



ADMINISTRATION FOR
CHILDREN & FAMILIES

Office of Child Support Enforcement | 330 C Street, S.W., 5th Floor
Washington, DC 20201 | www.acf.hhs.gov/css

COVID-19: Frequently Asked Questions (FAQs) **Office of Child Support Enforcement**

April 22, 2020

OCSE is providing FAQs about the operational, administrative, programmatic, and other challenges facing child support programs affected by the public health emergency due to the coronavirus (COVID-19) pandemic. OCSE recognizes that many of the operational impacts and costs are unknowable at this point, as they will depend on the spread of the coronavirus and response dictated by public health needs. Its top priority is the public health and safety of everyone.

OCSE has sorted questions by topic and will continue adding new FAQs as necessary.

In addition to the program specific FAQs below, ACF issued guidance, IM-ACF-OA-2020-01, providing flexibility for certain grant administration requirements of 45 CFR Part 75 during the pandemic. These flexibilities are time-limited and applicable to ACF applicants and grantees/recipients where the entity is conducting human service activities related to or affected by COVID-19.

Enforcement Remedies

1. **Question:** What enforcement actions can programs suspend during the pandemic?

Answer: Under Title IV-D of the Social Security Act (the Act), certain enforcement remedies are mandatory in every child support case and cannot be suspended, absent a change in federal law. These are immediate withholding under section 466(a)(8)(B) of the Act, unless there is a good cause not to require immediate withholding or the parties have reached a written agreement for an alternative arrangement for payment of support; and income withholding against unemployment compensation, unless the state reaches an agreement with the obligor to have specified amounts withheld from compensation otherwise payable to the obligor. For cases with arrears meeting the eligibility criteria, Federal Tax Refund Offset under section 464 of the Act is also a required enforcement measure.

The Act also requires states to have in effect laws requiring the use of the other enforcement procedures in section 466, such as driver's license suspension, credit monitoring, and state tax refund offset, but provides that certain of these enforcement actions "need not be used or applied in cases where the State determines (using guidelines which are generally available within the State and which take into account the payment record of the noncustodial parent, the availability of other remedies, and other relevant considerations) that such use or application would not carry out the purposes of [title IV-D of the Act] or would be otherwise inappropriate in the circumstances." States may review their guidelines for use of procedures under paragraphs (3), (4), (6), (7), (15), (16), (17) and (18) of section 466(a) of the Act to determine whether such enforcement action is appropriate during the current public health crisis. State law governs the process for implementing suspension of these enforcement actions during the pandemic.

States have discretion in using other federal enforcement remedies such as federal administrative offset, U.S. passport denial, Multistate Financial Institution Data Match (MSFIDM), and federal insurance match.

2. **Question:** Is the federal government considering a temporary suspension of the Federal Tax Refund Offset program given the current environment with COVID-19.

Answer: OCSE does not have the authority to suspend the Federal Tax Refund Offset Program, absent change in federal law.

3. **Question:** During a public health emergency, can a state choose to suppress or suspend all enforcement actions on cases where only state funds are owed?

Answer: Under Title IV-D of the Social Security Act, requirements for enforcement remedies do not distinguish between enforcement against arrears that are due a custodial parent and arrears that are assigned to the state. For orders with only state-assigned arrears, states may explore flexibilities under their state arrears management programs.

4. **Question:** When collecting arrears that are due to the state, can the state "suppress," that is suspend, initiating a wage withholding for unemployment benefits when the noncustodial parent is receiving that income because of a public health crisis?

Answer: OCSE does not have authority to grant a waiver for the statutory requirement to withhold child support from unemployment compensation. Note,

however, that section 454(19) of the Act allows the state to reach an agreement with the obligor to have specified amounts withheld from the unemployment compensation otherwise payable to such individual and to submit a copy of the agreement to the state agency administering the unemployment compensation law. It is only in the absence of an agreement that the law requires the initiation of legal process to withhold support from the unemployment compensation. See answer to 1 above under the Enforcement Remedies section.

IRS

1. **Question:** How often does OCSE submit certified debts to the IRS?

Answer: The certification process is continual. Cases remain active at Treasury's Bureau of the Fiscal Service until the state deletes them or the balance is reduced to zero.

Operations

1. **Question:** What core operating functions must continue during the pandemic if our office must close or enact maximum telework, for example?

Answer: If your government closes offices, your government's emergency preparedness plan or continuity of operations plan should designate the receipt and disbursement of child support payments as an essential function. Payment processing should continue. Please follow the latest CDC and state-specific recommendations regarding staffing and direct contact with the public.

2. **Question:** Will there be any flexibility in terms of timeframes and requirements for disbursement of payments?

Answer: OCSE is aware that programs affected by the pandemic may have operational difficulty complying with the disbursement timeframe for child support payments. Title IV-D of the Social Security Act (the Act) and regulations do not provide authority for waiver of timeframes for disbursement. OCSE is reviewing emergency authority under the Stafford Act and other federal government-wide emergency waiver provisions that may allow temporary flexibility to modify disbursement timeframes during the pandemic.

