

MANAGING CHILD SUPPORT ARREARS

A Discussion Framework

Final Summary of the Administration for Children and Families Northeast Hub Meeting on Managing Arrears

This Final Summary reflects recorded notes of roundtable discussions held at the April 2001 Northeast Hub Meeting on Managing Arrears. The views expressed in this summary are those of the participants. This summary is not to be considered as an official policy document of the Department of Health and Human Services or its agencies and it does not necessarily reflect the views of HHS or its interpretation of Federal law. For more information, please contact Jens Feck, ACF ROII, at Jfeck@acf.dhhs.gov.

NORTHEAST HUB MEETING ON MANAGING ARREARS

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NORTHEAST HUB MEETING ON MANAGING ARREARS

ESTABLISHING A DISCUSSION FRAMEWORK & DEVELOPING GUIDING PRINCIPLE

INTRODUCTION: State IV-D Directors and managers from fifteen Northeast Hub jurisdictions, along with their Federal and private partners, met in Philadelphia on April 11 and 12, 2001, to discuss a broad range of issues surrounding an emerging topic of national interest: *Child Support Arrears Management*. The meeting's ambitious goal was to organize identified issues and corresponding strategies within a framework conducive to developing guiding principles and effective state arrears management policies. That goal is accomplished, and the resulting framework and content are outlined below. However, this is only an initial step and the development and implementation of successful and cost-effective arrears management and prevention policies continues to be a work-in-progress. Accordingly, the Hub partnership has agreed to reconvene periodically in order to further this discussion, share successes and failures of ongoing as well as pilot programs, analyze implementation impediments, develop best practices, and potentially propose overriding guiding principles of national significance.

The compiled definitions, issues and strategies outlined in the following Arrears Management Framework were identified during four simultaneously facilitated roundtable discussions between IV-D Directors, state IV-D senior management, private sector organizations (CLASP, CSF, NPCL and the Urban Institute) and OCSE program managers. The Framework design was completed during a subsequent group meeting of all roundtable participants. The meeting agenda consisted of broad-based discussion points relevant to issue description, identification of corresponding solutions and strategies, and development of guiding principles and next steps. Participants received extensive resource material both prior to the meeting and on-site. At the conclusion of the meeting, state participants agreed to implement at least one new idea generated during roundtable discussions – initially, one that would not require a modification to existing policy or law. Private partners agreed to share soon-to-be-released arrears management reports and to incorporate the meeting outcomes into the underlying thought-process of future reports. And OCSE agreed to facilitate continued Hub discussions through establishment of a dedicated arrears management web-site.

The meeting opened with remarks by David Lett, Regional Administrator, Frank Fuentes, Acting Commissioner, Mary Ann Higgins, Northeast Hub Director, and Alisha Griffin, Assistant Director, New Jersey IV-D. These remarks had two themes in common: the national importance of arrears management, and the benefit of pulling together a broad range of Hub assets in response to a state request for technical assistance. The meeting closed on two parallel themes: (1) that effective arrears management policies can enhance virtually all IV-D program functions and improve program efficiency and customer service; and (2) that the Hub sponsorship of this meeting, the collaboration between pertinent Hub partners and the access to Hub resources were indispensable to the success of this meeting.

In conclusion, the meeting participants hope that the attached summary of their combined effort offers guidance on an issue that is common to all, and yet is defined by operational systems that vary from state to state – at times in the extreme. Participants moreover hope that this report, and future updates, can contribute substantively to a national dialogue around the prevention of arrears and the management of accrued arrears.

ARREARS MANAGEMENT – A DISCUSSION FRAMEWORK

Meeting participants unanimously agreed to organize the thoughts and information generated during the roundtable discussions into four distinct categories: Prevention; Order Establishment; Early Intervention; and Accrued Arrears Management. Each category contains the following sub-categories: Definitions; Issues; Strategies and Next Steps. (Editor notation: Next Step outstanding policy issues are addressed in the November Follow-up summary.) This categorization serves two purposes: Organizing information into a framework useful in the generation of guiding principles and state-specific strategies; and organizing current and future data on the impact, success and cost-effectiveness of arrears management strategies.

I. PREVENTION OF ARREARS

The concept of state, private, faith-based and IV-D agency action to prevent the accrual of arrears weaves throughout most arrears management discussions, and extends to preventive actions that may be appropriate prior to the initial request for IV-D services and even prior to the out-of-wedlock birth of a child. Nonetheless, it is appropriate to assign this concept a distinct category, given the importance, potential impact and far-ranging nature of arrears prevention activities. This category emphasizes those activities with the least amount of overlap into the remaining categories. Preventive activities that relate more directly to order establishment, early intervention and arrears management will be discussed in the corresponding Framework Section.

Definitions:

The initial step in any process to manage arrears should be the analysis of the arrears bucket (the totality of accrued arrears). This involves identifying and segregating the bucket into its respective elements. The following elements, or a combination thereof, will most likely make up any given state's arrears total:

- Child support
- Spousal support
- Interest
- Medical support for child
- Medical support for mother
- Birthing costs
- Legal costs
- Genetic test costs
- Child care
- Fees

The child support arrears element may need to be broken down into two additional sub-components:

- Unpaid amount towards current support – prospective from order date
- Unpaid amount towards fixed retroactive support – retroactive from order date

The second sub-component, retroactive arrears, usually accrues “automatically” as a result of a state law or policy establishing mandatory or discretionary retroactive child support obligations (retroactive to or prior to the filing of a support petition). The actual amount of the retroactive obligation is usually determined by a tribunal at the same time that the current support amount is established (i.e., the potential retroactive obligation has no legal consequence until it is adjudicated).

In some states the legal obligation to pay support is only retroactive to the filing date of the support petition. In other states the legal obligation may be retroactive for a specified number of years, or even to birth. In those states where retroactivity is limited to the filing date, retroactive amounts may nonetheless be substantial if there are significant delays between the filing and the hearing dates. Finally, in some states the period of retroactivity depends on the parties’ wedlock/out-of-wedlock status – out-of-wedlock status usually resulting in a shorter period of retroactivity. Due to the fact that many NCPs are not aware of the potential duty to pay retroactive support, the length of the retroactive timeframe in a particular state may very well determine the importance of pre-IV-D preventive strategies.

Once a state has identified the elements of its arrears bucket, it may want to determine why a particular arrears component continues to accrue. Generally speaking, arrears accrue because the NCP either (1) failed or refused to pay even though he/she has the ability to pay, or (2) failed to pay due to past and/or present financial inability. This financial inability may relate to post-order-establishment decreases in financial resources or it may relate to the fact that, at the time of order-establishment, the current support amount exceeded the capability to pay. Meeting participants identified a number of scenarios that could underlie a financial inability and that might explain the “why” of arrears:

- Default obligations that are based on insufficient data about NCP ability to pay
- Imputed NCP income that does not reflect actual NCP ability to pay (Note: the need for imputing income is not limited to default situations.)
- Obligations based on inappropriate guidelines or failure to properly apply the guidelines
- Retroactive amounts based on past ability to pay rather than current ability to pay
- Multiple family/order situations, where total needs exceed the ability to pay, especially in those states that do not have a law or uniform standard providing for credit for prior obligations
- NCP incarceration not followed by timely review and adjustment or modification (Note: in some states, Connecticut is an example, case law discourages downward modifications based on incarceration.)
- Unemployment or under-employment not followed by timely review and adjustment or modification
- Interest on arrears – at times the interest on arrears may exceed the arrears amount
- NCP lacks information about or access to the modification process, and the case should have been modified
- Arrears accumulated due to delays in the establishment of an order, and/or delays in the implementation of immediate income withholding

- NCP making direct payments or providing in-kind support to the CP and/or child, or cohabiting with the CP and making no payments, even though under a legal obligation to pay to the IV-D agency

A state may find it helpful to organize the various elements and terms associated with the arrears bucket into a matrix. The matrix could be used to analyze the entire arrears bucket or the arrears account of an isolated case. The validity and usefulness of the matrix would of course depend on a particular state’s ability to input accurate data. A sample matrix is found below (many variations are possible, and tables could include assessments of current collectability based on case- and NCP-specific data such as history of payments, current income and age of debt):

Arrears Reason ⇒ Arrears Type ↓	Automatic Application of Policy or Law	Discretionary Application of Policy or Law	Failure to Pay but Appears Financially Able	Inability to Pay (Short Term and Long Term)
Child Support Current	X	Not applicable		
Child Support Retroactive				
Spousal Support	X	Not applicable		
Interest				
Medical Spt/child	X	Not applicable		
Medical Spt/mother				
Birthing costs				
Legal costs				
Genetic test costs				
Child Care				
Fees				

Issues:

A state may need to address various issues prior to the development of appropriate prevention strategies, including:

- **Analysis of arrears “bucket.”** As stated, meeting participants agreed unanimously that the first step in arrears management should be the analysis of the arrears bucket. The completion of this exercise should allow the state to identify the source of the majority of arrears, and hopefully the reasons why NCPs failed to comply with the respective obligations. This information is the key to targeting preventive actions.
- **Conflicts with public policy.** Generally speaking, prevention of arrears strategies does not foster public policy conflicts. Preventing arrears up-front is the antithesis of compromising arrears, which many view as rewarding “criminal” behavior. Preventing arrears is a pro-active policy that is NCP, CP, and child-friendly, and it will likely have a positive impact on IV-D incentive payments. It is also a cornerstone of the universal public policy that all children are entitled to adequate and timely support.

