SB 190

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 2/28/94

FURTHER:

DATE TURNED INTO OFFICE: 4-6-94

The Finance Committee considered SENATE BILL NO. 190

"An Act relating to income withholding and other methods of enforcement for orders of support; and providing for an effective date."

and recommends:

[✓] replace with CS SB 190 (FINANCE)

or [ ] adopt previous CS ( )

[ ] attaches amendment(s)

[ ] same title
[ ] new title
[ ] technical title change (HB only)

[✓] adopts Senate Finance Letter of Intent

[ ] further referral to the

[ ] do pass

[ ] do not pass

[ ] no recommendation

[✓] individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal
Revenue	4/6/94		~~[illegible]~~ 104.0
AK Court Sys	3/15/94	-0-	~~33.7~~ 4/11/94

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal

[ ] Appropriation No Fiscal Note

DO PASS:

1. [illegible signature] Do Pass

Co-Chair: Signature/Recommendation

OTHER RECOMMENDATIONS:

[illegible signature]

[illegible signature]

[illegible signature] N.R.

2.

Co-Chair: Signature/Recommendation

Letter of Intent

OFFERED IN THE SENATE **BY SENATOR KELLY**

TO: CSSB 190 ( ) Draft 8-LS1001/U

Apart from the statutory changes enacted in this bill, the legislature wishes to convey its intent that the Child Support Enforcement Division distinguish between obligors, employers and others who voluntarily meet their support, withholding or other obligations under this chapter and those who do not. To the extent allowed by this chapter and federal law, this distinction should be actively reflected in all agency communications as well as in the nature, extent and timing of enforcement actions, subject to reasonable precautions to avoid uncollectability of funds necessary for support.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 190 (FIN)

Revision Date: 04/11/94
Title: An Act relating to income withholding and other methods of enforcement for orders of child support
Sponsor: Senate Judiciary by request
Requestor:

Dept. Affected: Alaska Court System
BRU: Trial Courts
Components:

COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 94) cost: $ None

ANALYSIS: (Attach a separate page if necessary)
No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228
Agency: Alaska Court System Date: 04/11/94

Approved by: Arthur H. Snowden, II, Administrative Director Date: 04/11/94
Agency: Alaska Court System

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

4-19-94
Replaces 109.0 note
of 4/6/94

FISCAL NOTE

STATE OF ALASKA **BILL NO.** SB 190 (Fin)

1994 LEGISLATIVE SESSION

Revision Date: April 11, 1994 Dept. Affected: Revenue

Title: Enforcement of Support Orders BRU: Child Support Enforcement Division

Component: Child Support Enforcement Division

Sponsor: Senate Judiciary Committee

Requestor: Senate Finance **COMPONENT SERIAL NO.** 111

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	71.6	71.6	71.6	71.6	71.6	71.6
TRAVEL						
CONTRACTUAL	9.6	9.6	9.6	9.6	9.6	9.6
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	20.8	20.8	20.8	20.8	20.8	20.8
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	104.0	104.0	104.0	104.0	104.0	104.0
CAPITAL						
REVENUE FUND SOURCE:	60.0	60.0	60.0	60.0	60.0	60.0

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	109.0	109.0	109.0	109.0	109.0	109.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1016 Fed Incent						
TOTAL	109.0	109.0	109.0	109.0	109.0	109.0

POSITIONS:

FULL-TIME	2	2	2	2	2	2
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: $ 0.0

ANALYSIS: (Attach a separate page if necessary.)
Section 101 of the Family Support Act of 1988 (P.L. 100-485) required that all child support orders issued by the courts after January 1, 1994 include a provision for immediate income withholding unless an exemption is granted by the court because there is good cause or an alternative written agreement by the parties and approved by the court. The intent of this provision of the Family Support Act is to provide the mechanism for collecting child support through wage withholding without applying for services from Child Support Enforcement Division (CSED) This requires CSED to provide payment only services for orders where neither party has applied for services or is receiving AFDC. This payment only processing and record keeping would require additional personnel to set up case files, process payments, audit cases and review cases for cost of living adjustments. The services required for these cases are not eligible for federal financial participation and must be funded by the state. The state will charge fees for this service to recover partial costs of administrating the requirement. (continued)

Prepared by: Mary Gay, Director Mary Gay Phone: 263-6270

Division: Child Support Enforcement Division Date:

Approved by Commissioner: Darrel J. Rexwinkel Darrel J. Rexwinkel Date: 4/12/94

Agency: Department of Revenue

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(continuation of Fiscal Note)

PROFESSIONAL SERVICES:

The Division will need 2 additional positions for the next year. It is not known at this time if additional positions will be needed beyond FY95 as it is difficult to judge what the impact will be. Positions required for FY 95:

One Accounting Clerk III to receipt payments.

One Clerk IV to set up and maintain case files.

CONTRACTUAL:

Additional cost of long distance telephone service, postage and space rent for the positions.

SUPPLIES:

Additional supplies for the additional positions to include paper, pens, folders,envelopes etc.

EQUIPMENT:

The following is a breakdown of equipment per new position:

Computer	$5,760
Office Modular Furniture	$3,435
Phone equip & service	$1,191
Total	$10,457

REVENUES:

This legislation is required for federal approval of Alaska's State Plan for Child Support Enforcement. A delay in enactment of this legislation could result in cessation of federal reimbursement of expenditures for Alaska's child support program and possible financial sanctions to Alaska's Aid to Families with Dependant Children program.

Federal financial participation is not provided for payment processing services. Therefore, it is planned that the Division, through regulation, will impose fees. The suggested fee will be $10 per month per case. At this time it is estimated that the Division will receive approximately 500 NON-IV-D (payment processing only) cases per year.

The fees CSED will charge for payment collection/disbursement and record keeping for the NON-IV-D cases will be shared 50/50. CSED will al

This legislation is required for federal approval of Alaska's State Plan for Child Support Enforcement.

FISCAL NOTE

STATE OF ALASKA **BILL NO.** CS SB 190 (Jud)

1994 LEGISLATIVE SESSION

Revision Date: April 4, 1994 Dept. Affected: Revenue

Title: Enforcement of Support Orders BRU: Child Support Enforcement Division

Component: Child Support Enforcement Division

Sponsor: Senate Judiciary Committee

Requestor: Senate Finance Committee **COMPONENT SERIAL NO.** 111

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	71.6	71.6	71.6	71.6	71.6	71.6
TRAVEL						
CONTRACTUAL	14.6	14.6	14.6	14.6	14.6	14.6
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	20.8	20.8	20.8	20.8	20.8	20.8
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	109.0	109.0	109.0	109.0	109.0	109.0
CAPITAL						
REVENUE FUND SOURCE:	60.0	60.0	60.0	60.0	60.0	60.0

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	109.0	109.0	109.0	109.0	109.0	109.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1016 Fed Incent						
TOTAL	109.0	109.0	109.0	109.0	109.0	109.0

POSITIONS:

FULL-TIME	2	2	2	2	2	2
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: $ 0.0

ANALYSIS: (Attach a separate page if necessary.)
Section 101 of the Family Support Act of 1988 (P.L. 100-485) required that all child support orders issued by the courts after January 1, 1994 include a provision for immediate income withholding unless an exemption is granted by the court because there is good cause or an alternative written agreement by the parties and approved by the court. The intent of this provision of the Family Support Act is to provide the mechanism for collecting child support through wage withholding without applying for services from Child Support Enforcement Division (CSED). This requires CSED to provide payment only services for orders where neither party has applied for services or is receiving AFDC. This payment only processing and record keeping would require additional personnel to set up case files, process payments, audit cases and review cases for cost of living adjustments. The services required for these cases are not eligible for federal financial participation and must be funded by the state. The state will charge fees for this service to recover partial costs of administrating the requirement. (continued)

Prepared by: Mary Gay, Director Phone: 263-6270

Division: Child Support Enforcement Division Date:

Approved by Commissioner: Darrel J. Rexwinkel Date: 4/6/94

Agency: Department of Revenue

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(continuation of Fiscal Note)

PROFESSIONAL SERVICES:

The Division will need 2 additional positions for the next year. It is not known at this time if additional positions will be needed beyond FY95 as it is difficult to judge what the impact will be. Positions required for FY 95:

One Accounting Clerk III to receipt payments.

One Clerk IV to set up and maintain case files.

CONTRACTUAL:

Additional cost of long distance telephone service, postage and space rent for the positions.

SUPPLIES:

Additional supplies for the additional positions to include paper, pens, folders,envelopes etc.

EQUIPMENT:

The following is a breakdown of equipment per new position:

Computer & Software	$5,760
Workstation Furniture	$3,506
Phone equip & service	$1,191
Total	$10,457

REVENUES:

This legislation is required for federal approval of Alaska's State Plan for Child Support Enforcement. A delay in enactment of this legislation could result in cessation of federal reimbursement of expenditures for Alaska's child support program and possible financial sanctions to Alaska's Aid to Families with Dependant Children program

Federal financial participation is not provided for payment processing services. Therefore, it is planned that the Division, through regulation, will impose fees. The suggested fee will be $10 per month per case. At this time, it is estimated that the Division will receive approximately 500 NON-IV-D (payment processing only) cases per year.

The fees CSED will charge for payment collection/disbursement and record keeping for the NON-IV-D cases will be shared 50/50. CSED will also send both parties a notice, upon receipt of their order from the court, that payments will be processed by CSED and that there is a fee for the service. CSED would also advise that the service is to provide payment processing only. The fee will be added to the child support for the obligor and deducted from the payment to the obligee. The court could include the fee information during the process of establishing the child support order.

April 12, 1994

Billy -

Attached is a copy of the DOR fiscal note for $109.0 that we applied to our CSSB 190 (Finance) when the bill was reported out of committee 4/6/94. Also attached is a new fiscal note from the department for a slightly lesser amount, $104.0, due to contractual line item reductions. The bill is on the Senate Floor, held on reconsideration to 4/13. What do you want to do?

Kathy
2618

4-6-94

8-LS1001\U.3
Lauterbach
4/4/94
Adopted

AMENDMENT

OFFERED IN THE SENATE BY SENATOR KELLY

TO: CSSB 190( ) Draft 8-LS1001\U

Page 3, line 24:

Delete "**$1**"

Insert "**$5**"

Page 6, after line 9:

Insert new bill sections to read:

"* **Sec. 12.** AS 25.27.100 is amended to read:

Sec. 25.27.100. ALL PERSONS MAY USE AGENCY**; FEES FOR SERVICES**. The agency shall provide aid to any person due child support under the laws of this state upon application. **Subject to (b) of this section, the** [THE] agency may, by regulation, impose a fee for services provided under this chapter.

* **Sec. 13.** AS 25.27.100 is amended by adding a new subsection to read:

(b) To the extent allowed under federal law, for each payment made by the agency to a custodian from money sent to the agency under an income withholding order issued under this chapter, the agency shall impose a fee of $5 on the custodian. To the extent allowed under federal law, the agency shall subtract this fee from the money it receives under the income withholding order before disbursing the balance of the money to the custodian."

Page 10, line 7:

Delete "$1"

Insert "$5"

Renumber the following bill sections accordingly.

SENATE FINANCE COMMITTEE (3)
Amendment Number: _____
Bill Number: SB 190
Sponsor: KELLY Date: 4/5/94
Logged In By: _____

4-6-94

8-LS1001\U.2
Lauterbach
4/4/94

ADOPTED
as amended
unan.

AMENDMENT

OFFERED IN THE SENATE BY SENATOR KELLY

TO: CSSB 190( ) Draft 8-LS1001\U

Page 4, line 25, after "shall":

Insert ", within ~~five~~ 15 working days,"

Page 4, line 26:

After "served":

Insert "by the agency"

After "required;":

Insert "if the agency receives money from an obligor under an income withholding order after the underlying support order has been satisfied and the agency was enforcing the support order at the time it became satisfied, the agency shall immediately return the overpayment to the obligor; if the agency fails to return an overpayment as required under this paragraph, the state is liable to the obligor for the amount of the overpayment, plus interest at the rate imposed under AS 43.05.225, and a person to whom the agency erroneously disbursed the overpayment is liable to the state for the amount disbursed, plus interest at the rate imposed under AS 43.05.225;"

SENATE FINANCE
COMMITTEE
Amendment Number: 4
Bill Number: SB 190
Sponsor: KELLY Date: 4/5/94
Logged In By: (Ron)

8-LS1001\U.1
Lauterbach
4/1/94

[redacted]

ADOPTED

AMENDMENT

OFFERED IN THE SENATE BY SENATOR KELLY

TO: CSSB 190( ) Draft 8-LS1001\U

SENATE FINANCE COMMITTEE
Amendment Number: 5
Bill Number: SB 190
Sponsor: Kelly Date: 4/5/94
Logged In By: [illegible]

Page 5, line 4:

Delete "a new subsection"

Insert "new subsections"

Page 6, after line 9:

Insert new material to read:

"(n) In calculating the amount of child support to be withheld under an income withholding order, ~~the court~~ or agency, ~~as applicable~~, shall give credit to the obligor for the cost to the obligor of medical and dental insurance for the children and educational payments for the children to the extent that the insurance coverage and educational payments **are required in the applicable child** support order and are actually paid for by the obligor.

*** Sec. 12.** AS 25.27.070(a) is amended to read:

(a) In a proceeding in which the court has ordered either or both parents to pay for the support of a child, the court may, on its own motion or motion of a party or the agency on behalf of a party, after notice and an opportunity for hearing, order either parent or both parents to assign to the custodian of the child that portion of salary or wages of either parent due them currently and in the future sufficient to pay the amount ordered by the court for the support, maintenance, nurture, and education of the child. **In calculating the amount of salary or wages to be assigned by a parent, the court shall give credit to the parent for the cost to the parent of medical and dental insurance for the children and educational payments for the children to the extent that the insurance coverage and educational payments are required in the applicable child support order and are actually paid for by the parent."**

Renumber the following bill sections accordingly.

Page 9, after line 19:

Insert a new bill section to read:

"* **Sec. 23.** AS 25.27.250(b) is amended to read:

(b) All real or personal property belonging to the obligor is subject to an order to withhold and deliver, including, but not limited to, earnings that are due, owing, or belonging to the debtor. **In calculating the amount to be withheld and delivered under an order issued under this section, the agency shall give credit to the obligor for the cost to the obligor of medical and dental insurance for the children and educational payments for the children to the extent that the insurance coverage and educational payments are required in the applicable child support order and are actually paid for by the obligor.**" and consistent with

Renumber the following bill sections accordingly.

~~adopted as consistent with~~

MOVED Jacko
ADOPTED
unan.

AMENDMENT
CSSB 190 (JUD)
8-LS1001\K

ADD the following to Sec. 11 of AS 25.27.062(m) as subsection (3).

3) owed by an Obligor who is receiving social security or other disability compensation that includes regular payments to the Obligor's child or children except to the extent that the payments to the children do not equal the child support due each month.

SENATE FINANCE
COMMITTEE
Amendment Number: 6
Bill Number: SB 190
Sponsor:
Date: 4/5/94
Logged In By:

Requested by C.S.E.D.

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

P.O. BOX 110400
JUNEAU, ALASKA 99811-0400
TELEPHONE: (907) 465-2300
FACSIMILE: (907) 465-2389

April 4, 1994

The Honorable Drue Pearce, Co-Chair
Senate Finance Committee
Alaska State Legislature
State Capitol, Room 508
Juneau, Alaska 99801-1182

Dear Senator Pearce:

Attached is a suggested amendment to CSSB 190 (Jud), enforcement of support orders. This amendment was prepared to clarify the effects of social security and disability payments on support orders. In support cases when an obligor receives a disability payment and the child is also compensated, the obligor's disability payment is not attached for amounts in excess of the ongoing obligation.

Thank you for the opportunity to provide comments concerning this essential legislation. If you have further concerns or questions, please contact us.

Sincerely,

Laraine L. Derr

Laraine L. Derr
Deputy Commissioner

94-069

cc: Senator Taylor

FAX TRANSMITTAL MEMO

TO: Stephanie
DEPT: FAX #: 3872
FROM: Laraine Derr PHONE:
CO: FAX #:
Post-it™ brand fax transmittal memo 7671

NO. OF PAGES 2

04-02LH

S-LS1001\U
Lauterbach
3/28/94

amended on 3/31
ADOPTED as amended.

CS FOR SENATE BILL NO. 190( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

"An Act relating to income withholding and other methods of enforcement for orders of support; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* **Section 1.** AS 25.27.062(a) is amended to read:

(a) A judgment, court order, or order of the agency under this chapter providing for support must contain an income withholding order. **Except as provided in (m) of this section, the income withholding order must provide for immediate income withholding if the support order is**

(1) being enforced by the agency and was issued or modified on or after the effective date of this Act: or

(2) not being enforced by the agency and was issued on or after the effective date of this Act [AN INCOME WITHHOLDING ORDER UNDER THIS SECTION MAY NOT BE ENFORCED UNLESS THE OBLIGOR HAD NOTICE OF THE ORDER WHEN IT WAS MADE OR AN APPLICATION FOR THE ORDER

WAS SERVED ON THE OBLIGOR IN THE MANNER PROVIDED FOR SERVICE OF A SUMMONS UNDER RULE 4, ALASKA RULES OF CIVIL PROCEDURE].

