CHAPTER 9-000 ENFORCEMENT OF SUPPORT ORDERS

This chapter contains information regarding the tools or methods or techniques available for the enforcement of support orders.

9-001 TIMEFRAMES FOR ENFORCEMENT: When a delinquency or other support-related noncompliance is identified or the non-custodial party is located, whichever is later, the Department or County/Authorized Attorney must initiate enforcement action within no more than:

1. 30 calendar days if service of process is not needed; or
2. 60 calendar days if service of process is needed.

9-002 ADMINISTRATIVE ATTACHMENT: Neb. Rev. Stat. §§ 43-3333 to 43-3339 allow for administrative attachment of personal assets of an obligor held by a payor or held by a financial institution for the collection of unpaid support from obligors who are not in compliance with support orders.

9-002.01 Criteria for Administrative Attachment: The property of an obligor with a IV-D support obligation may be subject to administrative attachment:

1. If the obligor is delinquent on a support order in an amount equal to the support due and payable for more than a three-month period of time; or
2. Upon request of the state agency of another state that administers Title IV-D of the Federal Social Security Act.

9-002.02 Verification of Applicability of Administrative Attachment: The Department or County/Authorized Attorney will make reasonable efforts to verify that an obligor in a case receiving IV-D services is subject to administrative attachment.

9-002.03 Notice of Arrearage: If the Department or County/Authorized Attorney determines to seize an obligor's property, the Department or County/Authorized Attorney will send a written notice of arrearage to the obligor by first-class mail.

9-002.03A Request for Administrative Hearing: An obligor receiving a notice of arrearage may send a written request for a hearing to the Department or County/Authorized Attorney. The request must be postmarked within 20 days after the date the notice of arrearage is mailed. The administrative hearing request must be based upon a mistake of fact. A mistake of fact is an error in the:

1. Amount of the arrearage; or
2. Identity of the obligor.

If the request is not postmarked within 20 days after the date the notice of arrearage is mailed, or the request is not based upon a mistake of fact, the Department will deny the administrative hearing request. If the obligor's request for administrative hearing is proper, the Department will provide an opportunity for a hearing and the administrative attachment process must be stayed until the administrative appeal process is completed.

9-002.03A1 Administrative Hearing: Any administrative hearing must be conducted in accordance with 465 NAC 6-000 ff. and the Administrative Procedure Act, Neb. Rev. Stat. § 84-901, et seq.

9-002.03A2 Hearing Date: The Department will provide an opportunity for a hearing within 15 calendar days after receipt of a proper written request.

9-002.03A3 Hearing Results: The Department will notify the obligor and Child Support Enforcement of the hearing results within 15 calendar days of the hearing.

9-002.03B Judicial Review: Any person aggrieved by a determination of the Department, upon exhaustion of all administrative remedies, may seek judicial review of a hearing finding in the court in which the support order was issued or registered.

9-002.04 Order to Withhold and Deliver: The Department or County/Authorized Attorney may send a payor an order to withhold and deliver specifically identified property of any kind due, owing, or belonging to an obligor if:

1. The Department has reason to and does believe that a payor has property in its possession which is due, owing, or belonging to an obligor;
2. Payment on a support order is in arrears an amount in excess of the support due for a three-month period of time;
3. The Department or County/Authorized Attorney sent a notice of arrearage to the obligor at least 30 days prior to sending the notice to withhold and deliver; and
4. The obligor did not request a hearing after receiving the notice of arrearage or if after a hearing the Department determined:
   a. An arrearage did exist; or
   b. There was no mistake of fact.

9-002.04A Payor Duties: When a payor receives an order to withhold and deliver the payor must:

1. Hold the property subject to the order to the extent of the amount of the arrearage stated in the order until the payor receives further notice from the Department or County/Authorized Attorney;
2. Within five business days of receiving the order:
   a. Answer any questions posed to the payor in the order;
   b. Supply the name and address of any person(s) that has an ownership interest in the property sought to be reached; and
   c. Return such information to the Department or County/Authorized Attorney; and

3. Upon further notice from the Department or County/Authorized Attorney, deliver any property which may be subject to the order to the court or agency designated in the order, or release such property or portion thereof.

9-002.04B Fee for Processing an Order to Withhold and Deliver: A payor that is a financial institution may deduct and retain a processing fee, not to exceed ten dollars, from any amounts turned over to the Department. This processing fee must not be credited to the obligor's arrearage total.

9-002.04C Failure or Refusal of the Payor to Withhold and Deliver: If a payor fails or refuses to withhold or deliver property subject to an order to withhold and deliver, unless the payor can show cause as to why the property was not withheld or delivered, the court which issued or registered the support order may enter a judgment for the lesser of the amount of the:

1. Arrearages stated in the order to withhold and deliver; or
2. Property or credits of the obligor in the possession or under the control of the payor at the time the order to withhold and deliver was received.

9-002.04D Discharge of the Payor: If a payor complies with an order to withhold and deliver the payor is discharged of its liability to an obligor or beneficiary with regard to the portion of the obligor's property withheld or delivered. In addition, the payor is discharged as to any property in its possession or under its control that is not the property of the obligor.

9-002.04E Payor's Release from Liability: A payor is not liable to the Department or County/Authorized Attorney or any individual for:

1. Responding to an order to withhold and deliver;
2. Holding, refusing to release to the obligor, or delivering any property of an obligor in compliance with an order to withhold and deliver; or
3. Any other action taken in good faith to comply with the requirements of Neb. Rev. Stat. §§ 43-3328 to 43-3339, regardless of whether such action was specifically authorized or described by such sections.

9-002.04F Priority of an Order to Withhold and Deliver: An order to withhold and deliver has the same priority as a garnishment for the support of a person pursuant to Neb. Rev. Stat. § 25-1056(4).

9-002.05 Notice of Order to Withhold and Deliver: Within five days after the issuance of an order to withhold and deliver, the Department or County/Authorized Attorney will send written notice to the obligor by first-class mail.

9-002.05A Request for Administrative Hearing: An obligor may request a hearing to contest a mistake of fact by sending a written request to the Department or County/Authorized Attorney within seven days after the date of the notice of order to withhold and deliver. If the request is not postmarked within seven days of the date the notice of order to withhold and deliver, or the request is not based upon a mistake of fact, the Department will deny the administrative hearing request. If the obligor's request for administrative hearing is proper, the Department will provide an opportunity for a hearing and the administrative attachment process must be stayed until the administrative appeal process is completed.

9-002.05A1 Administrative Hearing: Any administrative hearing must be conducted in accordance with 465 NAC 6-000 ff. and the Administrative Procedure Act, Neb. Rev. Stat. § 84-901, et seq.

9-002.05A2 Hearing Date: The Department will provide an opportunity for a hearing within 10 days after receipt of a proper written request.

9-002.05A3 Hearing Results: The Department will notify the obligor and Child Support Enforcement of the hearing results within 15 calendar days of the hearing.

9-002.05B Judicial Review: Any person aggrieved by a determination of the Department, upon exhaustion of all administrative remedies, may seek judicial review of a hearing finding in the court in which the support order was issued or registered.

9-002.06 Notice to Other Persons with an Ownership Interest: Upon receiving information from a payor that any other person(s) has or may claim an ownership interest in any property sought to be reached, the Department or County/Authorized Attorney will send written notice to such person(s) by certified mail, return receipt requested.

9-002.06A Request for Administrative Hearing: Any person claiming an ownership interest in any property sought to be reached may request a hearing to establish that the property or any portion of the property is not the obligor's by sending a written request to the Department or County/Authorized Attorney within 15 days after the date of the notice to other persons with an ownership interest. If the request is not postmarked within 15 days after the date of the notice to other persons with an ownership interest, the Department will deny the administrative hearing request. If the request for administrative hearing is proper, the Department will provide an opportunity for a hearing and the administrative attachment process must be stayed until the administrative appeal process is completed.

9-002.06A1 Administrative Hearing: Any administrative hearing must be conducted in accordance with 465 NAC 6-000 ff. and the Administrative Procedure Act, Neb. Rev. Stat. § 84-901, et seq.

9-002.06A2 Hearing Date: The Department will provide an opportunity for a hearing within 15 calendar days after receipt of a proper written request.

9-002.06A3 Hearing Results: The Department will notify any person claiming an ownership interest in any property sought to be reached and Child Support Enforcement of the hearing results within 15 calendar days of the hearing.

9-002.06B Judicial Review: Any person aggrieved by a determination of the Department, upon exhaustion of all administrative remedies, may seek judicial review of a hearing finding in the court in which the support order was issued or registered.

9-003 ADMINISTRATIVE ENFORCEMENT IN ~~INTERSTATE~~ INTERGOVERNMENTAL CASES: See 466 NAC 10-000.

9-004 ADMINISTRATIVE OFFSET: See 466 NAC 9-014.

9-005 ADMINISTRATIVE SUBPOENA: State and Federal laws allow for an administrative subpoena to compel the production of certain information relevant to establishing paternity or establishing, modifying, or enforcing a support order, without the necessity of obtaining an order from any other judicial or administrative tribunal.

