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**Office of Child  
Support  
Enforcement**

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**Policy  
Manual**

**Effective June 8, 2020**

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# Chapter 1

## INTRODUCTION

### 1.1 BACKGROUND INFORMATION

The Office of Child Support Enforcement is a division of the Department of Finance and Administration and is charged with administering the child support enforcement program within the state.

On January 4, 1975, Congress enacted Public Law 93-647. The law amended Title IV of the Social Security Act (referred to as the Act) by creating a new Part D, “Child Support and Establishment of Paternity.” Child support programs are also referred to as IV-D programs because the authority for the program is located within the Social Security Act, Title IV, Part D.

The child support program is a state and federal partnership with the purpose of promoting parental responsibility, securing financial support for children from their noncustodial parent, enhancing family self-sufficiency, and preventing or reducing reliance on public assistance. Each state, several U.S. territories, and many Native American tribes administer a child support enforcement program.

In the State of Arkansas, the child support program becomes involved in the establishment and enforcement of child support and medical support based on an application for services by the physical custodian of a child; by referral when the custodial party and/or children are recipients of TEA (which includes Arkansas Work Pays), Medicaid (which includes Arkansas Works and ARKids 1<sup>st</sup> A and B), or Supplemental Nutritional Assistance Program (SNAP); by referral when the noncustodial party is a recipient of SNAP; or based on a request for assistance from a child support program in another state, tribe, or country.

### 1.2 AUDIENCE

The Office of Child Support Enforcement (OCSE) Policy Manual is the official statement of policy used by staff in implementing the child support enforcement program in Arkansas.

### 1.3 PURPOSE

The purpose of the OCSE Policy Manual is to set forth agency policy utilized in the implementation of the child support enforcement program.

Unless otherwise stated, the information in this manual pertains to cases in which enforcement services are provided.



## 1.4 PREPARATION OF THE MANUAL

Policy for the OCSE Policy Manual is developed and promulgated pursuant to State law.

**NOTE: The codification of general and permanent rules, as published in the Code of Federal Regulations by the executive departments and agencies of the Federal Government, as well as Federal and State Law, supersedes policy set forth in the Arkansas OCSE Policy Manual.**

The OCSE Policy Manual will be available on the OCSE website at [www.childsupport.arkansas.gov](http://www.childsupport.arkansas.gov) until it is superseded. The superseded manual will be retained in agency files for three years as required by State law.

### 1.4.1 Common Terms Used in This Manual

Definitions of common terms and acronyms used in this manual are as follows:

- DHS – The Department of Human Services is also known as DHS.
- Federal OCSE – U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement is the federal government agency that oversees the national child support program.
- IV-D – The Social Security Act, Title IV, Part D provides the authority for the child support program; therefore, child support programs are referred to as IV-D programs and the cases they enforce are referred to as IV-D cases.
- Medicaid – For use in this manual, recipients of Medicaid may also include recipients of Arkansas Works or children who are receiving ARKids 1<sup>st</sup> A or B.
- OCSE – The Arkansas Office of Child Support Enforcement is also known as OCSE.
- SNAP – The Supplemental Nutrition Assistance Program is also known as SNAP.
- TEA – The Transitional Employment Assistance program is also known as TEA. It is Arkansas' program under the Federal Temporary Assistance for Needy Families (TANF) block grant. For use in this manual, recipients of TEA may also include participants of Arkansas Work Pays.

## 1.5 STRUCTURE OF THE PROGRAM

OCSE is state-administered and state-operated within the Department of Finance and Administration (DFA). Other sections of DFA that provide support services for OCSE include Administrative Services, Information Services, Personnel Management, Driver Services, Motor Vehicle, Revenue Legal Counsel, State Income Tax, State Procurement, Accounting, Budget, Intergovernmental Services, and Employee Benefits.

OCSE is the single and separate organizational unit responsible for administering the IV-D Program under the State Plan. The unit, supervised by the Administrator of OCSE, consists of Central Office, field offices, and the Arkansas Child Support Clearinghouse.

### **1.5.1 Central Office**

The Central Office for OCSE includes the Administrator and Management Staff who are charged with responsibility for specified areas. Operational functions are performed by Finance and Administration, Information Systems, Policy, Program Review, Communication and Outreach, General Counsel, Customer Service, Collections, and Program Support. The function of Central Office staff is to provide the necessary support services for field staff and to administer the program at the state level.

### **1.5.2 Field Offices**

Under direction of the Operations Manager, Field Managers are responsible for supervising the Regional and Extension Office Supervisors. Regional and Extension Office Supervisors are responsible, under the direction of the Field Managers, for supervising the field staff. The field staff are responsible for locating noncustodial parents and obtaining the information necessary to initiate administrative procedures to enforce orders or support legal action pursuant and limited to the purpose of the IV-D Program. The field staff work closely with the legal staff to ensure appropriate information is available to support the necessary legal action to collect child and medical support or establish paternity. OCSE attorneys represent neither the custodial party nor noncustodial parent, but rather the State's interest in seeing that children are provided for financially.

### **1.5.3 Arkansas Child Support Clearinghouse**

As required by federal law, OCSE operates the Arkansas Child Support Clearinghouse, also known as the State Disbursement Unit (SDU), for the collection and disbursement of payments under child support orders in IV-D cases (enforcement) and non-IV-D cases (payment processing). The Clearinghouse also provides necessary technical assistance and information to employers to ensure the collection and disbursement of payments.

## **1.6 FUNDING**

The Child Support Enforcement Program is supported by State General Revenue, fees collected from custodial parties and noncustodial parents, and federal funds.

## **1.7 PROGRAM GOAL**

The primary goal of OCSE is to work with parents and guardians to help establish and receive court-ordered child and medical support.

Child and medical support services are available to any individual, without regard to the person's state of residence, who has physical custody of a child and who applies for enforcement services. Recipients of TEA, certain mandatory Medicaid categories, and SNAP are automatically referred to OCSE for services from DHS.

OCSE provides the following services in cases that have been referred by DHS, referred from the child support program of another state, tribe, or country, or when a parent, guardian, or caretaker of a child has applied for services:

- Locate the noncustodial parent for the purpose of providing services
- Establish paternity of a child
- Establish an order for financial and medical support
- Enforce orders for financial and medical support
- Collect, distribute, and disburse child support payments
- Modify existing child and medical support orders

## **1.8 PUBLICIZING SUPPORT ENFORCEMENT SERVICES**

The availability of child and medical support enforcement services is publicized on a regular basis. This is accomplished through media announcements, brochures, presentations and participation by OCSE in various community events, and on the OCSE website. The information promotes the availability of child support services and provides resources where additional information may be obtained.

## **1.9 POLICY OF NONDISCRIMINATION**

OCSE complies with applicable federal and state civil right laws and does not discriminate on the basis of age, color, disability, race, national origin, sex, or religion.

# Chapter 2

## ADMINISTRATION

### 2.1 CASE CATEGORIES

OCSE has established the following as child support case categories.

#### 2.1.1 Enforcement Case

An open enforcement case is a case open with OCSE for full child support services or a case for medical support services only. These cases are open either by application, by referral from DHS, or are referred for full child support services by child support agencies in other states, tribes, or countries. These cases may also be referred to as IV-D cases.

##### *(a) IV-D Recovery Case*

A IV-D recovery case is an open enforcement case in which no current child or medical support is owed, but there are arrears owed to the state of Arkansas, the custodial party, or both. In these cases, the custodial party has requested services to collect the arrears.

#### 2.1.2 Split-Debt Case

A split-debt case is a former enforcement case in which current support and possibly arrears are owed to the custodial party and arrears are also owed to the state, but child support enforcement services are no longer being provided. Any child support payments received are paid to the family, with one exception; any collection received as an IRS Tax Offset will be used to collect what is owed to the state of Arkansas. OCSE will certify those debts owed to the state of Arkansas to the Federal Tax Offset Program for IRS tax intercept only and retain any collection to offset the amount owed to the state. The amount owed to the family is not eligible for certification under current federal regulations. No other enforcement remedies will be utilized to collect state debt while the case remains in this category.

#### 2.1.3 Payment Processing Case

A payment processing case is a case in which payments are received and disbursed through the Arkansas Child Support Clearinghouse and no other services are provided. These may also be referred to as non-IV-D cases because, even though payment processing is a function of the IV-D program, enforcement efforts as allowed by the IV-D program are not authorized.

The responsibility of OCSE in these cases is limited to receipt, recording, prompt disbursement, and responding to requests for information on the current status of support payments made through the Clearinghouse.

Services provided in payment processing cases are governed by federal regulation and are limited to the following services:

- Update the custodial party's address upon written request.

- Respond to inquiries regarding lost, stolen or destroyed checks issued by the Arkansas Child Support Clearinghouse.
- Provide payment histories upon the request of either party.
- Respond to calls regarding payments received and disbursed.
- Pursuant to federal rules, OCSE will provide a new income withholding notice redirecting payments to the Arkansas Child Support Clearinghouse based upon a request from an employer and after notice to the noncustodial parent and the custodial party.
- Perform routine locate activities of a custodial parent for the purpose of disbursement of a collection.

The following are services that cannot be provided in payment processing cases:

- Any enforcement action; for example, suspension of driver's license, interception of federal or state income tax refunds, passport denial.
- Process a refund of an overpayment.
- Inquire of a noncustodial parent or an employer why support payments ceased.

#### **2.1.4 Suspended Case**

Cases may be suspended for a specific date in the future only if there is a direct order by a court to cease all collection action as ordered by the court. When a case is suspended, all enforcement action and distributions stop.

## **2.2 ASSIGNED OFFICE**

### **2.2.1 Assigned Office**

#### ***(a) Open enforcement cases***

Cases in which child support enforcement services are provided are assigned to a local child support office responsible for a geographic area of one or more counties. The office responsible for working a case is the "assigned office." The following factors determine the office where the case should be assigned, listed in the order of priority:

1. Location of the Arkansas court that issued the order for child/medical support
2. Location of the custodial party
3. Location of the noncustodial parent

#### ***(b) Payment processing cases***

The Arkansas Child Support Clearinghouse is responsible for all payment processing cases.

### **2.2.2 Transferring Cases**

#### ***(a) Prior to the Establishment of an Order***

Prior to the establishment of a court order, unless a case is already pending in court, if facts indicate a case should be assigned to a different local child support office, the caseworker shall take immediate action to transfer the case to the correct office.

***(b) After the Establishment of an Order***

The OCSE Field Operations Manager or designee must approve all actions by OCSE to request transfer of a case from the jurisdiction of one court to another.

## **2.3 INFORMATION SAFEGUARD**

OCSE will not release information regarding members in an OCSE case except as permitted by federal or state law.

Release of information on the whereabouts of a party is permissible only if it is in connection with the administration of the Child Support Program, other limited purposes, or as specifically authorized by law. A violation of confidentiality shall constitute a Class B Misdemeanor.

It is unlawful to disclose to any committee or legislative body any information that identifies by name or address any applicant or recipient of OCSE child support enforcement services, except under limited circumstances.

### **2.3.1 Release Of Information Upon Request Of The Parties**

A custodial party or noncustodial parent is entitled to his or her own personal information contained in a case file. Court orders and pay records may be released to either requesting party. Personal information regarding the other party will not be released.

All requests for copies of information must be made in writing. Information may not be released over the phone. If a copy of an entire file is requested, then all information, including pay records and notes, will be released. However, the non-requesting party's address, work information, and Social Security number will be redacted.

Release forms and request letters will be maintained in the case file for documentation. Requested information will be mailed within five business days from date of receipt of the written request. No fee for copies will be charged.

Pursuant to Ark. Code Ann. § 9-14-210, OCSE may release information on the whereabouts of a party if the party requesting the information is the noncustodial parent or the custodial party. The noncustodial parent or custodial party must submit the request by an affidavit that clearly states the reason the information is requested and describes the unsuccessful attempts to acquire the information from other sources. The affidavit requesting release of information may be sent by first class mail to OCSE.

Within seven calendar days of receiving the request, OCSE will notify the party whose whereabouts are subject to disclosure that a request for location information has been made and that information will be provided within twenty calendar days of the date of the notice unless OCSE receives a copy of a court order prohibiting the disclosure or otherwise restricting the requesting party's rights to contact or visit the non-requesting party or children, or a request for an administrative hearing to contest the disclosure.

When an administrative hearing to contest the release of information is requested, OCSE will not disclose the whereabouts of a party until the administrative hearing is held or completed. If any reasonable evidence of domestic violence or child abuse is presented at the administrative hearing or by affidavit, and the disclosure of the last known address or any identifying information could be harmful to a party or the child, OCSE will not release the information.

### **2.3.2 Security of Case Records**

Case records will be stored in electronic files or in file cabinets accessible only to authorized OCSE personnel. These file cabinets will be maintained in a secure area, and locked when not in use.

### **2.3.3 Private Collection Agencies**

OCSE will not accept change requests forms or requests for information from a private collection agency. A “power of attorney” provided by a private collection agency will not be accepted. Custodial parties may seek optional remedies for the collection of obligated past due support. A custodial party may keep his or her OCSE child support case open while under contract with a private collection agency. As required by federal regulation, all payments received by OCSE will continue to be disbursed directly to the custodial party.

### **2.3.4 Reporting Breaches**

Federal and State law and regulation require that safeguard measures be in place to secure federal tax information (FTI), Personally Identifiable Information (PII), Federal Parent Locator Service (FPLS) information, and child support program information. Upon discovery of a possible improper inspection or disclosure of such information, employees shall follow OCSE procedures to report the incident to the appropriate authorities.

OCSE employees receive annual training for safeguarding information.

## **2.4 Case Records**

### **2.4.1 Maintenance Of Case Records**

The caseworker is responsible for the maintenance of a case record for each individual case in an assigned caseload. The record must contain all documents related to the case from the time of referral until closure. A written narrative containing a history of all contacts with the custodial party and noncustodial parent, all attempts to locate the noncustodial parent, all legal activity, any activity related to an adjustment of a disbursement of child support collections, and any other activity related to the case must be maintained in the data system.

### **2.4.2 Retention Of Case Records**

Local office staff must retain records for closed cases for a minimum of three years.

Field Managers or their designees may determine that a case record should be retained for a longer period.

The Field Manager, or a designee, will review case records selected for destruction and will arrange to have the case records destroyed by burning or shredding. The method of destruction must ensure the confidentiality of the contents of the case record.

## **2.5 SEPARATION OF CASH HANDLING AND ACCOUNTING FUNCTIONS**

Federal regulations require that individuals who have the responsibility of handling and issuing receipts may not participate in accounting or record keeping functions. The person who accepts payments and makes receipts must not be the same person who transmits and deposits monies. Procedures and internal controls are in place for handling payments. When payments are not being processed for distribution, they are locked in a secure file cabinet.

## **2.6 SECURITY OF PAYMENTS**

OCSE will ensure that every person who has access to or control over funds collected under the child support enforcement program is covered by a bond against loss resulting from employee dishonesty.

In order to ensure payments are received and credited in a timely manner, all payments should be made to the Arkansas Child Support Clearinghouse. Payments will not be accepted in the local office, with the exception of lump sum payments as a result of an agreement or a court order.

## **2.7 PROGRAM REVIEW**

Cases will be reviewed at regular intervals to ensure that case activities meet the program standards for completeness and timeliness as outlined in the Code of Federal Regulations; that fees are monitored to ensure that they are charged appropriately; that corrections and deletions are reviewed and approved; and that all case activities are properly narrated.

Reviews will be scheduled for each office on an annual basis. The review period will be the preceding 12 months. If the office fails to meet the standard for any criteria, a review will be scheduled after 6 months and only the criteria that failed will be reviewed. The Federal Self-Assessment review will be scheduled in October and includes sample cases from all OCSE offices. The review period for the Federal Self-Assessment review is the preceding 12 months from October through September.

Reviews are conducted using Arkansas Child Support Information Systems (ARCSIS) case screens including all imaged documents.



## **2.8 ADMINISTRATIVE REVIEW REQUEST**

A customer may ask for an administrative review to address any concern regarding his or her case. This informal process is useful in providing an explanation concerning various actions taken in his or her case or its status. Once a request for an administrative review is received, the appropriate office will review the case to determine if the action taken was appropriate and will respond to the customer in writing within ten days of receipt of the request.

An administrative review does not take the place of a formal administrative hearing that may be available under certain qualifying circumstances. It is not necessary for a customer to request an administrative review prior to requesting an administrative hearing. However, if the informal administrative process does not resolve an issue that qualifies for an administrative hearing, the customer's written request for an administrative review must also be treated as a request for an administrative hearing. In this instance, the date that the administrative review was first requested in writing will also be used as the date of the administrative hearing request. The customer must provide the information required in Chapter 9, Administrative Hearings, and meet all other requirements.

