

Strategies for Preventing the
Accumulation of Child Support Arrears
and Managing Existing Arrears:
An Update

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Introduction

When obligated parents fail to pay their child support, arrears accumulate. Over time this results in an ever-increasing amount of unpaid support. For those whose orders are enforced by the publicly funded child support program authorized by Title IV-D of the Social Security Act, this has become a substantial problem: currently, over \$100 billion in arrears are owed in those cases. This has led a number of states to examine their arrears caseload in order to determine what strategies could be used to address the problem.

Dr. Elaine Sorensen of The Urban Institute has conducted many of these state studies. Drawing on this work, as well as other state-based studies, she has identified a number of factors that contribute to the accumulation of arrears. They include:

- A high rate of default orders. States which set orders without the active participation of the obligated parent may end up with orders that are both unrealistically high and unenforceable.
- Child support guidelines that impose much higher burdens on low-income parents than on higher income parents.
- State policies on interest. If a state charges interest on arrears, that amount is added to the total owed and—over time—can substantially increase the debt owed by the obligated parent.

- The extent to which retroactive support is included in the initial order. Orders which include retroactive support start out with substantial arrears so that right from the beginning the obligated parent is playing catch-up.
- Lack of a timely, user-friendly process for modifying arrears. If economic circumstances change, or a parent becomes incarcerated or institutionalized an order that was proper when set may become unrealistic. In the absence of a process for change, arrears will accumulate under the old order.

As a result of this analysis, many states are changing their policies to reduce the amount of arrears that will accumulate in the future. Several states are also developing programs and approaches to existing cases so that some of the existing debt can be dealt with. The following pages describe some of these state efforts. In addition, a bibliography of sources is included to assist those wishing to do further research.

Preventing Arrears Growth:
What Other States
Are Doing

Overview

- You are not alone. Studies show that most states have a problem with accumulated arrears.
- The accumulation is the result of state structural and policy issues.
- The good news is that policies can be changed to prevent future problems.

Seven Primary Strategies

- Minimize Default Orders
- Develop Readable Materials
- Make Orders Real through Better Guidelines for Low Income Obligor
- Limit Use of Retroactive Support Orders
- Monitor Cases
- Strengthen Enforcement
- Increase Review and Adjustments

Strategy 1. Minimize Default Orders

- Improving Service of Process Especially of Initial Papers. Some California counties are providing a photo to process server. The photo is obtained from the department of Motor Vehicles. They are also paying extra for personal service and providing contact information for a case worker who can assist the process server if questions arise during the service.
- Encouraging NCPs Participation. Massachusetts uses a welcoming letter to encourage participation.
- Making it easier to Participate in Court. Texas allows NCPs to answer a summons and complaint by calling the court. California eliminated its filing fee for answering a summons and complaint.

Minimize Default Orders by Greater Use of Administrative Processes

Some states have expanded the use of administrative processes, including Maine, Maryland, Delaware, and New Jersey. Texas has also made good use of this concept.

Texas's Approach

- All new cases that need an order or paternity establishment are automatically reviewed to determine whether appropriate for administrative process.
- If case meets criteria, computer schedules conference and sends a simple two page notice to both parents along with a flyer that explains the advantages of the administrative process using first class mail. This does not constitute service.

Texas's Approach, cont.

- If case doesn't meet all of the criteria for the automated process, it will be reviewed by caseworker to determine whether it should be processed manually or sent for judicial action.
- Conferences are conducted by a case worker. If both parents attend the conference and agree to an order, then everyone signs the order and waives right to service.
- Agreed orders are reviewed by IV-D attorney and signed and sent to the court for review and signature.

Texas's Approach, cont.

- If neither of the parents appears or they appear but do not agree to an order, the case worker can file a non-agreed order. It is reviewed by IV-D attorney and signed and then sent to the court to be served on both parties.
- Parties have 20 days to request a court hearing to object to a non-agreed order. The request can be made orally or in writing. No fee is charged for this request.

Results in Texas

- Tremendous cultural change from a judicial approach to order establishment to a “customer friendly” approach that encourages contact and education of both parents.
- In 2000, nearly all orders were established judicially. Now, over half of all orders are established administratively.