* **Sec. 2.** AS 25.27.062(b) is amended to read:

(b) An income withholding order must direct the obligor, the obligor's employer, future employer, and any person, political subdivision, or department of the state to withhold money due or to be due the obligor and pay the money to the agency, in an amount determined under (i) of this section. **A court that issues a support order on or after the effective date of this Act shall send a copy of the order to the agency.**

* **Sec. 3.** AS 25.27.062(c) is repealed and reenacted to read:

(c) Income withholding under a support order that does not require immediate withholding may be initiated under AS 25.27.150 if the support order is being enforced by the agency, or under (d) of this section if the support order is not being enforced by the agency, if

(1) the obligor requests withholding;

(2) the payments that the obligor has failed to make within 30 days of the monthly due date specified in the support order are equal to or greater than the support payable for one month; or

(3) the obligee requests withholding and

(A) the agency approves the request because all or part of the monthly payment of the obligor has been more than 10 days overdue more than one time in the preceding 12 months or there is reason to believe that the obligor might withdraw assets to avoid payment of support; in this paragraph, "10 days overdue" means occurring 10 days after the monthly due date specified in a support order; or

(B) the court approves the request for good cause.

* **Sec. 4.** AS 25.27.062(d) is repealed and reenacted to read:

(d) Income withholding under a support order that does not require immediate income withholding and that is not being enforced by the agency may be initiated by filing a motion with the court and complying with applicable court rules. The court shall order the beginning of income withholding under this subsection if the court finds

that any of the grounds in (c)(1), (c)(2), or (c)(3)(B) of this section is satisfied. It is not a defense to a motion based on (c)(2) of this section that less than one full month's payment is past due by 30 days if at least one full month's payment was past due by 30 days on the date the motion was filed. Notice to the obligor of income withholding ordered under this subsection must be given in a manner that complies with court rules. In this subsection, "past due by 30 days" means unpaid 30 days after the monthly due date specified in the support order.

* **Sec. 5.** AS 25.27.062(e) is amended to read:

(e) The [OBLIGEE OR PERSON OR PUBLIC] agency **or the person who obtains an** [THAT REQUESTED THE] income withholding order **under this chapter** shall immediately send a copy of the income withholding order, a copy of **the relevant provisions of** AS 25.27.260 and this section, and an explanation of the effect of the statutes [BY CERTIFIED MAIL] to persons who may owe money to an obligor. **These items may be sent by first class mail or certified mail, return receipt requested, or they may be served personally by a process server.** An income withholding order made under this **chapter** [SECTION] is binding upon a person, employer, political subdivision, or department of the state immediately upon receipt of a copy of the income withholding order. An employer shall begin withholding the specified amount from the employee's wages **(1)** 14 **working** days after the mailing date on the **order** [NOTICE] of withholding **or 14 working days after the date on which the order was personally served, whichever is applicable,** or **(2)** on the first day of the next pay period, if earlier. The amount withheld shall be sent to the agency **within 10 working days after the date the employee is paid. An employer may, for each payment made under an order, deduct $1 from other wages or salary owed to the obligor**.

* **Sec. 6.** AS 25.27.062(f) is amended to read:

(f) An employer may not discharge, discipline, or refuse to employ an obligor on the basis of an income withholding order issued under this **chapter** [SECTION]. If an employer discharges, disciplines, or refuses to employ an obligor because of an income withholding obligation, the court, after notice and hearing, may order reinstatement or restitution to the obligor, or both. A person who violates this

subsection or a regulation adopted to implement it, is liable for a civil penalty of not more than $1,000.

* **Sec. 7.** AS 25.27.062(g) is amended to read:

(g) An income withholding order under this **chapter** [SECTION] has priority over all other attachments, executions, garnishments, or other legal process brought under state law against the same property unless otherwise ordered by the court. An income withholding order is not limited to the wages of an obligor but may include all money owed to the obligor not otherwise exempt by law. Exemptions under AS 09.38 do not apply to income withholdings under this **chapter** [SECTION].

* **Sec. 8.** AS 25.27.062(h) is amended to read:

(h) The court may order payment of all court costs that resulted from an income withholding proceeding under this **chapter** [SECTION].

* **Sec. 9.** AS 25.27.062(k) is repealed and reenacted to read:

(k) An employer who is withholding income of an employee under an order that provides that the withheld income shall be paid to the agency shall notify the agency promptly when the employee gives or receives notice of termination of employment and provide to the agency the employee's last known home address and the name and address of the employee's new employer, if known.

* **Sec. 10.** AS 25.27.062(l) is repealed and reenacted to read:

(l) Unless modified or terminated by the agency or the court, an order to withhold income under this chapter remains in effect until the support order is satisfied. The agency or court may not terminate or modify an income withholding order solely on the ground that the obligor has paid all arrearages. Upon satisfaction of a support order, if the order is

(1) being enforced by the agency, the agency shall notify all persons served with the income withholding order that withholding is no longer required;

(2) not being enforced by the agency, the obligor shall file a motion in court requesting termination of the withholding order and serve the motion on the obligee; the court shall enter an order terminating the withholding order if the court determines that the support order has been satisfied; the obligor may deliver a copy of the termination order to persons who were served with the income withholding

order; when a termination order is entered, the obligee shall, upon request of the obligor, notify the obligor of all persons who have been served with the income withholding order by the obligee.

* **Sec. 11.** AS 25.27.062 is amended by adding a new subsection to read:

(m) An income withholding order described in (a)(1) - (2) of this section is not subject to immediate withholding if the support order is

(1) being enforced by the agency and the obligor agrees to keep the agency informed of the obligor's current employer and the availability of employment-related health insurance coverage for the children covered by the support order until the support order is satisfied and

(A) the agency has entered into its record a written agreement between the obligor and the obligee that provides for an alternative arrangement and income withholding has not been terminated previously and subsequently initiated; the agency must also be a party to an agreement under this paragraph if support has been assigned to the state; or

(B) the obligor or obligee demonstrates and the agency, in compliance with applicable federal law, finds good cause not to require immediate income withholding because it would not be in the best interests of the child and, in a case involving the modification of a support order, the obligor has made voluntary support payments under a court or agency order and has not been in arrears in an amount equal to the support payable for one month; in this paragraph, "in arrears" means failing to make a support payment within 30 days of the monthly due date specified in the order; or

(2) not being enforced by the agency and the obligor agrees to keep the obligee informed of the obligor's current employer and the availability of employment-related health insurance coverage for the children covered by the support order until the support order is satisfied and

(A) the court finds that (i) a written agreement exists between the obligor and the obligee that provides for an alternative arrangement and (ii) income withholding has not been terminated previously and subsequently initiated; the agency must also be a party to an agreement under this paragraph

if support has been assigned to the state; or

(B) the obligor or obligee demonstrates, and the court, in compliance with applicable federal law, finds good cause not to require immediate income withholding because it would not be in the best interests of the child and, in a case involving the modification of a support order, the obligor has made voluntary support payments under a court or agency order and has not been in arrears in an amount equal to the support payable for one month; in this paragraph, "in arrears" means failing to make a support payment within 30 days of the monthly due date specified in the order.

*** Sec. 12.** AS 25.27.140(b) is amended to read:

(b) If a support order has been entered, the agency may enforce the support order utilizing the procedures prescribed in **AS 25.27.062. 25.27.150.** [AS 25.27.150] and 25.27.230 - 25.27.270.

*** Sec. 13.** AS 25.27.150 is repealed and reenacted to read:

Sec. 25.27.150. INITIATED INCOME WITHHOLDING; REQUIRED NOTICE AND HEARING. (a) In order to initiate income withholding for a support order being enforced by the agency for which immediate income withholding is not required under AS 25.27.062(a), the agency shall serve a notice of its intent to initiate income withholding on the obligor. Notice under this subsection shall be served upon the obligor by certified mail to the obligor's last known address, and service is complete when the notice is properly addressed, certified, and mailed.

(b) The notice must state the amount of the overdue support that is owed, if any, and the amount of income that will be withheld.

(c) The notice shall inform the obligor that the income withholding order will take effect 15 days after the date on which the notice is served unless the obligor requests a hearing within 15 days after the notice is served. If the obligor requests a hearing, an income withholding order may not take effect until the conclusion of the hearing.

(d) If the obligor requests a hearing, it shall be conducted under the department's regulations for informal conferences and shall be held within 15 days of the date of the request. The hearing may only be held to determine if there is a

mistake of fact that makes the income withholding order improper because the amount of current or overdue support is incorrect, the identity of the obligor is inaccurate, or, for initiated withholding based on AS 25.27.062(c)(3)(A), the alleged facts regarding overdue payments or potential withdrawal of assets are incorrect. The order is not subject to any other legal defenses. It is not a defense to an income withholding order issued under AS 25.27.062(c)(2) that less than one full month's payment is past due if at least one full month's payment was past due on the date notice was served under this section.

(e) The appeals officer shall inform the obligor, either at the hearing or within 15 days after the hearing, whether or not the withholding will occur and of the date on which it is to commence.

(f) If the appeals officer determines that withholding will occur, the obligor may request a formal hearing, as provided in the department's regulations. The income withholding order shall be issued and withholding shall begin under the procedures in AS 25.27.062, whether or not the obligor requests a formal hearing, unless the obligor posts security or a bond in the amount that would have been withheld pending the outcome of a formal hearing.

* **Sec. 14.** AS 25.27.160(b) is amended to read:

(b) The notice and finding of financial responsibility served under (a) of this section must state

(1) the sum or periodic payments for which the alleged obligor is found to be responsible, calculated by taking into consideration the need of the alleged obligee, the alleged obligor's liability to the state under **AS 25.27.120** [AS 25.27.130] if any, and the duty of support under the law;

(2) the name of the alleged obligee and the obligee's custodian;

(3) that the alleged obligor may appear and show cause in a hearing held by the agency why the finding is incorrect, should not be finally ordered, and should be modified or rescinded, because

(A) no duty of support is owed; or

(B) the amount of support found to be owed is incorrect;

(4) that if the person served with the notice and finding of financial

responsibility does not request a hearing within 30 days, the property **and income** of the person will be subject to execution **under AS 25.27.062 and 25.27.230 - 25.27.270** [IN ACCORDANCE WITH AS 25.27.230 - 25.27.270] in the amounts stated in the finding without further notice or hearing.

(2nd point amend #1

*** Sec. 15.** AS 25.27.170(b) is amended to read:

(b) If a request **for a formal hearing** under (a) of this section is made, the execution under **AS 25.27.062 and 25.27.230 - 25.27.270 may not** [AS 25.27.230 - 25.27.270 SHALL] be stayed **unless the obligor posts security or a bond in the amount of child support that would have been due under the finding of financial responsibility** pending the decision on the hearing [, OR THE DECISION OF A COURT, IF APPEALED]. If no request for a hearing is made, the finding of responsibility is final at the expiration of the 30-day period.

*** Sec. 16.** AS 25.27.170(d) is amended to read:

(d) The hearing officer shall determine the amount of periodic payments necessary to satisfy the past, present, and future liability of the alleged obligor under **AS 25.27.120** [AS 25.27.130], if any, and under any duty of support imposable under the law. The amount of periodic payments determined under this subsection is not limited by the amount of any public assistance payment made to or for the bene it of the child.

*** Sec. 17.** AS 25.27.170(f) is amended to read:

(f) If the alleged obligor requesting the hearing fails to appear at the hearing, the hearing officer shall enter a decision declaring the property **and income** of the alleged obligor subject to execution **under AS 25.27.062 and 25.27.230 - 25.27.270** [IN ACCORDANCE WITH AS 25.27.230 - 25.27.270] in the amounts stated in the notice and finding of financial responsibility.

*** Sec. 18.** AS 25.27.180(b) is amended to read:

(b) Liability to the state under **AS 25.27.120** [AS 25.27.130] is limited to the amount for which the obligor is found to be responsible under (a) of this section.

*** Sec. 19.** AS 25.27.230(a) is amended to read:

(a) At the exp.. ation of 30 days from either (1) the date of **distribution of an income withholding order under AS 25.27.062** [SERVICE OF NOTICE UNDER

AS 25.27.150], or (2) the date of service of a notice and finding of financial responsibility under AS 25.27.160, the agency may assert a lien upon the real or personal property of the obligor, in the amount of the obligor's liability.

* **Sec. 20.** AS 25.27.230(c) is amended to read:

(c) The lien shall attach to all real and personal property of the obligor and be effective on the date of recording of the lien with the recorder of the recording district in which the property attached is located. A lien against earnings shall attach and be effective upon filing with the recorder of the recording district in which the employer does business or maintains an office or agent for the purpose of doing business. **A lien filed at the offices of the Commercial Fisheries Entry Commission in Juneau against a limited entry permit issued under AS 16.43 is considered to have been filed against the permit in all recording districts in which the permit holder uses the permit.**

* **Sec. 21.** AS 25.27.250(a) is amended to read:

(a) At the expiration of **either (1) 15** [30] days from the date of service of **an income withholding order under AS 25.27.062 or** notice under AS 25.27.150, or **(2) 30 days** from the date of service of a notice and finding of financial responsibility under AS 25.27.160, the agency may issue to any person, political subdivision, or department of the state an order to withhold and deliver property.

* **Sec. 22.** AS 25.27.250(f) is amended to read:

(f) If a person, political subdivision, or department of the state upon whom service of an order to withhold and deliver has been made possesses property due, owing, or belonging to the obligor, that person, subdivision, or department shall withhold the property immediately upon receipt of the order and shall deliver the property to the agency [UPON DEMAND] after the expiration of the 14-day period from the date of service of the order **or expiration of the period specified in AS 25.27.062(e), whichever is earlier**. The agency shall hold property delivered under this subsection in trust for application against the liability of the obligor under **AS 25.27.062, 25.27.120, or 25.27.160** [AS 25.27.130] or for return, without interest, depending on final determination of liability or nonliability under this chapter. The agency may accept a good and sufficient bond **to secure payment of past, present,**

and future support conditioned upon final determination of liability in lieu of requiring **delivery** [DELIVERING] of property under this subsection.

* **Sec. 23.** AS 25.27.250 is amended by adding a new subsection to read:

(j) A person, political subdivision, or department that fails to comply with an order to withhold and deliver served under this subsection is subject to penalties under AS 25.27.260. A person, political subdivision, or department may, for each payment made under an order to withhold and deliver, deduct $1 from other wages or salary owed to the obligor.

* **Sec. 24.** AS 25.27.255(a) is amended to read:

(a) The agency shall pay to the obligee all money recovered by the agency from the obligor under an income withholding order except for court costs and money assigned to the agency under AS 25.27.120 - 25.27.130. **However, if there is more than one income withholding order under this chapter against an obligor, the agency shall allocate amounts available for withholding in a manner that gives priority to current support up to the limits imposed under 15 U.S.C. 1673(b) (sec. 303(b), Consumer Credit Protection Act). Notwithstanding the priority given to current support, the agency shall establish procedures for allocation of support among obligees so that in no case will the allocation result in a withholding order for one obligee not being implemented.**

* **Sec. 25.** AS 25.27.260 is amended to read:

Sec. 25.27.260. CIVIL LIABILITY UPON FAILURE TO COMPLY WITH AN ORDER OR LIEN. If **a** [ANY] person, political subdivision, or department of the state (1) fails to make an answer to an order to withhold and deliver within the time prescribed in AS 25.27.250; (2) fails or refuses to deliver property in accordance with an order issued under AS 25.27.250; (3) pays over, releases, sells, transfers, or conveys real property subject to a lien recorded under AS 25.27.230 to or for the benefit of the obligor or any other person; (4) fails or refuses to surrender upon demand property attached; **or** (5) fails or refuses to honor an assignment of wages or an income withholding order under AS 25.27.062 **that was served** [PRESENTED] by the agency **through personal service by a process server or through certified mail, return receipt requested**, the person, political subdivision, or department of the state is liable

to the agency in an amount equal to 100 percent of the amount constituting the basis of the lien, order to withhold and deliver, attachment, or withholding of wages or income, together with costs, interest, and reasonable attorney fees.

Amend #7

* **Sec. 26.** AS 25.27.260 is amended by adding a new subsection to read:

(b) A person, political subdivision, or department of the state that fails or refuses to honor a properly served income withholding order under AS 25.27.062 that is not being enforced by the agency is liable to the obligee in an amount equal to 100 percent of the amount ordered to be withheld together with costs, interest, and reasonable attorney fees.

* **Sec. 27.** AS 33.30.131(b) is amended to read:

(b) Unless alternative arrangements are expressly approved by the commissioner, when a prisoner is employed outside a correctional facility as part of a prerelease or short-duration furlough program, or as part of serving time in a correctional restitution center under AS 33.30.151 - 33.30.181, the earnings of the prisoner shall be delivered to the commissioner. If an employer transmits the earnings to the commissioner, the employer has no liability to the prisoner for the earnings. The commissioner shall disburse the earnings of the prisoner, in an order determined appropriate, under procedures adopted by the commissioner to

(1) pay for the room, board, and personal expenses of the prisoner in an amount or at a rate determined by the commissioner;

(2) pay any restitution or fine ordered by the sentencing court;

(3) reimburse the state for an award made for violent crimes compensation under AS 18.67 arising out of the criminal conduct of the prisoner;

(4) pay a civil judgment arising out of the criminal conduct of the prisoner; and

(5) support the dependents of the prisoner, and to provide child support payments as required by AS 25.27 [AS 25.27.062].

