



State of New Mexico
Human Services Department
Human Services Register



I. DEPARTMENT

NEW MEXICO HUMAN SERVICES DEPARTMENT (HSD)

II. SUBJECT

- 8.50.100.9 NMAC, Program Services
- 8.50.110.8 NMAC, Income Withholding
- 8.50.112.8 NMAC, Parental Responsibility Act License Suspension
- 8.50.112.16 NMAC, Administrative Offset by the Secretary of the Treasury
- 8.50.125.10 NMAC, Collection of Fees/Recoupments
- 8.50.125.11 NMAC, Distribution of Collections
- 8.50.130.8 NMAC, Administrative Hearings
- 8.50.130.10 NMAC, Notice of Administrative Enforcement Action

III. PROGRAM AFFECTED

(TITLE IV) CHILD SUPPORT ENFORCEMENT

IV. ACTION

PROPOSED RULES

V. BACKGROUND SUMMARY

The Human Services Department (the Department) through the Child Support Enforcement Division (CSED), is proposing amendments to rules *8.50.100.9 NMAC, Program Services; 8.50.110.8 NMAC, Income Withholding; 8.50.112.8 NMAC, Parental Responsibility Act License Suspension; 8.50.112.16 NMAC, Administrative Offset by the Secretary of the Treasury; 8.50.125.10 NMAC, Collection of Fees/Recoupments; 8.50.125.11 NMAC Distribution of Collections; 8.50.130.8 NMAC, Administrative Hearings; 8.50.130.10 NMAC, Notice of Administrative Enforcement Action.*

Changes in the rules are to update language, incorporate standardized rule language, and to provide additional clarification in sections of the rules.

The Department proposes to amend rules as follows:

8.50.100.9 NMAC

Section B: Deleted language stating that a non IV-A applicant may request location of a non-custodial parent so he/she can pursue support individually.

Section C-D: These sections were renumbered after section B was deleted.

8.50.110.8 NMAC

Section A: Current language was deleted and new language was added to the income withholding rule stating that the IV-D agency complies with language found at 45 CFR § 303.100.

Section C: Deleted outdated language stating that the department will take actions to institute income withholding upon the request of an obligor.

8.50.112.8 NMAC

Section F: Revised language in part “1” to state that the obligor address will be used for the processing of the certificate of compliance. Deleted outdated language in parts “1-2” stating the certificate of compliance will be mailed when complete and the obligor will be responsible for submitting the certificate of compliance to licensing agencies.

8.50.112.16 NMAC

The new 8.50.112.16 NMAC rule states administrative offset by the Secretary of the Treasury 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. When referring a case for administrative offset by the Secretary of the Treasury, the IV-D agency shall comply with the provision of 31 CFR § 285.1.

8.50.125.10 NMAC

Section A: Deleted part “5” providing for a parent locate only fee of \$60 and renumbered parts 6-16”. A new part “16” was added to incorporate administrative offset federal fee.

8.50.125.11 NMAC

Section I: Language was revised to state that 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.

8.50.130.8 NMAC

Section A: Current language was revised for clarity. Language was added for income withholding and administrative offset.

Section C: Current language was revised for clarity.

8.50.130.10 NMAC

Section F: Added a new section (“F”) stating that a notice regarding the referral for administrative offset is sent to the obligor at the last known address on file with the IV-D agency.

VI. RULES

These proposed rules will be contained in 8.50.100.9 NMAC, 8.50.110.8 NMAC, 8.50.112.8 NMAC, 8.50.112.16 NMAC, 8.50.125.10 NMAC, 8.50.125.11 NMAC, 8.50.130.8 NMAC, 8.50.130.10 NMAC.

This register and the proposed changes are available on the HSD website at <http://www.hsd.state.nm.us/LookingForInformation/Default.aspx>. If you do not have internet access, a copy of the proposed rules may be requested by contacting the Child Support Enforcement Division at 505-476-7186.

VII. EFFECTIVE DATE

The Department proposes to implement these rules effective July 1, 2019.

