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September 1, 2016

Commissioner Vicki Turetsky
ACF/Office of Child Support Enforcement
330 C Street, SW
Washington, DC 20201

SUBJECT: DRAFT INTERSTATE CHILD SUPPORT PAYMENT PROCESSING ACTION TRANSMITTAL

Dear Commissioner Turetsky:

Thank you for providing the National Council of Child Support Directors (NCCSD) an opportunity to review the federal Office of Child Support Enforcement (OCSE) draft Action Transmittal (AT) on Interstate Child Support Payment Processing. NCCSD solicited feedback from all state IV-D program directors. As of August 15, 2016, NCCSD received input from over 35 states. The following comments represent a compilation of those responses. The responses themselves, with identifying information removed, are also provided for your review (see attachment).

We want to bring to your immediate attention the significant level of concern by states to this guidance document. NCCSD urges OCSE to hold this policy guidance and recommends further meetings with states prior to issuance. We have serious concerns regarding states' ability to comply with the directives in the guidance, as well as with the stated requirements in the guidance itself. <u>NCCSD requests a conference call with OCSE to discuss this policy guidance and/or convening a special meeting at the upcoming WICSEC annual conference in early October</u>.

The most pressing concerns with the draft AT are as follows:

- The draft AT would require extensive state systems changes. Most state systems are not poised or able to make these changes either quickly or at all, which will defeat the intent to harmonize all states under UIFSA 2008. This will also lead to increased lack of uniformity in interstate case processing.
- OCSE offers no one-time funding to accomplish the systems changes required by this policy. There is also no mandate for states to pursue the necessary changes which makes it almost unrealistic that states will be able to accomplish the required changes.
- Additionally, requiring states to maintain a payment history on Non-IV-D and closed IV-D cases represents an expansion of state duties without mandate or funding. Manual IV-D staff time is required to document and update payment histories, when an enforcing state sends the issuing state record of payments received.
- In the context of available modern resources such as the Query Interstate Cases for Kids (QUICK) tool, the guidance in the draft AT is impractical and inefficient. States should be encouraged to utilize QUICK, and permitted to enforce another state's order where there is no open IV-D case.

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- At the 2014 Employer Symposium, employers requested that the state that issued the income withholding order (IWO) also receive the payments.
- The draft AT encourages states to issue an IWO payable to another state's SDU. The draft AT does not advise states to verify the issuing state's case number before the IWO is sent and direct payments to the issuing state's case number. This causes confusion and delay in getting support to families. .
- The policy guidance leads to increased manual processing, at a time when states are encouraged and budgets demand a move to automated systems case management. Detailed training and procedure manuals must be developed to help staff understand when an order can be automatically enforced and when person-to-person contact with another state is required.
- The policy direction for states to contact each other to agree how to move forward on individual cases results in states being unable to meet the mandate to issue income withholding orders within two business days of receiving new hire information.
- The policy guidance does not provide any assistance in how to manage cases with Tribal IV-D agencies, since tribes do not have to adopt UIFSA, although it appears to apply to all IV-D agencies.

See the attached document for more detail regarding the concerns expressed above.

We look forward to hearing from OCSE about a time for a conference call to discuss this policy guidance and/or convening a special meeting at the upcoming WICSEC annual conference in early October to work through these concerns prior to the final issuance of this DRAFT AT.

Sincerely,

Carol Eaton

Carol Eaton, President
NCCSD

Attachments

ATTACHMENT #1
DETAILED COMMENTS TO DRAFT AT ON INTERSTATE CHILD SUPPORT PAYMENT PROCESSING

Due to the volume of information received from the survey, below we have provided more detailed comments with respect to the highlighted concerns.

Concerns with items in the draft AT hereafter are summarized by topic grouping:

Payment Record

States strongly object to the requirement in the draft AT for states to maintain debt calculation or payment history on Non-IV-D cases, or on closed IV-D cases, and urge OCSE to reconsider this position.

- Requiring states to provide a payment history on Non-IV-D orders is a significant change in OCSE policy, and would require extensive and unfunded system changes.
- Question and response 10 in PIQ 10-01 says that "The monthly child support amount is not a required data element for non-IV-D cases; therefore, the cost of maintaining this information is not allowable." In order to calculate balances, and compute interest, states would need to maintain the monthly child support amount which is unfunded.
- Without funding for such system changes or a deadline for states to make these changes, we would move further away from uniformity in practice.
- While states must maintain a state case registry with all child support orders issued statewide, they have never been expected to maintain payment history and especially case balances on Non-IV-D orders, or on closed IV-D cases. Even if state systems could all generate payment histories on Non-IV-D orders, this is incomplete, as it does not include any payments made directly to the custodial parent or made to any other state that may have enforced the order. States must maintain the integrity of their systems and the trust they have established with the courts and the customers in regard to their payment records. This trust will be jeopardized if states are required to maintain arrears balances on Non-IV-D cases.