* **Sec. 28.** AS 25.27.255(b), 25.27.255(c), and secs. 2 and 5, ch. 75, SLA 1991, are repealed.

* **Sec. 29.** TRANSITIONAL PROVISION. (a) Notwithstanding other provisions of this Act, in the case of a support order issued by a court on or after January 1, 1994, and before

the effective date of this Act, the court shall, upon filing of a motion by an obligee who is the subject of the support order, issue an immediate income withholding order for support, regardless of whether support payments are in arrears, unless

(1) a written agreement exists between the obligor and the obligee that provides for an alternative arrangement;

(2) the obligor demonstrates, and the court finds, that there is good cause not to require immediate income withholding; or

(3) the support order is being enforced by the child support enforcement agency.

(b) An immediate income withholding order issued under this section is governed by AS 25.27, as amended by this Act, and shall be treated as an immediate income withholding order issued under AS 25.27.062(a).

*** Sec. 30.** This Act takes effect on the 10th day after the date it becomes law under AS 01.10.070(a).

DIVISION OF LEGAL SERVICES

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MEMORANDUM April 5, 1994

SUBJECT: Fees for Obligees and Obligors (CSSB 190( ); draft 8-LS-1001\U)

TO: Senator Drue Pearce

FROM: Terri Lauterbach
Legislative Counsel

You asked last week for information about fees that may be charged by CSED and employers in child support cases. Enclosed are copies of federal regulations relating to these two areas.

My reading of the federal regulations is that the state must charge an application fee for services when a non-AFDC person requests CSED's assistance in establishing or enforcing a child support order. (Please see page 247 of the enclosed pages of federal regulations.) The state may either assess the fee against the obligee or pay the fee itself. (I'm not sure what it means for the state to pay the fee itself, but that's what the regulations say.) In either case, the state may seek recovery of the fee from the obligor. To my knowledge, despite this federal requirement to charge an application fee, CSED is not charging a fee. I do not know if this means that we are using the option of having the state pay the fee or if we are out of compliance with federal law on this matter.

The regulations are silent as to whether additional fees may be charged, such as a fee for each payment sent to the obligee by CSED, and I have been unable thus far to confer with CSED about this matter either.

As to fees that may be collected by an employer from the obligor, there does not appear to be a limit under federal regulations. Please see page 281 of the enclosed pages.

I hope you find this information helpful. I will attempt to get clarifications from CSED before tomorrow's hearing. Please let me know if I can be of further assistance.

TML:pl
94-281 plm

Enclosure

Fee for obligee: See second page

days of the initial point of receipt in the responding State, in accordance with § 303.7(c)(7)(iv).

(2) Amounts collected by the IV-D agency on behalf of recipients of aid under the State's title IV-A or IV-E plan for whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective shall be distributed as follows:

(i) when the IV-D agency sends payments to the family under § 302.51(b)(1) of this part, payments to the family must be sent to the family within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected. When the IV-A agency sends payments to the family under § 302.51(b)(1) of this part, the IV-D agency must forward any amount due the family under § 302.51(b)(1) to the IV-A agency within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected.

(ii) Except as specified under paragraph (f)(2)(iv) of this section, collections for the month after the month the family receives its last assistance payment and collections distributed under § 302.51(b)(3) and (5) of this part must be sent to the family within 15 calendar days of the date of initial receipt in the State of a collection for the first month of ineligibility.

(iii) Except as specified in paragraph (f)(2)(iv) of this section, collections in IV-E foster care cases under §§ 302.52(b)(2) and (4) of this part must be distributed within 15 calendar days of the date of initial receipt in the State.

(iv) Collections as a result of Federal or State income tax refund offset paid to the family under § 302.51(b)(5) of this part, or distributed in title IV-E foster care cases under § 302.52(b)(4) of this part, must be sent to the AFDC family or IV-E agency, as appropriate, within 30 calendar days of the date of initial receipt by the IV-D agency, unless State law requires a post-offset appeal process and an appeal is filed timely, in which case the IV-D agency must send any payment to the AFDC family or IV-E agency within 15 calendar days of the date the appeal is resolved.

(3) Amounts collected on behalf of individuals receiving services under § 302.33 of this part shall be distributed as follows:

(i) Amounts collected which represent payment on the current support obligation shall be sent to the family within 15 calendar days of the date of initial receipt in the State.

(ii) Except as specified in paragraph (f)(3)(iii) of this section, if the amount collected is more than the amount required to be distributed in paragraph (f)(3)(i) of this section, the State may at its discretion either send such amounts to the family to satisfy past-due support within 15 calendar days of the date of initial receipt in the State or retain such amounts as have been assigned to satisfy assistance paid to the family which has not been reimbursed.

(iii) Collections due the family under § 302.51(b)(5) as a result of Federal or State income tax refund offset must be sent to the family within 30 calendar days of the date of receipt in the IV-D agency, except:

(A) If State law requires a post-offset appeal process and an appeal is timely filed, in which case the IV-D agency must send any payment to the family within 15 calendar days of the date the appeal is resolved; or

(B) As provided in § 303.72(h)(5) of this chapter.

(Approved by the Office of Management and Budget under control number 0960-0385)

[40 FR 27159, June 26, 1975, as amended at 47 FR 57281, Dec. 23, 1982; 49 FR 22289, May 29, 1984; 50 FR 19648, May 9, 1985; 51 FR 37731, Oct. 24, 1986; 54 FR 32309, Aug. 4, 1989; 56 FR 8003, Feb. 26, 1991]

§ 302.33 Services to individuals not receiving AFDC or title IV-E foster care assistance.

(a) *Availability of Services.* (1) The State plan must provide that the services established under the plan shall

be made available to any individual who:

(i) Files an application for the services with the IV-D agency. In an interstate case, only the initiating State may require an application under this section; or

(ii) Is a non-AFDC Medicaid recipient; or

(iii) Has been receiving IV-D services and is no longer eligible for assistance under the AFDC, IV-E foster care, and Medicaid program.

(2) The State may not require an application, other request for services or an application fee from any individual who is eligible to receive services under paragraphs (a)(1)(ii) and (iii) of this section. If an individual receiving services under paragraph (a)(1)(iii) of this section refuses services in response to a notice under paragraph (a)(4) of this section, and subsequently requests services, that individual must file an application and pay an application fee.

(3) The State may not charge fees or recover costs from any individual who is eligible to receive services under paragraph (a)(1)(ii) of this section.

(4) Whenever a family is no longer eligible for assistance under the State's AFDC, IV-E foster care, and Medicaid programs, the IV-D agency must notify the family, within five working days of the notification of ineligibility, that IV-D services will be continued unless the IV-D agency is notified to the contrary by the family. The notice must inform the family of the consequences of continuing to receive IV-D services, including the available services and the State's fees, cost recovery and distribution policies.

(5) The State must provide all appropriate IV-D services, in addition to IV-D services related to securing medical support, to all individuals who are eligible to receive services under paragraph (a)(1)(ii) of this section unless the individual notifies the State that only IV-D services related to securing medical support are wanted.

(b) *Definitions.* For purposes of this section:

Applicant's income means the disposable income available for the applicant's use under State law.

(c) *Application fee.* (1) Until October 1, 1985, the State plan may provide for an application fee to be charged each individual who applies for services under this section. If the State elects to charge a fee, the State plan shall specify either:

(i) A flat dollar amount not to exceed $25 to be charged each applicant; or

(ii) A fee schedule to be used to determine the fee to be charged each applicant. Such fee schedule will be based on each applicant's income and will be designed so as not to discourage the application for such services by those most in need of them.

(2) Beginning October 1, 1985, the State plan must provide that an application fee will be charged for each individual who applies for services under this section. Under this paragraph:

(i) The State shall collect the application fee from the individual applying for IV-D services or pay the application fee out of State funds.

(ii) The State may recover the application fee from the absent parent who owes a support obligation to a non-AFDC family on whose behalf the IV-D agency is providing services and repay it to the applicant or itself.

(iii) State funds used to pay an application fee are not program expenditures under the State plan but are program income under § 304.50 of this chapter.

(iv) Any application fee charged must be uniformly applied on a statewide basis and must be:

(A) A flat dollar amount not to exceed $25 (or such higher or lower amount as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs); or

(B) An amount based on a fee schedule not to exceed the flat dollar amount specified in paragraph (c)(2)(iv)(A) of this section. The fee schedule must be based on the applicant's income.

(v) The State may allow the jurisdiction that collects support for the State under this part to retain any application fee collected under this section.

(3) In an interstate case, the application fee is charged by the State where

the individual applies for services under this section.

(d) *Recovery of costs.* (1) The State may elect in its State plan to recover any costs incurred in excess of any fees collected to cover administrative costs under the IV-D State plan. A State which elects to recover costs shall collect on a case by case basis either excess actual or standardized costs:

(i) From the individual who owes a support obligation to a non-AFDC family on whose behalf the IV-D agency is providing services under this section; or

(ii) From the individual who is receiving IV-D services under paragraph (a)(1) (i) or (iii) of this section, either directly or from the support collected on behalf of the individual, but only if the State has in effect a procedure for informing all individuals authorized within the State to establish an obligation for support that the State will recover costs from the individual receiving IV-D services under paragraphs (a)(1) (i) and (iii) of this section.

(2) A State that recovers standardized costs under paragraph (d)(1) of this section shall develop a written methodology to determine standardized costs which are as close to actual costs as is possible. This methodology must be made available to any individual upon request.

(3) The IV-D agency shall not treat any amount collected from the individual as a recovery of costs under paragraph (d)(1)(i) of this section except amounts which exceed the current support owed by the individual under the obligation.

(4) If a State elects to recover costs under paragraph (d)(1)(ii) of this section, the IV-D agency may attempt to seek reimbursement from the individual who owes a support obligation for any costs paid by the individual who is receiving IV-D services and pay all amounts reimbursed to the individual who is receiving IV-D services.

(5) If a State elects to recover costs under this section, the IV-D agency must notify, consistent with the option selected, either the individual who is receiving IV-D services under paragraphs (a)(1) (i) or (iii) of this section, or the individual who owes a support obligation that such recovery will be made. In an interstate case, the IV-D agency where the case originated must notify the individual receiving IV-D services of the States that recover costs.

(6) The IV-D agency must notify the IV-D agencies in all other States if it recovers costs from the individual receiving IV-D services.

(e) *Assignment* (1) The IV-D agency may take an assignment of support rights not already assigned to the State from an individual receiving services under this section. However, an assignment by an individual under this section does not constitute an assignment as defined in § 301.1 of this chapter and may not be a condition of eligibility for services under this section.

(2) Before the recipient of IV-D services under this section makes an assignment of support rights, the IV-D agency shall inform the individual that the assignment is not a condition of eligibility for services under this section.

(Approved by the Office of Management and Budget under control numbers 0960-0253, 0960-0385, 0960-0402, and 0970-0107)

[49 FR 36772, Sept. 19, 1984, as amended at 50 FR 19648, May 9, 1985; 51 FR 37731, Oct. 24, 1986; 56 FR 8003, Feb. 26, 1991]

§ 302.34 Cooperative arrangements.

(a) The State plan shall provide that the State will enter into written agreements for cooperative arrangements with appropriate courts and law enforcement officials. Such arrangements may be entered into with a single official covering more than one court, official, or agency, if the single official has the legal authority to enter into arrangements on behalf of the courts, officials, or agencies. Such arrangements shall contain provisions for providing courts and law enforcement officials with pertinent information needed in locating absent parents, establishing paternity and securing support, including the immediate transfer of the information obtained under § 235.70 of this title to the court or law enforcement official, to the extent that such information is relevant to the duties to be performed

(ii) That the provision for withholding applies to any current or subsequent employer or period of employment;

(iii) Of the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact;

(iv) Of the period within which the absent parent must contact the State in order to contest the withholding and that failure to contact the State within the specified time limit will result in the State notifying the employer to begin withholding; and

(v) Of the actions the State will take if the individual contests the withholding, including the procedures established under paragraph (e) of this section.

(2) (i) The requirement for advance notice to the absent parent under paragraph (d)(1) of this section and for State procedures when the absent parent contests the withholding in response to the advance notice under paragraph (e) of this section do not apply in the case of any State which had a withholding system in effect on August 16, 1984 if the system provided on that date, and continues to provide, any other procedures as may be necessary to meet the procedural due process requirements of State law.

(ii) Any State in which paragraph (d)(2)(i) of this section applies must meet all other requirements of this section and must send notice to the employer under paragraph (f) of this section within 15 calendar days of the appropriate date specified in paragraph (c)(1) of this section if the employer's address is known on that date, or, if the employer's address is not known on that date, within 15 calendar days of locating the employer's address.

(e) *State procedures when the absent parent contests initiated withholding in response to the advance notice.* The State must establish procedures for use when an absent parent contests the withholding. Within 45 calendar days of sending advance notice to the absent parent under paragraph (d) of this section, the State must:

(1) Provide the absent parent an opportunity to present his or her case to the State;

(2) Determine if the withholding shall occur based on an evaluation of the facts, including the absent parent's statement of his or her case;

(3) Notify the absent parent whether or not the withholding is to occur and, if it is to occur, include in the notice the time frames within which the withholding will begin and the information given to the employer in the notice required under paragraph (f) of this section; and

(4) If withholding is to occur, send the notice required under paragraph (f) of this section.

(f) *Notice to the employer for immediate and initiated withholding.* (1) To initiate withholding, the State must send the absent parent's employer a notice which includes the following:

(i) The amount to be withheld from the absent parent's wages, and a statement that the amount actually withheld for support and other purposes, including the fee specified under paragraph (f)(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 State (or to such other individual or entity as the State may direct) within 10 working days of the date the absent parent is paid, and must report to the State (or to such other individual or entity as the State may direct) the date on which the amount was withheld from the absent parent's wages;

Fee for obligor

(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 an absent parent from employment, refusing to employ, or taking disciplinary action against any absent parent because of the withholding;

(vi) That, if the employer fails to withhold wages in accordance with the provisions of the notice, the employer

311-165 O—92——10

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March 14, 1994

The Honorable Steve Frank, Co-chair
The Honorable Drue Pearce, Co-chair
Senate Finance Committee
Capitol Building
Juneau, Alaska 99811

Dear Senator Frank and Senator Pearce:

Attached you will find a fiscal note for CSSB 190 (JUD), relating to income withholding and other methods of enforcement for orders of support.

SB 190 was drafted by the Child Support Enforcement Division (CSED) with the intention of bringing Alaska into compliance with a federal mandate on child support enforcement. Much of the legislation relates to CSED's activities, and the court system takes no position on those sections. However, a significant portion of SB 190 directs court activities in this area. These sections were drafted and introduced by CSED without any consultation with the court system. It is our view that these sections are confusing, difficult to administer, and provide individual judges with the discretion to interpret the law in a widely divergent manner, including ways that may not be compliant with federal law.

The court system will be submitting amendments during the committee process which have the effect of correcting the bill's problems and reducing the note.

Very truly yours,

Arthur H. Snowden II bh

Arthur H. Snowden, II
Administrative Director

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MEMORANDUM March 29, 1994

SUBJECT: CSSB 190( )/version "U" (An Act relating to income withholding and other methods of enforcement for orders of support)

TO: Senator Drue Pearce
Co-Chair, Senate Finance Committee

FROM: Terri Lauterbach
Legislative Counsel

You have asked for a comparison of CSSB 190( )/version "U" with CSSB 190(JUD).

In general, the aim of both bills is the same: to bring the state into compliance with federal laws relating to income withholding for child support. The federal laws applicable to child support orders that are enforced by CSED took effect in 1990. The federal laws applicable to child support orders that are enforced by private parties took effect in January of this year.

The bill that came out of the Senate Judiciary Committee was based on the understanding that when the federal laws governing income withholding by CSED became applicable to the court system this year, that the federal regulations implementing those laws would also become applicable to the court system. After the bill came out of the Senate Judiciary Committee, I learned that those regulations are not applicable to the court system; they are only applicable to CSED. Based on that new information, the bill needed to be rewritten to distinguish more clearly between procedures applicable to CSED and procedures applicable to the court system.

CSED, the Department of Revenue. and the court system have cooperated in rewriting the bill. I believe that it now more clearly reflects the requirements of federal law and acknowledges the ways in which the court system is differently affected by the federal laws.

Section 1. This section is comparable to sec. 1 and 3 of the Judiciary CS. CSED and the court system have agreed that the new language in sec. 1 of the Judiciary version was redundant with other portions of the bill, so it has been deleted. The

new language that now appears in sec. 1 of the blank CS appeared in sec. 3 of the Judiciary CS. However, rather than using the specific dates found in the Judiciary version, the blank CS uses the phrase "on or after the effective date of this Act." This phrase is more accurate because it recognizes that this bill is prospective in nature. The bill does not retroactively change anyone's child support order.

