

**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, 11/13/09]

**8.50.112.2 SCOPE:** To the general public. For use by the IV-D agency and recipients of IV-D services.  
[8.50.112.2 NMAC - Rp, 8.50.112.2 NMAC, 11/13/09]

**8.50.112.3 STATUTORY AUTHORITY:** Public Assistance Act, Section 27-2-27 NMSA 1978. 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, 11/13/09]

**8.50.112.4 DURATION:** Permanent.  
[8.50.112.4 NMAC - Rp, 8.50.112.4 NMAC, 11/13/09]

**8.50.112.5 EFFECTIVE DATE:** November 13, 2009, unless a later date is cited at the end of a section.  
[8.50.112.5 NMAC - Rp, 8.50.112.5 NMAC, 11/13/09]

**8.50.112.6 OBJECTIVE:** To conform the regulations with changes made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the Child Support Performance and Incentive Act of 1998, and the Deficit Reduction Action of 2005. The regulations herein codify present practices in accordance with federal and state law and regulations.  
[8.50.112.6 NMAC - Rp, 8.50.112.6 NMAC, 11/13/09]

**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 days or more delinquent on their monthly support obligation. The certified list is submitted to the appropriate boards, departments, and bureaus for 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 which meet the following criteria:

- (1) the obligor is in arrears thirty days or more in payment of court ordered support;
- (2) the obligor has been sent a notice of potential submittal by the IV-D agency to the obligor's last address of record with the IV-D agency; and
- (3) thirty calendar days have elapsed since the transmittal of the notice.

B. Manual referral process: Any delinquent obligor who does not meet the automated referral criteria described above may be referred manually. Obligor who have failed to comply with an order for support and are more than thirty days in arrears can be referred for license suspension.

C. Administrative hearing by the licensing boards: If requested by the hearing officer, the IV-D agency will make available a witness to testify on the IV-D agency's behalf at an administrative hearing which may be held in connection with this act.

D. Settlement:

- (1) In all cases, the IV-D agency must make every effort to obtain payments in full for all arrearages, including prior judgments and current delinquency.
- (2) If the obligor pays all the arrearages, including prior judgments and current delinquency, a certificate of compliance will be issued upon receipt of the request from the local field office.

(3) If the obligor cannot or will not pay all arrearages, the obligor will be instructed to pay the current delinquency in full. If the obligor pays the delinquency in full, and is in compliance with all other terms of the existing order, a new stipulated order is not necessary and a certificate of compliance will be issued. If the obligor cannot pay the current delinquency in full, partial payment may be accepted at the discretion of the IV-D agency.

(4) Alternatively, the IV-D agency may issue a certificate of compliance if the obligor has had wage withholding in place for at least three consecutive months and the amount withheld is the correct amount based upon the obligor's total monthly support obligation(s) (ongoing support plus payment to arrears) and payroll schedule. If the certificate of compliance is issued pursuant to a partial payment or due to consecutive wage withholding, the obligor must sign a new order that provides for an increased monthly payment to reduce arrearages and agrees to contempt of court language to include the issuance of a bench warrant if the obligor fails to make future payments as ordered. These provisions must be included in any new orders negotiated as a result of the act.

E. Arrears only cases: In an arrears only case, the monthly payment must be calculated using the current child support guidelines or a schedule that will fully pay the arrearages plus accumulated interest in 72 months or less.

F. Erroneous or inappropriate referrals:

(1) Certificates of compliance due to erroneous or inappropriate referrals and requests to waive the reinstatement fees will be issued and approved only under the following circumstances:

- (a) the obligor does not have a court ordered support obligation;
- (b) the delinquency does not equal or exceed at least one month's support obligation;
- (c) the court order prohibits the IV-D agency from referring the obligor for license suspensions;
- (d) the IV-D agency cannot establish that the notice informing the obligor that their license is subject to suspension was sent to their last known address; or
- (e) the amount owed is in dispute and the case is scheduled for a court hearing to settle the dispute.

(2) If the obligor meets the minimum criteria for referral, there will be no certificates of compliance issued due to erroneous or inappropriate referral. If an agreement is reached and a certificate of compliance is issued, the obligor will be required to pay the appropriate reinstatement fee.

G. 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 30 days of date of the certificate of compliance is issued. Failure to submit a certificate of compliance and pay required fees will result in the obligor's license(s) continued 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, 11/13/09]

#### **8.50.112.9 CONSUMER REPORTING AGENCIES (CREDIT BUREAUS):**

A. The New Mexico IV-D agency is required by federal 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 overdue support. The IV-D agency has procedures in place that ensure that overdue support is reported:

- (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 day's advance notice to the obligor at the obligor's last known address, the department, in accordance with its regulations, may release information regarding the delinquency of an obligor. The department may charge a reasonable fee to the consumer reporting agency.

[8.50.112.9 NMAC - Rp, 8.50.112.9 NMAC, 11/13/09]

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

Federal tax refund offset is utilized to pay child and spousal support delinquencies and arrearages. 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. 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. 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. 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/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.

