TO: Linda Boyer and OCSE management, and OGC
FROM: Data Access Legal team and Economic Analysis team
DATE: September 26, 2018
RE: Draft memo for discussion of legal authorities pertaining to charging fees and costs to states and other users.

BACKGROUND: This memo was originally drafted as a presentation for senior staff to approve fees for FY 2018. Rising costs of the technical assistance provided to states, from increased services and improved technologies, have prompted the Division of Federal Systems to increase fees charged back to users based on actual increased costs. The data access legal and economic analysis teams were asked to look at historical and current policy, regulation, and legislation to confirm the authority for these fees. This memo includes five appendices containing:

1. recently researched authorities (Appendix A);
2. an updated version of the 2008 matrix prepared for DFS fee methodology review in 2008, with a list of relevant OCSE and general legislation, regulations, and guidance (Appendix B);
3. OMB Statement of Financial Guidance issued to OCSE in1988 (Appendix C);
4. Chronology of FPLS and CSENet Fee Policy (Appendix D); and
5. FY2018 FPLS Fee Methodology Overview (Appendix E).

DFS GENERAL QUESTIONS:

1. What legislation or policy concerning the assessment of fees has changed since the review in FY2008?
2. What policy or regulations apply to our assessment of "telecommunication" fees to State CSE Agencies and/or our data matching partners?
3. Generally, what costs can be included in user charges assessed by OCSE?

BRIEF ANSWERS TO DFS QUESTIONS:

1. After researching the law, regulations, and OCSE policy, the Data Access legal team did not find any *new* legislation, regulations, or policy regarding the assessment of FPLS or CSENet fees.
2. The Data Access legal team found no policies that apply to the assessment of "telecommunication" fees other than that contained in the 1988 OMB memo issued to OCSE. (Appendix B)
3. The Data Access legal team found no guidance within our own policy and legal authority to assess an all-inclusive definition for "user charges" but both (1) the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. § 9701 (Appendix A), and (2) OCSE statutory authority, permit OCSE to charge specific costs or fees.

DFS SPECIFIC ISSUE: Does legal authority allow OCSE to recover costs from its users, including the state IV-D agencies, e.g. interstate networks (e.g. iSupport),

SUMMARY RESPONSE: Based on our research to date, an argument could be made that states and other users must pay for all "interstate networks and hubs" regardless of where they are housed, or under what authority they are established, and that other expenditures, such as portals and other communications networks that facilitate authorized communications, services and activities by states or other authorized users, should also be charged back.

The Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. § 9701, P.L. 97-258 (Sept. 13, 1982) (Appendix A) and OCSE-specific statutory authority permit OCSE to charge costs or fees. The IOAA does not appear to disallow an agency whose specific authority assigns some of its fees or costs, such as OCSE, from also assigning additional categories of costs, based not on any specific authority, but solely on the IOAA. However, subsection (b) of the IOAA appears to require agencies to "prescribe regulations establishing the charge for a service or thing of value provided by the agency." OCSE regulations at 45 C.F.R 303.70(f)(3) and (4)(ii) require that the amounts charged to states must be reasonable and in the amount determined by OCSE. This regulation may suffice as the regulation required by the IOAA but more research is needed to determine: (1) if this regulation is specific enough to cover all charges; and (2) whether its promulgation under the FPLS fee section of the Social Security Act renders charges ineligible for FFP. (*But see* NOTE below.)

A Statement of Financial Guidance was issued to OCSE by OMB on February 12, 1988 with OMB's statement of apportionment pursuant to an appropriations joint resolution, P.L. 100-202, Dec. 22, 1987, 101 STAT 1329 (*See* the last page of Appendix B). The guidance is consistent with the IOAA and requires states to pay for federally funded "interstate child support hubs and networks" and does not require (on its face) that the expense be included as a specific FPLS fee or other expense. The rationale for charging the states is "to encourage States to use them [the hubs and networks] in a cost-effective manner." This rationale could be extended to require *any* user to pay for a variety of tools, such as interstate hubs and networks or other technology or assistance which supports or facilitates the States and those entities, especially since the point of the charge is to "encourage States [which can be extended to *any* users] to use in a cost effective manner." This guidance appears

not only to permit, but to require, OCSE to charge states for interstate hubs and networks (as they become operational) and also permits states to claim FFP for the charge.

