

Ohio Administrative Code**5101:12. Child Support****Chapter 5101:12-60 Review and Adjustment of Title. IV-D Support Orders**

Updated for all rules final filed and adopted through January 30, 2012

5101:12-60-70. Waiver and compromise of permanently assigned arrears

(A) This rule and its supplemental rules describe the process for negotiating a waiver or compromise of permanently assigned arrears.

(B) The following terms apply to this rule and its supplemental rules:

(1) "Compromise" means a written agreement between an obligor and a child support enforcement agency (CSEA) to reduce permanently assigned arrears by an amount certain in exchange for a payment or payments.

(a) A "lump sum compromise" requires the obligor to make a lump sum payment of a specified amount. In exchange, the CSEA reduces permanently assigned arrears by a specified amount.

(b) An "installment plan compromise" requires the obligor to pay a monthly support amount for a specific time period. In exchange for the obligor's compliance, the CSEA reduces permanently assigned arrears by specific amounts at specific time periods.

(2) "Conditionally assigned arrears" has the same meaning as in rule 5101:12-80-10 of the Administrative Code.

(3) "Current obligation" has the same meaning as in rule 5101:12-80-10 of the Administrative Code.

(4) "Permanently assigned arrears" means:

(a) Child support, spousal support, past care, or medical support arrears that are permanently assigned to the Ohio department of job and family services (ODJFS) pursuant to an Ohio works first (OWF) assignment or permanently assigned to ODJFS or another state pursuant to an aid to families with dependent children, temporary assistance for needy families, medicaid, or Title IV-E foster care maintenance assignment.

(b) Reimbursement owed to ODJFS for medical expenses or genetic testing costs.

(5) "Unreimbursed assistance" has the same meaning as in rule 5101:12-80-09 of the Administrative Code.

(6) "Waiver" means a written agreement between an obligor and a CSEA to reduce permanently assigned arrears to an amount certain, including when the amount certain is zero dollars, without requiring a payment in exchange by the obligor.

(C) A CSEA may elect to establish a procedure for negotiating a waiver or compromise of permanently assigned arrears. When a CSEA elects to establish such a procedure:

(1) The CSEA director or administrator is authorized to approve a waiver or compromise of permanently assigned arrears in accordance with this rule and its supplemental rules; and

(2) The CSEA shall document the agency's procedure for negotiating a waiver or compromise of permanently assigned arrears in the agency procedural manual.

(3) The CSEA shall include completing and reviewing the JFS 07717, "Determination Regarding Negotiation for a Waiver or Compromise of Permanently Assigned Arrears" (7/2010), as part of the procedure.

(D) A CSEA shall consult with the agency's legal advisor regarding the waiver or compromise of any obligation owed to the CSEA.

(E) Provisions.

(1) No obligor has a right, either explicit or implied, to require the CSEA or ODJFS to waive or compromise permanently assigned arrears.

(2) When a support order has a current obligation, the permanently assigned arrears owed on the support order are not eligible for a waiver.

(3) A compromise shall not alter an obligor's requirement to pay the full monthly support obligation amount owed on the support order.

(4) The waiver of permanently assigned arrears shall not operate to stay the collection of any other arrears or balances. The compromise of permanently assigned arrears shall not operate to stay the collection of any current obligation, other arrears, or balances.

(5) During the period when the obligee is receiving OWF benefits, the amount of permanently assigned arrears that may be waived or compromised shall not exceed the amount of unreimbursed assistance on the case.

(6) The CSEA shall intervene in any known legal action for a waiver or compromise of permanently assigned arrears when the CSEA has not been made a party to the action and the action is pending or the appeal period has not lapsed.

(7) The CSEA shall not waive or compromise permanently assigned arrears assigned to another state when the other state has not provided the CSEA with written authorization for the waiver or compromise of the permanently assigned arrears.

(8) The CSEA may only issue one waiver per case. There is no limit on the number of compromises a CSEA may issue per case.

(9) An agreed entry for a waiver or compromise of permanently assigned arrears shall only pertain to one case.

(F) When the CSEA receives a court order for a waiver or compromise of conditionally assigned arrears:

(1) The CSEA shall comply with the order unless the CSEA has been notified that obligor's federal income tax refund offset has been applied to all or part of the conditionally assigned arrears identified in the court order, in accordance with paragraph (D) of rule 5101:12-50- 32.6 of the Administrative Code.

(2) When the CSEA has been notified that the obligor's federal income tax refund offset has been applied to the conditionally assigned arrears and the appeal period for the court order has not lapsed, the CSEA shall immediately take action to preserve for the state the amount of conditionally assigned arrears that are satisfied by the federal income tax refund offset.

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Rule Amplifies: 3125.03, 3125.24, 3125.25

Ohio Administrative Code**5101:12. Child Support****Chapter 5101:12-60 Review and Adjustment of Title. IV-D Support Orders**

Updated for all rules final filed and adopted through January 30, 2012

5101:12-60-70.1. Negotiation for a waiver or compromise of permanently assigned arrears

(A) An obligor may initiate a negotiation for a waiver or compromise of permanently assigned arrears by submitting a written request to the child support enforcement agency (CSEA).