9-005.01 Criteria for Administrative Subpoena: The Department or County/Authorized Attorney may issue an administrative subpoena to compel the following:

1. Genetic testing of an individual relevant to establishing paternity;
2. Production of information including, but not limited to, the name and address of the individual, a listing of financial assets and liabilities from public or private entities, and other relevant financial records; and
3. Access to information in records of state or local agencies, including state and local tax and revenue records, titles to real and personal property, employment records, and records concerning the ownership and control of business entities.

9-005.02 Failure or Refusal to Comply: If a person named in an administrative subpoena fails or refuses to obey the subpoena, the Department or County/Authorized Attorney may apply to a court of competent jurisdiction for an order directing such person to comply with the subpoena. Failure to obey this order may be punished as contempt of court, which may result in imprisonment.

9-005.02A Request for Administrative Hearing: Any person refusing to comply with the subpoena may request a hearing to establish that the subpoena should not be complied with by sending a written request to the Department or County/Authorized Attorney within 15 days after the date the subpoena was issued. If the request is not postmarked within 15 days after the date the subpoena was issued, the Department will deny the administrative hearing request. If the request for administrative hearing is proper, the Department will provide an opportunity for a hearing and the administrative subpoena process must be stayed until the administrative appeal process is completed.

9-005.02A1 Administrative Hearing: Any administrative hearing must be conducted in accordance with 465 NAC 6-000 ff. and the Administrative Procedure Act, Neb. Rev. Stat. § 84-901, et seq.

9-005.02A2 Hearing Date: The Department will provide an opportunity for a hearing within 15 calendar days after receipt of a proper written request.

9-005.02A3 Hearing Results: The Department will notify any person refusing to comply with an administrative subpoena and Child Support Enforcement of the hearing results within 15 calendar days of the hearing.

9-005.02B Judicial Review: Any person aggrieved by a determination of the Department, upon exhaustion of all administrative remedies, may seek judicial review of a hearing finding in the court in which the support order was issued or registered.

9-005.03 Confidentiality: All information acquired pursuant to an administrative subpoena is confidential and must not be disclosed or released except to other agencies that have a legitimate official interest in the information for carrying out the purposes of this section.

9-005.04 ~~Interstate~~ Intergovernmental Subpoena: See 466 NAC 10-000.

9-006 BANKRUPTCY: If a non-custodial party files for protection under the Bankruptcy Code, the Department or County/Authorized Attorney may be notified as a 'creditor', especially if there has been an assignment to the state. Normally, child support obligations and arrears are not dischargeable in bankruptcy. However, the use and timing of enforcement methods will be affected, depending on the type of bankruptcy filing involved.

9-006.01 Types of Bankruptcy Filings: The different types of bankruptcies are named for the chapters of the Bankruptcy Code that govern the specific types. The four main categories are:

1. Chapter 7 involves a liquidation of the debtor's non-exempt assets where creditors are then paid from the proceeds on a pro rata basis;
2. Chapter 11 applies to business reorganizations;
3. Chapter 12 is similar to Chapter 11 for unincorporated farms and ranches; and
4. Chapter 13 involves a wage-earner plan, whereby the debtor's disposable income after expenses is collected by the bankruptcy trustee and distributed to creditors on a pro rata basis over a period of time, usually five years.

9-006.02 Notice of Bankruptcy Proceedings: The Department or County/Authorized Attorney may receive notice of bankruptcy proceedings filed by a non-custodial party. A written notice may be sent to the Department or County/Authorized Attorney by the bankruptcy court or by the trustee. Other methods of notification include:

1. The bankruptcy notice is sent to the County/Authorized Attorney;
2. The bankruptcy notice is sent to the Nebraska Attorney General's office;
3. The bankruptcy notice is sent to the Department by the attorney of record for either party; or
4. Either party informs the Department or the County/Authorized Attorney.

Regardless of the initial point of contact, the Department and the County/Authorized Attorney must be provided copies of any written bankruptcy notice.

9-006.03 Effect of Bankruptcy Filing on Enforcement Actions

9-006.03A Automatic Stay: When a bankruptcy petition is filed, most creditor activities directed at the debtor and/or the debtor's assets is automatically stayed. Actions taken in violation of the automatic stay are void or voidable, and may be punished by fine or by contempt action. There are two exceptions to the automatic stay that relate to support obligations:

1. Commencement or continuation of an action to establish paternity or to establish or modify an order for support; and
2. Collection of support from property which is not property of the bankruptcy estate.

In Chapter 7 cases, assets and income acquired after the bankruptcy filing date are not protected by the automatic stay. In Chapter 13 cases, post-filing earnings are covered by the automatic stay.

Once the automatic stay goes into effect, enforcement actions must be reviewed. The Bankruptcy Code permits income withholding, license suspension, consumer credit reporting, and the interception of tax refund without first obtaining relief from the automatic stay. In order to undertake any other enforcement actions, the County/Authorized Attorney must file a motion for relief from the automatic stay with the Bankruptcy Court. The filing fee for bankruptcy motions may be waived for "child support creditors and their representatives."

9-006.03B Filing Proof of Claim: A proof of claim may be filed with the Bankruptcy Court for arrearages and interest. Child support arrears are not dischargeable. However, claims for support obligations are entitled to priority status, if there are assets available to satisfy claims.

9-006.03C Objection to Chapter 13 Plan: A County/Authorized Attorney may object to a payment plan proposed in a Chapter 13 bankruptcy case. A Chapter 13 plan must be "proposed in good faith". Factors included in a determination of good faith include, but are not limited to, the following:

1. A plan proposing to pay less than 100% of support arrears or a current support amount that is not in accord with the amount specified in the support order is not made in good faith;
2. A plan which is proposed solely to delay the collection of support constitutes bad faith;
3. A plan that attempts to circumvent or relitigate domestic relations issues that have been previously decided by a state court is not made in good faith; and
4. A plan that proposes to distribute under the plan an amount that is less than a support creditor would receive under Chapter 7 liquidation.

9-007 CONSUMER CREDIT REPORTING: The Department may submit to consumer credit reporting agencies IV-D support orders with a total delinquency of more than $500.

9-007.01 Advance Notice to the Non-custodial Party: The Department will send a one-time advance notice to the non-custodial party regarding its intent to submit his/her support order to consumer credit reporting agencies. The advance notice must include the:

1. County where the support order originated;
2. Support order number;
3. Date the amount was reported delinquent;
4. Total dollar amount to be submitted;
5. Delinquent amount by judgment type;
6. Notice that the non-custodial party has 30 days to reduce the arrears to below $500 to avoid submittal to consumer credit reporting agencies;
7. Non-custodial party's right to request an administrative review; and
8. Criteria a case must meet to be eligible for review.

9-007.02 Request for Administrative Review: If the non-custodial party believes there has been a mistake of fact that would preclude submittal to the consumer credit reporting agencies, the non-custodial party must request an administrative review. The request must be in writing and postmarked within 15 calendar days of the date of the advance notice, and be based on a mistake of fact. A mistake of fact is:

1. An error in the identity of the non-custodial party; or
2. The arrearage amount is $500 or less.

9-007.03 Conducting the Administrative Review: The Department must review the pertinent facts of the case to determine if the non-custodial party will be submitted to consumer credit reporting agencies. The Department will notify the non-custodial party of its findings within 30 calendar days of the date of the request for an administrative review.

9-007.03A Finding of the Administrative Review: The administrative review finding must include the procedures for the non-custodial party to appeal the finding through an administrative hearing.

9-007.03B Request for an Administrative Hearing: The non-custodial party may request an administrative hearing to appeal the administrative review finding. The non-custodial party must send a written request for an administrative hearing to the Department or County/Authorized Attorney within 15 calendar days of the date of the administrative review finding.

If the request is not postmarked within 15 calendar days of the date of the administrative review finding, the Department will deny the request for an administrative hearing.

9-007.04 Submittal Process Stayed: The Department will not submit a support order to consumer credit reporting agencies pending the outcome of the administrative review and administrative hearing.

9-007.05 Administrative Hearing: Any administrative hearing must be conducted in accordance with 465 NAC 6-000 ff. and the Administrative Procedure Act, Neb. Rev. Stat. § 84-901, et seq.

9-007.06 Hearing Date: The hearing must take place within 30 calendar days of the date of the receipt of the hearing request.

9-007.07 Hearing Results: The Department will notify the non-custodial party and Child Support Enforcement of the hearing results within 15 calendar days of the hearing.

9-007.08 Judicial Review: Any person aggrieved by a determination of the Department, upon exhaustion of all administrative remedies, may seek judicial review of a hearing finding in the court in which the support order was issued or registered.

9-007.09 Information Reported to Consumer Credit Reporting Agencies: The Department will submit the following non-custodial party's information to consumer credit reporting agencies:

1. Name;
2. Address;
3. Social Security Number;
4. Support order number;
5. Delinquent support amount; and
6. Monthly support obligation.
7.