Sec. 2. This section is comparable to sec. 2 of the Judiciary CS. However, CSED and the court system have now agreed that all income withholding payments should pass through CSED so that it can be the federally required agency for keeping track of income withholding. Therefore, the reference to "other persons or entities" that was in sec. 2 of the Judiciary CS has been removed. In sec. 2 of the blank CS, a new sentence has been added to require that courts send copies of new child support orders to CSED. This will help implement CSED's responsibility to be the agency that keeps track of child support enforcement.

Sec. 3. As discussed above, the material in sec. 3 of the Judiciary CS has been moved to sec. 1 of the blank CS. The material in this sec. 3 (of the blank CS) comes from sec. 4 of the Judiciary CS, with a couple of changes. One change is the addition of a definition of "10 days overdue" in order to clarify the phrase. The other change is in the last line of the section. The court is given broader discretion to find "good cause" rather than being tied to the same details that govern CSED's findings of "good cause."

Sec. 4. The new material in sec. 4 of the Judiciary CS has been moved to sec. 3 of the blank CS, as just discussed. CSED and the court system have agreed that the rest of sec. 4 of the Judiciary CS was redundant with the provisions of sec. 13 with respect to CSED's procedures and inaccurate with respect to the procedures applicable to the court system. Therefore, in the blank CS, AS 25.27.062(d) is repealed and reenacted in sec. 4 to apply only to the court system. This section describes how income withholding can be initiated under a support order when immediate withholding was not required.

Sec. 5. This section is like sec. 5 of the Judiciary CS except that the reference to "other entities" has been removed to reflect the decision in sec. 2 that CSED would be the central collection point for income withholding. Other entities will not be involved. On lines 14 - 15 of sec. 5 in the blank CS, CSED is given the option of using first class mail or a process server rather than being confined to using certified mail. It is my understanding that CSED already uses first class mail as a cost saving measure. Later in the bill, it is made clear that penalties for an employer who ignores an income withholding order only apply if the order was served by certified mail or by a process server. But, in the vast majority of situations, employers do implement orders they receive by first class mail, so the blank CS gives this less-costly option to CSED.

Two other changes are in sec. 5 of the blank CS: on lines 19 - 20, the phrase "14 working days" has been used instead of just "14 days" because "working days" is the federal requirement. The second change is the deletion of the sentence in the Judiciary CS that referred to penalties under AS 25.27.260. That sentence was redundant. AS 25.27.260 will apply by its own terms and does not need to be mentioned here.

Secs. 6 - 8. Sections 6 - 8 of the blank CS are new additions. Each section is amended in the same way: instead of referring to income withholding orders issued under this "section," each section now refers to income withholding orders issued under this "chapter." This broader language is intended to clarify that the provisions of these three sections apply to all income withholding, even if it's done through an order to withhold and deliver, which is issued under AS 25.27.250.

Sec. 9. This section provides that an employer must notify CSED when a child support obligor terminates employment. The Judiciary CS (in sec. 6) had provided that the notice could be sent to the court, CSED, or the obligee. This seemed to be a confusing set of alternatives for the employer. Also, because of sec. 2, which makes all payments pass through CSED, it seems as if CSED should also get these employer notices.

Sec. 10. This section sets out procedures for terminating a withholding order. It is based in part on sec. 7 of the Judiciary CS. However, the Judiciary CS did not adequately recognize the fact that a different procedure should be applicable to the court system. The blank CS sets out two procedures in paragraphs (1) and (2), depending on whether the support order is being enforced by CSED.

Sec. 11. This section describes the exceptions allowed under federal law for when immediate income withholding does not have to be ordered. It is like sec. 8 of the Judiciary CS, but rewritten for clarity as to the different procedures applicable to CSED and the court system. There are also the following changes: the health insurance provision in lines 8 - 10 is clarified to refer to coverage of the children for whom support is being paid; there is no requirement in federal law that CSED or the court always approve the alternative arrangement discussed in AS 25.27.062(m)(1)(A) and (2)(A) so the reference in the Judiciary CS to "approval" of these agreements has been deleted.

Sec. 12. Same as sec. 9 of the Judiciary CS.

Sec. 13. This section is like sec. 10 of the Judiciary CS except for the following changes: in subsection (a), it is clarified that this section applies only to situations where income withholding was not required to be immediate; in subsection (d), there is an additional legal defense allowed to the obligor with respect to allegations made under AS 25.27.062(c)(3)(A).

Sec. 14. This section is the same as sec. 11 of the Judiciary CS, except that, on page 7, line 23, the blank CS corrects a reference that has become inaccurate in the last few years because of changes made by the legislature in AS 25.27.130. The correct reference is now AS 25.27.120.

Sec. 15. This section is the same as sec. 12 of the Judiciary CS, except that, on page 8, line 6, the phrase "**for a formal hearing**" has been added. This addition clarifies that a bond will not be required of an obligor who only requests an informal conference.

Sec. 16. This section is new in the blank CS. It corrects the same reference discussed under sec. 14.

Sec. 17. Same as sec. 13 of the Judiciary CS.

Sec. 18. This section is new in the blank CS. It corrects the same reference discussed under sec. 14.

Sec. 19. This section is like sec. 14 of the Judiciary CS, except that the specific reference to subsection (e) of AS 25.27.062 is deleted. In the blank CS, the reference is to AS 25.27.062.

Sec. 20. Same as sec. 15 of the Judiciary CS.

Sec. 21. Same as sec. 16 of the Judiciary CS.

Sec. 22. Same as sec. 17 of the Judiciary CS, except that the reference to AS 25.27.-130 is corrected, as discussed under sec. 14.

Sec. 23. Same as sec. 18 of the Judiciary CS.

Sec. 24. Same as sec. 19 of the Judiciary CS.

Sec. 25. The section is new in the blank CS. It is added in order to clarify the penalties applicable in AS 25.27. On line 28, the word "**or**" is added to clarify that penalties are applicable to each paragraph individually. The new language on lines 30 - 31 specifies that penalties will be applicable only if the person received notice by certified mail or through a process server. First class mail is insufficient.

Sec. 26. This section is new in the blank CS. It makes an employer who ignores an income withholding order liable to the obligee for the money that should have been withheld in situations where CSED is not enforcing the order. This is comparable to the way AS 25.27.260(a) makes the employer liable to CSED when CSED is enforcing the order.

Sec. 27. This section is new in the blank CS. It clarifies that a prisoner's wages are subject to all of AS 25.27, not just AS 25.27.062.

Sec. 28. This section repeals the same provisions repealed in sec. 20 of the Judiciary CS. In addition, it also repeals the sections of ch. 75, SLA 1991, that would have made the monthly employer reporting program expire in January 1995. By repealing these sections of ch. 75, SLA 1991, the monthly employer reporting program will stay in effect.

Sec. 29. This section is new in the blank CS. It deals with the support orders issued by the court system between January 1 of this year and the date on which this bill would take effect. The deadline for the state's changes in its income withholding laws was January 1, 1994, for orders not being enforced by CSED. Every order issued by the courts between January 1 and the time this bill takes effect that does not include immediate income withholding is out of compliance with federal law. Section 29 allows an obligee to request that the court add immediate income withholding to these orders and, therefore, bring them into compliance with the federal law.

Sec. 30. Instead of the immediate effective date of the Judiciary CS, the blank CS delays the effective date until 10 days after the bill becomes law. The court system requested this delay so that it could put the effective date on its forms and get them mailed out to courts before the law must be implemented.

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I hope you find this memorandum helpful in explaining the differences between the two bills. Please let me know if I can be of further assistance.

TML:pl
94-258.plm

Enclosure

DIVISION OF LEGAL SERVICES

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MEMORANDUM April 6, 1994

SUBJECT: CSSB 190(Finance)\"X" version (Child Support Enforcement)

TO: Senator Steve Frank

FROM: Terri Lauterbach
Legislative Counsel

Enclosed is CSSB 190(Finance), as passed out by the Senate Finance Committee today, with the following exception: the handwritten addition ("and consistent with") on page 2 of the 8-LS1001\U.1 has not been added. When I asked committee staff why the same phrase was not added to the new subsection (n) on page 1 of the amendment, it was explained to me that the committee's concern was that an obligor who, for instance, was only required by the order to pay 50% of the health insurance costs not be credited with 100% of the payment. In my opinion, the phrase "to the extent that" in the amendment already covers this concern. An obligor will be given a credit "to the extent that" the payments are required in the support order, not any higher and not any lower.

I hope this explains the change adequately. Please let me know if I can be of additional assistance.

TML:pl:gc
94-288.plm

Enclosure

8-LS1001\X

CS FOR SENATE BILL NO. 190(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

"An Act relating to income withholding and other methods of enforcement for orders of support; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 25.27.062(a) is amended to read:

(a) A judgment, court order, or order of the agency under this chapter providing for support must contain an income withholding order. **Except as provided in (m) of this section, the income withholding order must provide for immediate income withholding if the support order is**

(1) being enforced by the agency and was issued or modified on or after the effective date of this Act; or

(2) not being enforced by the agency and was issued on or after the effective date of this Act [AN INCOME WITHHOLDING ORDER UNDER THIS SECTION MAY NOT BE ENFORCED UNLESS THE OBLIGOR HAD NOTICE OF THE ORDER WHEN IT WAS MADE OR AN APPLICATION FOR THE ORDER

WAS SERVED ON THE OBLIGOR IN THE MANNER PROVIDED FOR SERVICE OF A SUMMONS UNDER RULE 4, ALASKA RULES OF CIVIL PROCEDURE].

* **Sec. 2.** AS 25.27.062(b) is amended to read:

(b) An income withholding order must direct the obligor, the obligor's employer, future employer, and any person, political subdivision, or department of the state to withhold money due or to be due the obligor and pay the money to the agency, in an amount determined under (i) of this section. **A court that issues a support order on or after the effective date of this Act shall send a copy of the order to the agency.**

* **Sec. 3.** AS 25.27.062(c) is repealed and reenacted to read:

(c) Income withholding under a support order that does not require immediate withholding may be initiated under AS 25.27.150 if the support order is being enforced by the agency, or under (d) of this section if the support order is not being enforced by the agency, if

(1) the obligor requests withholding;

(2) the payments that the obligor has failed to make within 30 days of the monthly due date specified in the support order are equal to or greater than the support payable for one month; or

(3) the obligee requests withholding and

(A) the agency approves the request because all or part of the monthly payment of the obligor has been more than 10 days overdue more than one time in the preceding 12 months or there is reason to believe that the obligor might withdraw assets to avoid payment of support; in this paragraph, "10 days overdue" means occurring 10 days after the monthly due date specified in a support order; or

(B) the court approves the request for good cause.

* **Sec. 4.** AS 25.27.062(d) is repealed and reenacted to read:

(d) Income withholding under a support order that does not require immediate income withholding and that is not being enforced by the agency may be initiated by filing a motion with the court and complying with applicable court rules. The court shall order the beginning of income withholding under this subsection if the court finds

that any of the grounds in (c)(1), (c)(2), or (c)(3)(B) of this section is satisfied. It is not a defense to a motion based on (c)(2) of this section that less than one full month's payment is past due by 30 days if at least one full month's payment was past due by 30 days on the date the motion was filed. Notice to the obligor of income withholding ordered under this subsection must be given in a manner that complies with court rules. In this subsection, "past due by 30 days" means unpaid 30 days after the monthly due date specified in the support order.

* **Sec. 5.** AS 25.27.062(e) is amended to read:

(e) The [OBLIGEE OR PERSON OR PUBLIC] agency **or the person who obtains an** [THAT REQUESTED THE] income withholding order **under this chapter** shall immediately send a copy of the income withholding order, a copy of **the relevant provisions of** AS 25.27.260 and this section, and an explanation of the effect of the statutes [BY CERTIFIED MAIL] to persons who may owe money to an obligor. **These items may be sent by first class mail or certified mail, return receipt requested, or they may be served personally by a process server.** An income withholding order made under this **chapter** [SECTION] is binding upon a person, employer, political subdivision, or department of the state immediately upon receipt of a copy of the income withholding order. An employer shall begin withholding the specified amount from the employee's wages (1) 14 **working** days after the mailing date on the **order** [NOTICE] of withholding **or 14 working days after the date on which the order was personally served, whichever is applicable,** or (2) on the first day of the next pay period, if earlier. The amount withheld shall be sent to the agency **within 10 working days after the date the employee is paid. An employer may, for each payment made under an order, deduct $5 from other wages or salary owed to the obligor**.

* **Sec. 6.** AS 25.27.062(f) is amended to read:

(f) An employer may not discharge, discipline, or refuse to employ an obligor on the basis of an income withholding order issued under this **chapter** [SECTION]. If an employer discharges, disciplines, or refuses to employ an obligor because of an income withholding obligation, the court, after notice and hearing, may order reinstatement or restitution to the obligor, or both. A person who violates this

subsection or a regulation adopted to implement it, is liable for a civil penalty of not more than $1,000.

* **Sec. 7.** AS 25.27.062(g) is amended to read:

(g) An income withholding order under this **chapter** [SECTION] has priority over all other attachments, executions, garnishments, or other legal process brought under state law against the same property unless otherwise ordered by the court. An income withholding order is not limited to the wages of an obligor but may include all money owed to the obligor not otherwise exempt by law. Exemptions under AS 09.38 do not apply to income withholdings under this **chapter** [SECTION].

* **Sec. 8.** AS 25.27.062(h) is amended to read:

(h) The court may order payment of all court costs that resulted from an income withholding proceeding under this **chapter** [SECTION].

* **Sec. 9.** AS 25.27.062(k) is repealed and reenacted to read:

(k) An employer who is withholding income of an employee under an order that provides that the withheld income shall be paid to the agency shall notify the agency promptly when the employee gives or receives notice of termination of employment and provide to the agency the employee's last known home address and the name and address of the employee's new employer, if known.

* **Sec. 10.** AS 25.27.062(l) is repealed and reenacted to read:

(l) Unless modified or terminated by the agency or the court, an order to withhold income under this chapter remains in effect until the support order is satisfied. The agency or court may not terminate or modify an income withholding order solely on the ground that the obligor has paid all arrearages. Upon satisfaction of a support order, if the order is

(1) being enforced by the agency, the agency shall, **within 15 working days**, notify all persons served by the agency with the income withholding order that withholding is no longer required; if the agency receives money from an obligor under an income withholding order after the underlying support order has been satisfied and the agency was enforcing the support order at the time it became satisfied, the agency shall immediately return the overpayment to the obligor; if the agency fails to return an overpayment as required under this paragraph, the state is liable to the obligor for

the amount of the overpayment, plus interest at the rate imposed under AS 43.05.225, and a person to whom the agency erroneously disbursed the overpayment is liable to the state for the amount disbursed, plus interest at the rate imposed under AS 43.05.225;

(2) not being enforced by the agency, the obligor shall file a motion in court requesting termination of the withholding order and serve the motion on the obligee; the court shall enter an order terminating the withholding order if the court determines that the support order has been satisfied; the obligor may deliver a copy of the termination order to persons who were served with the income withholding order; when a termination order is entered, the obligee shall, upon request of the obligor, notify the obligor of all persons who have been served with the income withholding order by the obligee.

* **Sec. 11.** AS 25.27.062 is amended by adding **new subsection:** to read:

(m) An income withholding order described in (a)(1) - (2) of this section is not subject to immediate withholding if the support order is

(1) being enforced by the agency and the obligor agrees to keep the agency informed of the obligor's current employer and the availability of employment-related health insurance coverage for the children covered by the support order until the support order is satisfied and

(A) the agency has entered into its record a written agreement between the obligor and the obligee that provides for an alternative arrangement and income withholding has not been terminated previously and subsequently initiated; the agency must also be a party to an agreement under this paragraph if support has been assigned to the state; or

(B) the obligor or obligee demonstrates and the agency, in compliance with applicable federal law, finds good cause not to require immediate income withholding because it would not be in the best interests of the child and, in a case involving the modification of a support order, the obligor has made voluntary support payments under a court or agency order and has not been in arrears in an amount equal to the support payable for one month; in this paragraph, "in arrears" means failing to make a support payment

within 30 days of the monthly due date specified in the order;

(2) not being enforced by the agency and the obligor agrees to keep the obligee informed of the obligor's current employer and the availability of employment-related health insurance coverage for the children covered by the support order until the support order is satisfied and

(A) the court finds that (i) a written agreement exists between the obligor and the obligee that provides for an alternative arrangement and (ii) income withholding has not been terminated previously and subsequently initiated; the agency must also be a party to an agreement under this paragraph if support has been assigned to the state; or

(B) the obligor or obligee demonstrates, and the court, in compliance with applicable federal law, finds good cause not to require immediate income withholding because it would not be in the best interests of the child and, in a case involving the modification of a support order, the obligor has made voluntary support payments under a court or agency order and has not been in arrears in an amount equal to the support payable for one month; in this paragraph, "in arrears" means failing to make a support payment within 30 days of the monthly due date specified in the order; or

(3) an order that involves an obligor who is receiving social security or other disability compensation that includes regular payments to the children who are the subjects of the support order, except to the extent that the payments to the children do not equal the child support due each month.

(n) In calculating the amount of child support to be withheld under an income withholding order, the agency shall give credit to the obligor for the cost to the obligor of medical and dental insurance for the children and educational payments for the children to the extent that the insurance coverage and educational payments are required in the applicable child support order and are actually paid for by the obligor.

