

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

(a) *Past-due support qualifying for offset.* Past-due support as defined in § 301.1 of this chapter qualifies for offset if:

(1) There has been an assignment of the support rights under section 408(a)(3) of the Act or section 471(a)(17) of the Act to the State making the request for offset or the IV-D agency is providing services under § 302.33 of this chapter.

(2) For support that has been assigned to the State under section 408(a)(3) of the Act or section 471(a)(17) of the Act, the amount of the support is not less than \$150. The State may combine assigned support amounts from the same obligor in multiple cases to reach \$150. Amounts under this paragraph may not be combined with amounts under paragraph (a)(3) of this section to reach the minimum amounts required under this paragraph or under paragraph (a)(3) of this section.

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

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

(ii) The amount of support is not less than \$500. The State may combine support amounts from the same obligor in multiple cases where the IV-D agency is providing IV-D services under § 302.33 of this chapter to reach \$500. Amounts under this paragraph may not be combined with amounts under paragraph (a)(2) of this section to reach the minimum amounts required under this paragraph or under paragraph (a)(2) of this section.

(iii) At State option, the amount has accrued since the State IV-D agency began to enforce the support order; and

(iv) The State has checked its records to determine if a title IV-A or foster care maintenance assigned arrearage exists with respect to the non-IV-A individual or family.

(4) The IV-D agency has in its records:

(i) A copy of the order and any modifications upon which the amount referred is based which specify the date of issuance and amount of support;

(ii) A copy of the payment record, or, if there is no payment record, an affidavit signed by the custodial parent attesting to the amount of support owed; and

(iii) In non-IV-A cases, the custodial parent's current address.

(5) Before submittal, the State IV-D agency has verified the accuracy of the name and social security number of the noncustodial parent and the accuracy of the past-due support amount. If the State IV-D agency has verified this information previously, it need not reverify it.

(6) A notification of liability for past-due support has been received by the Secretary of the U.S. Treasury as prescribed by paragraph (c)(2) of this section.

(b) *Notification to OCSE of liability for past-due support.* (1) A State IV-D agency shall submit a notification (or notifications) of liability for past-due support to the Office according to the timeframes and in the manner specified by the Office in instructions.

(2) To the extent specified by the Office in instructions, the notification of liability for past-due support shall contain with respect to each delinquency:

(i) The name of the taxpayer who owes the past-due support;

(ii) The social security number of that taxpayer;

(iii) The amount of past-due support owed;

(iv) The State codes as contained in the Federal Information Processing Standards (FIPS) publication of the National Bureau of Standards and also promulgated by the General Services Administration in Worldwide Geographical Location Codes; and

(v) Whether the past-due support is due an individual who applied for services under § 302.33 of this chapter.

(3) The notification of liability for past-due support may contain with respect to each delinquency the taxpayer's IV-D identifier.

(c) *Review of requests by the Office.* (1) The Deputy Director will review each request to determine whether it meets the requirements of this section.

(2) If a request meets all requirements, the Deputy Director will transmit the request to the Secretary of the U.S. Treasury and will notify the State IV-D agency of the transmittal.

(3) If a request does not meet all requirements, the Deputy Director will attempt to correct the request in consultation with the State IV-D agency.

(4) If a request cannot be corrected through consultation, the Deputy Director will return it to the State IV-D agency with an explanation of why the request could not be transmitted to the Secretary of the U.S. Treasury.

(d) *Notification of changes in case status.* (1) The State referring past-due support for offset must, in interstate situations, notify any other State involved in enforcing the support order when it receives the offset amount from the Secretary of the U.S. Treasury.

(2) The State IV-D agency shall, within timeframes established by the Office in instructions, notify the Deputy Director of any deletion of, or any change in, the arrears balance, if the change is significant according to the guidelines developed by the State. The notification shall contain the information specified in paragraph (b) of this section.

(e) *Notices of offset*—(1) *Advance*. The State IV-D agency, or the Office, if the State requests and the Office agrees, shall send a written advance notice to inform a noncustodial parent 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 must inform noncustodial parents:

(i) Of their right to contest the State's determination that past-due support is owed or the amount of past-due support;

(ii) Of their right to an administrative review by the submitting State or at the noncustodial parent's request the State with the order upon which the referral for offset is based;

(iii) Of the procedures and timeframe for contacting the IV-D agency in the submitting State to request administrative review; and

(iv) That, in the case of a joint return, the Secretary of the U.S. Treasury will notify the noncustodial parent's spouse at the time of offset regarding the steps to take to protect the share of the refund which may be payable to that spouse. If the IV-D agency sends the notice, it must meet the conditions specified by the Office in instructions.

(2) *At offset*. The Secretary of the U.S. Treasury will notify the noncustodial parent that the offset has been made. The Secretary of the U.S. Treasury will also notify any individual who filed a joint return with the noncustodial parent of the steps to take in order to secure a proper share of the refund.