Strategy 2. Develop Readable Materials

- Many of the forms and other materials that go to parents are not user friendly.
- As a result, CPs and NCPs don't understand what they need to do.
- Some states have had good success in rewriting materials so that parents know what to do and when to do it. Connecticut, New Jersey, Texas and Virginia have all taken this approach.

Strategy 3. Making Orders Reflect the Ability of Low Income Parents to Pay

- Obtaining accurate income and asset information is key. All states should be using the automated locate tools to make sure that income is based on accurate, current information. It is best to have at least 4 quarters of income information rather than just recent pay stubs.
- Several states are also revising their child support guidelines to be more sensitive to the situation of low income parents. These include Connecticut, the District of Columbia and Colorado.

Colorado Child Support Commission Proposed Changes to Guidelines*

- Minimum order of \$50 for obligors making less than \$850 per month in adjusted gross income
- Low-income adjustment for obligors earning between \$850 and \$1,850 per month in adjusted gross income

*Based on a presentation by Larry Desbien at ERICSA March 2004

Child Support Commission Recommended a New Low Income Adjustment

- For Obligor between \$850 and \$1,850 per month in adjusted gross income the Low Income Adjustment Sets minimum order of:
 - \$75 for one child
 - \$150 for two children
 - \$225 for three children
 - \$275 for four children
 - \$325 for five children
 - \$350 for six children

Child Support Commission Recommended a New Low Income Adjustment

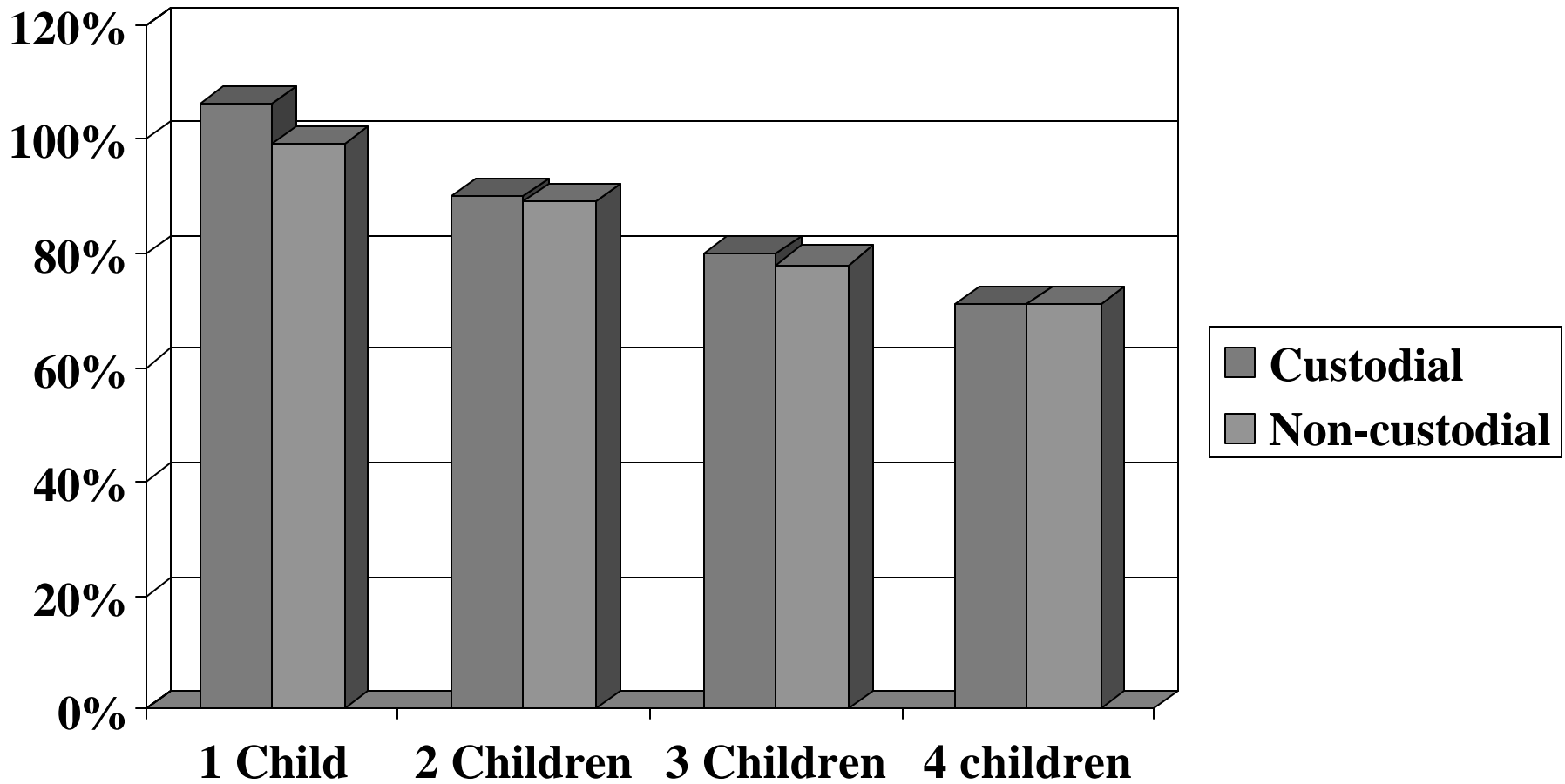
- Gives 40% of each additional dollar earned over \$900 to the children.
- Example: Obligor with \$1,000 in Adjusted Gross Income with 1 child.

