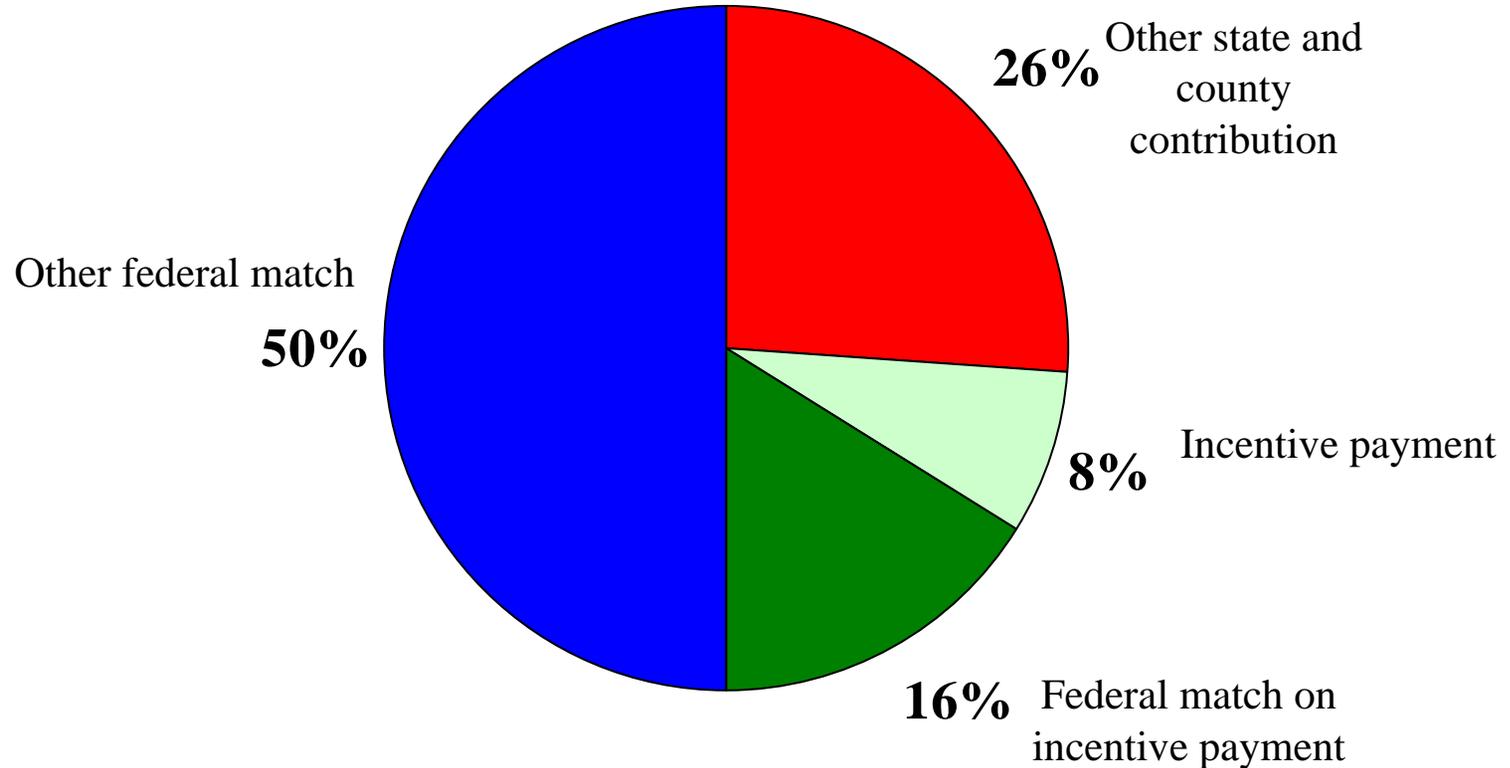
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- H.R. 1386 (McDermott) and S. 803 (Rockefeller/Cornyn) would repeal the cut.
- CBO preliminary estimate to restore funds: \$6.7 billion over 10 years (or \$11 billion in lost collections).
- Significant bipartisan support: Good chance of moving in late fall.

Source: <http://thomas.loc.gov>. Co-sponsors listed by state: <http://www.nwlc.org/pdf/childsupportcosponsors.pdf>

Incentive match is 16% of total funds and 22% of federal funds.