## **2.9 DOMESTIC VIOLENCE AND GOOD CAUSE CLAIMS**

### **2.9.1 Domestic Violence**

Parties who have experience domestic violence with the other parent should notify his or her caseworker immediately. The party may be asked to provide copies of any orders of protection or other information about the situation. OCSE will provide extra protection to information about the whereabouts of the parties.

### **2.9.2 Good Cause Claims**

*Good Cause* is a term used to identify cases where recipients of Medicaid, SNAP, or TEA are excused from cooperating with child support establishment and/or enforcement services. Good Cause may be made at any time during the life of a case. It should be submitted by the custodial party to DHS when the custodial party believes cooperation with OCSE would not be in the best interest of the child or would create a risk of harm to the child or the custodial party. When OCSE is notified of a Good Cause claim, OCSE will immediately discontinue activity on the case. If the claim is denied, then appropriate child support activities will resume.

In cases where the noncustodial parent has been referred to OCSE because he or she is a recipient of SNAP, but the custodial party does not receive any assistance through DHS, and the custodial party notifies OCSE that continuing to enforce the case is a danger to the custodial party or the children on the case, OCSE will close the child support enforcement case and notify DHS.

## **2.10 ARKANSAS REGISTRY OF CHILD SUPPORT ORDERS**

As mandated by federal and state law, all support orders issued or modified must be reported to each state's case registry (SCR). OCSE is responsible for the maintenance of the SCR, known as the Arkansas Registry of Child Support Orders.

The SCR maintains standard information regarding the parties to a child support order including but not limited to names, Social Security numbers, and other uniform identification numbers, dates of birth, case numbers, and case status.

When a support order exists for a IV-D case, the case record must also include the following:

- A record of the amount of periodic support owed under the order, and other amounts including arrearages, interest or fees due.
- Information on child support collected and distributed on each case.
- The birth date of any child for whom the order requires support.
- The amount of any lien imposed with respect to the support order.
- Payment history, provided by OCSE.

## **2.11 ACKNOWLEDGMENT OF PATERNITY PROGRAM**

The Acknowledgment of Paternity Program provides a simple way for the biological parents of a child to establish paternity if they are not married at the time of the child's birth.

OCSE provides written materials about paternity establishment to all public and private birthing hospitals in the State, forms necessary to voluntarily acknowledge paternity, and copies of a written description of the rights and responsibilities of acknowledging paternity. The rights and responsibilities of acknowledging paternity are explained and due process is safeguarded. OCSE must also provide training, guidance, and written instructions regarding voluntary acknowledgment of paternity as necessary to operate the hospital-based program and must assess each birthing hospital's program on an annual basis.

The OCSE Administrator and the hospital birthing center, certified nurse practitioner, or licensed midwife shall enter into cooperative agreements for compensation at a rate not to exceed \$20 for each valid Acknowledgment of Paternity (AOP) forwarded by the hospital, birthing center, certified nurse practitioner, or licensed midwife to OCSE.

A valid AOP must contain the signatures of both parents, and a notary must authenticate the parents' signatures. For children born in Arkansas after April 10, 1995, an AOP, properly executed during the child's minority, conclusively establishes the man as the father of the child, subject to modification pursuant to State law. For children born prior to April 10, 1995, paternity must be established by court order.

Additionally, the opportunity to acknowledge paternity after parents leave the hospital is provided in all Vital Records Departments, Health Departments, and all local child support offices located throughout the state.

### **2.11.1 Effect of Signing the Acknowledgment of Paternity**

The AOP forms the basis for establishment and enforcement of a child support or visitation order without a further proceeding to establish paternity. If the AOP is completed within 10 days after the birth of the child, the father's name will appear on the birth certificate. If the AOP is completed after 10 days, the mother may request an amended birth certificate showing the father's name. If the mother is married to someone other than the biological father at the time of birth, the mother, husband, and the biological father may use the AOP to establish paternity of the child and the biological father's name will appear on the birth certificate if completed within 10 days of the child's birth. If the AOP is completed later than 10 days after the birth and the husband's name appears on the birth certificate, a court order must be entered to allow the name of the father to be corrected. There is a space on the AOP that allows for change of the child's last name.

### **2.11.2 Rescinding the Acknowledgment of Paternity**

Any person who has signed an AOP may rescind the document within the earlier of 60 calendar days from the date of signing or prior to the date that an administrative or judicial proceeding, including a proceeding to establish a support order, is held relating to the child and the person executing the voluntary acknowledgment of paternity. Forms for this purpose are available at Department of Health, Division of Vital Records. Beyond the 60calendar day period, the acknowledged father must file a motion in court to set aside a paternity establishment pursuant to a voluntary acknowledgment of paternity based on an allegation that the acknowledgment was obtained by fraud, duress, or material mistake of fact. OCSE does not have the authority to assist the acknowledged father in the filing of such motions or in entering into an agreed order. The court may, after making such finding, direct the mother, the child, and the presumed father to submit to genetic testing for paternity. The burden of proof shall be upon the person challenging the establishment of paternity.

The duty to pay child support and other legal obligations shall not be suspended while the motion is pending, except for good cause shown. The specific basis supporting the good cause findings shall be recited in the court's order.

## **2.12 AVAILABLE RESOURCES**

### **2.12.1 Administrative Subpoenas**

The Administrator or a designee is authorized to issue an administrative subpoena for any financial or other information needed to establish, modify, or enforce a child support order to any individual or organization reasonably believed to have information on the financial resources of a noncustodial parent or putative father.

A court may compel compliance with an administrative subpoena, impose penalties for failure to comply of up to \$100 for each day after 60 days of receipt of a request, and may award attorney

fees and costs to OCSE upon proof that an individual or organization failed to comply with the subpoena without cause.

Subpoenas are served in the manner provided by law. OCSE will make and keep a record of all subpoenas issued.

### **2.12.2 New Hire Reporting**

The federal OCSE operates the National Directory of New Hires (NDNH), a database established for the purposes of assisting state child support agencies in locating parents and enforcing child and medical support orders. Arkansas law established the Arkansas New Hire Reporting Center, located within the Department of Workforce Services. Employers are required to report to the New Hire Registry information on newly hired and returning employees. OCSE receives New Hire records of noncustodial parents in open enforcement cases.

Information received by OCSE from the match is used for the sole purpose of establishing or enforcing child support obligations. When a match occurs, an income withholding notice and a National Medical Support Notice (NMSN), if appropriate, must be sent to the employer within two business days of the receipt of information.

### **2.12.3 Social Security Numbers**

State law mandates that all persons, agencies, boards, commissions, or other licensing entities issuing marriage or any occupational, professional, or business license must record the name, address, and Social Security number of each person applying for such licenses on the license application. This information is shared with OCSE for the purpose of locating individuals who owe child support obligations and for the enforcement of those obligations.

Those persons, agencies, boards, departments, commissions, or other licensing entities that issue 500 or more licenses each year, or that have a membership of 500 or more, are required to implement an automated data system capable of transmitting licensee information to OCSE. The license database may be transmitted or made available to OCSE quarterly.

The name of any member or representative of a licensing entity refusing to provide license information to OCSE will be certified by OCSE to the Office of the Governor and to the Arkansas Legislative Council.

Member and applicant Social Security number information is not released publicly and is not subject to disclosure under the open public record requirements of the Arkansas Freedom of Information Act. Disclosure of Social Security information without the consent of the individual or without court authorization is a Class B misdemeanor.

### **2.12.4 Specific Request for a Credit Report**

If requested by the Administrator of OCSE, the Consumer Reporting Agency must provide a copy of a credit report if the report is needed to establish an individual's ability to pay child support or to determine the appropriate level of payments. The reports are kept confidential and used for that purpose only. The report may not be used for any civil, administrative or criminal proceeding, or any purpose other than determining the ability to pay or the appropriate amount of

child support payments. OCSE must notify the noncustodial parent in writing, by certified mail, 10 calendar days prior to requesting a Consumer Report.

### **2.12.5 Federal Case Registry**

As mandated by federal law, the Federal Case Registry (FCR) is a national database that includes all child support cases handled by state child support agencies (referred to as open enforcement or IV-D cases) and all support orders established or modified on or after October 1, 1998 (referred to as non-IV-D cases). It is a database that contains basic case and participant data from each of the state case registries (SCR). SCRs are central registries of child support cases (IV-D cases) and orders (non-IV-D orders) in each state.

The FCR assists states in locating parties that live in different states to establish, modify, or enforce child support obligations; establish paternity; enforce state law regarding parental kidnapping; and, establish or enforce child custody or visitation determinations.

### **2.12.6 IRS Full Collection Service**

Past due child and medical support for TEA, Medicaid, SNAP, and non-TEA full OCSE services cases can be referred to the IRS to be collected as if unpaid child support were a delinquent tax debt. To be eligible for the IRS full collection service, a court order must exist, and arrears must be at least \$750. Request for use of full collection services must be approved by the Administrator of Arkansas OCSE and reviewed by the federal OCSE Regional office. Referrals to the IRS Full Collection Service are made by the state to which an assignment of support rights or a non-TEA application for child support services has been made.

### **2.12.7 United States District Courts**

The United States District Courts may be used to enforce the court order of an Arkansas court of competent jurisdiction against a noncustodial parent in another state. An application for using the U.S. District Court must be submitted to the federal OCSE Regional Office by the Arkansas OCSE Central Office.

### **2.12.8 Federal Parent Locator Service**

The Federal Parent Locator Service (FPLS) is a national locate system managed by the federal OCSE and contains information to help states locate parents and establish and enforce child support orders.

Central Registry within Central Office processes requests for information through the State Parent Locator Services (SPLS) and Federal Parent Locate Services (FPLS).

SPLS is utilized to respond to requests for locate information from other state child support agencies needed for establishing paternity, and/or securing child/medical support for dependent children. Additionally, the SPLS may accept authorized requests from IV-B (Child Welfare Services) or IV-E (Foster Care) agencies as well as acting as the conduit for submitting authorized requests through the FPLS. Authorized external requests are processed by Central Registry.

Disclosure of FPLS information to an authorized person is prohibited if a state has notified the FPLS that the state has reasonable evidence of domestic violence or child abuse and that disclosure of such information could be harmful to the custodial party or the child of such parent.

***(a) Requests through the SPLS for Information from the Federal Parent Locate Services (FPLS)***

Federal regulations require state child support agencies to honor and submit authorized requests for FPLS location information using the State Parent Locator Service (SPLS).

The information that may be made available through the FPLS is controlled by federal law and regulation and will vary based on the role or identity of the requestor and the purpose for which the information is requested. Information may be used or disclosed only as expressly permitted by federal law and regulation. The requestor must attest that the information will be used for an authorized purpose, that any information received will be treated as confidential, and provide evidence that the requestor is an authorized person.

Authorized federal attorneys or agents may request FPLS information directly from the federal OCSE and do not submit their request through the SPLS.

***(b) Safeguards When Using Federal Parent Locate Services (FPLS)***

All information obtained from the use of FPLS will be treated as confidential and safeguarded as required by the provisions of OCSE Policy, Chapter 2. Arkansas OCSE annually certifies to the FPLS that the information requested is for purposes specified in federal law and regulations and that specific safeguards are in place.

Central Registry is responsible for storing data collected and otherwise ensuring the confidentiality of the data. Information obtained through a FPLS request will be forwarded directly to the requestor. No other use of the information will be made, and any records related to the request that are confidential in nature will be destroyed.

***(c) Documents***

All documents associated with FPLS that contain confidential information concerning noncustodial parents will be accessible only to authorized OCSE personnel. All such documents will be maintained in a secure, locked area when not in use.

Computer files and documents will be protected by security measures in place in data processing and administrative services sections. Printouts and other computer documents generated for use by OCSE will be disposed of in such a manner that none of the contents come into the possession of unauthorized persons.

### **2.12.9 Child Support Enforcement Network**

Child Support Enforcement Network (CSENet) is a nationwide network which links state child support enforcement systems. States use CSENet to electronically request or report location, paternity and support establishment, enforcement, and collection information.

## **2.13 SERVICE OF PROCESS**

### **2.13.1 Guidelines For Diligent Efforts To Obtain Service Of Process**

Attorneys representing OCSE are responsible for selecting the appropriate method of service. The method must be selected and action taken to obtain service within three business days of the date on which the Summons or Contempt Citation was issued.

### **2.13.2 Monitoring The Request For Service Of Process**

#### **(a) Service by Sheriff or Process Server**

- If proof of service has not been returned within 14 calendar days of mailing, the sheriff or process server must be contacted to determine whether service has been obtained and, if not, whether the address provided has been determined to be inaccurate.
- If the address is inaccurate the attorney must immediately refer the case to the caseworker for relocate. The caseworker shall attempt to relocate the party and provide the attorney with a new address for service of process.
- If service is still being attempted using the address provided, follow up shall be made again 14 calendar days afterwards.

#### **(b) Service by Restricted Delivery Mail**

- If the return receipt is not received within 30 calendar days, it shall be assumed that the service is unsuccessful, and request for service must be sent to the sheriff or process server within 35 calendar days after the restricted delivery was mailed.
- If the restricted delivery service is returned unclaimed, but with the appearance that the address is still good, request for service shall be sent to the sheriff or process server within two business days.
- According to applicable Rules of Civil Procedure, if the restricted delivery service is returned marked "Refused" by the post office, it shall be re-mailed by first class mail within two business days of the return along with a notice that despite such refusal the case will proceed and that judgment by default may be entered against the defendant unless he or she appears at the hearing.
- If the restricted delivery service is returned with an indication that the address is no longer good, the file shall be referred to the caseworker for relocate immediately.

All efforts of service of process must be documented in the case file and ARCSIS note screens.

## **2.14 LONG-ARM JURISDICTION**

Arkansas courts may exercise jurisdiction over a putative father or a legal father who resides in another state when any of the following conditions provided in state law are met:

- The individual is personally served with a summons within Arkansas.
- The individual submits to the jurisdiction of this state by entering a general appearance or by filing a responsive document having the effect of waiving any consent to personal jurisdiction.
- The individual resided with the child in Arkansas.
- The individual resided in Arkansas and provided prenatal expenses or support for the child.
- The child resides in Arkansas because of the acts or directives of the individual.
- The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse.
- The individual asserted parentage in the Putative Father Registry maintained in Arkansas by the Department of Health.
- There is any other basis consistent with the constitutions of Arkansas and the United States for the exercise of personal jurisdiction.

The long-arm provision should be used before any other intergovernmental action when it is confirmed that the putative father lives in another state and when permitted under state law.

The long-arm provision applies to the establishment of paternity and/or the establishment of a support order.

**Note: Uniform Interstate Family Support Act recognizes that an intrastate case is preferable to an intergovernmental case. Therefore, only pursue intergovernmental remedies when all avenues for intrastate relief have been exhausted.**

## **2.15 SOCIAL SECURITY NUMBER REQUIREMENT**

Federal law requires the recording of a Social Security number (SSN) for any individual who is subject to a divorce decree, support order, or paternity determination or acknowledgement to be recorded in certain family matters. Each recipient of services is asked to provide an SSN.

Federal law requires that any Federal, State, or local government agency which requests an individual to disclose his or her SSN shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it. Accordingly, for purposes of implementing federal law, individuals are informed that disclosure is mandatory, pursuant to section 466(a)(13) of the Social Security Act, and that it will be used under the child support enforcement program to locate individuals for purposes of establishing paternity and establishing, modifying, and enforcing support obligations.



# Chapter 3

## CASE INITIATION AND LOCATE

### 3.1 OPENING A CASE

#### 3.1.1 Custodial Party Request

Child support services are available to custodial parties who submit a questionnaire and/or application, as appropriate, with OCSE for services. OCSE charges a nonrefundable application fee of \$25.00 to any person who files an application with OCSE for services under Title IV-D of the Social Security Act. The applicant for services does not have to be a resident of Arkansas.

- OCSE will provide an application to any custodial party who makes the request. The applicant for services cannot be the child.
- OCSE will provide child and medical support services to any custodial party who applies on behalf of a child and will enforce any support obligation established for a child or the custodial party of a child receiving services.
- Children listed in the application for services must be under the age of 18 if no court order for child support exists. Custodial parties may apply to recover unpaid child support if the youngest child is between the ages of 18 and 23 and the amount to be recovered is based on a court order. The custodial party of a child over the age of 23 may apply for services if a court order exists; however, the case may be eligible only for federal tax offset if there is no judgment on arrears.
- OCSE will not provide services if the noncustodial parent is deceased.
- All appropriate child and medical support services will be provided. For example, the applicant cannot request paternity establishment but no support order, or a support order but no income withholding. The exception is that in Medicaid-only cases, the applicant may elect in writing to receive only services related to securing medical support.
- OCSE will address the medical support needs of the child, which may result in either the noncustodial parent or the custodial party being responsible for providing health care coverage.