- **Cost-effectiveness.** Not every potential or actual NCP will benefit equally from a given prevention strategy (or benefit at all). A state may therefore need to target strategies in order to maximize the effectiveness of the arrears accrual prevention message. If a state decides to implement a strategy that targets a pre-IV-D population, it may want to first identify those individuals who are most likely to become potential NCPs (teenagers, young fathers, etc.). A secondary and narrower identification would consist of potential NCPs who are most likely to benefit from a specific prevention strategy. Finally, the state should identify available resources (staff and financial) that can be devoted to prevention efforts. As the Hub jurisdictions engage in more preventive strategy pilots, any ensuing cost-benefit calculations will hopefully support arguments before legislators and budget-managers that prevention activities are effective if adequately funded.

In deciding on the NCP target group parameters (both as to potential and current NCPs), states may want to consider the following: (1) based on various studies, about 50 to 60% of the total arrears bucket is owed by NCPs who earn less than \$20,000 annually; (2) based on experiential evidence, a division of NCPs into respective target groups should be more sophisticated than a division solely based on the case's public assistance status; and (3) an individual categorization should not necessarily be permanent in that the NCP's ability to pay can be very fluid and will most likely change over time. In conclusion, a state should recognize that a case may need to be subjected to different arrears prevention/management policies during its lifetime.

- **NCP-friendly activities.** In order to be effective, the targeted NCP must understand and believe the prevention of arrears message. At minimum, this means that the following outreach elements need to be modified and adapted to address the diverse needs and characteristics of each particular group within the greater NCP population: (1) language; (2) the media used to reach the target group; (3) the messenger; (4) the terminology; and (5) the particular group's concept of "debt" (which may differ from the IV-D concept).

Strategies:

The appropriateness and success of any given strategy will differ from state to state due to the significant variance in arrears definitions, arrears make-up, the timeframe of retroactive obligations, NCP populations and state resources. If a cited strategy has already been implemented, the respective state citation is included.

- **Arrears Analysis.** Once more, the initial step of any state prevention effort should be the analysis of the arrears "bucket." A state should determine to what extent the automated system can be of assistance in this process. For purposes of Federal reporting, the state is only required to provide information on the total amount of arrears due, the total amount distributed as arrears, the number of cases with arrears, and the number of cases paying toward arrears. (See lines 26-29, Form OCSE-157.) Unfortunately, this data offers little in terms of conducting meaningful arrears analyses. Participants recommend that states review their system's ability to generate ad hoc reports that could divide the arrears bucket into the elements suggested above. For example, ad hoc reports could be generated that are based on state-specific data elements and/or case notes. Connecticut already has a system ability to segregate current arrears from retroactive arrears that were set at the time of order establishment. Virginia is currently processing

data in order to develop a detailed dissection of its caseload, and the end product, when released, may result in further guidance and good practices. (Also see California's recently completed study on the collectability of its arrears. For more information, please contact Elaine Sorensen at esorensen@ui.urban.org.)

The system effort could include a general case clean-up strategy that may result in establishing a more accurate arrears total. Case clean-up activities can include:

1. Matches with vital statistics/probate records to identify deceased NCPs, followed by corresponding adjustments in the arrears balance, if appropriate. Also consider www.ancestry.com as a website source of death record information.
2. Recommendation that similar matches be conducted with SSA "death records." (Note: FPLS is currently in negotiations with SSA to establish a proactive match between SSA death records and FCR data).
3. Recommendation to use CSENet to obtain and update arrears balances in interstate actions.

The completed arrears analysis and case clean-up effort will benefit virtually all aspects of arrears management. (See Sections III and IV.)

Three information elements may be especially helpful in deciding upon appropriate prevention efforts and other aspects in arrears management:

1. Retroactive arrears as a percentage of total arrears;
2. Interest as a percentage of total arrears; and
3. Identifying NCPs likely to accumulate arrears

The ACSES (Automated Child Support Enforcement System) database should be able to provide information to determine to what extent retroactive obligations and/or interest constitute an issue in a particular state. However, most ACSES hold few if any data elements that can help in segregating NCPs into unwilling, unable and similar categories. CBOs, credit histories, NDNH and Quarterly Wage records, etc., should instead be consulted for obtaining data that is hopefully more useful, relevant and current. A review of private industry practice related to credit extension and debt management might also result in the development of a better grouping process. In conclusion, there is a consensus among the Hub states that more research and studies are needed in order to better judge who is or will likely be the unwilling instead of the unable payor.

As a state identifies the major components of its arrears bucket, learns to distinguish between willing and unwilling NCPs, and appreciates the various scenarios that give rise to arrearage accumulations, it will be better equipped to develop and identify appropriate prevention and outreach activities.

- **Prevention and Outreach activities.** The following information may be of interest as states begin to develop or re-design outreach activities addressing either potential and actual NCPs. The overriding goal of all preventive actions is to provide information about those steps in the IV-D process that, if overlooked or not understood by the NCP, are most likely to result in the accumulation of arrears.

1. **Use of technology and web resources.** New Jersey operates a voice response system that refers NCPs to appropriate web-based resources and information. Massachusetts will soon operate an enhanced interactive website. New Mexico also operates an interactive website. This technology can be expanded and used to inform potential NCPs of the consequences of failing to appear at tribunal hearings and on state laws, if any, establishing a duty to support a child prior to the filing of a legal action. Innovative technology can also be used to inform potential NCPs about child support guidelines and the establishment process. There is a consensus that too many NCPs leave a tribunal “without a clue” as to how their obligation was established. Early sharing of information about the process and about the kind of financial information that is critical to fair guideline calculations should significantly improve the perception and reality of that first NCP/IV-D contact.
2. **Family Service Agency partners.** Massachusetts uses the existing In-hospital paternity program to conduct extensive outreach to potential NCPs relative to all CSE functions. Amending the information that is offered in the hospital setting to also include arrears prevention information appears to be a cost-effective alternative that is available to all states. Likewise, states should review existing relationships, cooperative agreements and collaborative efforts with all other family service agencies, such as Head Start, IV-A and IV-E programs, to see how information currently provided about the CSE program can be amended to include a pro-active arrears prevention message. And IV-D programs should not overlook their own waiting rooms as an outreach opportunity. To date, many local offices are devoid of posters or brochures that, if made available, could offer arrears prevention information.
3. **Community-based-organizations (CBOs).** The IV-D program must take the initial step and educate itself on the make-up of available community resources, and then focus on those CBOs that could best assist in NCP outreach activities. It is important that communications with the CBO be as clear, accurate and understandable as the eventual communications with NCPs. Cross training activities between IV-D and CBO staff present an excellent opportunity for sharing accurate prevention information. For example, in Connecticut, CBOs have a standing invitation to attend any IV-D training event. This has fostered a sense of trust and cooperation between IV-D and CBOs. Legal Aid offices are also good, and sometimes overlooked, outreach partners, especially when it comes to providing technical information in layman terms about the court process and the child support guidelines. Organizations that provide information on parenting skills and parental responsibility should also be approached and involved.

CBOs may likewise offer the best opportunities to reach out to non-English speaking NCPs. CBOs that primarily serve non-English speaking populations should also be consulted whenever foreign-language outreach material is being drafted. Failure to do so may lead to failed outreach efforts. For example, the various nationalities within the Hispanic community may attach very different, and at times offensive, connotations to an identical Spanish word.

4. **Media and innovative ideas.** What type of media will most likely reach the NCPs that need to be reached? While web sites are very effective communication tools, many NCPs do not have access to the Internet. Likewise, placing CSE public notices on the legal-notice page of a newspaper may be less than effective. Instead, meeting participants suggest the following: (1) using rap music to spread the message; (2) including a message on streamers found on the bottom of the screen at many cable TV stations; (3) establishing a “Psychic Child Support Hotline” that offers free advice; (4) distributing pamphlets, in various languages, at schools and other public sites, that answer the “10 most frequently asked questions about arrears management” (Note: a good example of language that needs a user-friendly transformation); (5) establishing a national 1-800 number that offers 10 info-bits that apply to all states (for example, rights to modification services); and (6) use of continuous videos, similar to the videos on paternity used in West Virginia waiting rooms.