Providing case balances on Non-IV-D or closed IV-D cases represents a significant increase in the IV-D workload, and does not appear to be tied to any funding source. The response to the scenarios also appears to be inconsistent. As a base proposition, the AT states that the issuing state always maintains the payment history, and cannot be cut out of the payment stream. However, there are several scenarios which permit other states to merely keep the issuing state informed of payments (See Scenario 8, 9, and 12).

It is also unclear exactly how the enforcing state should notify the issuing state of these payments. Scenario 8 says the issuing state should be notified by the custodial party's new state, while Scenario 9 says the enforcing state should "regularly inform" the issuing state of those payments. The mechanism for this notice is not described, nor is the frequency. Must the issuing state request the notice, or should it be sent at regular intervals?
Most state systems are not currently programmed to provide such notice. In addition, updating the payment record in the issuing state will require manual IV-D worker intervention which we believe it not a funded activity.

Additional questions arose regarding when an order is payable directly to a custodial party, either because it is issued as a Non-IV-D order, or a tribunal has found "good cause" for an order to not be payable by IWO. Payments made by any mechanism other than IWO are not explored in the draft AT. One state presumes that these payments are to be treated like IWO

payments, but it is not clear from the draft AT. Most state systems will need to be changed to suppress all enforcement when the case is only open to complete the payment record custodian duty. At least one state indicates that their SDU is not the custodian of records, but rather the Clerk of Court is the custodian.

Section 319(b) Change of Payee where Issuing State is Owed Assigned Arrears
States agree with the literal reading of Section 319(b) of UIFSA requiring the issuing state to grant redirection or change of payee upon request. However, states urge OCSE to adopt official policy to encourage states to restrict these requests when the issuing state is owed assigned arrears.

- In Scenario 14, states believe both State A and State B should initiate full interstate referrals to State C. The policy as written would result in State A being absolutely last in line to receive its arrears, even if the other states also had assigned arrears.
- The policy as written in the draft AT complicates the process unnecessarily, and should be changed. OCSE can direct states to refrain from utilizing the Section 319(b) process under certain circumstances.
- The draft AT requires significant increases to the manual IV-D workload, by requiring workers to contact other states to determine how best to move forward on an individual case. How is a state to act, if the contacted state does not respond at all, or not within mandated timeframes to take administrative enforcement action?

Effect of Section 319(b) Change of Payee or Modification
States feel the draft AT does not adequately cover the effect of these actions. After granting change of payee pursuant to Section 319(b), the draft AT indicates that the issuing state remains responsible for maintaining the payment record. However, the issuing state is no longer involved in the payment process, making this action not only difficult or impossible to accomplish, but leaves that state with an unfunded mandate, as there is no FFP available when there is not an open IV-D case. Again, this proposed practice would call into question the integrity of our payment records.

NCCSD suggests that the state that requested change of payee under Section 319(b) become responsible for future payment record maintenance. In addition, modern record-keeping tools like QUICK make it much easier for states to obtain proper payment history of an interstate case.

Several states believe these payment history mandate cases would create a new class of Non-IV-D cases, ones which require significant manual IV-D staff intervention to log payment records upon receipt.

It is unclear from the draft AT if, after issuance of a conforming IWO or Administrative Notice of Change of Payee, the receiving state may issue IWOs without limitation. For example, if the issuing state issued a conforming IWO but the obligor obtains new employment, must the custodial party's state request a new, conforming IWO from the issuing state, or can that state issue their own IWO?

The effect of change of continuing, exclusive jurisdiction (CEJ) and subsequent modification on the custodian of records responsibility is not discussed at all in the draft AT. Other guidance from OCSE indicates that, after assumption of CEJ and modification, the interest rate, if any, of the new issuing/CEJ state applies to the order. It is not practical to expect the original issuing state, now completely out of payment processing on this order, to not only maintain the payment record, but to do so by applying another state's interest rate. This would require extensive

system changes, not to mention significant one-time and continuing training efforts.

Issuance of Income Withholding Order to Alternate State Disbursement Unit

Nearly all states indicate concern with guidance that directs states to issue IWOs to another state's, the issuing state, SDU. Universally, this provides significant system challenges. States also indicate grave concern with payment processing on these IWOs. These states indicate that their SDU would suspend payments received on these IWOs, because the case number referenced on the IWO will be that of the state issuing the IWO, and not of the state receiving the payment. This practice is consistent with current Texas system functionality, and states have been forced to adopt manual, labor-intensive workaround processes to notify employers to reference the order-issuing state's case number should they remit payment, to avoid either suspension of the payment or mistaken disbursement.

