

# ***Department of Child Support Services***



## ***Compromise Of Arrears Program***

# **Compromise Of Arrears Program Policy & Procedures**

State of California  
Department of Child Support Services

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# OVERVIEW OF THE COMPROMISE OF ARREARS PROGRAM (COAP)

The Department of Child Support Services (DCSS) established the Compromise of Arrears Program (COAP) to:

- Increase support collected for families and the State General Fund,
- Increase performance on the federal current support and arrears collection measures, and
- Reduce arrears.

## Program Background

An in-depth analysis of California's burgeoning child support arrears, summarized below, revealed that much of the arrears owed to California for aide provided to children is not collectible. In order to leverage and manage those arrears, DCSS, as directed by California Family Code section 17560, has developed COAP to compromise arrears owed to the government in exchange for payment of both current support and arrears.

## Urban Institute Findings

As of March 2000, \$14.4 billion of child support debt was owed in California. By 2003, the debt had grown to \$18 billion, representing 20 percent of the nation's child support arrears. Arrears in California have grown much faster than arrears in the rest of the country. In order to better understand the reasons for such dramatic growth, DCSS contracted with the Urban Institute of Washington, D.C., to analyze the statewide arrears and determine the amount that is realistically collectible. "*Examining Child Support Arrears in California: The Collectibility Study (2003)*", is the result of that effort.

According to the study, the vast majority of the debt, 72 percent, is held by 28 percent of debtors, who held more than \$20,000 in debt each. Of the entire arrears debt, 70 percent is owed to the government as recoupment for welfare paid to families; only 30 percent is classified as non-welfare debt owed to families. Over 60 percent of debtors have either no recent reported income or low recent reported income. One-quarter of the debtors have no recent income, and another 36 percent have incomes below \$10,000.

As a result of this analysis, the Urban Institute projected that California could expect to collect only about 26 percent (\$3.8 billion) of the \$14.4 billion in child support debt by 2010, and by 2010 the debt, including interest and new arrears, would ballooned to \$34 billion. This is because over half of the debt is held by parent debtors with incomes below \$10,000 and who owe amounts in excess of \$20,000.

The Urban Institute identified three basic reasons for the accumulation of arrears:

1. Court order amounts are often set and maintained too high relative to the non-custodial parent's (NCP's) ability to pay;
2. Enforcement efforts have not been successful; and
3. Interest accumulates on unpaid arrears at ten percent per year.

The Urban Institute recommended a series of steps to increase collection of arrears and prevent the accumulation of future arrears. However, even assuming significant improvement in both arrears collection and prevention of future arrears, they estimated that only a quarter of the existing debt is collectible. Therefore, the Urban Institute recommended the strategy of giving DCSS the authority to compromise government-owed arrears.

## **Compromise of Arrears Legislation**

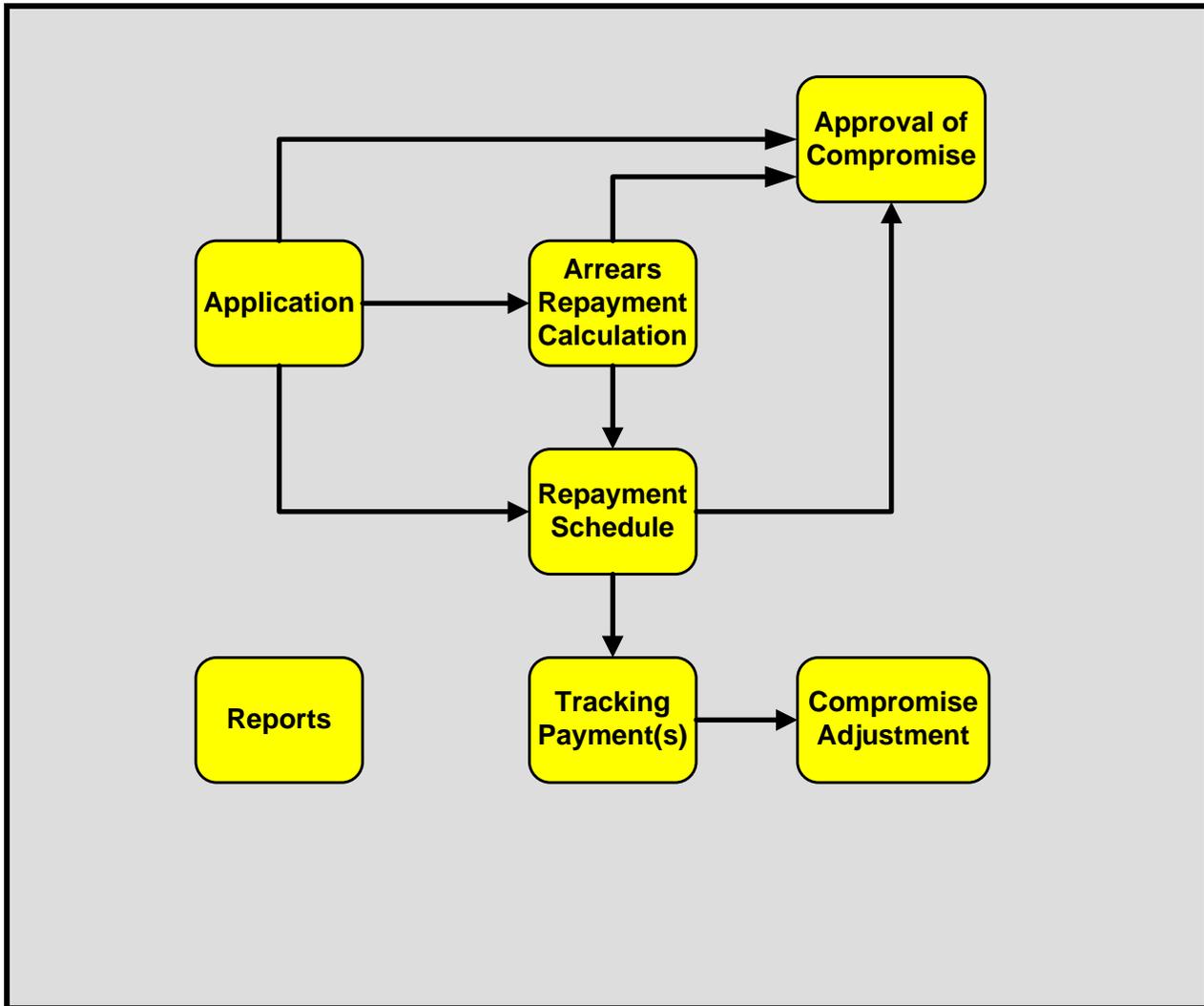
During the 2003-04 budget hearings, the Senate Budget Committee, after consulting with DCSS, adopted a series of proposals to enhance child support collections. The Budget Committee proposals included:

