



Office of the Attorney General
Washington, D.C. 20530

April 26, 1999

MEMORANDUM FOR MEMBERS OF THE CABINET

FROM:

THE ATTORNEY GENERAL *John Ashcroft*

SUBJECT:

Minimum Due Process Guidelines For Agencies
To Deny Federal Financial Assistance

On September 28, 1996, the President issued Executive Order 13019, 61 Fed. Reg. 51,763, "Supporting Families: Collecting Delinquent Child Support Obligations." Section 1 of the Executive Order requires the Secretary of the Treasury to collect past-due child support obligations by administrative offset. Section 2(b) of the Executive Order requires the head of each executive agency and department to deny federal financial assistance to those individuals whose payments are subject to administrative offset because of delinquent child support obligations. Federal financial assistance is defined as federal loans (other than a disaster loan), loan guarantees, or loan insurance. Section 2(c) of the Executive Order requires the Attorney General, in consultation with the Secretary of Health and Human Services and other affected agencies, to issue guidelines to the executive agencies and departments concerning minimum due process standards to be included in the procedures used in denying federal financial assistance. The attached Guidelines:

- (1) Define federal financial assistance and the persons who may be denied such assistance if their delinquent child support obligations have been referred to Treasury for offset (Guidelines, Section 2).
- (2) Set forth the policy that federal financial assistance will be denied to those with delinquent child support obligations except where (a) denial is not permitted by law; (b) denial would likely result in valid legal claims for damages against the United States;

(c) denial would be inconsistent with the best interests of the child or children with respect to whom a child support obligation is owed; or (d) denial should be waived (Guidelines, Sections 3-6).

- (3) Set minimum due process procedures which grant to the person whose name has been referred to Treasury for offset of delinquent child support obligations:
- (a) notice of the proposed denial of federal financial assistance;
 - (b) an opportunity to contest the proposed denial, which includes either a "paper" or oral hearing;
 - and (c) an opportunity to request that a decision denying federal financial assistance be reversed (Guidelines, Sections 10-14).

The Department of Health and Human Services and the Department of the Treasury have reviewed and approved the attached Guidelines. Pursuant to Section 2(b) of the Executive Order, they should be implemented promptly into any existing procedures you have for approving or denying federal loans (other than a disaster loan), loan guarantees, or loan insurance. John W. Showalter of our Civil Division ((202) 307-0244) is available to answer any questions or to provide assistance to your staffs.

As you know, this Administration has placed a high priority on assisting families in collecting past-due child support obligations. Appropriate denial of federal financial assistance to those who have defaulted on such obligations can be an important motivation to inspire people to meet their family responsibilities and can help in the important work of providing child support to those who need it. I thank you for your assistance in implementing these Guidelines.

Attachment

MINIMUM DUE PROCESS GUIDELINES:
DENIAL OF FEDERAL FINANCIAL ASSISTANCE
PURSUANT TO EXECUTIVE ORDER 13,019

The following minimum due process guidelines are issued by the Attorney General, in consultation with the Secretary of Health and Human Services and the Secretary of the Treasury, and are to be included in the procedures or regulations promulgated by Executive departments and agencies for the denial of federal financial assistance pursuant to Executive Order No. 13,019, 61 Fed. Reg. 51,763 (1996). Existing procedures or regulations may be utilized so long as they comport with these minimum due process guidelines.

Section 1. Purpose.

Executive Order 13,019 provides that Executive departments and agencies shall deny federal financial assistance to any person whose delinquent child support obligations are subject to collection by administrative offset. A person who is determined by a state to have delinquent child support obligations subject to collection by offset shall be denied such assistance pursuant to agency procedures or regulations which comport with these minimum due process guidelines.

Section 2. Definitions.

(a) Agency. Any Executive department, military department or defense agency or other agency of the Executive Branch that provides federal financial assistance as defined in these guidelines.

- (b) Delinquent child support obligations. The amount of support determined under a court order, or an order of an administrative procedure established under state law, for the support and maintenance of a child, or of a child and parent with whom the child is living, which has not been paid.
- (c) Delinquent child support obligations subject to collection by administrative offset. A "delinquent child support obligation" that has been submitted to the Department of the Treasury for collection by offset.
- (d) Denying official. An official authorized to deny federal financial assistance as defined in these guidelines. The denying official is either:
- (1) The agency head, or
 - (2) An official designated by the agency head.
- (e) Federal financial assistance. Any federal loan (other than a disaster loan), loan guarantee, or loan insurance.
- (f) Notice. A written communication served in person or sent by mail to the last known address of a person, his/her identified counsel, or his/her agent for service of process. Notice shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(g) Respondent. A person who has applied for federal financial assistance or is currently receiving such assistance and who has received a notice of proposed denial of such assistance.

(h) State. Any of the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a state.

Section 3. Coverage.

These guidelines apply to all persons who apply for federal financial assistance or who are currently recipients of federal financial assistance.

Section 4. Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to deny federal financial assistance to those persons whose delinquent child support obligations are subject to collection by administrative offset.

(b) The determination whether to submit a delinquent child support obligation is made by the state. Before a delinquent child support obligation is submitted to the Department of the Treasury, the person owing the obligation is notified of the amount owed and the state's intention to submit the obligation for collection by administrative offset. The person is notified of his or her right to an administrative review by the state referring the obligation or, upon the request of the person, by the state with the order upon which the referral was based, of

the state's determination that delinquent child support is owed, the amount of such support, as well as any other rights available under state law.

(c) Denial of federal financial assistance is a serious action which shall be used only in the public interest. Agencies shall deny federal financial assistance in accordance with procedures or regulations which comport with these guidelines.

