



State of New Mexico
Human Services Department
Human Services Register



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NEW MEXICO HUMAN SERVICES DEPARTMENT (HSD)

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III. PROGRAM AFFECTED
(TITLE IV-D) CHILD SUPPORT ENFORCEMENT

IV. ACTION
FINAL RULES

V. BACKGROUND SUMMARY

New Mexico Human Services Register Volume XLIV, Issue 25, dated August 4, 2021, issued the proposed rules: 8.50100 General Provisions, 8.50.106 Location, 8.50.107 Determination of Parentage, 8.50.108 Establishment and Modifiacation of Support Order, 8.50.109 Medical Support, 8.50.110 Income Withholding, 8.50.111 General Enforcement of Support Obligations, 8.50.112 Administrative Enforcement of Support Obligations, 8.50.114 Financial Institution Data Match (FIDM), 8.50.125 Fees, Payments, and Distributions, 8.50.130 Administrative hearings.

A public hearing was held on October 18, 2021, to receive public comments and testimony on this proposed rules. One individual attended and submitted the following comments:

1. Section 8.50.100.7(E) NMAC – The Department Should Define “Physical or emotional harm”

The Department should make additional changes to define “emotional harm” as this term is not adequately defined. The only reference to emotional harm is “mental abuse.” We propose the following definition so the Department can provide better service to survivors of emotional harm, emotional abuse, psychological abuse, or mental abuse: emotional abuse is when an abuser manipulates a survivor’s feelings in order to control their partner.

Alternatively, the Department can consider that emotional abuse is a way to control another person by using emotions to criticize, embarrass, shame, blame, or otherwise manipulate another person. The Department can help survivors if the term is clearly defined so that caseworkers will have a resource definition to identify whether someone is subject this abuse.

NMHSD Response:

The department will be submitting the following amendment based on above public comment as well as the federal Office of Child Support Enforcement (OCSE):

EE. **“Physical or emotional harm”** means being subjected to: physical acts that resulted in, or threatened to result in, physical injury; sexual abuse; sexual activity involving a dependent child; being forced as the caretaker relative of a dependent child to engage in non-consensual sexual acts or activities; threats of, or attempts at, physical or sexual abuse; mental abuse; being subject to a pattern of emotional or psychological attacks that may include embarrassment, isolation, blaming, name-calling, humiliation, threats, shaming, extreme jealousy, gaslighting, intimidation, and manipulation resulting in a range of emotional trauma that may include: confusion, fear, difficulty concentrating, anxiety, social withdrawal, sleep disruption, and depression; or neglect or deprivation of medical care.

2. 8.50.107.8(B) NMAC “Determination of Parentage” – The Department should define “best interests of the child.”

The Title IV-D agency is not required to establish parentage or pursue genetic testing in any case involving incest or rape, or in any case in which legal proceedings for adoption are pending, or if, in the opinion of the IV-D agency, *it would not be in the best interests of the child.*

We urge the Department to define, “not be in the best interests of the child.” It is important to define this term because the discretion given to the agency to make this determination is not adequately explained. There are many reasons why determining parentage may not be in the best interests of the child. 22 states list in their statutes specific factors to consider in making determinations regarding the best interests of the child.¹ Some factors commonly required include: emotional ties and relationships between the child and his or her parents, siblings, family and household members, or other caregivers; and the mental and physical health needs of the child.² The importance of family integrity is a guiding principle in 28 states.³ This means that the State should consider the impact on the child when pursuing parentage and allow custodial parents to decline pursuing parentage when it would not be in the best interests of the child for any of the above reasons.

NMHSD Response:

45 CFR § 303.5 (b) is the basis and for 8.50.107.8 (b) NMAC. Federal regulation does not define what would not be in the best interest of the child and the department currently follows district court judicial discretion as to other factors such as emotional ties and relationships and mental and physical health needs of the child.

3. 8.50.108.8(C) NMAC Establishment of Support Order - The Department Should Define “Best Interest” of the Child.

Here, again, the agency has discretion to not pursue a support order when a dependent child receives public assistance if it “would not be in the best interests of the child(ren).” As

above, we propose that the agency expand on the definition of “not in the best interest” because there are many “best interest” reasons why any family should not pursue child support or decline much-needed public assistance out of fear of the consequences when child support is pursued.

NMHSD Response:

45 CFR § 303.5 (b) is the basis and for 8.50.108.8 (b) NMAC. Federal regulation does not define what would not be in the best interest of the child and the department currently follows district court judicial discretion as to other factors such as emotional ties and relationships and mental and physical health needs of the child.

4. 8.50.112.8 NMAC Parental Responsibility (License Suspension) – The Department Should Provide an Exception to Suspending Drivers Licenses for Very Low-Income Parents

Suspending licenses for low-income noncustodial parents does not benefit the custodial families because it prohibits many noncustodial parents from being able to get to their jobs. The Department should formulate an exception for low-income individuals who end up going deeper into arrears when they lose their jobs because they have lost their drivers licenses. This rule hurts poor families most.

¹ https://www.childwelfare.gov/pubpdfs/best_interest.pdf

² Id.

³ Id.

NMHSD Response:

The Parental Responsibility Act, Section 40-5A-6 NMSA 1978 states, “The failure of a licensee to be in compliance with a judgment and order for support or subpoena or warrants relating to paternity or child support proceedings is grounds for suspension or revocation of a license” and does not make an exception for lower income obligors. Making the proposed change would require a change to legislation. Currently internal policy allows for a Certificate of Compliance if the non-custodial parent makes a full payment in subsequent month(s), if there is a modification review pending and the obligor is paying what they can pending the review, if there is a legal action(s) in progress that may affect the non-custodial parent’s ability to pay, if there is an income withholding order that has been issued by the department but payments have not been received yet, or any other situation determined and documents as approved by the County Director, Regional Operations Manager, Deputy Director of Field Operations, or CSED Director.

5. 8.50.112.11 NMAC Collection of Past Due Support By Federal Tax Offset, 8.50.125.11 NMAC Distribution of Collection (Except for Federal Income Tax), and 8.50.125.12 NMAC Distribution of Collections Through Federal Income Tax Refund Offset – The Department Should Reverse Its Distribution Priority.

When it comes to public assistance, New Mexico is a “cost recovery” state.⁴ Specifically, families who apply for cash assistance through New Mexico Works are required to assign their child support rights to the state.⁵ The state then collects child support payments

to reimburse itself for the amount of cash assistance paid to custodial families.⁶ Where past-due child support is owed, the state can intercept federal income tax refunds from non-custodial parents up to the amount needed to recoup the costs of providing cash assistance.⁷

Cost recovery as a means of reducing welfare costs is problematic for a number of reasons. First, when the state intercepts federal income tax refunds to reimburse itself for cash assistance, custodial families never reap the full benefits of this supplemental income—which could otherwise be used for rent payments or other basic necessities. In this way, the cash assistance program fails to serve its primary purpose of supporting struggling families. Second, there is evidence that states recoup only a marginal amount of funds using this approach (when compared to the overall amount of cash assistance expenditures).⁸ Research shows that cost recovery has been and still is an inefficient means of reducing the cost of welfare.⁹ Lastly, cost recovery is not in the best interests of children.¹⁰ First, it drives families further into poverty.¹¹ Second, families with more cash to spend can positively impact their local communities through the multiplier effect. When families use cash for rent payments, groceries, or child care, it has a positive impact on local economies which in turn positively impacts a child's community.¹²

Third, cost recovery strains relationships between custodial and non-custodial parents and may incentivize non-custodial parents to disappear in order to evade payments they know would otherwise go to the state and not to their children.¹³

Fortunately, the federal government has shifted its focus in recent years from cost recovery to the financial well-being of families and children.¹⁴ New Mexico should follow its lead to ensure that families are getting the financial support they need to thrive. Towards this end, the state has several options to improve how its cash assistance program interacts with child support enforcement.

The federal Deficit Reduction Act of 2005 allows states to elect the order in which they apply collected child support payments. Currently, New Mexico distributes collected child support payments to state-assigned debts, with any excess paid out to custodial families.¹⁵ HSD should follow formal rulemaking procedures to reverse the order in which it applies collected payments so that custodial families receive support first. The state's legislature should amend the current statutes¹⁶ to offer *full* pass-through and disregard similar to Colorado—its neighboring jurisdiction.

TANF families automatically assign to the state their rights to child support when they apply for TANF.¹⁷ **The amount of child support assigned to the state should not exceed the total amount of cash assistance paid to the family**, which accrues during the period in which the family receives assistance.¹⁸ These state-assigned child support payments serve as reimbursement to the state for the cash assistance paid to the family. Below is a chart summarizing New Mexico's regulatory schemes for families who have *never* received TANF, *formerly* received TANF and *currently* receive TANF:

⁴ 8.50.125.10 NMAC.

⁵ 42 U.S.C. § 608(a)(3) (2012).

⁶ See generally Elizabeth Cozzolino, *Child Support's Cost Recovery Goal after Welfare Reform 4*, UNIV. OF TEX. AT AUSTIN, (Apr. 27, 2018).

⁷ 8.50.112.10(A) NMAC.

⁸ Cozzolino, *supra* note 3, at 8 (comparing the amount of child support expenditures at \$20 billion in 2015 to the amount of child support retained by states at \$558 million in 2014, or 2.79% of expenditures); see also Laurie S. Kohn, *Engaging Men as Fathers: The Courts, the Law, and Father-Absence in Low-Income Families*, 35 CARDOZO L. REV. 511, 536 (2013).

⁹ See, e.g., Daniel L. Hatcher, *Child Support Harming Children: Subordinating the Best Interests of Children to the Fiscal Interests of the State*, 42 WAKE FOREST L. REV. 1029, 1033 (2007).

¹⁰ *Id.* at 1032.

¹¹ Kohn, *supra* note 5, at 535.

¹² AMBER WALLIN, N.M. VOICES FOR CHILDREN, NM'S WORKING FAMILIES TAX CREDIT 6 (Jan. 2017), <https://www.nmvoices.org/wp-content/uploads/2017/01/EITC-WFIC-rpt-web.pdf>.

¹³ See Kohn, *supra* note 5, at 534-35.

¹⁴ Hatcher, *supra* note 6, at 1033.

¹⁵ 8.50.125.11-12 NMAC.

¹⁶ 8.50.125.11(E) NMAC provides that, "At the discretion of the New Mexico legislature, the IV-D agency may disburse a maximum amount determined on a monthly basis . . . to the IV-A service recipient from collections on current support

. . . A pass through payment is in addition to, not in lieu of, the monthly TANF payment." Moreover, New Mexico's statutes on pass-through, disregard and liability for repayment of public assistance are located in NMSA 1978, Sections 27-2B-7(B)(10)(a)-(b) and 27-2-28(E).

¹⁷ 42 U.S.C. § 608(a)(3) (2012); NMSA 1978, § 27-2-28(F) (2009).

¹⁸ § 608(a)(3); § 27-2-28(C).

	(A) Never received TANF	(B) Formerly received TANF	(C) Currently receive TANF
	Child support rights are not assigned to the state.	Child support rights were assigned to the state.	Child support rights are assigned to the state.
(1) No past-due child support	All child support collections are paid to the custodial family. ¹⁹	New Mexico (1) pays the family the amount needed to satisfy current monthly child support obligations. ²⁰ Then (2) the state can either distribute the remaining amount to the family or the state. ²¹ The state can pay the family the state's share of the unreimbursed	New Mexico (1) pays the federal government its share of the amount collected, (2) retains its own share of the amount collected, then (3) distributes any amount in excess to the custodial family. ²²
State interception does not occur.			
Child support			

payments generally.		assistance. Otherwise, if the state reimburses itself, it must also pay the federal government its share of unreimbursed assistance.	
(2) Past-due child support	Child support rights are not assigned to the state. Child support collections from federal	Child support rights were assigned to the state. Using federal income tax refund offset, New	Child support rights are assigned to the state. Using federal income tax refund offset, New

¹⁹ 8.50.125.11(H) NMAC.

²⁰ 8.50.125.11(F) NMAC.

²¹ 8.50.125.11(F) NMAC.

²² 8.50.125.11(C) NMAC.

	(A) Never received TANF	(B) Formerly received TANF	(C) Currently receive TANF
State interception occurs. Child support collected from federal income tax offset. ²³	income tax offset are paid to the custodial family. ²⁴	Mexico (1) retains the cumulative amount of unreimbursed assistance paid to the family then (2) distributes any amount in excess to the custodial family. ²⁵	Mexico (1) retains the cumulative amount of unreimbursed assistance paid to the family then (2) distributes any amount in excess to the custodial family. ²⁶

For example, where a family *never received* TANF (column A), the family receives all child support collections (including those from federal income tax offset) because no child support rights were assigned to the state—regardless of any past-due child support (rows 1 and 2).

Where a family *formerly* received TANF (column B), child support payments were assigned to the state and distribution of collected child support depends on whether there is past-due child support. Where there is *no* past-due child support (row 1), the state must first

pay to the family the amount needed to satisfy current monthly child support obligations. Then the state has two options for the remaining amount: either pay the family or the state. If the state pays itself, it must also pay the federal government for its share of unreimbursed assistance. Alternatively, if there *is* past-due child support (row 2), the state can intercept federal income tax refunds to recoup the amounts paid to the family as assistance by the state. Any amount in excess is distributed to the custodial family.

Where a family *currently* receives TANF (column C), child support payments are assigned to the state and distribution of collected child support depends on whether there is past-due child support. Where there is *no* past-due child support (row 1), the state uses these payments to reimburse the federal government and the state for cash assistance paid to the custodial family. Any amount in excess is distributed to the family. Alternatively, if there *is* past-due child support (row 2), the state can intercept federal income tax refunds to recoup the

²³ 8.50.112.10(A) NMAC (“Criteria for federal income tax offset: A IV-D case may be referred for federal income tax offset . . . so long as there is a delinquency or arrearage owed.”).

²⁴ 8.50.125.12(C) NMAC.

²⁵ 8.50.125.12(B) NMAC.

²⁶ 8.50.125.12(A) NMAC.

amounts paid to the family as assistance by the state. Any amount in excess is distributed to the custodial family.

When it comes to families identified in the gray boxes above (who either (a) *formerly* received TANF and are owed past-due child support or (b) *currently* receive TANF and are entitled to either current or past-due child support), New Mexico’s current regulatory scheme is problematic. Specifically, the state should not prioritize its state-assigned debts over the needs of families who have received or are currently receiving TANF. **When the state uses child support collections to pay its debt, it diverts critical child support assistance away from families who may otherwise use this supplemental income to stay sheltered and pay for basic necessities.** Indeed, it is counterproductive to the stated goals of the cash assistance program, which is to increase family income and improve the quality of life for families and children in New Mexico.

Moreover, federal income tax refunds serve a distinct purpose: they reimburse filers who paid more in tax liability than they actually owed to federal and state governments.²⁷ The amount of a refund is the excess that a filer overpaid to the government based on reported income and tax liability.²⁸ These refunds are designed to offset the burden of paying taxes for lower income earners, who make up a majority of child support obligors.²⁹ It is counterproductive for the state to intercept these refunds because, once intercepted, they no longer serve the purpose of reimbursing lower income tax filers for overpaid tax liability.