VIII. PUBLIC HEARING

A public hearing to receive testimony on these proposed rules will be held in ASD/HSD Large Conference Room on the 1st floor, 1474 Rodeo Rd, Santa Fe, New Mexico. On Thursday, February 21, 2019, from 3:00 p.m. to 4:00 p.m. , Mountain Daylight Time (MDT) .

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Division in Santa Fe at 505-476-7186. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 505-827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by CSED upon request by providing copies directly to a requestor or by making them available on the CSED website or at a location within the county of the requestor.

IX. ADDRESS

Interested persons may address written comments to:

Human Services Department
Office of the Secretary
ATTN: Child Support Enforcement Division Public Comments
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

Recorded comments may be left at (505) 476-7186. Interested persons may also address comments via electronic mail to: Jennifer.Salazar-Va@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MST on February 21, 2019. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing.

X. PUBLICATIONS

Publication of these rules approved by:

Michael D. Nelson for Brent Earnest

BRENT EARNEST, SECRETARY
HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 50 CHILD SUPPORT ENFORCEMENT PROGRAM
PART 100 GENERAL PROVISIONS

8.50.100.1 ISSUING AGENCY: New Mexico Human Services Department - Child Support Enforcement Division.
[8.50.100.1 NMAC - Rp, 8.50.100.1 NMAC, 12/30/10]

8.50.100.2 SCOPE: To the general public. For use by the IV-D agency and recipients of IV-D services.
[8.50.100.2 NMAC - Rp, 8.50.100.2 NMAC, 12/30/10]

8.50.100.3 STATUTORY AUTHORITY: Public Assistance Act, Section 27-2-27 NMSA 1978. The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.).
[8.50.100.3 NMAC - Rp, 8.50.100.3 NMAC, 12/30/10]

8.50.100.4 DURATION: Permanent.
[8.50.100.4 NMAC - Rp, 8.50.100.4 NMAC, 12/30/10]

8.50.100.5 EFFECTIVE DATE: December 30, 2010, unless a later date is cited at the end of a section.
[8.50.100.5 NMAC - Rp, 8.50.100.5 NMAC, 12/30/10]

8.50.100.6 OBJECTIVE: To provide regulations in accordance with federal and state laws and regulations.
[8.50.100.6 NMAC - Rp, 8.50.100.6 NMAC, 12/30/10]

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 IV-D agency, designated by Section 27-2-27 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" 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 Section 27-1-13 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 Section 40-11A-503 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 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 for:

- (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; 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 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 Section 27-2-27 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 Section 40-6A-101, et. seq. NMSA 1978).
[8.50.100.7 NMAC - Rp, 8.50.100.7 NMAC, 12/30/10]

8.50.100.8 GENERAL PROGRAM DESCRIPTION: Child support enforcement services include establishing paternity, obtaining enforceable orders of support, collection and distribution of on-going support and arrears, and medical support, as appropriate. Any case with an enforceable order is an enforcement case, although some intake functions, such as non-custodial party locate may be required in order to enforce the order.
[8.50.100.8 NMAC - Rp, 8.50.100.8 NMAC, 12/30/10]

8.50.100.9 PROGRAM SERVICES:

A. There are six major program services in child support enforcement, of which one or more may be appropriate for a particular case:

- (1) non-custodial parent location;
- (2) establishment of paternity;
- (3) establishment of a support obligation (including medical support);
- (4) collection and distribution of support payments (including spousal and medical support);
- (5) enforcement of support obligation, (including medical and spousal support); and
- (6) review and adjustment of support obligation.

~~**B.** A non-IV-A applicant may, upon payment of a fee, request the non-custodial parent be located so he/she can pursue support individually. Requests for parent locate only are processed by the state parent locate unit and the applicant is informed of the results.~~

CB. Spousal support: The IV-D agency does not take any action to establish an order for spousal support. It remains the obligee’s responsibility to establish such an order. The responsibility of the IV-D agency is limited to enforcing existing spousal support orders. The IV-D agency may enforce spousal support when:

- (1) the payee has a previously established order for spousal support or the payee subsequently obtains an order for spousal support, and
- (2) the minor child and the payee are living in the same household, and
- (3) the child support obligation established will be enforced by the IV-D agency; existing spousal support orders must be enforced even if the spousal support and child support are in separate orders.

