

**Statute Review Workgroup**  
Chairman Comm. Kupiszewski

**CHILD SUPPORT COMMITTEE**

**August 9, 2011**

12:00 – 1:00 p.m.

Arizona State Courts Building, Conference Room 345A

1501 W. Washington St.

Phoenix, Arizona 85007

Teleconference: 602-452-3192 Access Code: 1126

**Agenda**

1. **Welcome and announcements**..... *Comm. Kupiszewski*
  
2. **Review and discuss:** ..... *Janet Sell*  
Proposed language for personal injury awards
  
3. **Review and update strategic plan**..... *Comm. Kupiszewski*
  
4. **Call to the Public**..... *Comm. Kupiszewski*  
This is the time for the public to comment. Members of the workgroup may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. § 38-431.01(H), action taken as a result of public comment will be limited to directing staff to study the matter, responding to any criticism, or scheduling the matter for further consideration and decision at a later date.
  
5. **Set next agenda**..... *Comm. Kupiszewski*
  
6. **Confirm next meeting**..... *All*

**Next Meeting**

September 13, 2011

Conf. Room 230

Teleconference: 602-452-3192 Access: 1126

12:00 p.m. to 1:00 p.m.

*All times are approximate. The Chair reserves the right to set the order of the agenda. Please contact Kathy Sekardi, Staff to the Child Support Committee at (602) 452-3253, with any questions concerning this Agenda. Persons with a disability may request reasonable accommodations by contacting Julie Graber at (602) 452-3250. Requests should be made as early as possible to allow time to arrange the accommodation.*

# Statute Review Workgroup

## Minutes

<b>Date:</b> July 12, 2011	<b>Time:</b> Noon to 1:00 p.m.	<b>Location:</b> AOC – Conf Room 230
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**Minute Taker:** Kathy Sekardi

**Members Attending:**

<input checked="" type="checkbox"/> Comm. Stephen Kupiszewski – Acting Chair	<input type="checkbox"/> Veronica Hart Ragland
<input checked="" type="checkbox"/> Theresa Barrett	<input checked="" type="checkbox"/> Janet Sell
<input checked="" type="checkbox"/> Pat Griffin	<input checked="" type="checkbox"/> Bianca Varelas-Miller - <i>telephonic</i>
<input checked="" type="checkbox"/> Brandon Maxwell - <i>telephonic</i>	<input checked="" type="checkbox"/> Donald Vert - <i>telephonic</i>

**Staff/Admin. Support:** Kathy Sekardi, Julie Graber

**Guests:** N/A

**Matters Considered:** Comm. Kupiszewski commenced the meeting at: 12:05 p.m. with a quorum.

Members discussed:

1. ARS §§ 25-327, 25-503 regarding overpayments of child support to custodial parents  
 Janet Sell provided proposed language to the workgroup members; however, she noted the court already has the inherent authority to discuss and order appropriate orders to address overpayments. The proposed language does not add anything further to the statute. Brandon Maxwell discussed inclusion of language into the statute that would require overpayment situations to be addressed during a hearing. Mr. Maxwell noted that the perception is that the system is one-sided and believes the noncustodial parent should have an opportunity to address overpayments and reimbursement. Members of the workgroup noted that the issue of overpayment and reimbursement is already routinely brought to the court’s attention. Requiring the courts to address overpayments in modification situations would also require the Clearinghouse to submit a recalculated arrears calculation. The concern is that this would open up more litigation and objections. The members noted that an obligor has the right to seek reimbursement in family or civil court. The workgroup consensus is that the proposed language is not necessary, and that this is an educational issue for judges. The members discussed providing training opportunities for judges on this topic and Comm. Kupiszewski offered to discuss this issue with the family court presiding judge.
  
2. Personal injury awards  
 Ms. Sell noted her agency is collecting information from other states regarding personal injury awards statutes. Ms. Sell will bring draft language to the next meeting. This item was tabled to the next meeting.

3. Strategic Agenda

Added to the strategic agenda is to discuss with Judge Hyatt the issue of overpayment in downward modification situations and to request feedback from the family court judiciary.

4. Next Agenda

- Ms. Sell will draft a proposal regarding collection of child support arrears from personal injury awards.

5. Statute Review Workgroup webpage

Members were encouraged to RSVP to the next Statute Review Workgroup by accessing the Child Support Committee, Statute Review Workgroup webpage at:

<http://www.azcourts.gov/cscommittees/ChildSupportCommittee/ChildSupportCommitteeWorkgroups.aspx>

All meeting materials, agendas, and minutes are available online.

Meeting adjourned at 12:30 p.m.

LEGISLATIVE CHILD SUPPORT COMMITTEE

**Statute Review Workgroup Strategic Planning – 2011**

GOALS FOR 2011:

1. ~~ARS § 23-722.01 Employer or payor reporting; exceptions~~ **PROPOSED LANGUAGE TO CSC**
  - a. ~~Clerk's office would like access to the state directory of new hire~~
2. ~~ARS § 25-505.01 Administrative income withholding order; notice; definition~~ **PROPOSED LANGUAGE TO CSC**
3. Possibly review different child support guidelines models with CSC
4. Review new version of income shares model guidelines – incorporate new review guidelines
5. Federal IWO form – interpretation question
6. ~~Recapture of overpayment of child support due to various reasons, not only due to change in custody—(03/24/11 requested by Brandon Maxwell)~~
  - ~~Remedy: file civil suit, change OOA to reflect reduction in child support payments~~
  - ~~Federal regulations do not allow SPCH to collect debt owed by CP~~
  - ~~Needs to be a judicial determination that takes child's best interests into consideration~~
  - ~~Has to flow through support payment clearinghouse so payment record is accurate~~
  - ~~Suggests authority to statute to allow bench to (“shall”) address payment (offset) toward eliminating over or under-payment~~ **CONSENSUS TO LEAVE STATUTE AS IS AND FOCUS ON JUDICIAL TRAINING - (06/14/11)**
7. Downward modification overpayment – feedback from judiciary. Education issue Comm. Kupiszewski will speak with Judge Carey Hyatt
8. Capture of personal injury award monies from insurance companies and attorneys

GOALS FOR 2012:

1. Update statutory language to replace “interstate” to “intergovernmental” (non-UIFSA) statutes

1 25-504. Order of assignment; ex parte order of assignment; responsibilities;  
2 violation; termination

3 A. In a proceeding in which the court orders a person to pay support the court  
4 shall, and in a proceeding in which the court orders a person to pay spousal  
5 maintenance the court may, assign to the person or agency entitled to receive the  
6 support or spousal maintenance that portion of the person's income necessary to  
7 pay the amount ordered by the court. In a proceeding in which spousal  
8 maintenance is ordered to be paid the court shall order the assignment on either  
9 party's request.

10 B. A person who is obligated by an order to pay support or spousal maintenance,  
11 the person to whom support or spousal maintenance is ordered to be paid or the  
12 department or its agent in a title IV-D case may file a verified request with the clerk  
13 of the superior court requesting the clerk to issue an ex parte order of assignment  
14 for support or spousal maintenance. The ex parte order of assignment may include  
15 a payment for current support and any other support, current spousal maintenance,  
16 spousal maintenance arrearages and interest on spousal maintenance arrearages. A  
17 request filed by the department or its agent need not be verified. The request shall  
18 state:

- 19 1. The name of the person or agency entitled to receive support or spousal  
20 maintenance.
- 21 2. The monthly amount of any current support and the monthly amount of any  
22 spousal maintenance ordered by the court.
- 23 3. The specific amount requested for any support arrearages, spousal maintenance  
24 arrearages or interest.
- 25 4. The name and address of the payor to whom it is requested the order of  
26 assignment be directed and the name of the person obligated to pay support or  
27 spousal maintenance.

28 C. After receipt of a request for an ex parte order of assignment the clerk of the  
29 superior court, without a hearing or notice to the person obligated to pay support or  
30 spousal maintenance, shall issue an order of assignment of that portion of the  
31 person's income as is sufficient to pay the amount requested to the person or  
32 agency entitled to receive the support or spousal maintenance. The order of  
33 assignment shall include the social security number of the obligated person. On  
34 issuance of an ex parte order of assignment, the clerk shall issue a notice directed  
35 to the obligor in substantially the following form, which shall also be in Spanish:  
36 Notice

37 To: The obligor (the person ordered to pay support or spousal maintenance)  
38 This is to notify you that part of your income or other monies is being taken away  
39 by the enclosed order of assignment that was issued on a request for an order of  
40 assignment that also is enclosed. The order of assignment has been issued for  
41 currently accruing child support or spousal maintenance, or both, based on the  
42 requesting party's claim that you are obligated to pay this. In addition, the  
43 requesting party may be claiming a right to collect other support, as defined in  
44 section 25-500, Arizona Revised Statutes, arrearages on spousal maintenance or  
45 interest on a judgment for unpaid spousal maintenance.

