

## PIQ-18-03 Federal Tax Refund Offset, Administrative Offset, and Passport Denial for Tribes

### Federal Tax Refund Offset Program

**Question 1:** What is the federal tax refund offset program?

Answer 1: Enacted by Congress, the federal tax refund offset program intercepts federal tax refunds of noncustodial parents who owe past-due support. This remedy involves all state child support agencies and three federal agencies – the Office of Child Support Enforcement, the Bureau of the Fiscal Service, and the Internal Revenue Service.

**Question 2:** What are the criteria for certifying IV-D cases for federal tax refund offset?

Answer 2: Per [45 CFR 303.72\(a\)\(1\)](#), [31 CFR 285.3](#), and [section 1912\(a\)\(1\)\(A\)](#) of the Social Security Act (the Act), IV-D cases certified for federal tax refund offset must meet one of the following criteria:

- The state (or tribe) has an assignment of support rights under section [408\(a\)\(3\)](#) or [471\(a\)\(17\)](#) of the Act or the IV-D agency is providing services under section [302.33](#) of this chapter.
- The state (or tribe) is enforcing the support obligation pursuant to section [454\(4\)\(A\)\(ii\)](#) of the Act.
- The state (or tribe) has an assignment of medical support rights under section [1912\(a\)\(1\)\(A\)](#) of the Act.

In addition,

- TANF or title IV-E foster care cases must have at least \$150 in past-due support; states (or tribes) may combine assigned support amounts from the same noncustodial parent in multiple cases to reach the \$150 minimum, per [45 CFR 303.72\(a\)\(2\)](#).
- Non-TANF or Medicaid-only cases must have at least \$500 of past-due support owed to or on behalf of a qualified child; debts from the same noncustodial parent in multiple cases may be combined to reach the \$500 minimum, per section [464\(b\)\(2\)\(A\)](#) of the Act, [45 CFR 303.72\(a\)\(3\)](#), and [31 CFR 285.3\(c\)](#).

### Administrative Offset Program

**Question 3:** What is the federal administrative offset program?

Answer 3: The Debt Collection Improvement Act allows certain federal payments to be administratively offset to collect past-due child support obligations. All payments that are eligible for offset under the Debt Collection Improvement Act, other than federal tax refunds, are categorized as administrative offsets.

**Question 4:** What are the criteria for certifying IV-D cases for federal administrative offset?

Answer 4: The administrative offset program is optional. All case types that are eligible for federal tax refund offset are eligible for administrative offset. In accordance with [31 CFR 285.1\(e\)](#), a debt may be submitted for administrative offset when it is at least \$25 and at least 30 days past-due, although states and tribes have flexibility to determine a higher threshold.

Eligible noncustodial parents are automatically submitted for administrative offset unless the case is excluded from the program.

### **Passport Denial Program**

**Question 5:** What is the passport denial program and the criteria for certifying IV-D cases?

Answer 5: The passport denial provision was added in [Section 370 of Personal Responsibility and Work Opportunity Act of 1996](#) and amended (effective October 1, 2006) in [Section 7303 of Deficit Reduction Act of 2005](#). [Section 452\(k\)](#) of the Social Security Act requires that, if the Secretary of HHS receives a certification that a noncustodial parent owes past-due support in an amount exceeding \$2,500, the Secretary shall transmit the certification to the Secretary of State who shall refuse to issue a passport to such individual. In other words, the Department of State (DoS) denies passports at the time of application for anyone certified by OCSE and reported to DoS. In addition, under the statute, the Secretary of State may take action to revoke, restrict, or limit a passport previously issued to such an individual.

[Section 454\(31\)](#) of the Act makes participation in the passport denial program a IV-D state plan requirement. All states are required to have in effect a procedure to certify to OCSE individuals who owe past-due support exceeding \$2,500. States are also required to provide notice to individuals and give them an opportunity to contest the delinquency determination.

### **Tribal Participation and State-Tribal Cooperative Agreements**

**Question 6:** When may a state IV-D agency submit a tribal IV-D case for federal tax refund offset, administrative offset, or passport denial?

Answer 6: A state IV-D agency may submit a tribal IV-D case for these programs when the following conditions are met.

- The approved tribal IV-D plan or plan amendment indicates that the tribe has entered into a cooperative agreement with the state under [45 CFR 309.60\(b\) and \(c\)](#) for the state to submit past-due support owed in tribal IV-D cases for federal tax refund offset, administrative offset, or passport denial. The tribe must submit, as part of its tribal IV-D

plan or plan amendment, copies of any such agreement in accordance with [45 CFR 309.35\(d\) and \(e\)](#) and [309.60\(c\)](#).