Applications for child support services are available on the OCSE website at [www.childsupport.arkansas.gov](http://www.childsupport.arkansas.gov) or interested parties may contact the local child support office.

When the request is made in person, the application for services is to be provided on the date of request. When a request is made in writing or by telephone, the application must be mailed to the requestor within five business days. A log will be kept for all requests for an application.

Completed requests for service packets may be submitted to a local child support office or mailed to OCSE Central Registry, P.O. Box 8133, Little Rock, AR 72203. Upon receipt, the request for service packet and all supporting documents will be forwarded to the appropriate local child support office for processing. If an application is received in a local office, the office reviewing the completed application for new or reopened cases must process the application locally and may transfer the case to another office, if appropriate.

The applicant must complete a separate application for each noncustodial parent named in the request for child support enforcement services and pay a separate application fee, as appropriate, for each noncustodial parent. Any supporting documents, such as divorce decrees, orders for child and medical support, and all modifications to original orders, should be included with the application. If an application is incomplete to the extent that work on the case cannot begin, the application, application fee, and all forms and documents will be returned to the applicant.

A letter of acceptance will be sent to the applicant. If the application is incomplete to the extent that work on the case cannot begin (e.g., the contract is not signed or the noncustodial parent or child is not listed), the application and fee will be returned to the applicant for completion. Otherwise, the application will be accepted, entered in the data system, and sent to the appropriate caseworker. The OCSE caseworker will contact the custodial party for any additional information needed. If the applicant requests services that cannot be provided, the Request for Services packet will be returned to the applicant with a cover letter stating the reason(s) why the application was rejected.

#### ***(a) Child-Only Medicaid***

A child-only Medicaid case is one in which the children are receiving Medicaid (including ARKids 1<sup>st</sup> A or B), the custodial party is not receiving Medicaid, and there is no assignment of medical support or requirement by DHS that the custodial party cooperate with OCSE. Custodial parties in these cases may apply for child support services by completing and signing an application and contract for services.

No application fee, costs, or other fees are charged to the custodial party in these cases. No recovery of previously charged fee balances will be made as long as a party on a case is receiving Medicaid.

#### ***(b) Minor Parents***

Requests for services are not accepted from minors. A parent or guardian of a minor may apply to establish support for the child of the minor.

### **3.1.2 Referrals**

Cases are referred to OCSE when a custodial party and child is receiving TEA, Medicaid, or SNAP benefits. A case will also be referred if a noncustodial parent receives SNAP benefits. Costs and fees for child support enforcement services are not charged to the custodial party in these cases, and no recovery of previously charged fee balances will be made as long as the party referred for services and/or the child are receiving those benefits. DHS may make a referral for a child in foster care.

**(a) TEA**

As a condition of receiving TEA benefits, custodial parties are required to cooperate with OCSE in establishing paternity if necessary, establishing a child and medical support order, and enforcing that order. By accepting a monetary grant for or on behalf of a child, the custodial party assigns to the State any rights to child support. DHS is responsible for notifying each applicant in writing that acceptance of assistance will result in an automatic assignment of support rights.

**(b) Mandatory Medicaid**

Cooperation is required for Medicaid cases referred to OCSE where the custodial party and the dependent are both recipients of Medicaid benefits. In these cases, the full range of child support services are provided, unless the custodial party elects in writing to receive medical support services only.

**(c) SNAP**

As a condition of receiving SNAP, both custodial and noncustodial parents or putative fathers are required to cooperate with OCSE in establishing paternity if necessary, establishing a child and medical support order, and enforcing that order.

**(d) Cases with Both Parents in the Home**

DHS may refer cases to OCSE when both parents are living in the home if **paternity is an issue**. OCSE will assist the parents to acknowledge paternity by administrative process, including DNA testing if requested by one of the parents. **When paternity is established, the case will be closed with appropriate notice.**

**3.1.3 Foster Care Cases**

DHS may refer a case to OCSE when appropriate. DHS is the custodial party in these cases and may refer a separate case for each parent as the noncustodial parent.

Once the child is removed from Foster Care, the case may remain open if the child was placed in the custody of one of the parents. If the child was placed with another relative or caretaker, that party must apply for services or be referred by DHS based on other assistance programs.

**3.1.4 Treatment Facilities**

OCSE may receive a Medicaid referral for cases in which a child under 18 has been placed in a treatment facility, if there was a noncustodial parent absent from the home at the time of placement, and an OCSE case is open against that absent parent - not against both parents. If both parents are in the home at the time of placement and the placement was not due to abuse or neglect on the part of the parents, OCSE is not required to provide services. DHS makes the determination and refers cases as appropriate.

## **3.2 INTERGOVERNMENTAL CASES**

Child support services in intergovernmental cases are provided in cooperation with the child support program in another state or tribe, or a country which is a member of the Hague Convention or which has a reciprocal agreement with the United States. State law, the Uniform Interstate Family Support Act (UIFSA), and the Hague Convention regulate the processing and enforcement of intergovernmental cases.

### **3.2.1 Arkansas as the Responding State**

Arkansas is the responding state when another state, tribe, or country requests assistance because it is unable to use their Long-Arm Statute for the establishment of paternity and support or requires assistance in the enforcement or modification of an obligation.

All available action will be taken according to Arkansas state law. Arkansas OCSE will assess and recover cost and fees as described in Chapter 8, Section 8.1 Cost/Fees For Service of this document in intergovernmental cases, when applicable. Any fee deducted will be identified when payments are forwarded to the initiating state.

Central Registry, a section within Central Office, receives all incoming intergovernmental OCSE cases.

Within 10 business days of receipt of a case from the initiating state, the Central Registry must ensure that documentation submitted with the case has been reviewed to determine completeness, forward the case for necessary action either to the State Parent Locate Service for location service or to the appropriate agency for processing, acknowledge receipt of the case, and ensure that any missing documentation has been requested from the initiating state. The Central Registry must respond to inquiries from other states within five business days of receipt of the request for a case status review of cases that have not yet been forwarded to the local office.

Central Registry will refer intergovernmental cases to the appropriate caseworker. The caseworker must provide location services if the information provided is inadequate or at the request of the initiating state within 75 calendar days of the referral of the case.

If the noncustodial parent is located in a county other than where initially located and there is no Arkansas court order, the case must be transferred to the appropriate county within 10 business days of verifying the noncustodial parent's location. If an Arkansas court order already exists, the case will be assigned to the county that issued the order. New information acquired while working the case must be transferred to the appropriate county within 10 business days of verification.

If the noncustodial parent is located in another state, Arkansas OCSE must notify the initiating state within 10 business days of the verification of the noncustodial parent's location. Arkansas OCSE, as the responding state agency, must return the form and documentation, including the new location, to the initiating state. Or, if directed by the initiating state, Arkansas OCSE must forward the form and documentation to the Central Registry in the state where the noncustodial parent has been located and notify the initiating state where the case has been sent.

The caseworker will provide all services necessary to locate noncustodial parents, establish paternity and child and medical support orders, and enforce existing child and medical support orders. OCSE will recognize and extend full faith and credit to court orders and affidavits acknowledging paternity issued in another state unless and until a court of competent jurisdiction directs otherwise. The caseworker will employ all remedies available under State law and OCSE policy to ensure compliance in intergovernmental cases. The caseworker must provide location services if the information provided is inadequate or at the request of the initiating state within 75 calendar days of the referral of the case.

Arkansas OCSE, as the responding state agency, must pay the costs of processing intergovernmental cases, including the cost of paternity testing in actions to establish paternity. If paternity is established in Arkansas, an attempt to obtain a judgment for costs of paternity testing from the father will be made.

If an order of support exists in any other state and the order cannot be enforced without court action, the caseworker will forward the case to the legal section so the existing order can be registered.

In an intergovernmental case, the state that initiated the case is OCSE's customer. It is not the responding state's responsibility to be in direct contact with the custodial party in the initiating state. However, it is the caseworker's responsibility to keep the initiating state informed of significant actions taken in the case so that the initiating state can keep the custodial party informed as to the status of the case.

### **3.2.2 Arkansas as the Initiating State**

Arkansas is the initiating state when it requests the assistance of the child support program of another state, tribe, or country because it is unable to use its Long-Arm Statute for the establishment of paternity and support or requires assistance in the enforcement or modification of an obligation.

If paternity or support has not been established, the local office should attempt use of long arm jurisdiction as outlined in Chapter 4 of this document, Long Arm Paternity, to establish paternity and support whenever appropriate. When a noncustodial parent is located in another jurisdiction, the case must be referred to the other jurisdiction within 20 days of determining that intergovernmental services are needed and receipt of all necessary information.

Sufficient and accurate information and documentation must be provided to the responding child support program.

When the responding state requests information, the local Arkansas OCSE office must provide that information within 30 calendar days or must notify the responding state when the information can be provided.

When new information has been verified, the responding state must be notified within 10 business days of the receipt of the information.

A request for status of a nonpaying case will be sent to the responding state every 90 calendar days until payments have been obligated or restored.

### **3.2.3 International Cases**

International requests for services will be accepted from all countries, regardless of whether they are a member of the Hague Child Support Convention or countries with which the United States has a reciprocal agreement. State IV-D agencies must meet the same case processing timeframes when working on international cases as in interstate cases. Other countries may not be able to respond to requests from states within the timeframes that apply to interstate cases. Sufficient time must be allowed for other countries to process requests; therefore, close communication with the other country is imperative.

## **3.3 COOPERATION REQUIRED**

Cooperation in the establishment or enforcement of a case is required in all cases, as well as keeping OCSE informed of changes in address or contact information.

### **3.3.1 Cooperation by Custodial Parties Who Apply for Services**

If a custodial party who applied for services does not cooperate with OCSE and that cooperation is essential for the next step in providing IV-D services, OCSE may initiate case closure procedures in compliance with established policy.

### **3.3.2 Cooperation by Parties Who Are Recipients of Certain Services**

Custodial parties who are recipients of TEA, certain Medicaid, and/or SNAP, are required to cooperate to avoid a possible reduction of benefits. Noncustodial parents who are recipients of SNAP are also required to cooperate to avoid a possible reduction of benefits.

#### ***(a) SNAP Recipients Who Are Noncustodial Parents or Putative Fathers***

Noncustodial parents and putative fathers who have been referred for child support services must cooperate in establishing paternity if the child was born out of wedlock and in providing support for the child unless a good cause determination has been made by DHS. Cooperation may include providing requested information, appearing for appointments and hearings, participating in testing for paternity establishment, and compliance with the terms of an order for support.

#### ***(b) Reporting Non-Cooperation Of Parties***

If a party who receives TEA, Medicaid, or SNAP and whose cooperation is mandatory as a condition of receiving those benefits, willfully fails to comply with any of the cooperation requirements, he or she will be considered non-cooperative unless a Good Cause finding has been determined by DHS.

If OCSE concludes that the party has willfully failed to comply, a notice will be sent by certified mail and will summarize the facts constituting the finding of non-cooperation. The party must cooperate or request an administrative hearing to contest the finding of noncooperation within 10 business days from the date the notice or DHS will be notified of the finding and may apply appropriate sanctions.

After the 10-day period referenced above, and even though DHS has been notified of non-cooperation, the party continues to have the right to request an administrative hearing within 30 calendar days of the date on the notice.

OCSE will continue to pursue child support efforts to the extent possible after DHS has been notified of non-cooperation

If at any time the party provides OCSE with the requested information needed for working the child support case, OCSE will notify DHS that the party has cooperated.

### **3.3.3 Custodial Parties Ordered to Provide Medical Support**

When the custodial party is ordered to be responsible for providing medical support, and if insurance is available through the custodial party's employer but is not being provided, OCSE will send a National Medical Support Notice (NMSN) to the employer. If employer-sponsored insurance is not available, a notice will be sent to the custodial party advising that he or she will have 30 days to comply with the NMSN. Failure to respond will be considered non-cooperation.

### **3.3.4 Mandatory Information Updates**

Upon the entry of an order, the noncustodial parent and custodial party must keep OCSE updated with their current residential and mailing address, Social Security number, telephone number, driver's license number, and their employer's name and address if child support payments are paid through the registry of court or the Arkansas Child Support Clearinghouse.

## **3.4 INITIATION**

Within 20 calendar days of receiving an application or the referral of a case, the local office must establish a case record and assess the information provided to determine the next appropriate action, which may include any of the following:

- Interviewing the custodial or noncustodial party
- Initiating verification of information
- If location information is inadequate, initiating locate efforts

## **3.5 LOCATE**

*Locate* is defined as obtaining information concerning the physical whereabouts and verifying information regarding the address, employment, and/or financial ability of a parent to provide support.

Any IV-D child support agency may request information regarding the assets or whereabouts of a noncustodial parent from any individual, financial entity, business or corporation, as defined in State law. The information requested or a statement that no information is available must be sent to OCSE within 30 days of the receipt of the request. A business or financial entity shall be liable

for civil penalties of up to \$100 for each day after the 30-day period in which it fails to provide the information. Any business, financial entity, officer, agent, or employee of such entity participating in good faith and providing information requested is immune from liability and suit for damages that might otherwise result from the release of the information to OCSE.

The caseworker is required to access all appropriate locate resources, including FPLS, and evaluate the responses within 75 calendar days of determining that location is necessary. Repeated attempts must be made quarterly, or immediately upon receipt of new information. These attempts may be automated but must include accessing Department of Workforce Services screens. FPLS must be accessed at least annually. Within 20 calendar days of determining the noncustodial parent is in another state, the caseworker must request assistance from the Central Registry in that state.



# **Chapter 4**

## **ESTABLISHMENT**

### **4.1 ESTABLISHMENT OF PATERNITY**

If the parents are not married when a child is born, paternity must be established before a child and medical support obligation can be established.

OCSE is not required to attempt to establish paternity in any case involving incest, forcible rape, or any case in which a legal proceeding for adoption is pending, if, after review and approval of an OCSE Field Manager, it is determined that to do so would not be in the best interest of the child.

If the paternity of a child has not been established at the time a case opens for child support services, the custodial party must identify the father of the child. OCSE will notify the putative father that it is alleged that he is a biological parent of a child and will provide an opportunity for the parties to voluntarily acknowledge paternity or request genetic testing to determine if he is the father of the child.

#### **4.1.1 Establishing Paternity When a Parent is Deceased**

If the putative father is deceased, OCSE will not accept referrals or an application to establish paternity.

State law authorizes genetic testing to establish paternity if the biological mother is deceased or unavailable (whereabouts are unknown). If the mother is deceased or unavailable, a relative who is willing to submit to genetic testing may be included in the testing process. The testing lab will advise OCSE regarding the participation of the relative.

OCSE will open a case and attempt to establish paternity and a support order in the case if the mother is the deceased parent and the child is living with a caretaker relative such as an aunt or grandmother.

#### **4.1.2 Establishing Paternity When a Parent is Incarcerated**

OCSE will not initiate court action to establish paternity while a putative father is incarcerated. The caseworker will contact the putative father and provide an opportunity for him to voluntarily acknowledge paternity by signing the AOP or request genetic testing. However, no other action to establish paternity may proceed while the putative father is incarcerated.

#### **4.1.3 Establishing Paternity When a Parent is in Bankruptcy**

Paternity may be established even though the noncustodial parent has filed bankruptcy without having to seek relief from the automatic stay. If OCSE receives a notice of bankruptcy, the attorney must review the case to determine the next appropriate action.

#### **4.1.4 Establishing Paternity by Voluntary Acknowledgment of Paternity**

OCSE will offer both parents the opportunity to establish paternity by completing the Acknowledgement of Paternity (AOP). If both parties complete the AOP, paternity is legally established and OCSE will take no other action to establish paternity.

##### ***(a) Rescinding the Acknowledgment of Paternity***

If either person who signed the AOP may rescind the document within the earlier of 60 calendar days from the date of signing and prior to the date that an administrative or judicial proceeding, including a proceeding to establish a support order, is held relating to the child and the person executing the voluntary acknowledgment of paternity.

OCSE does not have the authority to assist the acknowledged father in rescinding the acknowledgment of paternity. Forms for this purpose are available from the Department of Health, Division of Vital Records.

#### **4.1.5 Paternity Testing**

##### ***(a) Putative Father Requests Testing***

If the person named to be the putative father of a child disputes that he is the biological father, he may request genetic testing. OCSE will schedule testing through a court-approved genetic testing company.

