

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Administration for Children and Families****45 CFR Part 303**

RIN 0970-AC09

**Child Support Enforcement Program  
Federal Tax Refund Offset**

**AGENCY:** Administration for Children and Families, Department of Health and Human Services (HHS).

**ACTION:** Final rule.

**SUMMARY:** This final rule responds to comments received on the interim final rule with comment period, published on June 26, 2003, that amended regulations on collecting child support arrears through the Federal Tax Refund Offset process. The interim final rule reflected changes in OCSE's data processing protocols with the Department of the Treasury and incorporated current business practices and requests from State Child Support Enforcement agencies.

**DATES:** These regulations are effective October 26, 2004.

**FOR FURTHER INFORMATION CONTACT:** Yvette Hilderson Riddick, Division of Policy, OCSE, 202-401-4885, e-mail: [yriddick@acf.hhs.gov](mailto:yriddick@acf.hhs.gov). Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m. eastern time.

**SUPPLEMENTARY INFORMATION:****Statutory Authority**

This regulation is issued under the authority granted to the Secretary of Health and Human Services (the Secretary) by section 1102 of the Social Security Act (the Act), 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

**Interim Final Regulatory Provisions**

The interim final rule amending 45 CFR 303.72, Requests for collection of past-due support by Federal tax refund offset, did not impose new requirements or burdens on States, but rather removed administrative requirements and burdens, principally the requirement that the support be three months delinquent before the debt is referred for Federal tax refund offset. The rule also removed the requirement for States to submit written notices to OCSE; *i.e.*, to transmit paper responses

or to submit referrals by magnetic tape. Under the new procedures, notices and referrals are sent to OCSE electronically, which is much simpler for the States. Finally, the rule incorporated several policies that were already in effect in order to have all the information pertaining to the submission of Federal tax refund offset cases in one place.

**Response to Comments and Changes to the Interim Final Rule**

We received comments from four State IV-D agencies about the changes proposed in the interim final rule. The comments and our responses are discussed below.

*1. Comment:* One commenter said that, in the interim final rule, OCSE's use of the term "non-IV-A cases" is misleading or inaccurate. For example, a person may have been on assistance, but is currently not on assistance, yet has assigned arrears. Is this a IV-A case or not? The commenter suggested we use the terms "cases with support assigned to the State" and "cases with no support assigned to the State".

*Response:* The term "non-IV-A cases" was not added or changed in the interim final rule. The reference to "non-IV-A cases" covers any cases that have unassigned past-due support which is being submitted for offset. "IV-A cases" cover any cases that have assigned past-due support which is being submitted for offset, such as the example in the comment. The language that the commenter suggests changing is longstanding language that was not added or changed by the interim final regulation and thus, is not a proper subject for modification in the final rule. The regulatory language at § 303.72(a) lays out the rules for how support is submitted for offset. It differentiates past-due support qualifying for offset according to whether it is past-due support assigned to the State or past-due support that is not assigned to the State, but owed to the family. Assigned support and support owed to the family must meet different criteria for submittal, as outlined in paragraph (a). Thus, in a former assistance case with arrears assigned to the State and arrears owed to the family, the State will specify two separate amounts of past-due support for offset. Additionally, this distinction is required under the Internal Revenue Code, 26 U.S.C. 6402(c), the section of the Code pertaining to tax refund offset for child support. Under this subsection, first priority is given to "any past-due support which has been assigned to the State." Next priority is other Federal debts, followed by unassigned past-due support.

*2. Comment:* One commenter asked: If Federal tax refund offset is a mandatory tool, as stated in the preamble to the interim final rule, are States required to certify all cases with assigned arrears of \$150 or more and, if so, by when? The commenter expressed concern that States may need to change laws, policies and procedures to meet this "new" requirement. One commenter agreed with the regulatory changes, but pointed out that her State will need to make some programming changes that will take a few months to complete.

*Response:* The requirement to certify all cases that meet the criteria for submittal for Federal tax refund offset under 45 CFR 303.72 appears at § 303.6(c)(3) and has not been changed. The timeframe for that submittal is "according to the timeframes and in the manner specified by the Office in instructions" (§ 303.72(b)(1)). These instructions will be forthcoming in new guidance from the Federal Office of Child Support Enforcement. Currently, HHS requires States to update on at least a monthly basis, and recommends sending weekly updates if possible. OCSE will work closely with States before considering any changes to the timeframes and issuing instructions. OCSE does not contemplate instructions that will require changes to State law. The State may also use discretion to exclude a particular case as warranted, on a case-by-case basis.