- Establishment of an offer in compromise program by DCSS to compromise arrears and interest owed as reimbursement for public assistance.
- Changes to the low-income adjustment to the child support guideline.
- Expansion of the Financial Institution Data Match program to include cases with active wage assignments and simplification of the process to liquidate securities held by financial institutions.
- Reduction of the presumed income level used to establish a support order when no other income information is available from the Minimum Basic Standard of Adequate Care to minimum wage.

All of the proposals were added to AB 1752 (Chapter 225 of the Statutes of 2003) which became effective immediately as urgency legislation on August 11, 2003. As a result of this legislation, DCSS established COAP as a tool to enhance arrears collection by LCSAs accepting offers in compromise of arrears and interest owed as reimbursement for public assistance. The California Family Code section 17560 contains several requirements regarding COAP, which include but are not limited to the following:

- Any compromise must take into consideration the needs of the children subject to the child support order and the NCP's ability to pay.
- If the NCP owes current child support, he/she must be in compliance with the current order for a set period of time.
- Any compromise must be in the best interest of the state and must equal or exceed what the state can reasonably expect to collect toward the assigned arrears based on the NCP's ability to pay.
- The program must operate uniformly statewide.

# COAP POLICY AND PROCEDURES



This diagram shows how the seven steps of COAP interact. The application and supporting documentation feeds data into the compromise calculation, repayment schedule, and then the compromise approval components. The compromise calculation feeds repayment amounts into the repayment schedule and approval process. These four components are one time events and will be used only in building the COAP Agreement.

Once the COAP Agreement is created, signed and filed with the court, the payment and adjustment pieces monitor the payments and reduction of arrears. These components will be used on a recurring basis for the length of the repayment schedule.

To ensure COAP adheres to the legislative mandates and operates fairly and uniformly across the state, DCSS has designed a detailed process that must be completed before any child support arrears may be compromised. Compliance with all steps of the process ensures that parents and children are treated consistently across the state and support collections for both families and the state are maximized.

## **Eligibility Criteria**

The Local Child Support Agency (LCSA) is to determine the NCP's eligibility for COAP in accordance with ten specific eligibility criteria.

- Minimum amount of Permanently Assigned Child Support<sup>1</sup> Arrears (up to the Unreimbursed Assistance Pool amount) owed to the government of at least \$501
- No previous application to participate in COAP within one year prior to the date of denial letter
- No rescission of a previous COAP Agreement within two years prior to the date of rescission notice
- No conviction or contempt finding for failure to pay child support within six months prior to the date of application
- No intentional failure to pay in anticipation of COAP
- The child support case is not a two-state responding interstate case. Note: California initiated orders involved in the Uniform Interstate Family Support Act (UIFSA) are eligible for an offer in compromise; however, if approved, the NCP must pay the total required repayment in a lump sum
- The NCP does not have the ability to pay off all arrears owed, including interest, within three years from the date of application
- Ability to pay current support, arrears owed that are to be distributed prior to the arrears owed to the government and the arrears repayment amount as provided in the compromise Agreement within a three-year period from the date of the Agreement from any source (e.g. gift, loan, income)
- No concealment of any income, assets, or any reasonably anticipated income or assets, and no intentional withholding or falsifying of financial information

If the NCP fails to meet any one of the criteria, he/she is ineligible to participate in COAP. The LCSA informs the NCP that the application has been denied by sending the NCP a completed "Notice of Denial of Request for Compromise of Arrears." The LCSA also records the reason for the denial and the date the denial letter will be sent to the NCP.

## **Outreach to NCP**

The LCSA performs outreach to targeted NCPs identified as potential candidates for COAP based on COAP eligibility criteria. In general, LCSAs have found that pre-screening child support cases prior to COAP outreach increases the number of COAP applications that successfully result in offers in compromise. Additionally, some LCSAs have chosen to identify and target arrears only cases first because they are the simplest to apply for and process and take the least time to complete. The following forms are

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<sup>1</sup> Spousal Support arrears cannot be compromised by the DCSS.

available for the LCSAs use in performing outreach and for NCPs who request application packets.

