

AMERICAN PAYROLL ASSOCIATION

April 25, 2022

The Honorable Tangler Gray
Commissioner, Office of Child Support Enforcement
Administration for Children and Families
U.S. Department of Health and Human Services
330 C Street, SW
Washington, DC 20201
Tangler.Gray@acf.hhs.gov

Dear Commissioner Gray:

Thank you for speaking with us at the NCSEA Policy Forum. The American Payroll Association (APA) appreciates the partnership and collaboration the federal Office of Child Support Enforcement has consistently extended to the employer and payroll community. With employers collecting 75% of child support across the United States via income withholding, APA's relationship with OCSE and state child support agencies is extremely important.

Following our discussion at the forum, we wanted to outline some key areas of focus that the APA encourages OCSE to support for process improvements.

EMPLOYER SYMPOSIUMS

The APA requests that OCSE continue its support of Child Support Employer Symposiums. Meeting with state agencies and OCSE representatives in person has been a phenomenal experience for payroll professionals and an example of collaboration for success that all government and private-sector leaders should adopt. The OCSE Employer Services Team has played a key role in assisting to facilitate, organize, and coordinate these meetings, helping to identify problems and solutions in new hire reporting, withholding forms and automation, the gig economy, verification of employment, lump-sum reporting, and the national employer database. The APA hopes that you and the OCSE Employer Services Team will be able to participate this coming July in Boston.

RISK MANAGEMENT OF NEW HIRE REPORTING

The APA requests that OCSE remain vigilant in protecting employee data. We emphasize the need to limit access to new hire reporting data. Employers are subject to many federal and state laws regarding employee privacy with significant liability for leaks. In the past two years, the APA tracked more than 30 states' proposed legislative measures on data privacy.

The APA stands ready to work with OCSE and others to prevent further encroachment into the National Directory of New Hires. Access should only be permitted by those agencies with current access.

LUMP-SUM PAYMENT PROCESSING

The APA appreciates the many improvements made related to reporting lump-sum payments via OCSE's portal. However, the lump-sum process continues to be an area where employers and states both seem to struggle. Similar to the creation of the State Disbursement Units or the Office of Management and Budget-approved Income Withholding Order (IWO), the value of standardization allows for increased efficiencies.

The APA appreciates the enhancements OCSE has made regarding lump-sum payments, including the changes to the match/no match process and creation of the Communication Center.

List of Lump-Sum Challenges and Solutions

The APA asks that OCSE consider the following challenges and solutions:

1. **Employer Education.** At APA, we continue to find that many employers are not aware of lump-sum reporting requirements. Further education and awareness initiatives are key to distributing lump-sum amounts to children and families. This will take APA, state agencies, and OCSE to accomplish.
2. **Communication Center.** Employers prefer one system to communicate as opposed to 50 different state systems. We are confident that OCSE will agree with us on the value of its investment made to create the Communication Center. However, together, we need to: (1) increase outreach to get all states signed up to use the Communication Center and (2) add third-party access. We understand that OCSE's Employer Services Team is currently working on these considerations.
3. **Withholding Requests Vary by State.** Employers and their payroll departments continue to find that state requirements for the processing of lump-sum payments are too labor intensive and time consuming. States with requirements have different thresholds, timeframes, and instructions. The following are concerns for payroll professionals:
 - a. **Use of IWO Form.** Employers receive a variety of withholding request documents or lists from states on lump-sum payments. The child support program was designed to use the OMB-approved IWO form based on federal guidelines under the Section 466 [42 U.S.C 666] Requirement of Statutorily Prescribed Procedures to Improve Effectiveness of Child Support Enforcement.

The APA pursued an opinion letter from the U.S. Department of Labor to clearly define the lump-sum payments subject to the child support limits under the Consumer Credit

Protection Act. This effort was of significant importance to OCSE through former OCSE Commissioner Vicki Turetsky and took many years to accomplish. In addition, OCSE added space on the IWO to identify one-time payments. Yet, we still find that states are not using the IWO.

OCSE should require states to issue one-time, lump-sum payments on the IWO form, in particular, via the e-IWO process. This will likely take some programming at the state level. If a large employer desires a spreadsheet listing of matches for child support from lump-sum payments, this should be an exception to the rules rather than an open door for different state processes.

- b. No “Contact State” Messaging.** States should not be permitted to instruct employers to “contact state” in the OCSE portal in the match/no match report. This approach inappropriately shifts the burden of program development and enforcement on employers. If a state wants to communicate with an employer regarding lump-sum payments following an employer’s report to the portal, the burden should be on the state to contact the employer.
- c. Payout Date Versus Notification Date.** Currently, five states (California, Kentucky, Minnesota, Mississippi, and Ohio) have a requirement that advises employers to hold payment of a lump-sum from the “payout date” not the “reporting date.” While child support requirements override wage and hour laws about holding onto employees’ wages, the length of time for holding creates a fairness issue for employees that could be eliminated. The APA requests OCSE’s support in pushing these states to alter their processes to use the reporting date.
- d. Timeframe for State Agency Response.** Seven states (Arkansas, Illinois, Massachusetts, Minnesota, Nevada, Pennsylvania, and West Virginia) do not have any specified timeframe to respond to employers who report lump-sum payments. Without a set response time, employers are left in limbo regarding liability, not knowing when to hold, withhold, and release payments to employees. The APA believes that OCSE can either establish a minimum standard for state response time or work with these states to fix their procedures.
- e. Varying Reporting Thresholds.** – Nine states (Kentucky, Louisiana, Minnesota, Mississippi, North Dakota, Ohio, Oklahoma, Texas, and West Virginia) have varying threshold amounts for required reporting. Only one state (North Dakota) allows for a threshold or “lesser amount or an amount to be determined.” Employers do not report dollar amounts to OCSE’s portal. In many instances, employers do not know in advance the dollar amount of the lump sum. The APA recommends that OCSE encourage states to use the same or similar language as found in North Dakota’s requirements, otherwise employers will not know whether to report a lump-sum payment and wait for a state response.

4. **Processing and Terminating Non-IV-D IWOs.** These types of orders typically create challenges and liability for employers because of special instructions that can require employers to monitor for years after the initial receipt of orders (i.e., change the amount to \$xxx in 2025 and then to \$xxx in 2030). The APA requests that OCSE authorize IV-D agencies to issue IWOs to employers/income payors in non-IV-D cases (see North Dakota requirements). This would allow non-IV-D orders to use OCSE's e-IWO process.
5. **Independent Contractors.** Independent contractors are paid through accounts payable departments and not payroll. Yet, the new hire and withholding processes are currently performed in payroll systems. The IWO includes set pay frequencies that do not apply to independent contractors. Payments are made based on contractual or other schedules. In addition, independent contractor projects may be short or long-term. These payment issues make child support withholding more complicated for employers and states. The APA offers OCSE two recommendations: (a) adjust the IWO form to add verbiage regarding how independent contractors are paid and (b) partner with accounts payable associations to increase awareness about child support requirements.

The challenges and potential solutions described in this letter are intended to enhance the open dialogue APA has with OCSE. They may also lead to other areas of child support collaboration that are not directly payroll related, such as programs on domestic violence, diversity and inclusion, and outreach.

You can reach us through Corrinne Flores at corrinne.flores@adp.com or 909-971-5858 and Alice Jacobsohn, Esq., at ajacobsohn@americanpayroll.org or 202-669-4001. Thank you for the opportunity to share APA's perspectives.

Sincerely,



Corrinne Flores
Chair, Child Support Subcommittee



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