DC. Parental kidnapping and child custody cases: Federal and state parent locate services may be used to locate parents involved in parental kidnapping and custody cases pursuant to 42 USC 663 and 45 CFR 303.15. Any information obtained through the state or federal parent locate service shall be treated as confidential and shall be used solely for the purpose for which it was obtained and shall be safeguarded. A fee may be charged to cover the costs of processing requests for information. A separate fee may be charged to cover costs of searching for a social security number before processing a request for location information.

ED. Mandatory and optional services: As a condition of eligibility, IV-A and IV-E applicants are mandated to receive full services, including medical support, and do not have the option to refuse any IV-D services. Medicaid only referrals that include an assignment of rights, including SSI referrals, are mandated to receive medical support services, but have the option of receiving full service. The custodial party must cooperate in establishing paternity and medical support. Non-IV-A, non-medicaid applicants may receive child support services, subject to service and the actual cost of fees.

[8.50.100.9 NMAC - Rp, 8.50.100.9 NMAC, 12/30/10]

8.50.100.10 RESPONSIBILITY AND DELEGATION OF AUTHORITY: Pursuant to Section 27-2-27 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, 12/30/10]

8.50.100.11 ATTORNEY REPRESENTATION: Per Subsection E of Section 27-2-27 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, 12/30/10]

8.50.100.12 PRIVATE COUNSEL: Applicants for Title IV-D child support services may hire private legal counsel to represent their interests. The IV-D agency will cooperate with private attorneys, to the extent that such cooperation does not compromise the interests of the state. Applicants and their attorneys shall keep the IV-D agency fully informed of any private proceedings. If applicants or their legal representatives engage in conduct that is deemed to be non-cooperative, the case shall be eligible for closure. The IV-D agency is under no obligation to litigate any matters filed pro se by the custodial party or filed by a private attorney.

[8.50.100.12 NMAC - Rp, 8.50.100.13 NMAC, 12/30/10]

8.50.100.13 CONFIDENTIALITY:

A. The IV-D agency has access to the entire IV-A case file and to material in the medicaid case file. Information contained in the IV-A and 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 IV-D program. No unauthorized use, dissemination or disclosure of information in the possession of the 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, 12/30/10]

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 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 IV-D services: Custodial and non-custodial parties of 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 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 - 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, 12/30/10]

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 IV-D services, the 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 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, 12/30/10]

8.50.100.16 CONTROLS AND REPORTING: The 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, 12/30/10]

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 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, 12/30/10]

History of 8.50.100 NMAC:

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

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

ISD SCEB 512.0000, Conditions Under Which Confidential Information May Be Released, 6-23-80.

NMAC History:

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

History of Repealed Material:

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

8.50.100 NMAC, General Provisions, filed 5/14/2001 - Repealed effective 12/30/2010.

TITLE 8 SOCIAL SERVICES
CHAPTER 50 CHILD SUPPORT ENFORCEMENT PROGRAM
PART 110 INCOME WITHHOLDING

8.50.110.1 ISSUING AGENCY: New Mexico Human Services Department - Child Support Enforcement Division.
[8.50.110.1 NMAC - Rp, 8.50.110.1 NMAC, 12/30/10]

8.50.110.2 SCOPE: To the general public. For use by the IV-D agency and recipients of IV-D services.
[8.50.110.2 NMAC - Rp, 8.50.110.2 NMAC, 12/30/10]

8.50.110.3 STATUTORY AUTHORITY: Public Assistance Act, Section 27-2-27 NMSA 1978. The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.).
[8.50.110.3 NMAC - Rp, 8.50.110.3 NMAC, 12/30/10]

8.50.110.4 DURATION: Permanent.
[8.50.110.4 NMAC - Rp, 8.50.110.4 NMAC, 12/30/10]

8.50.110.5 EFFECTIVE DATE: December 30, 2010, unless a later date is cited at the end of a section.
[8.50.110.5 NMAC - Rp, 8.50.110.5 NMAC, 12/30/10]

8.50.110.6 OBJECTIVE: To provide regulations in accordance with federal and state laws and regulations.
[8.50.110.6 NMAC - Rp, 8.50.110.6 NMAC, 12/30/10]

8.50.110.7 DEFINITIONS: [RESERVED]
[See 8.50.100.7 NMAC]

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

A. The IV-D agency complies with ~~the Support Enforcement Act, Section 40-4A-1 et seq. NMSA 1978-45~~ CFR § 303.100 when it requests or initiates 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 IV-D agency will not stipulate or agree to such provisions. The party requesting to avoid wage withholding bears the burden or proof on this issue with the court.