- COAP Information Letter
- Child Support Compromise of Arrears Information Sheet
- Judicial Council form FL-150 (Income and Expense Declaration)
- Attachment To The Income and Expense Declaration, and
- COAP Documentation Checklist

In collaboration with DCSS, the LCSA may develop other COAP outreach materials. When necessary, the LCSA assists NCPs with completion of the application forms and provides guidance regarding what kind of supporting documentation the NCP must collect and submit to the LCSA.

## **Receipt of Application**

When an LCSA receives a COAP application package, the LCSA determines if that particular LCSA has case management responsibility and can process an offer in compromise. If not, the LCSA is to assist the NCP transferring the application to the LCSA with case management responsibility. If so, the LCSA is to review the application and the supporting documentation for completeness and inclusion of all necessary information. The NCP is responsible to provide a complete application containing all of the supporting documentation the LCSA needs to verify the NCP's income, assets, expenses, dependents, and any hardship claims. If the application is incomplete, or lacks adequate supporting documentation, the LCSA is to contact the NCP by telephone or in writing. If the NCP fails to respond to requests for additional information necessary to complete the review process to determine a compromise, the application can be denied for "failure or refusal to provide information necessary to process the application." The LCSA will send a denial letter notifying the NCP of the denial of the application. The NCP will not be eligible to re-apply for a compromise for one year from the date of the denial.

Prior to processing a COAP application, the LCSA is to consider whether COAP is the best or only action appropriate to case management. Alternate actions LCSAs may consider include, but are not limited to:

1. Set aside of a presumed income order. For more information, see CSS Letter 03-18 (October 1, 2003).
2. Review and adjustment of a child support order. For more information, see CSS Letter 04-09 (May 6, 2004).
3. Case closure. For more information, see Title 22, Division 13, Chapter 8.

LCSAs may initiate multiple case management procedures. For example, a case established using presumed income might qualify for a set aside. When the order is set aside, the NCP may qualify for a compromise of arrears. In these situations, the LCSA initiates all appropriate actions, beginning with the most viable. If it is determined that COAP is not an option, the LCSA sends the NCP a "Notice of Denial of Request for Compromise of Arrears", indicating in the "other" checkbox that COAP is not the appropriate remedy. The LCSA also informs the NCP of how the LCSA will proceed

with the case. If it is determined that COAP is one of several actions needed, all other actions are completed prior to approval of the offer in compromise.<sup>2</sup>

Once the COAP application is complete and the NCP has documented their claims the LCSA enters the NCP's information into either the COAP automated system or the COAP manual process workbook and the arrears repayment and compromise is determined automatically. Compromises are to be in the best interest of the State, and in any circumstances where the LCSA is able to collect more in a lump sum than is indicated by the system or workbook, the repayment will be the greatest amount that can be collected.

COAP provides for basic deductions from an NCP's income and some assets. These deductions include basic living costs such as; housing, utilities, food, as well as a liquidation cost for capital assets and a limited home equity. These deductions are applied automatically during the calculation of the compromise to ensure consistency statewide.

## **Outreach to Custodial Party (CP)**

When an NCP applies to compromise government-owned arrears, the LCSA is to determine if arrears are also owed to the CP. If any arrears are owed to the CP, excluding Unassigned During Assistance Arrears (UDAA), the LCSA is to contact the CP to determine if the CP wishes to compromise the CP-owed arrears. The CP has 20 days to respond to the LCSA. This is accomplished using the "Custodial Party's Statement of Rights".

The CP may choose to compromise any or all arrears owed to them during the process of the NCP participating in COAP. If the CP chooses to compromise a portion of their arrears, the NCP will be required to pay the remainder of the CP owed arrears in a lump sum as part of the initial payment, at the time the COAP Agreement is executed. When the CP chooses to compromise his or her arrears, a "Stipulation and Order Waiving Unassigned Arrears" must be approved by the court before the LCSA executes the compromise Agreement. If the CP chooses not to compromise any arrears, the total arrears balance owed to the CP (excluding TAA and UDAA) will be included in the NCP's repayment schedule and will be paid to the CP prior to any government-owed arrears being repaid to the state.<sup>3</sup>

If there is a Family Violence Indicator in the case on behalf of the CP, and the CP asks to have his or her arrears compromised, the LCSA is to ensure that the CP is acting voluntarily. This is accomplished by discussing the CP's compromise outside of the NCP's presence. If the LCSA determines that the CP is not acting voluntarily, the NCP

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<sup>2</sup> Example: Child support obligations are integrated into compromises of arrears agreements. Therefore, any necessary review and adjustment of a child support order is completed prior to the LCSA approving an offer in compromise. NCPs are kept apprized that the processing of their COAP application is delayed by the review and adjustment of their child support order.

<sup>3</sup> Unassigned During Assistance Arrears (UDAA) and Temporarily Assigned Arrears (TAA) are not part of the COAP Agreement since these types of arrears are paid after the Unreimbursed Assistance Pool (UAP) balance is satisfied. However, the LCSA should inform the NCP of the presence of UDAA and/or TAA and his/her obligation to repay this balance after completing their compromise Agreement.

is not eligible for a compromise of the CP owed-arrears, but may be eligible for a compromise of arrears owed to the government.

