

TITLE 8 SOCIAL SERVICES
CHAPTER 50 CHILD SUPPORT ENFORCEMENT PROGRAM
PART 112 ADMINISTRATIVE ENFORCEMENT OF SUPPORT OBLIGATIONS

8.50.112.1 ISSUING AGENCY: New Mexico Human Services Department - Child Support Enforcement Division
[8.50.112.1 NMAC - Rp, 8.50.112.1 NMAC, 12/30/10]

8.50.112.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of IV-D services.
[8.50.112.2 NMAC - Rp, 8.50.112.2 NMAC, 12/30/10]

8.50.112.3 STATUTORY AUTHORITY: Public Assistance Act, NMSA 1978, Section 27-2-27. The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.).
[8.50.112.3 NMAC - Rp, 8.50.112.3 NMAC, 12/30/10]

8.50.112.4 DURATION: Permanent.
[8.50.112.4 NMAC - Rp, 8.50.112.4 NMAC, 12/30/10]

8.50.112.5 EFFECTIVE DATE: December 30, 2010, unless a later date is cited at the end of a section.
[8.50.112.5 NMAC - Rp, 8.50.112.5 NMAC, 12/30/10]

8.50.112.6 OBJECTIVE: To provide regulations in accordance with federal and state law and regulations.
[8.50.112.6 NMAC - Rp, 8.50.112.6 NMAC, 12/30/10]

8.50.112.7 DEFINITIONS: [RESERVED]
[See 8.50.100.7 NMAC]

8.50.112.8 PARENTAL RESPONSIBILITY ACT (LICENSE SUSPENSION): The IV-D agency submits a certified list of support obligors who are thirty (30) days or more delinquent on their monthly support obligation. The certified list is submitted to the appropriate boards, commissions, courts, or agencies responsible for issuing drivers, professional, occupational, and recreational licenses as detailed in the Parental Responsibility Act NMSA 1978, Sect. 40-5A-1 et seq.

A. Automated referral process: The IV-D agency provides a certified list of all obligors who meet referral criteria to various licensing boards. The licensing boards report back to the IV-D agency the action the board has taken in connection with the Parental Responsibility Act. The IV-D automated system will refer cases that meet the following criteria:

(1) the obligor is delinquent thirty (30) days or more in payment of court ordered support;
(2) a notice of potential submittal has been sent to the obligor's last address of record with the IV-D agency;

(3) there is no court order prohibiting the referral; and
(4) thirty (30) calendar days have elapsed since the transmittal of the notice.

B. Administrative hearing by the licensing boards: If requested in writing by the hearing officer of the licensing board, the IV-D agency will make available a witness to testify on the IV-D agency's behalf at an administrative hearing that may be held in connection with the Parental Responsibility Act.

C. Settlement:

(1) In all cases, the IV-D agency must make every effort to obtain lump sum payments to satisfy all arrearages, including prior judgments, current delinquency, and accrued interest.

(2) If an obligor has had his or her license suspended in multiple cases, the issuance of a certificate of compliance for one case will not release the license suspension(s) for obligor's other case(s). The obligor will have to make satisfactory arrangements for each case in order to be eligible for license reinstatement.

D. Arrears only cases: In an arrears only case, the monthly payment must be calculated using the current child support guidelines at NMSA 1978, Section 40-4-11.1, or a schedule that will fully pay the arrearages plus accumulated interest in seventy two (72) months or less.

E. Withdrawal of referral: If the obligor does not meet the minimum criteria for referral at the time of the referral, the referral will be withdrawn, and a certificate of compliance will be issued with a request to waive the reinstatement of fees.

F. Responsibilities of the obligor: The obligor has the following responsibilities.

(1) The obligor must supply a valid mailing address for the certificate of compliance to be mailed when complete. The obligor may elect to have the certificate of compliance sent to his/her attorney of record, but must also provide the IV-D agency with a current, valid mailing address and physical address for the obligor.