*** Sec. 12.** AS 25.27.100 is amended to read:

Sec. 25.27.100. ALL PERSONS MAY USE AGENCY; **FEES FOR SERVICES**. The agency shall provide aid to any person due child support under the laws of this state upon application. **Subject to (b) of this section, the** [THE] agency

may, by regulation, impose a fee for services provided under this chapter.

* **Sec. 13.** AS 25.27.100 is amended by adding a new subsection to read:

(b) To the extent allowed under federal law, for each payment made by the agency to a custodian from money sent to the agency under an income withholding order issued under this chapter, the agency shall impose a fee of $5 on the custodian. To the extent allowed under federal law, the agency shall subtract this fee from the money it receives under the income withholding order before disbursing the balance of the money to the custodian.

* **Sec. 14.** AS 25.27.140(b) is amended to read:

(b) If a support order has been entered, the agency may enforce the support order utilizing the procedures prescribed in **AS 25.27.062, 25.27.150.** [AS 25.27.150] and 25.27.230 - 25.27.270.

* **Sec. 15.** AS 25.27.150 is repealed and reenacted to read:

Sec. 25.27.150. INITIATED INCOME WITHHOLDING; REQUIRED NOTICE AND HEARING. (a) In order to initiate income withholding for a support order being enforced by the agency for which immediate income withholding is not required under AS 25.27.062(a), the agency shall serve a notice of its intent to initiate income withholding on the obligor. Notice under this subsection shall be served upon the obligor by certified mail to the obligor's last known address, and service is complete when the notice is properly addressed, certified, and mailed.

(b) The notice must state the amount of the overdue support that is owed, if any, and the amount of income that will be withheld.

(c) The notice shall inform the obligor that the income withholding order will take effect 15 days after the date on which the notice is served unless the obligor requests a hearing within 15 days after the notice is served. If the obligor requests a hearing, an income withholding order may not take effect until the conclusion of the hearing.

(d) If the obligor requests a hearing, it shall be conducted under the department's regulations for informal conferences and shall be held within 15 days of the date of the request. The hearing may only be held to determine if there is a mistake of fact that makes the income withholding order improper because the amount

of current or overdue support is incorrect, the identity of the obligor is inaccurate, or, for initiated withholding based on AS 25.27.062(c)(3)(A), the alleged facts regarding overdue payments or potential withdrawal of assets are incorrect. The order is not subject to any other legal defenses. It is not a defense to an income withholding order issued under AS 25.27.062(c)(2) that less than one full month's payment is past due if at least one full month's payment was past due on the date notice was served under this section.

(e) The appeals officer shall inform the obligor, either at the hearing or within 15 days after the hearing, whether or not the withholding will occur and of the date on which it is to commence.

(f) If the appeals officer determines that withholding will occur, the obligor may request a formal hearing, as provided in the department's regulations. The income withholding order shall be issued and withholding shall begin under the procedures in AS 25.27.062, whether or not the obligor requests a formal hearing, unless the obligor posts security or a bond in the amount that would have been withheld pending the outcome of a formal hearing.

* **Sec. 16.** AS 25.27.160(b) is amended to read:

(b) The notice and finding of financial responsibility served under (a) of this section must state

(1) the sum or periodic payments for which the alleged obligor is found to be responsible, calculated by taking into consideration the need of the alleged obligee, the alleged obligor's liability to the state under **AS 25.27.120** [AS 25.27.130] if any, and the duty of support under the law;

(2) the name of the alleged obligee and the obligee's custodian;

(3) that the alleged obligor may appear and show cause in a hearing held by the agency why the finding is incorrect, should not be finally ordered, and should be modified or rescinded, because

(A) no duty of support is owed; or

(B) the amount of support found to be owed is incorrect;

(4) that if the person served with the notice and finding of financial responsibility does not request a hearing within 30 days, the property **and income** of

the person will be subject to execution **under AS 25.27.062 and 25.27.230 - 25.27.270** [IN ACCORDANCE WITH AS 25.27.230 - 25.27.270] in the amounts stated in the finding without further notice or hearing.

*** Sec. 17.** AS 25.27.170(b) is amended to read:

(b) If a request **for a formal hearing** under (a) of this section is made, the execution under **AS 25.27.062 and 25.27.230 - 25.27.270 may not** [AS 25.27.230 - 25.27.270 SHALL] be stayed **unless the obligor posts security or a bond in the amount of child support that would have been due under the finding of financial responsibility** pending the decision on the hearing [, OR THE DECISION OF A COURT, IF APPEALED]. If no request for a hearing is made, the finding of responsibility is final at the expiration of the 30-day period.

*** Sec. 18.** AS 25.27.170(d) is amended to read:

(d) The hearing officer shall determine the amount of periodic payments necessary to satisfy the past, present, and future liability of the alleged obligor under **AS 25.27.120** [AS 25.27.130], if any, and under any duty of support imposable under the law. The amount of periodic payments determined under this subsection is not limited by the amount of any public assistance payment made to or for the benefit of the child.

*** Sec. 19.** AS 25.27.170(f) is amended to read:

(f) If the alleged obligor requesting the hearing fails to appear at the hearing, the hearing officer shall enter a decision declaring the property **and income** of the alleged obligor subject to execution **under AS 25.27.062 and 25.27.230 - 25.27.270** [IN ACCORDANCE WITH AS 25.27.230 - 25.27.270] in the amounts stated in the notice and finding of financial responsibility.

*** Sec. 20.** AS 25.27.180(b) is amended to read:

(b) Liability to the state under **AS 25.27.120** [AS 25.27.130] is limited to the amount for which the obligor is found to be responsible under (a) of this section.

*** Sec. 21.** AS 25.27.230(a) is amended to read:

(a) At the expiration of 30 days from either (1) the date of **distribution of an income withholding order under AS 25.27.062** [SERVICE OF NOTICE UNDER AS 25.27.150], or (2) the date of service of a notice and finding of financial

responsibility under AS 25.27.160, the agency may assert a lien upon the real or personal property of the obligor. in the amount of the obligor's liability.

* **Sec. 22.** AS 25.27.230(c) is amended to read:

(c) The lien shall attach to all real and personal property of the obligor and be effective on the date of recording of the lien with the recorder of the recording district in which the property attached is located. A lien against earnings shall attach and be effective upon filing with the recorder of the recording district in which the employer does business or maintains an office or agent for the purpose of doing business. **A lien filed at the offices of the Commercial Fisheries Entry Commission in Juneau against a limited entry permit issued under AS 16.43 is considered to have been filed against the permit in all recording districts in which the permit holder uses the permit.**

* **Sec. 23.** AS 25.27.250(a) is amended to read:

(a) At the expiration of **either (1) 15** [30] days from the date of service of **an income withholding order under AS 25.27.062 or** notice under AS 25.27.150, or **(2) 30 days** from the date of service of a notice and finding of financial responsibility under AS 25.27.160, the agency may issue to any person, political subdivision, or department of the state an order to withhold and deliver property.

* **Sec. 24.** AS 25.27.250(b) is amended to read:

(b) All real or personal property belonging to the obligor is subject to an order to withhold and deliver, including, but not limited to, earnings that are due, owing, or belonging to the debtor. **In calculating the amount to be withheld and delivered under an order issued under this section, the agency shall give credit to the obligor for the cost to the obligor of medical and dental insurance for the children and educational payments for the children to the extent that the insurance coverage and educational payments are required in the applicable child support order and are actually paid for by the obligor.**

* **Sec. 25.** AS 25.27.250(f) is amended to read:

(f) If a person, political subdivision, or department of the state upon whom service of an order to withhold and deliver has been made possesses property due, owing, or belonging to the obligor, that person, subdivision, or department shall

withhold the property immediately upon receipt of the order and shall deliver the property to the agency [UPON DEMAND] after the expiration of the 14-day period from the date of service of the order **or expiration of the period specified in AS 25.27.062(e), whichever is earlier**. The agency shall hold property delivered under this subsection in trust for application against the liability of the obligor under **AS 25.27.062, 25.27.120, or 25.27.160** [AS 25.27.130] or for return, without interest, depending on final determination of liability or nonliability under this chapter. The agency may accept a good and sufficient bond **to secure payment of past, present, and future support** conditioned upon final determination of liability in lieu of requiring **delivery** [DELIVERING] of property under this subsection.

*** Sec. 26.** AS 25.27.250 is amended by adding a new subsection to read:

(j) A person, political subdivision, or department that fails to comply with an order to withhold and deliver served under this subsection is subject to penalties under AS 25.27.260. A person, political subdivision, or department may, for each payment made under an order to withhold and deliver, deduct $5 from other wages or salary owed to the obligor.

*** Sec. 27.** AS 25.27.255(a) is amended to read:

(a) The agency shall pay to the obligee all money recovered by the agency from the obligor under an income withholding order except for court costs and money assigned to the agency under AS 25.27.120 - 25.27.130. **However, if there is more than one income withholding order under this chapter against an obligor, the agency shall allocate amounts available for withholding in a manner that gives priority to current support up to the limits imposed under 15 U.S.C. 1673(b) (sec. 303(b), Consumer Credit Protection Act). Notwithstanding the priority given to current support, the agency shall establish procedures for allocation of support among obligees so that in no case will the allocation result in a withholding order for one obligee not being implemented.**

*** Sec. 28.** AS 25.27.260 is amended to read:

Sec. 25.27.260. CIVIL LIABILITY UPON FAILURE TO COMPLY WITH AN ORDER OR LIEN. If **a** [ANY] person, political subdivision, or department of the state (1) fails to make an answer to an order to withhold and deliver within the time

prescribed in AS 25.27.250; (2) fails or refuses to deliver property in accordance with an order issued under AS 25.27.250; (3) pays over, releases, sells, transfers, or conveys real property subject to a lien recorded under AS 25.27.230 to or for the benefit of the obligor or any other person; (4) fails or refuses to surrender upon demand property attached; **or** (5) fails or refuses to honor an assignment of wages or an income withholding order under AS 25.27.062 **that was served** [PRESENTED] by the agency **through personal service by a process server or through certified mail, return receipt requested**, the person, political subdivision, or department of the state is liable to the agency in an amount equal to 100 percent of the amount constituting the basis of the lien, order to withhold and deliver, attachment, or withholding of wages or income, together with costs, interest, and reasonable attorney fees.

*** Sec. 29.** AS 25.27.260 is amended by adding a new subsection to read:

(b) A person, political subdivision, or department of the state that **intentionally** fails or refuses to honor a properly served income withholding order under AS 25.27.062 that is not being enforced by the agency is liable to the obligee in an amount equal to 100 percent of the amount ordered to be withheld together with costs, interest, and reasonable attorney fees.

*** Sec. 30.** AS 33.30.131(b) is amended to read:

(b) Unless alternative arrangements are expressly approved by the commissioner, when a prisoner is employed outside a correctional facility as part of a prerelease or short-duration furlough program, or as part of serving time in a correctional restitution center under AS 33.30.151 - 33.30.181, the earnings of the prisoner shall be delivered to the commissioner. If an employer transmits the earnings to the commissioner, the employer has no liability to the prisoner for the earnings. The commissioner shall disburse the earnings of the prisoner, in an order determined appropriate, under procedures adopted by the commissioner to

(1) pay for the room, board, and personal expenses of the prisoner in an amount or at a rate determined by the commissioner;

(2) pay any restitution or fine ordered by the sentencing court;

(3) reimburse the state for an award made for violent crimes compensation under AS 18.67 arising out of the criminal conduct of the prisoner;

(4) pay a civil judgment arising out of the criminal conduct of the prisoner; and

(5) support the dependents of the prisoner, and to provide child support payments as required by AS 25.27 [AS 25.27.062].

* **Sec. 31.** AS 25.27.255(b), 25.27.255(c), and secs. 2 and 5, ch. 75, SLA 1991, are repealed.

* **Sec. 32.** TRANSITIONAL PROVISION. (a) Notwithstanding other provisions of this Act, in the case of a support order issued by a court on or after January 1, 1994, and before the effective date of this Act, the court shall, upon filing of a motion by an obligee who is the subject of the support order, issue an immediate income withholding order for support, regardless of whether support payments are in arrears, unless

(1) a written agreement exists between the obligor and the obligee that provides for an alternative arrangement;

(2) the obligor demonstrates, and the court finds, that there is good cause not to require immediate income withholding; or

(3) the support order is being enforced by the child support enforcement agency.

(b) An immediate income withholding order issued under this section is governed by AS 25.27, as amended by this Act, and shall be treated as an immediate income withholding order issued under AS 25.27.062(a).

* **Sec. 33.** This Act takes effect on the 10th day after the date it becomes law under AS 01.10.070(a).

SB 190
3-15-94
Kerttula MOVED
ADOPTED

AMENDMENT
CSSB19 0 (JUD)
8-LS1001\K

Amend Page 3 Section 5, line 26

Delete: in the [order withholding]...
Insert: in the withholding order...

Amend Page 6 Section 12, Line 20 to read

(b) If a request for a formal hearing under (a) ...

The first change is made to make the term proper.

The second change is suggested to eliminate that the obligor has been through the informal process, has had the Child Support Enforcement Division already review the case and is appealing that decision.

SENATE FINANCE
COMMITTEE
Amendment Number: 1
Bill Number: SB 190
Sponsor: Date: 3/14/94
Logged In By:

REQUESTED BY REVENUE

8-LS1001\K

Kerttula MOVED
ADOPTED
(Sharp opposed)

Amendment

OFFERED IN SENATE
TO: CSSB 190(JUD)

BY SENATOR PEARCE

Page 8, line 24:
Following "25.27.255(c)"
Insert "and secs. 2 and 5, ch. 75, SLA 1991,"

LANGUAGE BEING REPEALED BY AM #2

•Sec. 2. AS 25.27.075 is repealed and reenacted to read:

Sec. 25.27.075. EMPLOYMENT INFORMATION.

(a) An Employer of an obligor or a labor union of which an obligor is member shall provide to the agency information requested regarding the obligor's employment, wages or salary, and location.

(b) An employer of an obligor or a labor union of which an obligor is a member that knowingly violates this section is liable for a civil penalty of not more than $1,000.

Sec. 5. Section 2 of this Act takes effect January 1, 1995.

SENATE FINANCE COMMITTEE
Amendment Number: #2
Bill Number: SB 190
Sponsor: Pearce Date: 3/14/94
Logged In By: [illegible]

CS FOR SENATE BILL NO. 190(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 2/28/94
Referred: Finance

Sponsor(s): SENATE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

"An Act relating to income withholding and other methods of enforcement for orders of support; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* **Section 1.** AS 25.27.062(a) is amended to read:

(a) A judgment, court order, or order of the agency under this chapter providing for support must contain an income withholding order. **Except as provided in (c) of this section, an** [AN] income withholding order under this section may not be enforced unless

(1) it is entered by the court during a proceeding to establish or modify a duty of support; or

(2) notice is served on the obligor **in the manner provided in (d) of this section, AS 25.27.150, or 25.27.160** [HAD NOTICE OF THE ORDER WHEN IT WAS MADE OR AN APPLICATION FOR THE ORDER WAS SERVED ON THE OBLIGOR IN THE MANNER PROVIDED FOR SERVICE OF A SUMMONS

UNDER RULE 4, ALASKA RULES OF CIVIL PROCEDURE].

* **Sec. 2.** AS 25.27.062(b) is amended to read:

(b) An income withholding order must direct the obligor, the obligor's employer, future employer, and any person, political subdivision, or department of the state to withhold money due or to be due the obligor and pay the money to the agency **or to another person or entity specified in the withholding order**, in an amount determined under (i) of this section.

* **Sec. 3.** AS 25.27.062(c) is repealed and reenacted to read:

(c) Except as provided in (m) of this section, a child support order must provide for immediate withholding without the need for amendment of the order involved or other action by the court or agency that issued the order when

(1) the support order is being enforced by the agency and was issued or modified after October 31, 1990; or

(2) the support order is not being enforced by the agency and was issued or modified after December 31, 1993.

* **Sec. 4.** AS 25.27.062(d) is amended to read:

(d) **When a child support order does not require immediate income withholding, income withholding may be initiated under this subsection or, for support orders being enforced by the agency, income withholding may be initiated under AS 25.27.150 when (1) support payments are in arrears in an amount at least equal to the support payable for one month; (2) the obligor requests withholding; or (3) the obligee requests withholding and the agency or court approves the request because the obligor's payments have been more than 10 days overdue more than one time in the preceding 12 months or there is reason to believe that the obligor might withdraw assets to avoid payment of support. In order to initiate withholding under this subsection, the agency or the obligee shall serve notice of income withholding** [IF AN APPLICATION IS FILED WITH THE CLERK OF COURT, NOTICE SHALL BE SERVED] upon the obligor [BY THE AGENCY] in the manner provided by Rule 5, Alaska Rules of Civil Procedure, or any other method permitted by law. The notice **must** [SHALL] inform the obligor that the income withholding order will take effect 15 days after the date on which the

notice is served unless the obligor requests a hearing within the 15 days after the notice is served. If the obligor requests a hearing, an income withholding order may not take effect until the conclusion of the hearing. The court shall hold a hearing requested under this **subsection** [SECTION] within 15 days after the date the obligor requests the hearing [,] to determine if there **is a mistake** [ARE ANY MISTAKES] of fact that **makes** [MAKE] the withholding order improper **because** [, IF] the amount **of current or overdue support** [TO BE WITHHELD] is incorrect **or the identity of the obligor is inaccurate. The order is not subject to** [, OR IF THERE ARE] any other legal defenses. The court shall inform the obligor, either at the hearing or within 15 days after the hearing, whether or not the withholding will occur and of the date on which it is to commence. It is not a defense **to an order issued** under **(1) of** this **subsection** [SECTION] that less than one full month's payment is due if at least one full month's payment was due on the date notice was served under this **subsection** [SECTION].