Rhode Island’s “Dads Make a Difference” project, that uses teens to train other teens on parenting, is an example of an existing successful program that can incorporate an effective prevention message. In addition to schools, prisons also represent excellent sites where a positive outreach message can be connected with a captive audience.

5. **Outreach to CPs.** Providing CPs with information about arrears prevention may also be a worthwhile activity as myriad CPs have spouses who pay support to second families. Educating CPs (who are entitled to tribunal-ordered support) on how the acceptance of in-kind support or direct support payments may result in arrears accrual (and the corresponding potential of committing fraud if the CP is a TANF recipient) can likewise be an effective arrears prevention message. Collaborating with the IV-A agency with regard to the latter effort is recommended.

In conclusion, the prevention of arrears outreach activity needs to address the appropriate audience and provide timely and specific information in plain and understandable language that will help the targeted NCP avoid a child support debt.

Next Steps:

Meeting participants recommend or request that –

- OCSE explore availability of grants to support a national arrears prevention awareness campaign;
- OCSE compile and distribute descriptive information about pilot programs that focus on arrears prevention activities (along with pilot programs on all other arrears management projects);
- Hub states initiate or continue arrears analysis projects and share outcomes;
- Hub states implement as many new prevention ideas as possible and share outcomes; and
- Explore feasibility of research and/or studies to assist states in dividing NCPs into “able” and “not able,” and “willing” and “unwilling” groups.

II. ORDER ESTABLISHMENT

Meeting participants are in consensus on at least two points related to order establishment: (1) the order establishment methodology is one of the most significant determinates of whether or not arrears are likely to accumulate, and (2) the differences from state to state relative to the two most important components in the process – guidelines on setting current support and laws effecting retroactive support – are astounding. Several participants expressed strong feelings that the process of how a child support order is established needs to be revisited at the national level. Such review inherently leads to a struggle between flexibility and increased structure - and reaching an acceptable balance between such conflicting needs and interests will be a challenge. Nonetheless, the total national child support debt is currently estimated at over \$80 billion dollars, and to the extent that the order establishment process is a contributing factor, change may be inevitable.

Definitions:

The following terms are relevant to order establishment. The terms cited in Section I, subsection “Definitions,” defining the make-up of the arrears “bucket,” and segregating current from retroactive arrears, are equally relevant to this and the remaining Sections.

- **Service** – how is it accomplished, on whom, how is it documented, and does it meet due process – varies from state to state
- **Order** – contested or by consent, administrative or court
- **Default order** – required if NCP was served and fails to appear – in some states obligation is based on imputed income, in others, for example Connecticut (and, previously, Maine), the obligation defaults to the PA grant amount if no other information (past or present) is available to apply guidelines – however, Connecticut leaves the record open for 4 months for the NCP to present additional information
- **Child Support Guidelines** – must take into consideration all earnings and income of the NCP, must be based on specific descriptive and numeric criteria and result in a computation of the obligation (a rebuttable presumption), and must provide for the child’s health care needs – no other Federal requirements apply - significant guideline variance across Nation
- **Review of Guidelines** – must be reviewed, and revised, if appropriate, at least once every four years – review must consider economic data on the cost of raising children and must analyze frequency of deviations
- **Imputed income** – state ability to establish an income amount when the NCP fails to provide income information, or when the NCP is determined to be willfully unemployed or under-employed – imputed income can be based on minimum wage, average wage, CP testimony, and/or independent evidence such as tax returns and past work history
- **Self-support reserve** – dollar amount some states set aside from available income to provide for the NCP’s minimum needs – usually incorporated into guidelines
- **Retroactive support obligation** – the amount of support an NCP may be required to pay for a period prior to the date that a support order is established – In West Virginia and Connecticut, the retroactive period is 3 years for out-of-wedlock parties, in North Dakota it can be retroactive to birth, in other states it is left to court-discretion, and in several it goes back to the date of filing – approximately 15 states charge interest on retroactive amounts

- **Multiple cases** – situations where the NCP has children living with multiple CPs, and/or with the NCP, and where the children may or may not be subject of a support order or otherwise receiving support – some guidelines provide automatic credit for all NCP children, whether supported or not – in contrast, other states have no statute and/or no uniform standard pursuant to which a NCP with other legal support obligations receives credit in the computation of a subsequent obligation

Issues:

The following issues relate to order establishment:

- **Conflicts with public policy.** The order establishment process can touch upon several areas of potential conflict and diverging interests. The overriding conflict is the one between the needs of children and the ability of NCPs to support their children. Other conflicts exist between the public's desire to recoup welfare payments, to recoup case-related costs, and to charge interest on public and private debt, set once again against the NCP's limited financial resources. To the extent that staff time and effort are required to enhance the order establishment process, there is a conflict between needs and available resources. As a state attempts to reach a balance and consensus with respect to any of these conflicting interests, meeting participants recommend the involvement of all interested partners, including but not limited to the courts, the Executive branch, the Legislative branch, advocacy groups, Bar Associations, WtW and WIB agencies, other states and ACF Regional Offices.
- **NCP Appearance.** The state has an overriding interest in having the NCP appear at the time of order establishment. The state may need to review the entire order establishment proceeding to determine the extent to which each segment of the process promotes or undermines this interest. This includes a review of the effectiveness of pre-IV-D Prevention Activities that focus on informing the NCP about the procedure and importance of the initial hearing. Other issues include the content of the initial summons and notice; the ability to reach non-English speaking individuals; the setting of the hearing; the ability of high-income NCPs to benefit from a default setting; and the interplay with NCP interests in establishing visitation rights.
- **The Courts.** Which tribunal is best suited to expeditiously establish a fair order? Several meeting participants believe that orders are more quickly established administratively, while some suggested that states that exclusively generate judicial orders experience higher payment rates. Others mentioned that the judicial process usually results in greater delays between order establishment and implementation of wage retention; or that the courts were more likely to ignore IV-D mandates relative to income withholding, guidelines and the prohibition on direct payments. And while some states may view the courts as a major barrier in arrears management, most agree that the courts, if already a player, probably would not support a proposal to transfer establishment functions to an administrative process. Accordingly, the immediate concern should be the enhancement of the process, regardless whether judicial or administrative.
- **Child Support Guidelines.** A state should ensure that the guidelines are fair, are being applied consistently, and are being reviewed on a regular basis. While a review must be

conducted every four years, not every state has been able to meet this mandate. On the other hand, some states believe that guidelines should be reviewed more often than every four years, especially if there is early evidence of significant instances of deviation. In reviewing the guidelines, a state needs to decide who should be involved in the process; and when it comes to potential revisions, a state needs to ensure that the guidelines can be successfully applied to low-income NCPs.

- **Default Orders.** While most meeting participants agree that a state should be reluctant to issue default orders, if the NCP fails to appear, a default order must in fact be issued. Absent NCP testimony about income and assets, a state may need to resolve two issues: (1) how to establish the obligation, and (2) to what extent should the no-show NCP be allowed to subsequently challenge the default amount.
- **Retroactive amounts and other monetary obligations.** In addition to establishing a current obligation for child and medical support (and possibly spousal support), the initial order may also contain an arrears judgment for a retroactive obligation, along with judgments for legal costs, genetic test costs, birthing costs, fees, and a provision for late-payment charges and/or interest on any or all of the above. A state may want to know how the ability to pay child and medical support is affected by these other obligations. To the extent that a state has discretion under state law, it may want to re-examine when to pursue a particular non-child-support obligation, how that obligation is best established, and how that process should interact with the NCP's overall ability to pay.

Strategies:

Meeting participants recommend the following strategies (already implemented or otherwise suggested), that may enhance a state's order establishment process.

- **Court vs. Administrative Process.** Even in a judicial process jurisdiction, the courts may be convinced that the limited transfer of some order establishment functions to an administrative (or more informal) process is beneficial to everyone. For example, during the last three years, New Jersey has been processing administrative orders in consent cases, significantly expediting the establishment process. In Maryland and Delaware, CPs and NCPs attend settlement conferences (a concept that can be applied to both the judicial and administrative process), with settlement rates as high as 70%. In addition to expediting the procedure, the settlement conference approach tends to improve the proceeding's overall atmosphere – an important benefit, given anecdotal evidence that a NCP is 35% more likely to pay support if he/she was treated with *respect* in the establishment process. Finally, by actively engaging the NCP in the establishment proceeding, the NCP is more likely to be aware of the initial payment due date, of potential delays in initiating income withholding, and of rights to adjustment and modification proceedings.
- **Getting the NCP to Appear.** Most states agree that default orders should be avoided whenever possible – and for good reason, since experiential evidence indicates that the payment compliance rate is significantly lower in default cases. Initially, a state may want to calculate the number of default orders as a percentage of all orders issued, in order to determine the extent of the problem in a particular jurisdiction. If this is in fact

an issue, the beginning strategy could be the implementation of appropriate Prevention Techniques (see Section I) that focus on education and outline the negative consequences intrinsic to defaults. Additional strategies to obtain higher participation rates may focus on the format of the summons or notice to appear. For example, in Connecticut, the use of “**YOU MUST APPEAR**” language on the initial notice has increased the appearance rate to 90%. Whatever notice is used, it is important that it is easy to understand and available in the languages that may be spoken in a particular city or jurisdiction (AT&T and other vendors have translation capabilities – all similar avenues should be explored to reduce translation expense). States also need to determine whether or not minimum due process requirements were met before concluding that a failure to appear should result in default – especially when service of process appears questionable. If the NCP is in fact in default, a participant suggested that in conjunction with the issuance of a temporary order, a bench warrant be issued to increase the likelihood of the NCP’s attendance at a subsequent hearing to establish a final order.