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# Temporary stop-gap funding

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- ❑ To maintain funding, state must contribute new state funds (equal to 66% of state incentive payments).
- ❑ 25 states, including CA passed full funding for next year.
- ❑ 11 states have passed partial funding
- ❑ 11 states and DC do not have stop-gap funding.
- ❑ 3 states have pending legislative proposals.

Source: NCSEA



# Lewin Group data analysis found:

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- DRA could mean substantial funding decrease to state programs.
  - 17% overall decline in program spending
  - Impact varies by state (5% to 36% decline)
- Program spending is linked to performance.
- If states don't restore funding, performance will fall.
  - 10% drop in cases with orders
  - 4% drop in current collections
- High performing states face greatest risk.

Source: Lewin Group and ECONorthwest, *Anticipated Effects of the Deficit Reduction Act Provisions on Child Support Program Financing and Performance*, [http://www.nccsd.net/documents/nccsd\\_final\\_report\\_revised\\_2\\_437782.pdf](http://www.nccsd.net/documents/nccsd_final_report_revised_2_437782.pdf).



## Lewin Group interviews with 28 child support directors found:

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- ❑ Strong support from state executive branch.
- ❑ Weak fiscal conditions and decentralization play key roles in state funding decisions.
- ❑ Effect of cuts will worsen over time.
- ❑ Cuts will affect all customers and related programs.
- ❑ Interstate ramifications.
- ❑ Even with restored funding, planned initiatives will be cancelled or delayed.



# Lewin Group study found these cuts most likely:

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- Staff cuts through attrition and lay-offs (10-50%)
- Cuts to labor-intensive services and initiatives
  - Arrears collection initiatives
  - Customer service call centers
  - Employer initiatives
  - In-hospital paternity work
  - Medical support enforcement
  - Computer replacements and upgrades
  - Employment services for non-custodial parents
  - Intensive work with hard-to-serve clients
  - Interstate cases
  - Distribution options

# Paternity test match reduced under DRA

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- The federal matching rate is reduced from 90% to 66%.
- Effective Oct. 1, 2006.
- OCSE AT-06-06 (Nov. 16, 2006): Lower rate applies to expenses paid by the state after Oct. 1, 2006.

Cite: 42 U.S.C. 655(a)(1)© as amended.



# New \$25 service fee under DRA

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- ❑ Effective Oct. 1, 2006, states must impose an annual \$25 fee.
- ❑ Charged to individuals who have never received assistance under a IV-A program (TANF).
- ❑ For whom the state has collected at least \$500.
- ❑ 4 options: (1) retained from collections; (2) charged to the applicant; (3) recovered from the absent parent; (4) paid by the state.
- ❑ OCSE AT-06-06 (Nov. 6, 2006): Fees are based on collections made on or after October 1, 2006 and considered program income.

Cite: 42 U.S.C. 654(6)(B) as amended; 657(a)(3) as amended.



# OCSE proposed rule on fees

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## 72 Fed. Reg. 3093:

- Annual fee applies when the “State has disbursed to the family” at least \$500.
- The \$500 must be disbursed “in the Federal fiscal year.”
- Fee must reported by end of the year.
- Fee applies to each IV-D “case.”
- Fee applies to new and existing cases.
- In interstate case, fee imposed by initiating state.
- Special rules for international and tribal cases.

Source: OCSE-AT-07-01(Jan. 24, 2007)



## State implementation of fee policies in first year (as of March 2007)

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- 1/4 of states (including CA) are paying or propose to pay fee out of state funds.
- 1/2 of states will charge custodial parent.
- Wyoming will split the fee between custodial and non-custodial parent.

Source: NCCSD; CLASP; Lewin Group.



# Distribution-related terms

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- ❑ *Assignment rules* determine whether the state or family has a claim to collected support.
- ❑ *Distribution rules* determine how a collection is allocated between families, state, and federal government.
- ❑ *Pass-through policies* allow a state to pay the assigned money to current and former TANF families.
- ❑ *Disregard policies* determine extent support income is counted or ignored in TANF.
- ❑ *Disbursement rules* govern the act of paying collections to families, by check or electronic transfer.

Source: OCSE-AT-07-01 attaching 72 Fed. Reg. 3093, 3094 (Jan. 24, 2007).