46 If you believe the enclosed order of assignment is improper or unlawful, that your  
47 property is exempt by law or that your employer or other payor is withholding more

1 than is permitted by law, you may request a hearing before the superior court. You  
2 must file a request to terminate or adjust the order of assignment on forms  
3 provided by the clerk of the court within seven days after your receipt of the order  
4 for assignment, request for an order of assignment and this notice. If you request a  
5 hearing, it will be held no more than ten days after you file your request with the  
6 court.

7 Here are some other important things you should know:

8 The order of assignment is effective immediately on service of the order on your  
9 employer or another payor. The first employer or payor served shall not withhold or  
10 deduct amounts specified in the ex parte order of assignment for fourteen calendar  
11 days from the date of service to allow you, the obligor, an opportunity to contest  
12 the order of assignment as provided in section 25-504, Arizona Revised Statutes. A  
13 future employer or payor may begin deductions sooner than the fourteen day  
14 period after the order of assignment is received.

15 If you request a hearing, the court, after considering the financial resources of both  
16 parties and the reasonableness of the positions each party has taken, may order a  
17 party to pay a reasonable amount to the other for the attorney fees and costs of  
18 filing or defending the request.

19 Under state law (section 33-1131, Arizona Revised Statutes) no more than one-half  
20 of your disposable earnings for any pay period may be taken to satisfy an order  
21 issued for support or spousal maintenance. The amount of disposable earnings  
22 exempt from the order of assignment must be paid to you when due. Disposable  
23 income means the remaining portion of your wages, salary or compensation for  
24 personal services, including bonuses and commissions, or otherwise, and includes  
25 payments pursuant to a pension or retirement program or a deferred compensation  
26 plan, after deducting from such earnings the amounts required by law to be  
27 withheld.

28 An employer or other payor who receives the order of assignment may deduct from  
29 amounts due to you one dollar for each pay period, but not more than four dollars  
30 per month, for costs. The employer or payor also must deduct a monthly amount  
31 for the support payment handling fee required by state law (section 25-510,  
32 Arizona Revised Statutes).

33 The employer or other payor on whom the order of assignment is served will  
34 continue to withhold the amount set in the order and will forward the payment to  
35 the support payment clearinghouse until you file with the clerk one of the following:

- 36 1. A verified request to adjust the order of assignment, and the court adjusts the  
37 order of assignment because there has been a change of circumstances since the  
38 time of the issuance of the order or there is other good cause to do so.
- 39 2. A verified request for a hearing to terminate the order of assignment and, after a  
40 hearing, the court terminates the order of assignment if all obligations have been  
41 satisfied or will be satisfied within ninety days.
- 42 3. A notarized stipulation stating that the obligation to pay support or spousal  
43 maintenance has ended and that all arrearages either have been satisfied or have  
44 been waived, and the clerk terminates the order of assignment.

45 An employer may not refuse to hire, may not discharge or may not otherwise  
46 discipline you as a result of the order of assignment. If you are wrongfully refused  
47 employment, discharged or otherwise disciplined you may recover damages

1 suffered, plus reinstatement if appropriate, plus reasonable attorney fees and costs  
2 incurred against the employer.

3 Unless a court has expressly ordered otherwise, you must notify the clerk of the  
4 court or the support payment clearinghouse in writing of the address of your  
5 residence and of your employment and, within ten days, of a change in either one.  
6 Your failure to do so may subject you to sanctions for contempt of court, including  
7 reasonable attorney fees and costs pursuant to state law (section 25-504,  
8 subsection R, Arizona Revised Statutes). Official notices will be delivered to you at  
9 the most recent addresses you have provided to the clerk or support payment  
10 clearinghouse.

11 D. Any order of assignment shall be issued only for support, spousal maintenance,  
12 spousal maintenance arrearages, interest on spousal maintenance arrearages and  
13 handling fees. The order of assignment shall state the total amount that the payor  
14 shall withhold. The order of assignment also shall specify the monthly amount of  
15 current support and any other payment ordered for support, the monthly amount of  
16 any current spousal maintenance, the monthly amount of any spousal maintenance  
17 arrearages and any monthly interest payment. If the obligor's disposable earnings  
18 from the primary employer or other payor do not meet the support obligation, the  
19 court shall issue an order of assignment to a secondary employer or other payor of  
20 the obligor in order to meet the full support obligation.

21 E. An order of assignment shall be served on any employer or other payor by first  
22 class mail, electronic transmission or personal delivery or pursuant to the Arizona  
23 rules of family law procedure. The order of assignment is effective immediately on  
24 receipt by any employer or other payor and any future employer or future payor.  
25 Any employer or other payor of monies shall begin withholding no later than  
26 fourteen days after receipt of an order of assignment. The employer or other payor,  
27 if feasible, may begin withholding sooner than the fourteen day period if a payment  
28 to the obligor is due sooner.

29 F. Two copies of an ex parte order of assignment and of the request for an order of  
30 assignment, together with a copy of the notice required by this section, shall be  
31 served on any employer or other payor in the same manner as other orders of  
32 assignment under this section. Within five days after receipt, the employer or payor  
33 shall serve by personal delivery or by registered mail one copy of the ex parte order  
34 of assignment and of the request and the notice on the employee or other payee.  
35 The ex parte order of assignment is effective on any employer or other payor, and  
36 as an assignment by operation of law is effective on any future employers or other  
37 future payors, immediately on receipt. The first employer or other payor served  
38 shall not withhold or deduct amounts specified in the ex parte order of assignment  
39 for fourteen calendar days to allow the obligor an opportunity to contest the order  
40 of assignment as provided in this section. Any future employers or future payors  
41 shall begin withholding not later than fourteen days after receipt of an ex parte  
42 order of assignment but, if feasible, may begin withholding sooner than fourteen  
43 days if a payment to the obligor is due sooner.

44 G. After service of an ex parte order of assignment on the employer or payor that  
45 initially receives the order of assignment, an obligor may request a hearing to  
46 contest the ex parte order of assignment. The request shall be made in writing, and  
47 the obligor shall state under oath the specific reason for the request. The request

1 shall be filed with the court together with a notice of hearing form. The court shall  
2 hold a hearing within ten days after the request and notice of hearing form is filed.  
3 Immediately on the scheduling of the hearing, the obligor shall serve a copy of the  
4 request for and notice of hearing on the person entitled to receive support, and in a  
5 title IV-D case to the department. If the obligor files a request for hearing within  
6 seven days after receipt of the order of assignment, the court may order the  
7 support payment clearinghouse not to disburse any monies received pursuant to  
8 the order of assignment until further order of the court. The obligor may contest  
9 the withholding for any of the following reasons:  
10 1. There is an error in the identity of the obligor.  
11 2. There is an error in the amount of support or spousal maintenance.  
12 3. Invalidity of the order for support or spousal maintenance.  
13 4. Current support or spousal maintenance is no longer owed, if the order of  
14 assignment includes a payment for current support or spousal maintenance.  
15 5. Arrearages are not owed if the order of assignment includes a payment for  
16 arrearages.  
17 H. Any employer or other payor who has received any order of assignment shall  
18 withhold the amount specified in the order of assignment, together with the  
19 handling fee as provided in section 25-510, from the income of the person obligated  
20 to pay support or spousal maintenance and shall transmit the withheld monies to  
21 the support payment clearinghouse within two business days after the obligor is  
22 paid or after the payment to the obligor is due. The handling fee shall be deducted  
23 and transmitted monthly. For the cost of compliance the employer or payor may  
24 also withhold and retain an additional one dollar per payment but not more than  
25 four dollars per month for each obligor. An employer or payor may combine in a  
26 single payment withheld monies for more than one obligor, shall separately identify  
27 the portion of the remittance that is attributable to each obligor and shall include  
28 each obligor's social security number. An employer or payor shall notify the clerk or  
29 support payment clearinghouse in writing when the obligor is no longer employed  
30 or the right to receive income or other monies has been terminated. The employer  
31 or payor shall also notify the clerk or support payment clearinghouse in writing of  
32 the obligor's social security number and last known address and the name and  
33 address of the obligor's new employer, if known, within ten days. In a non-title IV-  
34 D case, within ten days after receiving this information the support payment  
35 clearinghouse shall notify the clerk of the superior court in the county where the  
36 support or maintenance order was issued. If within ninety days of the last payment,  
37 the employer or other payor reemploys the obligor or becomes obligated to pay the  
38 obligor, the employer or payor is again bound by the order of assignment and is  
39 required to perform as required by this section. In a title IV-D case the order of  
40 assignment may be reinstated pursuant to section 25-505.01. An employer or  
41 payor who fails without good cause to comply with the terms of an order of  
42 assignment is liable for amounts not paid to the clerk or support payment  
43 clearinghouse pursuant to the order of assignment and reasonable attorney fees,  
44 costs and other expenses incurred in procuring compliance and may be subject to  
45 contempt.  
46 I. If a person is obligated to pay child support for more than one family and the  
47 amount available for withholding is not sufficient to meet the total combined

1 current child support obligation, any monies withheld from the obligor's income  
2 shall be allocated to each family by the employer or payor as follows:

3 1. The amount of current child support ordered in each case shall be added  
4 together to obtain the total current child support obligation.