The Department should work with the legislature to take the following actions to directly support struggling families in New Mexico: (1) reverse the distribution priority in NMAC Sections 8.50.125.11 and 8.50.125.12; (2) amend NMSA 1978, Sections 27-2B-7(B)(10)(a)-(b) and 27-2-28(E) to provide *full* pass-through and disregard for families receiving cash assistance;

Pass-through refers to the amount of child support that a state elects to pass through to the custodial family in addition to cash assistance.³⁰ Disregard refers to the amount of child support that is disregarded when determining a custodial family's eligibility for cash assistance

²⁷ Susannah Snider, *Everything You Should Know About Tax Refunds*, U.S. NEWS & WORLD REPORT (Jun. 20, 2019), <https://money.usnews.com/money/personal-finance/taxes/articles/everything-you-should-know-about-tax-refunds>.²⁸ *Id.*

²⁹ See TAX POL'Y CTR., *How does the federal tax system affect low-income households?*, URBAN INST. AND BROOKINGS INST. (last updated May 2020), <https://www.taxpolicycenter.org/briefing-book/how-does-federal-tax-system-affect-low-income-households>; see also Hatcher, *supra* note 6, at 1031.

³⁰ *Child Support Pass-Through and Disregard Policies for Public Assistance Recipients*, NAT'L CONFERENCE OF STATE LEGISLATURES (May 29, 2020), <https://www.ncsl.org/research/human-services/state-policy-pass-through-disregard-child-support.aspx>.

benefits.³¹ Full pass-through support and disregard must be implemented via a statute according to NMAC Section 8.50.125.11(E).³²

NMHSD Response:

The department will ask the legislature for \$1.74 million in general fund to cover the expected TANF recoveries under the current distribution method so that the department can change to the Deficit Reduction Act (DRA) distribution method and pay families first for federal tax offsets. If approved for the general fund request, the department will promulgate rule changes to 8.50.125 followed by computer system changes which will require addition funding. The department is currently analyzing how soon system changes can be implemented after legislative funding request approval.

6. 8.50.112.11(C) NMAC The Department Should Stop Requiring Notarization of Documents

Requirements to notarize documents is referenced throughout the regulation. We urge the Department to remove this requirement and to promulgate a regulation that no longer requires this burdensome requirement for any child support enforcement matter. The Courts already accept sworn statements that do not require notarization. The Department should follow the Courts in this matter.

NMHSD Response:

The department is proposing to remove notarization in Change of Address, 8.50.100.17 in the current set of proposed rules. The department will complete a full review of all NMAC, and internal forms requiring notarization, will seek general counsel review to determine if any forms should change.

7. 8.50.112.11(I) NMAC The Department Should Stop Collecting Fees From Very Low Income non-TANF Custodial Parties.

“A non-TANF custodial party who has applied for Title IV-D services is assessed fees for the federal income tax refund. The fees are deducted from the tax refund when it is intercepted but are credited to the obligor’s support payment.” We urge the Department to not charge non-TANF custodial parties fees.

NMHSD Response:

Currently Title IV-A, Title IV-E and Medicaid-only (Title XIX) recipients are not charged any fees as per Collection of Fees/Recoupments 8.50.125.10, NMAC. The amount the Title IV-D agency deducts from each payment for all non-Title IV-A, Title IV-E and Medicaid-only (Title XIX) customers is collected at the rate of ten percent of the total amount of the distribution per 8.50.125.10.

8. 8.50.112.12 NMAC Collection of Past Due Support By New Mexico Taxation and Revenue Department by State Tax Refund Offset – The Department Should Reverse Its Distribution Priority For State Tax Offset.

For all the reasons stated above, regarding offsetting of federal tax refunds, the Department should elect to reverse its distribution priority for families when it comes to state taxation and revenue of state tax refund offset.

NMHSD Response:

State Tax Refund Offsets are currently paid to families first and are distributed as per Distribution of Collections 8.50.125.11, NMAC.

9. NMAC The Department Should Use Child Level Accounting By Splitting or Pro-Rating The Family Grant Amount on a Per-Child Basis.

The Department should use child-level accounting by splitting or pro-rating the family grant amount on a per-child basis when the child is (or was) included in the family unit and should not continue to apply collections to the cumulative amount of unreimbursed assistance balances based on the total monthly family grant amount. This hurts families. The state should be in the business of maximizing return on Title IV-D cases. These are the state’s poorest families.

NMHSD Response:

The federal Office of Child Support Enforcement (OCSE) has provided the following instructions for distribution in AT-97-17, “As a condition of eligibility for assistance under title IV-A of the Social Security Act, a member of a family must assign to the State any rights a family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving assistance) to support from any other person, which accrue (or have accrued) before the date the family leaves the program. Therefore, in current or former assistance cases, States may not use child-level accounting by splitting or pro-

rating the family grant amount on a per-child basis when the child is (or was) included in the family unit and must continue to apply collections to the cumulative amount of unreimbursed assistance balances based on the total monthly family grant amount”

<https://www.acf.hhs.gov/css/policy-guidance/instructions-distribution-child-support-under-section-457-social-security-act>. The department is exploring the idea of changing to families first distribution and changing the disbursement method to increase the amount of payments going to families instead of to TANF reimbursement. If the department receives the funding for the DRA distribution change described above then payments collected will be distributed to families first and assigned arrears balances would be paid last.

Concise Explanatory Statement:

- Changes in the rules are to revise and add clarification to for General Provisions, Determination of Parentage, Income Withholding, Support Obligations, Fees and Paments, and Administrative Hearings.

VI. RULES


These rules will be contained in 8.50100 General Provisions, 8.50.106 Location, 8.50.107 Determination of Parentage, 8.50.108 Establishment and Modifiacation of Support Order, 8.50.109 Medical Support, 8.50.110 Income Withholding, 8.50.111 General Enforcement of Support Obligations, 8.50.112 Administrative Enforcement of Support Obligations, 8.50.114 Financial Institution Data Match (FIDM), 8.50.125 Fees, Payments, and Distributions, 8.50.130 Administrative hearings. This final register and rules are available on the HSD website at <http://www.hsd.state.nm.us/LookingForInformation/Default.aspx> and on the Sunshine Portal at http://statenm.force.com/public/SSP_RuleHearingSearchPublic. If you do not have internet access, a copy of the final register and rules may be requested by contacting the Child Support Enforcement Division at (505) 709-5755.

VII. EFFECTIVE DATE

January 1, 2022

VIII. PUBLICATIONS

Publication of these rules approved by:

DocuSigned by:

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DR. DAVID SCRASE, SECRETARY
HUMAN SERVICES DEPARTMENT

This is an amendment to 8.50.100 NMAC, Sections 2, 3, 7, 10, 11, 13, 14, 15, 16, and 17 effective 1/1/2022.

8.50.100.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of Title IV-D services.

[8.50.100.2 NMAC - Rp, 8.50.100.2 NMAC, 12/30/2010; A, 1/1/2022]

8.50.100.3 STATUTORY AUTHORITY: Public Assistance Act, [~~NMSA 1978, Section 27-2-27~~] Section 27-2-27 et seq., 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.).

[8.50.100.3 NMAC - Rp, 8.50.100.3 NMAC, 12/30/2010; A, 1/1/2022]

8.50.100.7 DEFINITIONS: Unless otherwise apparent from the context, the following definitions shall apply throughout these regulations.

A. "Account" means a demand deposit account checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account.

B. "Arrearage" means the amount of support owed that was unpaid and has been consolidated into a judgment. Also referred to as arrears or past-due support.

C. "AFDC" means aid to families with dependent children. AFDC is now replaced by the TANF/ NM works program. Where TANF/ NM works is referenced in these regulations, the provisions apply to AFDC cases.

D. "Authorized representative" means a person acting under the authority of a valid power of attorney (with a general or specific designation regarding a child support case), a guardian ad litem, an attorney representing a person, or the parent of a minor having a child support case. The person will be required to produce documentation of his or her authorized status.

E. "Business day" means a day on which state offices are open for regular business.

F. "CP" means custodial party or custodial parent.

G. "CSED" means the child support enforcement division of the human services department that is the New Mexico Title IV-D agency, designated by [~~NMSA 1978, Section 27-2-27~~] Section 27-2-27 et seq., NMSA 1978, as the single state agency for the enforcement of child, medical, and spousal support obligations pursuant to Title IV-D of the Social Security Act.

H. "CSES" means the child support enforcement system (the computer system for CSED).

I. "Delinquency" means any payment under an order for support that has become due and is unpaid and has not been consolidated into a judgment. This may also be known as overdue support.

J. "Department" means the New Mexico human services department.

K. "Department's records" means all physical and automated records maintained by the department on any person, as well as access to automated and physical records maintained by other persons.

L. [~~"Dependant"~~] "Dependent" means a minor who has not emancipated by age or by court order. This is the same as a "minor child."

M. "DMSH" means data match specification handbook.

N. "Distribution" means the act of collecting child support payments and disbursing those payments to the proper individual or agency.

O. "District court" means the judicial district courts, family courts, and child support hearing officers having jurisdiction over child support matters in the state of New Mexico.

P. "Employer" means the same as the term in Section 3401(d) of the Internal Revenue Code of 1986 and includes any governmental entity and any labor organization.

Q. "FIDM" means financial institution data match.

R. "Financial institution" is defined in [~~NMSA 1978, Section 27-1-13~~] Section 27-1-13 et seq., NMSA 1978.

S. "Family violence" means the family violence indicator or non-disclosure indicator on the child support computer system.

T. "Genetic testing" means any testing methodology used to determine parent and child relationship as described in [~~NMSA 1978, Section 40-11A-503~~] Section 40-11A-503 et seq., NMSA 1978.

U. "Hearings bureau" means the Title IV-D hearings bureau.

V. "Hearing officer" means the Title IV-D administrative hearings officer or administrative law judge.

- W.** “HSD” means the human services department.
- X.** “Location” means information concerning the physical whereabouts of a person or the person’s employer(s), other sources of income, or assets as appropriate, which is sufficient and necessary to take the next appropriate action in a case.
- Y.** “NCP” means non-custodial party or non-custodial parent.
- Z.** “Obligee” means any person who is entitled to receive support under an order for support or that person's legal representative or assignee pursuant to [~~NMSA 1978, Section 27-2-28~~] Subsection F of Section 27-2-28 NMSA 1978.
- AA.** “Obligor” means the person who owes a duty to make payments under an order for support.
- BB.** “Order for support” means any order that has been issued by any judicial, quasi-judicial or administrative entity of competent jurisdiction of any state, territory, or nation that has entered into a reciprocal agreement for the establishment and enforcement of orders for support with the United States and which order provides f
- (1) periodic payment of funds for the support of a child or a spouse;
 - (2) modification or resumption of payment of support;
 - (3) payment of delinquency; or
 - (4) reimbursement of support.
- CC.** “Payor” means any person or entity who provides income to an obligor.
- DD.** “Person” means an individual, corporation, partnership, governmental agency, public office or other entity.
- EE.** “Physical or emotional harm” means being subjected to: physical acts that resulted in, or threatened to result in, physical injury; sexual abuse; sexual activity involving a dependent child; being forced as the caretaker relative of a dependent child to engage in non-consensual sexual acts or activities; threats of, or attempts at, physical or sexual abuse; mental abuse; being subject to a pattern of emotional or psychological attacks that may include embarrassment, isolation, blaming, name-calling, humiliation, threats, shaming, extreme jealousy, gaslighting, intimidation, and manipulation resulting in a range of emotional trauma that may include: confusion, fear, difficulty concentrating, anxiety, social withdrawal, sleep disruption, and depression; or neglect or deprivation of medical care.
- FF.** “Proof of service” means the completed document demonstrating that service has been completed in accordance with the New Mexico rules of civil procedure at Rule 1-004 NMRA. The documents include, but are not limited to: an affidavit of mailing, acceptance of service, certificate of service, or return of service.
- GG.** “Secretary” means the secretary of the human services department.
- HH.** “SDU” means the state disbursement unit that collects and disburses payments in all Title IV-D cases.
- II.** “Service of process” means:
- (1) service has been accepted by the person signing an acceptance of service; or
 - (2) service performed pursuant to Rule 1-004 NMRA.
- JJ.** “Support order” means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child or children, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, medical support, or arrearages.
- KK.** “TANF/NM works” means federally funded temporary assistance to needy families / New Mexico works (see AFDC).
- LL.** “Title IV” programs mean the various programs operated under the Social Security Act (42 USC Chapter 7, Title IV). IV-A refers to TANF and IV-B or IV-E refers to foster care. See definition below for “IV-D”.
- MM.** “Title IV-D” or “Title IV-D agency” or “IV-D agency” means the single and separate state agency authorized by Title IV, Subsection D of the Social Security Act (42 USC 651 et seq.) to operate a child support program. Both states and tribes may administer a Title IV-D program. The New Mexico “Title IV-D” agency is authorized by [~~NMSA 1978, Section 27-2-27~~] Section 27-2-27 et seq., NMSA 1978.
- NN.** “Title IV-D agency director” or “division director” means the director of the child support enforcement division of the New Mexico human services department.
- OO.** “Title IV-D staff” or “IV-D staff” means employees of the state of New Mexico assigned to operate a child support program to also include any contractors with the IV-D agency.
- PP.** “Title XIX” means medicaid programs that are operated under Title XIX of the Social Security Act.

QQ. “**UIFSA**” means Uniform Interstate Family Support Act (replaces the former Uniform Reciprocal Enforcement of Support Act). A case from another jurisdiction that has not yet adopted UIFSA shall be treated as a New Mexico UIFSA case. [~~See NMSA 1978, Section 40-6A-101 et. seq.~~] (See Section 40-6A-101 et seq., NMSA 1978).

[8.50.100.7 NMAC - Rp, 8.50.100.7 NMAC, 12/30/2010; A, 1/1/2022]

8.50.100.10 RESPONSIBILITY AND DELEGATION OF AUTHORITY: Pursuant to [~~NMSA 1978, Section 27-2-27~~] Section 27-2-27 et seq., NMSA 1978, the New Mexico human services department’s child support enforcement division (CSED) is the single and separate organizational unit designated to administer Title IV-D of the Social Security Act. It is responsible and accountable for the operation of the child support enforcement program insuring that its functions are being carried out in accordance with the relevant federal and state laws and regulations.

[8.50.100.10 NMAC - Rp, 8.50.100.10 NMAC, 12/30/2010; A, 1/1/2022]

8.50.100.11 ATTORNEY REPRESENTATION: Per [~~NMSA 1978, Section 27-2-27(E)~~] Subsection E of Section 27-2-27 et seq., NMSA 1978, the Title IV-D attorneys only represent the human services department. There is no express or implied attorney-client relationship between IV-D attorneys and applicants or recipients of IV-D services. Although applicants and recipients of IV-D services may interact with IV-D attorneys regarding their cases, the interaction with the IV-D attorneys does not indicate any confidential relationship that the person would have with a private attorney. All IV-D applicants and recipients are on notice that information provided to the IV-D agency (either to IV-D staff or attorneys) will not be disclosed to the general public, but may be used to collect support from either parent. The IV-D agency reserves the right to invoke the attorney work product privilege as it pertains to its attorneys and their work for the IV-D agency.