# Assignment under DRA

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- Pre-assistance assignment eliminated for new cases, effective Oct. 1, 2009, with state option to implement a year earlier.
- State flexibility to conform older assignments:
  - State option to discontinue some or all assignments in effect before Sept. 30, 1997.
  - State option to discontinue some or all post-1997 pre-assistance assignments in effect before DRA (Jan.
  - Options allow state to treat collections as never assigned.
- Bottom line: States may discontinue any assignment except during-assistance support owed after Sept. 30, 1997.

Cite: 42 U.S.C. 608(a)(3) as amended; 657(b)(1) and (2) as amended; OCSE-AT-07-05 (July 11, 2007).

# Distribution to former TANF families under DRA

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- State option to eliminate federal tax offset exception—  
distribute like other collections
  - Distribute to former TANF families before state
  - Distribute to current support before arrears
- IRS will give priority to child support offsets, whether assigned or not.
- State does not pay a federal share on support paid to families.
- State may elect DRA or PRWORA rules in state plan after Oct. 1, 2008—and must inform families if state keeps money.

Cite: 42 U.S.C. 657(a)(2) as amended; 657(a)(7)(A) as amended; 654(34) as amended; 26 U.S.C. 6402©; OCSE-AT-07-05 (July 11, 2007); OCSE-AT-07-01 attaching 72 Fed. Reg. 3093, 3094 (Jan. 24, 2007).



# New pass-through authority to former TANF families under DRA

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- State also may "retain, or pay to the family, the State share of the excess amount" assigned to the state.
- Even if states don't discontinue old assignments, they can pass through the money
- If state pays support to the family, it does not pay a federal share—no \$ limit.

Cite: 42 U.S.C. 657(a)(2)(B)(ii)(II) as amended; 657(a)(7)(A) as amended; OCSE-AT-07-05 (July 11, 2007).

# Pass-through to current TANF families under DRA

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- ❑ State authority unchanged to retain or pass through any support (current or arrears).
- ❑ But federal cost-sharing changed: effective Oct. 1, 2008, federal share is waived, up to \$100 pass-through for one child and \$200 for more children.
- ❑ Both federal and state shares must be passed through.
- ❑ Federal share is waived to extent of disregard.
- ❑ Maintenance of Effort (MOE) credit available for state share.
- ❑ URA is reduced by passed through amounts.

Cite: 42 U.S.C. 657(a)(7) as amended; OCSE-AT-07-05 (July 11, 2007); OCSE-97-017 (Oct. 21, 1997).



# State implementation of TANF pass-through policies as of June 1, 2007

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- 7 states adopted new pass-through policies or have pending legislation.
- More than 1/2 of states, including CA, have some type of pass-through policy.

Source: CLASP, *State Policy Regarding Pass-through and Disregard* (as of June 1, 2007), [http://www.clasp.org/publications/pass\\_through\\_2007june01.pdf](http://www.clasp.org/publications/pass_through_2007june01.pdf).



# Effect of expanded distribution on federal share

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- California has a 50% FMAP rate.
- Under existing law, state pays federal government \$50 dollars out of every \$100 assigned to and collected by state.
- When \$100 is paid to current or former TANF families, state gives up \$50 and federal government gives up \$50 in revenues.

Source: For more information on impact on California families, see Carmen Solomon-Fears, *The Financial Impact of Child Support on TANF Families: Simulation for Selected States*, CRS Report for Congress (June 24, 2007).



# TANF Maintenance of Effort (MOE)

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States must spend sufficient state funds to count toward TANF MOE requirements. To count, state spending must meet one of 4 TANF purposes:

- (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- (4) encourage the formation and maintenance of two-parent families.

Source: 42 U.S.C. 601; 609(a)(7).

# MOE spending for child support paid to current and former TANF families

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- Existing TANF statute permits states to count state share of child support passed through and disregarded for current TANF families.
- Unclear whether states can count state share of support paid to former TANF families. State spending counts for certain “pro-family” activities meeting 3<sup>rd</sup> or 4<sup>th</sup> purpose.

Source: 42 U.S.C. 609(a)(7)(B)(i)(I)(aa); interim final TANF rule 45 C.F.R. 263.2 (71 Fed. Reg. 37454 (June 29, 2006, <http://www.acf.hhs.gov/programs/ofa/tanfregs/tfinrule.htm>); OCSE-AT-07-05 (July 11, 2007).



# Putting it together: Limiting assignment

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- State only allowed to take a permanent assignment of support owed during assistance in new cases—no more temporary or conditional assignment.
- State can eliminate any or all old pre-assistance assignments.
- State can eliminate any or all pre-PRWORA assignments.