This information is updated on a monthly basis. An entry on a credit report remains for seven years following the last transaction.

9-007.10 Dispute to Consumer Credit Reporting Agencies: The non-custodial party may file a dispute with a consumer credit reporting agency if s/he does not agree with the submittal of his/her account to consumer credit reporting agencies. Upon notification from a consumer credit reporting agency that the non-custodial party disputes the submittal, the Department will review the non-custodial party's account to ensure it meets submittal criteria. Upon completion of the review, the Department will notify the consumer credit reporting agencies to correct or delete a support order submitted in error.

9-008 INCOME WITHHOLDING: Income withholding is the primary tool for enforcing support obligations. Federal regulations require the Department or County/Authorized Attorney to use income withholding. The amount withheld may not exceed the maximum amount permitted by the Consumer Credit Protection Act.

9-008.01 Criteria for Income Withholding: The income of an individual with a support obligation arising from a support order that has been issued or modified on or after September 6, 1991 must be subject to immediate income withholding, and the court must require income withholding in the support order, unless:

1. One party demonstrates to the court that there is good cause not to require income withholding; or

2. A written agreement between the parties providing a suitable alternative arrangement is incorporated into the order. If there is an assignment of support to the state, the state must be a party to the written agreement.

The income of anyone with a support obligation that does not contain provisions for immediate income withholding will be subject to initiated income withholding under the following conditions:

1. If there is an arrearage of at least one month's support amount; or
2. Regardless of whether payments are delinquent, on the earliest of the date:

   a. The non-custodial party requests income withholding;
   b. The custodial party requests income withholding in writing; or
   c. The Department of Health and Human Services or another State IV-D agency requests income withholding.

9-008.02 Notice of Intent to Withhold Income: Upon receiving certification or notice of a delinquency in support payments for a support order that does not contain provisions for immediate income withholding, the Department or County/Authorized Attorney must send the non-custodial party a notice of its intent to withhold income. The notice is not required if:

1. The non-custodial party previously received a notice of intent to withhold income;
2. The non-custodial party requests income withholding; or
3. Immediate income withholding is included in the order.

9-008.02A Content of the Notice of Intent: The notice of intent must inform the non-custodial party of the following:

1. Income withholding will become effective within 15 calendar days of the date of the notice;
2. Income withholding will continue with any subsequent employer or payor of income;
3. The amount of support owed;
4. The amount of income to be withheld; and
5. The right to appeal and the appealable issues.

9-008.02B Mailing the Notice of Intent: The notice of intent must be mailed by certified mail to the last known address of the non-custodial party.

9-008.03 Administrative Hearing: A non-custodial party receiving a notice of intent to withhold income may request an administrative hearing, pursuant to the Administrative Procedure Act, to appeal income withholding based on specific language in the court order that exempts the non-custodial party from income withholding, or on a mistake of fact. A mistake of fact is:

1. An error in the amount of current or overdue support;
2. An error in the identity of the non-custodial party; or
3. The amount to be withheld is incorrect, for example exceeds the maximum amount permitted under the Consumer Credit Protection Act.

The non-custodial party may send a written request for a hearing to the Department or County/Authorized Attorney. The request must be postmarked within 15 calendar days of the date of the notice of intent. If the request is not postmarked within 15 calendar days of the date of the notice, or the appeal request is not based on a mistake of fact, the Department will deny the appeal request.

9-008.03A Income Withholding Suspended: The Department or County/Authorized Attorney must not implement income withholding pending the outcome of the hearing.

9-008.03B Administrative Hearing: Any administrative hearing must be conducted in accordance with 465 NAC 6-000 ff. and the Administrative Procedure Act, Neb. Rev. Stat. § 84-901, et seq.

9-008.03C Hearing Date: The hearing must take place within 15 calendar days of the date of the receipt of the hearing request.

9-008.03D Hearing Results: The Department will notify the non-custodial party and the County/Authorized Attorney of the hearing results within 15 calendar days of the hearing.

9-008.03E Request for Hearing on a Foreign Support Order: If the order is a foreign support order entered under the Income Withholding for Child Support Act, the non-custodial party may send a written request for a hearing to the Department or County/Authorized Attorney postmarked within 15 calendar days of the date of the notice. The County/Authorized Attorney must schedule a hearing with the District Court and notify the Department.

9-008.04 Notice to Withhold Income: The Department or County/Authorized Attorney must notify the employer of the amount of income to withhold based on the identified arrearage and/or child support amount. The amount to be withheld must not exceed the maximum amount permitted under the Consumer Credit Protection Act.

The notice must inform the employer that failure to withhold income as directed will result in the employer becoming liable to pay the certified amount specified in the notice. The notice must also inform the employer that any discrimination, termination, or other disciplinary action taken against the employee as a result of receiving the notice to withhold income will subject the employer to penalties prescribed by law.

9-008.04A Timeframes: In cases that are subject to immediate income withholding, a notice to withhold income must be sent to the non-custodial party's employer within 15 calendar days of the date the support order is received, provided that the employer's address is known at that time. If the employer's address is not known at the time the support order is received, the notice to withhold income must be sent within 15 calendar days of locating the employer. If information regarding new employment for any non-custodial party who is subject to income withholding is reported to the State Directory of New Hires, the Department or County/Authorized Attorney must send a notice to withhold income to the non-custodial party's employer within two business days.

9-008.04B Employer Compliance: An employer must comply with the terms of the income withholding notice including, but not limited to:

1. The amount and the duration of the withholding; and
2. Maximum amounts to be withheld.

An employer must initiate the income withholding beginning with the next pay period following the date on the withholding notice. An employer must send all amounts withheld for payment of a support obligation to the Nebraska Child Support Payment Center within seven business days of the date the amount is withheld. The employer must indicate the following for each amount withheld:

1. The name of the non-custodial party;
2. The SSN of the non-custodial party;
3. The court order number; and
4. The date on which the amount was withheld.

9-008.04C Administrative Fee: Assessment of an additional administrative fee from the obligor's net income may not exceed two dollars and fifty cents in any calendar month.

9-008.04D Effective Date: When support is withheld by an employer in the month when due, and received by the Nebraska Child Support Payment Center in a month other than the month due, the date the payment is taken out of the obligor's wages is determined to be the date of the collection.

9-008.04E Amount of Income to be Withheld: The total amount to be withheld from the non-custodial party's net income is the lesser of either the dollar amount specified in the notice or:

1. 50 percent of the non-custodial party's net income if the non-custodial party has a second family;
2. 55 percent of the non-custodial party's net income if the non-custodial party has a second family and is more than 12 weeks in arrears;
3. 60 percent of the non-custodial party's net income if the non-custodial party does not have a second family;
4. 65 percent of the non-custodial party's net income if the non-custodial party does not have a second family and is more than 12 weeks in arrears; or
5. 90 percent of the non-custodial party's net income if the non-custodial party is incarcerated for criminal nonsupport and is earning income while on work release.

9-008.04F Multiple Support Orders: If the non-custodial party is eligible for income withholding on more than one order and the available income cannot satisfy all orders, the distribution of support must be as follows:

1. Withhold an amount to satisfy the current monthly support obligations:

   a. If there is not sufficient income available within the limits set by the federal Consumer Credit Protection Act to satisfy all current support obligations, then the amount that is available to be withheld must be distributed across all orders on a pro rata basis; or
   b. When the income available to be withheld is enough to cover all current support obligations, apply any remaining amount to arrearages. If there is not sufficient income available within the limits set by the federal Consumer Credit Protection Act to satisfy all arrearages, the amount that is available to be withheld must be distributed across all orders on a pro rata basis.

9-008.04G Penalties: An employer who complies with an income withholding order is immune from civil liability with regard to the withholding. An employer who fails to comply with an income withholding order issued is subject to the penalties that may be imposed under Nebraska law, including contempt proceedings and liability for the full certified amount owed.

9-008.05 Termination of Income Withholding: When a support obligation is paid in full, the Department or County/Authorized Attorney must send a notice to the employer instructing the employer to terminate the wage withholding.

9-008.06 Withholding of Unemployment Insurance Benefits: A cooperative agreement exists between the Department and the Department of Labor for the withholding of unemployment insurance benefits (UIB) in support cases with an income withholding order. The amount withheld may not exceed the maximum amount permitted by the Consumer Credit Protection Act.

9-008.06A Notice of Intent to Withhold Income: After receiving notice of an arrearage in support payments, and a report from Department of Labor that the non-custodial party receives UIB, the Department will send the non-custodial party a notice of its intent to withhold income from UIB. The notice is not required if:

1. The non-custodial party previously received a notice of intent to withhold income;
2. The non-custodial party requests income withholding; or
3. Immediate income withholding is included in the support order.

9-008.06B Request for Administrative Hearing: As is the case with an income withholding directed at the obligor's wages, the obligor has the right to appeal the notice to withhold from UIB, pursuant to the Administrative Procedure Act. See 466 NAC 9-008.03.