5 2. The amount of current child support ordered in each case shall be divided by the  
6 total current child support obligation to obtain the percentage of the total current  
7 child support obligation to be allocated to each case.

8 3. The amount withheld from the obligor shall be multiplied by the percentage for  
9 each case to obtain the amount to be allocated to each case.

10 J. The person or agency entitled to receive support or spousal maintenance shall  
11 notify the clerk of the superior court or support payment clearinghouse in writing of  
12 any change of residential address and of any other information required pursuant to  
13 section 46-443, within ten days of any change. If after reasonable efforts to locate  
14 the obligee the clerk or support payment clearinghouse is unable to deliver  
15 payments under an order of assignment for the period prescribed in section 25-503  
16 due to the failure of an obligee to comply with the notice requirement of this  
17 subsection, the clerk or support payment clearinghouse shall not make further  
18 payment under the order of assignment and shall return payments to the obligor as  
19 prescribed in section 25-503. Under these circumstances the court, clerk or  
20 department or its agent shall order the release of the employer or payor from the  
21 order of assignment on request of the employer, the payor, the department or its  
22 agent or on the clerk's own initiative. Any order of assignment from which an  
23 employer or payor has been released may be reinstated by following the procedures  
24 for obtaining an ex parte order of assignment pursuant to this section or, in a title  
25 IV-D case, an administrative income withholding order pursuant to section 25-  
26 505.01.

27 K. Unless a court has ordered otherwise, the person ordered to pay support or  
28 spousal maintenance shall notify the clerk of the superior court or the support  
29 payment clearinghouse in writing of the obligor's residential address and the name  
30 and address of any employer, and within ten days of any change. Failure to do so  
31 may subject the person to sanctions for contempt of court, including reasonable  
32 attorney fees and costs.

33 L. Any order of assignment may be adjusted if there has been a change of  
34 circumstances since the date the order of assignment was issued or for good cause.  
35 The department or its agent or a person obligated to pay or entitled to receive  
36 support or spousal maintenance shall file with the clerk of the superior court a  
37 request to adjust the order of assignment and a proposed order of assignment. The  
38 request shall specify the adjustment sought and the reason for the request. A copy  
39 of the request shall be served pursuant to the Arizona rules of family law  
40 procedure, or by the department or its agent in a title IV-D case by first class mail,  
41 on all other parties and on the state if the department is providing title IV-D  
42 support services or has a claim for arrearages. The party receiving the request and  
43 proposed order may request a hearing within twenty days or within thirty days if  
44 service is made outside this state. On proof of service and if a hearing has not been  
45 requested within the time allowed, the clerk shall issue the order of assignment as  
46 appropriate. Within two business days after the date the order of assignment is  
47 issued, the clerk shall transmit a copy of the order of assignment to the employer

1 or payor, the department or its agent and all parties. Unless ordered otherwise by  
2 the court, in a title IV-D case any order of assignment may be adjusted pursuant to  
3 section 25-505.01.

4 M. The department or its agent or a person obligated to pay or entitled to receive  
5 support or spousal maintenance may file a request to terminate any order of  
6 assignment if the obligation to pay support or spousal maintenance has ended or  
7 will end within ninety days after the filing of the request and if all arrearages either  
8 have been paid or will be paid within the period or have been waived. The request  
9 shall state the reason why termination is requested and shall contain the name and  
10 address of the employer or payor of the person obligated to pay support. A copy of  
11 the request shall be served pursuant to the Arizona rules of family law procedure,  
12 or by the department or its agent in a title IV-D case by first class mail, on all other  
13 parties and on the state if the department is providing title IV-D support services or  
14 has a claim for arrearages. A party receiving this notice may request a hearing  
15 within twenty days or within thirty days if service is made outside this state. On  
16 proof of service and if a hearing has not been requested within the time allowed,  
17 the clerk shall issue an order terminating the order of assignment as appropriate.  
18 Within two business days after the date the order is issued, the clerk shall transmit  
19 a copy of the order terminating the order of assignment to the employer or payor  
20 and to the department or its agent. If a hearing is requested, the court shall set the  
21 hearing within twenty days after receiving the request and shall issue an  
22 appropriate order. A person who is ordered to pay support may request the court to  
23 terminate an order of assignment at any time if an employer is making deductions  
24 on multiple assignments for an obligation for the same minor children.  
25 Notwithstanding any law to the contrary, the clerk shall not charge a fee to a  
26 person who files a request to terminate an order of assignment if an employer is  
27 making deductions on multiple assignments for an obligation for the same minor  
28 children.

29 N. If a request to adjust or terminate an order of assignment is filed, the court in its  
30 discretion may order that the clerk of the superior court or support payment  
31 clearinghouse not disburse any monies in dispute until further order of the court.

32 O. The clerk of the superior court shall issue an order terminating the order of  
33 assignment if the parties, including the department or its agent in a title IV-D case,  
34 file a notarized stipulation with the clerk that all obligations of support or spousal  
35 maintenance have been satisfied and that the obligor is no longer obligated to pay  
36 support or spousal maintenance. The stipulation shall state that the current  
37 obligation of support or spousal maintenance no longer exists and that all  
38 arrearages either have been satisfied or waived. The stipulation shall also contain  
39 the name and address of the employer or payor of the person obligated to pay  
40 support or spousal maintenance. Within five business days after the date the  
41 stipulation is filed, the clerk shall transmit a copy of the order terminating the order  
42 of assignment to the employer or payor and to the department or its agent.  
43 Notwithstanding any law to the contrary, the clerk shall not charge a fee to a party  
44 who files a stipulation pursuant to this subsection.

45 P. An assignment ordered pursuant to this section has priority over all other  
46 executions, attachments or garnishments. An obligation for current child support  
47 shall be fully met before any payments pursuant to an order of assignment may be

1 applied to any other support obligation. An assignment ordered under this section  
2 does not apply to amounts made exempt under section 33-1131 or any other  
3 applicable exemption law.

4 Q. Any employer or other payor shall not refuse to hire a person and shall not  
5 discharge or otherwise discipline an obligor because of service of an order of  
6 assignment authorized by this section. An employer or payor who refuses to hire a  
7 person or who discharges or otherwise disciplines an employee or obligor because  
8 of service of an order of assignment is subject to contempt and sanctions as may  
9 be ordered by the court. A person who is wrongfully refused employment,  
10 wrongfully discharged or otherwise disciplined is entitled to recover damages  
11 sustained by the prohibited conduct, reinstatement, if appropriate, and attorney  
12 fees and costs incurred.

13 R. In any proceeding under this section the court, after considering the financial  
14 resources of the parties and the reasonableness of the positions each party has  
15 taken, may order a party to pay a reasonable amount to another party for the costs  
16 and expenses, including attorney fees, of maintaining or defending the proceeding.  
17

1 25-323. Assignments

2 A. Pursuant to the requirements of section 25-504, in any proceeding in which the  
3 court orders a person to pay support as defined in section 25-500 the court shall,  
4 and in any proceeding in which the court orders a person to pay spousal  
5 maintenance the court may, assign to the person or agency entitled to receive the  
6 support or spousal maintenance that portion of that person's earnings, income,  
7 entitlements or other monies without regard to source as necessary to pay the  
8 amount ordered by the court.