3. **Question:** May states delay initiating outgoing intergovernmental referrals if reduced workforce, teleworking, or absences compromise the responding jurisdiction's operating status?

Answer: OCSE recognizes that states affected by the pandemic may experience diminished operational capacity and may need to make management decisions that impact case processing, including intergovernmental referrals. Federal regulations direct states to make the appropriate case management

decision for each case. States should consider using one-state remedies whenever possible [45 CFR 303.7(c)(3)].

4. **Question:** Can OCSE keep a list of each program's operation status for reference.

Answer: OCSE is posting a spreadsheet in the Child Support Portal updated every Tuesday with the operating status for states and tribes. OCSE is also providing the spreadsheet to NATCSD for posting on their internal website for tribal directors. States and tribes may send operating status updates to OCSEDRO@acf.hhs.gov for publication to the spreadsheet.

5. **Question:** As events and travel are canceled, jurisdictions may only receive a partial credit for the expenses. Can states and tribes be reimbursed for these costs?

Answer: In accordance with ACF IM-ACF-OA-2020-01, (providing grant flexibilities in conducting human services activities related to or affected by COVID-19), OCSE is allowing state and tribal programs that incur costs related to canceled events or travel due to the public health emergency to charge these costs to their award. We remind state and tribal programs to maintain appropriate records and cost documentation as required by 45 CFR 75.302 (Financial Management and Standards for Financial Management Systems) and 45 CFR 75.361 (Retention Requirements for Records), to substantiate charging any cancellation or other fees related to interruption of operations or services.

6. **Question:** May States elect not to submit an offset file for Federal Tax Refund Offset to OCSE or elect the exclusion indicator on the offset record specifications to prevent offset of the CARES Act economic stimulus payment for overdue child support debt?

Answer: No. Under Title IV-D of the Act, certain enforcement remedies are mandatory in every child support case and cannot be suspended, absent a change in federal law. These are immediate withholding and income withholding against unemployment compensation. For cases with arrears meeting the eligibility criteria, this includes Federal Tax Refund Offset under section 464 of the Act. Title IV-D requires states to have procedures to collect past due support from tax refunds as set forth in section 454(18) of the Act and to "take all steps necessary to implement and utilize such procedures." Corresponding regulations at 45 CFR 303.72(b) "[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." Thus, Title IV-D and regulations do not provide states the option to suspend Federal Tax Refund Offset in cases meeting the eligibility criteria under section 464 of the Act and 45 CFR 303.72. In addition, Congress has made clear that the economic stimulus payment is intended to be offset for overdue child support debt.

7. **Question:** What effect does the current reduced operating capacity of the courts have on prohibited retroactive reduction of child support obligations (Bradley Amendment)?

Answer: The Bradley Amendment codified in Section 466(a)(9) of the Act establishes the earliest date of retroactivity for modification of an existing support order. Section 466(a)(9) of the Act permits modification of orders retroactive to “any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.” Section 466(c)(2)(A)(ii) further provides that “in any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of such a party, the court or administrative agency of competent jurisdiction shall deem State due process requirements for notice and service of process to be met with respect to the party, upon delivery of written notice to the most recent residential or employer address filed with the State case registry pursuant to clause (i).” Clause (i) of Section 466(c)(2)(A) of the Act requires parties to the child support case to provide and update their residential and mailing addresses, and employer name and address. These provisions create a presumption of notice to the non-moving party upon delivery of written notice to the party’s home or employer address listed in the state’s case registry.

At this time, many state courts are open with limited services. IV-D agencies that require court involvement to modify an order meeting the state’s criteria for modification established pursuant to 45 CFR 303.8(c) may be able to file modification petitions and effectuate service to establish the date of retroactivity, even if the date of the hearing on the petition is delayed because of reduced court operations due to the COVID-19 public health emergency.

In addition, states may review their notification processes to determine if delivery of notice and service requirements may be met through alternative means, consistent with state law and Constitutional principles of procedural due process. For example, courts may be able to accept filings by electronic means or facsimile. In addition, courts may decide to authorize service of process through electronic service or institute alternative methods to effectuate notice and service of process during the COVID-19 public health emergency, if normal service of process procedures are unavailable. Parties may also agree to accept notice and waive service of process. OCSE recognizes the challenges posed by the COVID-19 public health emergency, and encourages states to continue to work with their courts to develop processes that allow child support agencies to maintain

program operations at the highest possible level during this challenging time, including modification of support orders where appropriate.

Reinvesting Incentive Payments

1. **Question:** If a state has an approved exemption to reinvest incentive payments in an activity that is scheduled for this summer, can the state change the date for the activity or use the approved funds on a different activity?

Answer: If the state would like to perform the same activity at a later date, the state can submit a request that the date of the activity be changed. OCSE will review the request and update the approval letter with the new date. If the circumstances have changed and the state would like to reinvest the incentive payments in an activity other than the activity that was approved, the state must notify OCSE of the change in circumstances and submit a request to reinvest incentive payments in the new activity in accordance with OCSE-AT-20-01. The approval for the previous request will be rescinded.

