



Resolution to Exclude Offset of Past-Due Child Support from Individual COVID-19 Payments

Introduction

The impact of the COVID-19 crisis on the child support program and the families it serves is wide-ranging. NCSEA supports a balanced approach by looking at the whole family with a goal of ensuring children are financially supported while preserving self-sufficiency for both parents.

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which provides emergency assistance and health care response for individuals, families, and businesses affected by the 2020 coronavirus pandemic. One important component of the CARES Act provides for \$1,200 to be given to individual citizens within certain income limits. While the CARES Act excluded such payments from offset for certain debts owed to the government under subsections (d),(e), and (f) of Section 6402 of the Internal Revenue Code of 1986 (IRC), the Act did not similarly exclude payments from offset for past-due child support under subsection (c) of IRC Section 6402.

Most state and tribal child support programs understood the purpose of the payment was to provide immediate and necessary relief to individuals who may have been impacted by the COVID-19 pandemic. They preferred that the payment be paid to each parent without being offset for past-due support, as the self-sufficiency of both parents was the immediate focus. However, there was limited opportunity to share that perspective with Congress prior to the enactment of the CARES Act.

Background

Congress may have elected not to exclude past-due child support from offset in the CARES Act because of the perception that the payments would go to parents and children owed support. But unfortunately, under current child support distribution laws, a significant amount of child support collections obtained through the federal tax offset program often go to *government owed* debt—and not parents and children.

Prior to the Deficit Reduction Act of 2005 (DRA), federal tax refund offsets were applied first to any state-assigned debt. Like all child support collections retained by the state, the state is required to pay at least 50% of that retained payment back to the federal government according to the state's Federal Medical Assistance Percentage. See 42 U.S.C. § 1905(b). Under the DRA, states were authorized to elect between pre-DRA





distribution or disbursing federal tax refund offsets like any other child support collection to current support, then to any past-due support owed to the family, and lastly to any state-assigned debt. See 42 U.S.C. § 657(a)(2)(b) (as amended by the DRA); 42 U.S.C. § 654(34) (states can elect between pre-DRA and post-DRA distribution). Because of significant operational and fiscal impacts, only an estimated 6 of the 54 states and territories have elected to distribute federal tax refunds under the DRA option, and thus nearly all states and territories continue to apply such refunds to any state-assigned debt before past-due support owed to the family.

In FFY 2018, a total of \$1.64 billion was collected through federal tax refund offset, out of a total of \$7.75 billion collected towards arrears from all sources. [OCSE Preliminary Data Report](#) FFY 2018 Table P-29, Table P-86. Of the \$114.70 billion owed in past-due support, 21.16% (\$24.27 billion) was state-assigned debt. Approximately 16%-20% of federal tax refund offsets were applied to state-assigned debt, totaling roughly \$280 million in FFY 2018. *Id.* at Table P-98. There was a total of 1.2 million tax refund offsets in Calendar Year 2018, out of 7.4 million cases submitted for offset, with an average offset collection of \$1,445. Table P-98; Table P-103. Over 30% of the cases submitted for offset involved state-assigned debt.

With the broad eligibility for the relief payments under the CARES Act, and the possibility that the offset also will be applied to the additional \$500 payment for dependents or an additional \$1,200 in a joint return, it would be easy to estimate six times the usual number of offsets (compared to 2018 where 7.4 million cases led to 1.2 million offsets) and a potential 50% increase in the portion applied to assigned debt (30% of cases submitted with assigned debt compared to 16-20% of cases receiving an offset in 2018). This could amount to **\$1.7 billion to \$2.5 billion** in CARES Act relief payments being offset and at least half *returning to the federal government* and the rest retained by the state—rather than being disbursed to families or paid directly to parents who owe child support to support themselves.

THEREFORE, NCSEA resolves to urge Congress to:

Exclude any future COVID-19 related relief payments from offset for past-due child support until Congress determines that parents who owe past-due support have enough employment opportunities to be self-sufficient without a relief payment.

Adopted by the NCSEA Board of Directors on April 21, 2020