*** Sec. 5.** AS 25.27.062(e) is amended to read:

(e) The obligee or person or **other entity** [PUBLIC AGENCY] that **obtains an** [REQUESTED THE] income withholding order shall immediately send a copy of the income withholding order, a copy of AS 25.27.260 and this section, and an explanation of the effect of the statutes by certified mail to persons who may owe money to an obligor. An income withholding order made under this section is binding upon a person, employer, political subdivision, or department of the state immediately upon receipt of a copy of the income withholding order. An employer shall begin withholding the specified amount from the employee's wages 14 days after the mailing date on the notice of withholding or on the first day of the next pay period, if earlier. The amount withheld shall be sent to the agency **or other person or entity specified in the order withholding within 10 working days after the date the employee is paid. A person who fails to comply with an income withholding order is subject to penalties under AS 25.27.260. An employer may, for each payment made under the order, deduct $1 from other wages or salary owed to the obligor**. Deleted

*** Sec. 6.** AS 25.27.062(k) is repealed and reenacted to read:

(k) An employer who is withholding income of an employee under an order

issued under this section shall notify the court, the agency, or the obligee promptly when the employee gives or receives notice of termination of employment and provide to the court, agency, or obligee the employee's last known home address and the name and address of the employee's new employer, if known.

* **Sec. 7.** AS 25.27.062(l) is repealed and reenacted to read:

(l) Unless modified or terminated by the agency or the court, an order to withhold income under this section remains in effect until the support order is satisfied. Upon satisfaction of a support order, the agency or obligee shall notify all persons served with the notice to withhold income. The agency or court may not terminate or modify an income withholding order solely on the ground that the obligor has paid all arrearages.

* **Sec. 8.** AS 25.27.062 is amended by adding a new subsection to read:

(m) An income withholding order issued under (c) of this section is not subject to immediate withholding if the obligor agrees to inform the court, agency, or obligee of the obligor's current employer and the availability of employment-related health insurance coverage and

(1) the court or agency has reviewed and approved on the record a written agreement between the obligor and the obligee that provides for an alternative arrangement for immediate income withholding and withholding has not been terminated previously and subsequently initiated; the agency must also be a party to an agreement under this paragraph if support has been assigned to the state; or

(2) the obligor or obligee demonstrates and the court or agency finds good cause not to require immediate income withholding because it would not be in the best interests of the child and, in a case involving the modification of a support order, the obligor has made voluntary support payments under a court or administrative order and has not been in arrears in an amount equal to the support payable for one month.

* **Sec. 9.** AS 25.27.140(b) is amended to read:

(b) If a support order has been entered, the agency may enforce the support order utilizing the procedures prescribed in **AS 25.27.062, 25.27.150,** [AS 25.27.150] and 25.27.230 - 25.27.270.

* **Sec. 10.** AS 25.27.150 is repealed and reenacted to read:

Sec. 25.27.150. INITIATED INCOME WITHHOLDING; REQUIRED NOTICE AND HEARING. (a) In order to initiate income withholding for a support order being enforced by the agency, the agency shall serve a notice of its intent to initiate income withholding on the obligor. Notice under this subsection shall be served upon the obligor by certified mail to the obligor's last known address, and service is complete when the notice is properly addressed, certified, and mailed.

(b) The notice must state the amount of the overdue support that is owed, if any, and the amount of income that will be withheld.

(c) The notice shall inform the obligor that the income withholding order will take effect 15 days after the date on which the notice is served unless the obligor requests a hearing within 15 days after the notice is served. If the obligor requests a hearing, an income withholding order may not take effect until the conclusion of the hearing.

(d) If the obligor requests a hearing, it shall be conducted under the Department of Revenue's regulations for informal conferences and shall be held within 15 days of the date of the request. The hearing may only be held to determine if there is a mistake of fact that makes the income withholding order improper because the amount of current or overdue support is incorrect or the identity of the obligor is inaccurate. The order is not subject to any other legal defenses. It is not a defense to an income withholding order issued under AS 25.27.062(d)(1) that less than one full month's payment is due if at least one full month's payment was due on the date notice was served under this section.

(e) The appeals officer shall inform the obligor, either at the hearing or within 15 days after the hearing, whether or not the withholding will occur and of the date on which it is to commence.

(f) If the appeals officer determines that withholding will occur, the obligor may request a formal hearing, as provided in the Department of Revenue's regulations. The income withholding order shall be issued and withholding shall begin, whether or not the obligor requests a formal hearing, unless the obligor posts security or a bond in the amount that would have been withheld pending the outcome of a formal hearing.

* **Sec 11.** AS 25.27.160(b) is amended to read:

(b) The notice and finding of financial responsibility served under (a) of this section must state

(1) the sum or periodic payments for which the alleged obligor is found to be responsible, calculated by taking into consideration the need of the alleged obligee, the alleged obligor's liability to the state under AS 25.27.130 if any, and the duty of support under the law;

(2) the name of the alleged obligee and the obligee's custodian;

(3) that the alleged obligor may appear and show cause in a hearing held by the agency why the finding is incorrect, should not be finally ordered, and should be modified or rescinded, because

(A) no duty of support is owed; or

(B) the amount of support found to be owed is incorrect;

(4) that if the person served with the notice and finding of financial responsibility does not request a hearing within 30 days, the property **and income** of the person will be subject to execution **under AS 25.27.062 and 25.27.230 - 25.27.270** [IN ACCORDANCE WITH AS 25.27.230 - 25.27.270] in the amounts stated in the finding without further notice or hearing.

* **Sec. 12.** AS 25.27.170(b) is amended to read:

(b) If a request under (a) of this section is made for a formal hearing, the execution under **AS 25.27.062 and 25.27.230 - 25.27.270 may not** [AS 25.27.230 - 25.27.270 SHALL] be stayed **unless the obligor posts security or a bond in the amount of child support that would have been due under the finding of financial responsibility** pending the decision on the hearing [, OR THE DECISION OF A COURT, IF APPEALED]. If no request for a hearing is made, the finding of responsibility is final at the expiration of the 30-day period.

* **Sec. 13.** AS 25.27.170(f) is amended to read:

(f) If the alleged obligor requesting the hearing fails to appear at the hearing, the hearing officer shall enter a decision declaring the property **and income** of the alleged obligor subject to execution **under AS 25.27.062 and 25.27.230 - 25.27.270** [IN ACCORDANCE WITH AS 25.27.230 - 25.27.270] in the amounts stated in the

notice and finding of financial responsibility.

* **Sec. 14.** AS 25.27.230(a) is amended to read:

(a) At the expiration of 30 days from either (1) the date of **distribution of a support order under AS 25.27.062(e)** [SERVICE OF NOTICE UNDER AS 25.27.150], or (2) the date of service of a notice and finding of financial responsibility under AS 25.27.160, the agency may assert a lien upon the real or personal property of the obligor, in the amount of the obligor's liability.

* **Sec. 15.** AS 25.27.230(c) is amended to read:

(c) The lien shall attach to all real and personal property of the obligor and be effective on the date of recording of the lien with the recorder of the recording district in which the property attached is located. A lien against earnings shall attach and be effective upon filing with the recorder of the recording district in which the employer does business or maintains an office or agent for the purpose of doing business. **A lien filed at the offices of the Commercial Fisheries Entry Commission in Juneau against a limited entry permit issued under AS 16.43 is considered to have been filed against the permit in all recording districts in which the permit holder uses the permit.**

* **Sec. 16.** AS 25.27.250(a) is amended to read:

(a) At the expiration of **either (1) 15** [30] days from the date of service of **a support order under AS 25.27.062 or** notice under AS 25.27.150, or **(2) 30 days** from the date of service of a notice and finding of financial responsibility under AS 25.27.160, the agency may issue to any person, political subdivision, or department of the state an order to withhold and deliver property.

* **Sec. 17.** AS 25.27.250(f) is amended to read:

(f) If a person, political subdivision, or department of the state upon whom service of an order to withhold and deliver has been made possesses property due, owing, or belonging to the obligor, that person, subdivision, or department shall withhold the property immediately upon receipt of the order and shall deliver the property to the agency [UPON DEMAND] after the expiration of the 14-day period from the date of service of the order **or expiration of the period specified in AS 25.27.062(e), whichever is earlier**. The agency shall hold property delivered

under this subsection in trust for application against the liability of the obligor under **AS 25.27.062, 25.27.130, or 25.27.160** [AS 25.27.130] or for return, without interest, depending on final determination of liability or nonliability under this chapter. The agency may accept a good and sufficient bond **to secure payment of past, present, and future support** conditioned upon final determination of liability in lieu of requiring **delivery** [DELIVERING] of property under this subsection.

* **Sec. 18.** AS 25.27.250 is amended by adding a new subsection to read:

(j) A person, political subdivision, or department that fails to comply with an order to withhold and deliver served under this subsection is subject to penalties under AS 25.27.260. A person, political subdivision, or department may, for each payment made under an order to withhold and deliver, deduct $1 from other wages or salary owed to the obligor.

* **Sec. 19.** AS 25.27.255(a) is amended to read:

(a) The agency shall pay to the obligee all money recovered by the agency from the obligor under an income withholding order except for court costs and money assigned to the agency under AS 25.27.120 - 25.27.130. **However, if there is more than one income withholding order under this chapter against an obligor, the agency shall allocate amounts available for withholding in a manner that gives priority to current support up to the limits imposed under 15 U.S.C. 1673(b) (sec. 303(b), Consumer Credit Protection Act). Notwithstanding the priority given to current support, the agency shall establish procedures for allocation of support among obligees so that in no case will the allocation result in a withholding order for one obligee not being implemented.**

* **Sec. 20.** AS 25.27.255(b) and 25.27.255(c) are repealed.

* **Sec. 21.** This Act takes effect immediately under AS 01.10.070(c).

BILL IN FORM THEY WANT

8-LS1001\E
Lauterbach
1/20/94

decided not to work w/ work draft & use CSSB 190(JUD)

CS FOR SENATE BILL NO. 190(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

"An Act relating to income withholding and other methods of enforcement for orders of support; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 25.27.062(a) is amended to read:

(a) A judgment, court order, or order of the agency under this chapter providing for support must contain an income withholding order. Except as provided in (c) of this section, an [AN] income withholding order under this section may not be enforced unless

(1) it is entered by the court during a proceeding to establish or modify a duty of support; or

(2) notice is served on the obligor in the manner provided in (d) of this section, AS 25.27.150, or 25.27.160 [HAD NOTICE OF THE ORDER WHEN IT WAS MADE OR AN APPLICATION FOR THE ORDER WAS SERVED ON THE OBLIGOR IN THE MANNER PROVIDED FOR SERVICE OF A SUMMONS

UNDER RULE 4, ALASKA RULES OF CIVIL PROCEDURE].

* **Sec. 2.** AS 25.27.062(b) is amended to read:

(b) An income withholding order must direct the obligor, the obligor's employer, future employer, and any person, political subdivision, or department of the state to withhold money due or to be due the obligor and pay the money to the agency **or to another person or entity specified in the withholding order**, in an amount determined under (i) of this section.

* **Sec. 3.** AS 25.27.062(c) is repealed and reenacted to read:

(c) Except as provided in (m) of this section, a child support order must provide for immediate withholding without the need for amendment of the order involved or other action by the court or agency that issued the order when

(1) the support order is being enforced by the agency and was issued or modified after October 31, 1990; or

(2) the support order is not being enforced by the agency and was issued or modified after December 31, 1993.

* **Sec. 4.** AS 25.27.062(d) is amended to read:

(d) **When a child support order does not require immediate income withholding, income withholding may be initiated under this subsection or, for support orders being enforced by the agency, income withholding may be initiated under AS 25.27.150 when (1) support payments are in arrears in an amount at least equal to the support payable for one month; (2) the obligor requests withholding; or (3) the obligee requests withholding and the agency or court approves the request because the obligor's payments have been more than 10 days overdue more than one time in the preceding 12 months or there is reason to believe that the obligor might withdraw assets to avoid payment of support. In order to initiate withholding under this subsection, the agency or the obligee shall serve notice of income withholding** [IF AN APPLICATION IS FILED WITH THE CLERK OF COURT, NOTICE SHALL BE SERVED] upon the obligor [BY THE AGENCY] in the manner provided by Rule 5, Alaska Rules of Civil Procedure, or any other method permitted by law. The notice **must** [SHALL] inform the obligor that the income withholding order will take effect 15 days after the date on which the

notice is served unless the obligor requests a hearing within the 15 days after the notice is served. If the obligor requests a hearing, an income withholding order may not take effect until the conclusion of the hearing. The court shall hold a hearing requested under this **subsection** [SECTION] within 15 days after the date the obligor requests the hearing [,] to determine if there **is a mistake** [ARE ANY MISTAKES] of fact that **makes** [MAKE] the withholding order improper **because** [, IF] the amount **of current or overdue support** [TO BE WITHHELD] is incorrect **or the identity of the obligor is inaccurate. The order is not subject to** [, OR IF THERE ARE] any other legal defenses. The court shall inform the obligor, either at the hearing or within 15 days after the hearing, whether or not the withholding will occur and of the date on which it is to commence. It is not a defense **to an order issued** under **(1) of** this **subsection** [SECTION] that less than one full month's payment is due if at least one full month's payment was due on the date notice was served under this **subsection** [SECTION].

* **Sec. 5.** AS 25.27.062(e) is amended to read:

(e) The obligee or person or **other entity** [PUBLIC AGENCY] that **obtains an** [REQUESTED THE] income withholding order shall immediately send a copy of the income withholding order, a copy of AS 25.27.260 and this section, and an explanation of the effect of the statutes by certified mail to persons who may owe money to an obligor. An income withholding order made under this section is binding upon a person, employer, political subdivision, or department of the state immediately upon receipt of a copy of the income withholding order. An employer shall begin withholding the specified amount from the employee's wages 14 days after the mailing date on the notice of withholding or on the first day of the next pay period, if earlier. The amount withheld shall be sent to the agency **or other person or entity specified in the order withholding within 10 days after the date the employee is paid. A person who fails to comply with an income withholding order is subject to penalties under AS 25.27.260. An employer may, for each payment made under the order, deduct $1 from other wages or salary owed to the obligor.**

* **Sec. 6.** AS 25.27.062(k) is repealed and reenacted to read:

(k) An employer who is withholding income of an employee under an order

issued under this section shall notify the court, the agency, or the obligee promptly when the employee gives or receives notice of termination of employment and provide to the court, agency, or obligee the employee's last known home address and the name and address of the employee's new employer, if known.

* Sec. 7. AS 25.27.062(l) is repealed and reenacted to read:

(l) Unless modified or terminated by the agency or the court, an order to withhold income under this section remains in effect until the support order is satisfied. Upon satisfaction of a support order, the agency or obligee shall notify all persons served with the notice to withhold income. The agency or court may not terminate or modify an income withholding order solely on the ground that the obligor has paid all arrearages.

* Sec. 8. AS 25.27.062 is amended by adding a new subsection to read:

(m) An income withholding order issued under (c) of this section is not subject to immediate withholding if the obligor agrees to inform the court, agency, or obligee of the obligor's current employer and the availability of employment-related health insurance coverage and

(1) the court or agency has reviewed and approved on the record a written agreement between the obligor and the obligee that provides for an alternative arrangement for immediate income withholding and withholding has not been terminated previously and subsequently initiated; the agency must also be a party to an agreement under this paragraph if support has been assigned to the state; or

(2) the obligor or obligee demonstrates and the court or agency finds good cause not to require immediate income withholding because it would not be in the best interests of the child and, in a case involving the modification of a support order, the obligor has made voluntary support payments under a court or administrative order and has not been in arrears in an amount equal to the support payable for one month.

* Sec. 9. AS 25.27.140(b) is amended to read:

(b) If a support order has been entered, the agency may enforce the support order utilizing the procedures prescribed in AS 25.27.062, 25.27.150, [AS 25.27.150] and 25.27.230 - 25.27.270.

* **Sec. 10.** AS 25.27.150 is repealed and reenacted to read:

Sec. 25.27.150. INITIATED INCOME WITHHOLDING; REQUIRED NOTICE AND HEARING. (a) In order to initiate income withholding for a support order being enforced by the agency, the agency shall serve a notice of its intent to initiate income withholding on the obligor. Notice under this subsection shall be served upon the obligor by certified mail to the obligor's last known address, and service is complete when the notice is properly addressed, certified, and mailed.

(b) The notice must state the amount of the overdue support that is owed, if any, and the amount of income that will be withheld.

(c) The notice shall inform the obligor that the income withholding order will take effect 15 days after the date on which the notice is served unless the obligor requests a hearing within 15 days after the notice is served. If the obligor requests a hearing, an income withholding order may not take effect until the conclusion of the hearing.