[8.50.100.11 NMAC - Rp, 8.50.100.11 NMAC, 12/30/2010; A, 1/1/2022]

8.50.100.13 CONFIDENTIALITY:

A. The Title IV-D agency has access to the entire Title IV-A case file and to material in the medicaid case file. Information contained in the Title IV-A and Title IV-D records is subject to federal and state confidentiality requirements. Federal and state law restrict the use or disclosure of information concerning applicants or recipients of program services to purposes directly connected with the administration of the Title IV-D program. No unauthorized use, dissemination or disclosure of information in the possession of the Title IV-D agency will be made or permitted. (See 42 USC 654 (a) (26) and 45 CFR 303.21). Department records are confidential and may not be released to third parties without a court order or as otherwise provided by federal or state law. Department records include, but are not limited to: address/locate information, audits, correspondence with other state agencies, payment records, distribution records, and employer information.

B. Unless authorized by federal law, no release of information concerning the whereabouts of persons subject to a protective order or about whom the state has reasonable evidence of domestic violence or child abuse shall be made.

C. A non-disclosure indicator will be entered on the child support enforcement system (CSES) and on the physical case file if a protective order or family violence affidavit is submitted. A court order for unsupervised visitation is not generally compatible with a non-disclosure indicator. A non-disclosure indicator will not be entered if a support order or divorce decree provides for unsupervised visitation, unless there is a specific court protective order.

D. The federal government may disclose confidential information on a New Mexico Title IV-D case in accordance with 42 USC 653.

E. All state and local staff and contractors who may have access to or be required to use confidential program data in the computerized support system will:

(1) be informed of applicable requirements and penalties, including those in section 6103 of the Internal Revenue Service Code (26 USC 6103);

(2) be adequately trained in security procedures; and

(3) be subject to have administrative penalties, including dismissal from employment, for unauthorized access to, disclosure, or use of confidential information.

F. The Title IV-D agency will redact personal identifying information to include social security numbers and dates of birth when releasing documents pursuant to a request for information, unless that information is being released pursuant to a specific program operation (i.e. court required information or administrative enforcement).

[8.50.100.13 NMAC - Rp, 8.50.100.14 NMAC, 12/30/2010; A, 1/1/2022]

8.50.100.14 AUTHORIZED RELEASE OF INFORMATION: Some information must be released to persons outside the agency. IV-D staff will exercise caution in releasing information on a Title IV-D case. Information should be released only after the identity of the requestor and the right to receive the information is clearly established. The burden of proving the legitimacy of a request is on the requestor.

A. Information may be released to the following parties:

(1) Applicants or recipients of Title IV-D services: Custodial and non-custodial parties of Title IV-D cases, their respective attorney of record, guardian, or power of attorney may obtain information concerning the receipt and distribution of payments, copies of legal documents filed in court on their case, public assistance benefits history, payment records, official notifications for a fee established by HSD, and correspondence from either the custodial or non-custodial party. They are not entitled to receive information that relates to the state's legal strategy or is otherwise protected by federal and state laws.

(2) Information may be released per the operational requirements of the program, subject to federal and state laws on confidentiality. Other agencies/requesters include, but are not limited to: district courts, credit reporting agencies, tax intercept programs, financial institutions, other Title IV agencies, medicaid agencies, authorized government agents (both federal and state authorized government agents must present adequate identification and permission from the individual concerned unless otherwise authorized to receive information), the federal office of child support enforcement and other state governmental bodies that are responsible for issuing licenses or holding money that is collectible by the Title IV-D agency.

(3) Congressional, executive or legislative inquiries - Congressional, executive and legislative inquiries are subject to all regulations governing confidentiality.

(4) Other individuals - Other individuals may obtain information through legal discovery procedures or from the custodial or non-custodial party.

B. Requests for information:

(1) Phone inquiries - Title IV-D staff will not release information on the telephone to anyone other than the custodial party, the non-custodial party, or his or her authorized representative. Requests by a third party for information must be submitted in writing.

(2) Written requests - Written requests for case information shall be screened by the Title IV-D agency to determine what information, if any, will be released.

(3) Walk-in requests - The same precautions applying to phone inquiries shall be used in dealing with walk-in requests for information. If uncertainty exists as to the identity of the requestor, the worker will ask to see identification before providing case information.

(4) Third party requests - The Title IV-D agency will not honor a request for information from a third party without a notarized release from either the custodial party or non-custodial party that specifies the information to be released. A third party may not obtain information pursuant to an authorized release unless the party consenting to the release is entitled to receive the information. The information provided will be in accordance with authorized releases according to federal and state law. The Title IV-D agency reserves the right to provide the requested information directly to either the custodial party or non-custodial party rather than the third party requestor or to redact personal or confidential information, as appropriate. An attorney of record for a custodial or non-custodial party is not considered a third party requestor.

[8.50.100.14 NMAC - Rp, 8.50.100.15 NMAC, 12/30/2010; A, 1/1/2022]

8.50.100.15 WRITTEN STATEMENTS OF COLLECTION PROVIDED TO RECIPIENTS OF IV-D SERVICES:

A. General written communication regarding collections: Upon a request from a recipient of Title IV-D services, the Title IV-D agency will make available a written statement, no more than twice a year, of payments made to the obligee by the obligor through the Title IV-D agency pursuant to an order for support, and the amount of any delinquency still owed to the obligee by the obligor.

B. Notice of collection of assigned support: The IV-D agency provides notice to recipients of benefits under Title IV-A of the Social Security Act of the amount of support payments collected for each quarter. No notice will be sent if:

- (1) no collection is made in the quarter;
- (2) the assignment is no longer in effect; and
- (3) there are no assigned arrearages.

[8.50.100.15 NMAC - Rp, 8.50.100.16 NMAC, 12/30/2010; A, 1/1/2022]

8.50.100.16 CONTROLS AND REPORTING: The Title IV-D agency maintains records necessary for the proper and efficient operation of the state plan and for the reporting accountability required by the federal office of child support enforcement including records regarding the following:

- A.** application for support services available under the state plan;
- B.** location of non-custodial parties, action to establish paternity, and obtain and enforce support and the costs incurred in such action;
- C.** amount and sources of support collections and the distribution of these collections;
- D.** any fees charged or paid for support enforcement services;
- E.** administrative costs; and
- F.** statistical, fiscal, and other records necessary to the reporting required.

[8.50.100.16 NMAC - Rp, 8.50.100.18 NMAC, 12/30/2010; A, 1/1/2022]

8.50.100.17 CHANGE OF ADDRESS: ~~[All requests for address and phone number changes must be made in writing or made in person with proper identification. If a person changing his or her address on file with the Title IV-D agency is receiving distributions by warrant (check), the request to update an address must be in writing and notarized or made in person with proper identification.]~~ The Title IV-D agency and its representatives must verify an individual's identity prior to changing the address and phone number in agency records. The failure of a custodial party or non-custodial party to maintain a valid address on file with the Title IV-D agency may result in one of the following, as appropriate for that party: further enforcement actions, closure of the Title IV-D case, or the surrender of support that has been determined to be unclaimed property pursuant to 8.50.132 NMAC.

[8.50.100.17 NMAC - N, 12/30/2010; A, 1/1/2022]

This is an amendment to 8.50.106 NMAC, Sections 2, 3, 9, 10, 11, 12, 13, 14, 15, and 16, effective 1/1/2022.

8.50.106.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of Title IV-D services.

[8.50.106.2 NMAC - Rp, 8.50.106.2 NMAC, 12/30/2010; A, 1/1/2022]

8.50.106.3 STATUTORY AUTHORITY: Public Assistance Act, [~~NMSA 1978, Section 27-2-27~~] Section 27-2-27 et seq., 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.).

[8.50.106.3 NMAC - Rp, 8.50.106.3 NMAC, 12/30/2010; A, 1/1/2022]

8.50.106.9 TIME FRAMES FOR PARENT LOCATE: Federal regulations require that within [~~seventy-five (75)~~] 75 calendar days of determining that location is necessary, the Title IV-D agency will access all appropriate location sources.

[8.50.106.9 NMAC - Rp, 8.50.106.9 NMAC, 12/30/2010; A, 1/1/2022]

8.50.106.10 VERIFICATION OF LOCATION: Location information must be verified prior to service of process. Federal regulations require that the Title IV-D case record contain documentation of the date, time, and name of each location source, even when the source failed to provide helpful information.

A. Location sources will be verified by a second source verification when necessary.

B. The following location sources are acceptable forms of location verification for single source verification:

(1) employer letter;

(2) driver's license or vehicle registration with a date of issuance which is 90 days or less;

(3) federal, state and local agencies and departments sources; and

(4) personal knowledge as to the non-custodial parent's whereabouts where the person is willing to testify to that fact.

[8.50.106.10 NMAC - Rp, 8.50.106.12 NMAC; A, 1/1/2022]

8.50.106.11 THE STATE PARENT LOCATOR SERVICE: The New Mexico Title IV-D agency established a state parent locator service (SPLS) that operates out of the agency's central office. The state parent locator service is authorized to submit location information requests to the federal parent locator service. If all attempts to locate a non-custodial parent fail at the local office level, these cases may be referred to the state parent locator service provided that at least the non-custodial parent's full name and either an approximate date of birth or social security number are known.

[8.50.106.11 NMAC - Rp, 8.50.106.10 NMAC, 12/30/2010; A, 1/1/2022]

8.50.106.12 FEDERAL PARENT LOCATOR SERVICE (FPLS): The Title IV-D agency may utilize the FPLS in accordance with 42 USC 653 and 45 CFR § 303.70. All information obtained is subject to federal and state laws regarding confidentiality of information. Neither parties nor their respective private legal representative may apply directly to the SPLS for FPLS information in parental kidnapping and child custody cases. Parties or their respective legal representative may, however, petition a state district court to request location information from the FPLS concerning the absconding parent and missing child. A party can request appropriate state officials who are authorized persons to make a locate request. A state district court may request FPLS information in connection with a child custody determination in adoption and parental rights determination cases.

[8.50.106.12 NMAC - Rp, 8.50.106.13 NMAC, 12/30/2010; A, 1/1/2022]

8.50.106.13 DECEASED PARTIES: If a party or [~~dependant~~] dependent is reported as deceased, the death must be verified. Verification may consist of written verification from the vital statistics bureau, office of the medical investigator or from any other accepted official source. [~~If the deceased is a non-custodial parent, after receipt of verification, a determination as to the existence of an estate is to be made and the possibility of a levy against the estate. If it is determined that no further action can be taken and no levy against the non-custodial parent's estate can occur, the case qualifies for closure.~~]

[8.50.106.13 NMAC - Rp, 8.50.106.14 NMAC; A, 1/1/2022]

8.50.106.14 STATE CASE REGISTRY: The Title IV-D agency established a state case registry that contains records with respect to:

A. each case in which services are being provided on or after October 1, 1998 by the state Title IV-D agency; and

B. each support order established or modified in the state on or after October 1, 1998, whether or not the order was obtained by the Title IV-D agency. [~~NMSA 1978, Section 27-1-8~~] (Section 27-1-8 et seq., NMSA 1978).

[8.50.106.14 NMAC - Rp, 8.50.106.15 NMAC, 12/30/2010; A, 1/1/2022]

8.50.106.15 LOCATOR INFORMATION FROM INTERSTATE NETWORKS: The state Title IV-D agency is authorized to have access to any system used by the state to locate an individual for purposes relating to motor vehicle or law enforcement.

[8.50.106.15 NMAC - Rp, 8.50.106.16 NMAC, 12/30/2010; A, 1/1/2022]

8.50.106.16 STATE DIRECTORY OF NEW HIRES: The department established a state directory of new hires pursuant to the State Directory of New Hires Act (“Act”), [~~NMSA 1978,~~] Section 50-13-1 et seq., NMSA 1978. The department may, at its discretion, contract this service, as appropriate. All information required by the act may be provided to a contractor designated by the department.

[8.50.106.16 NMAC - Rp, 8.50.106.18 NMAC, 12/30/2010; A, 1/1/2022]

This is an amendment to 8.50.107 NMAC, Sections 2, 3, 6, 8, 9, 11, and 12, effective 1/1/2022.

8.50.107.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of Title IV-D services.

[8.50.107.2 NMAC - Rp/E, 8.50.107.2 NMAC, 1/1/2010; A, 12/30/2010; A, 1/1/2022]

8.50.107.3 STATUTORY AUTHORITY: Public Assistance Act, [~~NMSA 1978, Section 27-2-27,~~] Section 27-2-27 et seq., 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.).

[8.50.107.3 NMAC - Rp/E, 8.50.107.3 NMAC, 1/1/2010; A, 1/1/2022]

8.50.107.8 DETERMINATION OF PARENTAGE: A determination of parentage is necessary for the establishment of child support. The Title IV-D agency extends full faith and credit to a determination of parentage made by another jurisdiction, whether established through voluntary acknowledgment or through administrative or judicial process. Alleged fathers may initiate parentage actions through the Title IV-D agency. The Title IV-D agency may petition a court of competent jurisdiction to establish parentage so long as the [~~dependant~~] dependent child is still under the age of majority.

A. Federal time-frames and requirements for establishment of parentage. The IV-D agency shall establish an order for support or complete service of process necessary to commence proceedings to establish a support order and, if necessary, parentage (or document unsuccessful attempts to serve process) within [~~ninety (90)~~] 90 calendar days of locating the alleged father or non-custodial parent. (45 CFR Section 303.4(d)).

B. The Title IV-D agency is not required to establish parentage or pursue genetic testing in any case involving incest or rape, or in any case in which legal proceedings for adoption are pending, or if, in the opinion of the IV-D agency, it would not be in the best interests of the child.

C. The Title IV-D agency may identify and use laboratories that perform, at reasonable cost, legally and medically acceptable genetic tests that tend to identify the biological parent or exclude the alleged biological parent. The IV-D agency may make available a list of such laboratories to appropriate courts and law enforcement officials, and to the public upon request.

D. The Title IV-D agency may seek entry of a default order by the court or administrative authority in a parentage case according to state law and rules of procedure regarding default orders.

E. The Title IV-D agency may seek to establish maternity in compliance with the New Mexico Uniform Parentage Act, as appropriate.

F. The IV-D agency will not initiate an action to rescind or disestablish parentage.

G. If a child in a Title IV-D case has an acknowledged, presumed, or an adjudicated father as defined within the New Mexico Uniform Parentage Act, then parentage has been determined and the Title IV-D agency will pursue the establishment of support on behalf of or against the parent, as appropriate.

[8.50.107.8 NMAC - Rp/E, 8.50.107.8 NMAC, 1/1/2010; A, 12/30/2010; A, 1/1/2022]

8.50.107.9 PARENTAGE INVOLVING MINOR FATHERS AND MOTHERS: If the biological parent is under the age of emancipation, and is not otherwise emancipated by law, the Title IV-D agency will take measures to establish parentage and support, as appropriate. If a biological parent is a minor, his or her parent, legal guardian, or attorney who has entered an appearance on behalf of the minor biological parent may be present at all meetings or discussions between the minor biological parent and the representatives of the Title IV-D agency. The Title IV-D agency will seek to establish parentage. If the alleged minor non-custodial parent is employed, the Title IV-D agency will pursue guideline support. Any order or stipulation will include a requirement that the minor non-custodial parent will notify the Title IV-D agency of his or her employment and educational status on a regular basis. In uncontested cases, the Title IV-D agency may seek the concurrence of the minor biological parent's parent(s), legal guardian, or attorney. In contested cases, the minor biological parent(s) may request the court to appoint a guardian ad litem. Any legal notices or pleading prepared following the appointment of the guardian ad litem will be sent in accordance with the rules of civil procedure.