## **Military Personnel**

California Family Code section 17560 was amended on August 30, 2005 to increase the potential compromise of arrears for NCPs who have been, or are currently, reservists or members of the National Guard that have been activated to military service and deployed out of state.

If an NCP indicates that he or she is seeking a further compromise under California Family Code section 17560(8) (1) (B), the LCSA is to contact COAP Help if they need assistance.

## **Family Reunification Compromise of Assigned Arrearages (FR-COAP)**

The FR-COAP has been in place through existing regulations AB 1449, Chapter 463, Statutes of 2001. This bill established a program by which non-custodial parents (NCP), also referred to as obligor parent, may compromise assigned arrearages and interest owed for reimbursement of certain public assistance payments paid for a child placed in foster care, or with a relative caretaker or guardian.

The purpose of the compromise is to reduce the financial hardships on the obligor parent in cases where the child has returned to that parent and the parent continues to have a financial responsibility to support the minor child as defined in Family Code 3901. NCPs interested in FR-COAP should contact the LCSA managing their child support case.

## **LCSA Approval of Compromise Agreement Terms**

Before entering into a COAP Agreement, the LCSA may need to obtain prior approval from DCSS of the compromise amount(s). Applications where the LCSA requests an override of the repayment are submitted for state level review. Upon receipt of the necessary information, DCSS will, when appropriate, approve or deny a modified compromise.

The compromise and repayment amounts may change slightly if the arrears balances have changed since the approval was issued.

## **Execution of Agreement and Payment**

Upon receipt of any required approval from DCSS, the LCSA shall prepare the "Agreement to Compromise Child Support Arrears" for COAP after executing the application. The Agreement shall include updated arrears balances for each case to be compromised. At the signing of the Agreement, the NCP must pay the initial arrears repayment amount.<sup>4</sup> The LCSA shall prepare a separate Agreement for each case, which specifies the repayment and compromise amounts for that case. After receiving payment, the LCSA shall reduce arrears balances and the UAP balance by the amount

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<sup>4</sup> The payment may include CP arrears that must be repaid before the permanently assigned arrears can be paid.

paid and the approved compromise amount. If the payment is made by personal check, the LCSA shall wait until the check has cleared before reducing the UAP.

If the case is a UIFSA case, the LCSA shall also notify the responding state of the arrears reduction.

## **Sending the Compromise Agreement to DCSS**

Within five working days of the funds clearing, the LCSA shall for each case forward a copy of the executed Agreement(s) to DCSS by fax or mail. Timely receipt of all executed Agreements is necessary so DCSS can correctly track all arrears collected and compromised.

## **Filing the Compromise Agreement with Court**

The LCSA must for each case file a copy of the signed COAP Agreement with the court which has jurisdiction over the case. The Agreement is filed along with the "Notice to Court of Compromise Agreement" and the final "Repayment Schedule(s)".

## **Case Closure**

If no further arrears are owed to the CP upon fulfillment of the COAP Agreement, the LCSA shall close the case. If additional arrears are owed to the CP, the LCSA shall continue to enforce the case.

## **Rescinding an Agreement**

When the NCP fails to meet the terms of an Agreement, the Agreement is rescinded fully or partially depending upon the circumstances. An Agreement is fully rescinded under the following circumstances.

- After executing a compromise Agreement, the LCSA determines that the NCP concealed, withheld or falsified information regarding the COAP Application.
- The NCP fails to comply with any required payment in the first six months.
- The NCP fails to comply with a current support payment at any time during the term of the Agreement.

An Agreement is partially rescinded under the following circumstances.

- If the NCP fails to comply with the terms of the Agreement over a consecutive three month period, and has failed to contact the LCSA with an explanation justifying modification of either the child support order or Agreement, then the Agreement will be partially rescinded.

If the NCP misses an arrears payment after the first six months, there may be additional money due at the end of the Agreement due to interest accrual. The NCP is responsible for any interest that accrued secondary to missed or shorted payments that were made up later.

The LCSA is to provide the NCP, Jurisdictional court and DCSS with written notice of a rescission. When an Agreement is fully rescinded all arrears and interest compromised under the Agreement are reinstated. When an Agreement is partially rescinded the initial payment and any other payments that were made will remain credited to the NCP's account and will not be returned to the NCP. Any compromise adjustments credited based on payments received up to the point of partial rescission will remain

compromised. The arrears paid shall be distributed to each case involved in the compromise based on the amount of arrears owed. The LCSA shall not refund any payments or intercepts received. The NCP will not be eligible to reapply for COAP for two years from the date of rescission notice.