9-008.06C Receipt of Intercepted Support Payments: The Department will send an annual receipt of support amounts collected from UIB to the non-custodial party if requested.

9-008.06D Collected Support Payments: The Department of Labor must send all amounts withheld for payment of a support obligation to the Department within ten calendar days of the date the amount is withheld. The Department of Labor must indicate the following for each amount withheld:

1. The name of the non-custodial party;
2. The SSN of the non-custodial party;
3. The court order number; and
4. The date on which the amount was withheld.

9-008.06E Terminating Income Withholding: The Department will notify the Department of Labor when the support obligation is paid in full. Upon notice, the Department of Labor must terminate income withholding of UIB for that order.

9-008.07 Direct Income Withholding: Under UIFSA, an income withholding order issued in one state may be sent directly to the non-custodial party's employer in another state. There is no requirement that a petition be filed or the order be registered in the receiving state. The initiating state may send a request for registration of the order. However, the receiving state may seek to enforce the order through income withholding or other administrative procedures without first registering the order.

9-008.07A Employer Compliance: A Nebraska employer must treat a direct income withholding request received directly from another state in the same manner as if a Nebraska tribunal had issued it. The employer must comply with the terms of the order with regard to:

1. The amount and the duration of the order;
2. Any fees and costs charged by the support enforcement agency; and
3. The address to which the payments must be sent; and

The employer must follow the law of the non-custodial party's principal place of employment regarding:

1. Timeframes for implementation;
2. Fees charged by the employer;
3. Maximum amounts to be withheld;
4. Processing of multiple income withholding orders; and
5. Any contest of the order by the non-custodial party.

9-008.07B Penalties: An employer who complies with a direct income withholding order is immune from civil liability with regard to the withholding. An employer who fails to comply with an income withholding order issued in another state is subject to the penalties that may be imposed under Nebraska law, including contempt proceedings and liability for the full certified amount owed.

9-009 (RESERVED)

9-010 LICENSE SUSPENSION: Nebraska state law provides for the suspension of a professional, occupational, or recreational license or a motor vehicle operator's license in cases where the non-custodial party fails to pay child, spousal, or medical support.

9-010.01 Criteria for License Suspension: A license holder with a IV-D support obligation may be subject to license suspension if the license holder:

1. Is delinquent on a support order in an amount equal to the support due and payable for more than a three-month period of time;
2. Is not in compliance with a payment plan established by the Department or County/Authorized Attorney, for payment of past-due support; or
3. Is not in compliance with a payment plan established by a court order for payment of past-due support.

9-010.02 Verification of Applicability of License Suspension: The Department or County/Authorized Attorney must make reasonable efforts to verify that a license holder in a case receiving IV-D services is subject to license suspension.

9-010.03 Notice to Suspend: If the Department or County/Authorized Attorney determines to certify a license holder to the appropriate licensing authority, the Department or County/Authorized Attorney must send a written notice to suspend to the license holder by certified mail to the last-known address of the license holder or to the last-known address of the license holder available to the court.

9-010.04 Contesting License Suspension: Within 30 calendar days after the issuance of the notice to suspend, a license holder receiving such notice may seek either judicial or administrative review.

9-010.04A Direct Judicial Review: The license holder may seek judicial review by filing a petition in the court of competent jurisdiction. It is the responsibility of the license holder to notify the Department that s/he is seeking judicial review. Upon timely receipt of such notice, the Department will stay the license suspension process pending the outcome of the judicial review.

9-010.04B Administrative Review: The license holder receiving a notice to suspend may request an administrative review to contest license suspension by sending a written request to the Department or County/Authorized Attorney. The Department will stay the action to certify for license suspension pending the outcome of the administrative review.

The administrative review request must be based on a mistake of fact. A mistake of fact is:

1. An error in the identity of the license holder; or
2. An error in the determination that the license holder is:
   a. Delinquent on a support order in an amount equal to the support due and payable for more than a three-month period of time;
   b. Not in compliance with a payment plan established by the Department or County/Authorized Attorney for payment of past-due support; or
   c. Not in compliance with a payment plan established by a court order for payment of past-due support.

9-010.04B1 Conducting the Administrative Review: The Department must review the pertinent facts of the case to determine if the license holder's referral for license suspension is warranted. If the request for administrative review is not postmarked within 30 calendar days of the date of the notice to suspend, or the request is not based on a mistake of fact, the Department will deny the request.

9-010.04B2 Finding of the Administrative Review: The Department must notify the license holder of its findings within seven calendar days of the date of the request for an administrative review. The administrative review finding must include the procedures for the license holder to appeal the finding through an administrative hearing.

9-010.04C Request for an Administrative Hearing: To request an administrative hearing, the license holder must send a written request to the Department or County/Authorized Attorney within 15 calendar days of the date of the administrative review finding. The issues to be determined at the hearing are limited to a mistake of fact as outlined in 466 NAC 9-010.04B. However, the license holder may raise additional issues, including the reasonableness of a payment plan for a support order, to be preserved for appeal to the district court as provided under the Administrative Appeals Act.

The action to certify for license suspension must continue to be stayed until the administrative appeal process is completed.

9-010.04C1 Administrative Hearing: The administrative hearing must be conducted in accordance with 465 NAC 6-000 ff. and the Administrative Procedure Act, Neb. Rev. Stat § 84-901, et seq.

9-010.04C2 Hearing Date: The administrative hearing must be held within 15 days of receiving a proper written request, and must be conducted in accordance with 465 NAC 6-000 ff. and the Administrative Procedure Act, Neb. Rev. Stat § 84-901, et seq.

9-010.04C3 Hearing Results: The Department will notify the license holder of the hearing results within 30 calendar days.

9-010.04D Judicial Review: Within ten days after issuance of the administrative hearing decision by the Department, the license holder may seek judicial review of the decision by filing a petition in the court in which the support order was issued or registered. The action to certify for license suspension must continue to be stayed until the judicial review process is completed.

9-010.05 Request for Review and Modification: Upon notification by the license holder that a motion or application to modify the order has been made or the license holder requests a review by the Department after receipt of the notice to suspend, the action to certify for license suspension will be stayed until disposition of the review and modification process. See 466 NAC 8-002 for criteria for a review by the Department.

9-010.06 Certification to Suspend License: The Department, County/Authorized Attorney or court of competent jurisdiction may certify in writing to the relevant licensing authority that a license holder meets the criteria for license suspension listed in 466 NAC 9-010.01 if the license holder did not request an administrative or judicial review, or if the findings of the administrative and/or judicial reviews determine that the license holder meets the criteria for license suspension. A copy of any certification to suspend a license will be sent to the license holder. Certification to the relevant licensing authorities must occur as follows.

9-010.06A Motor Vehicle Operator's License: Certification must be made to the Department of Motor Vehicles for the suspension of the license holder's license to operate a motor vehicle. The Department of Motor Vehicles must not suspend a license holder's commercial driver's license or restricted commercial driver's license. A commercial driver's license or restricted driver's license must be certified pursuant to 466 NAC 9-010.06C.

9-010.06B Recreational License: Ten working days after the date on which the operator's license suspension becomes effective and upon failure of the license holder to come into compliance with his/her support order, certification must be made to the Games and Parks Commission for suspension of a license holder's recreational license(s).

9-010.06C Professional and Occupational Licenses: Ten working days after the date on which the recreational license suspension becomes effective, or if the Games and Parks Commission is not automated, in ten working days after the date on which the motor vehicle operator's license suspension becomes effective and upon failure of the license holder to meet his/her legal obligations to provide support, certification must be made to any relevant licensing authority for suspension of a license holder's professional and or occupational licenses.

9-010.07 Suspension of License: Within ten days of certification, the relevant licensing authority must suspend the license holder's operators, professional, occupational, or recreational license, and the license holder's right to renew the suspended license. In the case of a member of the Nebraska State Bar Association whose license has been certified to the Counsel for Discipline of the Nebraska State Bar Association, the Nebraska Supreme Court may suspend the license holder's license to practice law, and may further discipline the license holder pursuant to the Nebraska Supreme Court rules regulating the Nebraska State Bar Association.

9-010.08 Reinstatement of License: When a license holder comes into compliance with his/her support order, the Department or county or authorized attorney must provide the license holder with written confirmation of compliance. It is the license holder's responsibility to present the written confirmation of compliance and any required reinstatement fee to the licensing authority. The license holder must follow the procedures established by the relevant licensing authority for reinstatement of any license that has been suspended pursuant to the Nebraska License Suspension Act.

A license holder who is in violation of a support order may come into compliance by paying all current and past due support, or by paying all current support and making payments in accordance with a payment plan for past due support.

9-010.08A Confirmation to Licensing Authority: If requested by a licensing authority, the Department or County/Authorized Attorney may also provide confirmation directly to the relevant licensing authority that the license holder is in compliance with the support order.

9-011 LIENS: A child support judgment in Nebraska automatically creates a lien that may be filed against real property, or any personal property that is registered with a county office.