(1) The 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 IV-D agency, in its discretion, may pursue wage withholding from the appropriate judicial or administrative authority.

~~C. The department will take all actions necessary to institute income withholding upon the request of an obligor.~~

[8.50.110.8 NMAC - Rp, 8.50.110.8 NMAC, 12/30/10]

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

A. the support obligation ends and all arrears are paid off; or

B. the court orders that income withholding cease; or

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

[8.50.110.9 NMAC - Rp, 8.50.110.15 NMAC, 12/30/10]

8.50.110.10 WITHHOLDING OF UNEMPLOYMENT COMPENSATION: A cooperative endeavor exists between the IV-D agency and the New Mexico department of workforce solutions for the withholding of unemployment compensation and workman's compensation 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, 12/30/10]

History of 8.50.110 NMAC:

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

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

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

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

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

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

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

NMAC History:

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

History of Repealed Material:

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

8.50.110 NMAC, Income Withholding, filed 5/14/2001 - Repealed effective 12/30/2010

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

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

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

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

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

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

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

8.50.112.7 DEFINITIONS: [RESERVED]
[See 8.50.100.7 NMAC]

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

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

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

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

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

C. Settlement:

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

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

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

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

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

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

~~(2) The obligor is entirely responsible for submitting the certificate(s) of compliance to all licensing agencies for the reinstatement of any and all licenses within thirty (30) days of date of the certificate of compliance is issued. Failure to comply with the licensing agency's requirements for license application approval or license reinstatement may result in the obligor's license(s) continued denial or suspension. The IV-D agency will not re-issue a certificate of compliance if the obligor fails to maintain compliance with all court orders for support.~~
[8.50.112.8 NMAC - Rp, 8.50.112.8 NMAC, 12/30/10]

8.50.112.9 CONSUMER REPORTING AGENCIES (CREDIT BUREAUS):

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

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

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

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

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

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

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

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

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

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

provide a notarized letter authorizing the release. The notarized letter shall set forth the injured spouse's name, the name of the obligor, and the obligor's CSED case number(s).

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

E. Notification of federal income tax offset:

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

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

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

(c) of the right to an administrative review;

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

(e) that the U.S. treasury will notify the obligor's spouse at the time of offset

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

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

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

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

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

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

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

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

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

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

H. Distribution of collections from federal income tax offset: Past-due support amounts collected as a result of the federal income tax refund offset shall be distributed pursuant to 8.50.125.12 NMAC. The obligor shall receive full credit for the entire amount of tax intercept that is applied to his or her case(s). Distribution of tax intercept money for obligors with multiple IV-D cases shall be in accordance with federal and state laws. If an offset is made to satisfy non-TANF past due support from a refund based upon a joint return, the IV-D agency may

delay distribution until notified that the injured spouse's proper share of the refund has been paid or for a period not to exceed six months from notification of offset, whichever is shorter.
[8.50.112.10 NMAC - Rp, 8.50.112.10 NMAC, 12/30/10]

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

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

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

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

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

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

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

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

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

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

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

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

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

[8.50.112.11 NMAC - Rp, 8.50.112.11 NMAC, 12/30/10]

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

[8.50.112.12 NMAC - Rp, 8.50.112.12 NMAC, 12/30/10]