9 B. The court may also issue an ex parte order of assignment pursuant to section  
10 25-504 for support as defined in section 25-500, spousal maintenance or  
11 arrearages of or interest on a judgment for spousal maintenance.

12 C. The court may terminate or adjust orders of assignment pursuant to section 25-  
13 504.

14

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**THE OFFICE OF CHILD SUPPORT ENFORCEMENT***Giving Hope and Support to America's Children***ACTION TRANSMITTAL****AT-11-05****DATE:** May 16, 2011

**ATTACHMENTS:** [OMB 0970-0154 Form Final](#)  
[OMB 0970-0154 Form Instructions Final](#)  
[Federal and State Legislative Requirements: Income Withholding and the State Disbursement Unit](#)

**TO:** State and Tribal Agencies Administering Child Support Enforcement Plans under Title IV-D of the Social Security Act and Other Interested Individuals

**SUBJECT:** Revised Income Withholding for Support (IWO) Form

**BACKGROUND:** Statutory requirements under sections 466(a)(1), (a)(8) and 466(b)(6) of the Social Security Act (the Act) require the use of the Income Withholding for Support (IWO) form in all IV-D cases, and in non-IV-D cases with orders initially issued in the state on or after January 1, 1994. The interim final rule issued on February 9, 1999 [64 FR 6237] implemented section 466(b)(6)(A)(ii) of the Act requiring the use of the OMB-approved IWO form (OMB 0970-0154) [see 45 CFR 303.100 (e)(1)]. Private firms, attorneys, and courts authorized under state law to issue IWOs must use the OMB-approved IWO form for all child support income withholding by employers. We urge states to review their income withholding procedures and state plan pre-print pages 2.12-1, 2.12-8, and 2.12-8B to ensure compliance with the income withholding requirements.

Tribes that operate IV-D programs (i.e., child support programs established in accordance with Title IV-D of the Act) are required to use the IWO form. This requirement was established with the publication of the Final Rule for Tribal Child Support Enforcement Programs on March 30, 2004 [69 FR 16638].

**Changes to the IWO Form**

Comments were solicited for revisions to the IWO form via the Federal Register on June 30, 2010 [75 FR 37816]. The IWO form and instructions were updated for consistency and clarity in light of numerous comments suggesting changes. Key changes include:

- **Elimination of shading:** Shading of sections in the existing IWO form causes problems when it is faxed to employers/income withholders. Vital information is obscured, requiring employers to contact states to resend the form. We removed the shading in the IWO.
- **Requirement of underlying order:** We reworded the note on page one to clarify that if the employer or income withholder receives this document from someone other than a state or tribal child support agency or a court, a copy of the underlying order containing a provision authorizing income withholding must be attached.
- **Remittance identifier:** To prominently display the remittance identifier, we moved it to page one above the case and order identifier. This will ensure employers/income withholders are using the remittance identifier when submitting payments.
- **Checkbox for employer returns:** We added a checkbox on page two of the form for the employer to indicate that the IWO is being returned because it does not direct payments to the State Disbursement Unit (SDU) or the IWO is not regular on its face. Instructions for this box are located on page two of the form, under "Payments to SDU".
- **Employment termination section:** We expanded the notification of employment termination section to include change in income status.
- **Instructions to reject and return invalid IWOs:** We provided guidance in the instructions to the form that indicate the circumstances under which an IWO must be rejected and returned to sender.

**Approach for Improving the Income Withholding Process**

As stated in DCL-10-14, the federal Office of Child Support Enforcement convened a group of employers, members of the judiciary, and state and federal child support representatives to discuss items that could be addressed to improve the income withholding process and to develop an approach for implementing the improvements. We carefully considered the comments received as we developed the following approach to improve the income withholding process.

**IWOs issued on or after 05/31/11 (i.e., new IWOs)**

1. If the IWO is not directed to the SDU as required by federal law [section 454B of the Act] then the employer should reject the IWO and return it to the sender, effective immediately.
2. If the employer receives a document to withhold income that is not issued on the OMB-approved IWO form as required by federal law (section 466(a)(8) and 466(b)(6)(A)(ii) of the Act) then the employer must reject the document and return it to the sender, effective 05/31/12.

**IWOs issued before 05/31/11 (i.e., IWOs already processed by employer)\***

1. If the IWO is not directed to the SDU as required by federal law (section 454B of the Act) then the employer should contact the state child support enforcement (CSE) agency in the state that issued the underlying support order on a

case-by-case basis to request a revised IWO directing payment to the SDU. The state may use procedures under section 466(c)(1)(E) of the Act, upon providing notice to the obligor and obligee, to direct the obligor or other payor to change the payment destination to the SDU. The employer should continue to send payments to the non-SDU address until the state CSE agency or sender issues a revised IWO directing payment to the SDU.

2. If income withholding is not issued on the OMB-approved IWO form as required by federal law (section 466(a)(8) and 466(b)(6)(A)(ii) of the Act) and the order presents a problem for the employer (i.e., insufficient information to process the IWO) or the order has been modified, then the employer should contact the sender to request an OMB-approved IWO form. The employer should continue withholding income until a new OMB-approved IWO form is received.

\*Please note: If the underlying support order meets any of the following criteria, then there is no requirement for states to process income withholding payments through the SDU:

1. support order initially issued in the state before January 1, 1994 and has never been modified; or
2. support order initially issued in the state before January 1, 1994 and has no arrearages; or
3. support order initially issued in the state before January 1, 1994 and is not associated with a IV-D case.

Attached is a copy of the revised Income Withholding for Support (IWO) form, as required by sections 452(a)(11), 454(9)(E), 466(a)(1), (a)(8) and 466(b)(6) of the Act. Also attached are the instructions to the revised form. The Federal and State Legislative Requirements: Income Withholding and the State Disbursement Unit question and answer document is attached to clarify federal requirements regarding the income withholding process.

**SUPERSEDED MATERIAL:** AT-07-07, AT-04-05, AT-01-07, AT-98-03

**REFERENCES:** AT-97-12, AT-97-04

**EFFECTIVE DATE:** States, tribes, and others should begin using this form immediately. States that need additional time to implement use of the IWO form are directed to continue to honor previous forms until 05/31/12, when the requirement for states to use the OMB-approved IWO form must be implemented. The form and instructions are available at <http://www.acf.hhs.gov/programs/cse/forms/>.

**INQUIRIES:** Please contact your ACF/OCSE Regional Program Manager if you have any questions.

Sincerely,

Vicki Turetsky  
Commissioner  
Office of Child Support Enforcement

cc: ACF/OCSE Regional Program Managers  
Tribal IV-D Directors

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## INCOME WITHHOLDING FOR SUPPORT

- ORIGINAL INCOME WITHHOLDING ORDER/NOTICE FOR SUPPORT (IWO)
- AMENDED IWO
- ONE-TIME ORDER/NOTICE FOR LUMP SUM PAYMENT
- TERMINATION of IWO

Date: \_\_\_\_\_

Child Support Enforcement (CSE) Agency     Court     Attorney     Private Individual/Entity (Check One)

**NOTE:** This IWO must be regular on its face. Under certain circumstances you must reject this IWO and return it to the sender (see IWO instructions <http://www.acf.hhs.gov/programs/cse/newhire/employer/publication/publication.htm> - forms). If you receive this document from someone other than a State or Tribal CSE agency or a Court, a copy of the underlying order must be attached.

State/Tribe/Territory \_\_\_\_\_ Remittance Identifier (include w/payment) \_\_\_\_\_  
 City/County/Dist./Tribe \_\_\_\_\_ Order Identifier \_\_\_\_\_  
 Private Individual/Entity \_\_\_\_\_ CSE Agency Case Identifier \_\_\_\_\_

_____ Employer/Income Withholder's Name _____ Employer/Income Withholder's Address _____ _____ _____ Employer/Income Withholder's FEIN _____ _____ Child(ren)'s Name(s) (Last, First, Middle) _____ _____ _____ _____ _____	RE: _____ Employee/Obligor's Name (Last, First, Middle) _____ Employee/Obligor's Social Security Number _____ Custodial Party/Obligee's Name (Last, First, Middle) _____ <div style="border: 1px solid black; width: 100%; height: 100%; margin-top: 20px;"></div>
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**ORDER INFORMATION:** This document is based on the support or withholding order from \_\_\_\_\_ (State/Tribe). You are required by law to deduct these amounts from the employee/obligor's income until further notice.