##### ***(b) Administrative Order for Testing***

If the putative father does not respond to the initial request from OCSE for contact or if he responds but does not want to sign the AOP or submit to genetic testing, OCSE may issue an administrative order for paternity testing that will require the mother, putative father, and minor child to submit themselves for paternity testing. OCSE will cause a copy of the administrative order for paternity testing to be served by certified mail on the mother and putative father.

Any party to an administrative order for paternity testing may object to the order and request an administrative hearing within 20 days of receiving the order. The purpose of the administrative hearing will be limited to whether the paternity testing under the administrative order should be conducted.

##### ***(c) Court-Ordered Testing***

If the putative father does not respond to the initial contact letter or declines to cooperate with administrative paternity testing, OCSE will initiate a court action to establish paternity.

##### ***(d) Results of Testing***

If the results of paternity testing establish a probability of inclusion that the putative father is the biological father of the child, OCSE will file a complaint for paternity and child support in the circuit court.

### ***(e) Paternity Testing After Paternity is Established by a Court Order***

State law allows a man who has been adjudicated to be the father or who has acknowledged paternity of a child who has not had a genetic test previously to have one paternity test at any time during the time in which he is ordered to pay support. If an acknowledgment of paternity was signed, paternity may be challenged only on an allegation of fraud, duress, or material mistake of fact. OCSE will not initiate this action on behalf of the noncustodial parent. OCSE will not suspend the collection of support while any action pursuant to this code section is pending, unless otherwise ordered by the court.

The noncustodial parent may petition the court asking for paternity testing if paternity and support were established without testing. OCSE cannot assist the noncustodial parent in the filing of such petitions and will not enter into an agreed order for paternity testing in such circumstances. If the court determines, based upon the results of genetic testing, that the adjudicated or presumed father is not the biological father, the court will set aside a previous finding or establishment of paternity; find that there is no future obligation of support; order that any unpaid support owed under the previous order is vacated; and order that any support previously paid is not subject to refund.

## **4.2 ESTABLISHMENT OF CHILD SUPPORT**

### **4.2.1 Overview**

OCSE will initiate actions to establish paternity (when necessary) and support in the appropriate circuit court on behalf of customers of OCSE with an open enforcement case. When the custodial party receives assistance or has contracted with OCSE for support services, a petition may be filed to require the noncustodial parent or both parents, if the child has been placed in Foster Care or with a guardian, to provide support. The most recent Family Support Chart must be used to determine the amount of support.

#### ***(a) Social Security Benefits***

**Supplemental Security Income (SSI)** - The Arkansas Supreme Court has held that an order for child support payments may not be based upon income from Supplemental Security Income benefits.

**Social Security Disability (SSD)** - When establishing support when disability benefits are being paid, the spouse and dependent benefit will be taken into account in determining the noncustodial parent's income. For example, the noncustodial parent's benefit amount plus any separate awards made to the disability recipient's spouse and children equals the total income for the noncustodial parent as defined by the Arkansas Supreme Court's guidelines for setting support.

#### ***(b) Bankruptcy***

Child support may be established even though the noncustodial parent has filed bankruptcy without having to seek relief from the automatic stay. If OCSE receives a notice of bankruptcy, the attorney must review the case to determine the next appropriate action.

### ***(c) Establishing Support When a Noncustodial Parent is Incarcerated***

OCSE will not initiate court action to establish child or medical support while a noncustodial parent is incarcerated. An order for support will be sought after the noncustodial parent has been released.

Incarceration is defined as being convicted and sentenced to a term of imprisonment in a state or federal correctional facility, including noncustodial parents who have been convicted and are housed in a county jail awaiting transfer to a state or federal correctional facility.

#### **4.2.2 Proof Of Income**

OCSE will include in all petitions for an order for child support that the custodial party be entitled to request proof of income annually, in writing by certified mail to the noncustodial parent and that the noncustodial parent must respond by certified mail to the request within 15 calendar days of receipt.

## **4.3 ESTABLISHING MEDICAL SUPPORT**

### **4.3.1 Overview**

Every court order must address the medical support needs of the children. If a new case is opened for enforcement with an existing court order that does not address medical support, the child support will be enforced as ordered; medical support will be addressed the next time the order is modified.

The custodial party can choose to be the person responsible for providing medical support by indicating his or her choice on the application for services and providing proof of coverage. Any form of private or public healthcare coverage qualifies as an acceptable form of medical support.

If the custodial party does not indicate he or she wishes to be the person responsible for providing medical coverage, OCSE will interview both parties and review employer records to determine the availability of health care coverage. OCSE will present information to the court so that a determination can be made as to which party is in the best position to provide coverage.

Each order will address who should provide coverage and whether the other party should contribute to the cost of the premium, or that neither party has health care coverage available that is reasonable in cost and accessible to the child. “Reasonable cost” as it pertains to insurance premiums and/or cash medical support and “accessible coverage” are defined in the Arkansas Supreme Court Guidelines for Setting Child Support Obligations (Administrative Order #10).

If employer-sponsored healthcare is available and the custodial party or noncustodial parent who is ordered to provide medical support has not provided proof of alternative coverage, a National Medical Support Notice (NMSN) will be sent to the appropriate employer.

Once medical support is established, OCSE will provide information to the custodial party and the Medicaid agency (if the children are receiving Medicaid benefits) regarding the health care

insurance policy including, but not limited to, the name, address and phone number of the health care insurance organization, benefits covered under the plan, the policy number, claim forms, membership card, and any other information needed to file a claim.

### **4.3.2 Authorized Inquiries**

Federal law protects the individual's right to privacy with regard to his or her medical histories and medical insurance coverage. For the purposes of preparing for court, OCSE has the authority to request the availability of medical support from employers. OCSE may also ask employers if children listed in the case are covered, but not about other children the employee may have covered.

## **4.4 EXPEDITED PROCESS FOR ESTABLISHMENT CASES**

Federal regulations and State law require that action to establish child support obligations be taken within certain time frames. OCSE must, within 90 calendar days of locating the putative father or noncustodial parent and regardless of whether paternity has been established, establish an order for support, complete service of process necessary to commence proceedings, or document unsuccessful attempts to serve process despite diligent efforts to obtain service of process. If the court dismisses a petition for a support order without prejudice, OCSE must, at the time of dismissal, examine the reasons for dismissal and determine when it would be appropriate to seek an order in the future.

Additionally, in all cases in which an order of support needs to be established and regardless of whether or not paternity has been established, action to obtain the order of support must be completed within 6 months of the date of service in 75% of such cases and within 12 months from the date of service in 90% of such cases.

If long-arm jurisdiction rules to establish paternity and support are used, paternity establishment and/or support order establishment should be completed within 12 months of service of process. Paternity establishment and support order establishment should be completed as one action when appropriate.

# Chapter 5

## ENFORCEMENT

### 5.1 ENFORCEMENT OF SUPPORT OBLIGATIONS

#### 5.1.1 Overview

OCSE will pursue collection of child and medical support obligations and utilize all appropriate administrative and judicial remedies available under State law. Once an order is established, the noncustodial parent is responsible for making payments by the date set in the order. Enforcement of support obligations will be initiated on the date the noncustodial parent fails to make payments in an amount equal to one month of support.

Upon completion of legal activity necessary to establish an obligation for support and the amount of the support obligation, the case will be returned to the caseworker, who will be responsible for monitoring payments made by the noncustodial parent to ensure that he or she complies with the support obligation. A child support obligation commences on the date specified in the order. If no start date is set out in the order, the first payment falls due on the date the order was filed with the clerk of court.

Enforcement through income withholding, intercept of unemployment benefits or workers' compensation benefits, income tax intercept, additional payments ordered to be paid on the child support arrearage or judgment, contempt proceedings, or any other means of collection shall be available for the collection of a child support arrearage or judgment until such is satisfied.

Administrative remedies must be attempted and exhausted before judicial remedies begin. Judicial remedies must be taken in accordance with expedited process timeframes. The most common judicial remedy is a motion and order to appear and show cause. Cases will be reviewed by the assigned attorney for next appropriate action.

#### ***(a) Expedited Process***

OCSE must take an enforcement action from the date of delinquency or locate, whichever is later, within 30 calendar days, if **no** service of process is required and within 60 calendar days, if service of process is required.

#### ***(b) Suspense***

Cases may be suspended for a specific date in the future only if there is a direct order by a court to cease all collection action as ordered by the court.

#### ***(c) Spousal Support***

OCSE will enforce spousal support obligations in cases where the custodial party is living with the child and spousal support and child support obligations are included in the same order. Once a noncustodial parent's responsibility to pay child support has ended and there are no longer child support arrears, OCSE will no longer collect current or past due spousal support.

### **5.1.2 Administrative Remedies**

Caseworkers must use all appropriate administrative methods as described in this chapter to enforce orders as the remedy of first choice. If administrative remedies have failed or are inappropriate, court action to enforce orders should then be used as a last resort.

### **5.1.3 Past-Due Support**

Past-due child support, also known as arrears, constitutes a judgment by operation of law and is subject to garnishment even in the absence of a court-ordered judgment on arrears. State law allows for the garnishment of wages until the total amount of child support judgment and costs are paid. Other sources of income, such as bank accounts, may also be garnished. The portion of VA benefits received in lieu of retired/retainer pay is subject to garnishment. The caseworker shall make a diligent effort to locate all sources of money belonging to the noncustodial parent and keep an accurate record of all attempts to locate money sources. Should the caseworker locate a money source belonging to the noncustodial parent and an arrearage exists, the caseworker should consult with the appropriate OCSE attorney. All necessary, proper, and reasonable steps to garnish said money source will be taken.

#### ***(a) Delinquency Notices***

OCSE may send a delinquency notice to the noncustodial parent when the unpaid support equals 30 days' obligation.

#### ***(b) Interest***

The owner of the judgment or the counsel of record of the owner of the judgment may request in writing, prior to the entry of a judgment on arrears, that interest not accrue on past due support.

If interest is reduced to a judgment by the court or the amount of interest owed is received as a sum certain from another state, OCSE will include the sum certain amount as child support debt owed and collect by all appropriate enforcement means.

In intergovernmental cases, the initiating state is responsible for notifying the responding state at least annually, or on request, of any interest charges.

In non-intergovernmental cases where there is no judgment or finding of the amount of interest owed by the court and the custodial party wishes to collect interest, the custodial party may obtain, at his or her own expense, a certified calculation of the total amount of interest owed from a licensed accountant or other reliable financial source. The calculation must be accompanied by a professional opinion on official letterhead that states the calculation is reasonable based on the information provided for the calculation and is calculated in accordance with State law pertaining to child support interest. Documentation supporting the calculation must be attached in order for OCSE to include the interest amount as a child support debt.

#### ***(c) Posting Security, Bond, or Guarantee to Secure Payment of Past-Due Support***

OCSE must petition, and the court may require, noncustodial parents to post security, bond or give some other guarantee to secure payment of overdue support. Advance notice must be provided to the noncustodial parent regarding the delinquency of the support payment and the

requirements for posting the security, bond or guarantee. OCSE will also inform the noncustodial parent of his or her rights and the methods available for contesting the action.

## **5.2 INCOME WITHHOLDING**

### **5.2.1 Overview**

Income withholding is used as an initial enforcement effort if the noncustodial parent is employed or if there is another source of periodic income subject to withholding.

Every court order should contain an order for the immediate withholding of income unless (1) the court finds that there is good cause not to implement withholding, or (2) the parties enter into an alternative agreement regarding withholding which is incorporated into the court order. For open enforcement cases, OCSE will include income withholding in every child support order.

OCSE, an attorney representing the custodial party, or the custodial party may initiate the income withholding process. An additional amount equal to 20% of the periodic payment must be deducted to apply against any accrued arrearage unless the court orders a specific amount or a set percentage to be paid on arrears.

OCSE must issue a wage withholding notice within 15 calendar days from receipt of the order if the employer's address is known on that date, thereafter within two business days of the date the employer's address is obtained, or two business days from electronic notice of the employer's address, such as from New Hire.

By law, the employer must begin the withholding no later than the first pay period that occurs after 14 calendar days following the date the notice was mailed.

#### ***(a) Intergovernmental Income Withholding***

OCSE will initiate income withholding by sending an income withholding notice to an employer in any state where the noncustodial parent is located and employment is verified. If the employer fails to implement withholding, OCSE will forward a request to the other state's child support agency to enforce the income withholding order.

#### ***(b) Bankruptcy***

If income withholding is in place when a noncustodial parent (employee) files bankruptcy, the caseworker will refer the case to the OCSE attorney for review and advice on how to proceed.

### **5.2.2 Initiated Income Withholding**

In the case of court orders which do not address income withholding, Arkansas law provides for payment of child support obligations by mandatory initiated income withholding. Initiated income withholding must take effect when the amount of the delinquency is equal to the total court-ordered support payable for 30 calendar days and upon proper notice to the noncustodial parent. The provision will also apply when partial payments have been made but total arrears are equal to the obligation due for one month.



### **5.2.3 Withholding of Lump Sum Payments**

Arkansas law requires that orders for payment of money for the support and care of any children include a provision for the withholding of the full amount of past due support owed by the noncustodial parent not to exceed 50% of the net lump-sum payment (entire amount of lump-sum less any amount required by law to be withheld) paid to the noncustodial parent. Lump sum payments are defined as a form of income paid to an individual at other than regular or periodic intervals; payment regardless of frequency that is dependent upon meeting a condition precedent, including the performance of a contract; a job performance standard or quota; the liquidation of unused sick or vacation pay or leave; the settlement of a claim; or an award for length of service.

### **5.2.4 Withholding from Social Security Disability**

Income withholding can be used to offset payments from Social Security Disability (SSD) Benefits.

If there is a lump sum disability payment made to the noncustodial parent, OCSE may intercept up to 50% of the payment to be paid towards arrears.

If there is a lump sum disability payment made to the family, OCSE will seek a determination from the court whether the noncustodial parent is entitled to credit against the child support order for the SSA lump sum payment.

### **5.2.5 Withholding from Unemployment Insurance Benefits**

State law provides for an information exchange with the Department of Workforce Services (DWS) and the withholding of Unemployment Insurance Benefits (UIB) to apply against a court-ordered child support obligation. Intercept of UIB is subject to income withholding for the amount of the obligation. The amount withheld cannot exceed Consumer Credit Protection Act (CCPA) limits.

In order to be considered for withholding of UIB, there must be a valid court order for child support, and the court order must direct DWS to withhold from UIB, or the noncustodial parent must agree that DWS will withhold from UIB

#### ***(a) Intercept Agreement***

There should be a provision in a court order for income withholding that permits withholding from UIB. If the income withholding provision is not in the order, a Notice Regarding Unemployment Compensation with the Agreement to Withhold from Unemployment Insurance Benefits will be sent to the noncustodial parent. This signed form is sufficient to begin income withholding from UIB. If the noncustodial parent fails to sign and return the agreement, court action will be necessary to change the order and permit withholding from UIB.

The amount to be deducted will be the amount stated in the order or current support amount plus an additional 20% for arrears or the amount ordered paid on arrears. The amount to be paid on arrears must be either in the court order or in the agreement that the noncustodial parent signs. The total amount to be withheld is subject to CCPA limits.

### **(b) Requests for Withholding to Other States**

A direct request to withhold from UIB will be sent to states that will accept them. If the noncustodial parent is receiving UIB benefits in a state that will not accept a direct withholding, an interstate referral to the noncustodial parent's state of residence will be required.

### **5.2.6 Worker's Compensation Withholding**

State law authorizes the withholding of Workers' Compensation benefits for child support. Up to 25% of periodic payments or up to 50% of lump sum payments may be withheld.

State law also authorizes a data match between Worker's Compensation Commission files and OCSE files on a monthly basis.

Custodial parties and other state child support agencies are not required to open a child support case with OCSE to offset Worker's Compensation benefits paid to the noncustodial parent. The Commission will accept a lien, a notice to withhold, a court order or a divorce decree directly from the custodial party, the other state agency, or private attorneys representing the parties.

### **5.2.7 Computing Amount for Withholding**

The Consumer Credit Protection Act (CCPA) and State law limits the amount of wages that are subject to withholding for support. The maximum amounts are expressed in percentages and depend on two variables:

1. Whether the noncustodial parent is supporting a spouse or other dependent child
2. Whether the arrearage owed equals or exceeds 12 weeks of support

Below is the breakdown of which percentage applies.