*3. Comment:* One commenter noted that OCSE mentioned, in the preamble to the interim final rule, that it amended § 303.72(d)(2), (f)(3) and (g)(4) to recognize that the amount to be offset may increase as well as decrease after the submittal, due to the transition from annual updates to a continuous data processing schedule or due to an administrative review. However, in the first two instances cited, the regulation was not changed.

*Response:* We have corrected the regulation by replacing "decrease" with "change" in paragraphs (d)(2) and (f)(3).

*4. Comment:* Paragraph § 303.72(g) sets forth procedures for contesting an offset in interstate cases. The amended § 303.72(g)(4) requires the State with the order to report changes resulting from an administrative review to the submitting State and the submitting State to notify OCSE. One commenter said that we should define "State with the order", because the State with the order may not be involved in the case if the order is not in the initiating or responding State.

*Response:* The commenter is correct in noting that the State with the order may be neither the initiating nor the responding State involved in a IV-D

case. The State with the order refers to the State with the order "upon which the referral for offset is based". We have added this language to paragraph (g)(4) for clarification. The provision allowing "the State with the order" to conduct an administrative review is not a change to the regulation.

5. *Comment:* Paragraph § 303.72(h)(6) was amended to specify that collections from offset may only be applied "to cases" that were being enforced by the IV-D agency at the time the advance notice described in paragraph (e)(1) of this section was sent. The prior paragraph (h)(6) had provided that collections from offset could be applied only against the "past-due support amount" that was specified in the advance notice to the obligor. One commenter asked: If a collection came in during a transitional period before an update was processed by OCSE to make the case a non-IV-D case, could the money be kept and applied to the arrears on that case?

*Response:* Regulations at 45 CFR 303.11 contain case closure requirements. If the State closes a case before the date of offset, consistent with case closure requirements, the offset amount would have to be returned to the Treasury, since past-due support that qualifies for offset must be past-due support owed in a IV-D case.

6. *Comment:* The change to paragraph (h)(6) narrows the past-due support to which collections from Federal income tax refund offsets may be applied. Under the regulations, the State, or OCSE at the State's request, sends the obligor a pre-offset notice specifying the obligor's right to contest that past-due support is owed and the right to an administrative review. The notice specifies that further arrears may be added to the obligor's debt without further notice. This past-due support could have already included debt from more than one case involving that obligor. States may also offer an opportunity for a due process hearing at the point of offset. States that provide that additional due process protection at offset, and not just at the pre-offset stage, should have flexibility in applying collections to past-due support owed by an obligor. If a State's due process has met State constitutional and due process requirements, the Federal regulation should continue to allow application of collections to all cases, similar to the handling of income withholding collections.

*Response:* We have not changed this provision for the following reasons. Section 464 of the Act authorizes the collection of past-due support from Federal tax refunds only if certain

conditions are met. First, the individual due the tax refund must owe past-due support which has been assigned to the State or which the State has agreed to collect for a child on whose behalf an application for services has been submitted. The statute defines "past-due support" as "the amount of a delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living." Second, the State must notify the Secretary of the Treasury that the individual owes past-due support in accordance with the procedures established by the Secretary of the Treasury. Third, prior to notifying the Secretary of the Treasury that the individual owes past-due support, the State must send a notice to the individual informing him or her that amounts will be withheld from any refund payable. The notice must also inform the individual of the steps that may be taken to contest the State's determination that past-due support is owed or the amount of such past-due support and must comply with the regulations established by the Secretary of HHS. The regulation governing the advance notice that must be provided appears at § 303.72(e). Under this regulation, the required advance notice must inform the individual of four things, including the right to a review by the submitting State or the State with the order upon which the referral is based and the procedures and timeframe for contacting the IV-D agency of the submitting State to request a review.