9-011.01 Enforcement: Liens arising under this section may be enforced by having the sheriff execute on the property.

9-011.02 Release and Subordination: The custodial party may only release or subordinate the lien as it relates to support owed to the custodial party. In cases where support has been assigned to the state or a state debt exists, a release or subordination of that portion of the lien must be signed by the Department.

9-011.02A Release or Subordination when Current: If support order payments are current, a partial or total release or subordination may be accomplished by filing: The person desiring the release or subordination must execute a notarized statement from the judgment creditor stating that payments are current, and then the child support lien can be released or subordinated without court approval. A properly executed notarized release or subordination document reciting that all support payments are current is sufficient evidence that the payments are in fact current.

~~9-011.02B Release or Subordination when not Current: If support order payments are not current, court approval by motion to the court is necessary. The court will grant the order upon a showing by the judgment debtor that sufficient real or personal property or property interests will remain subject to the lien or will maintain priority over other liens sufficient to cover all support due and which may become due~~

9-011.02B~~C~~ Judgment Creditor Refuses to Execute a Release or Subordination: If the judgment creditor refuses to execute a release or subordination the judgment debtor may file an application or motion with the Court for the relief desired. The Court may order the relief sought if the Court finds the release or subordination is not requested for the purpose of avoiding payment and the release or subordination will not unduly reduce the security of the judgment creditor.

As a condition, the Court may require posting of a bond with the Clerk of the Court in an amount fixed by the Court, guaranteeing payment of the judgment. For purposes of this section, a current certified copy of support order payment history from the IV-D Unit setting forth that all support payments are current is sufficient evidence that the payments are in fact current and is valid for thirty (30) days after the date of certification.

9-011.02C~~D~~ Priority of Real Property Mortgages: A mortgage or deed of trust, or any refinancing, renewal, or extension thereof, used to purchase real estate, has priority over a lien for child support.

9-011.03 Duration of Lien: Child support liens are effective until ten years after the latest of the following dates:

1. The date the youngest child becomes of age;
2. The date the youngest child dies; or
3. The date of the most recent execution to enforce the lien.

A child support judgment that ceases to be a lien for any of these reasons cannot be reinstated.

9-011.03A Execution on a Child Support Lien: An execution on a child support lien means an action taken to enforce the underlying judgment. These actions include but are not limited to:

1. Issuance of Income Withholding Forms;
2. License Suspension Actions;
3. Reporting Arrearage Amount to Consumer Credit Reporting Agencies;
4. Issuance of Billing Statements; or
5. Federal or State Tax Offset Actions.

9-011.04 Attachment of Liens on Motor Vehicles: A child support lien against an automobile or mobile home attaches when the lien is noted on the title certificate.

9-012 ~~INTERSTATE~~ INTERGOVERNMENTAL LIENS: See 466 NAC 10-005.

9-012.01 Full Faith and Credit: Nebraska courts must give full faith and credit to child support liens being enforced from other states when the party seeking enforcement complies with procedures for filing the lien. Liens arising in other states are entitled to the same priority as liens arising in the State of Nebraska.

9-012.02 Filing Requirements: To file an ~~interstate~~ intergovernmental lien in Nebraska, the state agency or party seeking enforcement must send the following items to the clerk of the district court:

1. A certified copy of the support order and all modifications;
2. A notice of lien that complies with 42 U.S.C. 652(a)(11) and 42 U.S.C. 654(9)(E); and
3. The appropriate filing fee.

Acceptance of these items by the clerk of the district court constitutes entry of the foreign support order, for purposes of enforcing the lien only. Additional filings that would be required to register a foreign judgment under UIFSA are not required for filing an ~~interstate~~ intergovernmental lien.

To file an outgoing ~~interstate~~ intergovernmental lien, the filing requirements of the receiving state must be complied with.

9-013 MILITARY ALLOTMENT: A military allotment is a mechanism for withholding support obligations from military wages, similar to income withholding. There are two types of allotments available for the payment of support:

1. Involuntary; and
2. Voluntary allotments.

9-013.01 Involuntary Allotments: An involuntary allotment may be executed against a military person's pay for support if there is an existing order for support and the service member has failed to make payments as directed in the order. An involuntary allotment may only be executed for the amount of the monthly support obligation. If payments toward any arrearage are sought, there must be an order that specifically requires payment of arrearages.

9-013.02 Voluntary Allotment: A voluntary allotment is strictly a voluntary procedure between the service member and the service itself. The service member instructs the disbursing officer to send a specific sum of money to care for the dependent. It may be revoked, reduced, or otherwise altered only at the discretion of the service member.

9-014 OFFSET PROGRAMS

9-014.01 Federal Tax Offset and Administrative Offset: The Federal Tax and Administrative Offset programs authorize the intercept of federal tax refunds and certain federal payments for the purpose of collecting past-due support.

The federal payments eligible for administrative offset include but are not limited to:

1. Federal retirement payments;
2. Vendor and miscellaneous payments for example expense reimbursement and travel payments).

It includes both recurring and non-recurring payments.

Payments that are excluded from the Administrative Offset Program include:

1. Benefit payments from the Department of Veteran Affairs;
2. Payments made by the Department of Education under Title IV of the Higher Education
3. Social Security payments;
4. Railroad retirement payments;

5. Payments made under Part B of the Black Lung Benefits Act;
6. Payments under means-tested programs that, upon request, are exempted by the head of the Federal Agency which administers the program;
7. Any type of payment, upon the written request of the head of the agency which authorizes the payments, if the offset would tend to interfere substantially with, or defeat the purposes of, the payment agency's program;
8. Payments made under the Internal Revenue Code of 1986 (except tax refund payments that are subject to administrative offset under separate authority); and
9. Payments made under the tariff laws of the United States.

9-014.02 Eligibility for Federal Tax Offset and Administrative Offset

9-014.02A Public Assistance Cases: To be eligible for Federal Tax Offset and Administrative Offset, support must have been assigned to the State, and must meet the following requirements:

1. The support obligation(s) has been established under a court order or an order of an administrative process established under state law;
2. The total amount of combined arrearages for all Nebraska IV-D cases is at least $150;
3. The arrearage on one or more of these cases is at least three months old;
4. Submittal to the Federal Tax Offset program continues after the child(ren) reaches the age of majority;
5. The delinquency is for support and maintenance of a child(ren);
6. The Department has verified the accuracy of the delinquent support, and has a copy of the order(s) and any modifications; and
7. The Department has verified the non-custodial party's name and Social Security Number.

When a case(s) meets the above criteria, it will be submitted for intercept. This includes cases in which the obligor has entered into a payment plan.

9-014.02B Non-Public Assistance and Medicaid-Only Cases: To be eligible for Federal Tax Offset and Administrative Offset, non-public assistance and Medicaid-Only IV-D cases must meet the following requirements:

1. The support obligation(s) has been established under a court order or an order of an administrative process established under state law;
2. The total amount of combined arrearages for all Nebraska IV-D cases is at least $500;
3. The arrearage on one or more of these cases is at least three months old;
4. Submittal to the Federal Tax Offset program continues after the child(ren) reaches the age of majority;

5. The Department has verified the accuracy of the delinquent support and has a copy of the order(s) and any modifications;
6. The Department has checked its records to determine if there are delinquent ADC or foster care support (state debt) amounts;
7. The Department has verified the non-custodial party's name and Social Security Number; and
8. The Department has the custodial party's current address.

When a case(s) meets the above criteria, it will be submitted for intercept. This includes cases in which the obligor has entered into a payment plan.

9-014.03 Notice of Offset: The Department must send a written notice at least annually to all non-custodial parties identified for the Federal Tax Offset and Administrative Offset programs. The notice must include information regarding:

1. The right to contest the State's determination that past-due support is owed or the amount of past-due support;
2. The right to an administrative review by the Department;
3. The procedures and timeframes to request an administrative review;
4. In the case of a joint return, at the time of the offset, the Secretary of the U.S. Treasury will notify the non-obligated spouse of the non-custodial party of the steps to take to protect the share of the refund which may be payable to that spouse; and
5. Any further arrears accruing due to payments missed may be added to the non-custodial party's debt and will be subject to collection by Federal Tax Offset and/or Administrative Offset now or in the future without notice.

9-014.04 Contesting Federal Tax Offset or Administrative Offset: The non-custodial party may request an administrative review to contest the submittal of his/her name for offset of tax refunds and/or federal payments in either the submitting state or the state with the order for support. The request must be made in writing postmarked within 45 calendar days of the date of the notice of referral. The request must be made based on a mistake of fact. A mistake of fact is:

1. An error in the identity of the non-custodial party;
2. An error in the amount of past-due support; or
3. The non-existence of an order for support.

If an amount that has already been offset through the federal tax offset program is found to have exceeded the amount of past-due support owed, the Department must refund the excess amount to the non-custodial party. The Department must provide the non-custodial party with an advance refund if the collection has been offset but has not yet been received from the Department of the Treasury. The non-custodial party must furnish a copy of the notice of offset from the Department of the Treasury to verify the amount of the offset to be eligible for an advance refund.