\$ \_\_\_\_\_ Per \_\_\_\_\_ current child support  
 \$ \_\_\_\_\_ Per \_\_\_\_\_ past-due child support - **Arrears greater than 12 weeks?**  Yes  No  
 \$ \_\_\_\_\_ Per \_\_\_\_\_ current cash medical support  
 \$ \_\_\_\_\_ Per \_\_\_\_\_ past-due cash medical support  
 \$ \_\_\_\_\_ Per \_\_\_\_\_ current spousal support  
 \$ \_\_\_\_\_ Per \_\_\_\_\_ past-due spousal support  
 \$ \_\_\_\_\_ Per \_\_\_\_\_ other (must specify) \_\_\_\_\_  
 for a **Total Amount to Withhold** of \$ \_\_\_\_\_ per \_\_\_\_\_.

**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:

\$ \_\_\_\_\_ per weekly pay period                      \$ \_\_\_\_\_ per semimonthly pay period (twice a month)  
 \$ \_\_\_\_\_ per biweekly pay period (every two weeks) \$ \_\_\_\_\_ per monthly pay period  
 \$ \_\_\_\_\_ **Lump Sum Payment:** Do not stop any existing IWO unless you receive a termination order.

**REMITTANCE INFORMATION:** If the employee/obligor's principal place of employment is \_\_\_\_\_ (State/Tribe), you must begin withholding no later than the first pay period that occurs \_\_\_\_\_ days after the date of \_\_\_\_\_. Send payment within \_\_\_\_\_ working days of the pay date. If you cannot withhold the full amount of support for any or all orders for this employee/obligor, withhold up to \_\_\_\_\_% of disposable income for all orders. If the employee/obligor's principal place of employment is not \_\_\_\_\_ (State/Tribe), obtain withholding limitations, time requirements, and any allowable employer fees at [http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact\\_map.htm](http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact_map.htm) for the employee/obligor's principal place of employment.

For electronic payment requirements and centralized payment collection and disbursement facility information (State Disbursement Unit [SDU]), see [http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact\\_map.htm](http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact_map.htm).

Include the **Remittance Identifier with the payment** and if necessary this FIPS code: \_\_\_\_\_ .

**Remit payment to** \_\_\_\_\_ (SDU/Tribal Order Payee)  
at \_\_\_\_\_ (SDU/Tribal Payee Address)

**Return to Sender [Completed by Employer/Income Withholder].** Payment must be directed to an SDU in accordance with 42 USC §666(b)(5) and (b)(6) or Tribal Payee (see Payments to SDU below). If payment is not directed to an SDU/Tribal Payee or this IWO is not regular on its face, you *must* check this box and return the IWO to the sender.

Signature of Judge/Issuing Official (if required by State or Tribal law): _____ Print Name of Judge/Issuing Official: _____ Title of Judge/Issuing Official: _____ Date of Signature: _____
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If the employee/obligor works in a State or for a Tribe that is different from the State or Tribe that issued this order, a copy of this IWO must be provided to the employee/obligor.

If checked, the employer/income withholder must provide a copy of this form to the employee/obligor.

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### ADDITIONAL INFORMATION FOR EMPLOYERS/INCOME WITHHOLDERS

State-specific contact and withholding information can be found on the Federal Employer Services website located at: [http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact\\_map.htm](http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact_map.htm)

**Priority:** Withholding for support has priority over any other legal process under State law against the same income (USC 42 §666(b)(7)). If a Federal tax levy is in effect, please notify the sender.

**Combining Payments:** When remitting payments to an SDU or Tribal CSE agency, you may combine withheld amounts from more than one employee/obligor's income in a single payment. You must, however, separately identify each employee/obligor's portion of the payment.

**Payments To SDU:** You must send child support payments payable by income withholding to the appropriate SDU or to a Tribal CSE agency. If this IWO instructs you to send a payment to an entity other than an SDU (e.g., payable to the custodial party, court, or attorney), you must check the box above and return this notice to the sender. Exception: If this IWO was sent by a Court, Attorney, or Private Individual/Entity and the initial order was entered before January 1, 1994 or the order was issued by a Tribal CSE agency, you must follow the "Remit payment to" instructions on this form.

**Reporting the Pay Date:** You must report the pay date when sending the payment. The pay date is the date on which the amount was withheld from the employee/obligor's wages. You must comply with the law of the State (or Tribal law if applicable) of the employee/obligor's principal place of employment regarding time periods within which you must implement the withholding and forward the support payments.

**Multiple IWOs:** If there is more than one IWO against this employee/obligor and you are unable to fully honor all IWOs due to Federal, State, or Tribal withholding limits, you must honor all IWOs to the greatest extent possible, giving priority to current support before payment of any past-due support. Follow the State or Tribal law/procedure of the employee/obligor's principal place of employment to determine the appropriate allocation method.

**Lump Sum Payments:** You may be required to notify a State or Tribal CSE agency of upcoming lump sum payments to this employee/obligor such as bonuses, commissions, or severance pay. Contact the sender to determine if you are required to report and/or withhold lump sum payments.

**Liability:** If you have any doubts about the validity of this IWO, contact the sender. If you fail to withhold income from the employee/obligor's income as the IWO directs, you are liable for both the accumulated amount you should have withheld and any penalties set by State or Tribal law/procedure. \_\_\_\_\_

**Anti-discrimination:** You are subject to a fine determined under State or Tribal law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against an employee/obligor because of this IWO. \_\_\_\_\_

Employer's Name: \_\_\_\_\_ Employer FEIN: \_\_\_\_\_  
Employee/Obligor's Name: \_\_\_\_\_  
CSE Agency Case Identifier: \_\_\_\_\_ Order Identifier: \_\_\_\_\_

**Withholding Limits:** You may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (CCPA) (15 U.S.C. 1673(b)); or 2) the amounts allowed by the State or Tribe of the employee/obligor's principal place of employment (see *REMITTANCE INFORMATION*). Disposable income is the net income left after making mandatory deductions such as: State, Federal, local taxes; Social Security taxes; statutory pension contributions; and Medicare taxes. The Federal limit is 50% of the disposable income if the obligor is supporting another family and 60% of the disposable income if the obligor is not supporting another family. However, those limits increase 5% - to 55% and 65% - if the arrears are greater than 12 weeks. If permitted by the State or Tribe, you may deduct a fee for administrative costs. The combined support amount and fee may not exceed the limit indicated in this section.

For Tribal orders, you may not withhold more than the amounts allowed under the law of the issuing Tribe. For Tribal employers/income withholders who receive a State IWO, you may not withhold more than the lesser of the limit set by the law of the jurisdiction in which the employer/income withholder is located or the maximum amount permitted under section 303(d) of the CCPA (15 U.S.C. 1673 (b)).

Depending upon applicable State or Tribal law, you may need to also consider the amounts paid for health care premiums in determining disposable income and applying appropriate withholding limits.

**Arrears greater than 12 weeks?** If the *Order Information* does not indicate that the arrears are greater than 12 weeks, then the Employer should calculate the CCPA limit using the lower percentage.

**Additional Information:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTIFICATION OF EMPLOYMENT TERMINATION OR INCOME STATUS:** If this employee/obligor never worked for you or you are no longer withholding income for this employee/obligor, an employer must promptly notify the CSE agency and/or the sender by returning this form to the address listed in the Contact Information below:

- This person has never worked for this employer nor received periodic income.
- This person no longer works for this employer nor receives periodic income.

Please provide the following information for the employee/obligor:

Termination date: \_\_\_\_\_ Last known phone number: \_\_\_\_\_

Last known address: \_\_\_\_\_  
\_\_\_\_\_

Final payment date to SDU/ Tribal Payee: \_\_\_\_\_ Final payment amount: \_\_\_\_\_

New employer's name: \_\_\_\_\_

New employer's address: \_\_\_\_\_  
\_\_\_\_\_

**CONTACT INFORMATION:**

**To Employer/Income Withholder:** If you have any questions, contact \_\_\_\_\_ (Issuer name)  
by phone at \_\_\_\_\_, by fax at \_\_\_\_\_, by email or website at: \_\_\_\_\_ .

Send termination/income status notice and other correspondence to: \_\_\_\_\_  
\_\_\_\_\_ (Issuer address).

**To Employee/Obligor:** If the employee/obligor has questions, contact \_\_\_\_\_ (Issuer name)  
by phone at \_\_\_\_\_, by fax at \_\_\_\_\_, by email or website at \_\_\_\_\_ .