Whether or not a IV-D hearing meets the NCP’s expectations about entitlement to visitation rights can also be a major factor influencing the NCP’s willingness to appear and cooperate. While there is no consensus on what visitation-related functions IV-D can or should perform (in light of the historic Legislative and legal separation of the issues), there is some agreement that IV-D should partner with, and possibly fund, CBOs and other entities that facilitate visitation, supervision and/or mediation. The existing process for authorizing grants to states for Access and Visitation Programs could very well be the cornerstone of any such effort.

- **Establishing a Default Order.** Most states agree that establishing (and publicizing) a pre-determined order amount in default situations (such as using the TANF grant amount, a specified amount, or the minimum wage) is not a good idea for at least two reasons: (1) the “educated” higher-income NCP will fail to appear if the default order is virtually guaranteed to be less than an order based on actual income, and (2) for low-income NCPs, the pre-determined amount may guarantee accumulation of potentially uncollectable arrears. (Note: Maine suspects that its past practice of using TANF grants as the default order amount was a windfall to many NCPs.) In striking the balance between the need to establish a default order and the desire to establish a fair order, meeting participants have the following suggestions:
 1. **Temporary orders.** Make all default orders provisional or temporary (as is done in New York) so that, if justified, established obligations are easily modified.
 2. **Avoid standard default amount.** Allow for the default order amount to be based on case-specific factors rather than uniform standards. For example, in Puerto Rico, CPs are allowed to testify relative to NCP income, past work history, assets, etc., on which an “income-estimation” can be based.
 3. **Matches with financial data.** Use historical income and tax data to set a more “reasonable” default order.
 4. **Keep the record open.** Allow the NCP to appear after the initial establishment of the default order to provide actual evidence of income and ability to pay. For example, in Connecticut, the default record is kept open for 4 months, during which timeframe the

NCP can appear and provide updated income information (The NCP is notified of this right at the time of order service). In Massachusetts, the record is kept open for one year, during which timeframe the default order can be set aside based on updated NCP income information. Maryland has a similar process, as long as the NCP can provide acceptable documentation of income. In some states, the amount is changed prospectively, not retroactively, while in others, such as Connecticut, an order based on new evidence replaces the initial order.

- **Appropriate Guidelines or “Getting the right order in the first place goes a long way towards managing arrears.”** A majority of states agree that establishing an appropriate support amount is contingent upon accurately determining NCP income - and then applying that income to a formula that calculates a fair amount of child support, yet leaves the NCP with the ability to provide for other children, if any, and basic personal needs. Establishing NCP income can be relatively simple if the NCP is employed and receiving regular and consistent wages. In those cases where the NCP is self-employed, under-employed or unemployed, or if reliable evidence of actual income or ability to earn income is not available for any other reason, many states resort to imputing income. The same recommendations on imputing income cited in the subsection above also apply here. (Under-employed and unemployed NCPs are discussed in more detail in the following subsection). Meeting participants caution against an over-estimation of income. To counteract that possibility, and the equal likelihood that income is under-estimated, some participants recommend that any time an order is based on imputed income, it should be issued as a temporary or provisional order, for the same reasons that Default Orders are best established as temporary or provisional orders. Once income is established, guidelines are applied, resulting in a recommended amount (the rebuttable presumptive amount) as computed by the formula, or, if due to special circumstances, an amount established by the tribunal that deviates from the formula. Meeting participants make the following recommendations relative to child support guidelines:

1. **Regular reviews.** Guidelines need to be reviewed, and if appropriate, revised on a regular basis. Several participants believe that guidelines are often unfair since they do not keep pace with socio-economic changes. To expedite the review, Rhode Island recommends that the process not be tied to Legislative approval. Most if not all participants agree that economists should be included in any guideline review.
2. **Self-support reserve.** Guidelines should establish an adequate self-support reserve to provide for basic needs of low-income NCPs. (The concept that the NCP is entitled to a form of “self-reserve” already exists in Federal law. The Consumer Credit Protection Act establishes a limit on the amount of support that can be withheld from wages, and, given that close to 70% of collected support comes from income withholding, order amounts that exceed CCPA limits virtually guarantee substantial arrears accrual.) Generally speaking, participants are in agreement that guidelines should balance low-income family needs with low-income obligor realities. A possible solution is to look to outside programs that can add income to each or both sides of the equation. Some participants suggest that the IV-D order establishment process in low-income cases should serve as a gateway to other services, such as housing, CHIPs, childcare, etc. Finally, to the extent that the existing guideline formula cannot be successfully applied to low-income cases, IV-D may need to take the lead on requesting formula deviations.

3. **Multiple families.** Guidelines should take multiple-family realities into account whenever establishing a support obligation. Not all do. For example, in Maryland, state law is silent as to multiple-families, and there is no uniform standard that provides for an NCP credit based on other obligations. In contrast, in the Virgin Islands, the guidelines automatically provide credit for every other NCP child (as long as paternity is established), whether or not a support obligation exists. The fact that the aforementioned CCPA limits apply regardless of the number of NCP obligations may be another valid reason to consider multiple-family obligations upfront before they result in potentially uncollectable arrears.
- **Under-employed and unemployed NCPs.** Not all under-employed or unemployed NCPs are willfully under-employed or unemployed. Nor is their alleged status necessarily truthful. (Interestingly enough, Rhode Island reports that some unemployed NCPs, in order to avoid the “nuisance” of court-ordered job searches, will lie and testify that they are employed, resulting in orders based on non-existent income! If common enough, a poster in the court waiting area advising of the consequences of such perjury might be an effective prevention technique.) Participants recommend that the state separate, to the extent possible, those NCPs that have taken deliberate action to reduce income from those that are truly unemployed or not able to be consistently employed (for example, seasonal workers). Existing interfaces with the NDNH, internal revenue agencies, etc., and collaboration with CBOs may assist in the segregation process. If the unemployment status is willful or voluntary, income should be imputed – something that Massachusetts has successfully done for years. If the unemployment status is not willful or voluntary, IV-D should attempt to:
 1. Collaborate with fatherhood groups and similar CBOs to assist NCPs who may not be immediately employable (including NCPs with substance abuse issues), and
 2. Collaborate with WtW/WIBs and Labor Departments to assist NCPs who may be employable. Generally speaking, WtW entities are able to assist any NCP who is under-employed or unemployed, or having difficulty in paying child support (as defined by the state), if the child(ren) is on TANF or TANF eligible.
 - **Retroactive Obligations.** Meeting participants cited several arguments both for and against the concept of establishing retroactive obligations. For example, avoiding retroactive obligations will, simply stated, avoid arrears. Reducing or eliminating the retroactive obligation may enhance the NCP’s ability and willingness to comply with the current obligation. On the other side, if orders are only prospective, the NCP has a built-in incentive to evade service of process for the initial hearing. Equally important, many NCPs have the ability to pay retroactive support, and the CP and the child are most often in need of the retroactive financial assistance. As stated earlier, state law establishes the period of retroactivity in most jurisdictions, and accordingly, flexibility may be limited. However, participants believe that the following suggestions can be helpful in developing useful strategies, one or more of which may be applicable in any given state:
 1. **Ability to pay.** Base retroactive support amounts solely on the NCP’s current ability to pay.