B. 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 that only have spousal support delinquencies or arrearages will not be referred for federal income tax offset if there is no ongoing child support obligation, delinquency, or arrearage. IV-D cases that are solely for processing payments will not be referred. Only IV-D cases which meet one of the following criteria are to be referred for federal income tax offset:

- (1) there has been an assignment of support rights;
- (2) the IV-D agency is enforcing the support obligation; or
- (3) there is an assignment of medical support rights.

C. IV-D cases referred must additionally meet the following certification criteria:

- (1) in TANF or title IV-E foster care cases the amount of past due assigned support must not be less than \$150; or
- (2) in non-TANF or medicaid-only cases the amount of past due unassigned support owed to or on behalf of a qualified child must be at least \$500.

D. 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.

E. Bankruptcy cases: The IV-D agency may not submit a case in which the non-custodial parent or his or her spouse has filed for bankruptcy under Title VII, XI, XII, and XIII of the United States bankruptcy code and an automatic stay is in effect without the express approval of an OGC-CSED attorney. When the automatic stay, under 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 without OGC-CSED attorney approval.

F. Notification of federal income tax offset:

- (1) Written advance notice is sent to inform an obligor that the amount of his/her past due support will be referred to the secretary of the U.S. treasury for collection by federal tax refund offset. The notice informs the obligor:
  - (a) of their 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 their right to an administrative review;
  - (d) of the procedures and time frame for requesting an administrative review; and
  - (e) 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 which 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.

G. Contesting referral for federal offset: The obligor has thirty days from the date of mailing of the notification of a referral for federal tax intercept to notify the IV-D agency that he/she contests the referral. The notification provides the address and telephone number to contact in order for the obligor to request a hearing to contest the referral. 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. If the case is a non-IV-A case, the IV-D agency shall send a copy of the notice to the custodial party. The notice shall set forth the time and place of the administrative hearing. The hearing is conducted in accordance with 8.50.130 NMAC. 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. 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. 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. 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.

H. 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 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 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 federal office of child support enforcement 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.

I. 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, 11/13/09]

**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 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. 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 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 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, the IV-D agency will send a notice to the obligor's last known address for the spouse named on the return within ten days after receiving the notification from TRD. The notice to the 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 spouse and that the spouse 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 spouse must notify the IV-D agency within thirty days from the date indicated on the notice of the intent of the spouse to seek his or her portion of the refund; and

(6) a statement that failure of the spouse to notify the IV-D agency regarding his or her claim to all or part of the refund within thirty days may be deemed a waiver of any claim of the 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.

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 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.

(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 days of the date of mailing of the notice of offset that he or she wants a 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 days. After the thirty-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. If the injured spouse does not claim the injured spouse portion within the time frame required, the whole amount of the state income tax offset collection will be distributed and disbursed as a payment to the IV-D case.

[8.50.112.11 NMAC - Rp, 8.50.112.11 NMAC, 11/13/09]

**8.50.112.12 FULL COLLECTION SERVICES BY THE SECRETARY OF THE TREASURY:** Cases are referred for full collection services after reasonable efforts have been made to collect the support through available mechanisms and these efforts have failed.

A. For a case to be eligible for certification to the secretary of the treasury, the following criteria must be met:

- (1) a valid order for support must be in place;
- (2) at least six months shall have elapsed since the last request for referral of the case to the secretary of the treasury for full collection services;
- (3) only the state which has taken an assignment or an application or referral may request secretary of the treasury collection services on behalf of a given case; and
- (4) the amount of past due support shall be at least \$750.

B. Once a case is certified for full collection, it will remain open for six years or until the amount certified is collected in full, or until the case is closed.

[8.50.112.12 NMAC - Rp, 8.50.112.12 NMAC, 11/13/09]

**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 office of child enforcement (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 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.

B. Contesting referral for passport denial: The obligor has thirty days from the date of the notification of a referral for passport denial to notify the IV-D agency that he/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. Upon receipt of an appeal request from the obligor, a notice is generated by the administrative law judge and is sent to the obligor and the IV-D agency stating the time and place of the administrative hearing. The hearing is conducted in accordance with 8.50.130 NMAC. [8.50.112.13 NMAC - Rp, 8.50.112.13 NMAC, 11/13/09]

**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 matches the list with lottery winners 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 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 days or until such time the administrative process is completed, so long as the process is completed within ninety 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 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 via registered mail. The notice of administrative lien will notify the obligor that he or she has fifteen 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, 11/13/09]

**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 authorized 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 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 or until such time the administrative process is completed, so long as the process is completed within ninety 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 collected by the IV-D agency, the IV-D agency has ninety 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 their last known address via registered mail. The notice of administrative lien shall notify the obligor that he or she has fifteen 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 working days after the obligor fails to request a timely hearing, instructing it 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 working days of the ruling of any hearing held in accordance with this section. [8.50.112.15 NMAC - Rp, 8.50.112.14 NMAC, 11/13/09]

**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 11/13/2009.