Employer groups indicate that it causes confusion for employers to receive IWOs that direct payments to another state's SDU. Several states report that the SDU and/or state systems are not able to distribute support on a IV-D case for which their system did not issue the IWO. It would require extensive systems changes to accommodate this type of payment processing. Failure to make these changes could result in support being either allocated to an incorrect case, or refunded to the obligor.

Further, the Draft AT infers, but does not outright direct, that states who send an IWO made payable to another state's SDU must concurrently notify that state's Central Registry through submission of a limited-service interstate referral. Without this notice, the receiving SDU state will not be able to properly notify the employer of the child support case number for the receiving SDU state. This will invariably lead to delay in getting payments to families, as any funds sent by these employers will suspend with the SDU. The receiving SDU state also must have direction from the IWO state regarding where to send the payment.

- The draft AT should clearly direct states, referencing the most recent draft OCSE intergovernmental forms, which action to request. It is believed that a Transmittal #1, Action I(3)(E) is required. Any subsequent change to these draft forms is unknown to states at this time, but the request is that the specific procedure be referenced.

System Impact

States indicate system change is required to maintain payment records on closed and Non-IV-D cases. Calculating interest utilizing another state's interest rate poses system and training challenges. At least one state indicates it has undertaken a feasibility study, and its system is wholly incapable of supporting redirection under Section 319(b), and changes are several years away.

- Several states indicate significant system change to their system to prevent automatic IWO generation on another state's order.
- These changes cannot be made quickly. Without funding and required timeframes for system change, we will move further away from uniformity in interstate case management.
- Removing automated enforcement activity from a case in which the state will only maintain a payment history will also permanently increase the state's need for manual worker review and intervention on these cases, and has the potential to delay the receipt of a first payment for families in need.
- Additionally, federal law requires IV-D agencies to send an IWO within two business days of receiving new hire information. This requirement is not stayed just because another state issued the order. Two business days will likely not be enough time for

states to communicate with one another, to see if there is an 'active, effective IWO' from the other state that may be redirected to the enforcing state.

These cases do not fit nicely into current IV-D or Non IV-D categories. Several states indicate system change is necessary to create a sub-category of cases: Limited service cases that are only open to forward payments to another state, when they are the issuing order state. These cases must be appropriately coded to avoid duplicate enforcement and submission for federal and state enforcement remedies. The draft AT does not adequately address which state should submit for other types of enforcement, such as federal income tax and passport.

The draft AT describes a notification to the issuing state of payments received when another state has enforced the order directly. State systems must be altered to provide this kind of notice, and the issuing state must have procedures in place to receive these notices and update the payment history.

Training

States indicate payment processing poses significant policy and training impacts for them. However, states indicate willingness to produce and deliver this training to staff. However, they indicate that suggested procedures in the draft AT regarding communication with states is unrealistic, as it is not reflective of current UIFSA practice. While communication efforts are ongoing, it is not realistic to think that a manual communication process would be effective for each and every one of these cases, and that states would agree on the most effective process for each case.

Directors indicate that training and procedure manuals must be extensive, as the scenarios are complicated, and cannot be taken by an automated system.

In addition, outreach will be required to advise employers of these changes.

Miscellaneous

One state notes that the draft AT does not explain how states are to process payments where the non-custodial parent, rather than the custodial parent, is the applicant. Other states write that the draft AT only addresses payments made by IWO, but not by the obligor voluntarily, or by other enforcement action such as bank levy, etc. Additionally, the draft AT does not discuss the impact, if any, on which state is to submit the obligor for federal enforcement action such as IRS intercept and passport revocation. Lastly, the draft AT does not address whether a state that issues a new IWO in response to a Section 319(b) request must issue new IWOs for each change in employment or change in the amount of withholding, or whether the custodial party's new state may issue their own IWOs after the first change.

Payment Forwarding

Some states indicate that the draft AT is out of sync with the draft revised OCSE intergovernmental forms. While the current Transmittal #1 form offers option I(6), "Redirect Payment to Obligee State," this option is removed on the most recent draft forms. It is unclear if the new option I(3)(E) covers this request. States request clarification if this is a limited service or full interstate referral. NCCSD believes clarification is required to indicate when the new, standalone Section 319(b) form should be used as opposed to the amended Transmittal #1.

Active and Effective IWO

States indicate the repeated references to whether a state has an active and effective IWO are confusing and need clarification. There is no definition for this term, which may be a matter of interpretation. Many states report that their system may list an IWO as "active" although it has either never received payment, or payments ceased or were erratic.