## INCOME WITHHOLDING FOR SUPPORT - Instructions

The Income Withholding for Support (IWO) is the OMB-approved form used for income withholding in Tribal, intrastate, and interstate cases as well as all child support orders which are initially issued in the State on or after January 1, 1994, and all child support orders which are initially issued (or modified) in the State before January 1, 1994 if arrearages occur. This form is the standard format prescribed by the Secretary in accordance with USC 42 §666(b)(6)(A)(ii). Except as noted, the following information must be included.

### Please note:

- For the purpose of this IWO form and these instructions, "State" is defined as a State or Territory.

### COMPLETED BY SENDER:

- 1a. **Original Income Withholding Order/Notice for Support (IWO).** Check the box if this is an original IWO.
- 1b. **Amended IWO.** Check the box to indicate that this form amends a previous IWO. Any changes to an IWO must be done through an amended IWO.
- 1c. **One-Time Order/Notice For Lump Sum Payment.** Check the box when this IWO is to attach a one-time collection of a lump sum payment. When this box is checked, enter the amount in field 14, Lump Sum Payment, in the *Amounts to Withhold* section. Additional IWOs must be issued to collect subsequent lump sum payments.
- 1d. **Termination of IWO.** Check the box to stop income withholding on an IWO. Complete all applicable identifying information to aid the employer/income withholder in terminating the correct IWO.
- 1e. **Date.** Date this form is completed and/or signed.
- 1f. **Child Support Enforcement (CSE) Agency, Court, Attorney, Private Individual/Entity (Check One).** Check the appropriate box to indicate which entity is sending the IWO. If this IWO is **not** completed by a State or Tribal CSE agency, the sender should contact the CSE agency (see [http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact\\_map.htm](http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact_map.htm)) to determine if the CSE agency needs a copy of this form to facilitate payment processing.

### NOTE TO EMPLOYER/INCOME WITHHOLDER:

This IWO must be regular on its face. Under the following circumstances, the IWO must be rejected and returned to sender:

- IWO instructs the employer/income withholder to send a payment to an entity other than a State Disbursement Unit (e.g., payable to the custodial party, court, or attorney). Each State is required to operate a State Disbursement Unit (SDU), which is a centralized facility for collection and disbursement of child support payments. Exception: If this IWO is issued by a Court, Attorney, or Private Individual/Entity and the initial child support order was entered before January 1, 1994 or the order was issued by a Tribal CSE agency, the employer/income withholder must follow the payment instructions on the form.
- Form does not contain all information necessary for the employer to comply with the withholding.
- Form is altered or contains invalid information.
- Amount to withhold is not a dollar amount.
- Sender has not used the OMB-approved form for the IWO (effective May 31, 2012).
- A copy of the underlying order is required and not included.

If you receive this document from an Attorney or Private Individual/Entity, a copy of the underlying order containing a provision authorizing income withholding must be attached.

## COMPLETED BY SENDER:

- 1g. **State/Tribe/Territory.** Name of State or Tribe sending this form. This must be a governmental entity of the State or a Tribal organization authorized by a Tribal government to operate a CSE program. If you are a Tribe submitting this form on behalf of another Tribe, complete line 1i.
- 1h. **Remittance Identifier (include w/payment).** Identifier that employers must include when sending payments for this IWO. The remittance identifier is entered as the case identifier on the Electronic Funds Transfer/Electronic Data Interchange (EFT/EDI) record.

## NOTE TO EMPLOYER/INCOME WITHHOLDER:

The employer/income withholder must use the Remittance Identifier when remitting payments so the SDU or Tribe can identify and apply the payment correctly. The remittance identifier is entered as the case identifier on the EFT/EDI record.

## COMPLETED BY SENDER:

- 1i. **City/County/Dist./Tribe.** Name of the city, county or district sending this form. This must be a governmental entity of the State or the name of the Tribe authorized by a Tribal government to operate a CSE program for which this form is being sent. (A Tribe should leave this field blank unless submitting this form on behalf of another Tribe.)
- 1j. **Order Identifier.** Unique identifier that is associated with a specific child support obligation. It could be a court case number, docket number, or other identifier designated by the sender.
- 1k. **Private Individual/Entity.** Name of the private individual/entity or non-IV-D Tribal CSE organization sending this form.
- 1l. **CSE Agency Case Identifier.** Unique identifier assigned to a State or Tribal CSE case. In a State CSE case, this is the identifier that is reported to the Federal Case Registry (FCR). For Tribes this would be either the FCR identifier or other applicable identifier.

Fields 2 and 3 refer to the employee/obligor's employer/income withholder and specific case information.

- 2a. **Employer/Income Withholder's Name.** Name of employer or income withholder.
- 2b. **Employer/Income Withholder's Address.** Employer/income withholder's mailing address including street/PO box, city, state and zip code. (This may differ from the employee/obligor's work site.) If the employer/income withholder is a federal government agency, the IWO should be sent to the address listed under Federal Agencies – Addresses for Income Withholding Purposes at [http://www.acf.hhs.gov/programs/cse/newhire/contacts/iw\\_fedcontacts.htm](http://www.acf.hhs.gov/programs/cse/newhire/contacts/iw_fedcontacts.htm).
- 2c. **Employer/Income Withholder's FEIN.** Employer/income withholder's nine-digit Federal Employer Identification Number (FEIN) (if available).
- 3a. **Employee/Obligor's Name.** Employee/obligor's last name, first name, middle name.
- 3b. **Employee/Obligor's Social Security Number.** Employee/obligor's Social Security number or other taxpayer identification number.
- 3c. **Custodial Party/Obligee's Name.** Custodial party/obligee's last name, first name, middle name.
- 3d. **Child(ren)'s Name(s).** Child(ren)'s last name(s), first name(s), middle name(s). (Note: If there are more than six children for this IWO, list additional children's names and birth dates in field 33 - Additional Information).

- 3e. **Child(ren)'s Birth Date(s).** Date of birth for each child named.
- 3f. **Blank box.** Space for court stamps, bar codes, or other information.

**ORDER INFORMATION** - Fields 5 through 12 identify the dollar amount to withhold for a specific kind of support (taken directly from the support order) for a specific time period.

### **NOTE TO EMPLOYER/INCOME WITHHOLDER:**

Payments are forwarded to the SDU within each State, unless the order was issued by a Tribal CSE agency. If the order was issued by a Tribal CSE agency, the employer/income withholder must follow the remittance instructions on the form.

### **COMPLETED BY SENDER:**

- 4. **State/Tribe.** Name of the State or Tribe that issued the order.
- 5a-b. **Current Child Support.** Dollar amount to be withheld **per** the time period (e.g., week, month) specified in the underlying order.
- 6a-b. **Past-due Child Support.** Dollar amount to be withheld **per** the time period (e.g., week, month) specified in the underlying order.
- 6c. **Arrears Greater Than 12 Weeks?** The appropriate box (Yes/No) must be checked indicating whether arrears are greater than 12 weeks so the employer/income withholder can determine the withholding limit.
- 7a-b. **Current Cash Medical Support.** Dollar amount to be withheld **per** the time period (e.g., week, month) specified in the underlying order.
- 8a-b. **Past-due Cash Medical Support.** Dollar amount to be withheld **per** the time period (e.g., week, month) specified in the underlying order.
- 9a-b. **Current Spousal Support.** (Alimony) dollar amount to be withheld **per** the time period (e.g., week, month) specified in the underlying order.
- 10a-b. **Past-due Spousal Support.** (Alimony) dollar amount to be withheld **per** the time period (e.g., week, month) specified in the underlying order.
- 11a-c. **Other.** Miscellaneous obligations dollar amount to be withheld **per** the time period (e.g., week, month) specified in the underlying order. **Must specify.** Description of the obligation.
- 12a-b. **Total Amount to Withhold.** The total amount of the deductions **per** the corresponding time period. Fields 5a, 6a, 7a, 8a, 9a, 10a, and 11a should total the amount in 12a.

**AMOUNTS TO WITHHOLD** - Fields 13a through 13d specify the dollar amount to be withheld for this IWO if the employer/income withholder's pay cycle does not correspond with field 12b.

- 13a. **Per Weekly Pay Period.** Total amount an employer/income withholder should withhold if the employee/obligor is paid weekly.
- 13b. **Per Semimonthly Pay Period.** Total amount an employer/income withholder should withhold if the employee/obligor is paid twice a month.