\$75 minimum order for one child

+ \$40 (.40 x \$100)

= \$115 monthly child support order using low income adjustment

**% of Poverty After Taxes and Payment/Receipt of Child Support Based on
New 2003 Guideline Schedule Enacted by Legislature
(Each Parent's income based on full-time, minimum wage earnings)**



	\$75 per/mo	\$150 per/mo	\$225 per/mo	\$275 per/mo
Custodial	106%	90%	80%	71%
Non-custodial	99%	89%	78%	71%

Early Results of the Low Income Adjustment

- 33% of the orders established or modified between January – June 2003 were in the \$50 – \$150 per month range compared to 18% for same time period in 2002.
- Obligor ordered to pay between \$50 - \$150 per month between January – June 2003 paid 31% more toward current support compared to obligors ordered to pay in this range for same time period in 2002.

Strategy 4. Limit Retroactive Support Orders

- California used to establish retroactive support orders that went back 3 years in public assistance cases, but now they go back to date of filing.
- Colorado is in the process of revising its regulation on retroactive support. Rather than instruct counties to go back to the date of birth, the new regulation will give counties flexibility.
- Massachusetts can still go back to date of birth, but rarely does as a matter of practice.
- Texas used to go back to date of birth, but now goes back at most 4 years.

Strategy 5. Monitor Cases

- It is very important to make sure that once an order is entered by a court or administrative agency, it is immediately entered in the IVD system. Massachusetts, New Jersey, New York, and Texas are all working on this problem.
- Once in the IVD system, it should be monitored for compliance. Alabama, Massachusetts, New Hampshire and Virginia are using systems to monitor all new orders during the first few weeks/months. If payments are not received, the agency contacts the NCP and/or the employer to see what the problem is. Contact may be by phone or letter or both.

Monitoring Can be Automated: the North Carolina Experience

- North Carolina bought an automated phone system, called PhoneTree 3500, which uses text-to-speech messaging to confirm appointments, make collection calls, and deliver other messages.
 - Has multilingual capability
 - Can individualize messages
 - Cost North Carolina \$14,000

Strategy 6. Working with Employers to Strengthen Enforcement

States can develop Employer Initiatives with the ultimate goal of increasing collections through wage withholding. A part of this is employer outreach, particularly recognizing the important work that employers do to secure child support. Another part is to improve customer service to employers. Colorado and Texas have begun employer initiatives.

Texas Statistics Prior to Employer Initiative

- 43% of automatic income withholding orders were sent out incorrectly.
- The Employer File contained 2 million employers, yet OAG interacted with about 119,000 different employers.
- There were 17 different interfaces with outside agencies, all of which were developed without consistency.