OCSE statutory authority and regulations include numerous requirements (or permission) for state IV-D agencies to charge user and other fees and recover costs, but it specifies less detail as to the methodology for OCSE charging state IV-D agencies. Where states are required to charge fees, guidance includes whether these costs are program expenditures or income (which, as such, are not eligible for FFP).

OCSE seeks the flexibility to include additional costs as "CSNet" fees. The OCSE definition of FPLS costs over time has broadened, for example, adding the debtor file. The benefit to the states for categorizing fees as a CSNet fee is that the states may claim FFP for the CSENet expenditure, but not (under current OCSE practice) for FPLS charges. However, charging fees for additional interstate networks would add costs not included in existing FPLS or CSENet fees.

NOTE: To date, the Data Access legal team has not found law prohibiting FFP for FPLS fees paid by the states. In fact, 45 CFR §304.20(a) appears to require it, as follows: "Federal financial participation at the applicable matching rate is available for: *** (5) The establishment and operation of the State parent locator service including: (i) Utilization of appropriate State and local locate sources to locate noncustodial parents; (ii) Utilization of the Federal Parent Locator Service;***"

RECOMMENDATION: Refer issue to OGC to determine: (1) whether and with what specificity a rulemaking is required to charge certain fees where not required by OCSE-specific law but are authorized under the IOAA; and (2) whether OCSE may allow states to claim FFP for costs associated with technical assistance tools provided by OCSE, such as the FPLS, portal, and other applications and services. States currently do claim FFP for CSNet expenditures as authorized under the 1988 OMB guidance.

OTHER RELATED QUESTIONS:

1. Do certain applications and services fall under the terms outlined in the OMB memo? (Appendix B).
2. Is iSupport an "interstate network or hub"?
3. Can iSupport be funded under the DFS budget?
4. Should we broadly apply the definition of an "interstate network or hub" to the Portal and all of the applications it supports?

RELATED ISSUE: Tribes and Tribal organizations have authority to access FPLS information under 42 U.S.C. 653(a)(2) and (c)(1). At this time the access is limited and Tribes are not required to report cases to the FCR or operate a Tribal Parent Locator Service. However, the reimbursement sections of 42 U.S.C. 653 only apply to State and federal agencies. Federal regulations at 45 CFR 303.70(f) also do not explicitly apply to Tribes or Tribal organizations. It may be necessary to amend federal statute(s) and/or regulations to have specific authority to charge FPLS fees to Tribes or Tribal organizations. Since current regulations fund tribal IV-D agencies at 90 percent or 80 percent, this may not pose any issue for some time – if they are allowed to claim FFP.

APPENDIX A

LEGAL AUTHORITY – OCSE SPECIFIC AND GENERAL

SPECIFIC OCSE AND FEDERAL PARENT LOCATOR SERVICE AUTHORITY

- **42 U.S.C. 652(j)** Training of State and Federal staff, research and demonstration programs, and special programs of regional or national significance. Out of any money in the Treasury of the United States not otherwise appropriated, **there is hereby appropriated to the Secretary for each fiscal year an amount equal to 1 percent of the total amount paid to the Federal Government** pursuant to a plan approved under this part [42 USCS §§ 651 et seq.] during the immediately preceding fiscal year (as determined on the basis of the most recent reliable data available to the Secretary as of the end of the third calendar quarter following the end of such preceding fiscal year) or the amount appropriated under this paragraph [subsection] for fiscal year 2002, whichever is greater, which shall be available for use by the Secretary, either directly or through grants, contracts, or interagency agreements, for--
  (1) **information dissemination and technical assistance to States**, training of State and Federal staff, staffing studies, and related activities needed to improve programs under this part (**including technical assistance concerning State automated systems** required by this part [42 USCS §§ 651 et seq.]); and
  (2) research, demonstration, and special projects of regional or national significance relating to the operation of State programs under this part [42 USCS §§ 651 et seq.].