[8.50.107.9 NMAC - Rp/E, 8.50.107.9 NMAC, 1/1/2010; A, 12/30/2010; A, 1/1/2022]

8.50.107.11 LONG ARM STATUTE CASES:

A. The Title IV-D agency will use the long arm statute as appropriate to exercise jurisdiction over a non-custodial parent residing in another state pursuant to ~~[NMSA 1978, Section 40-6A-201]~~ Section 40-6A-201 et seq., NMSA 1978.

B. Genetic testing may be used in long arm statute cases in the establishment of parentage. New Mexico shall advance the costs associated with the testing in cases wherein the state initiated long arm statute actions. The Title IV-D agency shall seek reimbursement for the advancement of the costs pursuant to the genetic testing section below.

[8.50.107.11 NMAC - Rp/E, 8.50.107.11 NMAC, 1/1/2010; A, 12/30/2010; A, 1/1/2022]

8.50.107.12 GENETIC TESTING:

A. The Title IV-D agency provides genetic testing services, as appropriate. The Title IV-D agency will not provide genetic testing services when parentage is presumed by law or has already been adjudicated unless ordered by a court of competent jurisdiction to do so. The Title IV-D agency will seek the admission into evidence, for purposes of establishing parentage, the results of a genetic test that are performed by a laboratory contracted with the Title IV-D agency to provide this specific service, unless the results are otherwise stipulated to by the parties. Any party to a Title IV-D case may seek genetic testing outside of the Title IV-D agency, at his or her own expense and obtain a genetic test and report in compliance with ~~[NMSA 1978, Sections 40-11A-503 to 504]~~ Sections 40-11A-503 to 504 et seq., NMSA 1978. The Title IV-D agency will not present or introduce into evidence the results of a genetic test report obtained through a laboratory not contracted with the Title IV-D agency.

B. The Title IV-D agency may charge any individual who is not a recipient of state aid for the cost of genetic testing in accordance with the fee schedule in 8.50.125 NMAC. The Title IV-D agency may advance the cost of the fee if the IV-D agency is a party in a pending court case and is providing full services. If the Title IV-D agency is not a party in a pending court case and is not providing full services, the Title IV-D agency may require payment of the fee from any or all parties prior to scheduling the genetic testing. If a party paying any or all of the genetic testing fee wants reimbursement from the other party, he or she must seek a court order against that party.

C. The Title IV-D agency will charge a father for genetic testing when parentage is already presumed by law or has already been adjudicated, regardless of the results of the paternity test. The Title IV-D agency will charge an alleged father for genetic testing when parentage is not presumed by law or adjudicated and the results of the test show the alleged father to be the biological father. The Title IV-D agency will charge the mother for genetic testing when parentage is not presumed by law or adjudicated and the results of the test show the alleged father not to be the biological father.

[8.50.107.12 NMAC - Rp/E, 8.50.107.12 NMAC, 1/1/2010; A, 12/30/2010; A, 1/1/2022]

This is an amendment to 8.50.108 NMAC, Sections 3 and 12, effective 1/1/2022.

8.50.108.3 STATUTORY AUTHORITY: Public Assistance Act, [~~NMSA 1978, Section 27-2-27~~] Section 27-2-27 et seq., 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.).

[8.50.108.3 NMAC - Rp/E, 8.50.108.3 NMAC, 1/1/2010; A, 1/1/2022]

8.50.108.12 MODIFICATION OF CHILD SUPPORT ORDERS: Either party may request the IV-D agency to provide the service of seeking the modification of a child support order. Applicable fees will be charged to the requesting party in compliance with 8.50.125.10 NMAC. The IV-D agency may seek a modification if the non-custodial parent will be incarcerated for more than 180 calendar days. The IV-D agency will not review a child support order for modification without request by a party, unless the custodial ~~parent~~ party is currently receiving public assistance. In accordance with federal and state laws, a modification of a support order is retroactive only to the time period that a petition or motion was filed with a court and was pending a decision.

[8.50.108.12 NMAC - Rp/E, 8.50.108.14 NMAC, 1/1/2010; A, 12/30/2010; A, 7/1/2021; A, 1/1/2022]

This is an amendment to 8.50.109 NMAC, Sections 2, 3, 6, 8, 10, 11, 12, 13, 14, 15, and 17, effective 1/1/2022.

8.50.109.2 SCOPE: To the general public. For use by the ~~[enforcement officer]~~ Title IV-D agency and recipient of Title IV-D services.

[8.50.109.2 NMAC - Rp 8 NMAC 5.CSE.000.2, 5/31/2001; A, 10/1/2003; A, 1/1/2022]

8.50.109.3 STATUTORY AUTHORITY: Public Assistance Act, Section 27-2-27 et seq., NMSA 1978. ~~[Mandatory Medical Support Act, Section 40-4C-1 et seq., NMSA 1978. Support Enforcement Act, Section 40-4A-1, et seq., 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.).

[8.50.109.3 NMAC - Rp 8 NMAC 5.CSE.000.3, 5/31/2001; A, 10/1/2003; A, 1/1/2022]

8.50.109.6 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 Act of 2005. The regulations herein codify present practices in accordance with federal and state law and regulations.]~~ To provide regulations in accordance with federal and state laws and regulations.

[8.50.109.6 NMAC - Rp 8 NMAC 5.CSE.000.6, 5/31/2001; A, 10/1/2003; A, 8/14/2009; A, 1/1/2022]

8.50.109.8 ESTABLISHMENT OF MEDICAL SUPPORT: All orders obtained by the IV-D agency must include a provision for medical support for the children. For the purposes of the IV-D program reporting, medical support includes any one of the following: private health insurance, public health care coverage (health, dental, or vision), coverage through Indian health services (IHS), state children's health insurance program (medicaid), or the defense enrollment eligibility reporting services (DEERS), cash medical support, or a percentage split of uncovered medical expenses for the minor children. Determination of a reasonable cash medical support obligation is pursuant to 45 CFR §303.31(a)(3). If the children are covered by IHS, the IV-D agency will request that private ~~[health insurance]~~ care coverage be provided by either or both ~~[parents]~~ parties, when available. If the non-custodial parent provides health care coverage and changes employment, and the new employer provides health care coverage, the IV-D agency must transfer notice of the provision to the new employer. The IV-D agency must request the inclusion of a medical support provision even when employment-related or other group health care coverage is not available or when children cannot be added at the time the order is entered. The IV-D agency shall request the provision of cash medical support only if the case is actively enrolled in Title XIX medicaid at the time medical support is established or modified. The cost of health care coverage is calculated by determining the amount charged to the medical support obligor for adding children to the existing coverage, or the difference between individual and family coverage. The reasonableness of the cost of the care coverage will be determined by stipulation of the parties or by the court. The IV-D agency may request the provision of health care coverage by either or both the custodial party and the non-custodial parent and that the parties should be responsible for any uncovered medical expenses in proportion to their incomes on the current child support worksheet. If the court does not enter an order for medical support, the IV-D case record must specify that a provision for medical support was requested but was not issued, in accordance with 45 CFR §303.31(b)(1-4).

[8.50.109.8 NMAC - Rp 8 NMAC 5.CSE.830, 5/31/2001; A, 10/1/2003; A, 8/14/2009; A, 7/1/2021; A, 1/1/2022]

8.50.109.10 AVAILABILITY OF MEDICAL ~~[INSURANCE]~~ CARE COVERAGE: Medical support will be addressed in actions to establish, enforce, or modify a child support award for minor children. All support orders obtained or modified by the IV-D agency will include a provision requiring either or both custodial party and the non-custodial parent to promptly inform the IV-D agency of the name and address of their current employers, whether either the custodial party or the non-custodial parent has access to health ~~[insurance]~~ care coverage and, if so, the health ~~[insurance]~~ care coverage policy information.

A. The non-custodial parent may be required to provide immediate health, dental, or vision ~~[insurance]~~ care coverage for the minor children if ~~[insurance]~~ health care coverage (not including Title XIX medicaid) is not available to the custodial party at a more reasonable cost than to the non-custodial parent for coverage of the minor child; and it is available to the non-custodial parent through an employment-related or other group health insurance plan, regardless of service delivery mechanism, which may be a labor organization, union, non-profit organization or professional association.

B. If medical [insurance] care coverage is not available to the non-custodial parent through an employment-related or other group health [insurance] care coverage plan, and health [insurance] care coverage is not being provided by the custodial parent, the non-custodial party may be required to provide immediate health insurance coverage for the children when it becomes available through an employment-related or other group health insurance plan.

C. Failure by a non-custodial parent to provide medical support for the minor children, and to provide information concerning health [insurance] care coverage, will subject the non-custodial parent to legal proceedings requiring the non-custodial parent to show cause as to why the non-custodial parent should not be held in contempt of court for failure to fulfill the requirements of the court order. This will be true even if medical support is the only area in which the non-custodial parent is not in compliance with the terms of the order.

[8.50.109.10 NMAC - Rp 8 NMAC 5.CSE.832, 5/31/2001; A, 10/1/2003; A, 8/14/2009; A, 1/1/2022]

8.50.109.11 PROVIDING CUSTODIAL PARENTS WITH MEDICAL [INSURANCE] CARE

COVERAGE INFORMATION: If the non-custodial parent is responsible for providing health [insurance] care coverage, the IV-D agency will provide the custodial party with available health [insurance] care coverage plan information when the non-custodial parent secures coverage for the dependent children. This includes any information available to the IV-D agency about the health [insurance] care coverage plan that would permit a claim to be filed or services to be provided. In cases enforced by the national medical support notice, the health [insurance] care coverage plan shall provide this information to the custodial party and the IV-D agency, as outlined on the notice.

[8.50.109.11 NMAC - Rp 8 NMAC 5.CSE.831, 5/31/2001; A, 10/1/2003; A, 8/14/2009; A, 1/1/2022]

8.50.109.12 MONITORING AND ENFORCING COVERAGE: In all cases in which there is a court order with no medical support ordered, the case will be reviewed pursuant to the IV-D agency's plan for automatic review of all IV-D cases every three years. Even if no other modification is expected, the IV-D agency must seek modification to include medical support, except in non-IV-A non-medicaid cases where the custodial party has not consented to the IV-D agency obtaining medical support. All remedies available for the collection and enforcement of child support apply to medical support. In cases where the non-custodial parent is required to provide health [insurance] care coverage through an employment-related or other group health [insurance] care coverage plan pursuant to a child support order, the IV-D agency shall use, where appropriate, the national medical support notice to enforce the provisions of health [insurance] care coverage for the children.

A. The IV-D agency must use the notice, when appropriate, to notify employers of the provision for health [insurance] care coverage of the children. The agency must transfer the notice to the employer within two business days after the date of entry of an employee who is an obligor in a IV-D case in the state directory of new hires.

B. Employers must transfer the notice to the appropriate group health [insurance] care coverage plan for which the children are eligible within twenty business days after the date of the notice.

C. Employers must withhold any obligation of the employee for employee contributions necessary for coverage of the children and send any amount withheld directly to the health [insurance] care coverage plan. Employees may contest the withholding based on a mistake of fact. If the employee contests such withholding, the employer must proceed with withholding until such time as the employer receives notice from the IV-D agency that the contest is resolved.

D. Upon receipt of the national medical support notice, the health [insurance] care coverage plan shall enroll the obligor's children as eligible dependents. Except as specifically outlined on the notice, the health [insurance] care coverage plan shall not be required to provide benefits or eligibility for such benefits in addition to those provided under the terms of the plan immediately before receipt of the notice.

E. If the obligor is enrolled in a plan, the children shall be enrolled in the same plan in which the obligor is enrolled. If the obligor is not enrolled in a plan, the premiums charged for enrollment of the children only shall be the same as would be charged for enrollment of the obligor only. If the obligor is not enrolled in a plan and there is more than one plan option available for enrollment of the children, the plan shall notify the IV-D agency and the agency, in consultation with the custodial party, will select a plan option. If the custodial party does not notify the agency of the selected plan option within the timeframe required by the agency, the children shall be enrolled in the plan's default option, which is defined as the least costly plan that conforms with the minimum health care protection as defined in the New Mexico Insurance Code, Section 59A-23B-1 et seq NMSA 1978.

F. The health [insurance] care coverage plan must notify the IV-D agency of the status of health [insurance] care coverage for the children, as outlined on the notice, within forty days after the date of the notice.

The plan shall also promptly notify the custodial party of the plan coverage and effective date, as outlined on the notice.

G. Employers must notify the IV-D agency promptly whenever the obligor's employment is terminated, in the same manner as is required for income withholding cases.

H. The IV-D agency must promptly notify the employer when there is no longer a current order for medical support in effect for which the IV-D agency is responsible.

[8.50.109.12 NMAC - Rp 8 NMAC 5.CSE.832.2, 5/31/2001; A, 10/1/2003; A, 8/14/2009; A, 1/1/2022]

8.50.109.13 MEDICAL SUPPORT PROVIDED BY THE CUSTODIAL PARTY: In cases where the custodial party has satisfactory medical ~~[insurance]~~ care coverage for the minor children other than medicaid, the amount expended by the custodial party for health ~~[insurance]~~ care coverage will be taken into account pursuant to the New Mexico child support guidelines worksheet that will be attached to the order. The IV-D agency will not enforce court ordered medical support against a custodial party.

[8.50.109.13 NMAC - Rp 8 NMAC 5.CSE.832.3, 5/31/2001; A, 10/1/2003; A, 8/14/2009; A, 1/1/2022]

8.50.109.14 COMMUNICATION WITH THE MEDICAL ASSISTANCE DIVISION: The IV-D agency is required to relay information regarding private health, dental, or vision ~~[insurance]~~ care coverage to the medical assistance division. This information includes newly obtained coverage, changes in coverage, or coverage lapses. The IV-D agency must report to the medical assistance division any medical support payments made directly to the custodial party if there is an assignment of medical support pursuant to 42 CFR 433.146. The IV-D agency in cooperation with the medical assistance division will communicate to determine if there are any lapses in health ~~[insurance]~~ care coverage for medicaid applicant/recipient.

[8.50.109.14 NMAC - Rp 8 NMAC 5.CSE.832.4, 5/31/2001; A, 8/14/2009; A, 1/1/2022]

8.50.109.15 ORDERING SPECIFIC DOLLAR AMOUNTS FOR MEDICAL SUPPORT: The court order should include a set amount and specify that the amount is designated for cash medical support, when, for example, there is no private health ~~[insurance]~~ care coverage available. This amount should be in addition to and not in lieu of the non-custodial parent's obligation to pay a percentage of unreimbursed medical expenses. Either the custodial party or the non-custodial parent may request the court to order the provision of cash medical support. The IV-D agency will request the provision of cash medical support only if the children are actively enrolled in Title XIX medicaid at the time medical support is established or modified. The IV-D agency will enforce a provision for cash medical support established or modified by any party so long as the court order designates a specific dollar amount to be paid in regular, equal installments (i.e. monthly, bi-weekly, weekly). If the order does not designate a specific dollar amount for medical purposes, the agency is not required to collect the money. For example, if the non-custodial parent is ordered to pay for the child's orthodontia, but no dollar amount is ordered, the IV-D agency will not enforce this component of the order.

[8.50.109.15 NMAC - Rp 8 NMAC 5.CSE.832.5, 5/31/2001; A, 10/1/2003; A, 8/14/2009; A, 1/1/2022]

8.50.109.17 FEES: In IV-D cases being enforced for medical support pursuant to the requirements of the national medical support notice, an employer may not assess a fee for withholding or for sending to the health ~~[insurance]~~ care coverage plan, the employee contributions necessary for health ~~[insurance]~~ care coverage of the children.