2. **Mitigating Case-specific factors.** Determine the retroactive period based on case specific circumstances; for example, did the NCP delay the establishment process or were the CP and/or state directly or indirectly responsible for the delay; when was paternity established (unknowing father vs. evading father issue); etc.
 3. **Charge now – collect/settle later.** Collect the amount of retroactive arrears allowable under law, recognizing that NCP ability to pay changes over the lifetime of a case, and keep open the option of eventual settlement or compromise.
 4. **Mitigating NCP factors.** Consider mitigating factors related to past NCP conduct when determining the retroactive obligation; for example, give the NCP credit for direct or in-kind support paid to the CP prior to the order establishment (in TANF cases, CP may need to be advised of potential consequences if support during TANF period is acknowledged – it is also recommended that such policy clearly indicate that future direct support will not be credited against the prospective obligation); other mitigating factors can include past periods during which the child lived with the NCP or a third party, and past periods of NCP/CP cohabitation.
 5. **Cap arrears.** Consider applying a policy similar to New York’s policy of capping retroactive arrears to \$500 if the NCP can establish an income below the poverty level; i.e., this policy could be applied to retroactive and/or future arrears accrual.
- **Other “Add-on” Obligations.** Most meeting participants accept the proposition that establishing a fair and collectable child support obligation is difficult enough. Every obligation added on to the current child support amount, from interest to fees, makes the process that much more difficult. While no one proposed that medical support and childcare should not be a component of every support order whenever appropriate, there was little consensus on the remaining “add-ons.” Participants were in general agreement that to the extent permissible under state law, each state should revisit its policy on pursuing “non-child-support” obligations. The completed arrears analysis could be useful in determining the extent to which a particular “add-on” is even an issue in a particular state.

The most controversial “add-on” is interest. Several participants believe that charging interest or any type of penalty may, in the end, be counter-productive to the primary mission of collecting child support, and benefit neither the CP nor the child. Maine and others indicated that their systems did not even have the capability to account for interest (creating additional issues in interstate actions, whenever Maine and similarly situated states have to interact with states where interest is routinely charged). On the other hand, if interest is not charged, will a NCP pay all of his or her other high-interest debt first? Also, the ability to charge interest may offer the IV-D agency additional leverage over the NCP in subsequent repayment negotiations, because the NCP may fear having to pay greater amounts due to accumulated interest. Nonetheless, if interest actually tends to accrue at a higher rate than the rate it is paid off, as one participant suggested, a state may want to examine to what extent the interest charge could be responsible for the future need to engage in repayment negotiations. Finally, if a state charges interest, it should have the system capability to suspend the accrual of interest on collections that are being held in escrow or temporarily held as a tax refund intercept in joint returns.

A state may want to consider the following potential strategies relative to “add-ons:”

1. **Caps.** Cap the amount of “add-on” collections (just as retroactive support may be capped) if the NCP income falls below an established threshold; and/or
2. **Flexibility.** Provide flexibility when it comes to “add-on” collections. For example, in Rhode Island, birthing and interest costs are negotiable, and the Court has discretion to stay interest charges.

In conclusion, it is important that any order establishment policy decision maintains the integrity of the order – that is to say that both the CP and NCP have reason to respect the process, and that both have the expectation that the order will be enforced – timely and consistently. At the same time, the order amount that is established must be connected to a feasibility that it can be collected – especially in relation to cases involving low-income NCPs. There is a consensus that we are in an “arrears mess” – improving the establishment process may be one of the most effective ways to eventually leave the mess behind.

Next Steps:

Meeting participants recommend the following –

- States, in partnership with OCSE, should consider compiling and sharing 4 year guideline reviews
- Consider initiating a discussion/review of the order establishment process at the national level
- Recommendation that Hub states implement as many enhancements in the establishment process as possible and share outcomes

III. EARLY INTERVENTION

Early Intervention relates to up-front strategies designed to avoid or minimize the accrual of arrears. The concept is closely tied to prevention and education strategies that (1) emphasize NCP responsibility and (2) inform NCPs of their right to request review and adjustment, modification and termination services. Early Intervention also applies to developing strategies where the IV-D agency takes the initial step to avoid arrears accrual. The concept has two primary guiding principles: Immediately enforce the order whenever necessary and immediately adjust the order amount whenever appropriate.

Definitions:

The following terms are relevant to Early Intervention. In addition, factors cited in Section I, subsection “Definitions,” relative to NCP inability to pay may also apply here.

- **Review and Adjustment** – the periodic review of the obligation, and, if appropriate, its subsequent adjustment, conducted at the request of either party (or another state) or conducted automatically at regular intervals. Federal law no longer requires automatic reviews, and states only need to review and adjust in response to a request.
- **Modification** – the ability to adjust the obligation at any time based on a change in substantial circumstances.
- **Age of emancipation** – the age to which the NCP is normally required to support his child (in some states the age of emancipation is 18, in others it is 21; in Massachusetts support can run to age 23; and in New Jersey, the age of emancipation is not even codified). In several states, the legal age of emancipation does not terminate the legal obligation to pay if the child is attending a full-time educational institution; if the child is incapacitated, the obligation to support may continue for the lifetime of the child.
- **Termination** – the date on which the legal obligation to support terminates. This can be based on the child’s emancipation, death of the child or NCP, NCP incapacity, NCP being granted child custody or changes in the NCP/CP relationship.

Issues:

A state may need to address several issues during the strategy development phase, including:

- **Staff training and caseloads.** Staff training, whether related to outreach, conflict resolution or customer service is an important element in all aspects of arrears management. It is especially significant in early intervention strategies due to the high degree of staff involvement. Before training begins, a state should review current case management techniques to determine if they have kept pace with the latest enforcement methods made available under state and Federal law. Second, training should not only focus on enforcement skills, but also on the very different set of skills required for negotiations and interactions with high-risk NCPs. A state may also explore the desirability of involving existing customer service staff in NCP early-intervention

outreach activities. Finally, a state should determine to what extent a worker's caseload affects the ability to provide appropriate early intervention services.

- **Interstate Cases.** Several meeting participants felt that delays in the enforcement of interstate cases were a significant contributing factor in arrears accumulation. Two-state interstate enforcement actions were blamed for the longest delays. States need to determine to what extent one-state interstate actions can be better utilized. Finally, “arrears prevention” may need to be established as a distinct topic in on-going interstate discussions.
- **Automation.** The automated system can have a positive and negative impact upon Early Intervention capabilities. For example, in some states, workers complain that overwhelming worklists undermine otherwise good intentions to provide early intervention services in a timely and meaningful fashion. On the other hand, automated systems could be enhanced so as to segregate the cases in need of early intervention from the remaining caseload, allowing staff to focus on problem NCPs. Automated systems may also assist states in providing more timely services to the interstate caseload.
- **Wage Withholdings.** Delays between order establishment or modification and the initiation of wage retentions, and delays in initiating new wage retention whenever a NCP switches jobs also contribute to arrears accumulation. States should explore strategies to reduce delays whenever possible.
- **Order Terminations.** States may need to review the process for terminating orders, and further determine whether or not the process is being conducted in a timely manner. This includes an examination of who can or must initiate the termination – for example, state law may require the NCP to affirmatively request a termination. Finally, in the event that a termination was not initiated and/or completed in a timely manner, a state needs to decide whether or not to adopt an adjustment policy.
- **NCP Access to the IV-D Process.** The NCP's access to modification and termination services depends not only upon notice, but also upon the ease or complexity of the process. States should try to ensure that the access to any service that may mitigate arrears accrual is understandable and easily accomplished by all NPCs.

Strategies:

Meeting participants recommend the following strategies (already implemented or otherwise suggested) that may enhance a state's ability to avoid arrears accrual.

- **Review and Adjustment/Modifications.** Immediate intervention whenever a NCP's capacity to pay changes may be a key factor in avoiding inappropriate arrears accrual. Strategies, as suggested below, may be pro-active, or reactive to a NCP's or other party's request:
 1. **Conduct more frequent reviews.** While a state is only required to provide review and adjustment services in three year cycles (and only if requested), allowing for more frequent reviews should help to ensure that the initial obligation continues to be

fair to both parties on a future and uninterrupted basis. For example, New Jersey conducts reviews every two years.

2. **Conduct automatic reviews.** Federal law no longer requires an automatic and periodic review and adjustment of either TANF or Non-TANF cases. No studies have been done to determine if reviews occur less frequently now that they must be requested – however, it can be presumed that the more frequently reviews are conducted, the less likely that inappropriate arrears will accrue. Partly for that reason, Connecticut continues to conduct automatic partial reviews at regular intervals. New Jersey likewise automatically reviews cases on a periodic basis, and in selected Non-TANF cases, issues notices to the parties to determine interest in conducting a complete review/adjustment process. New Jersey also has a COLA adjustment (does not require guideline computations unless contested) that significantly simplified the process and reduced the appeal rate. In addition, New Jersey reports that this proactive customer contact also supports general case clean-up efforts (for example, in response to a notice, a CP informs the agency that the child is emancipated).
3. **Provide timely actual notice to NCPs.** For example, West Virginia includes a notice about modification rights in the notice that informs the NCP about the unemployment benefits' intercept. Other states provide a notice whenever the IV-D system becomes aware that the NCP is unemployed. In Puerto Rico, the IV-D agency conducts outreach at private or government entities about to experience major layoffs, providing NCPs with detailed information about modification rights (this may require establishing an interface with unions or DoL). The Virgin Islands intends to provide notice of modification rights to all newly incarcerated NCPs. (The law on incarcerated NCPs varies from state to state. In Connecticut, case law discourages downward modifications when a NCP is incarcerated. In Arizona, the order is suspended upon incarceration. Meeting participants recommend a middle ground to the extent allowable under existing state law: consider a downward modification based on incarceration, but only after a determination that NCP has no assets out of which to pay support. This is in line with Maryland's most recent case law, holding that incarceration will not imply an inability to pay, but it also is not a presumptive indication of an attempt to evade the obligation.)
4. **Simplify the process.** Use settlement conferences and hearing officers to process modifications – a solution also possible in a judicial process if it provides for eventual approval by the court (sign-off by a Judge). In fact, Judges often believe that contempt actions are really modification actions in disguise, and they may view this as an effective way to keep the number of contempt actions to manageable levels.