# **APPENDIXES**

## **Appendix A - Compromise of Arrears Program Statute**

Family Code Section 17560

SEC. 16. Section 17560 of the Family Code is amended to read: 17560. (a) The department shall establish and operate a statewide compromise of arrears program pursuant to which the department may accept offers in compromise of child support arrears and interest accrued thereon owed to the state for reimbursement of aid paid pursuant to Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code. The program shall operate uniformly across California and shall take into consideration the needs of the children subject to the child support order and the obligor's ability to pay. (b) If the obligor owes current child support, the offer in compromise shall require the obligor to be in compliance with the current support order for a set period of time before any arrears and interest accrued thereon may be compromised. (c) Absent a finding of good cause, or a determination by the director that it is in the best interest of the state to do otherwise, any offer in compromise entered into pursuant to this section shall be rescinded, all compromised liabilities shall be reestablished notwithstanding any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise may be refunded, if either of the following occurs: (1) The department or local child support agency determines that the obligor did any of the following acts regarding the offer in compromise: (A) Concealed from the department or local child support agency any income, assets, or other property belonging to the obligor or any reasonably anticipated receipt of income, assets, or other property. (B) Intentionally received, withheld, destroyed, mutilated, or falsified any information, document, or record, or intentionally made any false statement, relating to the financial conditions of the obligor. (2) The obligor fails to comply with any of the terms and conditions of the offer in compromise. (d) Pursuant to subdivision (k) of Section 17406, in no event may the administrator, director, or director's designee within the department, accept an offer in compromise of any child support arrears owed directly to the custodial party unless that party consents to the offer in compromise in writing and participates in the agreement. Prior to giving consent, the custodial party shall be provided with a clear written explanation of the rights with respect to child support arrears owed to the custodial party and the compromise thereof. (e) Subject to the requirements of this section, the director shall delegate to the administrator of a local child support agency the authority to compromise an amount of child support arrears up to five thousand dollars (\$5,000), and may delegate additional authority to compromise up to an amount determined by the director to support the effective administration of the offers in compromise program. (f) For an amount to be compromised under this section, the following conditions shall exist: (1) (A) The administrator, director or director's designee within the department determines that acceptance of an offer in compromise is in the best interest of the state and that the compromise amount equals or exceeds what the state can expect to collect for reimbursement of aid paid pursuant to Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code in the absence of the compromise, based on the obligor's ability to pay. (B) Acceptance of an offer in compromise shall be deemed to be in the best interest of the state, absent a finding of good cause to the contrary, with regard to arrears that accrued as a result of a decrease in income when an obligor was a reservist or member of the National Guard, was activated to United States military service, and failed to modify the support order to reflect the reduction in income. Good cause to find that the compromise is not in the best interest of the state shall include circumstances in which the service member's

failure to seek, or delay in seeking, the modification were not reasonable under the circumstances faced by the service member. The director, no later than 90 days after the effective date of the act adding this subparagraph, shall establish rules that compromise, at a minimum, the amount of support that would not have accrued had the order been modified to reflect the reduced income earned during the period of active military service. (2) Any other terms and conditions that the director establishes that may include, but may not be limited to, paying current support in a timely manner, making lump-sum payments, and paying arrears in exchange for compromise of interest owed. (3) The obligor shall provide evidence of income and assets, including, but not limited to, wage stubs, tax returns, and bank statements as necessary to establish all of the following: (A) That the amount set forth in the offer in compromise of arrears owed is the most that can be expected to be paid or collected from the obligor's present assets or income. (B) That the obligor does not have reasonable prospects of acquiring increased income or assets that would enable the obligor to satisfy a greater amount of the child support arrears than the amount offered, within a reasonable period of time. (C) That the obligor has not withheld payment of child support in anticipation of the offers in compromise program. (g) A determination by the administrator, director or the director's designee within the department that it would not be in the best interest of the state to accept or rescind an offer in compromise in satisfaction of child support arrears shall be final and not subject to the provisions of Chapter 5 (commencing with Section 17800) of Division 17, or subject to judicial review. (h) Any offer in compromise entered into pursuant to this section shall be filed with the appropriate court. The local child support agency shall notify the court if the compromise is rescinded pursuant to subdivision (c). (i) Any compromise of child support arrears pursuant to this section shall maximize to the greatest extent possible the state's share of the federal performance incentives paid pursuant to the Child Support Performance and Incentive Act of 1998 and shall comply with federal law. (j) The department shall ensure uniform application of this section across the state.

## **Appendix B - Compromise of Assigned Arrearages Family Reunification Statute**

### Family Code Section 17415

(a) It shall be the duty of the county welfare department to refer all cases in which a parent is absent from the home, or in which the parents are unmarried and parentage has not been established by the completion and filing of a voluntary declaration of paternity pursuant to Section 7573 or a court of competent jurisdiction, to the local child support agency immediately at the time the application for public assistance, including Medi-Cal benefits, or certificate of eligibility, is signed by the applicant or recipient, except as provided in Section 17552 of this code and Section 11477.04 of the Welfare and Institutions Code. If an applicant is found to be ineligible, the applicant shall be notified in writing that the referral of the case to the local child support agency may be terminated at the applicant's request. The county welfare department shall cooperate with the local child support agency and shall make available all pertinent information as provided in Section 17505.

(b) Upon referral from the county welfare department, the local child support agency shall investigate the question of nonsupport or paternity and shall take all steps necessary to obtain child support for the needy child, enforce spousal support as part of the state plan under Section 17604, and determine paternity in the case of a child born out of wedlock. Upon the advice of the county welfare department that a child is being considered for adoption, the local child support agency shall delay the investigation and other actions with respect to the case until advised that the adoption is no longer under consideration. The granting of public assistance or Medi-Cal benefits to an applicant shall not be delayed or contingent upon investigation by the local child support agency.

(c) In cases where Medi-Cal benefits are the only assistance provided, the local child support agency shall provide child and spousal support services unless the recipient of the services notifies the local child support agency that only services related to securing health insurance benefits are requested.

(d) Where a court order has been obtained, any contractual Agreement for support between the local child support agency or the county welfare department and the non-custodial parent shall be deemed null and void to the extent that it is not consistent with the court order.