(d) If the obligor requests a hearing, it shall be conducted under the Department of Revenue's regulations for informal conferences and shall be held within 15 days of the date of the request. The hearing may only be held to determine if there is a mistake of fact that makes the income withholding order improper because the amount of current or overdue support is incorrect or the identity of the obligor is inaccurate. The order is not subject to any other legal defenses. It is not a defense to an income withholding order issued under AS 25.27.062(d)(1) that less than one full month's payment is due if at least one full month's payment was due on the date notice was served under this section.

(e) The appeals officer shall inform the obligor, either at the hearing or within 15 days after the hearing, whether or not the withholding will occur and of the date on which it is to commence.

(f) If the appeals officer determines that withholding will occur, the obligor may request a formal hearing, as provided in the Department of Revenue's regulations. The income withholding order shall be issued and withholding shall begin, whether or not the obligor requests a formal hearing, unless the obligor posts security or a bond in the amount that would have been withheld pending the outcome of a formal hearing.

* Sec. 11. AS 25.27.160(b) is amended to read:

(b) The notice and finding of financial responsibility served under (a) of this section must state

(1) the sum or periodic payments for which the alleged obligor is found to be responsible, calculated by taking into consideration the need of the alleged obligee, the alleged obligor's liability to the state under AS 25.27.130 if any, and the duty of support under the law;

(2) the name of the alleged obligee and the obligee's custodian;

(3) that the alleged obligor may appear and show cause in a hearing held by the agency why the finding is incorrect, should not be finally ordered, and should be modified or rescinded, because

(A) no duty of support is owed; or

(B) the amount of support found to be owed is incorrect;

(4) that if the person served with the notice and finding of financial responsibility does not request a hearing within 30 days, the property **and income** of the person will be subject to execution **under AS 25.27.062 and 25.27.230 - 25.27.270** [IN ACCORDANCE WITH AS 25.27.230 - 25.27.270] in the amounts stated in the finding without further notice or hearing.

* Sec. 12. AS 25.27.170(b) is amended to read:

(b) If a request under (a) of this section is made, the execution under **AS 25.27.062 and 25.27.230 - 25.27.270 may not** [AS 25.27.230 - 25.27.270 SHALL] be stayed **unless the obligor posts security or a bond in the amount of child support that would have been due under the finding of financial responsibility** pending the decision on the hearing [, OR THE DECISION OF A COURT, IF APPEALED]. If no request for a hearing is made, the finding of responsibility is final at the expiration of the 30-day period.

* Sec. 13. AS 25.27.170(f) is amended to read:

(f) If the alleged obligor requesting the hearing fails to appear at the hearing, the hearing officer shall enter a decision declaring the property **and income** of the alleged obligor subject to execution **under AS 25.27.062 and 25.27.230 - 25.27.270** [IN ACCORDANCE WITH AS 25.27.230 - 25.27.270] in the amounts stated in the

notice and finding of financial responsibility.

* **Sec. 14.** AS 25.27.230(a) is amended to read:

(a) At the expiration of 30 days from either (1) the date of **distribution of a support order under AS 25.27.062(e)** [SERVICE OF NOTICE UNDER AS 25.27.150], or (2) the date of service of a notice and finding of financial responsibility under AS 25.27.160, the agency may assert a lien upon the real or personal property of the obligor, in the amount of the obligor's liability.

* **Sec. 15.** AS 25.27.230(c) is amended to read:

(c) The lien shall attach to all real and personal property of the obligor and be effective on the date of recording of the lien with the recorder of the recording district in which the property attached is located. A lien against earnings shall attach and be effective upon filing with the recorder of the recording district in which the employer does business or maintains an office or agent for the purpose of doing business. **A lien filed at the offices of the Commercial Fisheries Entry Commission in Juneau against a limited entry permit issued under AS 16.43 is considered to have been filed against the permit in all recording districts in which the permit holder uses the permit.**

NEW

* **Sec. 16.** AS 25.27.250(a) is amended to read:

(a) At the expiration of **either (1) 15** [30] days from the date of service of **a support order under AS 25.27.062 or** notice under AS 25.27.150, or **(2) 30 days** from the date of service of a notice and finding of financial responsibility under AS 25.27.160, the agency may issue to any person, political subdivision, or department of the state an order to withhold and deliver property.

NEW

* **Sec. 17.** AS 25.27.250(f) is amended to read:

(f) If a person, political subdivision, or department of the state upon whom service of an order to withhold and deliver has been made possesses property due, owing, or belonging to the obligor, that person, subdivision, or department shall withhold the property immediately upon receipt of the order and shall deliver the property to the agency [UPON DEMAND] after the expiration of the 14-day period from the date of service of the order **or expiration of the period specified in AS 25.27.062(e), whichever is earlier**. The agency shall hold property delivered

under this subsection in trust for application against the liability of the obligor under **AS 25.27.062, 25.27.130, or 25.27.160** [AS 25.27.130] or for return, without interest, depending on final determination of liability or nonliability under this chapter. The agency may accept a good and sufficient bond **to secure payment of past, present, and future support** conditioned upon final determination of liability in lieu of requiring **delivery** [DELIVERING] of property under this subsection.

*** Sec. 18.** AS 25.27.250 is amended by adding a new subsection to read:

(j) A person, political subdivision, or department that fails to comply with an order to withhold and deliver served under this subsection is subject to penalties under AS 25.27.260. A person, political subdivision, or department may, for each payment made under an order to withhold and deliver, deduct $1 from other wages or salary owed to the obligor.

*** Sec. 19.** AS 25.27.255(a) is amended to read:

(a) The agency shall pay to the obligee all money recovered by the agency from the obligor under an income withholding order except for court costs and money assigned to the agency under AS 25.27.120 - 25.27.130. **However, if there is more than one income withholding order under this chapter against an obligor, the agency shall allocate amounts available for withholding in a manner that gives priority to current support up to the limits imposed under 15 U.S.C. 1673(b) (sec. 303(b), Consumer Credit Protection Act). Notwithstanding the priority given to current support, the agency shall establish procedures for allocation of support among obligees so that in no case will the allocation result in a withholding order for one obligee not being implemented.**

*** Sec. 20.** AS 25.27.255(b), 25.27.255(c), and secs. 2 and 5, ch. 75, SLA 1991, are repealed.

*** Sec. 21.** This Act takes effect immediately under AS 01.10.070(c).

is interfering with development plans, and it wants $30,000 a year for the continued use of the site.

The 27-member Ayakulik Inc. will soon own the land which adjoins the state's fish-counting weir at the mouth of the river on the south end of Kodiak Island.

The Native corporation wants to build a lodge on the property, and an attorney Game on the site hinders their plans.

The proposed lease to the state requires extinguishing a 25-foot-wide pubic easement that runs from the weir site about 250 yards to the beach.

"We do feel that the weir and easement would interfere," said Chuck Winegarden. "They can have their weir there, that is a navigable river; they just cannot walk on that land."

The Fish and Game department says it would be de which produc ery and worl river.

Under the al, public a except for th weir.

The river fish their wa trips. There

Around the State

Bill would allow transfer of Native allotments

JUNEAU — Native allotments in state parks could be transferred to other state lands under a bill the Senate passed Monday.

The legislation applies to the parcels of up to 160 acres granted to Natives by the federal government for traditional uses, such as subsistence hunting and fishing, before the 1971 Alaska Native Claims Settlement Act.

Some of the 12,000 allotments statewide later became part of state parks, where hunting and fishing were restricted.

Sen. George Jacko, D-Pedro Bay and the bill's sponsor, said many of those parcels are under litigation, and that the legislation would provide an out-of-court resolution.

Senate Bill 293 passed 19-1, and was sent to the House.

Most of the 159 allotments eligible for a transfer are in the 1.4 million-acre Wood-Tikchik State Park near Dillingham or the 49,000-acre Chilkat Bald Eagle Preserve near Haines.

Bill would require child-support monitoring

JUNEAU — All child-support payments would be monitored by the Revenue Department and those overdue in their payments could have their wages withheld, under a bill the Senate passed Monday.

The legislation is required to bring the state in line with federal law, supporters said. Without the bill, the state could lose some of the $70 million in federal money that goes to child-support enforcement and welfare, said Mary Gay, director of the Child Support Enforcement Division.

The division currently handles cases and withholds wages for overdue payments only if the recipient is on welfare or applies for the agency's help, Gay said.

The legislation would require the agency to provide accounting for all child-support payments, except when a court approves an alternative arrangement, such as a trust fund, Gay said. That would add about 600 cases a year to the division's workload, she said.

To satisfy the requirement, three additional state employees would have to be hired at a cost of about $143,000 a year, state officials said.

Senate Bill 190 passed 17-3 and was to be sent to the House pending a possible reconsideration vote later this week.

— The Associated Press

Ester resi

FAIRBANKS (AP) — Ab residents want the operato placer gold mine to subdue ment at night.

Utah-based Yellow Ea hopes to begin work on the feet from Ester across the Pa summer. The start-up date approval by the U.S. A Engineers.

About 20 Ester residents volunteer fire department

"We are not interested mine. We just want it opera that we can live with, and make a profit. We still want some sleep," said Dick Gumn

Gumm and about a dozen dents have asked the Corps to

Talks aim t

JUNEAU (AP) — Negotiati were under way Monday exempt Sea-Land Service I from the Teamsters Union st against 23 trucking and shipp companies.

Sea-Land provides a ma ocean freight link to Alaska fr the lower 48 states. Gov. Walte Hickel last weekend asked Teamsters to exempt Sea-Lan Alaska freight service from strike.

"The transportation servi provided by Sea-Land to Ala are vital," Hickel said in a ne release Monday. "We don't ne to be part of the Teamste

Measure to

By IAN MADER
Associated Press Writer

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 190 (FIN)

Revision Date: 04/11/94
Dept. Affected: Alaska Court System
Title: An Act relating to income withholding and other methods of enforcement for orders of child support
BRU: Trial Courts
Components:
Sponsor: Senate Judiciary by request
Requestor:
COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 94) cost: $ None

ANALYSIS: (Attach a separate page if necessary)
No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228
Agency: Alaska Court System Date: 04/11/94

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System Date: 04/11/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 190 (JUD)

Revision Date:
Title: An Act relating to income withholding and other methods of enforcement for orders of child support
Sponsor: Senate Judiciary by request
Requestor:

Dept. Affected: Alaska Court System
BRU: Trial Courts
Components:

COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	31.7	31.7	31.7	31.7	31.7	31.7
TRAVEL						
CONTRACTUAL	2.0	2.0	2.0	2.0	2.0	2.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	33.7	33.7	33.7	33.7	33.7	33.7
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	33.7	33.7	33.7	33.7	33.7	33.7
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	33.7	33.7	33.7	33.7	33.7	33.7

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 94) cost: $ None

ANALYSIS: (Attach a separate page if necessary)
See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228
Agency: Alaska Court System Date: 03/15/94

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System Date: 03/15/94

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3-15-94
Court System
p. 2

SB-190 Fiscal Note

Although their cost has not been quantified in this fiscal note, the following sections of this bill will also cause unnecessary additional work for the court:

- Section 6 authorizes employers to send notice to the court when an employee terminates employment. This causes unnecessary additional filing for the court and appears to serve no purpose because the court does not do anything with this information.

- Section 8 similarly creates additional filing for the court by providing that obligors may file their required notice of current employment, etc. with the court. Again, the court would do nothing with this information.

- Section 8 also appears to require court hearings to review parties written agreements for alternative arrangements. Such hearings should not be required if the judge can decide this issue without a hearing.

The above sections, and others, cause unnecessary additional work for the court which could be eliminated by changes in the bill. These changes would not be inconsistent with federal requirements.

Alaska Court System
Fiscal Analysis
CSSB 190 (JUD)

The court system anticipates being able to implement this legislation by 7/1/94. The bill affects all child support orders issued starting 1/1/94 and will require review of all orders issued from 1/1/94 through 6/30/94. During 1993, 3,727 child support orders were issued. It is estimated that with the same rate of disposition, 1,864 orders will be issued during the first six months of 1994 and will require processing by the court system. This fiscal analysis divides the new responsibilities for the court system into two parts – retroactive work and on–going work. The court system has estimated the impact of the retroactive requirements, but cannot estimate at this time the on–going work costs.

Personal Services

	Salary	Benefits	Total
Retroactive file processing required by legislation			
Court Clerk II, range 10A, permanent part–time, 6 months, Anchorage	$12,006	$5,710	$17,716

Clerical staff will be required to pull and review an estimated 1,864 files issued from 1/1/94 through 6/30/94. An Anchorage divorce master estimates that 50% or 932 of the child support orders will require preparation and mailing of notices to both parties and a complete retyping of the child support order. This process is estimated to require 1/2 hour of clerical time for each child support order.

Pro Tem Superior Court Judge, fully vested, permanent part–time, 4 months, Anchorage	$8,050	$5,912	$13,962

It is estimated that 50% of the 932 (above) or 466 child support orders will require a court hearing, lasting approximately 1/2 hour each. All 932 of the new child support orders will require judicial review and signature, which will take approximately 1/4 hour each.

Ongoing requirements of legislation

It is not possible to accurately estimate the additional resources needed for the on–going requirements of this legislation. However, judicial staff will be needed for each withholding order hearing. These hearings are estimated to last approximately 1/2 hour each. The legislation also will result in large amounts of paperwork for the court clerical staff to process and file. With the stringent time requirements of this legislation, court staff must be diverted from other duties to process child support matters. It is anticipated that the staff needed for the retroactive work will continue during the on–going period.

Contractual

Postage for mailing notices and notifying all attorneys of changes – retroactive period	2,000

Other Costs

The court system anticipates, but has not estimated, additional costs for designing and printing notices, meetings of the forms committee to design and develop new forms and procedures, and for mailing forms and notices to the parties to child support cases.

Estimated initial costs of the legislation	**$33,678**

FISCAL NOTE

No. 1

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL No. Bill Version: SB 190
(S) Publish Date: 2-28-94

Revision Date:
Title: Enforcement of Support Orders
Sponsor: Senate Judiciary Committee
Requestor: Senate Judiciary Committee

Dept. Affected: Revenue
BRU: Child Support Enforcement Division
Component: Child Support Enforcement Division
COMPONENT SERIAL NO. 111

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	71.6	147.3	104.5	0.0	0.0	0.0
TRAVEL				0.0	0.0	0.0
CONTRACTUAL	14.6	29.1	21.8	0.0	0.0	0.0
SUPPLIES	2.0	4.0	3.0	0.0	0.0	0.0
EQUIPMENT	20.8	41.5	31.2	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS				0.0	0.0	0.0
TOTAL OPERATING	109.0	221.9	160.5	0.0	0.0	0.0
CAPITAL						
REVENUE FUND SOURCE:	60.0	60.0	60.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	109.0	221.9	160.5	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1016 Fed Incent						
TOTAL	109.0	221.9	160.5	0.0	0.0	0.0

POSITIONS:

FULL-TIME	2	4	3	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: $ 0.0

ANALYSIS: (Attach a separate page if necessary.)
Section 101 of the Family Support Act of 1988 (P.L. 100-485) requires that all child support orders issued by the courts after January 1, 1994 include a provision for immediate income withholding unless an exemption is granted by the court because there is good cause or an alternative written agreement by the parties and approved by the court. The intent of this provision of the Family Support Act is to provide the mechanism for collecting child support through wage withholding without applying for services from Child Support Enforcement Division (CSED) This requires CSED to provide payment only services for orders where neither party has applied for services or is receiving AFDC. This payment only processing and record keeping would require additional personnel to set up case files, process payments, audit cases and review cases for cost of living adjustments. The services required for these cases are not eligible for federal financial participation and must be funded by the state. The state may charge fees for this service and recover the full cost of administrating the requirement. (continued)

Prepared by: Mary Gay, Director Mary Gay Reed Phone: 263-6270
Division: Child Support Enforcement Division Date: 2-21-94
Approved by Commissioner: Darrel J. Rexwinkel Darrel J. Rexwinkel for DJR Date: 3/21/94
Agency: Department of Revenue

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...or's Legislative Office

Changes in CSfor SB 190 (JUD) have no fiscal impact. This fiscal note is appropriate.
2/25/94

(Rev 11/93) 94fiscal.nterial

(continuation of Fiscal Note)

PROFESSIONAL SERVICES:

The Division will need 9 additional positions over three years. The Division will need 2 positions in FY 95, 4 positions in FY 96 and 3 positions in FY 97. Positions required for FY 95:

One Accounting Clerk III to receipt payments.

One Clerk IV to set up and maintain case files.

CONTRACTUAL:

Additional cost of long distance telephone service, postage and space rent for the positions.

SUPPLIES:

Additional supplies for the additional positions to include paper, pens, folders,envelopes etc.

EQUIPMENT:

The following is a breakdown of equipment per new position:

Computer	$5,760
Office Modular Furniture	$3,435
Phone equip & service	$1,191
Total	$10,457

REVENUES:

It is planned that the Division, through regulation, would impose fees for this payment processing service. The suggested fee would be $10 per month per case. At this time, it is estimated that the Division will receive approximately 500 new cases per year.

This legislation is required for federal approval of Alaska's State Plan for Child Support Enforcement. A delay in enactment of this legislation could result in cessation of federal reimbursement of expenditures for Alaska's child support program and possible financial sanctions to Alaska's Aid to Families with Dependant Children program.