(2) The obligor is entirely responsible for submitting the certificate(s) of compliance to all licensing agencies for the reinstatement of any and all licenses within thirty (30) days of date of the certificate of compliance is issued. Failure to comply with the licensing agency's requirements for license application approval or license reinstatement may result in the obligor's license(s) continued denial or suspension. The IV-D agency will not re-issue a certificate of compliance if the obligor fails to maintain compliance with all court orders for support.

[8.50.112.8 NMAC - Rp, 8.50.112.8 NMAC, 12/30/10]

8.50.112.9 CONSUMER REPORTING AGENCIES (CREDIT BUREAUS):

A. The Title IV-D agency is required by federal and state law to report periodically to consumer reporting agencies the name of any obligor who is delinquent in the payment of support and the amount of the overdue support. The IV-D agency has procedures in place that ensure that overdue support is reported only:

(1) after the obligor has been afforded due process required under state law, including notice and a reasonable opportunity to contest the accuracy of such information; and

(2) to an entity that has furnished evidence satisfactory to the state that the entity is a legitimate consumer reporting agency.

B. At the request of a consumer reporting agency, and upon thirty (30) day's advance notice to the obligor at the obligor's last known address of record with the IV-D agency, the department may release information regarding the delinquency of an obligor. The department may charge a reasonable fee to the consumer reporting agency, pursuant to NMSA 1978, Sec. 40-4A-15.

[8.50.112.9 NMAC - Rp, 8.50.112.9 NMAC, 12/30/10]

8.50.112.10 COLLECTION OF PAST DUE SUPPORT BY FEDERAL TAX REFUND OFFSET:

Federal tax refund offset is utilized to pay support arrearages, including child support, medical support, and spousal support. Cases meeting specific criteria are referred to the U.S. department of treasury's financial management service. A non-TANF custodial party who has applied for IV-D services is assessed fees for the federal income tax refund offset remedy. The fees are deducted from the tax refund when it is intercepted but are credited to the obligor's support payment. Custodial party consent is not required before submitting the case for offset in any IV-D case. In addition, cases may be submitted where there is past due support on behalf of a disabled adult who was determined to be disabled under Title II or XVI while he or she was still a minor and for whom a support order is still in effect.

A. Criteria for federal income tax offset: A IV-D case may be referred for federal income tax offset, regardless of whether the child(ren) are emancipated, so long as there is a delinquency or arrearage owed. IV-D cases having spousal support delinquencies or arrearages will not be referred for federal income tax offset if there is not also an ongoing child support obligation, delinquency, or arrearage. IV-D cases that are solely for processing payments will not be referred. Only IV-D cases that meet at least one of the criteria in 45 CFR 303.72(a) are to be referred for federal income tax offset.

B. Periodic updates on referred obligors are sent by the IV-D agency to the treasury department. Those updates may result in modifications up or down on the balance due or deletions from the referral.

C. Joint return: The U. S. internal revenue service (IRS) will offset a refund from a joint income tax return to pay a past due support obligation if either tax filer is certified as being legally responsible for providing support. Complaints, questions, and forms (i.e., injured spouse claim and allocation) concerning joint refund cases can only be addressed by the IRS. If the obligor's spouse is not liable for the support debt, the IRS will issue a pro rata refund to the spouse (upon the filing of an IRS injured spouse claim and allocation form by the obligor's spouse) and the IV-D agency will be required to reimburse the IRS in the amount of the pro rata refund. The federal government will advise the IV-D agency of any adjustments to IV-D collections. The injured spouse may also voluntarily release the claim to his or her portion of the joint refund. This will result in an immediate distribution of the refund amount to the IV-D case. An injured spouse may request the release form from the IV-D agency, or may provide a notarized letter authorizing the release. The notarized letter shall set forth the injured spouse's name, the name of the obligor, and the obligor's CSED case number(s).