(e) Whenever a family which has been receiving public assistance, including Medi-Cal, ceases to receive assistance, including Medi-Cal, the local child support agency shall, to the extent required by federal regulations, continue to enforce support payments from the non-custodial parent until the individual on whose behalf the enforcement efforts are made sends written notice to the local child support agency requesting that enforcement services be discontinued.

(f) The local child support agency shall, where appropriate, utilize reciprocal arrangements adopted with other states in securing support from an absent parent. In individual cases where utilization of reciprocal arrangements has proven ineffective, the local child support agency may forward to the Attorney General a request to utilize federal courts in order to obtain or enforce orders for child or spousal support. If reasonable efforts to collect amounts assigned pursuant to Section 11477 of the Welfare and Institutions Code have failed, the local child support agency may request that the case be forwarded to the Treasury Department for collection in accordance with federal regulations. The Attorney General, where appropriate, shall forward these

requests to the Secretary of Health and Human Services, or a designated representative.

#### Section 17550

(a) The Department of Child Support Services, in consultation with the State Department of Social Services, shall establish regulations by which the local child support agency, in any case of separation or desertion of a parent from a child that results in aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code being granted to the child, may compromise the obligor parent or parents' liability for public assistance debt, including interest thereon, owed to the state where the child for whom public assistance was paid is residing with the obligor parent, and all of the following conditions are met:

(1) The obligor parent establishes one of the following:

(A) The child has been adjudged a dependent of the court under Section 300 of the Welfare and Institutions Code and the child has been reunified with the obligor parent pursuant to a court order.

(B) The child received public assistance while living with a guardian or relative caregiver and the child has been returned to the custody of the obligor parent, provided that the obligor parent for whom the debt compromise is being considered was the parent with whom the child resided prior to the child's placement with the guardian or relative caregiver.

(2) The obligor parent, for whom the debt compromise is being considered, has an income less than 250 percent of the current federal poverty level.

(3) The local child support agency, pursuant to regulations set forth by the department, has determined that the compromise is necessary for the child's support.

(b) Prior to compromising an obligor parent's liability for debt incurred for either AFDC-FC payments provided to a child pursuant to Section 11400 of the Welfare and Institutions Code, or incurred for CalWORKs payments provided on behalf of a child, the local child support agency shall consult with the county child welfare department.

(c) Nothing in this section relieves an obligor, who has not been reunified with his or her child, of any liability for public assistance debt.

(d) For the purposes of this section, the following definitions apply:

(1) "Guardian" means the legal guardian of the child, who assumed care and control of the child while the child was in the guardian's control, and who is not a biological or adoptive parent.

(2) "Relative caregiver" means a relative as defined in subdivision (c) of Section 11362 of the Welfare and Institutions Code, who assumed primary responsibility for the child while the child was in the relative's care and control, and who is not a biological or adoptive parent.

(e) The department shall promulgate all necessary regulations pursuant to this section on or before October 1, 2002, including regulations that set forth guidelines to be used by the local child support agency when compromising public assistance debt.

#### Section 17522

(a) The State Department of Social Services, in consultation with the Department of Child Support Services, shall promulgate regulations by which the county child welfare department, in any case of separation or desertion of a parent or parents from a child that results in aid under Section 11400 of the Welfare and Institutions Code, shall determine whether it is in the best interests of the child to have the case referred to the

local child support agency for child support services. If reunification services are not offered or are terminated, the case may be referred to the local child support agency. In making the determination, the department regulations shall provide the factors the county child welfare department shall consider, including:

(1) Whether the payment of support by the parent will pose a barrier to the proposed reunification, in that the payment of support will compromise the parent's ability to meet the requirements of the parent's reunification plan.

(2) Whether the payment of support by the parent will pose a barrier to the proposed reunification in that the payment of support will compromise the parent's current or future ability to meet the financial needs of the child.

(b) The department regulations shall provide that, where the county child welfare department determines that it is not in the best interests of the child to seek a support order against the parent, the county child welfare department shall refrain from referring the case to the local child support agency. The regulations shall define those circumstances in which it is not in the best interest of the child to refer the case to the local child support agency.

(c) The department regulations shall provide, where the county child welfare department determines that it is not in the child's best interest to have his or her case referred to the local child support agency, the county child welfare department shall review that determination following each court hearing held under Section 361.5 of the Welfare and Institutions Code, and shall refer the child's case to the local child support agency upon a determination that, due to a change in the child's circumstances, it is no longer contrary to the child's best interests to have his or her case referred to the local child support agency.

(d) The State Department of Social Services shall promulgate all necessary regulations pursuant to this section on or before October 1, 2002.

#### Welfare and Institutions Code Section 903

(a) The father, mother, spouse, or other person liable for the support of a minor, the estate of that person, and the estate of the minor, shall be liable for the reasonable costs of support of the minor while the minor is placed, or detained in, or committed to, any institution or other place pursuant to Section 625 or pursuant to an order of the juvenile court. However, a county shall not levy charges for the costs of support of a minor detained pursuant to Section 625 unless, at the detention hearing, the juvenile court determines that detention of the minor should be continued, the petition for the offense for which the minor is detained is subsequently sustained, or the minor agrees to a program of supervision pursuant to Section 654. The liability of these persons and estates shall be a joint and several liability.