- **42 U.S.C. 653(e)(2)** Notwithstanding any other provision of law, whenever the individual who is the head of any department, agency, or instrumentality of the United States receives a request from the Secretary for information authorized to be provided by the Secretary under this section, such individual shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality with a view to determining whether the information requested is contained in any such files or records. If such search discloses the information requested, such individual shall immediately transmit such information to the Secretary, except that if any information is obtained the disclosure of which would contravene national policy or security interests of the United States or the confidentiality of census data, such information shall not be transmitted and such individual shall immediately notify the Secretary. If such search fails to disclose the information requested, such individual shall immediately so notify the Secretary. The costs incurred by any such department, agency, or instrumentality of the United States or of any State in providing such information to the Secretary shall be reimbursed by him in an amount which the Secretary determines to be reasonable payment for the information exchange (which amount shall not include payment for the costs of obtaining, compiling, or maintaining the information). Whenever such services are furnished to an individual specified in subsection (c)(3) *[the resident parent, legal guardian, attorney, or agent of a child*], a fee shall be charged such individual. The fee so charged shall be used to reimburse the Secretary or his delegate for the expense of providing such services.

- **42 U.S.C. 653(k)(3).** (k) Fees.— . . . (3) For information furnished to state and federal agencies.—A State or Federal agency that receives information from the Secretary pursuant to this section or section 452(m) shall reimburse the Secretary for costs incurred by the Secretary in furnishing the information, at rates which the Secretary determines to be reasonable (which rates shall include payment for the costs of obtaining, verifying, maintaining, and comparing the information).

- **42 U.S.C. 654(17).** A State plan for child and spousal support must—*** (17) provide that the State will have in effect an agreement with the Secretary entered into pursuant to section 463 for the use of the Parent Locator Service established under section 453 and, provide that the State will accept and transmit to the Secretary requests for information authorized under the provisions of the agreement to be furnished by such Service to authorized persons, will impose and collect (in accordance with regulations of the Secretary) a fee sufficient to cover the costs to the State and to the Secretary incurred by reason of such requests, will transmit to the Secretary from time to time (in accordance with such regulations) so much of the fees collected as are attributable to such costs to the Secretary so incurred, and during the period that such agreement is in effect will otherwise comply with such agreement and regulations of the Secretary with respect thereto;

- **45 CFR 303.70(f).**

  (1) The IV-D agency shall reimburse the Secretary for the fees required under:
    (i) Section 453(e)(2) of the Act whenever Federal PLS services are furnished to a resident parent, legal guardian, attorney or agent of a child not receiving assistance under title IV-A of the Act;

(ii) Section 454(17) of the Act whenever Federal PLS services are furnished in parental kidnapping and child custody or visitation determination;
(iii) Section 453(k)(3) of the Act whenever a State agency receives information from the Federal PLS pursuant to section 453 of the Act.

(2)(i) The IV-D agency may charge an individual requesting information, or pay without charging the individual, the fees required under sections 453(e)(2), 453(k)(3) or 454(17) of the Act except that the IV-D agency shall charge an individual specified in section 453(c)(3) of the Act the fee required under section 453(e)(2) of the Act
(ii) The IV-D agency may recover the fee required under section 453(e)(2) of the Act from the noncustodial parent who owes a support obligation to a family on whose behalf the IV-D agency is providing services and repay it to the individual requesting information or itself.
(iii) State funds used to pay the fee under section 453(e)(2) of the Act are not program expenditures under the State plan but are program income under § 304.50 of this chapter.

(3) The fees referenced in paragraph (f)(1) of this section shall be **in an amount determined to be reasonable payment for the information exchange.**

(4)(i) If a State fails to transmit the fees charged by the Office under this section, the services provided by the Federal PLS in cases subject to the fees may be suspended until payment is received.
(ii) Fees shall be transmitted in **the amount** and manner **prescribed by the Office in instructions**.

- **45 CFR §304.20(a)**. Federal financial participation at the applicable matching rate is available for: *** (5) The establishment and operation of the State parent locator service including: (i) Utilization of appropriate State and local locate sources to locate noncustodial parents; (ii) **Utilization of the Federal Parent Locator Service**;***

  Note: Only the fees paid by the State pursuant to 453(e)(2) are considered program income. The fees paid under 454(17) and 453(k)(3) are not considered program income. *Also see* 45 CFR 304.23(e): "any expenditures which have been reimbursed by fees collected as required by this chapter" are not available for FFP.