Changes Implemented by Texas

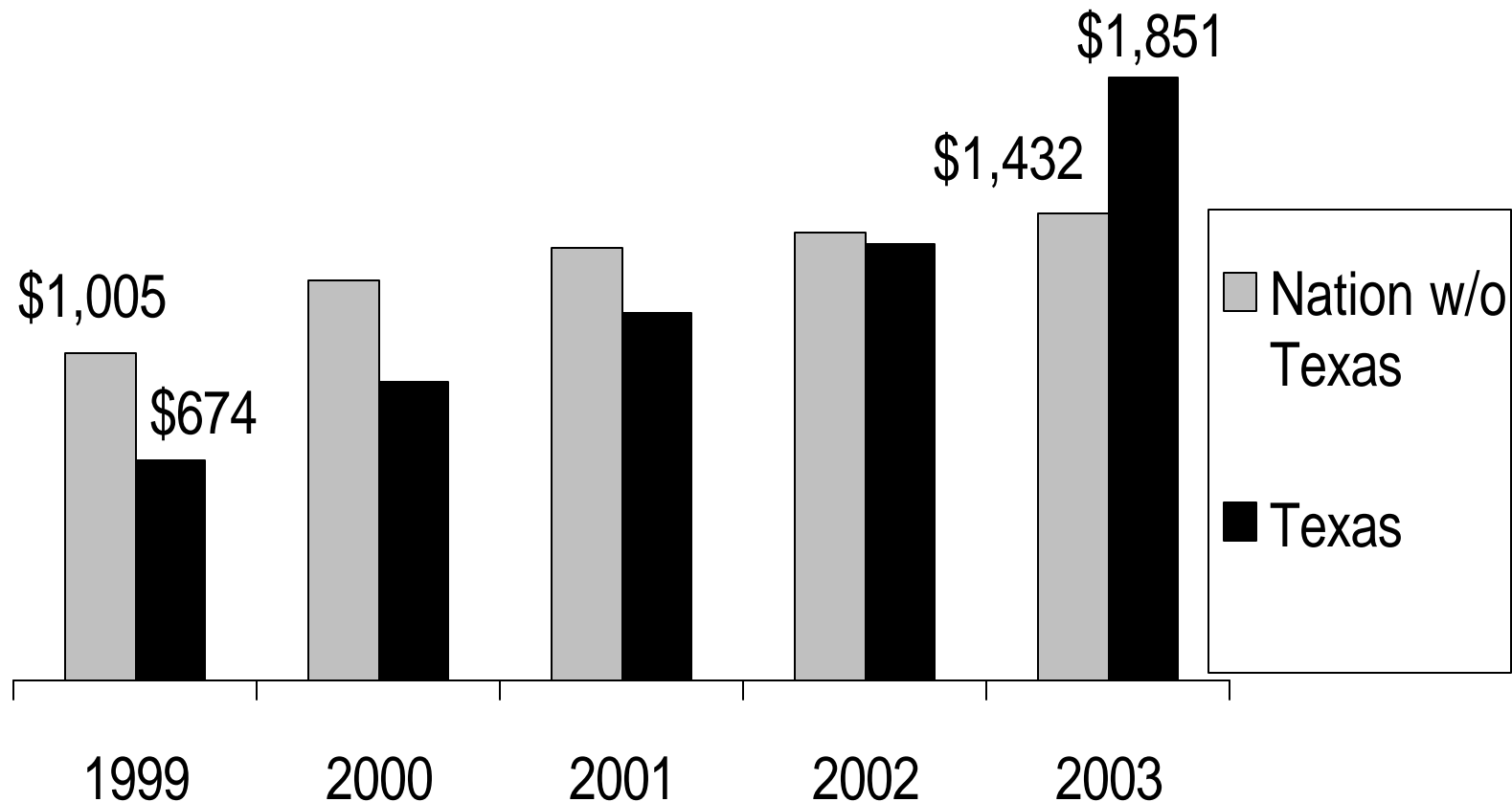
- Developed a new Employer File that can retain multiple addresses for the same employer and matches by FEIN and employer name.
- Checked all employer/FEIN combinations to determine which FEINS went with what employers and which locate address was the good AIW address.
- Implemented commercial software, called Code 1, to validate addresses on an on-going basis.