9-014.04A Conducting the Administrative Review: The Department must review the pertinent facts of the case to determine if the non-custodial party's referral for offset is warranted. The Department must notify the non-custodial party of its findings within 60 calendar days of the date of the request for an administrative review.

9-014.04A1 Finding of the Administrative Review: The administrative review finding must include the procedures for the non-custodial party to appeal the finding through an administrative hearing.

9-014.04B Request for an Administrative Hearing: To request an administrative hearing, the non-custodial party must send a written request to the Department within 30 calendar days of the date of the administrative review finding.

9-014.04B1 Administrative Hearing: The administrative hearing must be conducted in accordance with 465 NAC 6-000 ff. and the Administrative Procedure Act, Neb. Rev. Stat. § 84-901, t seq.

9-014.04B2 Hearing Date: The administrative hearing must be held within 30 days of receiving a proper written request.

9-014.04B3 Hearing Results: The Department will notify the non-custodial party and Child Support Enforcement of the hearing results within 15 calendar days of the hearing.

9-014.04C Judicial Review: Any person aggrieved by a determination of the Department, upon exhaustion of all administrative remedies, may seek judicial review of a hearing finding in the court in which the support order was issued or registered.

9-014.05 Submitting ~~Interstate~~ Intergovernmental Cases for Federal Offset: The state submitting a certification of past-due support for enforcement must inform any other state involved in enforcing the support order when it submits an ~~interstate~~ intergovernmental case and when it receives a federal offset amount. If the debt submitted is based upon another state's support order, the submitting state must communicate with the other state for purposes of verification of arrears or, when necessary, to obtain a copy of the order or the payment record prior to submitting the certification.

In ~~interstate~~ intergovernmental cases, (the state in which the public assistance assignment or non-assistance application for IV-D services has been filed for example, the initiating state), must submit the past-due support for federal tax refund and/or administrative offset. It is necessary to specify which state must submit the past-due support debt for offset to avoid multiple states submitting the same arrearage.

If a state submits a case for federal income tax refund or administrative offset on the basis of another state's child support order, the submitting state must comply with the other state's laws regarding offsets. The taxpayer may request an administrative review in either the submitting state or the state which issued the order. States conducting administrative reviews must not delete cases submitted by another state simply because they would not have been submitted, for policy reasons, by the state with the order.

9-014.05A Joint Returns/Non-Obligated Spouse Claim: To claim his/her portion of a withheld joint federal income tax refund, a non-obligated spouse must file an Injured Spouse Claim and Allocation form with the IRS within six years following the end of the tax year. IRS will calculate the portion of the joint tax refund attributable to the non-obligated spouse's earnings and return that portion to the non-obligated spouse. If the IRS makes an adjustment, and payment has been made to a custodial party, the Department will recover the adjusted amount from the custodial party. One recovery option available includes retaining future offset collections to which the custodial party would otherwise be entitled. See 466 NAC 11-006.

9-014.06 Distribution of Collections: Collections received by the Department as a result of federal tax refund offset must be distributed as past-due support in accordance with 466 NAC 11-002.04 Federal Income Tax Offset Distribution. If the collection is based on a joint tax return, the state may delay disbursement until notification that the unobligated spouse's proper share of the refund has been paid or for a maximum of six months.

Collections received as a result of administrative offset must be distributed in accordance with 466 NAC 11-000.

This program authorizes the intercept of Nebraska tax refunds for the purpose of collecting child support. State tax refunds may also be intercepted to satisfy spousal support when the obligor owes for the support of a spouse who is living with the child(ren) for whom the obligor also owes child support.

9-014.07 Referral to the Department of Revenue for Tax Refund Offset: The Department may submit any past-due support obligation of at least $25 to the Department of Revenue for possible offset of a tax refund.

9-014.07A Notice to the Non-custodial Party of Referral: The Department must notify the non-custodial party of its intent to refer to the Department of Revenue his/her past-due support obligation for possible offset of a tax refund. The notice of intent to refer a past-due support obligation to the Department of Revenue for possible offset must include information regarding:

1. The right to contest the State's determination that past-due support is owed or the amount of past-due support;
2. The right to an administrative review by the Department;
3. The procedures and timeframes to request an administrative review; and
4. The procedures implemented by the Department of Revenue in the case of a joint return;
5. Any further arrears accruing due to payments missed may be added to the non-custodial party's debt and will be subject to collection by State Revenue Tax Offset now or in the future without notice.

9-014.08 Contesting State Tax Offset: The non-custodial party may request an administrative review to contest the referral to the Department of Revenue or to contest the intercept of the tax refund. The request must be made in writing postmarked within 45 calendar days of the date of the notice of referral or intercept. The request must be made based on a mistake of fact. A mistake of fact is:

1. An error in the identity of the non-custodial party;
2. An error in the amount of past-due support; or
3. The non-existence of an order for support.

9-014.08A Conducting The Administrative Review: The Department must review the pertinent facts of the case to determine if the non-custodial party's referral to the Department of Revenue is warranted. The Department must notify the non-custodial party of its findings within 60 calendar days of the date of the request for an administrative review.

9-014.08A1 Finding of the Administrative Review: The administrative review finding must include the procedures for the non-custodial party to appeal the finding through an administrative hearing.

9-014.08B Request for an Administrative Hearing: To request an administrative hearing, the non-custodial party must send a written request to the Department within 30 calendar days of the date of the administrative review finding.

9-014.08B1 Administrative Hearing: The administrative hearing must be conducted in accordance with 465 NAC 6-000 ff. and the Administrative Procedure Act, Neb. Rev. Stat. § 84-901, et seq.

9-014.08B2 Hearing Date: The administrative hearing must be held within 30 days of receiving a proper written request.

9-014.08B3 Hearing Results: The Department will notify the non-custodial party and Child Support Enforcement, of the hearing results within 15 calendar days of the hearing.

9-014.08C Judicial Review: Any person aggrieved by a determination of the Department, upon exhaustion of all administrative remedies, may seek judicial review of a hearing finding in the court in which the support order was issued or registered.

9-014.09 Receipt to Non-custodial Party of Offset Support: Upon completion of the offset, the Department must send the non-custodial party a receipt of support offset by a tax refund. The receipt must include:

1. The final amount of refund the non-custodial party was entitled to before offset;
2. The past-due support obligation; and
3. The amount remaining after offset to be reimbursed to the non-custodial party, if any.

9-014.10 Joint Returns/Non-Obligated Spouse Claim: The non-obligated spouse of the non-custodial party who signed a joint tax return is entitled to receive 50% of the state income tax refund. However, if it can be proven by the non-obligated spouse that s/he paid more than 50% of the couples' tax, a request can be made to the Department for the allotted portion of the refund.

9-014.11 Distribution of Collections: Collections received by the Department as a result of state tax refund offset must be distributed in accordance with 466 NAC 11-000.

9-015 STATE LOTTERY PRIZE OFFSET: Nebraska State lottery prizes in excess of $500 are subject to an offset to satisfy a delinquency of $25 or more pursuant to a support order. Lottery prizes may also be offset to satisfy spousal support that have accrued pursuant to an obligation assessed against a non-custodial party for the support of a spouse who is living with the child(ren) for whom the non-custodial party also owes support. The Department may pursue the collection of a past-due support obligation after the child has reached the age of majority.

9-015.01 Referral to the Department of Revenue for a Lottery Prize Offset: The Department of Revenue must access the Department's child support records when redeeming a lottery ticket for a prize in excess of $500 to determine if the winner has a past-due support obligation.

9-015.01A Notification from Department of Revenue: When a non-custodial party with a past-due support obligation has presented a winning lottery ticket for redemption, the Department of Revenue must give the non-custodial party a written notice informing the non-custodial party that their lottery prize is being withheld due to past-due support being owed.

The Department of Revenue must notify the Department when written notification has been given to a non-custodial party with a past-due support obligation of $25 or more, wins a State lottery prize in excess of $500.

9-015.02 Notification to Non-custodial Party of Offset: Within 20 calendar days of receiving notification from the Department of Revenue that a non-custodial party with a past-due support obligation has presented a winning lottery ticket for redemption, the Department will send a notice to the non-custodial party that the lottery prize will be offset to satisfy a past-due support obligation.

9-015.02A Content of Notice of Offset: The notice must include:

1. The basis for the claim to the lottery prize;
2. The intention to apply the lottery prize to offset a past-due support obligation(s);
3. The right to request an administrative review;
4. The mailing address of where to send the request for an administrative review; and
5. That the failure to request an administrative review in the allotted timeframe results in a denial to have an administrative review.

9-015.02B Request for Administrative Review: If the non-custodial party believes that the lottery prize winnings were intercepted in error, the non-custodial party must request an administrative review. The request must be in writing and postmarked within 45 calendar days of the date of the advance notice, and be based on a mistake of fact. A mistake of fact is:

1. An error in the identity of the non-custodial party;
2. No order for support; or
3. The non-custodial party disagrees with the arrearage amount.