Safeguarding

1. **Question:** Do states have authority to share information between Child Support and the state's public health agency during this COVID-19 crisis?

Answer: While OCSE recognizes that this information sharing would be useful to respond to the public health emergency, it does not have the authority beyond 45 CFR 303.21 to permit disclosure of child support program confidential information with state public health agencies. Under 45 CFR 303.21(a)(1), confidential information is defined as any information relating to a specified individual or an individual who can be identified by reference to one or more factors specific to him or her, including but not limited to the individual's Social Security number, residential and mailing addresses, employment information, and financial information. The safeguarding and disclosure regulation is specific regarding the authorized person/program, purpose, and information that can be shared. Along with a few other purposes (e.g. reporting suspected child abuse and neglect, enforcing custody/visitation and parental kidnapping), the regulation limits information sharing to IV-A, IV-B, IV-E, Titles XIX and XXI, SNAP, and other state programs under a plan approved under Title I, X, XIV, and XVI. OCSE is reviewing authority under federal government-wide public health emergency laws that may authorize expanded information sharing with public health agencies to respond to the COVID-19 crisis.

Social Security Administration

1. **Question:** Will SSA continue to honor Income Withholding Orders (IWOs), including both existing IWOs and new ones in the coming weeks and months?

Answer: OCSE has confirmed with SSA that they will continue to honor existing IWOs and implement new ones. Child support agencies should continue to follow their existing process for sending IWOs to SSA.

Tribal

1. **Question:** May a tribe submit a request for waiver of the non-federal share of child support program expenditures because of COVID-19?

Answer: Yes. The COVID-19 outbreak is a unique public health emergency. Tribes may be disproportionately impacted and face difficulty responding to the outbreak and meeting part or all of the non-federal share contribution.

In accordance with [45 CFR 309.130\(e\)\(1\)\(ii\)](#), a tribe may request a waiver of the non-federal share of program expenditures for an emergency situation that occurs after the start of the fiscal year. For a COVID-19 waiver request, tribes must submit the following:

- Amount that needs to be waived.
- Statement of the circumstances and justification.
- Portions of the tribal budget for the funding period sufficient to demonstrate that any funding shortfall is not limited to the tribal child support program and that any uncommitted tribal reserve funds are insufficient to meet the non-federal share contribution. Note: The tribe may redact confidential information and include a letter indicating that it has no uncommitted tribal reserve funds.
- Attempts made to secure the necessary funds and in-kind contributions from other sources and the results. However, given the nature and scope of this emergency, OCSE understands if tribes are unable meet this criterion.

All statements in support of a waiver request must be supported by evidence including, but not limited to, a description of how the tribe's circumstances relate to its capacity to provide child support enforcement services. Note: OCSE will contact the tribe if it needs additional information.

An approved waiver will expire at the end of the fiscal year. Unless the tribe receives an approval, the funding requirements stated in [45 CFR 309.130\(d\)](#) apply. A tribe may not appeal a waiver decision, pursuant to [45 CFR 309.130\(e\)\(5\)\(iii\)](#).

Tribes should address their request to Scott M. Lekan, Acting Commissioner, and submit the required information to OCSE.tribal@acf.hhs.gov. Please contact your OCSE Regional Program Manager if you need technical assistance.

2. **Question:** The August 1 budget submission deadline may be difficult for tribes to meet. Will OCSE extend the deadline for tribal annual budget submissions beyond August 1?

Answer: OCSE cannot provide a blanket extension to the annual budget submission due August 1 for fiscal year 2021, pursuant to 45 CFR 309.15(c) and 309.130(b)(2). However, OCSE will work with tribes to ensure that it has all of the required information to process budget submissions and to issue notice of grant awards by October 1. Please contact your OCSE Regional Program Specialist if you encounter any delays or issues in completing your budget. OCSE will address them on a case-by-case basis.

3. **Question:** May a tribe submit a request for waiver of the non-federal share of child support program expenditures to be incurred in fiscal year 2021 before the start of that fiscal year?

Answer: Yes. Under [45 CFR 309.130\(e\)\(1\)\(i\)](#), when a tribe or tribal organization anticipates that it will be temporarily unable to contribute part or all of the required non-federal share of program funding, it must submit an anticipated temporary waiver request. The federal funding period begins on October 1. The tribe must send the request to OCSE, along with the SF 424A, no later than 60 days prior to the start of the funding period for which the waiver is being requested, which is August 1. The request for a waiver must be submitted in accordance with the procedures specified in [45 CFR 309.130\(e\)\(2\), \(3\) and \(4\)](#). An untimely or incomplete request will not be considered. Additionally, we will not issue a letter of inquiry. Therefore, OCSE strongly encourages tribes to work with their OCSE Regional Program Specialist to develop a request that complies with the tribal regulations. Tribes should address their request to Scott M. Lekan, Acting Commissioner, and submit required information to OCSE.tribal@acf.hhs.gov.