  - **OMB STATEMENT OF FINANCIAL GUIDANCE -** "Consistent with OCSE's original start up plan, we understand that Federally-funded interstate child support hubs and networks should charge back to encourage States to use them in a cost-effective manner." (Appendix A).

  - **PUBLIC LAW NO: 102-394, DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1993, SEC. 214**. "For any program funded in this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts, the Secretary of Health and Human Services is authorized, **when providing services or conducting activities for a State with respect to such program for which the Secretary is entitled to reimbursement by the State, to obtain such reimbursement as an offset against Federal payments to which the State would otherwise be entitled under such program from funds appropriated for the same or any subsequent fiscal year**. Such offsets shall be credited to the appropriation account which bore the expense of providing the service or conducting the activity, and shall remain available until expended."

GENERAL AUTHORITY

- Agencies may charge fees under the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. § 9701, or under specific statutory authority. The following is extracted from **GAO-08-386SP, User Fee Design Guide**.

  UNDER THE IOAA – The IOAA provides broad authority to assess user fees or charges on identifiable beneficiaries **by administrative regulation**. User fees assessed under IOAA authority must be (1) **fair** and (2) **based on costs** to the government, the **value** of the service or thing to the recipient, **public policy** or interest serviced, and **other relevant facts**. Fees collected under this authority are **deposited in the general fund** of the U.S. Treasury and are generally not available to the agency or the activity generating the fees. Unless otherwise authorized by law, IOAA requires that agency regulations establishing a user fee are subject to policies prescribed by the President. OMB provides such guidance to executive branch agencies under this authority through Circular No. A-25.9. The Circular establishes federal guidelines regarding user fees assessed under the authority of IOAA and other statutes, including the scope and types of activities subject to user fees and the basis upon which the fees are set. It also provides guidance for executive branch agency implementation of fees and the disposition of collections.

UNDER AN AGENCY'S SPECIFIC AUTHORITY – In many instances, Congress has provided specific authority to federal agencies to assess user fees—in agency authorizing or appropriations legislation, for example. Legislation authorizing a user fee may enact a specified rate or amount to be assessed or may stipulate how the fee is to be calculated, such as a formula; the method and timing of collection; and the authorized uses of the fee collections, which may be broadly or narrowly defined. The amount of a fee may be set to partially or fully recover costs or may be set according to some other basis (e.g., market value). Specific authorizing statutes may even grant the agency broad discretion to set and revise fee rates without Congressional approval—that is, solely through the regulatory process—based on various factors. Specific user fee statutes should be construed consistent with IOAA and OMB.

APPENDIX B

Summary of Legislation and OMB Guidance on the Calculation of User Charges

This appendix reproduces the document drafted in 2008 and has been updated for this 2017 review.

SUMMARY OF LEGISLATION AND OMB GUIDANCE ON THE CALCULATION OF USER CHARGES

[This document was drafted in 2008 and updated (in the third column) for this 2017 review.]

2008 REVIEW SOURCE AND SUMMARY	**2008 REVIEW COMMENTS**	**2017 REVIEW COMMENTS**
Circular A-11, Preparation and Submission of Budget Estimates User charges are charges assessed for the provision of Government services and for the sale or use of Government goods or resources. s. 20.3. User charges do not include collections from other Federal accounts. s. 20.7(g).	This definition section of A-11 refers directly to A-25, the Circular dedicated to the topic of user charges. Note, however, that A-25, in turn, refers to A-130, which discusses user charges only in a context that is ***not applicable to*** FPLS. (See below.)	Circular A-11 was revised July 1, 2016, and is now entitled *Preparation, Submission and Execution of the Budget.* Suggests that agencies should also consult the GAO's Federal User Fee: A Design Guide as a reference when setting user fees. s. 51.13. *Note: the text of s. 20.3 (definition of User Charges) and s. 20.7(g) did not change*