8.50.112.13 DENIAL OF PASSPORTS FOR NONPAYMENT OF CHILD SUPPORT:

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

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

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

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

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

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

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

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

B. If the lottery winner is verified by the IV-D agency as owing a debt collected by the agency, the IV-D agency has ninety (90) days to initiate an administrative action against the winner. The IV-D agency will notify the winner by mailing a copy of the notice of administrative lien to the obligor at their last known address of record with the IV-D agency via registered mail. The notice of administrative lien will notify the obligor that he or she has fifteen (15) days from the date of the notice to contest or appeal the administrative lien. The notification sent to the obligor provides the address and telephone number for the obligor to contact the IV-D agency to request a

hearing to appeal the referral. If the obligor does not contest the notice of administrative lien within the required timeframe, a notice for release of funds to the IV-D agency is mailed to the lottery commission instructing it to forward the lottery winnings to the IV-D agency. If the obligor contests the notice of administrative lien and timely requests a hearing, an administrative hearing will be conducted in accordance with 8.50.130 NMAC. [8.50.112.14 NMAC - Rp, 8.50.112.14 NMAC, 12/30/10]

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

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

B. If the gaming machine winner is an obligor verified by the IV-D agency as owing a debt to or collected by the IV-D agency, the IV-D agency has ninety (90) days to complete an administrative action against the winner, unless the winner agrees to an extension of the time limitations or the administrative law judge extends the time. The IV-D agency shall notify the winner by mailing a copy of the notice of administrative lien to the obligor at his or her last known address of record with the IV-D agency via registered mail. The notice of administrative lien shall notify the obligor that he or she has fifteen (15) days from the date of the receipt of the notice to contest or appeal the administrative lien. The notification sent to the obligor provides the address and telephone number of the obligor to contact the IV-D agency to request a hearing to appeal the referral. If the obligor does not contest the notice of administrative lien within the required timeframe, a notice for release of funds to the IV-D agency is mailed to the racetrack licensee within five (5) working days after the expiration of the obligor's deadline to request a timely hearing, instructing the racetrack licensee to forward the gaming machine payout to the IV-D agency. If the obligor contests the notice of administrative lien and timely requests a hearing, an administrative hearing will be conducted in accordance with 8.50.130 NMAC. The IV-D agency shall notify the racetrack licensee within five (5) working days of the ruling of any hearing held in accordance with this section. [8.50.112.15 NMAC - Rp, 8.50.112.15 NMAC, 12/30/10]

8.50.112.16 ADMINISTRATIVE OFFSET BY THE SECRETARY OF THE TREASURY

A. Referral for administrative offset: federal administrative 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. When referring a case for administrative offset by the secretary of the treasury, the IV-D agency shall comply with the provision of 31 CFR § 285.1.

B. Notification of administrative 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 administrative offset. The notice shall be sent to the obligor's last address of record with the IV-D agency. The IV-D agency shall inform the obligor:

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

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

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

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

C. Contesting referral for administrative offset: The obligor has thirty (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 provides the address and telephone number to be contacted in order for the obligor to request a hearing to contest the referral.

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

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

History of 8.50.112 NMAC:

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

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

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

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

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

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

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

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

NMAC History:

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

History of Repealed Material:

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

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

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

TITLE 8 SOCIAL SERVICES
CHAPTER 50 CHILD SUPPORT ENFORCEMENT PROGRAM
PART 125 FEES, PAYMENTS, AND DISTRIBUTIONS

8.50.125.1 ISSUING AGENCY: New Mexico Human Services Department - Child Support Enforcement Division.
[8.50.125.1 NMAC - Rp, 8.50.125.1 NMAC, 12/30/10]

8.50.125.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of IV-D services.
[8.50.125.2 NMAC - Rp, 8.50.125.2 NMAC, 12/30/10]

8.50.125.3 STATUTORY AUTHORITY: Public Assistance Act, NMSA 1978, Section 27-2-27. The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.).
[8.50.125.3 NMAC - Rp, 8.50.125.3 NMAC, 12/30/10]

8.50.125.4 DURATION: Permanent.
[8.50.125.4 NMAC - Rp, 8.50.125.4 NMAC, 12/30/10]

8.50.125.5 EFFECTIVE DATE: December 30, 2010, unless a later date is cited at the end of a section.
[8.50.125.5 NMAC - Rp, 8.50.125.5 NMAC, 12/30/10]

8.50.125.6 OBJECTIVE: To provide regulations in accordance with federal and state law and regulations.
[8.50.125.6 NMAC - Rp, 8.50.125.6 NMAC, 12/30/10]