Develop user-friendly pro-se packages. In one state, where all modification actions have to be filed in the court, a pro-se package is readily available but difficult to complete. If the forms cannot be readily simplified, a state can provide NCPs with information about fatherhood groups and other CBOs that are willing to assist in the completion of forms. In Maryland, the IV-D agency funds a city position assigned to assist NCPs in completing pro-se forms. Pro-se packages should be readily available in every jurisdiction, and they could be distributed via the Internet, as is being done in New Jersey and planned in Massachusetts. New Hampshire held evening workshops on the pro-se process – even though turnout was not as great as expected.

Some meeting participants suggested establishment of “Pro-se Courts,” where clerks would assist with the completion and filing of petitions, where filing fees would be minimal or eliminated, and where the court would assist with service of process. Mock calculations were also encouraged as a “best practice” – sort of a practice run to determine whether or not proceeding with a full-blown modification was justified, and a way to avoid using resources on requests that would ultimately be denied.

5. **Publicize information about review/adjustment and modification rights.** As part of the state’s general prevention activities (discussed in Section I), Delaware operates an elaborate voice-response system to provide information about the modification process. In addition, it would be in any state’s best interest if appropriate CBO’s were well informed about that state’s law and procedure with respect to this issue.
- **Prompt Termination of Orders.** The following strategies may be of benefit in a state effort to timely terminate orders whenever factually appropriate.
 1. **Termination language.** Add language that the obligation will terminate upon a certain event, to the extent possible. However, in most jurisdictions, only marriage will automatically terminate an obligation, and most anything else will need some involvement by a tribunal.
 2. **Pro-active contacts.** In jurisdictions where reaching the age of emancipation does not necessarily result in a termination of the obligation, take pro-active steps to resolve the issue. For example, whenever a child reaches age 18, Connecticut is considering having the system automatically generate a letter to the CP requesting information as to the child’s school status. If the CP fails to respond within a specified period of time, the order is terminated.
 3. **Caseload matches.** Match the caseload against vital statistics/probate records to identify deceased NCPs. (Also see discussion on vital statistics matches at Section I, “Strategies,” “Arrears Analysis.”) However, if a NCP is deceased, IV-D may need to determine whether or not the estate can satisfy outstanding arrears, if any, before a case is actually closed.
 4. **Adjustment policy.** Establish a policy that allows you to adjust arrears for any amounts accumulated between the date when an obligation should have terminated and the date when it was terminated.
 - **Wage Withholdings and Other Enforcement Techniques.** Enforcement tools should be initiated automatically and immediately whenever appropriate. (Participants acknowledge the fact that state due-process laws may undermine that goal and serve to delay some enforcement efforts.) The following strategies, some of which extend the boundary of traditional enforcement actions, may be of benefit in the effort to avoid arrears accrual – especially when automated enforcement tools are not available or applicable.
 1. **Up-front notice.** Provide up-front information to NCPs that they have an obligation to make support payments directly to the IV-D agency if the obligation is not being otherwise deducted from their paycheck. This is especially important in jurisdictions

that routinely experience delays between order establishment and wage retention, and those that have large NCP populations that engage in seasonal employment, frequently switching jobs. The notice could be incorporated into the order or served along with the order as part of a separate document.

2. **Interim notice.** Whenever the agency receives notice from an employer that a NCP is no longer employed, immediately issue a notice to the NCP that he or she may be entitled to modification services, obligated to continue paying support and required to inform the agency when re-employed.
 3. **30-Day contact.** Consider New Hampshire's successful policy of contacting all NCPs whenever the account is 30 days in arrears. The contact can be directly by staff, or by way of a notice that carries an appropriate rights-and-responsibilities message. There is experiential evidence of a link between the length of time since the last payment and the success in obtaining a future payment – possibly the reason why the implementation of New Hampshire's 30-day policy has been a positive experience.
 4. **90-Day contact.** Automatically sort cases on the basis of a 90-day non-payment history, and order the respective NCP to appear before an Administrative Hearing Officer in order to identify and resolve the non-payment issues.
- **Interstate Cases.** The concept of immediate enforcement of orders to avoid arrears accrual can be more difficult to implement with respect to the interstate caseload. Most often the “difficulty” relates to unreasonable delays in appropriate action by the Responding state, and/or doubts in the Responding state about the validity of the debt. Generally speaking, meeting participants recommend the use of one-state interstate actions. This maintains Initiating state control over the process and its timeliness. Several one-state interstate actions are very effective, but also new and sometimes misunderstood. For instance, one-state interstate lien actions are very useful in seizing all available NCP assets to pay off arrears – but not every financial institution will necessarily honor a lien from another state. In the event that a state learns about a financial institution that has or will not accept liens from other states, or if a state is concerned about the adequacy of its state law in regard to establishing a mandate that such liens must be recognized, requests for technical assistance to (1) educate the financial institution, and/or to (2) analyze the state law, could be directed to the appropriate Regional Office.

Next Steps:

Meeting participants recommend the following –

- Consider availability of SIP grants for projects to make the Review and Adjustment process as fair and user-friendly as possible
- Increase utilization of one-state interstate actions that relate to arrears reduction
- Request Federal clarification on IV-D minimum responsibility to represent a requesting party in a review and modification action

- Recommendation that Hub states implement as many new Early Intervention techniques as possible and share outcomes

IV. ACCRUED ARREARS MANAGEMENT

The underlying purpose of the strategies outlined in Sections I, II and III is to avoid the accrual of child support arrears. As these strategies are implemented and hopefully prove to be effective, the future need to manage accrued arrears will diminish. However, as previously cited, the national total of accrued arrears is estimated at \$80 billion dollars – and the strategies outlined heretofore will do little if anything to reduce this debt. Accordingly, states may need to make several decisions relative to accrued arrears: (1) What portion of the total arrears “bucket” is supportable and verifiable; (2) What portion of the total is likely to be “collectable;” (3) What are the best strategies to collect the “collectable;” and (4) What should be done with the “uncollectable” debt. Virtually all aspects of these decisions touch upon two major case-specific factors: (1) What is the underlying reason for the arrearage in a particular case, and (2) will a particular NCP ever be able to satisfy the arrearage.

Definitions:

The following terms are relevant to Accrued Arrears Management. The majority of the terms cited in the previous Sections are equally relevant to this Section.

- **Unreimbursed Public Assistance (URA) and TANF Arrears.** URA is the difference between the cumulative amount of assistance paid to a family and the assigned child support collected and credited against that amount. IV-D’s responsibility is limited to collecting what is owed pursuant to a child support order. However, in some states a non-IV-D agency may enforce the collection of URA amounts that exceed the child support order. A conflict may arise if the arrears management policy does not extend to the collection of the URA excess (i.e., NCP arrears forgiven but CP’s URA is not).
- **OCSE Incentive Formula.** Relative to arrears, a state’s Federal incentive payment is based on the number of cases in which a collection is made towards arrears, rather than the dollar amount of collections towards arrears. Accordingly, a collection of \$1 dollar towards arrears qualifies a case under the criteria.
- **Arrears compromise.** Action to forgive all or a portion of the TANF or Non-TANF arrearage, or any other outstanding obligation. Must have the consent of all parties that have or may have an interest in the arrearage. (Note: the Federal interest in arrears does not vest until a payment on arrears is collected and available for distribution; accordingly, Federal consent is not necessary in the compromise phase – see PIQ-99-03.)
- **Statute of limitations.** Establishes a time frame after which an arrears amount may no longer be enforced. For example, Maryland has a 3-year statute if a debt is not reduced to judgement, and a 12-year statute if the debt is reduced to judgement. In most jurisdictions, the judgement can be renewed prior to the expiration of the statutory period.

In the event that a state decides to adopt a policy authorizing the compromise or settlement of arrears, it needs to determine who has a financial and legal interest in the various portions of the arrears bucket. Potential interests may be defined as follows:

- Child Support Arrears owed to the CP and only requiring CP consent (never assigned and unassigned arrears)
- Child Support Arrears owed to the state and only requiring state consent (permanently assigned arrears)
- Child Support Arrears potentially owed to both the state and CP and requiring both state and CP consent (conditionally assigned arrears – i.e., state retains interest if collection is made via IRS offset)
- Child Support Arrears owed to the state, but only temporarily, therefore potentially requiring both state and CP consent (temporarily assigned arrears)

(Note: As to temporarily assigned arrears, whether or not CP consent may be required pursuant to Federal and/or state policy is still open to interpretation. For now, the best course of action may be to obtain the consent of both the state and CP.)