2008 REVIEW SOURCE AND SUMMARY	2008 REVIEW COMMENTS	2017 REVIEW COMMENTS
Circular A-25, User Charges "When a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed (to recover the full costs to the Federal government for providing the special benefit, or the market price)." Sec. 6.a.1. "Except as provided in Section 6c, user charges will be sufficient to recover the full cost to the Federal Government (as defined in Section 6d) of providing the service, resource, or good when the Government is acting in its capacity as sovereign." Sec. 6.a.2.	User charges do not include collections from other Federal accounts. A-11, s. 20.7(d). Thus, A-25 does not apply to transactions between federal agencies. Even if applicable to non-federal sources, i.e., state IV-D agencies, A-25 also provides that the more specific guidance in A-130 will be deemed to meet the requirements of Circular A-25 on user charges related to information resources. A-25, s. 4.c. Because the FPLS is an "information resource" under A-130, A-130 applies generally applies to the FPLS. However, A-130 provides no guidance directly applicable to FPLS on the calculation of user charges because FPLS is not engaged in "information dissemination" and is not an "information processing services organization" as those terms are defined in A-130. (See below.)	**Sec. 6.d.1.** ``Full cost'' includes all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of: (a) Direct and indirect personnel costs, including salaries and fringe benefits ... (b) Physical overhead, consulting, and other indirect costs … (c) The management and supervisory costs. (d) The costs of enforcement, collection, research, establishment of standards, and regulation, (e) Full cost shall be determined or estimated from the best available records of the agency... **Sec. 7.d.** d. When developing options to institute user charges administratively, agencies should review all sources of statutory authority in addition to the Independent Offices Appropriations Act that may authorize implementation of such charges.

2008 REVIEW SOURCE AND SUMMARY	2008 REVIEW COMMENTS	2017 REVIEW COMMENTS
Circular A-130, Management of Information Resources Agencies must avoid improperly restrictive practices by setting user charges for *information dissemination products* to recover the cost of dissemination but no higher unless an exception to this policy applies. Sec. 8.a.7(c). A "service recipient" must pay to an "information processing services organization" the full costs or expenses incurred by the IPSO in its operation, including all direct, indirect, general, and administrative costs.	An "information dissemination product" is disseminated by an agency *to the public*. Because FPLS user charges apply to federal and state agencies, not to the public, this provision is inapplicable. "Information processing services organization" (IPSO) means "a discrete set of personnel, information technology, and support equipment with the ***primary function*** of providing services to more than one agency on a reimbursable basis." Sec. 6, *Definitions,* paragraph o. It is unlikely that OCSE is an "IPSO" Furthermore, Circular A-130 includes no elaboration on the respective roles of IPSOs or service recipients.	Circular A-130 was revised and republished July 28, 2016, and is now entitled *Managing Federal Information as a Strategic Resource*. New language in revised Circular A-130: "Agencies shall not, unless specifically authorized by statute, *establish fees that exceed the cost of dissemination to the public*, restrict or regulate the use, resale, or re-dissemination of public information by the public; or establish any mechanism that interferes with the timely and equitable availability of public information to the public;" *See* subsection (e)(2)(c) under section 5 (Policy). Because FPLS user charges apply to federal and state agencies, not to the public, this provision is inapplicable.

2008 REVIEW SOURCE AND SUMMARY	2008 REVIEW COMMENTS	2017 REVIEW COMMENTS
The Chief Financial Officers Act "Agencies should discuss the results of the biennial review of user fees and any resultant proposals in the Chief Financial Officers Annual Report required by the Chief Financial Officers Act of 1990;" A-25, s. 8.e.	Requirements or guidelines for the biennial review are not addressed in the Chief Financial Officers Act of 1990. The CFO act, however, does mandate the reporting of the following: • a description and analysis of the status of agency financial management; • the annual financial statements and audit reports prepared under the CFO Act, where applicable; • a summary of the reports on internal accounting and administrative control systems submitted to the President and the Congress under the Federal Managers' Financial Integrity Act; and • other information the agency head considers appropriate concerning agency financial management. The biennial review is thusly treated as a vehicle for the description and analysis of a specific component of financial management methodology for OCSE.	No change to statute requiring annual report. *See* 31 U.S.C. §902(a)(6).