8.50.125.7 DEFINITIONS: [RESERVED]
[See 8.50.100.7 NMAC]

8.50.125.8 CHILD SUPPORT PAYMENTS:

A. The IV-D agency has in effect procedures for the payment of support through the 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 IV-D agency is designated to administer the state's withholding system. The 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 IV-D services and cooperating with the IV-D agency, recipients must submit to the 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 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 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 IV-D agency, he or she will automatically be enrolled in the 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 IV-D agency. The form must be fully completed to include an explanation of the exceptional circumstances requiring an exemption from EFT. The 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, 12/30/10]

8.50.125.9 STATE DISBURSEMENT UNIT: The state IV-D agency has established and operates a state disbursement unit (SDU) for the collection and disbursement of payments in all IV-D cases pursuant to 42 USC 654(a).
[8.50.125.9 NMAC - Rp, 8.50.125.9 NMAC, 12/30/10]

8.50.125.10 COLLECTION OF FEES/RECOUPMENTS: New Mexico is a cost recovery state, and other states' 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 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-aA 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) parent locate only: \$60~~
- ~~(6)~~(5) filing fee: actual cost
- ~~(7)~~(6) witness fee: actual cost
- ~~(8)~~(7) service of process: actual cost
- ~~(9)~~(8) expert witness fee: actual cost
- ~~(10)~~(9) court costs: as assessed
- ~~(11)~~(10) establishment of support obligation and paternity (if necessary): \$250
- ~~(12)~~(11) modification: \$150
- ~~(13)~~(12) enforcement: \$250
- ~~(14)~~(13) tax intercept related: as determined by federal regulations
- ~~(15)~~(14) IRS tax intercept service: \$25
- ~~(16)~~(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 IV-D case in accordance with the fee schedule above.

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, 8.50.125.10 NMAC, 12/30/10]

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 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 arrears;
- (4) past due support arrears;
- (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 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 (1) and (2), 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 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 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 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 IV-D agency nor the 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 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 (1) and (2) 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 (1), (2) and (3) 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 (4), 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. ~~No collections~~ Collected funds will be sent to third parties, attorneys, or agents, except in cases where there is a court order directing the support payment(s) to a person or entity other than the custodial party, 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 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.

[8.50.125.11 NMAC - Rp, 8.50.125.11 NMAC, 12/30/10]

8.50.125.12 DISTRIBUTION OF COLLECTIONS THROUGH FEDERAL INCOME TAX REFUND

OFFSET: Any amount of support collected through federal income tax refund offset will be retained by the state to the extent past-due support has been assigned to the state up to the amount necessary to reimburse the state for cumulative amounts paid to the family as assistance by the state. The state will pay to the federal government the federal share of the amounts so retained. To the extent the amount collected exceeds the amount required to be retained, the state will pay the excess to the family.

A. Current assistance cases: Support collections through federal income tax refund offsets in current assistance cases are retained by the state up to the cumulative amount of unreimbursed assistance paid to the family. Collections over and above the cumulative amount of unreimbursed assistance are paid to the family.

B. Former assistance cases: Support collections made through federal income tax refund offsets in former assistance cases shall first be applied to assigned arrearages. This includes any conditionally-assigned arrearages. These collections shall be retained by the state up to the cumulative amount of unreimbursed assistance paid to the family. Collections over and above the cumulative amount of unreimbursed assistance are paid to the family.

C. Never-assistance cases: Support collections through federal income tax refund offsets in non-assistance cases are paid to the family.

[8.50.125.12 NMAC - Rp, 8.50.125.12 NMAC, 12/30/10]

8.50.125.13 DISTRIBUTION OF COLLECTIONS IN TITLE IV-E FOSTER CARE CASES: Amounts collected as support in Title IV-E foster care cases will be distributed in accordance with 45 CFR 302.52.

[8.50.125.13 NMAC - Rp, 8.50.125.13 NMAC, 12/30/10]

8.50.125.14 ASSIGNED MEDICAL SUPPORT COLLECTIONS: Any amounts collected by the 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 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 IV-D agency will be forwarded to the medicaid agency for distribution.

