

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.”