(B) When making a determination regarding a pending negotiation for a waiver or compromise of permanently assigned arrears, a CSEA:

(1) May require an obligor to submit to the CSEA:

(a) Financial records or other relevant documents that demonstrate past, present, and/or future financial hardship;

(b) Any other information requested by the CSEA or by the office of child support (OCS) within the Ohio department of job and family services; and

(2) Shall:

(a) Complete the JFS 07717, "Determination Regarding Negotiation for a Waiver or Compromise of Permanently Assigned Arrears" (7/2010);

(b) Review documents submitted by the obligor, when applicable; and

(c) Forward via electronic mail a scanned copy of the signed JFS 07717, and scanned copies of any documents submitted by the obligor, to OCS for OCS's approval when the pending negotiation is for a waiver or compromise of permanently assigned arrears of five thousand dollars or more.

The threshold for an installment plan compromise is the total amount of permanently assigned arrears that could be compromised under the terms of the agreement.

(C) Within ten business days of the date OCS receives the JFS 07717 in accordance with paragraph (B)(2)(c) of this rule, OCS will issue a written response to the CSEA. Should OCS not timely respond to the CSEA, the CSEA shall consider the pending negotiation approved.

(D) When an obligor's request to negotiate a waiver or compromise of permanently assigned arrears is denied by the CSEA or OCS, the CSEA shall issue a notice to the obligor that the obligor's request is denied and the reason for the denial.

(E) When an obligor submits a request in accordance with paragraph (A) of this rule and the arrears are assigned to another state, the CSEA shall forward the obligor's request to the other state.

(F) The CSEA shall maintain copies of the documents described in this rule in the obligor's relevant case record.

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5101:12-60-70.2. Agreed entry for a waiver or compromise of permanently assigned arrears

(A) When a child support enforcement agency (CSEA) or the office of child support (OCS) approves a pending negotiation for the waiver or compromise of permanently assigned arrears, the CSEA shall prepare and issue to the obligor:

(1) When the support order is an administrative child support order, the JFS 07718, "Administrative Agreed Entry for a Waiver or Compromise of Permanently Assigned Arrears" (7/2010).

(2) When the support order is a court support order, an agreed entry that includes:

(a) The terms and conditions of the waiver or compromise, including the amount of permanently assigned arrears that shall be waived or compromised;

(b) For an installment plan compromise, the dates the CSEA will review the obligor's payment history to determine the amount of permanently assigned arrears to reduce as a result of the obligor's compliance with the installment plan; and

(c) The following statements:

(i) The rights of the obligee shall not be prejudiced by the waiver or compromise of permanently assigned arrears;

(ii) When the agreed entry is a waiver, and a balance remains on the case, the obligor is still responsible for paying in full the remaining support obligation amount owed, and is still subject to all of the collection and enforcement techniques;

(iii) When the agreed entry is a compromise, the obligor is still responsible for paying in full the remaining support obligation amount owed on the case, including the current obligation amount, and is still subject to all of the collection and enforcement techniques; and

(iv) The waiver or compromise is final and neither the obligor nor the CSEA may re-open matters covered by the agreed entry, by court action or otherwise, unless:

(a) The obligor fails to comply with the terms and conditions set forth in the agreed entry;

(b) The obligor is believed to have acted with intent to defraud the CSEA by furnishing false information or concealing assets or financial history; or

(c) There is a mutual mistake of a material fact sufficient to cause the agreed entry to be reformed or set aside.

(B) Waiver.

When the obligor has satisfied all of the terms and conditions of the agreed entry, the CSEA shall:

(1) Waive the permanently assigned arrears by the amount identified in the agreed entry; and

(2) Reduce the unreimbursed assistance (URA) by an amount equal to the amount of permanently assigned arrears that are waived.

(C) Lump sum compromise.

When the obligor has made the lump sum payment and has satisfied all of the terms and conditions of the agreed entry, the CSEA shall:

- (1) Reduce the permanently assigned arrears by the amount identified in the agreed entry; and
- (2) Reduce the URA by an amount equal to the amount of permanently assigned arrears that are reduced.

(D) Installment plan compromise.

During the life of the installment plan compromise, at pre-determined intervals, the CSEA shall:

- (1) Review the obligor's payment history, determine the amount of permanently assigned arrears to reduce, and reduce the permanently assigned arrears by that amount; and
- (2) Reduce the URA by an amount equal to the amount of permanently assigned arrears that are reduced.

(E) The CSEA shall consider whether it is appropriate to initiate an action to reinstate the permanently assigned arrears when:

- (1) The obligor fails to comply with the terms and conditions set forth in the agreed entry;
- (2) The obligor is believed to have acted with intent to defraud the CSEA by furnishing false information or concealing assets or financial history; or
- (3) There is a mutual mistake of material fact sufficient to cause the agreed entry to be reformed or set aside.

(F) The CSEA shall maintain a cumulative log of all waiver and compromise agreements that includes the following information for each agreement:

- (1) The names of the obligor and the obligee;
- (2) The case number;
- (3) The amount of permanently assigned arrears waived or compromised;
- (4) The amount of support collected from the obligor as part of the agreed entry; and
- (5) The date the agreed entry was adopted by the CSEA or court.

(G) The CSEA shall provide any of the following upon request by OCS:

- (1) A copy of the document described in paragraph (F) of this rule;
- (2) A copy of a signed JFS 07718 or journalized agreed entry;
- (3) Any other report, as determined by OCS, of waivers and compromises of permanently assigned arrears for support orders administered by the CSEA.

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