(b) The county shall limit the charges it seeks to impose to the reasonable costs of support of the minor and shall exclude any costs of incarceration, treatment, or supervision for the protection of society and the minor and the rehabilitation of the minor. In the event that court-ordered child support paid to the county pursuant to subdivision (a) exceeds the amount of the costs authorized by this subdivision and subdivision (a), the county shall either hold the excess in trust for the minor's future needs pursuant to Section 302.52 of Title 45 of the Code of Federal Regulations or, with the approval of the minor's caseworker or probation officer, pay the excess directly to the minor.

(c) It is the intent of the Legislature in enacting this subdivision to protect the fiscal integrity of the county, to protect persons against whom the county seeks to impose

liability from excessive charges, to ensure reasonable uniformity throughout the state in the level of liability being imposed, and to ensure that liability is imposed only on persons with the ability to pay. In evaluating a family's financial ability to pay under this section, the county shall take into consideration the family's income, the necessary obligations of the family, and the number of persons dependent upon this income. Except as provided in paragraphs (1), (2), (3), and (4), "costs of support" as used in this section means only actual costs incurred by the county for food and food preparation, clothing, personal supplies, and medical expenses, not to exceed a combined maximum cost of fifteen dollars (\$15) per day, except that:

(1) The maximum cost of fifteen dollars (\$15) per day shall be adjusted every third year beginning January 1, 1988, to reflect the percentage change in the calendar year annual average of the California Consumer Price Index, All Urban Consumers, published by the Department of Industrial Relations, for the three-year period.

(2) No cost for medical expenses shall be imposed by the county until the county has first exhausted any eligibility the minor may have under private insurance coverage, standard or medically indigent Medi-Cal coverage, and the Robert W. Crown California Children's Services Act (Article 2 (commencing with Section 248) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code).

(3) In calculating the cost of medical expenses, the county shall not charge in excess of 100 percent of the AFDC fee-for-service average Medi-Cal payment for that county for that fiscal year as calculated by the State Department of Health Services; however, if a minor has extraordinary medical or dental costs that are not met under any of the coverages listed in paragraph (2), the county may impose these additional costs.

(4) For those placements of a minor subject to this section in which an AFDC-FC grant is made, the local child support agency shall, subject to Sections 17550 and 17552 of the Family Code, seek an order pursuant to Section 17400 of the Family Code and the statewide child support guideline in effect in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 of the Family Code. For purposes of determining the correct amount of support of a minor subject to this section, the rebuttable presumption set forth in Section 4057 of the Family Code is applicable. This paragraph shall be implemented consistent with subdivision (a) of Section 17415 of the Family Code.

(d) Notwithstanding subdivision (a), the father, mother, spouse, or other person liable for the support of the minor, the estate of that person, or the estate of the minor, shall not be liable for the costs described in this section if a petition to declare the minor a dependent child of the court pursuant to Section 300 is dismissed at or before the jurisdictional hearing.

(e) Notwithstanding subdivision (a), the father, mother, spouse, or other person liable for the support of a minor shall not be liable for the costs of support of that minor while the minor is temporarily placed or detained in any institution or other place pursuant to Section 625 or is committed to any institution or other place pursuant to an order of the juvenile court, if the minor is placed or detained because he or she is found by a court to have committed a crime against that person. Nothing in this subdivision shall be construed to extinguish a child support obligation between private parties.

## Appendix C – COAP Eligibility Checklist

- Minimum amount of Permanently Assigned Child Support Arrears (up to the Unreimbursed Assistance Pool amount) owed to the government of at least \$501. Note: Applications with arrears balances between \$501-\$4999.99 must be processed manually.
- No previous application to participate in COAP within one year prior to the date of application
- No rescission of a previous COAP Agreement within two years prior to the date of application
- No conviction or contempt finding for failure to pay child support within six months prior to the date of application
- No intentional failure to pay in anticipation of COAP
- Only one child support case in California's child support program. This restriction does not include duplicate cases which must be transferred to the appropriate LCSA. Note: Effective October 2008, applicants with multiple cases in one or more LCSAs may be eligible for review of an offer in compromise, but must be processed manually.
- The child support case is not a two-state responding interstate case. Note: California initiated orders involved in the Uniform Family Support Act (UIFSA) are eligible for review of an offer in compromise; however, if approved the NCP must pay the total required repayment in a lump sum.
- The NCP does not have the ability to pay off all arrears owed, including interest, within three years from the date of application
- Ability to pay current support, arrears owed that are to be distributed prior to the arrears owed to the government and the arrears repayment amount as provided in the compromise Agreement within a three-year period from the date of the Agreement from any source (e.g. gift, loan, income)
- No concealment of any income, assets, or any reasonably anticipated income or assets, and no intentional withholding or falsifying of financial information.

## **Appendix D - Glossary**

### **ACTUAL CALCULATED REPAYMENT AMOUNT**

The final repayment amount based on the formula the COAP calculator used to determine what the NCP has the ability to repay in the next three years. The Estimated and Actual Calculated Repayment Amounts may vary, depending on any changes of data prior to execution.

### **AGREEMENT (SEE COMPROMISE AGREEMENT)**

### **APPLICATION**

Judicial Council form FL-150, Income and Expense Declaration and supporting documentation.

### **COAP AUTOMATED SYSTEM**

The web-based software providing the capacity to process, review, implement, and monitor COAP Agreements in an automated manner.

### **COAP COMPROMISE CALCULATION**

Determines the arrears repayment amount and the state compromise amount based on the data contained in either the application, supporting documentation, or any other information available to the LCSA.

