



# American Payroll Association

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Government Relations • Washington, DC

January 16, 2015

Office of Child Support Enforcement,  
Administration for Children and Families  
370 L'Enfant Promenade SW  
Washington, DC 20447  
Attn: Director, Division of Policy

**Re:** Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Notice of Proposed Rulemaking (NPRM) ACF-2014-2014-0004-0001.

Dear Commissioner Turetsky,

The American Payroll Association (APA) appreciates the opportunity to provide comments on the proposed rulemaking changes to make the Child Support programs more flexible, effective, and efficient. We understand that these changes are needed in order to comply with President Obama's initiatives included in *Executive Order 13563: Improving Regulation and Regulatory Review*. In the following comments, we note specific changes that are being proposed, raise issues that result from the changes, and offer suggestions to improve the overall efficiency.

## **About the American Payroll Association**

The APA is a nonprofit professional association representing more than 20,000 payroll professionals and their companies throughout the United States. Some APA members work for payroll service providers who in turn process the payrolls for another 1.5 million employers, representing an aggregate total of one-third of the private-sector workforce. According to the Office of Child Support Enforcement, employers are responsible for collecting more than 70% of all child support in the United States, through wage withholding.

The APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws. In addition, the APA's Government Relations Task Force works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and individual workers.

## **General**

APA fully supports enhancing the current child support programs to accomplish the three major directives of the NPRM, which include: (1) *procedures to promote program flexibility, efficiency, and modernization*; (2) *updates to account for advances in technology*; and (3) *technical corrections*. We support changes that contribute to the success of the child support programs and also provide clarity regarding processes with which employers are directly involved.

## **Effective Date and Potential Impact on State Law**

Regarding the effective date of the changes, we support a *general effective date of one year after publication of the final rule*. Having states make changes at varying timeframes creates an additional level of complexity for employers.

## **SECTION 302.32: COLLECTION AND DISBURSEMENT OF SUPPORT PAYMENTS BY THE IV-D AGENCY**

APA supports regulations that would enforce the legal requirement that SDUs process both IV-D and non-IV-D payments. We appreciate the changes made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) in creating centralized payment processing through the creation of State Disbursement Units (SDUs). However, as noted in the NPRM, some SDUs are not in compliance with the law, which creates difficulties for employers, obligor employees, and custodial parents. Bringing this process into a centralized SDU collection process will benefit all involved.

## **Enhancements to Section 302.32**

**Child Support and Spousal Support Collection Combined:** As an enhancement to 302.32, APA suggests that SDUs be required to continue processing spousal support payments after their associated child support payments are released. Under current practice, spousal payments are paid through the SDU when they are included with child support payments. Once the child support payment ends, the SDU ceases processing the spousal support payments. Having the SDU continue to process such spousal payments will ensure that there is no disruption in payments to the custodial parent.

## **SECTION 302.56: GUIDELINES FOR SETTING CHILD SUPPORT AWARDS**

APA supports the suggested amendments to current §302.56(c)(1) to require that guidelines take into consideration a noncustodial parent's *actual* earnings and income rather than imputing the person's earnings and income. We strongly encourage that child support agencies utilize the systems to which they already have access in order to obtain the actual earnings, rather than sending an increase in verifications directly to employers. As indicated in the NPRM, "states have access to multiple interstate data systems, including the State and National Directories of New Hires as well as the Financial Institution Data Match (FIDM) and Multistate Financial Institution Data Match (MSFIDM), that can verify when a noncustodial parent has a new job, is claiming unemployment insurance benefits, or has quarterly wage information available."

### **SECTION 303.100: PROCEDURES FOR INCOME WITHHOLDING**

APA supports the two changes recommended in the NPRM regarding use of the OMB-approved Income Withholding for Support form (OMB 0970-0154, referred to as the IWO). Specifically, these changes regard the: (1) inconsistent use of the form, and (2) transmission of payments for non-IV-D orders to the appropriate SDU.

Regarding use of the form, we support OCSE's recommendation to clarify section §303.100(e) by replacing the phrase "the standard federal format" with the phrase "the required OMB-approved Income Withholding for Support form." We believe this will discourage use of alternative forms, thereby increasing the efficiency of the withholding process.

Additionally, we support the creation of a new paragraph, §303.100(i), stating that, "income withholding payments on non-IV-D cases must be directed through the SDU." Such a change will result in a single payment address in each state to which employers will remit withheld child support, regardless of the type of case being processed.