The regulations governing tribal child support programs at [45 CFR 309.35\(d\)](#) require that after approval of the original tribal child support program application, all relevant changes required by new federal statutes, rules, regulations, and Department interpretations are required to be submitted so the Secretary may determine whether the plan continues to meet federal requirements and policies.

- The approved state-tribal cooperative agreement describes the process for submitting past-due support owed in tribal IV-D cases for federal tax refund offset, administrative offset, or passport denial.
- The tribal IV-D plan provides evidence that the tribe's application for IV-D services under [45 CFR 309.65\(a\)\(2\)](#) includes a statement that the applicant is applying for state IV-D services for purposes of submitting past-due support for federal tax refund offset, administrative offset, or passport denial.

Note: The above guidance allows a tribal IV-D agency access to federal tax refund offset, administrative offset, and passport denial through a state IV-D agency. If a tribe has individuals who applied for IV-D services using an application without the mandatory language regarding federal tax refund offset, administrative offset, or passport denial (see above), the tribe must notify those individuals that the state will provide this enforcement remedy. The tribe must provide this notification before the issuance of the pre-offset notice required under [45 CFR 303.72\(e\)](#).

To ensure past-due cases are properly noticed and certified when the debt first becomes eligible for federal tax refund offset, administrative offset, or passport denial, as states are required to do, OCSE strongly encourages tribes develop standard operating procedures for identifying when noncustodial parents become delinquent. This will ensure timely notice to past-due noncustodial parents and certification of all eligible cases.

**Question 7:** Does participation in the federal tax refund offset, administrative offset, or passport denial programs require a tribal plan amendment?

Answer 7: Yes. This would be considered a substantial or material change and a plan amendment must be submitted in accordance with [45 CFR 309.35\(e\)](#). The plan amendment must include the state-tribal agreement in accordance with [45 CFR 309.35\(d\) and \(e\)](#) and [309.60\(c\)](#). The plan amendment must be approved before participation in the federal tax refund offset, administrative offset, or passport denial programs.

**Question 8:** What information should the state-tribal cooperative agreement address for tribal participation in the federal tax refund offset, administrative offset, or passport denial programs?

Answer 8: States and tribes have the discretion to develop state-tribal cooperative agreements for tribal participation in these programs in accordance with the federal regulations. However, OCSE recommends such agreements address the following:

- Compliance with the safeguarding requirements for child support information in [45 CFR 309.80](#) and [310.15](#) (see question 15);
- Assurance that the cases certified meet the statutory and regulatory requirements;
- Process for payment or reimbursement of fees;
- Process for the administrative review;
- Process for issuing the pre-offset notice per [31 CFR 285.1\(h\)](#), [45 CFR 303.72\(e\)](#), and OCSE guidance; and
- Compliance with the requirements for cooperative arrangements in [45 CFR 303.107](#).

For tribes that decide to use administrative offset or passport denial, we recommend the state-tribal cooperative agreement describe the process for certifying and releasing cases.

### **Federal Tax Refund Offset and Federal Tax Information**

**Question 9:** Under a state-tribal cooperative agreement for federal tax refund offset, may a tribe have access to federal tax information?

Answer 9: Current IRS statute does not allow disclosure of federal tax information to a tribal IV-D program. IRS currently allows two alternative options so tribes can participate in the federal tax refund offset program without federal tax information disclosure.

- Option 1: Federal tax refund offset payment amount and payment date may be disclosed provided that information on the source of all payments disclosed orally or in writing from the state child support payment records are not specified to prevent unauthorized disclosure of federal tax information.
- Option 2: In addition to the payment amount and payment date listed above in Option 1, federal tax refund offset payment amounts may be described as voluntary or involuntary, or administrative/non-administrative, or any other designation that states choose to use in their payment records that does not specify the source of the payment. States may not use more than two designations for payment amounts.

Please see [IRS child support resources](#) for additional information.

### **Pre-Offset Notices**

**Question 10:** Under a state-tribal cooperative agreement for federal tax refund offset, administrative offset, or passport denial, what are the permissible methods for issuing a pre-offset notice for eligible tribal IV-D cases?

Answer 10: OCSE permits the following methods for issuing a pre-offset notice for eligible IV-D cases under a state-tribal cooperative agreement.

Option 1: If the state issues its own pre-offset notice, a tribe can issue its own pre-offset notices on its past-due cases.

Option 2: If the state issues its own pre-offset notice, a tribe can have the state issue the notice to the tribal cases.

Option 3: If OCSE issues the pre-offset notice for the state, OCSE will issue the notice for the tribe.