A similar determination needs to be made for any component of the arrears bucket that is based on something other than child support -- for example, interest, fees, spousal support, medical support and child care. A good practice may be to develop a state-specific matrix (see sample below) that outlines the various arrears components, with cross-references to the corresponding parties of interest.

Sample Consent Matrix

Arrears Type ⇒	Never & Unassigned	Permanently Assigned	Conditionally Assigned	Temporarily Assigned	Spousal Support	Fees
State Consent	No	Yes	Yes	Yes	No	Yes
CP Consent	Yes	No	Yes	Yes	Yes	No

The matrix can be expanded to include information about whether or not a particular type of arrearage should ever be compromised, and if so, under what circumstances. (Note: Permanently assigned arrears, if in excess of the URA balance, may revert to Unassigned.)

Issues:

A state may need to address the following issues prior to formulating an arrears management policy:

- **Conflicts with public policy.** The extent to which an accrued arrears management policy allows for compromise or suspension of enforcement activities will determine the extent of potential conflicts with existing public policy, law and/or various interest groups, including CPs. Generally speaking, the following conflicts may arise:
 1. Only pursuing “collectable” arrears vs. the desire to fully recoup welfare payments
 2. Negotiated suspension of enforcement vs. legal requirements to enforce
 3. Desire to increase Federal incentive payments vs. reluctance to compromise debt
 4. Giving the delinquent NCP a break vs. sending a positive message to paying NCPs

5. The good intention to manage arrears vs. the perception that one is rewarding criminal behavior

Meeting participants agree that whatever accrued arrears management policy is adopted, it must not undermine the willingness of paying NCPs to continue to honor their obligations. This is especially true for those NCPs who have paid all support due even during times of personal financial hardship. (States, such as Maryland, that have already initiated limited arrears compromise pilots indicate that it is still too early to tell if there will be a backlash from NCPs who regularly pay support.)

- **Suspending Enforcement.** The ability of the state to offer a suspension of certain enforcement techniques can be an effective tool in negotiating a payment plan with the NCP. Meeting participants recognize, however, that certain enforcement methods can not be suspended since Federal statute and/or state laws mandate their use. The requirements to initiate wage withholding and to submit cases for Federal and state tax refund offsets were specifically cited as Federal mandates (assuming that arrears exceed statutory threshold amounts). States may need to request OCSE confirmation that this list is complete (or do Federal mandates extend to credit bureau reporting, etc.); and they need to ensure that state law does not mandate an action that Federal law may not.
- **Compromising Arrears.** The IV-D Agency should satisfactorily resolve several items before considering any compromise action:
 1. Does IV-D have a comfortable degree of certainty that the arrears are in the appropriate “bucket” so that all parties who need to consent to the compromise are properly identified;
 2. Does the CP have the authority to compromise arrears under state law. For example, in West Virginia a CP is not allowed to compromise arrears – the CP can only indicate that arrears are not owed, and if approved by the Court, the arrears can be adjusted accordingly; and
 3. If the arrears are temporarily assigned, has IV-D clarified whether or not Federal or state policy requires CP consent (if yes, refer back to bullet “2”).

In addition, a state may want to know whether or not the partial or complete compromise of debt has a positive effect upon the NCP’s future willingness or ability to pay current support. The eventual resolution of this ongoing debate may very well influence a state’s final decision on whether or not to compromise.

- **Selling Off Arrears.** Virginia indicated that it was considering the possibility of selling TANF arrearage accounts to a collection agency for a to-be-negotiated fraction of the dollar value. The concept found appeal among several meeting participants, including one who carried more than \$2 billion dollars worth of outstanding debt. However, since the Federal Government retains an interest in arrears that vests at the time of collection, it is presently unclear whether or not the “sale” of arrears is permissible under Federal law, and no state action should be taken until OCSE issues a policy clarification.

- **Domestic Violence.** Any aspect of arrears management that may be perceived as benefiting NCPs and that involves or requires CP consent can aggravate the potential for domestic violence. For example, the District of Columbia related its experience that many CP requests for IV-D case closure were the result of threats of violence. States should take proactive steps to ensure that a CP’s consent to compromise arrears (or any other action that may require consent) is not the result of similar threats. Some participants suggested that any proposed policy that increases the potential for domestic violence should be rejected.
- **Interest and the arrears “bucket.”** For states that charge interest on overdue support payments, the question of whether or not that interest is included in the arrears amount reported to OCSE may still need to be resolved. While a Federal interpretation was apparently issued to Alabama, the specific facts and the extent of the general applicability were unknown.
- **Able to pay vs. not able to pay.** Most meeting participants agree that before sustainable accrued arrears management decisions can be made, the state needs to be able to divide NCPs into those able to pay and those not able to pay off arrears. The discussions, issues and strategies outlined in previous Sections relative to making this classification should be applicable here; i.e., the type of NCP classified as not having the likely ability to satisfy retroactive arrears may have the same essential characteristics of the NCP not able to pay off subsequently accrued arrears.
- **Accrued Arrears Management Philosophy.** A state should define what it intends to accomplish with accrued arrears management. If the priorities are not clear, chances are the state will send a wrong message. Is the purpose to close dead cases, to collect all arrears, to focus on “collectable” arrears, or to simply appear more efficient by reducing arrears using all available means? A state needs to be aware that the eventual definition of the purpose will likely have a significant impact on the future integrity of that state’s orders, on relations with CPs and on prospective NCP payments. A participant therefore suggests that any policy that reduces a legitimate debt must not be perceived as a windfall to the NCP, but instead must be seen as a cost-effective management tool. Finally, it is suggested that the eventual policy reflects the current state economy (a significant determinative factor relative to NCP ability to pay), and that the policy can be easily adjusted in order to accommodate future economic changes.

Strategies:

Meeting participants recommend the following strategies (already implemented or otherwise suggested) that may enhance a state’s ability to successfully manage accrued arrears.

- **Caseload Clean-up.** To the extent that the state has not already conducted clean-up activities recommended in Section I and III, the following should be considered:
 1. **Matches with Vital Registry.** Conduct matches with Vital Statistics and Probate Records to identify all deceased NCPs in the caseload. Request regular Regional Office updates on proposed plans to match FCR with SSA death records and utilize

this process once implemented. Prior to case closure, ensure that no action, including a levy against the estate, can be taken to satisfy arrears.

2. **Emancipated children.** Identify all cases in which children are emancipated and the current order remains in effect, and request regular CP updates on child's school status to determine continued eligibility to received current support.
 3. **Federal case closure criteria, or "closing dead cases."** Review cases to determine whether or not they qualify for IV-D case closure pursuant to 45 CFR 303.11. For example, case closure is allowable when the arrearage is less than \$500 or unenforcable under state law, or when the NCP's location is unknown and the state's diligent efforts to locate have been unsuccessful. Even in a state where the modification of an incarcerated NCP's order is not permissible, if the NCP is incarcerated without chance for parole and the NCP is not able to pay support for the duration of the child's minority, it may be possible to close the IV-D case.
 4. **CSENet.** Once available, use of CSENet to update, verify and correct arrears balances in interstate cases.
 5. **Unreimbursed Public Assistance (URA).** Federal regulations only require that the history of past assistance paid to a family is retroactive for a minimum period of three years. Should a state determine that large URA balances are counterproductive to arrears management, and if permissible under state law, it may decide to calculate URA only for the minimum period of three years retroactive from the date of a given distribution. (See OCSE-AT-97-17).
 6. **Interest.** In the event that a state receives Federal instructions that interest should not be included in the amount of reported arrears, appropriate adjustments, if any, should be made to the arrears "buckets."
- **Enforcement.** Every collection towards arrears serves to minimize the problem and helps to avoid the potential use of the more controversial management policies. In addition, as Massachusetts points out, even a dollar of collection helps in the Federal incentive calculation, and the state routinely attempts to collect at least a minimum amount in every case. If the enforcement effort goes beyond automated functions, and requires more intense staff involvement, it should be focused on the group of NCPs a state has determined to be most likely able to pay (as indicated above, this may involve the use of credit histories, CBO assistance and sorting lessons learned from private industry, and amounts to a separation of the collectable debt from the uncollectable debt). Most meeting participants agree that a state should aggressively attempt to use all available enforcement techniques prior to any consideration of debt compromise. Some suggestions are as follows:
 1. Maximize use of FIDM. New Jersey has found that the use of FIDM resulted in the satisfaction of a significant number of outstanding TANF arrears accounts.
 2. Expand use of one-state interstate actions.
 3. Emphasize the importance of good credit (the ability to refinance at current low rates) and publicize the thresholds for credit bureau reporting to encourage NCP payments.