SB 190

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF REVENUE

P.O. BOX 110400
JUNEAU, ALASKA 99811-0400
TELEPHONE: (907) 465-2300
FACSIMILE: (907) 465-2389

OFFICE OF THE COMMISSIONER

March 1, 1994

MAR 01 199

The Honorable Drue Pearce
Co-Chair Senate Finance Committee
Alaska State Legislature
State Capitol, Room 518/508
Juneau, Alaska 99801-1182

Dear Senator Pearce:

Senate Bill 190, "Enforcement of Support Orders" was recently referred from the Senate Judiciary Committee to the Senate Finance Committee. This proposed legislation is a federal requirement for Alaska's Child Support Enforcement program, therefore, it is extremely important that it be passed this session. A delay in enactment of this legislation could result in cessation of federal reimbursement of expenditures for the Child Support Enforcement program and possible financial sanctions to the Aid to Families with Dependent Children program. As you are aware, these programs are in the multi-million dollar range.

I would appreciate your scheduling this bill for hearing at the earliest possible date. We will be available at any time if you have questions and look forward to the earliest opportunity to testify.

Your attention and consideration is appreciated.

Sincerely,

Laraine L. Derr

Laraine L. Derr
Deputy Commissioner

94-038
Enclosure

cc: Mary Gay, Director
CSED

0 3 199

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE
Division of Legislative Finance

P.O. Box 113200
Juneau, AK 99811-3200
(907) 465-3795
FAX (907) 463-4885

MEMORANDUM

DATE: March 3, 1994

TO: Senator Steve Frank, Co-Chair
Senator Drue Pearce, Co-Chair
Senate Finance Committee

Representative Ron Larson, Co-Chair
Representative Eileen MacLean, Co-Chair
House Finance Committee

Senator Steve Reiger, Chair
Health and Social Services
Finance Subcommittee

Representative Mark Hanley, Chair
Health and Social Services
DHSS Finance Subcommittee

Senator Steve Rieger, Chair
Health, Education & Social Services

Representative Cynthia Toohey, Co-Chair
Representative Con Bunde, Co Chair
Health, Education & Social Services

FROM: Mike Greany
Legislative Fiscal Analyst
By: Susan M. Sorenson

SUBJECT: Potential Sanctions for AFDC

Summary

The Department of Revenue, Child Support Enforcement Division (CSED) has two federal compliance problems.

1. CSED did not meet compliance standards for either the establishment of support obligations or the establishment of paternity. The fiscal ramifications of non-compliance impact the AFDC program. The division is taking steps to remedy these problems with an increase of staff of 42PFT, 16 of these are temporary PFT. Possible fiscal sanctions to the AFDC program if CSED does not meet compliance standards are discussed below.

2. CSED's state plan does not comply with federal requirements and policies. The fiscal ramifications for not passing statutory changes contained in SB 190 are that CSED will lose its federal funding for the CSE program. In addition, the AFDC program will be assessed a 1% to 2% penalty of AFDC federal funding. The withdrawal of federal CSE funds would most likely effect FY95 federal funding. In FY95, there is a potential loss of Title IV-A (AFDC) federal funding of $708,400 to $1,416,700.

Discussion

The Division of Legislative Audit prepared the State of Alaska Single Audit, For the Fiscal Year Ended June 30, 1992. The results of this audit were that CSED was out of compliance in several areas. The federal audit report will likely contain these same findings. The interim federal audit report will be released in March or April, 1994. The state will then receive a letter describing the penalties for non-compliance.

The state is out of compliance in two areas:

1. **The state Child Support Enforcement Division did not meet the compliance standards for either the establishment of support obligations or the establishment of paternity.**

   CSED can submit a corrective action plan within 60 days of receiving the penalty notice. The penalty is suspended for a one year period while the state works on meeting the items in the corrective action plan. The federal government monitors the state's efforts during the year to ensure that steps are being taken to remedy compliance issues.

   If the penalty is not suspended, the federal government can immediately assess the penalty. CSED has not yet received a penalty letter. For ease in calculating the amount of the penalty, I will use FY94 as the suspension period and FY95 as the end of the suspension period.

   If the federal government does not accept CSED's corrective action plan, the penalty for FY94 would be as follows:

AFDC Title IV-A (In Thousands)	FY94 Estimated Revenue	Penalty: Not Less than 1%	Penalty: Not More than 2%
Program	58,521.0	585.2	1,170.4
Administration	4,292.8	42.9	85.9
Child Care	2,859.0	28.6	57.2
Total Federal Funding	65,672.8	656.7	1,313.5

The likelihood of a penalty is after the end of the corrective action period. This is because penalties are usually suspended if the state submits a corrective action plan.

After the year is over, the federal government determines whether the state has achieved substantial compliance in meeting its corrective action plan. If it has not, the state is assessed a penalty of not less than 1% nor more than 2% of the federal payments, as shown below.

AFDC Title IV-A (In Thousands)	FY95 Estimated Revenue	Penalty: Not Less than 1%	Penalty: Not More than 2%
Program	63,200.4	632.0	1,264.0
Administration	4,258.2	42.6	85.2
Child Care	3,378.6	33.8	67.6
Total Federal Funding	70,837.2	708.4	1,416.7

The penalty for the next year that the state is out of compliance is not less than 2% nor more than 3%. The penalty for the third year the penalty is assessed is not less than 3% nor more than 5%.

The department is already working on correcting the audit deficiencies. The department requested authority to receive and expend federal funds at the November 5, 1993 Legislative Budget and Audit Committee meeting. At this meeting the department received authorization to hire 26 PFT and 16 PPT positions.

2. The CSED state plan does not comply with federal requirements and policies.

USDHHS, Administration of Children and Families extended the time allowed for CSED to comply with federal regulations. There are two statutory revisions needed to address changes in federal regulation.

a) Alaska Statute 25.27.062(d) describes the method for contesting wage withholding and contains language that causes the state plan to be out of compliance. Federal regulations require states to have procedures for contesting wage withhold order only if there are "mistakes of fact." The Alaska statute goes beyond what was intended by federal law by adding "... *or if there are any other legal defenses.*"

   Senate Bill 190 was submitted to the legislature during the first session of the 18th Alaska State Legislature. The bill was intended to modify the statute to meet federal mandates on income withholding and enforcement of support orders. The CSED version of SB 190 deleted '*or if there are any other legal defenses.*" from AS 25.27, bringing Alaska into compliance with federal regulations. However, the version that was introduced into the legislature did not contain that revision.

The current status of SB 190 in the legislature is the Senate Judiciary committee proposed and passed CSSB 190 out of committee. The committee substitute deletes "*or if there are any other legal defenses.*" The Senate Finance committee will hear the bill next.

To date, no companion House Bill has been introduced.

b) Other legislation is needed to implement an additional federal regulation that is effective January 1, 1994. This regulation requires wage withholding in all support orders issued by the court on and after January 1, 1994, which are not being enforced under Title IV-D.

CSSB 190 contains the necessary statutory changes to bring Alaska into compliance with federal regulations that are effective January 1, 1994.

The fiscal ramifications for not passing statutory changes contained in SB 190 are that CSED will lose its federal funding for the CSE program. In addition, the AFDC program will be assessed a 1% to 2% penalty of AFDC federal funding. The withdrawal of federal CSE funds would most likely effect FY95 federal funding. In FY95, there is a potential loss of Title IV-A (AFDC) federal funding of $708.,400 to $1,416,700.

If you have any additional questions, please call me at 465-3002. Although, the timelines are approximate for the above information, the amount of the dollar sanctions approximates real penalties for the AFDC program.

cc: Randy S. Welker
Legislative Auditor

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM February 23, 1994

SUBJECT: Income Withholding for Child Support (CSSB 190(JUD); draft 8-LS1001\K)

TO: Senator Robin Taylor
ATTN: Kevin Sullivan

FROM: Terri Lauterbach
Legislative Counsel

Enclosed is a new draft version of CSSP 190(JUD). After discussing the subject with CSEA officials, as you requested, I have restored the bond/security language in AS 25.27.150(f) and 25.27.170(b) (bill sections 10 and 12). According to the director of CSEA, they are required under 45 C.F.R. 303.104, copy attached.

I apologize for not finding this federal reference before my memo to you of February 15. At that time, I was only reviewing the new regulations in 45 C.F.R. 303.100 that implemented the Family Support Act of 1988. The bond/security requirement is under a regulation that predates the Family Support Act.

I wish to also correct another mistake in my memo to you of February 15. On page 2 of the memo, at line 3, I explained that a support order "enforced by CSEA" meant one that involves an AFDC case while, on line 14, I explained that a support order "not enforced by CSEA" meant a "private" case where support had not been assigned to the state. These explanations are not precisely accurate. Support orders "enforced by CSEA" do include AFDC cases, but they also include "private" cases where a non-AFDC person has sought the assistance of CSEA in establishing and/or enforcing a child support order. Support orders "not enforced by CSEA" are support orders issued by courts; they may or may not include a provision that payments be made through CSEA, but CSEA in these situations would only be a pass-through agency, not an enforcer of the support order.

The import of this different explanation is that it is primarily the court system that needs to be concerned about how to apply SB 190 to the support orders that are issued or modified by it on or after January 1, 1994, but before the effective date of SB 190. CSEA does not have any "interim" orders to worry about. CSEA, through

its regulations and its mandate to be in compliance with federal law, has been including immediate income withholding in all of its cases since November 1, 1990, not just in AFDC cases. It will continue to do so, whether or not SB 190 is enacted.

With reference to CSEA, the main change accomplished by SB 190 would be to decrease confusion about its practices. Not only have the statutes been out of sync with CSEA's practices since November 1, 1990, so have the procedures of the hearing officers in the Department of Revenue. In paragraph (B) on page 4 of my February 15 memo, I stated that "the Department of Revenue is not currently making immediate income withholding part of its orders." That statement should have read "The hearing officers in the Department of Revenue are not currently making immediate income withholding part of their orders." Since November 1990, even when the decision of a hearing officer denied a request for immediate wage withholding, CSEA (which is also in the Department of Revenue) has been using immediate withholding after the support order became final. If the legislature enacts a law making our statutes match federal mandates, obligors and obligees (and their attorneys), as well as the general public, could read the statutes and hearing officers' decisions and not be faced with contradictory actions by CSEA.

So, to recap, the primary reason for SB 190, as I understand it, is to give direction to the court system for its child support orders. The court system has not, apparently, been implementing federal law (which applies to support orders issued by courts on and after January 1, 1994), pending legislative direction. This noncompliance is jeopardizing the federal match that Alaska gets for its child support enforcement efforts. The changes made with respect to CSEA will not change its practices, but will make the laws conform to those practices, thus decreasing confusion.

I understand that you are still awaiting suggested language from the court system for how to apply this bill to support orders that are issued or modified by the courts on or after January 1, 1994. While CSEA will have to be involved even with the court orders because CSEA is, under federal law, the "single state agency" entrusted with duties relating to all child support orders, the main entity for which the (eventual) applicability section will be relevant appears to be the court system.

Please let me know if I should try to clarify any aspect of this memo.

TML:pl
94-148.plm

Enclosure

promptly reimbursing the absent parent.

(3) The State must establish procedures for ensuring that in the event of a joint return, the absent parent's spouse can apply for a share of the refund, if appropriate, in accordance with State law.

(f) *Fee for certain cases.* The State IV-D agency may charge an individual who is receiving services under § 302.33(a)(1) (i) or (iii) of this chapter a reasonable fee to cover the cost of collecting past-due support using State tax refund offset. The State must inform the individual in advance of the amount of any fee charged.

(g) *Distribution of collections.* (1) A State must distribute collections received as a result of State income tax refund offset: (i) For an AFDC case, under § 302.51 (b) (4) and (5) and (e) of this chapter;

(ii) For a foster care maintenance case, under § 302.52(b) (3) and (4) of this chapter; and

(iii) For a non-AFDC case, except as specified in paragraph (g)(1)(iv) of this section, by paying offset amounts to the family first or using them first to reimburse the State, depending on the State's method for distributing arrearage collections in non-AFDC cases.

(iv) For cases in which medical support rights have been assigned under 42 CFR 433.146, and amounts are collected which represent specific dollar amounts designated in the support order for medical purposes, under § 302.51(e) of this chapter.

(2) If the amount collected is in excess of the amounts required to be distributed under paragraph (g)(1) of this section, the IV-D agency must repay the excess to the absent parent whose State income tax refund was offset within a reasonable period in accordance with State law.

(3) The State must credit amounts offset on individual payment records.

(h) *Information to the IV-D agency.* The State agency responsible for processing the State tax refund offset must notify the State IV-D agency of the absent parent's home address and social security number or numbers. The State IV-D agency must provide this information to any other State involved in enforcing the support order.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19655, May 9, 1985; 50 FR 31720, Aug. 6, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 54 FR 32312, Aug. 4, 1989; 56 FR 8005, Feb. 26, 1991]

§ 303.103 Procedures for the imposition of liens against real and personal property.

(a) The State shall have in effect and use procedures which require that a lien will be imposed against the real and personal property of an absent parent who owes overdue support and who resides or owns property in the State.

(b) The State must develop guidelines which are generally available to the public to determine whether the case is inappropriate for application of this procedure.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19656, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986]

§ 303.104 Procedures for posting security, bond or guarantee to secure payment of overdue support.

(a) The State shall have in effect and use procedures which require that absent parents post security, bond or give some other guarantee to secure payment of overdue support.

(b) The State must provide advance notice to the absent parent regarding the delinquency of the support payment and the requirement of posting security, bond or guarantee, and inform the absent parent of his or her rights and the methods available for contesting the impending action, in full compliance with the State's procedural due process requirements.

(c) The State must develop guidelines which are generally available to the public to determine whether the case is inappropriate for application of this procedure.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19656, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986]

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the
Regional Director

Region X
M/S RX-34
2201 Sixth Avenue
Seattle, WA 98121

OCT 25 1993

Mary Gay
Director
Child Support Enforcement Division
550 West 7th, 4th Floor
Anchorage, Alaska 99501-3556

Dear Mrs. Gay:

Thank you for your letter of August 31, 1993, and a copy of the redraft of Senate Bill 190 which addresses the deficiencies noted in our March 30, 1993, letter. We understand that this latest version will be introduced in the second session of the legislature which will convene in January 1994.

We have reviewed the redraft of Senate Bill 190 for compliance with federal regulations. The amendment of Alaska State Statute 25.27.062 will bring the state into compliance with federal requirements in the following areas of wage withholding:

> Alaska State Statute 25.27.062(d) - deletes the language allowing for "any other legal defense" as a defense for contesting wage withholding.
>
> Alaska State Statute 25.27.062(c) - addresses Section 101(b) of the Family Support Act which requires states to enact laws requiring the use of procedures under which all child support orders (non-IV-D cases) issued in the state on or after January 1, 1994, will include appropriate language requiring Immediate Wage Withholding.

Based upon your request and the above information, we will defer approval or disapproval of Alaska's State Plan to allow the state to pursue the necessary legislation. It is imperative, however, that this legislation be passed as early in the legislative session as possible. A delay in enactment of this legislation could result in cessation of federal reimbursement of expenditures for your child support program and possible Title IV-A financial sanctions.

We would also like to remind you of the provisions in the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) affecting paternity requirements under title IV-D of the Social Security Act (the Act). As you are aware, Section 13721 of P.L. 103-66 amends Section 466(a) of the Act requiring states to have laws and procedures for simple civil process for voluntary acknowledgement of paternity. The effective date of the paternity provisions of the law is October 1, 1993. However, if state laws are necessary to implement these provisions, the effective date is the date of enactment of state law, but in no event any later than the first calendar quarter after the close of the first regular session of the state legislature that begins after the August 10, 1993, enactment of the Federal law. A copy of the information sent to states regarding P.L. 103-66 is enclosed for your reference.

We hope this information is helpful. If you have any questions or need assistance in meeting your state plan requirements, please contact Linda Gillett at (206) 615-2552.

Sincerely,

Stephen S. Henigson
Regional Administrator

Enclosure

DEPARTMENT OF HEALTH & HUMAN SERVICES

Administration for
Children and Families

Region X
M/S RX-34
2201 Sixth Avenue
Seattle, WA 98121

MAR 30 1993

CSED

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APR 0 2 1993

CSED-DIRECTOR

Mary Gay, Director
Alaska Child Support
Enforcement Division
Revenue Division
550 West 7th, Suite 410
Anchorage, Alaska 99501-3556

Dear Ms. Gay:

We have received and reviewed the documentation submitted to our office dated September 30, 1992.

As noted on the enclosed preprint page 2.12-10-1: Review and Adjustment of Child Support Obligations, your submission has been given final approval in this area. We are unable to approve section 2.12-1: Wage Withholding. The reason we cannot approve this section is because Alaska CSED does not have statutes and procedures in this area as required by Section 101 (b) of the Family Support Act. As you know, Section 101 (b) of the Family Support Act amends Section 466 (a)(8) of the Social Security Act requiring states, as a condition of state plan approval, to enact laws requiring the use of procedures under which all child support orders issued in the state on or after January 1, 1994, will include appropriate language requiring Immediate Wage Withholding. