

§ 303.100 Procedures for income withholding.

(a) *General withholding requirements.* (1) The State must ensure that in the case of each noncustodial parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of his or her income as defined in sections 466(b)(1) and (8) of the Act must be withheld, in accordance with this section, as is necessary to comply with the order.

(2) In addition to the amount to be withheld to pay the current month's obligation, the amount to be withheld must include an amount to be applied toward liquidation of overdue support.

(3) The total amount to be withheld under paragraphs (a)(1), (a)(2) and, if applicable, (f)(1)(iii) of this section may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

(4) In the case of a support order being enforced under the State plan, the withholding must occur without the need for any amendment to the support order involved or any other action by the court or entity that issued it other than that required or permitted under this section.

(5) If there is more than one notice for withholding against a single noncustodial parent, the State must allocate amounts available for withholding giving priority to current support up to the limits imposed under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)). The State must establish procedures for allocation of support among families, but in no case shall the allocation result in a withholding for one of the support obligations not being implemented.

(6) The withholding must be carried out in full compliance with all procedural due process requirements of the State.

(7) The State must have procedures for promptly terminating withholding:

(i) In all cases, when there is no longer a current order for support and all arrearages have been satisfied; or,

(ii) At State option, when the noncustodial parent requests termination and withholding has not been terminated previously and subsequently initiated, and the noncustodial parent meets the conditions for an alternative arrangement set forth under paragraph (b)(3) of this section.

(8) The State must have procedures for promptly refunding to noncustodial parents amounts which have been improperly withheld.

(9) Support orders issued or modified in IV-D cases must include a provision requiring the noncustodial parent to keep the IV-D agency informed of the name and address of his or her current employer, whether the noncustodial parent has access to health insurance coverage at reasonable cost and, if so, the health insurance policy information.

(b) *Immediate withholding on IV-D cases.* (1) In the case of a support order being enforced under this part that is issued or modified on or after November 1, 1990, 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 paragraph in any case where:

(i) Either the noncustodial or custodial parent demonstrates, and the court or administrative authority finds, that there is good cause not to require immediate withholding; or

(ii) A written agreement is reached between the absent and custodial parent, and, at State option, the State in IV-D cases in which there is an assignment of support rights to the State, which provides for an alternative arrangement.

(2) For the purposes of this paragraph, any finding that there is good cause not to require immediate withholding must be based on at least:

(i) A written determination that, and explanation by the court or administrative authority of why, implementing immediate income withholding would not be in the best interests of the child; and

(ii) Proof of timely payment of previously ordered support in cases involving the modification of support orders.

(3) For purposes of this paragraph, “written agreement” means a written alternative arrangement signed by both the custodial and noncustodial parent, and, at State option, by the State in IV-D cases in which there is an assignment of support rights to the State, and reviewed and entered in the record by the court or administrative authority.

(c) *Initiated withholding in IV-D cases.* In the case of income not subject to immediate withholding under paragraph (b) of this section, including cases subject to a finding of good cause or to a written agreement:

(1) The income of the noncustodial parent shall become subject to the withholding on the date on which the payments which the noncustodial parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of:

(i) The date on which the noncustodial parent requests that withholding begin;

(ii) The date on which the custodial parent requests that withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved; or

(iii) Such earlier date as State law or procedure may provide.

(2) The only basis for contesting a withholding under this paragraph is a mistake of fact, which for purposes of this paragraph means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.

(d) *Notice to the noncustodial parent in cases of initiated withholding.* The State must send a notice to the noncustodial parent regarding the initiated withholding. The notice must inform the noncustodial parent:

- (1) That the withholding has commenced;
- (2) Of the amount of overdue support that is owed, if any, and the amount of wages that will be withheld;
- (3) That the provision for withholding applies to any current or subsequent employer or period of employment;
- (4) Of the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact;
- (5) Of the information provided to the employer, pursuant to paragraph (e) of this section.

(e) *Notice to the employer for immediate and initiated withholding.* (1) To initiate withholding, the State must send the noncustodial parent's employer a notice using the required OMB-approved *Income Withholding for Support* form that includes the following:

(i) The amount to be withheld from the noncustodial parent's income, and a statement that the amount actually withheld for support and other purposes, including the fee specified under paragraph (e)(1)(iii) of this section, may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b));

(ii) That the employer must send the amount to the SDU within 7 business days of the date the noncustodial parent is paid, and must report to the SDU the date on which the amount was withheld from the noncustodial parent's income;

(iii) That, in addition to the amount withheld for support, the employer may deduct a fee established by the State for administrative costs incurred for each withholding, if the State permits a fee to be deducted;

(iv) That the withholding is binding upon the employer until further notice by the State;

(v) That the employer is subject to a fine to be determined under State law for discharging a noncustodial parent from employment, refusing to employ, or taking disciplinary action against any noncustodial parent because of the withholding;

(vi) That, if the employer fails to withhold income in accordance with the provisions of the notice, the employer is liable for the accumulated amount the employer should have withheld from the noncustodial parent's income;

(vii) That the withholding under this section shall have priority over any other legal process under State law against the same income;

(viii) That the employer may combine withheld amounts from noncustodial parents' income in a single payment to each appropriate agency requesting withholding and separately identify the portion of the single payment which is attributable to each individual noncustodial parent;

(ix) That the employer must withhold from the noncustodial parent's income the amount specified in the notice and pay such amount to the State disbursement unit within 7 business days after the date the income would have been paid to the noncustodial parent.