Changes Implemented by Texas

- Developed electronic interface with TALX Corporation, the largest employment verification company in the U.S. TALX has access to over 2,000 of the largest employers' payroll records.
- Revised interfaces with outside agencies so that they are consistent and compatible with new Employer File.
- Reviewed programming logic for electronic AIWs and implemented numerous changes.

For more information about the Texas Employer Initiative, contact Ruben Barbosa at Ruben.Barbosa@cs.oag.state.tx.us

Collections through Income Withholding per Case with an Order Established in Texas and the Balance of the Nation



Source: OCSE Annual Statistical Reports

Strategy 7. Increase the Number of Reviews and Modifications

- One approach is to establish a cost-of-living (COLA) adjustment that automatically increases orders unless someone objects. New York, New Jersey, and Minnesota now have some form of a COLA.
- Another approach is to focus on populations that are most likely to need a downward adjustment. Prisoners, those who are in drug rehabilitation programs, and those receiving long-term inpatient hospital services are possibilities. These can be informational programs for either the newly incarcerated or those about to be released (New Jersey and New Hampshire approach) or statutory abatements for these populations (Connecticut).
- A third approach is to simplify the review and adjustment process for all. Alaska, South Dakota, Washington and West Virginia have all taken steps in this direction.

Managing Existing Arrears:
What Other States
are Doing

Five Primary Strategies

- Close the Case
- Revise Interest Rate Policy
- Compromise Interest
- Compromise Uncollectible Arrears Owed to the Government in Exchange for Compliance with Current Support Order
- Compromise Arrears Owed to the State Because the Order is Inconsistent with State Policy

Strategy 1. Eliminate “Deadwood” Through Case Closure

- Massachusetts has taken cases identified by the Urban Institute that have no reported income for five years and no payments for three years and determining whether they should be closed.
- Texas targeted cases with the largest amounts of arrears owed and determined whether they should be closed.
- California has integrated case closure into its preparation for automation

Sec. 303.11 Case Closure Criteria

In order to be eligible for closure, the case must meet at least one of the federal criteria. The following are most likely to be useful.

- (1) There is no current support order and arrears are under \$500 or are unenforceable under state law.
- (2) The obligated parent is dead and no action against an estate is possible.
- (3) Paternity can't be established under state law.
- (4) The non-custodial parent's location is unknown, and the state has made diligent efforts using multiple sources, in accordance with Sec. 303.3, all of which have been unsuccessful, to locate the non-custodial parent:
 - i. Over a three-year period when there is sufficient information to initiate an automated locate effort, or
 - ii. Over a one-year period when there is not sufficient information to initiate an automated locate effort;
- (5) The obligated parent is unable to pay support for the duration of the child's minority due to incarceration, institutionalization, or permanent, total disability

Minimum Use of Case Closure Strategies

Review arrears-only cases that have no payments in three years and no reported income for possible case closure.

Strategy 2. Revise Interest Rate Policy

Why and how state policies and practices vary in this area.

State Practice Varies Greatly: Why States Charge Interest Routinely

- Child support debt should be treated like any other debt. If it isn't, obligors will pay other debts before child support debt.
- Charging interest should improve compliance with current support orders because non-custodial parents will want to avoid paying interest.
- Custodial families should be compensated for not receiving support on time.

Reasons for Not Charging Interest Routinely

- Child support arrears are not like other debt. Most child support arrears are held by low-income obligors, many of whom do not have access to the private credit market.
- Research does not find that charging interest increases compliance with child support orders.
- When compliance with current support and arrears obligations are incomplete, assessing interest is mainly adding to arrears accumulation.