- 13c. **Per Biweekly Pay Period.** Total amount an employer/income withholder should withhold if the employee/obligor is paid every two weeks.
- 13d. **Per Monthly Pay Period.** Total amount an employer/income withholder should withhold if the employee/obligor is paid once a month.
14. **Lump Sum Payment.** Dollar amount to be withheld when the IWO is used to attach a lump sum payment. This field should be used when field 1c is checked.

#### **REMITTANCE INFORMATION**

15. **State/Tribe.** Name of the State or Tribe sending this document.
16. **Days.** Number of days after the effective date noted in field 17 in which withholding must begin according to the State or Tribal laws/procedures for the employee/obligor's principal place of employment.
17. **Date.** Effective date of this IWO.
18. **Working Days.** Number of working days within which an employer/income withholder must remit amounts withheld pursuant to the State or Tribal laws/procedures of the principal place of employment.
19. **% of Disposable Income.** The percentage of disposable income that may be withheld from the employee/obligor's paycheck.

#### **NOTE TO EMPLOYER/INCOME WITHHOLDER:**

For State orders, the employer/income withholder may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C. § 1673(b)); or 2) the amounts allowed by the State of the employee/obligor's principal place of employment.

For Tribal orders, the employer/income withholder may not withhold more than the amounts allowed under the law of the issuing Tribe. For Tribal employer/income withholders who receive a State order, the employer/income withholder may not withhold more than the limit set by the law of the jurisdiction in which the employer/income withholder is located or the maximum amount permitted under section 303(d) of the Federal Consumer Credit Protection Act (15 U.S.C. §1673 (b)).

A federal government agency may withhold from a variety of incomes and forms of payment, including voluntary separation incentive payments (buy-out payments), incentive pay, and cash awards. For a more complete list, see 5 Code of Federal Regulations (CFR) 581.103.

#### **COMPLETED BY SENDER:**

20. **State/Tribe.** Name of the State or Tribe sending this document.
21. **Document Tracking Identifier.** Optional unique identifier for this form assigned by the sender.
22. **FIPS Code.** Federal Information Processing Standards (FIPS) code.
23. **SDU/Tribal Order Payee.** Name of SDU (or payee specified in the underlying Tribal support order) to which payments are required to be sent. Federal law requires payments made by IWO to be sent to the SDU except for payments in which the initial child support order was entered before January 1, 1994 or payments in Tribal CSE orders.

24. **SDU/Tribal Payee Address.** Address of the SDU (or payee specified in the underlying Tribal support order) to which payments are required to be sent. Federal law requires payments made by IWO to be sent to the SDU except for payments in which the initial child support order was entered before January 1, 1994 or payments in Tribal CSE orders.

#### **COMPLETED BY EMPLOYER/INCOME WITHHOLDER:**

25. **Return to Sender Checkbox.** The employer/income withholder should check this box and return the IWO to the sender if this IWO is not payable to an SDU or Tribal Payee or this IWO is not regular on its face. Federal law requires payments made by IWO to be sent to the SDU except for payments in which the initial child support order was entered before January 1, 1994 or payments in Tribal CSE orders.

#### **COMPLETED BY SENDER:**

26. **Signature of Judge/Issuing Official.** Signature (if required by State or Tribal law) of the official authorizing this IWO.
27. **Print Name of Judge/Issuing Official.** Name of the official authorizing this IWO.
28. **Title of Judge/Issuing Official.** Title of the official authorizing this IWO.
29. **Date of Signature.** Optional date the judge/issuing official signs this IWO.
30. **Copy of IWO checkbox.** If checked, the employer/income withholder is required to provide a copy of the IWO to the employee/obligor.

#### **ADDITIONAL INFORMATION FOR EMPLOYERS/INCOME WITHHOLDERS**

The following fields refer to Federal, State, or Tribal laws that apply to issuing an IWO to an employer/income withholder. State- or Tribal-specific information may be included only in the fields below.

#### **COMPLETED BY SENDER:**

31. **Liability.** Additional information on the penalty and/or citation of the penalty for an employer/income withholder who fails to comply with the IWO. The State or Tribal law/procedures of the employee/obligor's principal place of employment govern the penalty.
32. **Anti-discrimination.** Additional information on the penalty and/or citation of the penalty for an employer/income withholder who discharges, refuses to employ, or disciplines an employee/obligor as a result of the IWO. The State or Tribal law/procedures of the employee/obligor's principal place of employment govern the penalty.
33. **Additional Information.** Any additional information, e.g., fees the employer/income withholder may charge the obligor for income withholding or children's names and DOBs if there are more than six children on this IWO. Additional information must be consistent with the requirements of the form and the instructions.

#### **COMPLETED BY EMPLOYER/INCOME WITHHOLDER:**

##### **NOTIFICATION OF EMPLOYMENT TERMINATION OR INCOME STATUS**

The employer must complete this section when the employee/obligor's employment is terminated, income withholding ceases, or if the employee/obligor has never worked for the employer.

**Please Note:** Employer's Name, FEIN, Employee/Obligor's Name, CSE Agency Case Identifier, and Order Identifier must appear in the header on the page with the Notification of Employment Termination or Income Status.

34a-b. **Employment/Income Status Checkbox.** Check the employment/income status of the employee/obligor.

- 35. **Termination Date.** If applicable, date employee/obligor was terminated.
- 36. **Last Known Phone Number.** Last known (home/cell/other) phone number of the employee/obligor.
- 37. **Last Known Address.** Last known home/mailling address of the employee/obligor.
- 38. **Final Payment Date.** Date employer sent final payment to SDU/Tribal payee.
- 39. **Final Payment Amount.** Amount of final payment sent to SDU/Tribal payee.
- 40. **New Employer's Name.** Name of employee's/obligor's new employer (if known).
- 41. **New Employer's Address.** Address of employee's/obligor's new employer (if known).

## **COMPLETED BY SENDER:**

### ***CONTACT INFORMATION***

- 42. **Issuer Name (Employer/Income Withholder Contact).** Name of the contact person that the employer/income withholder can call for information regarding this IWO.
- 43. **Issuer Phone Number.** Phone number of the contact person.
- 44. **Issuer Fax Number.** Fax number of the contact person.
- 45. **Issuer Email/Website.** Email or website of the contact person.
- 46. **Termination/Income Status and Correspondence Address.** Address to which the employer should return the Employment Termination or Income Status notice. It is also the address that the employer should use to correspond with the issuing entity.
- 47. **Issuer Name (Employee/Obligor Contact).** Name of the contact person that the employee/obligor can call for information.
- 48. **Issuer Phone Number.** Phone number of the contact person.
- 49. **Issuer Fax Number.** Fax number of the contact person.
- 50. **Issuer Email/Website.** Email or website of the contact person.

### The Paperwork Reduction Act of 1995

This information collection and associated responses are conducted in accordance with 45 CFR 303.100 of the Child Support Enforcement Program. This form is designed to provide uniformity and standardization. Public reporting for this collection of information is estimated to average two to five minutes per response. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

## Federal and State Legislative Requirements: Income Withholding and the State Disbursement Unit

**QUESTION 1:** Are states required to have laws that require the use of the OMB-approved Income Withholding for Support form (OMB 0970-0154) in both IV-D and non-IV-D orders?

**RESPONSE 1:** Yes, sections 466(a)(1), (a)(8) and 466(b)(6)(A)(ii) of the Social Security Act (the Act) requires states to use the OMB-approved Income Withholding for Support form in non-IV-D cases with child support orders initially issued in the state on or after January 1, 1994, and in all IV-D income withholding orders.

Section 466(a)(8) of the Act requires:

“(a) In order to satisfy section 454(20)(A), each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

\* \* \* \* \*

(8)(A) Procedures under which all child support orders not described in subparagraph (B) will include provision for withholding from income, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing application for services under this part. [IV-D income withholding orders]

(B) Procedures under which all child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under this part will include the following requirements: [non-IV-D income withholding cases]

\* \* \* \* \*

(iii) The requirements of paragraphs (2), (5), (6), (7), (8), (9), and (10) of subsection (b), where applicable.

Section 466(b)(6)(A)(ii) of the Act requires:

“(b) The procedures referred to in subsection (a)(1)(A) (relating to the withholding from income of amounts payable as support) must provide for the following:

\* \* \* \* \*

(6)(A)(ii) The notice given to the employer shall be in a **standard format prescribed by the Secretary**, and contain only such information as may be necessary for the employer to comply with the withholding order.” (Emphasis added.)