- A. 50% of the disposable earnings if the noncustodial parent is supporting a spouse or dependent child other than the spouse or child for whose support the court order was issued
- B. 55% of the disposable earnings if the conditions of (A) above exist and the amount of arrears are equal to 12 weeks support or greater
- C. 60% of the disposable earnings if the noncustodial parent is not supporting a spouse or dependent child other than the spouse or child with respect to whose support the court order was issued
- D. 65% of the disposable earnings if the conditions of C above exist and there is an amount of arrearage of 12 weeks support or greater

If the total to be withheld for current and past-due support exceeds CCPA limits and if all notices and orders for current support have been satisfied, the employer shall make prorated disbursements of the remaining amount available for disbursement toward arrears. *Prorated*

means the proportionate amount each notice or order for payment of past due support bears to the total amount due for payment of past due support under all notices and orders.

### **5.2.8 Contested Withholding**

The only grounds available to an obligor to contest wage withholding are that the person who received the notice was not the person obligated to pay the support, the arrears are incorrect, or the current support amount is incorrect. OCSE will conduct an informal review of the income withholding order issued by the agency, upon the request of the noncustodial party, to confirm that he or she is the person identified as the person who owes the support and that the amount of current and past-due support is correct. However, if the noncustodial parent wants to request a hearing with the court, he or she must do so within 10 calendar days of the date of the notice of income withholding. Once implemented, income withholding remains in effect, following the noncustodial parent from one employer to another until the support obligation is terminated or is set aside by the court.

If withholding is contested within 10 calendar days, the caseworker will immediately forward the case to the Supervisor/Field Manager for administrative review.

#### ***(a) Contest Of An Income Withholding Order Issued In Another State***

A noncustodial parent may contest with OCSE the validity or enforcement of an income withholding order issued in another state and received directly by an employer in Arkansas by registering the order in a court of this state and filing a contest to that order in the same manner as if the order had been issued by a court in this state.

The noncustodial parent must give notice of the contest to the following:

- The support enforcement agency providing services to the custodial party
- Each employer that has directly received an income withholding order relating to that noncustodial parent
- The person designated to receive payments in the income withholding order
- To the custodian if no person is designated to receive payments

If a noncustodial parent contests an income withholding notice that was issued in another state, the caseworker will contact the other state to advise that the noncustodial parent has contested the direct income withholding. If the other state initiates intergovernmental enforcement pursuant to UIFSA, the order will be registered.

## **5.3 FEDERAL OFFSET PROGRAM**

### **5.3.1 Overview**

The Federal Offset Program helps states collect delinquent child support debts owed to the custodial party and/or the state by the following remedies:

- Federal Income Tax Refund Offset
- Administrative Offset
- Passport Denial Program

### **(a) Certification Requirements**

Certification requirements apply to all available remedies in the Federal Offset Program.

In intergovernmental cases, the initiating state will certify for federal offset.

- Past-due support:
  - May include medical support only if a specific dollar amount is included in the order.
  - May include spousal support if the custodial party is living with the child and spousal support and child support obligations are included in the same order.
  - May not include fees or court costs or any other non-child support debts owed to the state or to the family.
- OCSE must:
  - Verify the accuracy of the arrears.
  - Have a copy of the order, including any modifications.
  - Obtain a copy of the payment record or an affidavit signed by the custodial party attesting to the amount of support owed.
  - Verify the accuracy of the noncustodial parent's name, Social Security number, and current address.
  - Have the custodial party's current, or last known, address.
  - Certify that the information is accurate and that the state has afforded the noncustodial parent all due process rights.

Selection for the Federal Offset Program is as follows and is mandatory if the noncustodial parent's arrears balances meet the following criteria:

- The combined TEA arrears from all cases must be at least \$150.
- The combined non-TEA arrears from all cases must be at least \$500.

### **(b) Due Process**

Noncustodial parents who meet the above criteria will be notified by a Pre-Offset Notice before being certified for offset. The Pre-Offset Notice will inform the noncustodial parent of the right to contest that past-due support is owed or the amount of past-due support, as well as the procedures for requesting an administrative hearing to contest the offset. Requests for an administrative hearing must be received within 30 days of the date of the pre-offset notice.

Past-due child support will remain subject to collection by offset until paid in full in cases open for enforcement services. Any past-due support that accrues after the notice is sent will be added to the debt and is subject to offset without further notification.

If past-due support is paid to a zero balance or is modified to a zero balance and then accrues an arrearage at a later date, a new Pre-Offset Notice will be sent to the noncustodial parent prior to re-certification for the new arrearage.

A notice will be sent annually as a reminder to noncustodial parents who continue to meet the criteria for the Federal Offset Program.

### ***(c) Offset Priority***

The U.S. Department of Treasury's Financial Management Service (FMS) operates the Treasury Offset Program, which maintains a centralized Master Debtor File. This file contains a list of taxpayers who owe debts to various agencies, including child support debts submitted by states to OCSE for federal income tax refund and administrative offset. Funds that are offset for repayment of past-due child support are forwarded through the U.S. Department of Health and Human Services to the states that submitted the noncustodial parent for offset.

FMS applies payment offsets (both tax refund and administrative) to a noncustodial parent's federal debts in the following order:

- Federal tax debt (IRS)
- Past-due child support (TEA and non-TEA cases)
- Other federal debts (education loan debts)
- State tax debts

If multiple states submit the same noncustodial parent, the state with the earliest submission is first in the distribution of offsets. If a case was deleted and is then re-certified at a later date (for example, if a case is closed for enforcement and then re-opened), the priority for that case is based on the date the re-certification was processed.

### ***(d) Bankruptcies***

Unless specific instructions to the contrary are provided by the appropriate legal department, OCSE may continue to process federal administrative offsets, tax refund offsets, and passport denials while a noncustodial party is in bankruptcy.

### ***(e) Cost of Offset***

The cost of each tax and administrative offset, not to exceed \$25, will be passed on to the custodial party in non-TEA cases where the offset was \$100 or greater.

## **5.3.2 Federal Income Tax Refund Offset**

Child support payments received by Federal Tax Offset can only apply to child or spousal support arrears. Monies from Federal Tax Offset received by OCSE in excess of the amount of arrears will be returned to the noncustodial parent.

### **(a) Injured Spouse**

FMS 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. The U.S. Treasury Department will notify the spouse at the time of offset regarding the steps to take to protect his or her share of the refund. The noncustodial party's spouse may file an Injured Spouse Allocation Form when filing the joint tax return or any time after the offset. If the noncustodial parent's spouse files the appropriate form with the original tax return, the IRS will determine what, if any, portion of the refund is owed to the spouse based on that person's income and tax debt and will only offset the noncustodial parent's share of the tax refund.

As provided in federal regulations, OCSE will delay the distribution of refunds based on a joint return for six months to allow the IRS time to process the form that may have been filed after the return and offset was processed.

### **5.3.3 Administrative Offset**

Administrative Offset allows for the interception of certain federal payments in order to collect past-due child support. These payments can be recurring or one-time payments. The type of payments that can be intercepted include payments to private vendors who perform work for a government agency, payments received from an agricultural subsidy, federal retirement payments, and relocation and travel reimbursements owed to federal employees.

Some payments are excluded from administrative offset, including Veterans Affairs disability benefits, federal student loans, Railroad Retirement payments, and payments made under certain programs based on financial need, such as Supplemental Security Income.

Federal payments eligible for administrative offset are intercepted as follows:

- Vendor/Miscellaneous Payments – Qualifying vendor and miscellaneous payments can be offset at 100 percent. For example, employee expense reimbursement or agricultural subsidy.
- Federal Retirement Payments – Retirement pay is offset at a rate of 25 percent. If an income withholding is in place for federal retirement, the case will be excluded from retirement administrative offset.

### **5.3.4 Debt Check Program**

The Debt Check Program is operated by Financial Management Service (FMS). It is a debt management program for use by federal agencies and outside lenders who issue federal loans, loan insurance, and loan guarantees. The program allows these agencies and lenders to conduct a search to confirm whether potential recipients of federal financial assistance owe delinquent non-tax debt to the federal government or owe delinquent child support. If records indicate a debt is owed, the applicant could be denied from receiving the loan, loan insurance, or loan guarantee.

OCSE reports to FMS those cases in which no payments, excluding tax offset, have been received in the last 90 days.

### **5.3.5 Passport Denial**

When a noncustodial parent's arrears from all of his or her cases meets or exceeds \$2,500, federal OCSE submits the name to the State Department for passport denial. The noncustodial parent's passport will remain flagged until arrears are paid in full or the conditions specified below are met.

#### ***(a) Release from Passport Denial***

When a noncustodial parent's arrears are paid to zero, passports flags are automatically removed by a weekly update. The local child support office may request removal sooner if the arrears are zero or if one of the acceptable reasons for release, listed below, is met. If the individual was erroneously submitted for passport denial, a request for immediate release of the flag will be submitted.

Release of a passport without the payoff of arrears may be approved in the following circumstances.

- If a noncustodial parent received a judgment of instant debt (i.e., there was no previous court order, and a noncustodial parent is now ordered to pay retroactive support for a child), the passport can be released if the noncustodial parent has followed the order without exception, including making all ordered payments toward arrears.
- If a noncustodial parent must travel due to a life or death emergency of an immediate family member, verification of the emergency by a medical doctor or from the Red Cross is mandatory, along with a payment of at least 25% of the arrears. "Immediate family" is defined as the following in relation to the noncustodial parent: parent or guardian, child (natural or adopted), grandparent, sibling, aunt, uncle, stepchild, stepparent, stepsibling, spouse.
- If a noncustodial parent is on active military duty and needs the removal of a passport flag due to being deployed overseas, the passport flag will be removed upon receipt of a copy of the deployment orders or a letter from the commanding officer stating the passport is required for military duty. This does not apply to civilians voluntarily going overseas to work at a military base or with a private business.
- If a noncustodial parent requires a passport for work-related travel, the following is required:
  - A letter from the employer stating the noncustodial parent is required to travel as a condition of his or her employment.
  - If one is not already in place, an Income Withholding Order will be issued to the employer. If the employee has not yet started work for the job for which the travel is required, the employer must be one to which an Income Withholding Order may be issued.
  - A payment of the current support amount for the month plus not less than 25% of the total amount of arrears.

## **5.4 STATE INCOME TAX REFUND OFFSET**

### **5.4.1 Overview**

State law authorizes collection of current support and past due child and medical support, as well as fees, costs, and other debts as defined by State law, through the interception of State income tax refunds.

A listing of delinquent obligors and the amount of past due child and medical support and fees and costs certified for collection are combined with other debts owed to Arkansas and submitted to the Revenue Department. This list is matched against the Revenue Department taxpayer file. When a tax refund becomes available for an individual whose debt has been certified, the Revenue Set-Off Unit forwards the funds to OCSE and the refund is applied against the amount of the debt. The Revenue Department pays any excess directly to the taxpayer. Medical support, overpayments, cost and fees are subject to tax intercept.

Collections from a noncustodial parent as a result of State income tax refund offset are treated as a regular child support payment and disbursed accordingly.

### **5.4.2 Eligibility For Offset**

In addition to the legislative requirements, OCSE has established the following criteria for submissions for State intercept:

- There must be a court order for support.
- Arrearage must be at least \$50 for TEA or Foster Care cases and \$100 for non-TEA cases. Instant debt balances will be included in the certified amount; however, cases with orders less than 30 days old from the effective date will not be certified regardless of the arrearage amount.
- The fees of the noncustodial parent must total at least \$50. Fees and TEA arrears may be combined to reach the \$50 threshold for TEA certification.
- There must be an assignment of child support rights to the State of Arkansas for TEA, Medicaid, and IV-E Foster Care cases or a contract for child and/or medical support for non-TEA cases.
- Arkansas must be the responding state in intergovernmental cases (i.e., the noncustodial parent must reside in Arkansas).

### **5.4.3 State Tax Pre-Offset Notices**

The individual who is being certified to the Revenue Department will be given written notice in advance of the agency's intent to intercept his or her tax refund.

### **5.4.4 State Tax Offset Informal Complaint Resolution**



The local office will attempt to resolve complaints or questions regarding State Tax Offset informally. The customer should be informed that they must submit a written request in order to contest the offset through an Administrative Hearing within the timeframes indicated in the pre-offset notice.

## 5.5 LICENSE SUSPENSION

### 5.5.1 Administrative Suspension of Licenses

State law authorizes and establishes procedures for the suspension of specified state-issued licenses, including commercial driver's and regular driver's licenses, including motorcycles; permanent license plates; recreational licenses; and occupational, professional and business licenses of a noncustodial parent, if certain conditions exist on a case. When interviewing the noncustodial parent, the local OCSE office should request that the noncustodial parent allow the office to copy the noncustodial parent's driver's or commercial driver's license and Social Security card for identification purposes and for future reference. This information is to be maintained in the file at the local OCSE office. All licensing authorities affected may not be capable of interface automation with the OCSE database. Periodically, staff should make inquiries with custodial parties or other knowledgeable sources to determine if a noncustodial parent holds a state-issued license subject to suspension.

**NOTE: There are two classes of state ID cards that do not fall within the definition of "license": Class ID (issued for identification only) and Class X (issued for persons who have been ticketed for a traffic violation in Arkansas but have not been licensed to drive in Arkansas). Class ID and Class X will not be suspended.**

One of the following two conditions must be met in order to suspend a noncustodial parent's license or license plate:

Condition 1: The noncustodial parent is delinquent on a court-ordered child support payment in an amount equal to three months' obligation or more, or the noncustodial parent is delinquent on payments toward an adjudicated arrearage in an amount equal to a three months' obligation or more

Condition 2: The noncustodial parent is the subject of an outstanding failure to appear, body attachment, or bench warrant related to a child support proceeding

The following are exceptions to the above conditions:

1. If the noncustodial parent was assessed retroactive support, the noncustodial parent is not "delinquent" in child support payments for those retroactive support payments. For

example, if the noncustodial parent is the putative father and the court finds him to be the legal father and invokes the law authorizing the setting of support retroactively, then the noncustodial parent is not delinquent because there was never an obligation to pay anything before the court date. "Instant debt" will not be considered an "adjudicated arrearage" for the purpose of this policy. However, if the noncustodial parent fails to pay on a retroactive support order for three months or in a total amount equal to at least three months' obligation, license suspension may be appropriate.

2. The noncustodial parent pays the delinquency below an amount equal to three months' obligation.
3. Noncustodial parents who are currently in compliance with a written agreement with OCSE requiring periodic installment payments for liquidation of a child support delinquency or adjudicated arrearage, noncustodial parents currently in compliance with their most recent court order reducing a child support arrearage to proper judgment and requiring periodic payments for liquidation of the judgment, or noncustodial parents who are currently making regular and periodic payments on a child support delinquency or adjudicated arrearage through income withholding.
4. The noncustodial parent enters an agreed order or written installment agreement with OCSE with instructions to pay current support plus an additional specified amount to be applied to the arrearage/delinquency. The agreed order or written installment agreement should contain a provision that stipulates that if the noncustodial parent becomes 30 days delinquent on the agreed order or written agreement, the license(s) affected will be suspended immediately, and the noncustodial parent specifically waives all rights to an administrative hearing or further notice prior to the suspension(s).

OCSE can place a suspension against an expired license, which will prevent the noncustodial parent from receiving a new license until arrangements have been made with OCSE to pay current support and an amount toward arrears.

#### **(a) Bankruptcy**

If the noncustodial parent has filed for bankruptcy, any release of an already suspended license or any prospective suspension of their license shall be determined on a case-by-case basis by the caseworker with the following exception: If the case is one in which the noncustodial parent does not have any ongoing obligation, then a suspended license should be immediately released and no further suspension referrals sent unless prior approval is received from the legal department.

#### **5.5.2 Notice Of Intent To Suspend License**

If either Condition 1 or Condition 2 noted above exists and none of the five Exceptions apply, a Notice of Intent to Suspend License will be mailed to the noncustodial parent. Notices should be sent certified mail to the most current address as provided by the licensing authorities or to the address provided to the court by the noncustodial parent, unless a verified address has been obtained. In the event a notice sent by certified mail is rejected or unclaimed, a subsequent mailing of the notice by regular first-class mail shall be considered sufficient (must be narrated/documentated). The notice will specifically identify all known licenses and permanent license plates held by the noncustodial parent and will inform the noncustodial parent that the

specified licenses or license plates will be suspended in 60 days unless the noncustodial parent requests an administrative hearing within 30 calendar days following the date of the notice. The notice shall advise the noncustodial parent that identified licenses will be suspended unless the request for a hearing is received within 30 calendar days of the date of the notice.