# Putting it together: Full family distribution

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- A state may pay all collected support to current and former TANF families.
- This includes any or all assigned support.
- Federal share can be waived on all support paid to families except support above \$100 and \$200 limits for current TANF families
- Can claim MOE credit for entire state share paid to current TANF families when disregarded.

# Summary of DRA distribution options

(adapted from Matheson, et al., Aug. 6, 2007 NCSEA powerpoint)

<b>Decision point</b>	<b>Implement</b>	<b>Or</b>
Eliminate pre-assistance assignment	By 10/1/09	As early as 10/1/08
Discontinue older assignments	Some or all pre-1997 assignments on or after 10/1/08	Post-1997 pre-assistance assignments on or after 10/1/08
Pass-through payments	Current TANF cases—existing authority, but fed share waived 10/1/08	Former TANF cases on or after 10/1/08
Tax offset collections in former TANF cases	Continue PRWORA distribution	Implement DRA distribution on or after 10/1/08
Full family distribution	None or some options	All options



# Solely-funded state programs

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- ❑ DRA also changed TANF work participation rules—work rates count for families in state-funded programs if state spending is used to meet MOE.
- ❑ Some states are considering whether to move TANF families into a state (non-MOE) program.
- ❑ New federal policy allows states to require assignment and retain support for families in state-funded programs, but difficult and legally uncertain.
- ❑ Better idea: move toward full family distribution across programs.

Source: OCSE AT-07-02 (May 18, 2007).



# Review and adjustment under DRA

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- States are *required* to review and, if appropriate, adjust orders for cases with an assignment under part A at least every 3 years or upon parental request.
- 72 Fed. Reg. 3093: Proposed rule would clarify that this doesn't apply to TANF arrears-only cases.
- Effective Oct. 1, 2007.

Cite: 42 U.S.C. 666(a)(10) as amended; OCSE-AT-07-01 (Jan. 24, 2007).



# Medical support under DRA

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- ❑ All orders enforced by child support agency must include a provision for medical support provided by *either or both parents*.
- ❑ The state may enforce a medical support order against custodial parents.
- ❑ “Medical support” defined to include health care coverage under a health insurance plan and payment of medical expenses.
- ❑ Effective Oct. 1, 2006.

Cite: 42 U.S.C. 666(a)(19)(A) as amended; 652(f) as amended.



# OCSE medical support policy interpretation

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OCSE-PIQ-07-01 (Feb. 6, 2007):

- ❑ State must use guidelines for birthing costs and other retroactive medical support orders.
- ❑ State may submit past-due medical support for IRA tax offset--if set according to guidelines.



# Proposed OCSE medical support rule

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71 Fed. Reg. 54965:

- ❑ Defines “cash medical support:” private or public insurance or other medical costs.
- ❑ Broad definition of “health insurance.”
- ❑ Defines “reasonable cost:” doesn’t exceed 5% of gross income.
- ❑ Guidelines must address “how parents will provide for health care needs.”
- ❑ All IV-D support orders must include medical support.
- ❑ Requires agency to seek modification if health insurance is available.
- ❑ State must consider appropriate health coverage available to either parent.
- ❑ Current support given priority over medical support.
- ❑ Child-only Medicaid cases may be closed for non-cooperation.
- ❑ Changes in audits and self-assessments (FFY 2005 audits).

Cite: OCSE AT-06-04 (Sept. 20, 2006).



# Decreased passport limits

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- The amount of unpaid support needed to trigger a passport denial has decreased from \$5,000 to \$2,500.
- Effective Oct. 1, 2006.

Cite: 42 U.S.C. 666(a)(10)(A)(i) as amended.



# Tax intercept for adult children

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- The federal tax offset procedure can be used to collect arrears for children who have reached the age of majority.
- Effective Oct. 1, 2007.

Cite: 42 U.S.C. 664 as amended.



# Other provisions

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- ❑ HHS may conduct insurance data matching through FPLS.
- ❑ State option to use system for interstate case processing conduct insurance data matching.
- ❑ Federal FPLS and training funds maintained.
- ❑ General DRA effective date: Oct. 1, 2006, with standard exception when state laws must be amended (3 months after the 1<sup>st</sup> day of the 1<sup>st</sup> calendar quarter beginning after the close of the first regular session of the state legislature).

Cite: 42 U.S.C 652(l) as amended; 653(k)(3) as amended; 653(o) as amended.



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