When developing the state-tribal agreement for federal tax refund offset, administrative offset and/or passport denial, we recommend states and tribes discuss the options above to determine the appropriate one.

**Question 11:** When tribes issue their own pre-offset notices, are they required to use the OCSE pre-offset notice template?

Answer 11: Yes. To ensure noncustodial parents are appropriately informed and receive proper notice, a tribe must use the OCSE pre-offset notice template when issuing its pre-offset notice (see attached template). The tribe may transfer the OCSE pre-offset notice template onto tribal letterhead. Additionally, tribes may exclude language about administrative offset and passport denial when appropriate.

**Question 12:** Do tribes have to submit their pre-offset notices for review and approval?

Answer 12: Yes. OCSE must review and approve all of the required documents before the tribe can submit cases for the federal tax refund offset, administrative offset, and passport denial programs. The plan amendment documents include the state-tribal agreement, tribal application for services, and, if appropriate, tribal pre-offset notice. Once approved, the tribe must submit any changes to these documents to OCSE for review and approval before they become final.

As a reminder, OCSE has 90 days to review and respond to tribal plan amendments per [45 CFR 309.35](#). Consequently, the review process might impact a tribe's efforts to meet the time frame for participation in the federal tax refund offset program and issuing pre-offset notices to delinquent noncustodial parents.

## **Due Process Requirements**

**Question 13:** When must noncustodial parents receive a pre-offset notice?

Answer 13: Per [31 CFR 285.1\(h\)](#) and [45 CFR 303.72\(e\)](#), individuals must receive a written advance notice (such as the pre-offset notice) at least 30 days before the child support program may submit their cases to Treasury's Financial Management Service for federal tax refund offset and administrative offset. Individuals are also required to receive notice prior to passport denial certification.

**Question 14:** When the noncustodial parent requests a review, which agency performs the administrative review of the tribal IV-D case?

Answer 14: The tribe performs the administrative review when the noncustodial parent contests that there is a past-due amount owed or contests the amount of past-due support the tribe submitted for the program(s).

### **Safeguarding Requirements**

**Question 15:** What are the child support safeguarding requirements for tribal IV-D cases submitted for federal tax refund offset, administrative offset, and passport denial?

Answer 15: Tribes must have procedures for safeguarding confidential child support information in accordance with [45 CFR 309.80](#) and [310.15](#), which apply to tribal IV-D cases submitted for federal tax refund offset, administrative offset, and passport denial.

### **Cost Recovery and Program Fees**

**Question 16:** What are the fees associated with the federal tax refund offset and administrative offset programs?

Answer 16: There are two fees associated with the federal offset program:

- Treasury fees for federal tax refund and administrative offsets and
- OCSE issued pre-offset notices fee (when applicable).

**Question 17:** Under a state-tribal cooperative agreement for federal tax refund offset or administrative offset, what are the options for reimbursement of the fees associated with the offset program?

Answer 17: A state and tribe have the following options for the recovery of fees associated with federal tax refund offset or administrative offset.

- Option 1: The state pays for the fees associated with the federal tax refund offset (see question 16) for the tribal IV-D cases and claims those fees for federal financial participation. Per Line 1b of the instructions for Form [OCSE-396](#), expenditures for routine administration and operation of the child support program include the fees

charged for pre-offset services and retained by the Treasury for federal offset collections (see OCSE [AT-18-01](#)).

- Option 2: The state pays for the fees associated with the federal tax refund offset (see question 16) for the tribal IV-D cases and claims those fees for federal financial participation. If the state requests reimbursement from the tribe for the fees, the tribe reimburses the state for the federal tax refund offset fees and includes those fees as part of the expenses allocable to the program per [45 CFR 309.145\(f\)](#). The state claims the reimbursed funds as program income on the Form [OCSE-396](#) per [45 CFR 304.50](#).

Please note that Treasury deducts the fee for federal tax refund offset from the offset amount. However, the state or tribe must credit the noncustodial parent payment record for the full amount of the offset.

Please also note that if the tribe charges the recipient of IV-D services a fee not to exceed \$25 for submitting past-due support for federal tax refund offset, the tribe must inform the recipient of IV-D services in advance of any fee charged in accordance with [45 CFR 303.72\(i\)\(2\)](#). The federal tax refund offset fee may only be charged to a non-IV-A recipient of services under 45 CFR 302.33(a)(1)(i) or (iii). The tribe must exclude from its quarterly expenditure claims an amount equal to all fees which are collected and costs recovered during the quarter in accordance with [45 CFR 309.75\(e\)\(4\)](#).