### **5.5.3 License Suspension Informal Complaint Resolution**

Following issuance of the Notice of Intent to Suspend License, the noncustodial parent may avoid license suspension by contacting the local OCSE office and entering into an agreed order or written installment agreement with OCSE as described in Exception 4 listed above. Agreed orders and written installment agreements made after issuance of a License Suspension Notice should include a condition that requires that some payment be made by the noncustodial parent before expiration of the notice of intent to suspend. In the event the noncustodial parent contests the accuracy of the arrearage information or the duration of the delinquency, he or she can schedule an appointment with the local OCSE office to resolve the issue. Issues that cannot be resolved by the local OCSE office will be forwarded to Central Office for an administrative hearing if requested by the noncustodial parent.

### **5.5.4 License Suspension And Reinstatements**

If the 60 days has expired and no appeal is pending, the license will be suspended. The noncustodial parent must enter into an installment agreement before the license will be reinstated. Additionally, the noncustodial parent may avoid suspension or obtain reinstatement by paying the delinquency to an amount below three months' obligation.

In some instances, noncustodial parents may initiate action on their own accord resulting in a court order eliminating the presence of Condition 1 or 2. If the noncustodial parent takes such action eliminating the threshold condition for license suspension prior to the effective date of the intended suspension, the responsible local OCSE office must upon notification notify the Central Office Program Support section to take action to set aside suspension activity on the case and to notify the noncustodial parent accordingly.

Central Office staff is responsible for keying or requesting any suspensions or reinstatements of licenses and license plates. If the noncustodial parent pays the arrearage below an amount equal to three months' obligation or the court enters a judgment on arrears, the license will be reinstated. Following license suspension, the noncustodial parent may obtain license reinstatement by entering into an agreed order or written installment agreement with OCSE as described in OCSE policy. The agreed order or written installment agreement should contain a provision requiring a lump sum payment in addition to requiring the periodic payment of current support and regular periodic payments on the arrearage/delinquency. It is imperative that Central Office be notified to immediately take necessary actions to restore the license or permanent license plate of the obligor when the condition warranting suspension has been removed.

In the event of fraud or mistake resulting in a wrongful suspension, OCSE shall immediately notify the licensing authority involved to restore the license or permanent license plate of the noncustodial parent as appropriate. When an enforcement case closes, OCSE loses its authority to enforce the child support order. Although the case may remain open for payment processing, OCSE cannot take any action on the case to enforce or collect child support. Therefore, when an

enforcement case is closed, OCSE cannot continue a license suspension action against the noncustodial parent, and his or her licenses should be reinstated.

### **5.5.5 Referrals And Injunctions For Suspended License**

Whenever OCSE determines that the noncustodial parent has engaged in an activity despite suspension of the license, a referral should be made to the licensing authority and/or to law enforcement, as appropriate. In some cases, the local OCSE office may consider seeking a court injunction from the appropriate Circuit Court restraining the noncustodial parent from any activity not permitted during license suspension. The assigned OCSE attorney should be consulted if the local OCSE office believes that injunctive relief should be pursued.

### **5.6.6 Law License Review**

Noncustodial parents who are licensed attorneys and who meet one of the Conditions and none of the Exceptions listed previously may be referred to the clerk of Supreme Court for review of their law license.

## **5.6 LIEN AND LEVY**

### **5.6.1 Overview**

In cases in which there is overdue child support, and in an effort to secure assets to satisfy any current support obligation and any arrearage, OCSE is authorized to take any of the following actions:

- intercept or seize periodic or lump-sum payments from
  - a state or local agency, including unemployment compensation, worker's compensation, certain veteran's benefits
  - judgments, settlements, prizes, and lotteries
- attach and seize assets of the obligated parent held in financial institutions
- attach public and private retirement funds, including any union retirement fund and railroad retirement
- impose liens and, in appropriate cases, force the sale of property and distribute proceeds

State law requires each financial entity (defined as any bank, trust company, savings and loan association, credit union, insurance company, or any corporation association, partnership, or individual receiving or accepting money or its equivalent on deposit) to cooperate with OCSE to develop, implement, and operate an electronic automated data match system using automated data exchanges to provide OCSE, each calendar quarter, with the following information: the name, record address, Social Security number, or other taxpayer identification number and other identifying information for each noncustodial parent who maintains an account at their respective financial institution.

OCSE enters into cooperative agreements with financial entities to provide for automatic data exchanges to the maximum extent feasible in order to locate account assets of noncustodial parents. Any information obtained from any financial entity shall become a business record of OCSE and be subject to privacy safeguards.

### **5.6.2 Liens on Assets Held by Financial Entities**

OCSE may impose a lien, seize assets, or freeze an account based on verification of an account held by an individual at any time information becomes available to the caseworker. The caseworker shall notify the Lien/Levy Section when such information becomes available. The process to seize the asset will be completed by the Lien/Levy section staff.

The following criteria must be met to qualify for a lien on assets held by financial entities:

- The case must be an open enforcement case.
- Arrears must be at least \$500 or equal to three months' obligation, whichever is greater.
- No payment received within the last 45 days.
- The noncustodial parent is not currently a TEA recipient.
- The noncustodial parent's source of income may not include SSI.
- A Family Violence Indicator is not attached to the parties.

An account is defined as any of the following:

- demand deposit account
- checking or negotiable withdrawal order account
- savings account
- money-market mutual fund account
- time deposit account

Withholdings, intercepts, and seizures may be initiated by OCSE without obtaining a prior order from any court. OCSE shall provide written notice to the noncustodial parent or alternate account holder informing him or her that withholding, intercept, or seizure has commenced; of the right to an administrative hearing; and the procedures to follow if he or she desires to contest the action(s). The notice to the noncustodial parent or alternate account holder shall include the information provided to the employer, agency, or financial institution.

Financial entities shall, in response to a notice of lien or levy, surrender assets held by such financial entities on behalf of any noncustodial parent who is subject to a child support lien pursuant to a judgment or by operation of law.

### **5.6.3 Liens Against Insurance Claims**

Cases meeting the following criteria are matched with insurance carriers through the Child Support Lien Network (CSLN) and Federal Insurance Match program to identify any claim payments due to the noncustodial parent.

- Case is open for enforcement.
- Arrears are at least \$500.
- The noncustodial parent is not receiving TEA in Arkansas or TANF in another state.

Upon receipt of the match, a Notice to Withhold Insurance Assets is sent to the insurance company, the obligor, OCSE, and the noncustodial parent's attorney. The noncustodial parent

has 15 calendar days from the date on the notice to request an administrative hearing. If no hearing is requested, the insurance company is notified to remit to OCSE, the amount of the arrears or the amount of the noncustodial parent's share of the settlement whichever is less.

#### **5.6.4 Administrative Review and Administrative Hearings**

Upon receipt of the Notice of Lien and Levy, the noncustodial parent, or alternate account holder, may contact OCSE Central Office, Lien & Levy Section, to contest the validity of the freeze and seize, and ask for an administrative hearing. The Lien & Levy caseworker must review the record to determine whether the case was certified correctly, or whether the issues raised by the noncustodial parent, or alternate account owner, are valid. If the issues raised by the noncustodial parent, or alternate account owner, are resolved by the Lien & Levy caseworker, then necessary action will be taken in accordance with the resolution, and a letter outlining the resolution will be sent to the noncustodial parent, or alternate account owner.

Should the Lien & Levy caseworker be unable to resolve the issues or if the noncustodial parent or alternate account owner remains dissatisfied, then the noncustodial parent or alternate account owner may request an administrative hearing in writing. See Chapter 9 concerning proper administrative hearing policy.

#### **5.6.5 Lottery**

All open enforcement cases with arrears in excess of \$500 will be referred to the Office of the Arkansas Lottery for offset of any winnings claimed by the noncustodial parent. The amount subject to withholding is the full balance due on all the noncustodial parent's cases. Collections of lottery winnings will be distributed to current support first and then to arrears. Referrals will be deleted when the case is closed. Payment processing cases will not be referred.

#### **5.6.6 Liens on Real and Personal Property**

OCSE may impose a lien against the real and personal property of a noncustodial parent who owes overdue support and who resides or owns property in the State. State law provides for relief from the fraudulent transfer of property and assets by a noncustodial parent in an attempt to avoid liens and provides a creditor provisions needed to obtain avoidance of the transfer to the extent necessary to satisfy a claim subject to the limitations in State law. A settlement agreement between the noncustodial parent, a child support creditor, and/or OCSE may be obtained.

### **5.7 AUTOMATED CREDIT REPORTING**

Child support debt information may be reported to Consumer Reporting Agencies (Credit Bureau). To be reported, the amount owed must exceed \$1,000 and may not include instant debt amounts entered as judgments at the time the court issues a support order, so long as regular payments have been made as ordered by the court.

OCSE must send the noncustodial parent a notice by regular mail to his or her last known address prior to the disclosure of information to a consumer reporting agency. The notice must inform the noncustodial parent of the amount of overdue support to be released, the procedures for contesting the accuracy of the information, and a statement that if he or she fails to contest

the disclosure within seven calendar days of the mailing date on the notice, the information will be released.

## **5.8 REFERRALS FOR REVIEW FOR CRIMINAL PROSECUTION**

### **5.8.1 State Criminal Nonsupport**

AR OCSE may refer cases for state criminal nonsupport to the appropriate prosecuting attorney for consideration if, upon review of the case, it appears the obligation to support is not being met.

Additionally, referrals to the appropriate prosecuting attorney are required if:

- AR OCSE has had enforcement responsibility for at least 12 consecutive months;
- more than \$10,000 is owed and remains unpaid;
- regular child support payments are not being paid, and
- the custodial party has completed and signed an affidavit containing the required information, including a request that the noncustodial parent be prosecuted for the criminal offense of nonsupport.

### **5.8.2 Federal Criminal Nonsupport**

Failure to pay child support is also a federal crime and may be prosecuted as such pursuant to the Child Support Recovery Act and the Deadbeat Parents Punishment Act.

To be eligible for prosecution under federal law, the following elements must be present:

- The willful failure to pay
- A known child support obligation
  - Which has remained unpaid for longer than one year; or, in the case of a felony prosecution, 2 years **or** the amount of the past due obligation is greater than \$5,000 or in the case of a felony prosecution, \$10,000
  - For a child who resides in another state
- An additional basis exists for the prosecution of the failure to pay child support as a felony if the noncustodial parent has traveled in interstate or foreign commerce with the intent to evade the support obligation and the obligation has remained unpaid for a period of one year or longer or is greater than \$5,000

Cases meeting the criteria for this type of prosecution may be forwarded to designated OCSE staff for review and forwarding to, if appropriate, to the U.S. Attorney's Office for the federal district in which the custodial party resides. The U.S. Attorney's Office will exercise its prosecutorial discretion in determining whether to accept or decline a case for prosecution and the level at which an accepted case will be prosecuted.

## **5.9 ENFORCING MEDICAL SUPPORT**

### **5.9.1 Overview**

OCSE must enforce medical support following the same program standards outlined in this chapter for enforcing child support. If the obligated parent does not provide proof of health care coverage within 30 calendar days of the file mark date on the court order, the caseworker must take enforcement action to secure medical support. The caseworker must request employers and other groups offering health care insurance coverage to notify OCSE of lapses in coverage.

#### ***(a) Medical Bills***

OCSE will not initiate or pursue legal action to obtain judgment for medical bills not covered by medical insurance.

### **5.9.2 Employer-Sponsored Health Care Coverage**

In all cases where either party is ordered to provide medical support through his or her employer and child support enforcement services are provided by OCSE, the National Medical Support Notice (NMSN) will be used as required by federal regulations.

The NMSN must be sent to the employer within two business days of receiving employment information or matching with employer information contained in the New Hire Directory. If the obligated parent changes employers, OCSE will send a National Medical Support Notice to the new employer within two business days of identifying the new employer unless medical support is provided by a third party.

The Consumer Credit Protection Act (CCPA) limits apply to the combined total withheld for both child support and medical coverage. (See Chapter 5, Computing Amount for Withholding for a discussion of CCPA limits.) Income withholding for child support must take priority over the deduction for health care premiums.

OCSE will notify the employer when there is no longer a current order for medical support in effect for which the agency is responsible.

The employer and the health care administrator must follow Arkansas law to implement income withholding for health care coverage premiums, enrolling the child, and providing information regarding the policy to the family.

## **5.10 RECOVERY OF CHILD SUPPORT**

### **5.10.1 Overview**

OCSE will continue collection after the emancipation of a child until a written request is made by the custodial party to stop enforcing the case, until all arrears are paid, there is an



administrative determination that the debt is uncollectible, or the case meets other federal case closure criteria.

Any arrears that have not been reduced to judgment by the time the youngest child attains the age of 23 are subject to the statute of limitations regarding collection of child support. OCSE will not take enforcement action to collect support arrears for which an affirmative defense of statute of limitations exists with the exception of those actions permitted by federal law: offset of federal income tax refunds, denial of passports, and administrative offset of payment from the federal government to individuals regardless of the age of the child.

All enforcement techniques apply to collection of the past due amount of support, including adjudication of arrears, garnishment, execution, wage withholding, contempt, or liens on property, as well as federal tax and administrative offset. State income tax refunds may be intercepted to recover TEA and non-TEA arrears.

The OCSE agency will accept recovery cases from another IV-D agency or by application from the custodial party on behalf of a child age 22 or younger who was the subject of a child support order. If the child is age 23 or older, OCSE can accept the case if there is a court-ordered judgment, or as permitted by the laws of the state issuing the support order.

### **5.10.2 Recovery of Child Support in Intergovernmental Cases**

In cases in which the order was entered in another state, the statute of limitations of the state that issued the order or the Arkansas statute of limitations, whichever is longer, will apply and control how long arrears may be collected.

In cases in which the Arkansas statute of limitation would be a bar to collection of the arrears, the law of the issuing state must be reviewed to determine if collection may continue.

If collection of the child support arrears is not possible under Arkansas law or the law of the issuing state, the caseworker will send a 60-day closure notice to the applicant for services or the initiating state, as appropriate, and the case will be closed.

## **5.11 REDIRECTING CHILD SUPPORT TO THE PHYSICAL CUSTODIAN**

A custodial party may redirect payments to an alternate caretaker (a nonrelative caretaker) by designating in a record that the alternate caretaker will have the child for a temporary time period.

Arkansas law authorizes redirection of court-ordered child support from one custodial party to another physical custodian without obtaining a court order when the physical custodian has had, or is anticipated to have, physical custody of a child for more than eight consecutive weeks, other than court-ordered visitation, during which there is an obligation to pay child support. The new physical custodian cannot be the noncustodial parent.

The notice must comply with the requirements of Ark. Code Ann. § 9-14-234 as amended by Act 904 of 2019 and may be given by OCSE, the custodial party, or the physical custodian and include a statement from the custodial parent or physical custodian that the child has or will be residing with the physical custodian for more than eight consecutive weeks.

## **5.12 TERMINATION OF SUPPORT**

### **5.12.1 Overview**

Unless the court orders otherwise, a noncustodial parent's duty to pay child support for a child shall automatically terminate by operation of law:

- When the child reaches 18 years of age unless the child is still attending high school;
- If the child is still attending high school, the support obligation ends upon the child's high school graduation or the end of the school year after the child reaches 19 years of age, whichever is earlier;
- If a child has reached 18 years of age and is home-schooled, upon receipt of proof of home schooling, support will continue until the end of the school year after the child has reached 19 years of age or receives a GED confirmation, whichever is earlier;
- When the child is emancipated by a court of competent jurisdiction, marries, dies;
- Upon the marriage of the parents of the child to each other; or
- Upon a final or interlocutory decree of adoption of the child, relieving the noncustodial parent of all parental rights and responsibilities.

If arrears are still owed at the time of emancipation, wage withholding and/or enforcement efforts will continue until arrears are paid in full.

### **5.12.2 Noncustodial Parent May Initiate Termination of Support**

If there are no child support arrearages, the noncustodial parent may terminate income withholding for child support without petitioning the court by giving written notice, in person or by certified mail, to the noncustodial parent's employer, the custodial party, OCSE, the Clearinghouse, and the clerk of the court. The notice must be given no earlier than 30 calendar days before the termination of the duty to pay support, and must contain the name and address of the noncustodial parent, the name and address of the noncustodial parent's employer, a statement that income withholding for child support will be terminated, the date of termination, and the basis for termination of income withholding.

The custodial party, OCSE, or the clerk of the court may file a written objection to the termination. The written objection to the termination must be made by certified mail to the noncustodial parent and to his or her employer within 10 calendar days after receipt of the notice of intent to terminate income withholding for child support. It must state that the noncustodial parent's duty to pay child support has not been fulfilled as required by court order, and it must set forth the reasons for nonfulfillment. If a written objection is filed as provided in this section, income withholding for child support shall continue until such time as an order is entered which terminates, alters, or amends income withholding for child support.