2017/2018 REVIEW ADDITIONAL SOURCES AND SUMMARY	2017/2018 REVIEW COMMENTS
Fees and charges for Government services and things of value (31 U.S.C. §9701, Sept. 13, 1982, P.L. 97-258) (b) The head of each agency … may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be-- (1) fair; and (2) based on-- (A) the costs to the Government; (B) the value of the service or thing to the recipient; (C) public policy or interest served; and (D) other relevant facts. (c) This section does not affect a law of the United States-- (1) prohibiting the determination and collection of charges and the disposition of those charges; and (2) prescribing bases for determining charges, but a charge may be redetermined under this section consistent with the prescribed bases.	• Not new legislation. • Supports establishing and collecting user fees by regulation. • Requires regulations to be fair and based on costs, public policy or interest served, and other relevant facts.
Intergovernmental Cooperation Act of 1968, Title III, Sec. 301, *et seq*.[1] **31 U.S.C. 6505(a) and (b)** (enacted by P.L. 97-258): (a) The President may prescribe statistical and other studies and compilations, development projects, technical tests and evaluations, technical information, training activities, surveys, reports, documents, and other similar services that an executive agency is especially competent and authorized by law to provide. The services prescribed must be consistent with and further the policy of the United States Government of relying on the private enterprise system to provide services reasonably and quickly available through ordinary business channels. (b) The head of an executive agency may provide services prescribed by the President under this section to a State or local government when-- (1) written request is made by the State or local government; and (2) payment of pay and all other identifiable costs of providing the services is made to the executive agency by the State or local government making the request.	• Not new legislation. • Requires written request by State or local government. • Although the principles of seeking reimbursement for the costs of providing technical assistance and applications to facilitate case processing across state lines are relevant to our discussion, the practices set forth in the original statute and reinforced in the subsequent legislation upon the repeal of 42 U.S.C. 4221 *et seq.,* i.e. for states to make a written request for assistance, are not applicable to the Portal exchanges and fees discussed.

[1] Provisions of the Act that were originally codified at 42 U.S.C. 4221 *et seq*. were repealed in 1982 by P.L. 97-258, §5(b), 96 Stat. 1080.

2017/2018 REVIEW ADDITIONAL SOURCES AND SUMMARY	2017/2018 REVIEW COMMENTS
GAO-08-386SP, Federal User Fees: A Design Guide "Fee collections should be sufficient to cover the intended portion of program costs over time. Although the costs of any particular program may rise or fall, there is a general concern that fees may not keep pace with increases in costs because of factors such as inflation." "To set fees so that total collections cover the intended share of program costs, a reliable accounting of total program cost is important. *** Unless the authorizing legislation specifies costs that should be included or excluded, agencies should follow OMB guidance."	• Fees should be set and adjusted to cover the intended share of costs over time, including the consideration of future program costs. • OMB Circulars No. A-25 and No. A-11 instruct agencies to include all direct and indirect costs when determining full cost.
GAO-12-342SP, 2012 GAO Annual Report: Opportunities to Reduce Duplication, Overlap and Fragmentation, Achieve Savings, and Enhance Revenue. "Federal user fees and charges are generally related to **some voluntary transaction** or request for government goods or services beyond what is normally available to the public, such as fees for national park entrance, patent applications, and customs inspections. Twenty-three federal agencies reported collecting nearly $64 billion in fees or charges in fiscal year 2010. As GAO reported in May 2008, well-designed user fees can reduce the burden on taxpayers to finance those portions of activities that provide benefits to identifiable users. Regular, comprehensive fee reviews can help identify duplicative fee-funded activities, prevent misalignment between fees and the activities they cover, and maximize opportunities for user financing." [emphasis added] https://www.gao.gov/modules/ereport/handler.php?1=1&path=/ereport/GAO-12-342SP/data_center_savings/General_government/43._Federal_User_Fees#_ftn2_4	• References "voluntary" transactions but supports establishing and collecting user fees for mandatory transactions. • Supports regular, comprehensive review of fees.