[8.50.109.17 NMAC - N, 10/1/2003; A, 8/14/2009; A, 1/1/2022]

This is an amendment to 8.50.110 NMAC, Sections 2, 3, 8, 9, 10, and adding 11, effective 1/1/2022.

8.50.110.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of Title IV-D services.

[8.50.110.2 NMAC - Rp, 8.50.110.2 NMAC, 12/30/2010; A, 1/1/2022]

8.50.110.3 STATUTORY AUTHORITY: Public Assistance Act, [~~NMSA 1978, Section 27-2-27~~] Section 27-2-27 et seq., 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.).

[8.50.110.3 NMAC - Rp, 8.50.110.3 NMAC, 12/30/2010; A, 1/1/2022]

8.50.110.8 INCOME WITHHOLDING: State and federal laws require the Title IV-D agency [~~to seek~~] to obtain an immediate income withholding in all Title IV-D cases.

A. The Title IV-D agency complies with 45 CFR § 303.100 [~~when it requests or initiates~~] by ensuring that payments for support, including lump sum payments, are made by immediate income wage withholding.

B. Although the Support Enforcement Act provides for a good cause exemption to immediate wage withholding and a procedure to avoid immediate income withholding, the Title IV-D agency will not stipulate or agree to such provisions. The party requesting to avoid wage withholding bears the burden [~~of~~] of proof on this issue with the court.

(1) The Title IV-D agency will comply with any valid court or administrative order that prohibits wage withholding.

(2) If an obligor receives an exemption to wage withholding and later accrues a delinquency, the Title IV-D agency, in its discretion, may pursue wage withholding from the appropriate judicial or administrative authority.

(3) Wage withholding will commence immediately upon issuance of the notice of income withholding. The notice shall inform the obligor that he or she has 30 days from the date of the notice to contest or appeal the income withholding.

[8.50.110.8 NMAC - Rp, 12/30/2010; A, 7/1/2019; A, 1/1/2022]

8.50.110.9 TERMINATION OF INCOME WITHHOLDING: The Title IV-D agency will not terminate an income withholding once instituted, unless:

A. the support obligation [~~ends~~] terminates and all arrears are paid off; or

B. the court orders that income withholding cease; or

C. the Title IV-D agency closes its case pursuant to 8.50.129 NMAC.

[8.50.110.9 NMAC - Rp, 8.50.110.15 NMAC, 12/30/2010; A, 1/1/2022]

8.50.110.10 WITHHOLDING OF UNEMPLOYMENT COMPENSATION: A cooperative endeavor exists between the Title IV-D agency and the New Mexico department of workforce solutions for the withholding of unemployment [~~compensation and workman's compensation~~] benefits in those cases with an income withholding order pursuant to federal and state laws.

[8.50.110.10 NMAC - Rp, 8.50.110.16 NMAC, 12/30/2010; A, 1/1/2022]

8.50.110.11 WITHHOLDING OF WORKMAN'S COMPENSATION: A cooperative endeavor exists between the Title IV-D agency and the New Mexico workers' compensation administration for the withholding of workman's compensation benefits in those cases with an income withholding order pursuant to federal and state laws.

[8.50.110.11 NMAC - N, 1/1/2022]

This is an amendment to 8.50.111 NMAC, Sections 2, 3, 8, 9, 10, 12, 13, 15, and 16, effective 1/1/2022.

8.50.111.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of Title IV-D services.

[8.50.111.2 NMAC - Rp, 8.50.111.2 NMAC, 12/30/2010; A, 1/1/2022]

8.50.111.3 STATUTORY AUTHORITY: Public Assistance Act, [~~NMSA 1978, Section 27-2-27~~] Section 27-2-27 et seq., 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.).

[8.50.111.3 NMAC - Rp, 8.50.111.3 NMAC, 12/30/2010; A, 1/1/2022]

8.50.111.8 GENERAL ENFORCEMENT OF SUPPORT OBLIGATIONS: The Title IV-D agency uses a variety of processes, both administrative and judicial, to enforce support obligations.

[8.50.111.8 NMAC - Rp, 8.50.111.8 NMAC, 12/30/2010; A, 1/1/2022]

8.50.111.9 PERSONS OWING OVERDUE SUPPORT: Pursuant to state and federal law, the Title IV-D agency may seek to obtain an order that requires the obligor to adhere to the support obligations or, if the person is not incapacitated, to participate in work activities. The Title IV-D agency does not charge a late fee for overdue support.

[8.50.111.9 NMAC - Rp, 8.50.111.9 NMAC, 12/30/2010; A, 1/1/2022]

8.50.111.10 INTEREST CALCULATIONS: The Title IV-D agency calculates interest in accordance with:

A. New Mexico law regarding the accrual of interest on support obligations is applied to New Mexico support orders; and

B. the interest rules of the issuing state (state that issued the order) apply when New Mexico registers a foreign support order; the initiating state (state requesting registration of a foreign support order) is responsible for providing an accurate audit to include interest, as appropriate.

[8.50.111.10 NMAC - Rp, 8.50.111.12 NMAC, 12/30/2010; A, 1/1/2022]

8.50.111.12 CONTEMPT PROCEEDINGS: The Title IV-D agency will pursue contempt provisions when the non-custodial parent has a delinquency of at least three months, and there is sufficient evidence that the non-custodial parent has an ability to pay or otherwise comply with the order. If an obligor is found by a court to be in contempt of court, the Title IV-D agency may request the court issue a bench warrant for the arrest of the obligor. Any bond requested by the Title IV-D agency in a bench warrant shall be a cash only bond to be paid to the Title IV-D agency and distributed in accordance with federal and state laws regarding distribution of support payments.

A. The Title IV-D agency will screen the case for information regarding the non-custodial parent's ability to pay or otherwise comply with the order.

B. The Title IV-D agency will provide the court with information regarding the non-custodial parent's ability to pay or otherwise comply with the order.

C. The Title IV-D agency will provide clear notice to the non-custodial parent that [~~his or her~~] their ability to pay constitutes the critical question in the civil contempt action.

[8.50.111.12 NMAC - Rp, 8.50.111.16 NMAC, 12/30/2010: A, 1/1/2020; A, 1/1/2022]

8.50.111.13 GARNISHMENT: The Title IV-D agency may pursue garnishment of an obligor's wages to reduce his or her arrearage balance. A garnishment will not be pursued if there is currently a wage withholding in effect.

[8.50.111.13 NMAC - Rp, 8.50.111.17 NMAC, 12/30/2010; A, 1/1/2022]

8.50.111.15 POSTING OF BOND, GUARANTEE, OR OTHER SECURITY: The Title IV-D agency may request the court to order an obligor to secure the support payment by bond, guarantee, surety or other security deemed appropriate by the court.

[8.50.111.15 NMAC - Rp, 8.50.111.19 NMAC, 12/30/2010; A, 1/1/2022]

8.50.111.16 STATE OR FEDERAL CRIMINAL PROSECUTIONS: The Title IV-D agency will refer support obligors for state or federal criminal prosecution pursuant to state and federal law (See 18 USC 228 and

~~[NMSA 1978, Section 30-6-2]~~ Section 30-6-2 et seq., NMSA 1978). During the time a referral is being considered by or accepted by a state or federal agency for prosecution, the Title IV-D agency will suspend civil enforcement (court proceedings) unless otherwise instructed by the appropriate prosecutor's office. The Title IV-D agency will continue to administratively enforce the obligation.

[8.50.111.16 NMAC - Rp, 8.50.111.20 NMAC, 12/30/2010; A, 1/1/2022]

This is an amendment to 8.50.112 NMAC, Sections 2, 3, 8 through 16, effective 1/1/2022.

8.50.112.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of Title IV-D services.

[8.50.112.2 NMAC - Rp, 8.50.112.2 NMAC, 12/30/2010; A, 1/1/2022]

8.50.112.3 STATUTORY AUTHORITY: Public Assistance Act, [~~NMSA 1978, Section 27-2-27~~] Section 27-2-27 et. seq., 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, 12/30/2010; A, 1/1/2022]

8.50.112.8 PARENTAL RESPONSIBILITY ACT (LICENSE SUSPENSION): The Title IV-D agency submits a certified list of support obligors who are 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, Sect. 40-5A-1 et seq., NMSA 1978.

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

- (1) the obligor is delinquent 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 Title IV-D agency notifying the obligor of the impending license suspension/revocation;
- (3) there is no court order prohibiting the referral; and
- (4) 30 calendar days have elapsed since the [~~transmittal of the~~] notice was sent to the obligor and no request for hearing was submitted by the obligors.

B. Administrative hearings are conducted by the licensing boards: If requested in writing by [~~the hearing officer of~~] the licensing board, the Title IV-D agency will make available a witness to testify on the Title 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 Title 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 Section 40-4-11.1 et seq., NMSA 1978, or a schedule that will fully pay the arrearages plus accumulated interest in 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~~] it 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 must supply a valid mailing address for the processing of the certificate of compliance. The obligor may elect to have the certificate of compliance sent to his/her attorney of record, but must also provide the Title IV-D agency with a current, valid mailing address and physical address for the obligor.

[8.50.112.8 NMAC - Rp, 8.50.112.8 NMAC, 12/30/2010; A, 7/1/2019; A, 1/1/2022]

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 Title 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;

(2) in cases where an appeal is made, after a determination by the administrative law judge that finds that the information is accurate and

~~[(2)]~~ **(3)** the information is reported only 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)]~~ **30** day's advance notice to the obligor at the obligor's last known address of record with the Title 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]~~ Section 40-4A-15 et seq., NMSA 1978.
[8.50.112.9 NMAC - Rp, 8.50.112.9 NMAC, 12/30/2010; A, 1/1/2022]

8.50.112.10 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 Title IV-D agency shall comply with the provisions of 45 CFR § 303.71. The obligor has 30 days from the date of mailing of the notification of a referral for federal full collection to notify the Title IV-D agency that he or she contests the referral.
[8.50.112.10 NMAC - N, 1/1/2022]

~~[8.50.112.10]~~ **8.50.112.11 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 Title 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 child support delinquency or arrearage ~~[owed]~~. Title IV-D cases having spousal support delinquencies or arrearages will not be referred for federal income tax offset ~~[if]~~ unless there is ~~[not also]~~ an ongoing child support obligation, delinquency, or arrearage. Title IV-D cases that are solely for processing payments will not be referred. Only Title 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 Title 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 Title IV-D agency will be required to reimburse the IRS in the amount of the pro rata refund. The federal government will advise the Title IV-D agency of any adjustments to Title IV-D collections. The injured spouse may also agree to voluntarily release the claim ~~[to]~~ of his or her portion of the joint refund to have it applied towards the child support obligation. This will result in an immediate distribution of the refund amount to the Title IV-D case. An injured spouse may request the release form from the Title 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 Title IV-D agency will review the non-custodial party's bankruptcy case to determine what action, if any, the Title IV-D agency ~~[may]~~ should 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 and that any amounts collected will be applied towards the obligor's child support obligation. The notice shall be sent to the obligor's last address of record with the Title IV-D agency and shall inform the obligor:

owed;

(a) of the right to contest the department's determination that past due support is

(b) of the right to contest the amount of past due support;

(c) of the right to request an administrative review;

(d) of the procedures and time frame for requesting an administrative review;

(e) notice will be provided to any individual who filed a joint return with the obligor, advising of the process for requesting the obligor's share of the refund; and

~~(e)~~ (f) 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)]~~ 30 days from the date of mailing of the notification of a referral for federal tax intercept to notify the Title IV-D agency that he or she contests the referral. The notification issued by the Title IV-D agency provides the obligor with 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 Title 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 Title 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 Title 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)]~~ 10 days of the receipt of the obligor's request for administrative review, the New Mexico Title IV-D agency must notify the Title 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)]~~ 45 days of receipt of the request for administrative review from the New Mexico Title IV-D agency, the Title IV-D agency in the state that referred the case to New Mexico should:

(1) ~~[send]~~ Send notice to all appropriate parties setting forth the time and place of the administrative review; and

(2) ~~[conduct]~~ Conduct the review and render a decision. If the administrative review conducted by

the Title IV-D agency in the other state results in a reduction or elimination of the amount referred for offset, the Title IV-D agency that conducted the administrative review should inform the New Mexico Title IV-D agency and the OCSE of the decision. The New Mexico Title IV-D agency shall be bound by the determination of the Title IV-D agency in the state that conducted the review.

H. Distribution of collections from federal income tax offset: Single filer federal tax refund offsets will be placed on hold for 30 days and joint filer federal tax refund offsets will be split in half and the obligor's portion will be placed on hold for 30 days and the injured spouse's portion will be placed on hold for six months. 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 after the appropriate holds have elapsed. The obligor shall receive full credit for the entire amount of tax intercept that is applied to his or her case(s), including fees. Distribution of tax intercept money for obligors with multiple Title 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 Title 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.

I. Fees: A non-TANF custodial party who has applied for Title IV-D services is assessed fees for the federal income tax refund. The fees are deducted from the tax refund when it is intercepted but are credited to the obligor's support payment.

[8.50.112.11 NMAC - Rp, 8.50.112.10 NMAC, 12/30/2010; Rn & A, 1/1/2022]

[~~8.50.112.11~~ 8.50.112.12 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)~~ 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 Title IV-D agency. The notice will include:

(1) a statement that an offset will be made and that the Title 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 Title IV-D agency to request a hearing;

(4) the amount of refund to be offset against the debt asserted;

(5) a statement that the obligor has ~~thirty (30)~~ 30 days from the date indicated on the notice to contest the offset and request [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~~ request a hearing within ~~thirty (30)~~ 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)~~ 10 days after receiving the notification from TRD, the Title IV-D agency will send a notice to the obligor's spouse (injured spouse) as identified on the return, to the obligor's last known address of record with the Title 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~~ may be made and the Title 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 Title 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 Title IV-D agency within ~~thirty (30)~~ 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 Title IV-D agency regarding his or her claim to all or part of the refund within ~~thirty (30)~~ 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 Title IV-D account, the Title 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 Title IV-D agency. Upon notification, the Title IV-D tax intercept unit

will contact TRD to obtain verification and, upon obtaining verification, the Title 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 Title IV-D agency within ~~[thirty (30)]~~ 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)]~~ 30 days. After the ~~[thirty (30)]~~ 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) including fees. Distribution of tax intercept money for obligors with multiple Title 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 Title IV-D agency may delay distribution of the injured spouse's share until notified that ~~[the injured spouse's proper share of]~~ the refund has been paid because of the injured spouse signed a release, or for a period not to exceed six ~~[(6)]~~ months from notification of offset, whichever is shorter.

[8.50.112.12 NMAC - Rp, 8.50.112.11 NMAC, 12/30/2010; Rn & A, 1/1/2022]

~~[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, 12/30/2010]~~

8.50.112.13 DENIAL OF PASSPORTS FOR NONPAYMENT OF CHILD SUPPORT:

A. Referral for passport denial: The Title IV-D agency ~~[certifies]~~ submits the names of obligors who owe support arrears in excess of \$2,500 for inclusion in the OCSE database which is then sent to the U.S. department of state. The U. S. department of state denies passports to individuals whose name appears on the certified OCSE database of the OSCE as owing more than \$2,500 in arrears. 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 Title IV-D agency. After the applicant makes satisfactory payment arrangements with the Title IV-D agency, the IV-D agency shall request that OCSE remove the applicant's name from its database. The Title 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)]~~ 30 days from the date of the notification of a referral for passport denial to notify the Title 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 Title 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 Title 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 Title 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, 12/30/2010; A, 1/1/2022]

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

A. State law authorizes the Title IV-D agency to place a lien on lottery winnings owed ~~[to]~~ by delinquent child support obligors. Lists of delinquent obligors are provided by the Title 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 Title IV-D agency of any matches. The Title IV-D agency must provide the lottery commission with verification of the support lien ~~[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)]~~ 90 days or until such time the administrative process is completed, so long as the process is completed within ~~[ninety (90)]~~ 90 days. If no delinquency exists, the notification will be a release of lien.