(f) *Procedures for contesting in intrastate cases*. (1) Upon receipt of a complaint from a noncustodial parent in response to the advance notice required in paragraph (e)(1) of this section or concerning a tax refund which has already been offset, the IV-D agency must send a notice to the noncustodial parent and, in non-IV-A cases the custodial parent, of the time and place of the administrative review of the complaint and conduct the review to determine the validity of the complaint.

(2) If the complaint concerns a joint tax refund that has not yet been offset, the IV-D agency must inform the noncustodial parent that the Secretary of the U.S. Treasury will notify the noncustodial parent's spouse at the time of offset regarding the steps to take to secure his or her proper share of the refund. If the complaint concerns a joint tax refund which has already been offset, the IV-D agency must refer the noncustodial parent to the Secretary of the U.S. Treasury.

(3) If the administrative review results in a deletion of, or change in, the arrears balance, the IV-D agency must notify OCSE within timeframes established by the Office and include the information specified in paragraph (b) of this section.

(4) If, as a result of the administrative review, an amount which has already been offset is found to have exceeded the amount of past-due support owed, the IV-D agency must take steps to refund the excess amount to the noncustodial parent promptly.

(g) *Procedures for contesting in interstate cases.* (1) If the noncustodial parent requests an administrative review in the submitting State, the IV-D agency must meet the requirements in paragraph (f) of this section.

(2) If the complaint cannot be resolved by the submitting State and the noncustodial parent requests an administrative review in the State with the order upon which the referral for offset is based, the submitting State must notify the State with the order of the request for an administrative review and provide that State with all necessary information, including the information listed under paragraph (a)(4) of this section, within 10 days of the noncustodial parent's request for an administrative review.

(3) The State with the order must send a notice to the noncustodial parent and, in non-IV-A cases the custodial parent, of the time and place of the administrative review, conduct the review and make a decision within 45 days of receipt of the notice and information from the submitting State.

(4) If the administrative review results in a deletion of, or change in, the arrears balance, the State with the order upon which the referral for offset is based must notify the submitting State within timeframes established by the Office and include the information specified in paragraph (b) of this section. The submitting State must then notify the Office within timeframes established by the Office and include the information specified in paragraph (b) of this section.

(5) Upon resolution of a complaint after an offset has been made, the State with the order must notify the submitting State of its decision promptly.

(6) When an administrative review is conducted in the State with the order, the submitting State is bound by the decision made by the State with the order.

(7) Based on the decision of the State with the order, the IV-D agency in the submitting State must take steps to refund any excess amount to the noncustodial parent promptly.

(8) In computing the arrearage collection performance level under § 305.2(a)(4) of this chapter, if the case is referred to the State with the order for an administrative review, the collections made as a result of Federal tax refund offset will be treated as having been collected in full by both the submitting State and the State with the order.

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

(2) Collections received by the IV-D agency in foster care maintenance cases shall be distributed as past-due support under § 302.52(b) (3) and (4) of this chapter.

(3)(i) Except as provided in paragraph (h)(3)(ii), the IV-D agency must inform individuals receiving services under § 302.33 of this chapter in advance that amounts offset will be applied to

satisfy any past-due support which has been assigned to the State and submitted for Federal tax refund offset.

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

(4) If the amount collected is in excess of the amounts required to be distributed under section 457 of the Act, the IV-D agency must repay the excess to the noncustodial parent whose refund was offset or to the parties filing a joint return within a reasonable period in accordance with State law.

(5) In cases where the Secretary of the U.S. Treasury, through OCSE, notifies the State that an offset is being made to satisfy non-IV-A past-due support from a refund based on a joint return, the State may delay distribution until notified that the unobligated 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 earlier.

(6) Collections from offset may be applied only to cases that were being enforced by the IV-D agency at the time the advance notice described in paragraph (e)(1) of this section was sent.

(i) *Payment of fee.* (1) A refund offset fee, in such amount as the Secretary of the U.S. Treasury and the Secretary of Health and Human Services have agreed to be sufficient to reimburse the U.S. Department of Treasury for the full cost of the offset procedure, shall be deducted from the offset amount and credited to the U.S. Department of Treasury appropriations which bore all or part of the costs involved in making the collection. The full amount of the offset must be credited against the obligor's payment record. The fee which the Secretary of the U.S. Treasury may impose with respect to non-IV-A submittals shall not exceed \$25 per submittal.

(2) The State IV-D agency may charge an individual who is receiving services under § 302.33(a) (1) (i) or (iii) of this chapter a fee not to exceed \$25 for submitting past-due support for Federal tax refund offset. The State must inform the individual in advance of the amount of any fee charged.

(3) Any State which requests the Office to send the advance written notice under paragraph (e)(1) of this section will be charged a fee, in an amount established by the Office in instructions, for printing and mailing of pre-offset notices. This fee shall be credited to the Health and Human Services appropriations which bore all or part of the costs involved in making the collection.

(j) Each State involved in a referral of past-due support for offset must comply with instructions issued by the Office.

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2003; 68 FR 53052, Sept. 9, 2003; 69 FR 62415, Oct. 26, 2004; 73 FR 74920, Dec. 9, 2008; 81 FR 93566, Dec. 20, 2016]