[8.50.125.14 NMAC - Rp, 8.50.125.14 NMAC, 12/30/10]

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 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, 12/30/10]

8.50.125.16 CHILD SUPPORT RECEIVED DIRECTLY FROM PAYORS: As a condition of receiving IV-D services, all recipients must submit to the 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 IV-D case for non-cooperation. If the recipient of IV-D services elects to receive medical support services only, the recipient of IV-D services may keep child support payments received directly from the payor.

[8.50.125.16 NMAC - Rp, 8.50.125.16 NMAC, 12/30/10]

8.50.125.17 CHILD SUPPORT COLLECTED FOR MEDICAID REFERRALS: A medicaid only recipient, for whom an assignment of support rights is in effect, must receive medical support services but may choose to receive full services. If the recipient elects to receive full services, the recipient is required to turn over all child support received, to be distributed in accordance with federal and state regulations. If the recipient elects to receive only medical support services, the recipient may keep child support payments received directly from the payor.

[8.50.125.17 NMAC - Rp, 8.50.125.17 NMAC, 12/30/10]

8.50.125.18 CHILD SUPPORT CASE SERVICES: The 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 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 IV-D agency or opening a new case with the 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 IV-D agency.

- (1) The 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 IV-D agency will provide either the custodial party or the non-custodial party a printout of the payments received by the IV-D agency after receiving a written request.
- (3) The 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, 12/30/10]

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 IV-D agency. If the 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 IV-D agency will replace a warrant that it can confirm was not redeemed and has not escheated to the IV-D agency through the undistributed collections process. If the 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 IV-D agency will deny the request for a replacement warrant.

[8.50.125.19 NMAC - N, 12/30/10]

History of 8.50.125 NMAC:

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

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

ISD CSEB 521.0000, Non-AFDC Fees and Costs, 6-23-80.

ISD CSEB 521.0000, Non-AFDC Fees and Costs, 1-20-81.

ISD CSEB 592.0000, Collection, 6-23-80.

ISD CSEB 593.0000, Distribution, 6-23-80.

NMAC History:

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

History of Repealed Material:

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

8.50.125 NMAC, Fees, Payments, and Distributions, filed 5/14/2001 - Repealed effective 12/30/2010

TITLE 8 SOCIAL SERVICES
CHAPTER 50 CHILD SUPPORT ENFORCEMENT PROGRAM
PART 130 ADMINISTRATIVE HEARINGS

8.50.130.1 ISSUING AGENCY: New Mexico Human Services Department - Child Support Enforcement Division
[8.50.130.1 NMAC - Rp, 8.50.130.1 NMAC, 12/30/10]

8.50.130.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of IV-D services.
[8.50.130.2 NMAC - Rp, 8.50.130.2 NMAC, 12/30/10]

8.50.130.3 STATUTORY AUTHORITY: Public Assistance Act, NMSA 1978, Section 27-2-27. The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.).
[8.50.130.3 NMAC - Rp, 8.50.130.3 NMAC, 12/30/10]

8.50.130.4 DURATION: Permanent.
[8.50.130.4 NMAC - Rp, 8.50.130.4 NMAC, 12/30/10]

8.50.130.5 EFFECTIVE DATE: December 30, 2010, unless a later date is cited at the end of a section.
[8.50.130.5 NMAC - Rp, 8.50.130.5 NMAC, 12/30/10]

8.50.130.6 OBJECTIVE: To provide regulations in accordance with federal and state law and regulations.
[8.50.130.6 NMAC - Rp, 8.50.130.6 NMAC, 12/30/10]

8.50.130.7 DEFINITIONS: [RESERVED]
[See 8.50.100.7 NMAC]

8.50.130.8 ADMINISTRATIVE HEARINGS: The Title IV-D agency will provide for administrative hearings for:

- A. an obligor requesting a review pertaining to income withholding, 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 referral for the FIDM program;
- B. any IV-A recipient or former IV-A recipient who believes he or she is entitled to receive part or all of a support payment that was received by 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, 12/30/10]

8.50.130.9 IN GENERAL:

- A. The hearing process provides the appellant notice and an opportunity to assert his or her 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; and
 - (4) to be advised that 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, 12/30/10]

8.50.130.10 NOTICE OF ADMINISTRATIVE ENFORCEMENT ACTION:

- A. Notices to obligor of referral to tax-offset program: The IV-D agency sends written notice to inform an obligor that the amount of his or her past-due support 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 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 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 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 IV-D agency.