B. If the lottery winner is verified by the Title IV-D agency as owing a debt collected by the agency, the Title IV-D agency has [~~ninety (90)~~] 90 days to initiate an administrative action against the winner. The Title IV-D agency will notify the winner by mailing a copy of the notice of administrative lien to the obligor at [~~their~~] the last known address of record with the Title IV-D agency via registered mail. The notice of administrative lien will notify the obligor that he or she has [~~fifteen (15)~~] 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 Title 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 Title IV-D agency is mailed to the lottery commission instructing it to forward the lottery winnings to the Title 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.

C. If an administrative seizure proceeding is not initiated with the 90-day period, the Lottery Commission shall release the prize payment to the winner. Section 6-24-22 et seq., NMSA 1978.
[8.50.112.14 NMAC - Rp, 8.50.112.14 NMAC, 12/30/2010; A, 1/1/2022]

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

A. State law authorizes the Title IV-D agency to place a lien on delinquent obligor's gaming machine payouts [~~owed to delinquent obligors~~]. Lists of delinquent obligors are provided by the Title 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 Title IV-D agency. The racetrack licensee then notifies the Title IV-D agency of any matches. The Title IV-D agency must notify the racetrack licensee [~~must be notified by the IV-D agency~~] within seven [~~(7)~~] business days (excluding weekends and state holidays) and provide [~~with~~] verification of the support lien. If no delinquency exists, the Title 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)~~] 90 days or until such time as the administrative process is completed, so long as the process is completed within [~~ninety (90)~~] 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 Title IV-D agency as owing a debt to or collected by the Title IV-D agency, the Title IV-D agency has [~~ninety (90)~~] 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 Title IV-D agency shall notify the winner by mailing a copy of the notice of administrative lien to the obligor at [~~his or her~~] the last known address of record with the Title IV-D agency via registered mail. The notice of administrative lien shall notify the obligor that [~~he or she~~] obligor has [~~fifteen (15)~~] 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 Title IV-D agency to request an appeal [~~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~~] business 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 Title 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 Title IV-D agency shall notify the racetrack licensee within five [~~(5)~~] [~~working~~] business days of the ruling of any hearing held in accordance with this section.
[8.50.112.15 NMAC - Rp, 8.50.112.15 NMAC, 12/30/2010; A, 1/1/2022]

8.50.112.16 ADMINISTRATIVE OFFSET BY THE SECRETARY OF THE TREASURY:

A. Referral for administrative offset: federal administrative offset is utilized [~~to pay~~] for payment of support arrearages, including child support, medical support, and if appropriate, spousal support. Cases meeting specific criteria are referred to the U.S. department of treasury's financial management service. When referring a case for administrative offset by the secretary of the treasury, the Title IV-D agency shall comply with the provisions of 31 CFR § 285.1.

B. Notification of administrative offset: Prior to submitting a referral, written advance notice is sent to the obligor to inform [~~an~~] the obligor that due to the amount of [~~his or her~~] the obligor's past due support the obligor will be referred to the secretary of the U.S. treasury for collection by administrative offset. The notice shall be sent to the obligor's last address of record with the Title IV-D agency. The Title IV-D agency shall inform the obligor:

- (1) of the right to contest the department's determination that past due support is owed;
- (2) of the right to contest the amount of the past due support;
- (3) of the right to request an administrative review 30 days from the date of the notification;

and

- (4) of the procedures [~~and time frame~~] for requesting an administrative review.

C. Contesting referral for administrative offset: The obligor has 30 days from the date of notification of a referral for administrative offset to notify the IV-D agency that he or she contests the referral. The notification issued by the IV-D agency ~~shall [provide]~~ provide 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 Title 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.

[8.50.112.16 NMAC - N, 7/1/2019; A, 1/1/2022]

This is an amendment to 8.50.114 NMAC, Sections 2, 3, 8, 9, 10, 12, and 13, effective 1/1/2022.

8.50.114.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of Title IV-D services.

[8.50.114.2 NMAC - Rp, 8.50.114.2 NMAC, 12/30/10; A, 1/1/2022]

8.50.114.3 STATUTORY AUTHORITY: Public Assistance Act, [~~NMSA 1978, Section 27-2-27~~] Section 27-2-27 et seq., 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.).

[8.50.114.3 NMAC - Rp, 8.50.114.3 NMAC, 12/30/10; A, 1/1/2022]

8.50.114.8 AGREEMENTS WITH FINANCIAL INSTITUTIONS: The department, through the Title IV-D agency, has developed procedures and forms by which it enters into agreements with financial institutions doing business in the state to develop and operate, in coordination with such financial institutions, a data match system for the purpose of identifying and seizing assets to satisfy past-due support. All references to the Title IV-D agency below are on behalf of the department.

A. Data match agreements: The Title IV-D agency has agreements with financial institutions for data match using a standard Title IV-D agency form. The institutions may elect to report through an agent.

B. Election of reporting methods: Financial institutions shall elect their method of reporting using forms provided by the Title IV-D agency and return reporting agreements to the Title IV-D agency within [~~thirty (30)~~] 30 days of notification of required reporting. Acceptable methods of reporting are contained in the federal office of child support enforcement's data match specification handbook (DMSH). The financial institution may elect to report through an agent authorized and identified to the Title IV-D agency by the financial institution.

C. Quarterly matches: Financial institutions shall [~~quarterly~~] conduct quarterly matches of their accounts against the names and social security numbers provided by the Title IV-D agency and report all accounts matched, or may elect to provide a quarterly list of all accounts in a format acceptable to the Title IV-D agency. Each calendar year, information matches shall be furnished no later than:

- (1) March 31 (first quarter);
- (2) June 30 (second quarter);
- (3) September 30 (third quarter); and
- (4) December 31 (fourth quarter).

D. Failure to report: Financial institutions failing to perform a quarterly match, return the reporting election forms, or furnish account information are subject to the penalties in 8.50.131 NMAC. If the financial institution is unable to perform a quarterly match due to circumstances outside of its control, it should immediately notify the Title IV-D agency to request an extension of time. If the Title IV-D agency grants an extension, a penalty shall not be assessed against the financial institution.

E. False statements: If false statements are used to obtain a release, penalties will be assessed as set forth in 8.50.131 NMAC.

[8.50.114.8 NMAC - Rp, 8.50.114.8 NMAC, 12/30/10; A, 1/1/2022]

8.50.114.9 FREEZE ORDER:

A. An obligor who has been on wage withholding for at least six months or who has made all payments (voluntary) for the last 12 months is exempt from this process.

~~[A.]~~ **B.** Issuance and effect: When a match occurs showing the existence of an obligor's assets in an amount of more than \$2,000 [~~held by a support obligor~~], the Title IV-D agency may issue an administrative freeze order to the financial institution. Account funds shall not be released by the financial institution during the pendency of proceedings involving a freeze order. The financial institution shall [~~mail~~] send a copy of the [~~administrative freeze order~~] notice of lien to the obligor and to all persons listed on the account by certified mail within three business days after the notice of lien is received by the financial institution. [~~The IV-D agency will mail a copy of the administrative order to the obligor's most current address on file with the IV-D agency.~~] The institution shall reply within [~~ten (10)~~] 10 days on the form provided by the Title IV-D agency.

~~[B.]~~ **C.** Right to appeal: [~~The administrative freeze order will inform the aggrieved party of the right to appeal the administrative order by mailing the appeal by certified mail to the address indicated on the form provided by the IV-D agency within fifteen (15) calendar days.~~] The notice of lien shall notify the obligor that the obligor has 15 days from the date of the notice to contest or appeal the freeze.

[8.50.114.9 NMAC - Rp, 8.50.114.9 NMAC, 12/30/10; A, 1/1/2022]

8.50.114.10 SEIZE ORDER:

A. Seizure: If no written appeal is received within the time frame for appeal, or if an appeal is not upheld, a seize order will be issued by the Title IV-D agency. The financial institution must transfer the assets to the Title IV-D agency within three [~~3~~] working days of the receipt of the seize order.

B. Appeals: If an appeal is received, it will be processed in accordance with the appeals process set forth in 8.50.130 NMAC.

[8.50.114.10 NMAC - Rp, 8.50.114.10 NMAC, 12/30/10; A, 1/1/2022]

8.50.114.12 SEIZED ASSETS: Assets seized from accounts will be distributed according to the Title IV-D agency distribution rules.

[8.50.114.12 NMAC - Rp, 8.50.114.12 NMAC, 12/30/10; A, 1/1/2022]

8.50.114.13 DISTRIBUTION OF FIDM COLLECTIONS IN MULTIPLE CASES: FIDM collections will always be prorated to all open Title IV-D cases for an obligor based on the arrearage owed in each case. By operation of law, arrearages include all adjudicated arrears and delinquency on current support, plus accrued interest. [~~FIDM collections are not distributed to payment processing only cases unless there is a TANF/AFDC arrearage owed to the state.~~]

[8.50.114.13 NMAC - Rp, 8.50.114.13 NMAC, 12/30/10; A, 1/1/2022]

This is an amendment to 8.50.125 NMAC, Sections 2, 3, 8 through 11, 14, 15, 16, 18, and 19, effective 1/1/2022.

8.50.125.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of Title IV-D services.

[8.50.125.2 NMAC - Rp, 8.50.125.2 NMAC, 12/30/2010; A, 1/1/2022]

8.50.125.3 STATUTORY AUTHORITY: Public Assistance Act, [~~NMSA 1978, Section 27-2-27~~] Section 27-2-27 et seq., 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.).

[8.50.125.3 NMAC - Rp, 8.50.125.3 NMAC, 12/30/2010; A, 1/1/2022]

8.50.125.8 CHILD SUPPORT PAYMENTS:

A. The Title IV-D agency has in effect procedures for the payment of support through the Title IV-D agency upon the request of either the non-custodial party or the custodial party, regardless of whether arrearages exist or withholding procedures have been instituted. The Title IV-D agency is designated to administer the state's withholding system. The Title IV-D agency monitors all amounts paid and the dates of payments and records them on an individual payment record. As a condition of receiving Title IV-D services and cooperating with the Title IV-D agency, recipients must submit to the Title IV-D agency child support received directly from the non-custodial party. If the recipient of title XIX (medicaid) services elects to receive medical support services only, the recipient of title XIX (medicaid) services may keep child support payments received directly from the payor.

B. All support payments disbursed by the Title IV-D agency shall be through electronic funds transfer (EFT). The custodial party must elect to receive the payments via direct deposit or a pre-paid debit card authorized by the Title IV-D agency. If a custodial party receiving support payments fails to choose either option at the time of application or when requested by the Title IV-D agency, he or she will automatically be enrolled in the Title IV-D authorized pre-paid debit card program. Exceptions to disbursements via EFT may be granted for exceptional circumstances. Those wishing to request an exemption should request an "EFT exemption form" from the Title IV-D agency. The form must be fully completed to include an explanation of the exceptional circumstances requiring an exemption from EFT. The Title IV-D agency will respond in writing either granting or denying the request for an exemption.

[8.50.125.8 NMAC - Rp, 8.50.125.8 NMAC, 12/30/2010; A, 1/1/2022]

8.50.125.9 STATE DISBURSEMENT UNIT: The state Title IV-D agency has established and operates a state disbursement unit (SDU) for the collection and disbursement of payments in all Title IV-D cases pursuant to 42 USC 654(a).

[8.50.125.9 NMAC - Rp, 8.50.125.9 NMAC, 12/30/2010; A, 1/1/2022]

8.50.125.10 COLLECTION OF FEES/RECOUPMENTS: New Mexico is a cost recovery state, and other states' Title IV-D agencies have been notified of this fact. All fees charged to the custodial party are deducted from payments the IV-D agency distributes to the custodial party. The amount the Title IV-D agency deducts from each payment will not exceed ten percent of the total amount of the distribution. Once the percentage for the fee is deducted, the balance of the distribution is sent to the custodial party. Title IV-A, Title IV-E and medicaid-only (Title XIX) recipients are not charged any fees; federal regulations will not allow cost recovery on these cases.

A. Fee types and amounts:

- (1) non-IV-D wage withholding payment processing only: \$25 (annually);
- (2) non-IV-A full service IRS collection: applicable federal fee;
- (3) paternity genetic testing: as charged by lab;
- (4) non-IV-A/IV-E case processing: actual cost;
- (5) filing fee: actual cost;
- (6) witness fee: actual cost;
- (7) service of process: actual cost;
- (8) expert witness fee: actual cost;
- (9) court costs: as assessed;
- (10) establishment of support obligation and paternity (if necessary): \$250;
- (11) modification: \$150;
- (12) enforcement: \$250;

- (13) tax intercept related: as determined by federal regulations;
 - (14) IRS tax intercept service: \$25;
 - (15) TRD tax intercept service: \$20;
 - (16) administrative offset: applicable federal fee.
- B.** Refund of fees: Fees are to be refunded only under the following conditions:
- (1) fees have been charged in error or overcharged;
 - (2) the court orders a refund.
- C.** Fees are assessed to the custodial or non-custodial party requesting an action or service (i.e. establishment of paternity, modification or enforcement of support obligation) in a Title IV-D case in accordance with the fee schedule above. There will be a one-time establishment of support obligation fee and a one-time enforcement fee per case if a party requests these types of action. The IV-D agency will be responsible for the fee if the Title IV-D agency completes an enforcement action on behalf of solely the Title IV-D agency.
- D.** Genetic testing fees: See 8.50.107.12 NMAC in addition to the fee schedule listed above.
- E.** Recoupment: The IV-D agency will recoup from the custodial party for any over-distribution of funds and for any funds collected from the non-custodial party that are returned for insufficient funds. If the recoupment is pursuant to an over-distribution of funds, the recoupment amount shall not exceed twenty-five percent of any future distribution to the custodial party until paid in full. If the recoupment is pursuant to insufficient funds received from the non-custodial party's payment, the recoupment amount shall be one hundred percent of any future distribution to the custodial party until paid in full.
[8.50.125.10 NMAC - Rp, 12/30/2010; A, 7/1/2019; A, 1/1/2022]

8.50.125.11 DISTRIBUTION OF COLLECTIONS (EXCEPT FOR FEDERAL INCOME TAX REFUND OFFSETS): Specific terms used in this section are derived from 42 USC 657 and 45 CFR § 300 through 303.