D. Bankruptcy cases: The IV-D agency will review the non-custodial party's bankruptcy case to determine what action, if any, the Title IV-D agency may take in regard to the non-custodial party's obligation to pay support. When the automatic stay, issued pursuant to Section 362 of the bankruptcy code, has been lifted or is no longer in effect with respect to the individual owing the obligation, and the obligation was not discharged by the bankruptcy proceeding, the case may be submitted for offset.

E. Notification of federal income tax offset:

(1) Written advance notice is sent to inform an obligor that the amount of his or her past due support will be referred to the secretary of the U.S. treasury for collection by federal tax refund offset. The notice shall be sent to the obligor's last address of record with the IV-D agency and shall inform the obligor:

- (a) of the right to contest the department's determination that past due support is owed;
- (b) of the right to contest the amount of past due support;
- (c) of the right to an administrative review;
- (d) of the procedures and time frame for requesting an administrative review; and
- (e) that the U.S. treasury will notify the obligor's spouse at the time of offset regarding steps to

take to protect the share of the refund that may be payable to that spouse.

(2) At the time the offset occurs, the secretary of the U.S. treasury will notify the obligor that the offset has been made. In addition, notice will be provided to any individual who filed a joint return with the obligor, advising him or her of the steps to be taken in order to secure a proper share of the refund.

F. Contesting referral for federal offset: The obligor has thirty (30) days from the date of mailing of the notification of a referral for federal tax intercept to notify the IV-D agency that he or she contests the referral. The notification issued by the IV-D agency provides the address and telephone number to be contacted in order for the obligor to request a hearing to contest the referral.

(1) Upon receipt of an appeal request from the obligor, a notice is generated by the administrative law judge and sent to the obligor and the IV-D agency.

(2) The notice shall set forth the time and place of the administrative hearing. The hearing is conducted in accordance with 8.50.130 NMAC.

(3) If the appeal request concerns a joint tax refund that has not yet been intercepted, the obligor is informed that the secretary of the U.S. treasury will notify the obligor's spouse at the time of offset regarding steps to take to secure his or her proper share of the refund.

(4) If the appeal concerns a joint tax refund which has already been offset, the obligor will be referred to the secretary of the U.S. treasury to address the refund due to the obligor's spouse.

(5) If the hearing decision results in a deletion or decrease in the amount referred for offset, the federal office of child support enforcement will be notified.

(6) If an amount which has already been offset is found to have exceeded the amount of past due support owed, steps to refund the excess amount to the obligor will be promptly taken.

G. Interstate cases: The following applies to the New Mexico IV-D agency when it is the state that submits a case for federal income tax offset. The obligor shall request an administrative review be conducted by the New Mexico IV-D agency. If the underlying order upon which the referral for federal income tax offset is based has not been issued by a New Mexico district court, within ten (10) days of the receipt of the obligor's request for administrative review, the New Mexico IV-D agency must notify the IV-D agency in the state that referred the case to New Mexico of the obligor's request for administrative review. Within forty-five (45) days of receipt of the request for administrative review from the New Mexico IV-D agency, the IV-D agency in the state that referred the case to New Mexico should: (1) send notice to all appropriate parties setting forth the time and place of the administrative review; and (2) conduct the review and render a decision. If the administrative review conducted by the IV-D agency in the other state results in a reduction or elimination of the amount referred for offset, the IV-D agency that conducted the administrative review should inform the New Mexico IV-D agency and the OCSE of the decision. The New Mexico IV-D agency shall be bound by the determination of the IV-D agency in the state that conducted the review.

H. Distribution of collections from federal income tax offset: Past-due support amounts collected as a result of the federal income tax refund offset shall be distributed pursuant to 8.50.125.12 NMAC. The obligor shall receive full credit for the entire amount of tax intercept that is applied to his or her case(s). Distribution of tax intercept money for obligors with multiple IV-D cases shall be in accordance with federal and state laws. If an offset is made to satisfy non-TANF past due support from a refund based upon a joint return, the IV-D agency may delay distribution until notified that the injured spouse's proper share of the refund has been paid or for a period not to exceed six months from notification of offset, whichever is shorter.