(d) When more than one agency has an interest in the proposed denial of federal financial assistance to a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their denial actions.

(e) Nothing in these guidelines is intended to imply that an agency has any authority to determine whether a person owes a delinquent child support obligation or the amount of such obligation.

Section 5. Denial of federal financial assistance.

Except as set forth in Section Six, a person whose delinquent child support obligations are subject to collection by administrative offset shall be denied federal financial assistance so long as his/her obligations are subject to collection by offset.

Section 6. Exceptions.

(a) A person whose delinquent child support obligations are subject to collection by administrative offset will not be denied federal financial assistance when such person falls within a class of persons eligible to receive federal financial assistance where it has been determined by the agency head that denial of federal financial assistance to persons in such a class:

(1) is not permitted by law; or

(2) would likely result in valid legal claims for damages against the United States; or

(3) would be inconsistent with the best interests of the child or children with respect to whom a child support obligation is owed; or

(4) should be waived as, for example, inconsistent with the agency's programmatic requirements.

(b) Upon making a determination as set forth in subsection (a), the head of each agency shall provide written notification of his/her determination, with the reasons therefor, to the Secretary of the Treasury.

Section 7. Continuation of existing federal financial assistance.

(a) An agency must continue federal financial assistance extended to a person prior to notification that the person has delinquent child support obligations subject to collection by administrative offset where discontinuance or termination of the federal financial assistance would subject the United States to liability.

(b) An agency shall not renew or extend federal financial assistance to a person (where a failure to renew or extend would not subject the United States to liability) once the agency has been notified that the person has delinquent child support obligations subject to collection by administrative offset.

Section 8. Denial of federal financial assistance.

The denying official shall deny federal financial assistance to a person for the causes set forth in Section Nine, using procedures or regulations which comport with Sections Ten to Twelve of these guidelines.

Section 9. Causes for denial of federal financial assistance.

Federal financial assistance shall be denied to a person when:

(a) The agency has obtained from the Secretary of the Treasury, or other authorized source, information that the person has delinquent child support obligations and that these obligations are subject to collection by administrative offset; and

(b) The person does not fall into a class of persons which has been excepted from denial of federal financial assistance as set forth in Section Six.

Section 10. Notice of proposed denial of federal financial assistance.

The denying official shall initiate a denial of federal financial assistance by notice to the person who has applied for such assistance or who is presently receiving such assistance

(hereafter the "respondent"). The notice shall include the following statements or information:

(a) The agency has been informed that the respondent has delinquent child support obligations and that these obligations are subject to collection by administrative offset;

(b) Pursuant to Executive Order 13,019 and other applicable law, the person's application for federal financial assistance must be denied, or that, if the respondent is presently receiving such federal financial assistance, such assistance will not be renewed or extended.

(c) An explanation of the person's opportunity to contest the proposed denial as described in Section Eleven.

Section 11. Opportunity to contest proposed denial.

(a) Within 30 days, or such greater time as permitted by the head of the agency, after receipt of the notice of proposed denial of federal financial assistance, the respondent may submit to the denying official, in person, in writing, or through a representative, information and argument in opposition to the proposed denial.

(b) The respondent shall be afforded an opportunity for a proceeding where the respondent's information and opposition to the proposed denial is reviewed. This review may consist of a "paper" review of the record or may involve an oral hearing. In determining whether to grant an oral hearing, the agency may consider whether: 1) agency statutes or regulations require an oral hearing; 2) issues of credibility or veracity are involved;

3) other factors make an oral hearing necessary for a complete review of the issues. Unless otherwise required by law, an oral hearing is not required to be a formal evidentiary-type hearing, although the agency should carefully document all significant matters discussed at the hearing.

(c) The sole purpose of such a proceeding, whether "paper" or "oral," shall be to determine:

(1) Whether the respondent has a delinquent child support obligation subject to collection by administrative offset; and

(2) If so, whether the respondent belongs to a class of persons excepted from denial of federal financial assistance pursuant to Section Six.

(d) The agency shall not make, and the respondent shall not request, a determination whether the respondent owes a delinquent child support obligation or the amount of such obligation.

Section 12. Denying official's decision.

(a) The denying official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless this period is extended for good cause.

(b) If the denying official decides to deny federal financial assistance to the respondent, the denying official shall give the respondent prompt notice:

- (1) referring to the notice of proposed denial; and
- (2) specifying the reason for denial.

(c) If the denying official decides not to deny federal financial assistance to the respondent, the denying official shall give the respondent prompt notice of that decision. A decision not to deny federal financial assistance shall be without prejudice to a subsequent denial of federal financial assistance by any other agency.

Section 13. Reversal of denial decision.

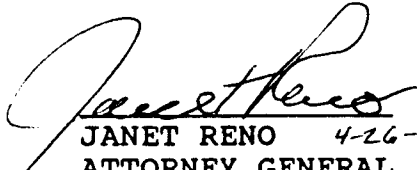
(a) The respondent may request that the denying official reverse the denial decision. Such a request shall be in writing and supported by documentation. The denying official may grant such a request for the following reasons:

(1) Information received by the agency from the Secretary of the Treasury or other authorized source that the respondent has no child support obligations subject to collection by administrative offset.

(2) Information that the agency head has excepted the class of federal financial assistance recipients to which respondent belongs from the operation of the Executive Order pursuant to Section Six.

Section 14. No private rights created.

These guidelines do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person, nor shall the failure of an agency to comply with any of these guidelines, or regulations implementing these guidelines, be available to any debtor as a defense.


JANET RENO 4-26-99
ATTORNEY GENERAL