2017/2018 REVIEW ADDITIONAL SOURCES AND SUMMARY	2017/2018 REVIEW COMMENTS
GAO-13-820, Federal User Fees: Fee Design Options and Implications for Managing Revenue Instability. "Design decisions also have program management implications. For example, **the frequency of fee reviews and adjustments affects the alignment between collections and costs**. Failing to review fees regularly has sometimes resulted in large increases when fees are eventually updated, creating costly challenges." "… we have also previously reported that, in the past, stakeholders expressed concern about the agency incentive to inflate costs or the lack of incentive to restrain costs. **This risk may be reduced**, and tools for Congressional and stakeholder oversight may be enhanced, **if the agency clearly reports its methods for setting the fee, including an accounting of program costs and the assumptions it uses to project future program costs and fee collections**. "Fee collections are classified into 3 categories: offsetting collections, offsetting receipts, or governmental receipts. *** [f]ees classified as offsetting collections can provide agencies with more flexibility because they are generally available for agency obligation without an additional annual appropriation."	• *Note*: this guidance addresses mainly how ***Congress*** designs fees, and applies more to fee-funded agencies (e.g., U.S. Patent and Trademark Office; the Mint; the FCC). • Fees set to "reimburse the Secretary for costs incurred" for providing information under section 453 or 452(m) are most likely offsetting collections.

2017/2018 REVIEW ADDITIONAL SOURCES AND SUMMARY	2017/2018 REVIEW COMMENTS
GAO-17-268T, Federal Fees, Fines, and Penalties: Observations on Agency Spending Authorities "User fees are **fees assessed to users for** goods or **services provided by the federal government**. They are an approach to financing federal programs or activities that, in general, are related to some voluntary transaction **or request for government services above and beyond what is normally available to the public**. User fees are a broad category of collections, **whose boundaries are not clearly defined**." *"Intragovernmental fees* are charged by one federal agency to another for goods and services such as renting space in a building or cybersecurity services. Unlike user fees, fines, and penalties, **unless Congress has specified otherwise, agencies generally have authority to use intragovernmental fees without further appropriation**." "Legislation authorizing a fee, fine, or penalty may give the agency authority to use collections without additional congressional action. **We refer to the legal authorities that provide agencies with permanent authority to both collect and obligate funds from sources such as fees, fines, and penalties as "permanent funding authorities."** Agencies with these permanent funding authorities have varying degrees of autonomy, depending in part on the extent to which the statute limits when, how much, and for what purpose funds may be obligated."	• Fees set under 453(k)(3) could be considered user fees. • Fees charged to other federal agencies under 453(k)(3) could be considered intragovernmental fees. • 453(k)(3) is arguably permanent funding authority.

APPENDIX C

OMB Statement of Financial Guidance (February 12, 1988)

The last page of this appendix contains the Statement of Financial Guidance, issued by OMB on February 12, 1988, which accompanied OMB's statement of apportionment pursuant to an appropriations joint resolution, P.L. 100-202, Dec. 22, 1987, 101 STAT 1329**.**

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

FEB 12 1988

2/29/88 Budget
cc M. Sherman
M. Kirker
D. Kirker
N. Marr
H. Pabst

Mr. Dennis J. Fischer
Deputy Assistant Secretary for Finance
Department of Health and Human Services
Washington, D.C. 20201

Dear Dennis:

Enclosed is the apportionment Child Support Enforcement reflecting appropriations made available by P.L. 100-202. This apportionments also include carryover balances from FY87.

FYI

Strengthening child support enforcement is a high priority for both the Administration and Congress. Both agree the Federal government should take every step possible to encourage States to help as many children as possible receive the support they should from their absent parents. The Office of Management and Budget (OMB) lauds the administrative measures the Department of Health and Human Services (HHS) and the Office of Child Support Enforcement have taken to help children receive the higher support levels they rightfully deserve.

It is incumbent on the Executive to take every step feasible to make sure child support enforcement operates at the most optimal level possible. A necessary step is to make sure States report timely. OMB is concerned that some State Child Support Agencies frequently submit late or incomplete financial and program reports. We believe HHS's deadlines are reasonable and know the required information is necessary for the Secretary to monitor program improvements, determine whether adequate funds are available, and evaluate whether State expenditures are proper and efficient.