9-015.02C Conducting the Administrative Review: The Department will review the pertinent facts of the case to determine if the lottery prize winnings will be intercepted. The Department will notify the non-custodial party of its findings within 60 calendar days of the date of the request for an administrative review.

9-015.02C1 Finding of the Administrative Review: The administrative review finding must include the procedures for the non-custodial party to appeal the finding through an administrative hearing.

9-015.02D Request for an Administrative Hearing: The non-custodial party may request an administrative hearing to appeal the administrative review finding. The non-custodial party must send a written request for an administrative hearing to the Department within 30 calendar days of the date of the administrative review finding. If the request is not postmarked within 30 calendar days of the date of the administrative review finding, the Department will deny the administrative hearing request.

9-015.02D1 Administrative Hearing: Any administrative hearing must be conducted in accordance with 465 NAC 6-000 ff, and the Administrative Procedure Act, Neb. Rev. Stat. § 84-901, et seq.

9-015.02D2 Hearing Date: The Department will provide an opportunity for a hearing within 30 days after receipt of a proper written request.

9-015.02D3 Hearing Results: The Department will notify any person refusing to comply with an administrative subpoena and Child Support Enforcement of the hearing results within 15 calendar days of the hearing.

9-015.02E Judicial Review: Any person aggrieved by a determination of the Department, upon exhaustion of all administrative remedies, may seek judicial review of a hearing finding in the court in which the support order was issued or registered.

9-016 PASSPORT DENIAL/REVOCATION: All child support cases that meet the established criteria are subject to passport denial/revocation, pursuant to certification by the Department to the Federal Secretary of Health and Human Services.

Submittal to the passport denial/revocation program continues after the child reaches the age of majority.

9-016.01 Eligibility for Passport Denial/Revocation

9-016.01A Public Assistance Cases: To be eligible for the passport denial/revocation program, support must have been assigned to the State, and must meet the following criteria:

1. The support obligation was established under a court order or an order of an administrative process established under state law;
2. The total amount of combined arrearages for all Nebraska IV-D cases is in excess of $2,500;
3. The delinquency must be for support and maintenance of a child or of a child and the parent with whom the child is living (spousal support). Delinquent support may include medical support, but only if a specific dollar amount is included in the order and the non-custodial party is not making payments as ordered;
4. The state IV-D agency must have verified the accuracy of the delinquent support and have a copy of the order, any modifications, the pay record or an affidavit signed by the court-ordered payee (custodial party) attesting to the accuracy and amount of delinquency;
5. The state must have verified the non-custodial party's name and Social Security Number;
6. The state IV-D agency must have the custodial party's current address; and
7. The delinquent support will remain subject to the passport denial/revocation program until the arrears are paid in full.

When a case(s) meets the above criteria, it will be submitted for passport denial/revocation. This includes cases in which the obligor has entered into a payment plan.

The state may not submit a case in which the non-custodial party or his/her spouse has filed bankruptcy under Title 11 of the United States Code, "unless the automatic stay of enforcement under section 362 of the Bankruptcy Codes has been lifted or is no longer in effect with respect to the individual owing the obligation and the obligation was not discharged by the bankruptcy proceeding". See 466 NAC 9-006.

9-016.01B Non-Public Assistance Cases: To be eligible for the passport denial/revocation program, non-public assistance and Medicaid-Only IV-D cases must meet the following criteria:

1. The support obligation was established under a court order or an order of an administrative process established under state law;
2. The total amount of combined arrearages for all Nebraska IV-D cases is in excess of $2,500;
3. The delinquency must be for support and maintenance of a child or of a child and the parent with whom the child is living (spousal support). Delinquent support may include medical support, but only if a specific dollar amount is included in the order and the non-custodial party is not making payments as ordered;
4. The state IV-D agency must have verified the accuracy of the delinquent support and have a copy of the order, any modifications, the pay record or an affidavit signed by the court-ordered payee (custodial party) attesting to the accuracy and amount of delinquency;
5. The state must have verified the non-custodial party's name and Social Security Number;
6. The state IV-D agency must have the custodial party's current address;
7. In non-ADC or Medicaid only cases, the state IV-D agency has checked its records to determine if there are delinquent ADC or foster care support (state debt) amounts; and
8. The delinquent support will remain subject to the passport denial/revocation program until the arrears are paid in full.

When a case(s) meets the above criteria, it will be submitted for passport denial/revocation. This includes cases in which the obligor has entered into a payment plan.

The state may not submit a case in which the non-custodial party or his/her spouse has filed bankruptcy under Title 11 of the United States Code, "unless the automatic stay of enforcement under section 362 of the Bankruptcy Codes has been lifted or is no longer in effect with respect to the individual owing the obligation and the obligation was not discharged by the bankruptcy proceeding". See 466 NAC 9-006.

<u>9-016.02 Notification to Non-custodial Party of Passport Denial/Revocation</u>: Written notice is sent at least annually to the non-custodial party identified for the passport denial/revocation program. The notice must include information regarding:

1. The right to contest the State's determination that past-due support is owed or the amount of past-due support;
2. The right to contest the referral by requesting an administrative review in either the submitting state or the state with the order for support;
3. The procedures and timeframes to request an administrative review; and
4. Any further arrears accruing due to payments missed may be added to the non-custodial party's debt and will be subject to submittal to the passport denial/revocation program now or in the future without notice.

9-016.02A Contesting Passport Denial/Revocation: The non-custodial party may request an administrative review to contest the referral to the Federal Secretary of Health and Human Services for passport denial/revocation. The request must be made in writing postmarked within 45 calendar days of the date of the notice of referral for passport denial/revocation. The request must be made based on a mistake of fact. A mistake of fact is:

1. An error in the identity of the non-custodial party;
2. An error in the amount of past-due support;
3. The non-existence of an order for support; or
4. The non-existence of a support obligation for the non-custodial party.

9-016.03 Notification to State with the Original Order: If the support order is from another state, the complaint cannot be resolved, and the non-custodial party requests an administrative review in the state with the original order, the Department notifies that state within ten days of the date of the request by the non-custodial party. The Department will provide that state with the proper documentation (including a copy of the order and any modifications, a copy of the payment record or the custodial party's affidavit, and the custodial party's address for non-ADC/Medicaid only cases).

The state receiving the ~~interstate~~ intergovernmental request to conduct an administrative review must then contact the non-custodial party (and custodial party in non-ADC cases) and advise them of the date, time, and place of the review. The state must conduct the review and make a decision within 45 days of the receipt of the information and request from the submitting state. OCSE must also be notified if the administrative decision results in a deletion or modification of the delinquent support amounts.

9-016.03A Conducting the Administrative Review: The Department will review the pertinent facts of the case to determine if the non-custodial party's referral for passport denial/revocation is warranted. The Department will notify the non-custodial party of its findings within 60 calendar days of the date of the request for an administrative review.

9-016.03A1 Finding of the Administrative Review: The administrative review finding must include the procedures for the non-custodial party to appeal the finding through an administrative hearing.

9-016.03B Request for an Administrative Hearing: To request an administrative hearing, the non-custodial party must send a written request to the Department within 30 calendar days of the date of the administrative review finding.

9-016.03B1 Administrative Hearing: The administrative hearing must be conducted in accordance with 465 NAC 6-000 ff. and the Administrative Procedure Act, Neb. Rev. Stat. § 84-901, et seq.

9-016.03B2 Hearing Date: The administrative hearing must be held within 30 days of receiving a proper written request.

9-016.03B3 Hearing Results: The Department will notify the non-custodial party and Child Support Enforcement of the hearing results within 15 calendar days of the hearing.

9-016.03C Judicial Review: Any person aggrieved by a determination of the Department, upon exhaustion of all administrative remedies, may seek judicial review of a hearing finding in the court in which the support order was issued or registered.

9-016.03D Notification to OCSE: If the decision resulting from the administrative review or appeal hearing lowers the delinquent support amount or zeroes the debt entirely, the Department will notify OCSE of the deletion or modification within ten days.

9-017 U.S. ATTORNEY REFERRAL: On October 25, 1992, the Child Support Recovery Act of 1992 was enacted. On June 24,1998 Congress modified provision of the Child Support Recovery Act adding a felony provision for willful failure to pay court ordered support for a child residing in another state.

9-017.01 Offense: Failure to pay legal child support obligation by any person who:

1. Willfully fails to pay a support obligation with respect to a child who resides in another state, if such obligation has remained unpaid for a period longer than one year, or is greater than $5,000;
2. Travels in ~~interstate~~ intergovernmental or foreign commerce with the intent to evade a support obligation, if such obligation has remained unpaid for a period longer than one year, or is greater than $5,000; or
3. Willfully fails to pay a support obligation with respect to a child who resides in another state, if such obligation has remained unpaid for a period longer than two years, or is greater than $10,000 may be punished as a felony.

9-017.02 Presumption: The existence of a support obligation that was in effect for the time period charged in the indictment or information creates a rebuttable presumption that the non-custodial party has the ability to pay the support obligation for that time period.