#### **Enhancements to Section 303.100:**

**Standard Return Document:** An employer that receives an IWO that fails to meet the requirements of the OMB-approved form is required to return the order to the sender. The language requiring such action is included on the most recent version of the IWO but might not be included on previous versions still in use or on orders issued by courts, private attorneys, or others. APA recommends the creation of a standard return document that may be used to accompany the IWO being returned. A government form that includes an official statement citing the need for all issuers to use the OMB-approved form would alleviate tensions when employers reject what issuers believe to be orders served in good faith.

**Amount Changes:** While the OMB-approved form (OMB 0970-0154) was created to be standard across states, specific states have subverted their use of the form to accommodate their own processes. This undermines the standardization effort and adds unnecessary layers of complexity for employers processing these orders. The OMB Form indicates, under AMOUNTS TO WITHHOLD: "You do not have to vary your pay cycle to be in compliance with the Order Information. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts."

Certain states have trouble accommodating weekly and biweekly payments, because the payments do not match the employee's monthly amount due. These pay schedules often leave the noncustodial parents in arrears for small amounts for a few months, which are caught up periodically when a month includes an extra period. APA notes that biweekly pay periods are the most common pay periods used in the United States. A few states would prefer that employers not send amounts that correspond to weekly or biweekly pay periods, but instead send amounts that will meet the monthly obligation; to do so requires suppressing a payment in those months when the extra pay period occurs to avoid an overpayment and increasing weekly or biweekly payments to avoid an underpayment when the extra pay period does not occur.

Forms issued by the state of Colorado regularly list two different amounts in separate monthly amount fields. While one would expect the amount to be withheld on semimonthly and biweekly pay periods to differ, on the Colorado order they are the same. In the example provided, taken from an order received by an APA member, the IWO clearly shows that the Order Information section calls for a monthly payment of \$216.67 while the Amount to Withhold for a monthly pay period calls for a payment of \$200.

Such orders are common from the state of Colorado. This is confusing to employers and results in a potential over-deduction on a biweekly pay period.

<b>ORDER INFORMATION:</b> This document is based on the support or withholding order from <u>COLORADO</u> .			
You are required by law to deduct these amounts from the employee/obligor's income until further notice.			
\$ 180.00	Per	Month	current child support
\$ 20.00	Per	Month	past-due child support - Arrears greater than 12 weeks? <input type="checkbox"/> Yes <input type="checkbox"/> No
\$	Per		current cash medical support
\$	Per		past-due cash medical support
\$	Per		current spousal support
\$	Per		past-due spousal support
\$ 16.67	Per	Month	other (must specify) <u>Amount needed so full \$ is withheld</u>
for a Total Amount to Withhold of \$ <u>216.67</u> per <u>Month</u>			
<b>AMOUNTS TO WITHHOLD:</b> You do not have to vary your pay cycle to be in compliance with the Order Information. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:			
\$ <u>50.00</u>	per	weekly pay period	\$ <u>100.00</u> per semimonthly pay period (twice a month)
\$ <u>100.00</u>	per	biweekly pay period (every two weeks)	\$ <u>200.00</u> per monthly pay period
\$ LUMP SUM PAYMENT Do not stop any existing IWO unless you receive a termination order.			

APA recommends that OCSE clarify to states and to employers that such calculations are inconsistent with the intent of the form and may be rejected by employers.

### **TERMINATION NOTIFICATION**

Currently, employers are able to report employment terminations for IV-D cases through OCSE's e-IWO process or on the Child Support portal. Non-IV-D cases cannot be reported through e-IWO or the portal, so employers must determine the type of order before processing the termination, either electronically or manually.

APA recommends that OCSE process both IV-D and non-IV-D cases through the portal. An employer that reports **ALL** termination information (IV-D and non-IV-D) through the e-IWO process or through the portal for participating states should be considered to have met the legal requirement for reporting this information to the respective states.

### **FUTURE ACTIONS/AMENDMENTS TO WITHHOLDING ORDERS**

APA recommends that OCSE clarify that withholding orders are not to include instructions to be implemented in the future (e.g., step-down payments). Changes to an order should be submitted as an amended order. Failure to comply with withholding instructions to be implemented at a future date should not be considered a failure to comply with the order; further, such instructions should be considered grounds for rejection.

We appreciate the opportunity to provide feedback. For the sections of the NPRM not referenced in this document, the APA currently does not have additional comments or suggestions. If you have any questions, please contact Corri Flores, Lisa Poole, or William Dunn, whose contact information is provided below.

Sincerely,

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