Government-wide grants policies are designed to facilitate the orderly flow of funds to grantees whose financial management systems meet Federal standards for control of and accountability for the use of funds. As a result, HHS normally funds Child Support Enforcement by sending States letters of credit at the beginning of each quarter. At the beginning of each month States use their local banks to withdraw from the Treasury about one third of the amount of the letter of credit.

Generally, the convenience of advance funding through letters of credit is <u>not</u> supposed to be extended to grantees with financial management systems not meeting Federal standards. OMB believes some States do not supply the financial and program reporting HHS needs because this prerequisite has not been enforced. Beginning with the third quarter of fiscal year 1988,

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this convenience shall not be extended to States who are overly delinquent in submitting complete Child Support Enforcement program and financial reports.

States with substandard Child Support Enforcement financial management systems (States overly delinquent in submitting required reports) shall receive Federal incentive and matching funds by Treasury check on an as-needed basis. Using this funding mechanism rather than reverting to reimbursement by Treasury check ensures States have adequate funds to operate programs while still providing the necessary accountability. Funding by Treasury check shall be used when reports have not been received in time for HHS to review before preparing a letter of credit. To give a grantee the convenience of the letter of credit method, complete expenditure and collections reports are required no later than 30 days after the due date and complete program reports are required no later than 50 days after the due date. When the Office of Child Support Enforcement has not received complete reports 15 days after the due date, it shall remind the State by letter that the convenience of the letter of credit funding method is contingent on receiving complete reports. For the third quarter of fiscal year 1988, the Director of OCSE may make exceptions, and include in a letter of credit one month's funding while reports are being received and reviewed.

This guidance on use of the letter of credit payment method does not affect the Congressionally required changes in payment methodology for States who have not supplied complete expenditure and collections reports within about 150 days of the due date, or complete program reports within about 170 days of the due date. In those cases, the statute requires the payment method be reimbursement by Treasury check at the end of the quarter.

Per HHS's request, OMB has apportioned carryover funds to develop a national Child Support Enforcement telecommunications network. OMB has apportioned in a single apportionment both carryover and new appropriations for Child Support Enforcement Excluding Statewide Management Information Systems. Thus, an apportionment request for Child Support Enforcement Excluding Statewide Management Information Systems is being returned without action.

Sincerely,

David K. Kleinberg
Deputy Associate Director for
Health and Income Maintenance

Enclosure

STATEMENT OF FINANCIAL GUIDANCE

Consistent with OCSE's original start up plan, we understand that Federally funded interstate child support hubs and networks should charge back to encourage States to use them in a cost-effective manner. Once an interstate network or regional hub is functioning, the operating and subsequent development costs will be charged directly to the States using the systems, with Federal reimbursement (to the individual, not the host, States) at the normal matching rate. For a given network or hub, charge backs are to begin no later than the second calendar quarter after the initial system has been implemented. For existing systems, charge backs should begin no later than July 1, 1988. OMB believes it desirable, as a matter of proper and efficient administration, to ask all States to conduct a study comparing cost and outcomes of the interstate network to credit bureaus for locating absent parents who can pay child support.

Method of providing Federal funds to States: To determine in advance the need for added Federal funds for State administration of Child Support Enforcement, all required State expenditure and collections reports need to be completed and received no later than 30 days after the due date. Other quarterly program reports need to be completed and received no later than 50 days after the due date. Starting with funding for the third quarter of fiscal year 1988, the letter of credit payment method shall not be used when any reports are not complete and received by the times indicated above. Instead, funds shall be provided to States by Treasury check, on an as needed basis. For the third quarter of fiscal year 1988, the Director of OCSE may make exceptions, and include in a letter of credit one month's funding while reports are being received and reviewed. OMB should be notified within 10 days of any changes in the method of payment. The notification should include a description of the State's delinquent reports and any past history of delinquent reports. This guidance on use of the letter of credit payment method does not affect the Congressionally required changes in payment methodology for States who have not supplied complete expenditure and collections reports within about 150 days of the due date, or complete program reports within about 170 days of the due date. In those cases, the statute requires the payment method be reimbursement by Treasury check at the end of the quarter.

David K. Kleinberg
Deputy Associate Director for
Health and Income Maintenance

Date: 2/12/88

***The attached apportionment is approved subject to the statement of financial guidance.