(x) That the employer must notify the State promptly when the noncustodial parent terminates employment and provide the noncustodial parent's last known address and the name and address of the noncustodial parent's new employer, if known.

(2) In the case of an immediate withholding under paragraph (b) of this section, the State must issue the notice to the employer specified in paragraph (e)(1) of this section within 2 business days of the date the State's computerized support enforcement system receives notice of income and income source from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State, or the date information regarding a newly hired employee is entered into the State Directory of New Hires, or if information is not received by the State's computerized support enforcement system or its State Directory of New Hires, within 15 calendar days of the date the support order is received if the employer's address is known on that date, or, if the address is unknown on that date, within 2 business days of the date the State's computerized support enforcement system receives notice of income and income source from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State, or the date information regarding a newly hired employee is entered into the State Directory of New Hires, or if information is not received by the State's computerized support enforcement system or its State Directory of New Hires, within 15 calendar days of locating the employer's address.

(3) In the case of initiated withholding, the State must send the notice to the employer required under paragraph (e)(1) of this section within 2 business days of the date the State's computerized support enforcement system receives notice of income and income source from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State, or the date information regarding a newly hired employee is entered into the State Directory of New Hires, or if information is not received by the State's computerized support enforcement system or its State Directory of New Hires, within 15 calendar days of the date specified in paragraph (c)(1) of this section if the employer's address is known on that date, or, within 2 business days of the date the State's computerized support enforcement system receives notice of income and income source from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State, or the date information regarding a newly hired employee is entered into the State Directory of New Hires, or if information is not received by the State's computerized support enforcement system or its State Directory of New Hires, within 15 calendar days of locating the employer's address.

(4) If the noncustodial parent changes employment within the State when a withholding is in effect, the State must notify the noncustodial parent's new employer, in accordance with the requirements of paragraph (e)(1) of this section, that the withholding is binding on the new employer.

(f) *Interstate withholding.* (1) The State law must require employers to comply with a withholding notice issued by any State.

(2) When an out-of-State IV-D agency requests direct withholding, the employer must be required to withhold funds as directed in the notice but to apply the income withholding laws of the noncustodial parent's principal place of employment to determine:

- (i) The employer's fee for processing the withholding notice;
- (ii) The maximum amount that may be withheld from the noncustodial parent's income;
- (iii) The time periods to implement the withholding notice and to remit the withheld income;
- (iv) The priorities for withholding and allocating income withheld for multiple child support obligees; and
- (v) Any withholding term or conditions not specified in the withholding order.

(3) In other than direct withholding actions:

(i) A State may require registration for orders from other States for purposes of enforcement through withholding only if registration is for the sole purpose of obtaining jurisdiction for enforcement of the order; does not confer jurisdiction on the court or agency for any other purpose (such as modification of the underlying or original support order or resolution of custody or visitation disputes); and does not delay implementation of withholding beyond the timeframes established in paragraphs (e)(2) and (e)(3) of this section.

(ii) Within 20 calendar days of a determination that withholding is required in a particular case, and, if appropriate, receipt of any information necessary to carry out withholding, the initiating State must notify the IV-D agency of the State in which the noncustodial parent is employed to implement interstate withholding. The notice must contain all information necessary to carry out the withholding, including the amount requested to be withheld, a copy of the support order and a statement of arrearages, if appropriate. If necessary, the State where the support order is entered must provide the information necessary to carry out the withholding within 30 calendar days of receipt of a request for information by the initiating State.

(iii) The State in which the noncustodial parent is employed must implement withholding in accordance with this section upon receipt of the notice from the initiating State required in paragraph (f)(3)(ii) of this section.

(iv) The State in which the noncustodial parent is employed must notify the State in which the custodial parent is receiving services when the noncustodial parent is no longer employed in the State and provide the name and address of the noncustodial parent and new employer, if known.

(4) The withholding must be carried out in full compliance with all procedural due process requirements of the State in which the noncustodial parent is employed.

(5) Except with respect to when withholding must be implemented which is controlled by the State where the support order was entered, the law and procedures of the State in which the noncustodial parent is employed shall apply.

(g) *Provision for withholding in all child support orders.* Child support orders issued or modified in the State whether or not being enforced under the State IV-D plan must have a provision for withholding of income. This requirement does not alter the requirement governing all IV-D cases in paragraph (a)(4) of this section that enforcement under the State plan must proceed without the need for a withholding provision in the order.

(h) *Notice to employer in all child support orders.* The notice to employers in all child support orders must be on an OMB-approved *Income Withholding for Support* form.

(i) *Payments sent to the SDU in child support order not enforced under the State IV-D plan.* Income withholding payments made under child support orders initially issued in the State on or after January 1, 1994 that are not being enforced under the State IV-D plan must be sent to the State Disbursement Unit for disbursement to the family in accordance with sections 454B and 466(a)(8) and (b)(5) of the Act and § 302.32(a) of this chapter.

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