**NOTE: For information on automatic modification of the support amount when one child emancipates, see Chapter 6.**

# Chapter 6

## MODIFICATION

### 6.1 REVIEW AND ADJUSTMENT

#### 6.1.1 Review

Child support obligations may be reviewed and adjusted, if appropriate, once every 36 months at the request of either party or a state in an intergovernmental case. There must be a change in the noncustodial parent's gross income in an amount equal to or more than 20% or more than \$100 per month in order to petition the court for modification of the obligated child support amount based on the Family Support Chart. The order must be an Arkansas order or an order that Arkansas can assume continuing exclusive jurisdiction (CEJ) to modify.

TEA cases will be reviewed and adjusted, if necessary, once every 36 months. A request from a party is not required. Each TEA case will be reviewed at the time of referral to determine if review and adjustment is appropriate.

Review and adjustment may be requested more often than once every 36 months if a significant change in circumstances exists. The burden of proof is on the requesting party. A review more often than once every 36 months may be appropriate if one or more of the following circumstances exist:

- Support was set at the chart minimum because the noncustodial parent was unemployed or under-employed at the time, and new evidence shows that he or she is employed or more gainfully employed.
- The noncustodial parent is unemployed or has experienced a reduction in pay or hours worked through no fault of his or her own and the situation is likely to continue for an extended period of time.
- The noncustodial parent is or will be incarcerated for at least 180 days. Incarceration is defined as a conviction resulting in a sentence of confinement to a local jail, state, or federal correctional facility, or state psychiatric hospital for at least 180 days excluding credit for time served prior to sentencing.
- The noncustodial parent becomes permanently disabled which is medically verified by a doctor's statement and/or Social Security Disability benefits determination form. When modifying support based on disability benefits being paid, the spouse and dependent benefits, whether in the home of the obligor, assignor, or a third party, will be taken into account in determining the noncustodial parent's income. For example, the noncustodial parent's benefit amount plus any separate awards made to the disability recipient's spouse and children equals the total income for the noncustodial parent as defined by the guidelines for setting support.

- The noncustodial parent has provided income information to OCSE at the request of the custodial party and otherwise meets the criteria for a review as outlined in State law.
- One or more of the dependents have turned 18 or otherwise emancipated and one of the parties requests review of the support amount for the remaining children.
- The medical needs of the child need to be addressed due to a change in health care coverage.
- All of the dependents have emancipated and a significant change in the noncustodial parent's income has occurred.

### **6.1.2 Notices**

Notice of the right to request review and adjustment will be provided to both parties not less than once every three years. Parties requesting a review must sign the Request for Review and Adjustment form. The non-requesting party will receive notification that a review will be conducted. Both parties will receive a Notice of Review Determination upon completion of the review.

#### ***(a) Incarcerated Noncustodial Parents***

If a noncustodial parent is or will be incarcerated for at least 180 days, as defined in paragraph 6.1.1, notice of the right to request review and adjustment will be provided to both parties within 15 business days of the date on which OCSE receives verification of the conviction resulting in the incarceration.

### **6.1.3 Review And Adjustment Of Intergovernmental Cases**

Intergovernmental cases will be reviewed and adjusted upon the request of another state or either party in another state only if the order is an Arkansas order, or if Arkansas can assume continuing exclusive jurisdiction.

### **6.1.4 Review and Adjustment When a Child Emancipates**

The three-year limit on requests for review and adjustment does not apply in cases where a child is emancipating unless the support amount was reviewed within the last three years and the issue of adjusting the support amount for the remaining minor children was addressed at that time.

When one child emancipates and there are remaining children on the case, both parties will be given an opportunity to request a review and adjustment of support.

A review will not be conducted when the child emancipating is the last or only child on a case, and the child support obligation will end when the child emancipates.

Any remaining child support owed at the time of emancipation will continue to be enforced and the amount due will remain at the current amount until the past-due support is paid in full.

## **6.2 ADJUSTMENT OF SUPPORT FOR VISITATION**

Arkansas law provides that the noncustodial parent is to provide written notification to the clerk of court within 10 calendar days when abatement or reduction of child support should occur due to extended visitation. The noncustodial parent is to provide copies of this notice to his or her employer, if income withholding is in effect, and the Office of Child Support Enforcement, if applicable. The law specifically provides that it is the responsibility of the noncustodial parent to provide this notification.

It is the responsibility of the noncustodial parent to inform the employer to abate or reduce child support in accordance with the court order and when to resume the payment of child support. If an employer requires a new income withholding before making any adjustment to the withholding, OCSE may issue a new income withholding form for open enforcement cases at the request of the NCP or employer if the support order specified such abatement. Once the visitation period is over, OCSE will issue another income withholding notice to the employer for the full amount of support ordered.

Arkansas law does not require that the noncustodial parent is responsible to notify the custodial party of abatement or reduction of child support due to the visitation. However, in order to ensure that arrearage balances remain accurate, if a notice is received indicating that the child support obligation should be reduced for the period of the visitation, the caseworker should verify with the custodial party that the noncustodial parent has had custody of the dependents for the time specified. Any necessary adjustments to the child support obligation should be made in accordance with the court order. If it is revealed that the noncustodial parent did not have the dependents for the time reported, any failure to pay the correct amount of support may be addressed in a future court proceeding.

# Chapter 7

## CASE CLOSURE

### 7.1 OVERVIEW

Federal regulations provide strict guidelines for determining when it is appropriate to close a child support enforcement case. The case must remain open for enforcement services if the circumstances of the case do not match one of the following criteria.

A case cannot be closed for enforcement simply because all legal remedies have been attempted without success. When enforcement attempts fail, the caseworker must review the file to determine the reason enforcement has failed and when taking the next action would be appropriate. The case attorney should review the case to determine when the next appropriate legal action may be taken.

Note that closure of a case for enforcement purposes does not affect the validity of the underlying court order.

### 7.2 CRITERIA FOR CASE CLOSURE

Cases may be closed, but are not required to be, for enforcement if at least one of the following criteria is met and supporting documentation for the decision to close the case is maintained in the case file:

1. There is no longer a current obligation for child support and arrears are under \$500. Cases will remain open until paid in full if regular payments are being received.
2. There is no longer a current obligation for child support, no arrears are owed to the family with only assigned arrears remaining, and, after review and appropriate approval, it has been determined there is low likelihood of collection.
3. There is no longer a current obligation for child support, all the children have reached the age of majority, the noncustodial parent is entering or has entered long-term care arrangements (such as a residential care facility or home health care), and the noncustodial parent has no income or assets available above the subsistence level that could be levied or attached for support.
4. The noncustodial parent or putative father is deceased and no further action, including a levy against the estate, can be taken.
5. Paternity cannot be established for any of the following reasons:
  - a) The child is at least 18 years old and an action to establish paternity is prohibited under Arkansas law.
  - b) A genetic test or a court order has excluded the putative father and no other putative father can be identified.

- c) OCSE has determined that it would not be in the best interest of the child to establish paternity in a case involving incest or rape, or in any case where legal proceedings for adoption are pending.
  - d) The identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by OCSE with the custodial party.
- 6. The noncustodial parent's location is unknown and all locate efforts have been unsuccessful despite diligent effort using multiple sources:
  - a) Over a two-year period when there is sufficient information to initiate automated locate efforts;
  - b) Over a one-year period when there is sufficient information for automated locate efforts but locate interfaces are unable to verify a Social Security Number;
  - c) Over a six-month period where there is not sufficient information to initiate automated locate efforts.
- 7. OCSE has determined, after review and appropriate approval, that the noncustodial parent cannot pay support for the duration of the child's minority or thereafter, has no income or assets available above the subsistence level that could be levied or attached for support, and shows no evidence of support potential for the following reasons:
  - a) The noncustodial parent has been institutionalized in a psychiatric facility
  - b) The noncustodial parent is incarcerated
  - c) The noncustodial parent has a medically verified total and permanent disability
- 8. The noncustodial parent's sole income is from supplemental Security Income (SSI) or from both SSI and Social Security Disability Insurance (SSDI) but the SSDI benefit is not a significant source of income.
- 9. The noncustodial parent is a citizen of, and lives in, a foreign country, does not work for the federal government or a company with headquarters or offices in the United States, and has no reachable domestic income or assets, and there is no federal or state treaty or reciprocity with the country.
- 10. The case was open for State Parent Locate Services only and the locate services have been provided.
- 11. In cases where cooperation with OCSE is not required as a condition of receiving public assistance, the custodial party requests closure in writing and there is no assignment to the State of medical support or of arrearages owed to the state that accrued under a support order.
- 12. There has been a finding of good cause or a determination that support enforcement may not proceed without risk of harm to the child or custodial party.
- 13. In cases where cooperation with OCSE is not required as a condition of receiving public assistance, when OCSE is unable to contact the party despite a good faith effort to contact

the party through at least two different methods.

14. In cases where cooperation with OCSE is not required as a condition of receiving public assistance, OCSE documents the custodial party's failure to cooperate and an action by the custodial party is essential for the next step in providing establishment or enforcement services.
15. OCSE documents failure by the initiating state to take an action that is essential for the next step in providing services. Federal requirements and time frames will be taken into consideration for closing intergovernmental cases.
16. The initiating state has sent notification that the initiating state has closed its case.
17. The initiating state has sent notification that services are no longer needed.
18. Another assistance program, including TEA, Foster Care, SNAP, and Medicaid, has referred a case to OCSE that has been determined, after review and appropriate approval, to be inappropriate, as determined by an OCSE Field Manager, to establish, enforce, or continue to enforce a child support order and the custodial party has not applied for services. Detailed documentation of the review process and reason for case closure will be maintained in the case notes.
19. The open enforcement case, including a case with arrears assigned to the State, has been transferred to a Tribal IV-D agency and OCSE has complied with the following procedures:
  - a. Before transferring the case to a Tribal IV-D agency and closing the case:
    - i. The custodial party requested OCSE to transfer the case to the Tribal IV-D agency and close the case; or
    - ii. OCSE notified the custodial party of its intent to transfer the case to the Tribal IV-D agency and close the case and the recipient did not respond to the notice to transfer the case within 60 calendar days from the date notice was provided;
  - b. OCSE completely and fully transferred and closed the case; and
  - c. OCSE notified the custodial party that the case has been transferred to the Tribal IV-D agency and closed; or
  - d. The Tribal IV-D agency has a State-Tribal agreement approved by federal OCSE to transfer and close cases. The State-Tribal agreement must include a provision for obtaining the consent from the custodial party to transfer and close the case.
20. A case must be closed and supporting documentation will be maintained for the case closure decision when the child is eligible for health care services from the Indian Health Service (IHS); and the case was opened because of a Medicaid referral based solely upon health care services, including the Purchased/Referred Care program provided through an Indian Health Program.



## **7.3 NOTICE OF CASE CLOSURE**

A notice of intent to close a case for enforcement services will be sent to the custodial party 60 days prior to the closure of the case.

In intergovernmental cases meeting the criteria for case closure, OCSE will send the notice to the other state, in a record, 60 days prior to closure of the intent to close the case. OCSE will not contact the custodial party in responding cases.

If the custodial party is deceased, the 60-day closure notice should be sent to the person in charge of closing out the custodial party's business affairs or to the custodial party's last known address.

The following exceptions do not require a notice of closure and can be closed immediately:

- The custodial party who is not a recipient of TEA or SNAP requests closure in writing and there is no assignment of medical support owed to the state.
- The case was opened for State Parent Locate Services only and the location services have been provided.
- OCSE or the appropriate agency has determined that support enforcement may not proceed without risk of harm to the child or a party, including a finding of Good Cause.

The case shall remain open if the custodial party or the initiating state supplies information in response to the notice of closure which could lead to the establishment of paternity or a support order or enforcement of an order. A case that is scheduled for closure because OCSE was unable to contact the custodial party by two different methods must remain open if contact with the custodial party is reestablished.

## **7.4 CLOSING CASES WHEN LEGAL ACTION IS PENDING**

If legal action is pending at the time the applicant requests closure, OCSE may either dismiss all action without prejudice, or substitute the applicant as Plaintiff or moving party and withdraw.

The attorney will notify the parties of OCSE's actions and where the case stands in the legal process. The case will be closed as soon as practicable.

## **7.5 CLOSING AN ENFORCEMENT CASE**

After a closure notice has been generated and the 60-day period has passed, a case will either change to a payment processing case or close altogether. If a valid Arkansas order exists, and a continuing current or past due child support obligation, the case will change from an open

enforcement case to a payment processing case. If there is no longer a valid Arkansas order and continuing child support obligation, the case will close completely.

If there are any actions pending when an enforcement case closes, enforcement efforts such as license suspension and any pending tax offset will cease. If TEA arrears are owed to the state, the TEA arrears will continue to be subject to tax offset up to the certified amount and will be retained for arrears to the state owed. Any amount received from a federal tax offset in excess of the TEA arrears will be disbursed to the noncustodial party. Any intercepted federal tax refund in a non-TEA case that may be on hold at the time of case closure will be disbursed to the noncustodial parent.

In a case where current support or arrears are still due when a case is no longer being enforced, any income withholding to an employer or to Worker's Compensation will remain in place.

## **7.6 INTERGOVERNMENTAL CASE CLOSURE**

Federal regulations authorize the responding state to close an intergovernmental case when it documents a failure on the part of the initiating state to take an action that is essential for the next step in providing services. One exception involves income withholding. If a state using authority under its UIFSA statute sends a withholding notice directly to an employer in another state, it cannot be considered non-cooperation and a rationale for case closure by the employer's state that is otherwise processing an intergovernmental case for the state that sends the direct withholding.

When making a decision regarding whether or not an initiating state has failed to take an action that is essential to the next step in providing services, take into consideration the requirements and time frames outlined in federal regulations.

A notice of intent to close the case must be sent to the initiating state 60 days prior to case closure. OCSE is not required to send a closure notice to the custodial party. It is not the responding state's responsibility to be in direct contact with the custodial party in the initiating state.

The initiating state must be notified within 10 working days of locating the noncustodial parent in another state. The case may not be closed until the initiating state has directed the responding state to either return the forms or forward the case to the noncustodial parent's new location. The case may be closed only after notification that receipt of the transferred case has been acknowledged.

The caseworker is responsible for ensuring that the address for future payments is correct when closing an intergovernmental case. If the order is from another state, two attempts to obtain the address must be made. The second attempt should be in a record advising the initiating state that money may be returned to the noncustodial parent if a good address is not provided. Collections based on Arkansas orders will be retained until a good address is provided.

## **7.7 RE-OPENING OF CLOSED CASES**

Custodial parties whose case was previously closed for enforcement services may request the case be reopened upon submitting an application and fees, if applicable. The application will be reviewed to determine if the circumstances of the case allow effective enforcement efforts.

# Chapter 8

## FINANCIAL

### 8.1 COSTS/FEEES FOR SERVICE

#### 8.1.1 Noncustodial Parent Costs and Fees

Arkansas law requires that all orders directing payments through the registry of the court or through the Arkansas Child Support Clearinghouse must set a fee to be paid by the noncustodial parent until the child support obligation has ended and there are no longer arrears due.

Payments made for this administrative fee may be made on an annual or quarterly basis online through the OCSE website, in the form of a check or money order payable to OCSE, or such other legal tender that OCSE may accept. This administrative fee payment is separate and apart from the support payment, and under no circumstances will the support payment be reduced to fulfill the payment of this fee. The administrative fee will not be assessed in the year that the case is entered in the system.

In addition, OCSE will petition the court for award of attorney fees and the cost associated with litigation, including the cost of paternity testing, and for the recovery of fees for child support services generated due to the failure of the NCP to pay his or her obligation. However, noncustodial parents who must cooperate with child support services as a condition of receiving SNAP benefits shall not be charged attorney fees or court costs, including the costs of paternity testing.

#### ***(a) Cost and Fee Recovery***

Statements will be sent to noncustodial parents regularly when costs and/or fees are owed. The billing statements will provide an itemized list of costs and fees assessed during the current period, and any outstanding balance remaining due.

Noncustodial parents who owe fees or owe a debt to the state of \$50 or more will be certified for state tax intercept. State tax intercepts are distributed in the order of current support, arrears, and fees. Excess payments will be applied to any cost or fee balance. Other legal action such as, but not limited to, garnishment may be taken to collect outstanding fee and cost balances.