Interest-Related Strategies to Manage Arrears

Several state legislatures have lowered their Interest Rate:

- Texas (from 12% to 6%, effective 1/02)
- Michigan (from compounded 8% to a simple variable rate tied to the 5-year United States Treasury Note, plus 1%, effective 7/04)
- Virginia (from 9% to 6%, effective 7/04)
- New Mexico (from 8.75% to 4% in 2004)

Interest-Related Strategies to Manage Arrears

- Order of Attribution. Many states, including Michigan and Massachusetts, apply arrears payments toward principal before interest.
- Link Interest Assessment to Compliance with a Payment Plan. Michigan and Massachusetts charge interest on arrears only if obligors do not pay their full current support order or do not comply with their payment plan.
- Create Exceptions. Massachusetts has the authority to not assess interest or penalties in hardship cases.

Summary of Possible Approaches to Interest

- Apply Arrears Payments to Principal before Interest. Could reduce arrears growth significantly.
- Reduce the Interest Rate to the Time Value of Money (i.e. the current interest rate), currently about 4%.
- Assess Interest on Public Arrears only if Obligor is not Complying with Current Support Order or Payment Plan.

Michigan recently implemented all three of these strategies.

Strategy 4. Compromise Arrears Owed to The Government

- Arrears that have been permanently assigned to the state under the provision of Titles IVA (TANF), IVE (foster care), or XIX may be compromised without consulting the CP. (OCSE PIQ 00-03)
- Any compromise of arrears that have not been permanently assigned requires the consent of the CP. State law may also require that a court or administrative agency signs off to ensure the best interests of the child.

Most Arrears Compromise Programs are Compromising Arrears in Exchange for Some Particular Behavior

- Connecticut has authority to compromise publicly- held arrears for obligors who complete fatherhood programs and for those who wish to settle the debt in full by a single payment.
- California (COAP), Michigan, and New Mexico (Fresh Start) have all started Arrears Compromise programs that compromise arrears in exchange for increased compliance.

States take Different Approaches to Compromising Publicly-Held Arrears

These approaches can be administrative or judicial. *Administrative* approaches include:

- Washington CSE Program has authority to accept less than the full amount of arrears owed to the government. Has a Conference Board that reviews cases.
- Minnesota CSE Program has authority to compromise publicly held arrears.
- Massachusetts agency has authority to make “equitable adjustments” to arrears owed to the government when there is a legitimate question of whether the arrearage accrued under equitable circumstances, there is substantial doubt about whether the debt can ever be collected, and the obligor has no present or future potential to pay the full amount.

Judicial approaches include:

- Texas Associate Judges have authority to set aside arrears and interest owed to the government.
- California gives obligors a year to ask for reconsideration of default orders based on inaccurate income information.
- Michigan allows obligors to seek relief from arrearages by filing a motion with the circuit court.

Arrears Compromise Programs that have been Evaluated

- Two pilot arrears compromise programs have been evaluated, one in Maryland and one in Minnesota.
- Both arrears compromise programs targeted low-income obligors with a current support order.
- Both served less than 150 obligors.
- Both programs required participants to pay child support in full for extended periods of time in order to qualify for debt forgiveness.

Results from Evaluations of Arrears Compromise Programs

- 20-25% of participants had their entire state-owed arrears forgiven.
- Participants paid significantly more child support during the program than prior to the program.
- In Maryland, the total amount of child support collected from participants was greater than the amount of arrears forgiven.

Lessons Learned from Arrears Compromise Programs

Recruitment can be Difficult

- Maryland worked with fatherhood programs to avoid this issue.

Retention can be Difficult

- May want to compromise arrears in each month that the obligor pays in full, but allow obligors to remain in the program even though they miss full payments in some months.

Lessons Learned from Arrears Compromise Programs:

Different arrears compromise strategies fit different situations:

- Lump-Sum Settlements of state-owed arrears can work if NCPs have an ability to pay some of their uncollectible arrears .
- Compromising state-owed arrears can be offered in exchange for complying with repayment plans when arrears are uncollectible and lump-sum settlements are not feasible.
- Equitable Adjustments to state-owed arrears can be given when arrears accumulated as a result of policies that are no longer in effect or because downward modifications were not implemented in a timely fashion.

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