- **Suspending enforcement and other State concessions.** Many states have been successfully offering the suspension of certain enforcement tools in exchange for regular NCP payments towards current support and/or arrears. While some enforcement tools must be utilized (See Definitions subsection above), generally speaking, a state has broad discretion as to when and how to enforce an obligation. In some states (and if permissible under state policy), in exchange for regular NCP payments, IV-D may modify or reduce a future obligation. All strategies involve a performance-based approach – i.e., the NCP makes regular payments in exchange for some state concession. Most involve some pre-determination of a limited capacity to pay. Some states apply the strategy to all NCPs, other states limit the strategy to arrears-only cases. Suggested strategies are as follows:

1. **Amnesty Programs.** Suspend outstanding warrants (on a one-time basis) in exchange for a lump-sum payment towards arrears or in exchange for an agreement to pay off arrears pursuant to a mutually agreed to schedule. Virginia combined an amnesty program with an innovative initial enforcement action – i.e., arrest warrants were issued against 57,000 targeted NCPs, who were then given the opportunity to enter into repayment agreements. If the opportunity was seized, the warrant was quashed. To date, 24,000 agreements have been reached.
2. **Licenses.** Agree not to suspend licenses (especially effective as to driver’s licenses) for so long as the NCP makes payments pursuant to a schedule.
3. **Interest.** Suspend future interest charges on arrears for as long as the NCP makes payments pursuant to a schedule.

A related strategy involves establishment of a policy that applies NCP payments to the debt (principal) first, in order to reduce the rate that interest would otherwise accumulate.

4. **Court-based enforcement.** Suspend contempt actions as long as NCP makes payments pursuant to a schedule, or as long as NCP cooperates with work searches and other re-employment activities. For example, in Maryland, court-based enforcement actions are suspended if the NCP signs and complies with a Personal Responsibility contract and/or attends substance abuse counseling and treatment.
- **Third Party payments toward arrears.** In a pilot project in Allegheny County, Pennsylvania, the Goodwill Foundation pays a percentage of a NCP’s arrears (up to a maximum grant of \$5,000) in exchange for the NCP’s participation in a program designed to facilitate gainful employment and encourage the future regular payment of child support. Payments are made each time the NCP completes a significant program benchmark toward employment and compliance with the support obligation. The program lasts a maximum of six months, and the child support order can be modified during the enrollment period. Program activities range from parenting and Life Skills training to driver’s education (and acquisition of a vehicle as needed for employment purposes through Goodwill’s auto auction) and post-employment career development. As of 12-31-00, 2 NCPs completed the program, 14 are actively participating and 4 were terminated for non-compliance. 15 NCPs are currently employed with a mean wage per hour of \$7.74.

- **Compromise and Settlement.** A number of meeting participants expressed reluctance about compromising all or even a portion of an NCP's debt. For example, West Virginia took the position that it would never compromise (even though it may consider writing off a debt after 10 years of account inactivity). The general preference was for enforcement, suspension of enforcement in lieu of a payment plan, or holding arrears in abeyance – i.e., “it is better to defer the collection than to forgive the debt permanently.” Maine stated that it would not agree to compromise any large amount of arrearage, believing that the future usually holds out collection opportunities. Other reasons for the disinclination to compromise varied from “why compromise given all the enforcement techniques that states now have” to “am worried that compromise will lead to a backlash from NCPs that do pay or try to pay.”

Compromising arrears may nonetheless be an appropriate accrued arrears management technique for some states and under some circumstances. For example, one state conducted a match between the SCR and Mental Health records and found that more than 5,000 NCPs experienced mental health problems of varying degrees. Arguably, a percentage of those may have a permanent inability to pay either current or retroactive support, or they may have lacked the capacity to request modifications in the past. Other states may have “questionable” TANF arrears that should not be enforced, but could be used as compromise leverage to negotiate a payment plan for the supportable remainder of the debt. New Hampshire believes that the system of computing arrears is at times unfair, especially when the NCP had no pre-summons knowledge about his or her duty to support. The following examples reflect some circumstances under which compromise may be appropriate in a particular jurisdiction:

1. **Arrears-Only cases.** Connecticut has a compromise policy that currently involves court approval (legislation is pending to grant IV-D independent authority to compromise). The policy is limited to TANF Arrears-only cases, is based on the state's best interests, and results in the stipulation of a reduced amount in conjunction with a payment plan.
2. **Formula-based policy.** Virginia has a debt-compromise statute that uses a formula to establish a reduced debt amount based on the length of time and the amount of the periodic payment required to pay off the existing debt. Vermont has a similar formula approach that requires a percentage lump-sum payment of the total debt, the percentage being dependent upon the estimated number of years that would otherwise be required to pay off the debt (the higher the number, the lower the percentage). The entire debt is reinstated if the percentage payment is not made.
3. **Low-income NCPs.** Maryland operates a pilot compromise program that is limited to TANF debt and low-income NCPs who are presently receiving services from a CBO (substance abuse, unemployed, low skill/educational levels, etc). The CBO refers the NCP, and he/she must agree to cooperate with the CBO in the respective service plan that is designed to lead to eventual employment and payment of current support. IV-D screens the cases, and if accepted, enforcement actions are suspended. If the NCP successfully completes the initial 6 months of training, the debt is reduced by 25%. Thereafter, for each completed 6 month period of regular current support

payments, the NCP qualifies for an additional 25% reduction, up to and until the entire TANF debt is forgiven.

Domestic violence, as indicated earlier, may be an issue whenever the CP's involvement is required in the arrears management process. This most often applies when the state takes suspension of enforcement or compromise actions. Meeting participants recommend that caseworkers receive appropriate DV training, and that they are aware that this can be an issue in any case, even in those that do not have a DV indicator. If the case history does include DV, one state recommends that any suspension or compromise action is reviewed by the court. In conclusion, states should ensure that the CP's involvement in any action can be accomplished safely, and that the CP's decisions are voluntary.

Next steps:

Meeting participants recommend the following –

1. Request Federal clarification on whether or not credit bureau reporting is a mandated enforcement action
2. Request Federal clarification on whether or not TANF arrears can be sold to collection agencies
3. Request Federal clarification on whether or not the interest on debt charged in a particular state has to be included in the arrears amount reported on OCSE Forms
4. Request Federal clarification on whether or not the CP has to consent to the compromise of temporarily assigned arrears
5. Request Federal clarification on mandates to collect arrears after all children in the order have been emancipated and no longer entitled to current support
6. Share end-result of Massachusetts analysis of appropriate arrears management policies with respect to criteria, internal process, etc, when completed and available
7. Explore desirability and need for state-developed national standards so that NCPs receive equal and similar treatment across state lines
8. Explore possibility of development of an “inactive/suspense” case type which is only subject to “automated” enforcement, based on pre-determination that state has taken all reasonable steps to enforce and collect, but without success
9. Recommendation that Hub states implement as many new Accrued Arrears Management techniques as possible and share outcomes

ADDENDUM “A” – HIGHLIGHTS OF ISSUES

Prevention	Order Establishment	Early Intervention	Accrued Arrears Management
Arrears Bucket Analysis	Re-examine Establishment Process	Staff training and caseloads	Who consents to compromise
Pre-IV-D outreach	Court or Administrative	Interstate actions	Conflicts with public policy
Involvement of CBOs	Re-examine retroactive concept	Reduce delays in enforcement	Who is able and who is not able to pay off
Cost-effectiveness	Review need for “add-on” amounts	Immediate termination if appropriate	Define state reason for policy
Focused NCP/potential NCP outreach	Accommodate low-income NCPs	NCP access to modifications	Effect on state incentive payments
NCP-friendly outreach	Review Default process	Review and adjustments	Enforce or suspend enforcement

ADDENDUM “B” – HIGHLIGHTS OF STRATEGIES

Prevention	Order Establishment	Early Intervention	Accrued Arrears Management
Dissect Caseload Develop Matrix	Develop better guidelines	Match with Vital Registry to terminate orders	Caseload clean up – apply case closure criteria
Use Internet – Websites	Cap retroactive and add-on amounts	Pro-active contact at child emancipation	Maximize use of FIDM
Cross-train with CBOs	Temporary Default orders – keep record open	Frequent automatic reviews of order or pro-active contact	Suspend enforcement in exchange for payment plan
Segregate Unable from Unwilling NCP	Regular review of guidelines	Pro-active NCP contact at time of unemployment	Suspend interest in exchange for payment plan
Include CP outreach	IV-D as Gate to WtW and CBOs	Simplify modification process	Compromise uncollectable arrears
Use innovative media	Self-support reserves For NCPs	30/90-day contact after non-payment	Sell policy as “cost-effective”