The final rule at 45 CFR 303.100(e) also requires states to send the noncustodial parent’s employer the OMB-approved IWO form. The preamble to the interim final rule [64 FR 6237] promulgating 45 CFR 303.100(e) states as follows with respect to use of the IWO form:

We are revising new paragraph (e)(1) by adding “using the standard Federal format” after the word “notice”. We are making this revision to conform to section 466(b)(6)(A)(iii) of the Act, which requires the States to issue income withholding notices in a standard

format prescribed by the Secretary. On January 27, 1998, the Office of Child Support Enforcement distributed this standard income withholding form to the States in OCSE-AT-98-03 (OMB No. 0970-0154).

Please note: Section 466(a)(8)(B)(i) of the Act provides two exceptions to income withholding in non-IV-D cases: good cause or a written alternative agreement. Section 466(a)(8)(B)(i) of the Act states:

“(i) The income of a noncustodial parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order; except that such income shall not be subject to withholding under this clause in any case where (I) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (II) a written agreement is reached between both parties which provides for an alternative arrangement.”

**QUESTION 2:** What orders must the state disbursement unit (SDU) process as required by federal law?

**RESPONSE 2:** Section 454B of the Act requires the state agency to establish and operate an SDU for the collection and disbursement of payments in IV-D cases and in non-IV-D cases in which the support order was initially issued on or after January 1, 1994, and in which the income of noncustodial parent is subject to withholding.

See requirements under section 454B of the Act:

“(a) State Disbursement Unit.—

(1) In general.—In order for a State to meet the requirements of this section, the State agency must establish and operate a unit (which shall be known as the “State disbursement unit”) for the collection and disbursement of payments under support orders—

(A) in all cases being enforced by the State pursuant to section 454(4) [IV-D cases]; and

(B) in all cases not being enforced by the State under this part in which the support order is initially issued in the State on or after January 1, 1994, and in which the income of the noncustodial parent is subject to withholding pursuant to section 466(a)(8)(B) [non-IV-D].”

**QUESTION 3:** Are states required to have laws directing withholding payments to the SDU? Does this apply to both IV-D and non-IV-D orders?

**RESPONSE 3:** Yes, withholding must be administered by the state through the state disbursement unit in all IV-D cases, and non-IV-D cases with orders initially issued in the state on or after January 1, 1994 and in which the income of the noncustodial parent is subject to withholding.

Section 466(a)(8) of the Act requires:

“(a) In order to satisfy section 454(20)(A), each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

\* \* \* \* \*

(8)(A) Procedures under which all child support orders not described in subparagraph (B) will include provision for withholding from income, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing application for services under this part.

(B) Procedures under which all child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under this part will include the following requirements:

\* \* \* \* \*

(iii) The requirements of paragraphs (2), (5), (6), (7), (8), (9), and (10) of subsection (b), where applicable.”

Section 466(b)(5) of the Act requires:

“(b) The procedures referred to in subsection (a)(1)(A) (relating to the withholding from income of amounts payable as support) must provide for the following:

\* \* \* \* \*

(5) Such withholding must be administered by the State through the State disbursement unit established pursuant to section 454B, in accordance with the requirements of section 454B.”

**QUESTION 4:** May an individual or entity send the IWO form to an employer if there is no underlying support order or if there is no underlying income withholding order?

**RESPONSE 4:** If an employer receives the IWO from someone other than a state or tribal CSE agency or a court, a copy of the underlying order containing a provision authorizing income withholding must be attached. Also see PIQ-01-01, Answer to Question 1, “Section 466(b)(1) of the Act requires withholding ‘in the case of each noncustodial parent against whom a support order is or has been issued or modified in the State.’ Therefore, the first condition for withholding is an underlying support order issued in accordance with Federal requirements and State law.

Section 466(b)(6)(A)(i) of the Act directs that an employer of a noncustodial parent, "upon being given notice as described in clause (ii), must be required to withhold from such noncustodial parent's income the amount specified by such notice" Clause (ii) of that section requires that the ‘notice given to the employer shall be in a standard format prescribed by the Secretary [of HHS], and contain only such information as may be necessary for the employer to comply with *the withholding order.*’ PIQ-99-02 indicates in the answer to Question 2 that the form ‘must be used to *notify* employers of *an order to withhold.*’ [Emphasis added.] Income withholding orders may

be included as part of a support order or may be issued as a separate order by a tribunal or an appropriate authority under State law.

Only a tribunal or entity authorized to issue orders under State law may issue the Federal ‘Order/Notice to Withhold Income for Child Support’ as a withholding order. The form may also be sent by an individual, agency or entity as a notice to an employer to withhold income, but only if it is based on an underlying withholding order issued by an appropriate authority under State law. If sent as a notice to an employer to initiate income withholding, information about the underlying withholding order and who issued it must be included on the Notice.”

**QUESTION 5:** Does section 466(c)(1)(E) of the Act apply to IV-D and non-IV-D orders?

**RESPONSE 5:** Yes, section 466(c)(1)(E) of the Act applies to IV-D and non-IV-D orders which are processed through the SDU pursuant to section 454B of the Act (see question #2).

Please note: Section 466(c)(1)(E) of the Act requires states to have laws under which, in cases in which support is subject to an assignment to the state or to a requirement to pay through the State Disbursement Unit, upon notice to the obligor and obligee, the IV-D agency may direct the obligor or other payor to change the payee to the appropriate government entity. As stated in PIQ-01-01, Answer to Question 3, Section 466(c)(1)(E) of the Act requires states to have the authority to administratively change the payee or redirect payments under an order issued in their state without obtaining an order from any other judicial or administrative tribunal in their own State (emphasis added).

Guidance on “change in payee” was issued via PIQ-01-01; see specifically question and answer 2 and 3.

[PIQ-01-01](#), *Clarification on Use of the Federal Order/Notice to Withhold Income for Child Support*

**“Question 2:** If an individual or entity in one State sends directly to an employer in another State an Order/Notice to Withhold Child Support that is based on an another State's order, may the individual or entity change the payee or redirect payments to a designation other than the designation in the other State's order or a designation subsequently authorized by the tribunal or authority in the other State that issued the underlying order?”

**Answer:** No. Section 501 of the Uniform Interstate Family Support Act (UIFSA) authorizes that an income withholding order of another State may be sent directly to the obligor's employer in another State without filing a pleading or registering the order. There is no restriction under UIFSA on who may send the income withholding order to the employer. Section 502(c)(2) of UIFSA mandates the employer to "withhold and distribute funds as directed in the withholding order by complying with the terms of the order which specify (2) the person or agency designated to receive payments and the address to which payments are to be forwarded;..." Therefore, if a support order or income withholding order issued by one State designates the person or agency to receive

payments and the address to which payments are to be forwarded, an individual or entity in another State may not change the designation when sending an Order/Notice to Withhold Child Support.

**Question 3:** May a State IV-D agency use its administrative authority required under section 466(c)(1)(E) of the Act to change the payee or redirect payments from the designation of the person or agency to receive payments and the address to which payments are to be forwarded that is included in a support or income withholding order issued by another State?

**Answer:** No. Section 466(c)(1)(E) of the Act requires States to have laws under which, in cases in which support is subject to an assignment to the State or to a requirement to pay through the State disbursement unit, upon notice to the obligor and obligee, the IV-D agency may direct the obligor or other payor to change the payee to the appropriate government entity. States therefore must have the authority to administratively change the payee or redirect payments under an order issued in their State without obtaining an order from any other judicial or administrative tribunal in their own State. This requirement does not authorize a State IV-D agency to administratively change the payee or the agency designated to receive payments from any designation in, or subsequently authorized in, an order issued by another State.”

Section 466(c)(1)(E) of the Act requires:

“(c) Expedited Procedures.—The procedures specified in this subsection are the following:

(1) Administrative action by state agency.—Procedures which give the State agency the authority to take the following actions relating to establishment of paternity or to establishment, modification, or enforcement of support orders, without the necessity of obtaining an order from any other judicial or administrative tribunal, and to recognize and enforce the authority of State agencies of other States to take the following actions:

(E) Change in payee.—In cases in which support is subject to an assignment in order to comply with a requirement imposed pursuant to part A, part E, or section 1912, or to a requirement to pay through the State disbursement unit established pursuant to section 454B, upon providing notice to obligor and obligee, to direct the obligor or other payor to change the payee to the appropriate government entity.”