The purpose of the advance notice provisions is to inform the individual of the IV-D agency's determination that he or she owes an amount of past-due support and to afford the individual an opportunity to contest the IV-D agency's determination that such past-due support is owed before the case is submitted for tax refund offset. In order to accomplish the purpose of the advance notice provisions and to comply with the statutory and regulatory provisions, an individual must be provided sufficient information concerning the past-due support claimed to be owed so as to enable a decision whether or not to request a review. An individual cannot contest a determination of past-due support about which he or she has not been notified.

7. *Comment:* The OCSE automated system for Federal tax refund offset cannot send a second advance notice that would include a second family's past-due support without first decertifying the first family's past-due support, which creates a burden on

families whose support has already been submitted by the State.

*Response:* OCSE is programming a new transaction that will allow States to generate new pre-offset notices on an ad hoc basis without decertifying a case. It is expected to be available very soon.

8. *Comment:* The obligor's debt is offset at the amount that is certified as of the date of offset. Define "date of offset."

*Response:* The "date of offset" is the date that Treasury's Financial Management Services actually offsets the tax refund. This date is sent to the State with the payment file.

9. *Comment:* One commenter mentioned a missing reference to paragraph (f)(3) in the amendatory language in the interim final rule.

*Response:* We have corrected that omission in this final rule. In addition, we have identified several other typographical and technical errors in the text of the interim final rule that we have corrected in this final document. These corrections appear in paragraph (b)(1), where we corrected the placement of the parentheses; in paragraph (b)(2), where we added the word "delinquency" which had been left out in error; in paragraph (d)(1), where we changed "of" to "for" in the phrase "referring past-due support of offset"; and in paragraph (i)(1), where we added "U.S." to the term "Department of Treasury" and we added the words "of the" between "amount" and "offset".

#### **Paperwork Reduction Act of 1995**

No new information collection requirements are imposed by these regulations, nor are any existing requirements changed as a result of their promulgation. Therefore, the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), regarding reporting and record keeping, do not apply.

#### **Regulatory Flexibility Analysis**

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Act.

#### **Regulatory Impact Analysis**

This final rule responds to comments on amended regulations on collecting child support arrears through the Federal Tax Refund Offset process. The changes make it easier for States to determine which cases are eligible for referral by eliminating certain

requirements. Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This rule is considered a "significant regulatory action" under the Executive Order and therefore has been reviewed by the Office of Management and Budget.

**Unfunded Mandates Reform Act of 1995**

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

The Department has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year.

**Congressional Review**

This regulation is not a major rule as defined in 5 U.S.C. chapter 8.

**Assessment of Federal Regulations and Policies on Families**

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations will not have an impact on family well-being as defined in the legislation.

**Executive Order 13132**

Executive Order 13132 on federalism applies to policies that have federalism implications, defined as "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, or on the distributions of power and responsibilities among the various levels of government". This rule does not have federalism implications for State or local governments as defined in the Executive Order.

**List of Subjects in 45 CFR Part 303**

Child support, Grant programs/social programs.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program)

Dated: June 28, 2004.

**Wade F. Horn,**  
*Assistant Secretary for Children and Families,*

Date Approved: August 6, 2004.

**Tommy G. Thompson,**  
*Secretary of Health and Human Services.*

■ For the reasons discussed above, title 45 CFR chapter III is amended as follows:

**PART 303—STANDARDS FOR PROGRAM OPERATIONS**

■ 1. The authority citation for part 303 continues to read as follows:

**Authority:** 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

■ 2. Amend § 303.72 by revising paragraphs (b)(1), (b)(2) introductory text, (d)(1), (d)(2), (f)(3), (g)(4), and (i)(1) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

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

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

\* \* \* \* \*

(d) \* \* \*

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

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

\* \* \* \* \*

(f) \* \* \*

(3) If the administrative review results in a deletion of, or change in, the arrears balance, the IV–D agency must notify OCSE within timeframes established by the Office and include the information

specified in paragraph (b) of this section.

\* \* \* \* \*

(g) \* \* \*

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

\* \* \* \* \*

(i) \* \* \*

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

\* \* \* \* \*

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AU02**

**Endangered and Threatened Wildlife and Plants; Interim Rule for the Beluga Sturgeon (*Huso huso*)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Interim rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, will allow the trade in beluga sturgeon (*Huso huso*) and its by-products, provided that specimens are accompanied by valid permits issued under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This interim rule will be effective until the publication of a final rule under Section 4(d) of the Endangered Species Act of