- A.** In accordance with federal regulations, for purposes of distribution in a Title IV-D case, amounts collected, except for amounts collected through federal income tax refund offset, must be distributed as follows:
- (1) current support (monthly payment ordered for current support);
 - (2) past due support (monthly payment on judgment);
 - (3) current support arrearages;
 - (4) past due support arrearages;
 - (5) in each of the categories above, the payment is prioritized in the following order: child support, medical support, spousal support; any payment that is insufficient to meet the entire obligation will be applied in the order stated above.
- B.** The requirement to apply collections first to satisfy the current support obligation is critical in all Title IV-D cases to ensure that payment records are consistent in interstate cases, regardless of whether the amount applied to current support is paid to the family (as in a former assistance case) or retained by the state to recover unreimbursed assistance in a current assistance case.
- C.** Current assistance cases: The state will (not exceeding the cumulative amount of unreimbursed assistance paid to the family):
- (1) pay to the federal government the federal share of the entire amount collected;
 - (2) retain the state share of the amount collected; and
 - (3) reduce the cumulative amount of unreimbursed assistance by the total amount collected and disbursed under Paragraphs (1) and (2) of this section, and distribute collections exceeding the cumulative amount of unreimbursed assistance to the family.
- D.** Federal statute does not specify the order in which collections are applied to satisfy assigned arrearages in current assistance cases. The state of New Mexico has selected the following option:
- (1) collections will be first applied to temporarily assigned arrearages; and
 - (2) additional collections will be applied to permanently assigned arrearages.
- E.** Pass through payment: At the discretion of the New Mexico legislature, the Title IV-D agency may disburse a maximum amount determined on a monthly basis (refer to disregard for child support payments in 8.102.520.9 NMAC for maximum amount), to the Title IV-A service recipient from collections on current support. Under no circumstances is a current or former IV-A recipient entitled to receive said amount as part of the arrearages owed to him or her. The disbursement to the custodial party, up to the maximum amount, shall only be made if the recipient is currently receiving TANF and the Title IV-D agency collects a payment from the non-custodial party. If the non-custodial party pays less than the maximum amount allowed to pass through, the custodial party shall only receive the amount of the payment collected. Neither the Title IV-D agency nor the Title IV-A

agency will pay the difference to the custodial party between the maximum pass through amount and the amount paid by the non-custodial party. If the custodial party has more than one Title IV-D case, he or she will only receive the lower of the amount of the maximum disregard or the current monthly collection received on all cases. A pass through payment is in addition to, not in lieu of, the monthly TANF payment.

F. Former assistance cases: For collections made prior to October 1, 1998 (other than through federal income tax refund offset), the state shall:

(1) first, distribute the amount collected to satisfy the current monthly support obligation and pay that amount to the family;

(2) second, distribute any amount above the current monthly support obligation to arrearages owed to the family or assigned to the state; the federal statute does not specify the order in which collections are applied to satisfy arrearages; the state must have procedures that specify the order in which assigned arrearages will be satisfied; if the state distributes any amount to assigned arrearages, the state must pay to the federal government the federal share of the amount so collected; the state must retain the state share of the amount so collected, with one exception; the state may retain or pay to the family the state share of collections applied to arrearages that accrued while the family was receiving assistance after October 1, 1996.

G. For collections made on or after October 1, 1998, or earlier at state option (other than collections through federal income tax refund offset), the state shall:

(1) distribute the amount collected to satisfy the current monthly support obligation and pay that amount to the family;

(2) distribute any amount above the current monthly support obligation to satisfy never-assigned arrearages and pay that amount to the family;

(3) distribute any amount above amounts distributed in Paragraphs (1) and (2) of this section to satisfy unassigned pre-assistance arrearages and conditionally-assigned arrearages and pay that amount to the family;

(4) distribute any amount above amounts distributed in Paragraphs (1), (2) and (3) of this section to satisfy permanently-assigned arrearages; the state must pay the federal government the federal share of the amount so collected; the state must retain the state share of the amount so collected with one exception; the state may retain or pay to the family the state share of collections applied to arrearages that accrued while the family was receiving assistance after October 1, 1996;

(5) reduce the cumulative amount of unreimbursed assistance by the total amount distributed under four, distribute collections exceeding the cumulative amount of unreimbursed assistance to satisfy unassigned during-assistance arrearages and pay those amounts to the family.

H. Never-assistance cases: All support collections in never-assistance cases must be paid (less any applicable fees) to the family.

I. Collected funds will be distributed to the resident parent, legal guardian, caretaker relative having custody of or responsibility for the child or children, judicially-appointed conservator with a legal and fiduciary duty to the custodial parent and the child, or alternate caretaker designated in a record by the custodial parent. An alternate caretaker is a nonrelative caretaker who is designated in a record by the custodial parent to take care of the children for a temporary time period.

J. When the non-custodial parent has multiple cases with the Title IV-D agency, payments received from the non-custodial parent through wage withholding shall be distributed among all active cases on a pro-rata basis determined by the total amount of all monthly support obligations. Payments received through administrative enforcement mechanisms shall be distributed among multiple cases on a pro-rata split based on the total amount of arrearages owed at the time of the referral for administrative enforcement, except for reinstatement of license(s). Payments received for the reinstatement of licenses will be applied to the specific case(s) rather than split among multiple cases. Any other direct payments made by the non-custodial parent will be divided among all active cases involving the non-custodial parent in amounts as directed by the non-custodial parent.

[8.50.125.12 NMAC - Rp, 12/30/2010; A, 7/1/2019; A, 1/1/2022]

8.50.125.14 ASSIGNED MEDICAL SUPPORT COLLECTIONS: Any amounts collected by the Title IV-D agency that represent specific dollar amounts designated in the support order for medical purposes that have been assigned to the state will be forwarded to the medicaid agency for distribution. When a family ceases receiving assistance under the state's Title XIX (medicaid) plan, the assignment of medical support rights under section 1912 of the act terminates, except for the amount of any unpaid medical support obligation that has accrued under such assignment. The Title IV-D agency will attempt to collect any unpaid specific dollar amounts designated in the

support order for medical support purposes. Under this requirement, any medical support collection made by the Title IV-D agency will be forwarded to the medicaid agency for distribution.
[8.50.125.14 NMAC - Rp, 8.50.125.14 NMAC, 12/30/2010; A, 1/1/2022]

8.50.125.15 CHILD LEVEL ACCOUNTING: An application for public assistance by any person constitutes an assignment by operation of law of any support rights the person is entitled to from any other person, whether the support rights are owed to the applicant or to any family member for whom the applicant is applying for or receiving assistance. Therefore, in current or former assistance cases, the Title IV-D agency may not use child-level accounting by splitting or pro-rating the family grant amount on a per-child basis when the child is (or was) included in the family unit and must continue to apply collections to the cumulative amount of unreimbursed assistance balances based on the total monthly family grant amount.
[8.50.125.15 NMAC - Rp, 8.50.125.15 NMAC, 12/30/2010; A, 1/1/2022]

8.50.125.16 CHILD SUPPORT RECEIVED DIRECTLY FROM PAYORS: As a condition of receiving Title IV-D services, all recipients must submit to the Title IV-D agency all court ordered, voluntary agreement and voluntary contribution child support directly received from the non-custodial party. Failure to cooperate with this requirement may constitute cause for closing the Title IV-D case for non-cooperation. If the recipient of Title IV-D services elects to receive medical support services only, the recipient of Title IV-D services may keep child support payments received directly from the payor.
[8.50.125.16 NMAC - Rp, 8.50.125.16 NMAC, 12/30/2010; A, 1/1/2022]

8.50.125.18 CHILD SUPPORT CASE SERVICES: The Title IV-D agency provides two types of case services: full service and payment processing only.

A. Full services cases: Recipients of IV-A services are automatically enrolled for full services and recipients of ~~[title]~~ Title XIX may elect to receive full services for all support or solely for medical support. Full services cases include all services listed below as specific services may not be selected. Applicants not receiving any type of public assistance may also request full services that include:

- (1) establishment of paternity;
- (2) establishment of a child support, medical support order, or both;
- (3) enforcement of a child support orders, spousal support orders (so long as there is a current order for child support), and medical support orders;
- (4) administrative enforcement of orders, including referrals for tax intercepts, passport denial, license revocation, and financial institution data match;
- (5) issuance of wage withholding against a non-custodial party's earnings/wages for support obligations; and
- (6) modification of child support orders, if appropriate.

B. Payment processing only cases: A custodial party currently receiving full services from the Title IV-D agency or opening a new case with the Title IV-D agency may elect to receive payment processing only services so long as he/she is not currently receiving public assistance (Title IV-A or Title XIX) and does not have an outstanding balance of arrears owed to the state for prior public assistance. Payment processing only services are charged an annual fee as stated in section 10, above. In order to receive payment processing only services, the custodial party must produce a valid court order (either issued by or registered by a court in New Mexico) for a support obligation that contains an income withholding provision or a copy of an income withholding order indicating that payments are to be sent to the Title IV-D agency.

- (1) The Title IV-D agency is not responsible for:
 - (a) establishing, modifying, or enforcing the support obligation;
 - (b) establishing, modifying, enforcing, sending, or terminating the income withholding order;
 - (c) calculating or determining the appropriate amount of support, payment toward arrears, delinquencies, and arrearages;
 - (d) appearing in court for any issues involving the establishment, modification, enforcement or termination of the support obligations.
- (2) The Title IV-D agency will provide either the custodial party or the non-custodial party a printout of the payments received by the Title IV-D agency after receiving a written request.
- (3) The Title IV-D agency may terminate the payment processing only services if no payments are received for a period of two [~~2~~] months.

[8.50.125.18 NMAC - Rp, 8.50.125.18 NMAC, 12/30/2010; A, 1/1/2022]

8.50.125.19 ISSUANCE OF REPLACEMENT WARRANTS: If a custodial party or non-custodial parent claims that a warrant issued to him or her has not been received, a replacement warrant shall be issued only if the original warrant has not been redeemed or at the discretion of the Title IV-D agency. If the Title IV-D agency determines that a replacement warrant will be issued, any warrants that were fraudulently redeemed shall be reported by the intended recipient to the proper authorities as a pre-condition for the issuance of a replacement warrant. An unredeemed warrant is subject to the undistributed collections process, see 8.50.132 NMAC. The Title IV-D agency will replace a warrant that it can confirm was not redeemed and has not escheated to the Title IV-D agency through the undistributed collections process. If the Title IV-D agency is unable to confirm that a warrant has been redeemed due to the length of time that has passed since the warrant was issued, the Title IV-D agency will deny the request for a replacement warrant.

[8.50.125.19 NMAC - N, 12/30/2010; A, 1/1/2022]

This is an amendment to 8.50.130 NMAC, Sections 2, 3, 8 through 12 and 14 through 25, effective 1/1/2022.

8.50.130.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of Title IV-D services.

[8.50.130.2 NMAC - Rp, 8.50.130.2 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.3 STATUTORY AUTHORITY: Public Assistance Act, [~~NMSA 1978, Section 27-2-27~~] Section 27-2-27 et seq., 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.).

[8.50.130.3 NMAC - Rp, 8.50.130.3 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.8 ADMINISTRATIVE HEARINGS: Administrative hearings will be provided by [The] the Title IV-D agency [~~will provide for administrative hearings for~~] in the following situations:

A. an obligor [~~requesting~~] requests a review pertaining to income withholding, consumer reporting, an adverse administrative order, [or] referral for federal tax intercept, referral for state tax intercept, referral for passport denial, referral for administrative offset, lien on lottery winnings, lien on gaming winnings, or [the FIDM program] a FIDM referral;

B. any IV-A recipient or former IV-A recipient who believes [~~he or she~~] the recipient is entitled to [~~receive~~] part or all of a support payment that was [~~received by~~] made to the Title IV-D agency but not disbursed to the recipient;

C. an obligor's spouse who requests the refund of more [~~that~~] than one-half of a state tax intercept;

and

D. an owner as defined in 8.50.132.7 NMAC who is claiming an interest in undistributed collections.

[8.50.130.8 NMAC - Rp, 8.50.130.8 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.9 IN GENERAL:

A. The hearing process provides the appellant notice and an opportunity to assert the appellant's claim.

B. Hearing appellant: A hearing "appellant" for the purpose of these regulations is any obligor, obligor's spouse (only in cases involving a state tax intercept), or obligee requesting and entitled to a review.

C. Appellant's rights: the right to a hearing includes the right:

(1) to be advised of the nature and availability of a hearing;

(2) to safeguards of the appellant's opportunity to present a case;

(3) to have prompt notice and implementation of the decision based upon the hearing results;

and

(4) to be advised that if the appellant is not in agreement with the administrative hearing result, a judicial review may be invoked to the extent such review is available under state law.

[8.50.130.9 NMAC - Rp, 8.50.130.8 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.10 NOTICE OF ADMINISTRATIVE ENFORCEMENT ACTION:

A. Notices to obligor of referral to tax-offset program: The IV-D agency or federal office of child support enforcement sends written notice to inform an obligor that due to the amount of [~~his or her~~] the obligor's past-due support the obligor will be referred for a tax refund offset. One or more of the following notices is sent:

(1) FMS pre-offset notice (obligor);

(2) taxation and revenue department pre-offset notice (obligor);

(3) taxation and revenue department pre-offset notice (injured spouse);

(4) IRS notice of offset; and

(5) taxation and revenue department final distribution notice.

B. Notice to obligor of FIDM freeze order: The Title IV-D agency will mail a [~~copy of the freeze order~~] notice of lien to the obligor at the last known address on file with the IV-D agency. [~~The freeze order will inform the aggrieved party of the right to appeal the order by mailing a request for appeal within fifteen (15) calendar days by certified mail to the address indicated on the form provided by the IV-D agency.~~]

C. Notice to obligor of administrative lien on lottery and gaming winnings: The Title IV-D agency will mail a copy of the notice of administrative lien to the obligor at the last known address on file with the Title IV-D agency.

D. Notice to obligor for passport referral: Notice regarding the referral for passport denial is included in the FMS offset notice and is sent to the obligor at the last known address on file with the Title IV-D agency.

E. Notice to owner of an undistributed collection: The Title IV-D agency will mail a copy of the notice of undistributed collection to the owner at the last known address on file with the Title IV-D agency.

F. Notice to obligor for administrative offset referral: The Title IV-D agency will mail notice regarding the referral for administrative offset is included in the FMS offset notice and is sent to the obligor at the last known address on file with the Title IV-D agency.

G. All notices will include the process and timeframes for requesting an appeal.
[8.50.130.10 NMAC - Rp, 8.50.130.8 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.11 TIME FRAMES FOR REQUESTING AN ADMINISTRATIVE HEARING: In all cases where a time frame is not specifically provided, the appellant has ~~fifteen (15)~~ 15 calendar days following the date of mailing of notice by the Title IV-D agency to submit a written request for an administrative hearing. The appellant has ~~thirty (30)~~ 30 days from the date on the pre-offset notice to request a hearing. In order to be considered timely, the request for a hearing on a pre-offset notice must be received by the Title IV-D agency no later than the close of business on the ~~thirtieth (30th)~~ 30th day, or the next business day if the ~~thirtieth (30th)~~ 30th day is a ~~Sunday~~ weekend or federally recognized holiday.

[8.50.130.11 NMAC - Rp, 8.50.130.8 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.12 CONTESTING TAX REFUND INTERCEPT IN INTERSTATE CASES:

A. If an appellant requests an administrative hearing ~~[in writing, a tax hearing request form is completed by the appellant or the IV-D staff and is submitted within ten (10) days to the administrative law judge. The] the~~ administrative law judge ~~[sends]~~ will send a notice of acknowledgment to the appellant and to the respective Title IV-D agency worker. The notice and acknowledgement shall include a statement regarding the timeliness of the request for hearing. In non-Title IV-A cases, the Title IV-D agency ~~[notifies]~~ shall notify the custodial party of the time and place of the administrative hearing. The Title IV-D agency worker ~~[should]~~ shall be available to testify at the administrative hearing.