[8.50.112.10 NMAC - Rp, 8.50.112.10 NMAC, 12/30/10]

8.50.112.11 COLLECTION OF PAST DUE SUPPORT BY NEW MEXICO TAXATION AND REVENUE DEPARTMENT BY STATE TAX REFUND OFFSET: New Mexico law allows for the interception (offset) of an obligor's tax refund to pay child support.

A. Criteria for state income tax offset: Cases submitted for tax refund offset to the New Mexico taxation and revenue department (TRD) must meet federal tax refund offset criteria. In interstate cases, if New Mexico is the responding state, obligors are referred to TRD only, not to IRS.

B. Pre-offset notices/final notices: Within ten (10) days after receiving notification of an offset from TRD, the Title IV-D agency will send a notice to the obligor at his or her last known address of record with the IV-D agency. The notice will include:

- (1) a statement that an offset will be made and that the IV-D agency intends to apply the amount of the offset against a claimed debt;
- (2) the amount of the debt asserted;
- (3) the name, address, and telephone number of the IV-D agency;
- (4) the amount of refund to be offset against the debt asserted;
- (5) a statement that the obligor has thirty (30) days from the date indicated on the notice to contest the offset by applying to the IV-D agency for a hearing with respect to the validity of the debt asserted by the IV-D agency; and
- (6) a statement that failure of the obligor to apply for a hearing within thirty (30) days will be deemed a waiver of the opportunity to contest the offset and to a hearing.

C. If the refund against which a debt is intended to be offset results from a joint return, within ten (10) days after receiving the notification from TRD, the IV-D agency will send a notice to the obligor's last known address of record with the IV-D agency for the injured spouse named on the return. The notice to the injured spouse will contain the following information:

- (1) a statement that an offset will be made and the IV-D agency intends to apply the amount of the offset against a claimed debt;
- (2) the total amount of the refund and the amount of each claimed debt;
- (3) the name, address, and telephone number of the IV-D agency;
- (4) a statement that no debt is claimed against the injured spouse and that the he or she may be entitled to receive all or part of the refund, regardless of the claimed debt against the obligor;
- (5) a statement that to assert a claim to all or part of the refund, the injured spouse must notify the IV-D agency within thirty (30) days from the date indicated on the notice of the injured spouse's intention to seek his or her portion of the refund; and
- (6) a statement that failure of the injured spouse to notify the IV-D agency regarding his or her claim to all or part of the refund within thirty (30) days may be deemed a waiver of any claim of the injured spouse with respect to the refund.

D. Upon the transfer of money from TRD to the IV-D account, the IV-D agency will notify the obligor of the final determination of the offset. The notice includes:

- (1) the amount of the TRD refund to which the obligor was entitled prior to intercept;
- (2) the offset amount and balance, if any, of the debt still due; and
- (3) the amount of refund in excess of the debt due and owed to the obligor, if any.

E. Contesting referral for state tax offset: The appeal procedures are the same as for federal tax refund offset with some exceptions.

(1) When the injured spouse who has filed jointly contacts the Title IV-D agency within the time required, no tax intercept hearing is held. Upon verification, the injured spouse's portion will be refunded as soon as the TRD money is posted to the case, and the obligor will not be given credit for the injured spouse's portion of the payment that is refunded.

(2) If the obligor's spouse files "married, but separated" the state taxation and revenue department does not honor this filing status for offset purposes and will offset the obligor's spouse's refund. In this instance, the injured spouse may contact the IV-D agency. Upon notification, the IV-D tax intercept unit will contact TRD to obtain verification and, upon obtaining verification, the IV-D agency will refund the spouse's portion of the offset to the injured spouse.

(3) If the injured spouse determines that he or she is entitled to more than one-half of the offset, he or she must notify the IV-D agency within thirty (30) days of the date of mailing of the notice of offset that he or she wants an administrative hearing regarding the claim to a larger portion of the offset.