9-017.03 Referral Criteria: The County/Authorized Attorney will review potential cases for referral to the U.S. Attorney to ensure that they meet the referral criteria. After review of the potential cases, the County/Authorized Attorney must send the cases to the Department after determination has been made that the cases meet the following criteria:

1. The non-custodial party must have the ability to pay. The ability to pay does not require an ability to pay either total current or total arrearages;
2. The non-custodial party has willfully failed to pay his/her administrative or court ordered support obligation;

3. The non-custodial party must know of his/her past-due support obligation. The non-custodial party must have been properly served the order for support;
4. The past due support obligation must be greater than $5,000 or must have remained unpaid for a period longer than one year;
5. The past due support obligation must be greater than $10,000 or must have remained unpaid for a period longer than two years; may be punished as a felony; and
6. The child must live in Nebraska, and the non-custodial party must live in a state other than the State of Nebraska.

9-017.04 Penalties: The Guideline penalties for a misdemeanor under the statute are:

1. For the first offense, not more than six months imprisonment and/or a fine of $5,000; and
2. For the second and subsequent offense, not more than two years imprisonment and/or a fine of $250,000.

The Guideline penalty for a felony under the statute is not more than two years imprisonment and/or a fine of $250,000.

9-017.05 Mandatory Restitution: Upon a conviction under this section, the court must order restitution in an amount equal to the total unpaid support obligation as it exists at the time of sentencing.

9-018 DEBT CHECK: Debt Check is an amendment to the Federal Debt Collection Improvement Act of 1996. Debt Check is used by authorized Federal agencies and lending institutions as part of the loan application review process for Federal loans (other than a disaster loan), loan guarantees and loan insurance.

Federal agencies are required to deny loans or loan guarantees to individuals or businesses who owe delinquent non-tax debt to the Federal government (number USC § 3720B and 31 CFR § 285.13). Executive Order 13019 of 1996 extends this denial to delinquent child support debtors whose debts have been referred to Federal Tax and Administrative Offset Programs.

Submittal to the Debt Check Program continues after the child reaches the age of majority.

9-018.01 Eligibility for Debt Check

9-018.01A Public Assistance Cases: To be eligible for Debt Check, support must have been assigned to the State, and must meet the following requirements:

1. The support obligation has been established under a court order or an order of an administrative process established under state law;
2. The delinquent amount of support is at least $150;
3. The arrearage is at least three months old;

4. The delinquency is for support and maintenance of a child or of a child and parent with whom the child is living (spousal support). Delinquent support may include medical support, but only if a specific dollar amount is included in the order and the non-custodial party is not making payments as ordered;
5. The delinquency is for support and maintenance of a child;
6. The Department has verified the accuracy of the delinquent support, and has a copy of the order and any modifications; and
7. The Department has verified the non-custodial party's name and Social Security Number.

When a case meets the above criteria, it will be submitted for Debt Check. This includes cases in which the obligor has entered into a payment plan.

9-018.01B Non-Public Assistance and Medicaid-Only Cases: To be eligible for Debt Check, non-public assistance and Medicaid-only IV-D cases must meet the following requirements:

1. The support obligation has been established under a court order or an order of an administrative process established under state law;
2. The delinquent amount of support is at least $500;
3. The arrearage is at least three months old;
4. The delinquency is for support and maintenance of a child or of a child and parent with whom the child is living (spousal support). Delinquent support may include medical support, but only if a specific dollar amount is included in the order and the non-custodial party is not making payments as ordered;
5. The Department has verified the accuracy of the delinquent support and has a copy of the order and any modifications;
6. The Department has checked its records to determine if there are delinquent ADC or Foster Care support, (state debt) amounts;
7. The Department has verified the non-custodial party's name and Social Security Number; and
8. The Department has the custodial party's current address.

When a case meets the above criteria, it will be submitted for Debt Check. This includes cases in which the obligor has entered into a payment plan.

9-018.02 Notice: The Department must send written notice at least annually to all non-custodial parties identified for the Debt Check Program. The notice must include information regarding:

1. The right to contest the State's determination that past-due support is owed or the amount of past-due support;
2. The right to an administrative review by the Department;
3. The procedures and timeframes to request an administrative review;
4. Any further arrears accruing due to payments missed may be added to the non-custodial party's debt and will be subject to collection now or in the future without further notice.

9-018.03 Contesting Debt Check: The non-custodial party may request an administrative review to contest the submittal of his/her name for Debt Check. The request must be made in writing postmarked within 45 calendar days of the date of the notice of referral. The request must be made based on a mistake of fact. A mistake of fact is:

1. An error in the identity of the non-custodial party;
2. An error in the amount of past-due support; or
3. The non-existence of an order for support.

9-018.03A Conducting the Administrative Review: The Department must review the pertinent facts of the case to determine if the non-custodial party's referral for Debt Check is warranted. The Department must notify the non-custodial party of its findings within 60 calendar days of the date of the request for an administrative review.

9-018.03A1 Finding of the Administrative Review: The administrative review finding must include the procedures for the non-custodial party to appeal the finding through an administrative hearing.

9-018.03B Request for an Administrative Hearing: To request an administrative hearing, the non-custodial party must send a written request to the Department within 30 calendar days of the date of the administrative review finding.

9-018.03B1 Administrative Hearing: The administrative hearing must be conducted in accordance with 465 NAC 6-000 ff. and the Administrative Procedure Act, Neb. Rev. Stat. § 84-901, et seq.

9-018.03B2 Hearing Date: The administrative hearing must be held within 30 days of receiving a proper written request.

9-018.03B3 Hearing Results: The Department will notify the non-custodial party and Child Support Enforcement of the hearing results within 15 calendar days of the hearing.

9-018.03C Judicial Review: Any person aggrieved by a determination of the Department, upon exhaustion of all administrative remedies, may seek judicial review of a hearing finding in the court in which the support order was issued or registered.

9-019 Unclaimed Property Offset: The Uniform Disposition of Unclaimed Property Act Neb. Rev. Stat. §69-1301 et seq. provides the State Treasurer with the authority to make payments toward child support obligations when the obligor under a support order is the owner of unclaimed property and the obligor has past-due child support.

The Treasurer may file a claim under the Uniform Disposition of Unclaimed Property Act when the owner of the property has a case(s) that meets the following requirements:

1. The owner has a child support obligation(s) that has been established under a court order or an order of an administrative process established under state law;
2. The total amount of combined arrearages for all Nebraska IV-D cases is at least $25;

3. The arrearage on one or more of the cases is at least 30 days old; or
4. The delinquency is for support and maintenance of a child: Delinquent support may only include child support.

9-019.01 Notification from Department: When a non-custodial party with a past-due support obligation of greater than 30 days is found to be the owner of unclaimed property, the Department will give the non-custodial party written notice informing the non-custodial party that their unclaimed property will be offset to satisfy a support obligation.

9-019.01A Content of Notice of Offset: The notice must include:

1. The basis for the claim to the unclaimed property;
2. The intention to apply the unclaimed property to offset a support obligation(s);
3. The right to request an administrative review;
4. The mailing address of where to send the request for an administrative review; and
5. That the failure to request an administrative review in the allotted timeframe results in a denial to have an administrative review.

9-019.01B Request for Administrative Review: If the non-custodial party believes that the unclaimed property was intercepted in error, the non-custodial party must request an administrative review. The request must be in writing and postmarked within 45 calendar days of the date of the advance notice, and be based on a mistake of fact. A mistake of fact is:

1. An error in the identity of the non-custodial party;
2. No order for support; or
3. The non-custodial party disagrees with the arrearage amount.

9-019.01B1 Conducting the Administrative Review: The Department will review the pertinent facts of the case to determine if the unclaimed property will be intercepted. The Department will notify the non-custodial party of its findings within 60 calendar days of the date of the request for an administrative review.

9-019.01B1a Finding of the Administrative Review: The administrative review finding must include the procedures for the non-custodial party to appeal the finding through an administrative hearing.

9-019.01C Request for ~~an~~ Administrative Hearing: The non-custodial party may request an administrative hearing to appeal the administrative review finding. The non-custodial party must send a written request for an administrative hearing to the Department within 30 calendar days of the date of the administrative review finding. If the request is not postmarked within 30 calendar days of the date of the administrative review finding, the Department will deny the administrative hearing request.

9-019.01C1 Administrative Hearing: Any administrative hearing must be conducted in accordance with 465 NAC 6-000 ff., and the Administrative Procedure Act, Neb. Rev. Stat. §84-901, et seq.

9-019.01C2 Hearing Date: The administrative hearing must be held within 30 days of receiving a proper written request.

9-019.01C3 Hearing Results: The Department will notify the non-custodial party and Child Support Enforcement of the hearing results within 15 calendar days of the hearing.

9-019.01D Judicial Review: Any person aggrieved by a determination of the Department, upon exhaustion of all administrative remedies, may seek judicial review of a hearing finding in the court in which the support order was issued or registered.