#### 8.1.2 Custodial Party Costs and Fees

Costs and fees are charged to the custodial party who applies for OCSE services and in intergovernmental cases. However, pursuant to federal regulations, fees may not be charged:

- To a custodial party who much cooperate with child support services because
  - The custodial party receives TEA services
  - The custodial party and the child receives Medicaid
  - The custodial party receives SNAP benefits
- To a custodial party who receives Medicaid or if the child for whom the custodial party is seeking services receives Medicaid.

Fees or costs for services including but not limited to legal fees noted below, generated because of a breach by the noncustodial parent of an agreement or a court order, will be incorporated into the request for relief and reduced to judgment in favor of OCSE against the noncustodial parent. Fees and costs based on such judgment and recovered from the noncustodial parent will offset fees assessed to the custodial party.

The cost schedule is as follows:

**Application Fee** – The application fee per noncustodial parent is \$25. This is paid by the applicant at the time the application for services is submitted. The application fee is charged per case and is nonrefundable and nonreimbursable.

**Base Cost** - Base cost is charged the first of each month if a payment was received during the previous month. The base cost is 13% of the amount disbursed to the family for the previous month up to a maximum of \$18 per month.

### **Legal Action**

- Initiation of Legal Action, \$80. Assessed when complaint, motion or petition, order and citation, affidavit and arrest warrant, notice/order of hearing, or other pleadings or notices are prepared and forwarded to the clerk for processing.
- Out-of-Court Settlement, \$100. Assessed when court action is resolved prior to court appearance in all cases.
- In-Court Settlement, \$150. Assessed when court action is resolved at the court appearance without trial.
- Trial \$250. Assessed when court action is resolved by the court after hearing.

### **Other**

- Actual Costs will be assessed based on actual costs incurred by the agency for monies expended including but not limited to the actual cost of transcripts, depositions, witness fees, paternity tests, IRS full collection process, filing fees, service of process, and other litigation costs, including federal offset program fees, not to exceed \$25 if the offset is over \$100.
- Financial Institution Levy Fee, \$35. This fee will be charged for each levy that results in a monetary recovery from a participating financial institution.
- Insurance Claim Levy Fee, \$35. This fee will be charged for each levy that results in a monetary recovery from an insurance claim.

### ***(a) Cost and fee recovery***

Fees and costs assessed in open enforcement cases are recovered from child support payments collected by withholding up to 13% from any payment received through the Arkansas Child Support Clearinghouse until all charges are paid in full. Detailed information regarding assessments is available through the OCSE customer service website and is provided in an annual statement.

In payment processing or closed cases, regular billing statements are issued.

Cost and fees totaling \$50 or more owed by custodial parties in payment processing or closed cases will be certified for state tax refund offset.

**State Tax Refund Intercept - Overpayments** - Custodial parties who have overpayments due in open enforcement (IV-D), payment processing (Non-IV-D), suspended, and closed cases will be certified for state tax offset if there is an overpayment balance in excess of \$25 and if the custodial party failed to make arrangements to repay the overpayment.

## **8.1.3 Intergovernmental Cases**

### ***(a) Interstate Cases***

Custodial parties in interstate cases will be charged fees according to the same cost schedule as intrastate cases, whether initiating or responding, and regardless of whether the other state also charges fees.

Fees assessed to the custodial party are deducted from child support collected and the amount deducted are identified when the payment is forwarded to the initiating state. The initiating state must give the noncustodial parent full credit for the total amount paid.

### ***(b) International Cases***

Fees may not be charged to another country or to the custodial party residing in a foreign country in an international case.

## **8.1.4 Debt Recovery**

The OCSE Debt Recovery Section concentrates on the collection of debts, including but not limited to, administrative fees, costs, custodial party overpayments, and the collection of insufficient funds debt.

OCSE will make collection efforts in situations where income withholding is not possible. Those efforts may include, but are not limited to the following:

- Seeking judgment for past due amounts
- Garnishing wages or bank accounts
- State income tax refund offset

## **8.2 DISTRIBUTION**

### **8.2.1 Distribution Order**

Child support payments collected in open enforcement cases, with the exception of federal income tax refund offsets, are distributed first to the support obligation due in the month in which the payment was collected. The date of collection is the date the payment was received at the Arkansas Child Support Clearinghouse. Collections are applied in the following manner.

#### ***(a) Non-TEA Cases***

In open enforcement cases where the custodial party is not receiving, nor has received, TEA benefits, support payments received are paid in the following order: current support, past-due support (also known as arrears), cash medical support, spousal support, debts owed to the state, and fees owed by the noncustodial parent.

#### ***(b) TEA Cases***

In open enforcement cases where the custodial party is receiving TEA benefits, support payments received are paid first to the State up to the previous month's grant amount. Any amount collected in excess of the unreimbursed grant is disbursed to the family.

#### ***(c) Former TEA Cases***

In open enforcement cases where the custodial party has assigned arrears, payments received are paid first to the custodial party up to the amount of support due in the current month. Any amount collected in excess of current support is applied to arrears owed to the family and then arrears owed to the state. If the current month's support obligation and all arrears have been satisfied, excess payments are applied to any fees owed by the noncustodial parent, or if none, disbursed to the family.

#### ***(d) Foster Care Cases***

Payment collected for a child receiving IV-D Foster Care that is a payment on the required support obligation for the current month will be retained by the State to reimburse Foster Care maintenance payments.

#### ***(e) Payment Processing Cases***

All child support payments received in payment processing cases are disbursed to the custodial party.

#### ***(f) Split-Debt Cases***

Federal tax refunds intercepted by OCSE in split-debt cases will be applied to the assigned arrears. Any amount of federal tax intercept that remains will be refunded to the noncustodial parent. All other child support payments are disbursed to the custodial party.

### ***(g) Federal and State Income Tax Intercept***

Amounts collected through federal income tax offset must be paid to reimburse Foster Care maintenance payments first, then to satisfy assigned arrears in TEA or former-TEA cases, then the custodial party. IRS offsets received by OCSE may be distributed to reflect payments on the case or cases, but the actual disbursement of the payment may be held for up to six months if the refund is subject to adjustment by the IRS.

State tax intercepts are distributed first to current support, then to arrears, and then fees.

In non-TEA cases, if the case is certified and the custodial party notified OCSE in writing subsequent to the certification that the case is to be closed, OCSE will delete the certification and return any funds that may be intercepted after the effective date of the closure to the noncustodial parent. If TEA arrears are owed to the State, the amount certified will be reduced to that amount and a tax intercept up to the certified amount will be retained for arrears owed; any amount collected in excess of the debt owed to the State will be refunded to the noncustodial parent.

## **8.3 DISBURSEMENT**

### **8.3.1 Disbursement to the Custodial Party**

As required by state and federal law, payments are disbursed directly to custodial parties within two business days of receipt and identification. In an intergovernmental responding case, payments are disbursed to the initiating child support program within two business days. Payment may not be made to private collection agencies or similar third parties.

Distribution and disbursement may be delayed only if:

- The court has ordered payments held pending the outcome of a judicial review or during the pendency of an appeal, or other litigation regarding the existence or amount or arrears owed or on specific order of the court.
- There is an error that has occurred and the worker is correcting the problem. The worker must monitor the case daily to ensure that any money that should be disbursed to the custodial party is released promptly in order to meet the two-business day timeframe required by the regulation and then remove the distribution hold as soon as the problem is corrected.

### **8.3.2 Stale-Dated and Lost/Stolen Checks**

There is a waiting period of 14 calendar days from the date the check was mailed before action can be taken on a lost or stolen check. However, if it is determined that the check was mailed to an incorrect address, the waiting period is only seven days. The intended recipient of the check must complete an affidavit and/or surety bond, as appropriate. After the waiting period and the necessary paperwork has been signed, a new check may be issued.

A check is considered stale-dated 180 calendar days after it was issued. If a payee is in possession of a stale-dated check, the check should be returned to OCSE and a replacement check will be issued. When a stale dated check becomes one year old and the payee cannot be



located, the funds are redistributed and applied to arrears and/or fees, refunded to the noncustodial parent or payor, or sent to the state treasurer.

### **8.3.3 Insufficient Funds**

If the bank returns a check unpaid because of insufficient funds, OCSE will pursue payment in the manner required by law and may restrict the payor's check-writing privileges as permitted by Arkansas law and DFA policy.

When a payor bank or financial institution returns a check due to either a lack of funds to pay the demand or due to the absence of a valid account, that check may be subject to civil collection procedures, and referral to the Office of the Prosecuting Attorney for criminal process. An attempt will be made to notify the maker of the check to allow for redemption. A service charge for all returned checks, is charged as allowed by state law.

If the payor responds to the notice and makes restitution before the record is submitted to the prosecuting attorney's office, civil remedies will not be pursued.

### **8.3.4 Overpayments**

#### ***(a) Custodial Party Reimbursement***

OCSE will make every effort to ensure that payments are posted and disbursed correctly. However, if OCSE made an error, if payments were made by a check on which a stop payment order was placed, or if an adjustment was made by the IRS to a collection previously disbursed, OCSE will seek reimbursement for the overpayment.

OCSE will attempt to recover overpayments by requesting instruction from custodial parties regarding how they wish to repay an overpayment. Custodial parties will be given the option to choose to permit the overpayment to be repaid by recoupment or by repaying the overpayment directly either in full or in installment agreements. Instruction will be solicited from a custodial party in writing and those instructions must be given to OCSE in writing.

Custodial parties who have not made arrangements to repay an overpayment may be certified for state tax offset, as described in this document Chapter 8, Custodial Party Costs and Fees.

#### ***(b) Refunds to the Noncustodial Parent***

Refunds to the noncustodial parent will be made only if OCSE made an error that resulted in the overpayment. The noncustodial parent must initiate the request for a refund. The request must be in writing and indicate that the noncustodial parent understands that refunding money will create an overpayment for the custodial party.

## **8.4 PAYMENTS MADE BY THE NONCUSTODIAL PARENT**

Payments made to the Arkansas Child Support Clearinghouse may be made by check, money order, cashier's check, through OCSE MyCase by credit card or eCheck, or any other form of

payment that may be available through the Office of Child Support Enforcement. Cash payments are discouraged.

#### **8.4.1 Direct Payments from the Noncustodial Parent to the Custodial Party**

In order to ensure proper credit is given for payments made, all child support payments should be made through the Arkansas Child Support Clearinghouse.

If a custodial party who has an open enforcement case receives payment directly from a noncustodial parent, the money must be forwarded to the Arkansas Child Support Clearinghouse to ensure that the payment is properly recorded. If a recipient of TEA or Medicaid fails to forward a payment made directly from the noncustodial parent, the result may be a reduction in or a loss of benefits. OCSE must notify the IV-A agency of the amount of the collection, which represents payments on the required support obligation for the month, within 10 business days of the end of the month in which the support is received.

# Chapter 9

## ADMINISTRATIVE HEARINGS

### 9.1 OVERVIEW

The purpose of an OCSE administrative hearing is to provide an opportunity for the review of an administrative action, before that action is taken, which a party believes will be adverse to their interest. For the purpose of an administrative hearing, a party is an account holder, custodial party, or noncustodial parent.

Administrative hearings are conducted by attorneys within or assigned by the General Counsel section. Administrative hearings are not available to hear objections to federal or state laws or regulations or dispute the amount of child support arrears as calculated by the OCSE caseworker. Additionally, complaints regarding visitation, paternity determinations, wage withholding, or the amount of court ordered child support can only be reviewed by the court. If the basis for the hearing request involves any of the following issues that can be resolved by an agency decision, a hearing may be held:

- Federal administrative and tax offset
- State tax offset
- Liens against accounts in financial institutions or insurance settlements (Child Support Lien Network (CSLN) and Financial Institution Data Match (FIDM))
- Suspension of driver's license, permanent license plates, recreational, or certain professional licenses
- Custodial party or noncustodial parent noncooperation
- Release of address information

### 9.2 INITIATING AN ADMINISTRATIVE HEARING

#### 9.2.1 Written Request

A party, or their attorney, may request an administrative hearing by submitting a written request to the office specified on the notice of the intended administrative action. That request must be received within the timeframe specified on the notice. As a convenience, an Administrative Hearing Request form is available in all local OCSE offices and on the OCSE website at [www.childsupport.arkansas.gov](http://www.childsupport.arkansas.gov).

The request for an administrative hearing **must** contain information sufficient to determine the following:

- A statement of the specific action for which a hearing is requested
- The reason the party believes the action should not occur
- The relief or other action the requesting party is seeking

## **9.2.2 Timeframes in Which to Request an Administrative Hearing**

The party against whom the proposed action is to be taken must submit a written request for an administrative hearing to the local child support office within the following timeframes from the mailing date of the notice of intent/pre-offset notice.

- Federal tax offset – 30 days from the date of the notice
- State tax offset – 30 days from the date of the notice
- Financial Institution Data Match (FIDM) – 10 days from the date of the notice
- Insurance settlements or accounts (CSLN) – 15 days from the date of the notice
- Suspension of driver's license; permanent license plates; recreational or professional licenses – 30 days from the date of the notice
- Custodial or noncustodial party noncooperation – 30 days from the date of the notice
- Release of address information – 20 days from the date of the notice

## **9.3 SCHEDULING HEARINGS**

The hearing officer will schedule the hearing to afford the parties, and their attorneys, if any, notice of the date, place, and time of the hearing. The hearing may be rescheduled at the discretion of the hearing officer or at the request of any party upon a showing of good cause. The hearing scheduling notice shall recite that the obligor's failure to appear for the scheduled hearing will be considered a waiver of the administrative hearing process.

The hearing officer will mail the party a notice setting the time, location, and date of the hearing and advising that he or she has 15 days from the date of the notice to inform the hearing officer of the identity of any OCSE employees they may wish to question during the administrative hearing.

## **9.4 INTERPRETERS**

If a foreign language interpreter or an interpreter for the hearing impaired is required by the party requesting the hearing, the party shall advise the General Counsel section, in writing, no later than 10 days prior to the scheduled hearing. A qualified interpreter will be secured for the hearing by the General Counsel section.

## **9.5 WITNESSES**

The party and/or his or her representative will be notified by the General Counsel section that 15 days are allowed from the date of the notice to review the hearing file at the office indicated in the notice. The notice will also advise the party and/or their representative that they may identify OCSE employees who they wish to question during the administrative hearing.

The initiating office should submit the names of any witnesses the office wishes to testify regarding the adverse action taken to the General Counsel section at the time the hearing file is submitted. OCSE employees are required to testify in the administrative hearings upon notification by the hearing officer. The initiating office representative will be notified by the

hearing officer of any witnesses the party has requested and will have five days from receipt of this notice to identify rebuttal witnesses.

## **9.6 PLACE OF HEARINGS**

The hearing will normally be held at the OCSE Central Office, Little Rock, Arkansas. At the request of a party, and/or at the discretion of the hearing officer, the hearing may be held at an OCSE field office or by telephone conference call.

## **9.7 ABANDONING THE ADMINISTRATIVE HEARING REQUEST**

If the requesting party fails to appear for the hearing and has not received the consent of the hearing officer to a postponement, the administrative appeal will be considered abandoned.

## **9.8 INITIATING OFFICE**

The initiating office will provide pertinent information relating to the issues of the case and be prepared to question any witnesses who are presented as well as the party requesting the hearing. In hearing requests relating to state or federal tax offset, the local office must attempt to contact the requesting party to attempt to resolve the complaint prior to the hearing.

## **9.9 CONDUCT OF HEARING**

The hearing will be conducted by a hearing officer who is an attorney assigned by the General Counsel section. No person who participated in the decision that is being appealed may serve as the hearing officer. The administrative hearing will be electronically recorded by the hearing officer or his or her designee. The party who requested the administrative hearing may have a designated representative present at the hearing.

## **9.10 HEARING DECISION**

### **9.10.1 Final Order**

The hearing officer will prepare and sign a Final Order based on testimony of the parties, documents presented, and statements of party representatives. A copy of the Final Order will be mailed to the party appealing the adverse action with proof of delivery, (i.e., certified or registered mail, restricted delivery, return receipt requested). A copy will also be provided to the representative of the initiating office.

### **9.10.2 Judicial Appeals to the Circuit Court**

If a party wishes to appeal the Final Order, he or she has 30 calendar days after receipt of the final order to file an appeal with the appropriate circuit court for a judicial review.

In noncooperation cases, any appeal may be made to the appropriate state agency.

## **9.11 INTERGOVERNMENTAL CASES INVOLVING FEDERAL TAX OFFSET**

If an administrative hearing is requested in an intergovernmental case, the hearing may be conducted by the state that issued the child support order at the request of the noncustodial parent. When an administrative review is conducted by the issuing state, the decision made by that state is binding.