F. Distribution of collections from state income tax offset: State income tax offset collections will be placed on hold for thirty (30) days. After the thirty (30) day hold, the state income tax offset monies will be applied as a regular payment and distributed as outlined in 8.50.125.11 NMAC. The obligor shall receive full credit for the entire amount of tax intercept that is applied to his or her case(s). Distribution of tax intercept money for obligors with multiple IV-D cases shall be in accordance with federal and state laws. If an offset is made to satisfy non-TANF past due support from a refund based upon a joint return, the IV-D agency may delay distribution until notified that the injured spouse's proper share of the refund has been paid or for a period not to exceed six (6) months from notification of offset, whichever is shorter.
[8.50.112.11 NMAC - Rp, 8.50.112.11 NMAC, 12/30/10]

8.50.112.12 FULL COLLECTION SERVICES BY THE SECRETARY OF THE TREASURY: Cases may be referred for full collection services after reasonable efforts have been made to collect the support through available mechanisms and these efforts have failed. When referring a case for full collection services by the secretary of the treasury, the IV-D agency shall comply with the provision of 45 CFR 303.71.
[8.50.112.12 NMAC - Rp, 8.50.112.12 NMAC, 12/30/10]

8.50.112.13 DENIAL OF PASSPORTS FOR NONPAYMENT OF CHILD SUPPORT:

A. Referral for passport denial: The IV-D agency certifies obligors who owe support arrears in excess of \$2,500. The U. S. department of state denies passports to individuals whose name appears on the certified database of the OSCE as owing more than \$2,500. Once the department of state identifies a passport applicant as owing money for child support, the applicant will be notified by letter that the issuance or renewal of the passport has been denied, pending satisfactory payment of money owed to the IV-D agency. After the applicant makes satisfactory payment arrangements with the IV-D agency, the IV-D agency shall request that OCSE remove the applicant's name from its database. The IV-D agency makes every effort in its negotiations to obtain a lump sum payment sufficient to satisfy the entire delinquency and arrears balances, including accrued interest.

B. Contesting referral for passport denial: The obligor has thirty (30) days from the date of the notification of a referral for passport denial to notify the IV-D agency that he or she contests the referral. The notification sent to the obligor provides the address and telephone number for the obligor to contact the IV-D agency to request a hearing to appeal the referral.

(1) Upon receipt of an appeal request from the obligor, a notice is generated by the administrative law judge and sent to the obligor and the IV-D agency.

(2) The notice shall set forth the time and place of the administrative hearing. The hearing is conducted in accordance with 8.50.130 NMAC.

(3) If the case is a non-IV-A case, the IV-D agency shall send a copy of the notice to the custodial party.

[8.50.112.13 NMAC - Rp, 8.50.112.13 NMAC, 12/30/10]

8.50.112.14 LOTTERY: The IV-D agency and the lottery commission work cooperatively to intercept lottery winnings for debts collected by the IV-D agency.

A. State law authorizes the IV- D agency to place a lien on lottery winnings owed to delinquent obligors. Lists of delinquent obligors are provided by the IV-D agency to the lottery commission who then compares the list with lottery winners claiming prizes of more than \$600. The lottery commission then notifies the IV-D agency of any matches. The lottery commission must be notified by the IV-D agency within five (5) business days with verification of the support lien. The verification of the support lien will include a notice of administrative lien requesting the lottery commission to retain the funds for ninety (90) days or until such time the administrative process is completed, so long as the process is completed within ninety (90) days. If no delinquency exists, the notification will be a release of lien.