B. If the appeal concerns an IRS joint tax refund that has not yet been intercepted, the appellant is informed that the IRS will notify the injured spouse at the time of intercept regarding the steps to take to secure his or her proper share of the refund. If the appeal concerns a joint tax refund that has already been intercepted, the injured spouse is referred to the IRS to seek resolution.

[8.50.130.12 NMAC - Rp, 8.50.130.9 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.14 CONTESTING THE DENIAL OF PAYMENT OF AN UNDISTRIBUTED COLLECTION:

~~[If an appellant requests an administrative hearing, an undistributed collections hearing request form is completed by the appellant or the IV-D staff and is submitted within ten (10) days to the administrative law judge. The administrative law judge sends a notice of acknowledgement to the appellant and to the respective Title IV-D agency worker to include a statement regarding the timeliness of the request for hearing.]~~ An owner who is claiming an interest in an undistributed collection has 30 calendar days following the date that the Title IV-D agency denied payment of the undistributed collection to submit a written request for an administrative hearing.

[8.50.130.14 NMAC - N, 12/30/2010; A, 1/1/2022]

8.50.130.15 INITIATION OF HEARING PROCESS:

A. A request for hearing must be made in writing.

B. ~~[Receipt]~~ The administrative law judge shall acknowledge, in writing, the receipt of a written hearing request [shall be acknowledged in writing to the appellant by the administrative law judge], and shall provide the appellant with written acknowledgment of the receipt.

C. Upon the request of the appellant, the Title IV-D staff shall assist in the preparation of a notice of hearing. The notice of hearing will be signed by the appellant.

[8.50.130.15 NMAC - N, 12/30/2010; A, 1/1/2022]

8.50.130.16 DENIAL/DISMISSAL OF REQUEST FOR HEARING:

A. The administrative law judge may deny or dismiss a request for hearing when:

- (1) the request is not received within the specified time period;
- (2) the situation has been resolved;
- (3) the request is not made in writing; or

(4) a written withdrawal of request for hearing is received from the appellant, or a written agreement settling all issues is approved by all parties and is submitted to the administrative law judge.

B. A request for a hearing is considered abandoned and therefore dismissed if neither the appellant nor his or her representative appears at the time and place of the hearing, and if, within ~~ten (10)~~ 10 days after a notice of abandonment is mailed by the administrative law judge, the appellant has not presented good cause for failing to appear. Good cause includes verification of a death in the family, doctor's note verifying a disabling personal illness, or other significant emergencies. At the discretion of the administrative law judge, a showing of exceptional circumstances is considered good cause.

[8.50.130.16 NMAC - Rp, 8.50.130.13 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.17 NOTICE OF HEARING: As early as possible and not less than ~~ten (10)~~ 15 days prior to the hearing, written notice is sent by the administrative law judge to all parties involved in the hearing. The notice shall set forth the time, date and place of the hearing. Arrangements will be made to ensure that the hearing process is accessible to and accommodates the appellant, as long as the appellant provides at least ~~ten (10)~~ 10 days advance notice to the administrative law judge of the need for reasonable accommodations. The notice of hearing includes an explanation of the hearing process and limitation of the scope of the hearing, the procedures to be followed during the hearing, and notification that the appellant should be ready to produce any required witnesses at the hearing or secure legal counsel prior to the hearing. The appellant is told that neither the department nor the Title IV-D agency will pay for any representation or legal counsel for appellant or for any hearing costs. The issuance of a notice of hearing by the administrative law judge shall act to stay the administrative action, pending the issuance of a ruling ~~[on the merits of the hearing]~~.

[8.50.130.17 NMAC - Rp, 8.50.130.12 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.18 APPELLANT'S RIGHTS: The appellant is given adequate opportunity to review and present evidence that is within the scope of the hearing.

A. The appellant may examine all documents to be used at the hearing prior to the date of the hearing, as well as during the hearing. If requested, the Title IV-D staff will provide copies of the portions of the case file that are relevant to the hearing. Confidential information that is protected from release and other documents or records that the appellant will not otherwise have an opportunity to challenge will not be introduced at the hearing or affect the administrative law judge's decision.

B. The appellant may present his or her case or have it presented by a representative.

C. The appellant may bring witnesses ~~[he or she wants]~~ to present information that he or she believes is ~~[important]~~ relevant to ~~[his or her]~~ the case.

D. The appellant may advance relevant arguments without undue interference.

E. The appellant may ~~[question or overcome any testimony or evidence, including an opportunity to]~~ confront and cross-examine adverse witnesses.

F. The appellant may submit relevant evidence to support pertinent facts and defenses in the case.

[8.50.130.18 NMAC - Rp, 8.50.130.14 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.19 TITLE IV-D AGENCY RESPONSIBILITY: To ensure an appellant's rights during the hearing process, the Title IV-D agency shall:

A. make available, in a timely manner, without charge, the case documents (excluding any privileged, safeguarded or confidential information) necessary for an appellant or representative to determine whether a hearing should be requested or to prepare for a hearing;

B. provide ~~[a translator]~~ an interpreter if the appellant ~~[is not proficient in English]~~ requests one;

C. provide reasonable accommodations, if requested in advance; and

~~[C]~~ **D.** prepare a summary of evidence to include all documents to be presented by the Title IV-D agency at the hearing and all documents should be provided to the appellant, or his or her representative, by the Title IV-D agency at least ~~ten (10)~~ 10 days prior to the hearing.

[8.50.130.19 NMAC - Rp, 8.50.130.15 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.20 PRE-HEARING ACTIVITY:

A. Preliminary conference: A preliminary conference may be scheduled prior to the hearing to discuss the issues concerning the hearing. The preliminary conference is held between the Title IV-D agency worker, the appellant, the Title IV-D attorney if an attorney is representing the appellant and the appellant's representative, as applicable. The administrative law judge is not involved and will not participate in the

preliminary conference. This conference may provide an opportunity to resolve the dispute. A preliminary conference may lead to an informal resolution of the dispute. However, a hearing shall still be held unless the appellant makes a written withdrawal of his or her request for a hearing. If a written withdrawal is received by the Title IV-D agency worker, it must be forwarded to the administrative law judge. Appellants are advised that the preliminary conference is optional and that it will not delay or replace the hearing process.

- B. The purposes of the pre-hearing conference include, but are not limited to:
 - (1) clarification, formulation and simplification of issues;
 - (2) resolution of some or all issues;
 - (3) exchange of documents and information;
 - (4) review of any audit findings; and
 - (5) discussion of other matters that might help dispose of any of the pending issues.
- C. Matters left unresolved: If all matters in controversy are not resolved at the preliminary

conference, a hearing is held.

~~[_____D._____ Tax hearing request form: If the dispute cannot be resolved, within [ten (10)] 10 days of the receipt of the request for administrative hearing, a tax hearing request form is sent to the child support enforcement division, administrative support bureau.]~~

[8.50.130.20 NMAC - Rp, 8.50.130.16 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.21 CONDUCT OF HEARING:

- A. Conduct of a hearing is as follows:
 - (1) all hearings are conducted telephonically;
 - (2) the hearing is not open to the public;
 - (3) the administrative law judge identifies for the record all persons present at the hearing;

and

- (4) the administrative law judge takes administrative notice of those matters the same as state courts take judicial notice of, including the Title IV-D agency's policies and procedures.

- B. Record: A hearing is electronically recorded. The recording is placed on file at the hearings unit and is available for examination by the appellant or representative for ~~[thirty (30)]~~ 30 days following the hearing. If a decision is appealed, an index log of the tape is prepared by the Title IV-D agency and a copy of the index log is supplied to the appellant free of charge.

- C. Admission of evidence: Formal rules of evidence and civil procedure do not apply. The administrative law judge may allow hearsay testimony if it is deemed relevant to the decision. The rules of privilege will be effective to the extent that they are recognized in civil actions in the New Mexico district courts.

- D. Case records: An appellant or representative is allowed to examine the entire hearing case record before, during and after the proceedings. The appellant or representative must request the hearing record and the Title IV-D agency will provide the record within a reasonable period of time.

[8.50.130.21 NMAC - Rp, 8.50.130.17 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.22 DECISION MAKING:

- A. Authority: The hearing decision is based only on the evidence introduced and admitted by the administrative law judge during the hearing. This includes the record of the testimony, all reports, documents, forms, etc., made available at the hearing, provided that the appellant was given an opportunity to examine them as part of the hearing process.

- B. Written decision: The administrative law judge will issue a written ~~[hearing]~~ decision ~~[notice]~~ within ~~[twenty (20)]~~ 20 business days after the hearing. ~~[The decision will clearly state whether the administrative law judge is finding in favor of the appellant of the Title IV-D agency and shall include reference to the admitted evidence that supports the decision.]~~

[8.50.130.22 NMAC - Rp, 8.50.130.18 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.23 IMPLEMENTATION OF DECISIONS: The administrative law judge's decision is final and binding on all issues within the scope of a hearing and that have been the subject of a hearing, unless stayed by an appeal or a district court order.

- A. Decision favorable to appellant regarding offsets:

- (1) If the administrative hearing results in a deletion of, or decrease in, the amount referred for tax intercept, the tax intercept unit notifies the OCSE within ~~[ten (10)]~~ 10 business days of the administrative hearing.

(2) If, as a result of the administrative hearing, an amount which has already been offset is found to have exceeded the amount of past-due support owed, the Title IV-D agency refunds the excess amount to the obligor promptly, and reports the refund to the OCSE. In joint return cases, the refund check is made payable to both parties.

B. Decisions regarding liens on lottery, gaming, or FIDM: The Title IV-D agency will take appropriate action in accordance with the decision of the administrative law judge. If the administrative law judge rules in favor of the appellant, the Title IV-D agency will take action to fully or partially release a freeze order or administrative lien, as appropriate. If the administrative law judge rules in the agency's favor, the Title IV-D agency will proceed to have the funds routed ~~[to the Title IV-D agency]~~ for distribution to the obligor's case(s) or held ~~[with]~~ by the Title IV-D agency until all appeals relevant to the action have been exhausted ~~[or foreclosed due to deadlines]~~.

[8.50.130.23 NMAC - Rp, 8.50.130.19 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.24 RIGHT OF APPEAL: Either party has the right to judicial review of the ~~[hearing]~~ administrative law judge's decision or a denial of a hearing issued pursuant to 8.50.130.15 NMAC, unless [other than for] a written withdrawal of request for hearing was signed by the appellant. If a hearing decision is in favor of the Title IV-D agency, appellant is notified of the right to pursue judicial review ~~[of the decision]~~ at the time of the decision.

A. Timeframes for appealing decision: Within ~~[thirty (30)]~~ 30 days after the date on the ~~[hearing]~~ administrative law judge's decision ~~[notice]~~, an appellant or the Title IV-D agency may appeal ~~[a decision]~~ by filing an appropriate action for judicial review with the clerk of the appropriate district court, and filing a copy with the Title IV-D administrative law judge.

B. Record sent to district court: All appeals to the district court are on the record made at the hearing. The administrative law judge files one ~~[(4)]~~ copy of the hearing record with the clerk of the appropriate district court and furnishes one copy to the appellant within ~~[twenty (20)]~~ 20 days after receipt of the notice of appeal.

C. Stay pending appeal: An appeal to the state district court shall act as a stay of the underlying administrative action, pending the court's ruling.

[8.50.130.24 NMAC - Rp, 8.50.130.20 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.25 STATE DIRECTORY OF NEW HIRES PENALTY ASSESSMENT HEARINGS: The human services department, Title IV-D agency, has established a hearing process that provides for impartial review of New Mexico state directory of new hires claims against non-complying employers. (45 USC 653(d)). For purposes of these regulations, an employer requesting a hearing is referred to as an appellant.

A. Appellant eligibility: The Title IV-D agency established a hearing process for any individual who meets the following criteria:

(1) any employer who believes he or she has been erroneously assessed penalties; and

(2) who has been unable to resolve this issue with the New Mexico state directory of new hires representative at a preliminary conference.

B. Hearing appellant: A hearing appellant for the purposes of these regulations is any employer requesting review. ~~[The right to file a request for a hearing is not to be limited or interfered with in any way by the IV-D agency as long as the request is made in a timely manner.]~~

C. Appellant's rights: The right to a hearing includes the right:

(1) to be advised of the nature and availability of a hearing and the process to request a hearing;

(2) to be represented at the hearing by counsel or other person of the appellant's choice;

(3) to have a hearing that safeguards the appellant's opportunity to present a case;

(4) to have prompt notice and implementation of the administrative law judge's decision ~~[on the hearing;]~~ and

(5) to be advised that the appellant may request judicial review ~~[may be invoked]~~ to the extent such review is available under state law, and that the Title IV-D agency does not pay for the cost of such proceedings ~~[; the requirements of due process apply to hearing proceedings].~~

D. Penalty assessment notice: The New Mexico state directory of new hires sends written notice to inform an employer that penalties have been assessed. Each penalty assessment notice will:

(1) cite the statutory authority (~~[NMSA 1978, Section 50-13-4]~~ Section 50-13-4 et seq., NMSA 1978) for the assessment of the penalty;

(2) include the name and last four digits of the social security number for each party not reported;

(3) list the total amount of penalties assessed;

(4) inform the employer that failure to report is the basis for penalty and does not require a knowing or deliberate act on the part of the employer;

(5) inform the employer that conspiracy can be established by circumstantial evidence;

(6) list requirements for employers to request a hearing if they disagree with the assessment;

(7) provide the name and business telephone number of a Title IV-D agency contact to provide additional information or answer questions relating to the assessment of penalties and to request a hearing.

E. Time frames for requesting hearing: The appellant has [~~thirty (30)~~] 30 days from the date on the penalties assessment notice to submit a written request for a hearing. In order to be considered timely, the request must be received by the administrative law judge no later than the close of business on the [~~thirtieth (30th)~~] 30th day. When a timely request for hearing is received by the administrative law judge, the administrative law judge notifies the new hires directory, state project manager immediately so that a preliminary conference can be scheduled.

F. Notice of hearing: Upon receipt of a timely request for hearing, written notice is sent by the administrative law judge to all parties involved in the hearing regarding the time, date and place of the hearing. Arrangements will be made to ensure that the hearing process is accessible to and accommodates the appellant. In the hearing notice, appellants are also given an explanation of the hearing process, the procedures to be followed for the hearing, and enough time to secure witnesses or legal counsel. The appellant shall be informed that neither the department nor the Title IV-D agency pays for representation or legal counsel for appellant or for any hearings costs, and are provided the name and business telephone number of a contact who can provide additional information relating to the assessment of penalties. A hearing may be continued or rescheduled with the consent of all parties.

G. State directory of new hires responsibility: To ensure an appellant's rights during the hearing process, the state directory of new hires staff will:

(1) upon request, make available in a timely manner the documents necessary for an appellant or representative to determine whether to request a hearing or to prepare for a hearing;

(2) upon request, help appellant submit a written hearing request.

H. Effect of issuance of notice of hearing: All provisions contained in sections 8.50.130.15, 8.50.130.17, 8.50.130.19, 8.50.130.20 and 8.50.130.22 NMAC apply when a notice of hearing is issued pursuant to subsection F above.

[8.50.130.25 NMAC - Rp, 8.50.130.21 NMAC, 12/30/2010; A, 1/1/2022]