[8.50.130.10 NMAC - Rp, 8.50.130.8 NMAC, 12/30/10]

F. Notice to obligor for administrative offset referral: 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 IV-D agency.

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) calendar days following the date of mailing of notice by the IV-D agency to submit a written request for an administrative hearing. The appellant has thirty (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) day, or the next business day if the thirtieth (30th) day is a Sunday or federally recognized holiday.

[8.50.130.11 NMAC - Rp, 8.50.130.8 NMAC, 12/30/10]

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 administrative law judge sends 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 the custodial party of the time and place of the administrative hearing. The Title IV-D agency worker should 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, 12/30/10]

8.50.130.13 CONTESTING TAX REFUND INTERCEPT IN RESPONDING INTERSTATE CASES:

Administrative hearing requests are referred to the central registry in the responding state if the obligor requests a hearing in that state.

A. When the obligor, after receiving the FMS offset notice from the other state, contacts the Title IV-D agency worker, the worker may refer the obligor to the state that issued the notice. However, if the obligor contacts the Title IV-D agency as the last resort because he or she cannot get assistance from the other state, the worker may contact the other state, or refer the obligor to central registry and central registry staff will contact the other state.

B. If a request from the obligor for an administrative hearing in New Mexico is received and the case was submitted based on another state's order, a review of the arrearage computation submitted for tax intercept and the underlying documentation, and any new evidence provided by the appellant is completed, and an attempt is made to resolve the complaint. If the complaint cannot be resolved by the Title IV-D agency worker and the obligor requests an administrative hearing in the initiating state, the other state is notified by the New Mexico Title IV-D

agency of the request and all necessary information is provided within ten (10) days of the obligor's request for an administrative hearing. At the same time, the central registry sends the OCSE an update to report that the matter is being transferred to the initiating state for the purpose of conducting an administrative hearing.

C. The initiating state is responsible for all procedures required for conducting a hearing within that state.

[8.50.130.13 NMAC - Rp, 8.50.130.10 NMAC, 12/30/10]

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.

[8.50.130.14 NMAC - N, 12/30/10]

8.50.130.15 INITIATION OF HEARING PROCESS:

A. A request for hearing must be made in writing.
B. Receipt of a written hearing request shall be acknowledged in writing to the appellant by the administrative law judge.

C. Upon the request of the appellant, the 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, 12/30/10]

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) 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, 12/30/10]

8.50.130.17 NOTICE OF HEARING: As early as possible and not less than ten (10) 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) 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 and secure legal counsel prior to the hearing. The appellant is told that neither the department nor the 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, 12/30/10]

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 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 to his or her case.

D. The appellant may advance 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, 12/30/10]

8.50.130.19 TITLE IV-D AGENCY RESPONSIBILITY: To ensure an appellant's rights during the hearing process, the 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 if the appellant is not proficient in English; and

C. 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) days prior to the hearing.

[8.50.130.19 NMAC - Rp, 8.50.130.15 NMAC, 12/30/10]

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 IV-D agency worker, 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 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) 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, 12/30/10]

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 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) 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, 12/30/10]

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) 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, 12/30/10]

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) 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 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 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, 12/30/10]

8.50.130.24 RIGHT OF APPEAL: Either party has the right to judicial review of the hearing decision or a denial of a hearing issued pursuant to 8.50.130.15 NMAC other than for a written withdrawal of request for hearing 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) days after the date on the hearing 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 (1) copy of the hearing record with the clerk of the appropriate district court and furnishes one copy to the appellant within twenty (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, 12/30/10]

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 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;
- (2) to be represented 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 decision on the hearing, and
- (5) to be advised that judicial review may be invoked to the extent such review is available

under state law, and that the 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) 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.

E. Time frames for requesting hearing: The appellant has thirty (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) 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 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, 12/30/10]

History of 8.50.130 NMAC:

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

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

NMAC History:

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

History of Repealed Material:

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

8.50.130 NMAC, Administrative Hearings, filed 5/14/2001 - Repealed effective 12/30/2010