B. If the lottery winner is verified by the IV-D agency as owing a debt collected by the agency, the IV-D agency has ninety (90) days to initiate an administrative action against the winner. The IV-D agency will notify the winner by mailing a copy of the notice of administrative lien to the obligor at their last known address of record with the IV-D agency via registered mail. The notice of administrative lien will notify the obligor that he or she has fifteen (15) days from the date of the notice to contest or appeal the administrative lien. The notification sent to the obligor provides the address and telephone number for the obligor to contact the IV-D agency to request a hearing to appeal the referral. If the obligor does not contest the notice of administrative lien within the required timeframe, a notice for release of funds to the IV-D agency is mailed to the lottery commission instructing it to

forward the lottery winnings to the IV-D agency. If the obligor contests the notice of administrative lien and timely requests a hearing, an administrative hearing will be conducted in accordance with 8.50.130 NMAC.
[8.50.112.14 NMAC - Rp, 8.50.112.14 NMAC, 12/30/10]

8.50.112.15 GAMING: The IV-D agency and the gaming board work cooperatively to intercept racetrack gaming machine payouts for debts collected by the IV-D agency.

A. State law authorizes the IV-D agency to place a lien on gaming machine payouts owed to delinquent obligors. Lists of delinquent obligors are provided by the IV-D agency to the gaming control board on a monthly basis. The racetrack licensees research the names of winners of \$1,200 or more per payout against the list provided to the gaming control board by the IV-D agency. The racetrack licensee then notifies the IV-D agency of any matches. The racetrack licensee must be notified by the IV-D agency within seven (7) business days (excluding weekends and state holidays) with verification of the support lien. If no delinquency exists, the IV-D agency will notify the racetrack licensee with a release of lien. If a delinquency exists, the verification of the support lien shall include a notice of administrative lien requesting the racetrack licensee to retain the gaming machine payout for ninety days (90) or until such time as the administrative process is completed, so long as the process is completed within ninety (90) days. If no delinquency exists, the notification will be a release of lien.

B. If the gaming machine winner is an obligor verified by the IV-D agency as owing a debt to or collected by the IV-D agency, the IV-D agency has ninety (90) days to complete an administrative action against the winner, unless the winner agrees to an extension of the time limitations or the administrative law judge extends the time. The IV-D agency shall notify the winner by mailing a copy of the notice of administrative lien to the obligor at his or her last known address of record with the IV-D agency via registered mail. The notice of administrative lien shall notify the obligor that he or she has fifteen (15) days from the date of the receipt of the notice to contest or appeal the administrative lien. The notification sent to the obligor provides the address and telephone number of the obligor to contact the IV-D agency to request a hearing to appeal the referral. If the obligor does not contest the notice of administrative lien within the required timeframe, a notice for release of funds to the IV-D agency is mailed to the racetrack licensee within five (5) working days after the expiration of the obligor's deadline to request a timely hearing, instructing the racetrack licensee to forward the gaming machine payout to the IV-D agency. If the obligor contests the notice of administrative lien and timely requests a hearing, an administrative hearing will be conducted in accordance with 8.50.130 NMAC. The IV-D agency shall notify the racetrack licensee within five (5) working days of the ruling of any hearing held in accordance with this section.

[8.50.112.15 NMAC - Rp, 8.50.112.15 NMAC, 12/30/10]

History of 8.50.112 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

ISD CSEB 501.1100, State and Local Requirements, 6/23/80.

ISD CSEB 501.1100, State and Local Requirements, 6/23/80.

ISD CSEB 561.0000, Procedures for Enforcement, 6/23/80.

ISD CSEB 564.0000, Collection by IRS, 6/23/80.

ISD CSEB 564.0000, Collection by IRS, 3/7/84.

ISD CSEB 565.0000, U.S. District Court Enforcement, 6/23/80.

ISD CSEB 566.0000, Voluntary Wage Allotments of Federal Employees and Processing of Garnishment Orders for Child Support and/or Alimony, 11/3/81.

NMAC History:

8 NMAC 5.CSE.000 through 8 NMAC 5.CSE.970, 12/30/94.

History of Repealed Material:

8 NMAC 5.CSE, Child Support Enforcement - Repealed 5/31/2001.

8.50.112 NMAC, Administrative Enforcement of Support Obligations, filed 5/14/2001 - Repealed effective 11/13/2009.

8.50.112 NMAC, Administrative Enforcement of Support Obligations, filed 11/2/2009 - Repealed effective 12/30/2010.