### **COMPROMISE AGREEMENT, AGREEMENT, AGREEMENT TO COMPROMISE CHILD SUPPORT ARREARS**

A written Agreement signed by the NCP and the LCSA (DCSS form 0035).

### **COMPROMISE OF ASSIGNED ARREARAGES - FAMILY REUNIFICATION**

An Agreement to reduce arrearages, including interest, owed to the state in cases where separation or desertion of both parents from a child resulted in aid being granted for the child in the form of Aid to Families with Dependent Children-Foster Care (AFDC-FC) payments or California Work Opportunity and Responsibility to Kids Act (CalWORKs) payments inclusive of payments for Kinship Guardianship Assistance Payment Program (KinGAP). Title 22, Division 13, Section 119015.

### **FAMILY VIOLENCE INDICATOR**

A designation that resides in the Federal Case Registry (FCR) placed on a participant in a case or order by a State that indicates a person is associated with child abuse or domestic violence. It is used to prevent disclosure of the location of a custodial party and/or a child believed by the State to be at risk of family violence.

### **INITIAL PAYMENT**

The portion of the repayment amount the NCP must pay at the time of execution. If the CP has agreed to a partial compromise, the initial payment is the greater of initial payment stated on page 5 or the amount of the CP arrears not being compromised. When there is a current support obligation, the initial payment also includes the monthly current support amount.

## **INTERSTATE CASES**

Cases in which the dependent child and non-custodial parent (NCP) live in different states, or where two or more states are involved in some case activity, such as enforcement.

## **MBSAC**

Minimum basic standard of adequate care.

## **STATE COMPROMISE AMOUNT**

Amount of arrears owed to the government that the NCP does not have to repay, as specified in an executed COAP Agreement.

## **STATE REPAYMENT AMOUNT**

Amount of arrears owed to the government that the NCP must repay, as specified in an executed COAP Agreement.

## **TEMPORARILY ASSIGNED ARREARAGES (TAA)**

Unpaid support that accrues after October 1, 1998, and before the period a family receives public assistance which becomes assigned when the family receives public assistance. Temporarily assigned arrearages also mean any unassigned arrearages that accrued before October 1, 1998, for a family who began receiving public assistance after October 1, 1998. Title 22, Division 13, Section 119088 (Proposed)

## **TWO-STATE ACTION (TWO-STATE INTERSTATE CASE)**

Action a state must file under the Uniform Interstate Family Support Act (UIFSA) guidelines when it does not have Long Arm Jurisdiction. This is usually in cases where a state is trying to establish an initial child support order on behalf of a resident custodial party. Other actions, such as requesting wage withholdings or review and adjustment of a support order, do not require a Two-State Action even if the initiating state does not have Long Arm Jurisdiction.

## **UIFSA**

Laws enacted at the State level to provide mechanisms for establishing and enforcing child support obligations in interstate cases (when a NCP lives in a different state than the child (ren) and the CP). Among the law's provisions is the ability of state IV-D agencies to send withholding order to employers across state lines. PRWORA mandated that all states adopt legislation requiring that UIFSA be adopted, without modification by the state, January 1, 1998.

## **UNASSIGNED DURING ASSISTANCE ARREARAGES (UDAA)**

Unpaid support in former public assistance cases that accrued while the family was receiving public assistance which exceeds the total unreimbursed assistance pool. Title 22, Division 13, Section 119091 (Proposed)

## **UNREIMBURSED ASSISTANCE POOL (UAP)**

The cumulative amount of public assistance paid to a family receiving public assistance under the CalWORKS, Foster Care, or KinGAP programs which has not been repaid by the recoupment of collections for assigned current support or arrearages.

Title 22, Division 13, Section 119095 (Proposed)

## Appendix E - Reference Information

### 1. Collectibility Study

“Examining Child Support Arrears in California: The Collectibility Study”, March 2003, The Urban Institute:

<http://www.childsup.ca.gov/Portals/0/resources/docs/reports/2003/collectibility2003-05.pdf>

### 2. Regulations

Compromise of Assigned Arrearages-Family Reunification:

<http://www.childsup.ca.gov/Portals/0/resources/docs/regulations/adopted/r-18-02e.pdf>

Case Closure:

<http://www.childsup.ca.gov/Portals/0/resources/docs/regulations/adopted/r-2-02e.pdf>

### 3. CSS Letters

AB 1449 (Compromise Assigned Arrearages-Family Reunification):

<http://www.childsup.ca.gov/Portals/0/resources/docs/policy/css/2005/css05-17.pdf>

<http://www.childsup.ca.gov/Portals/0/resources/docs/policy/css/2003/css03-19.pdf>

Review and Adjustment:

<http://www.childsup.ca.gov/Portals/0/resources/docs/policy/css/2006/css06-15.pdf>

Presumed Income Set Aside:

<http://www.childsup.ca.gov/Portals/0/resources/docs/policy/css/2003/css03-18.pdf>

COAP:

<http://www.childsup.ca.gov/Portals/0/resources/docs/policy/css/2006/css06-20.pdf>

<http://www.childsup.ca.gov/Portals/0/resources/docs/policy/css/2005/css05-18.pdf>

<http://www.childsup.ca.gov/Portals/0/resources/docs/policy/css/2004/css04-32.pdf>

<http://www.childsup.ca.gov/Portals/0/resources/docs/policy/css/2004/css04-07.pdf>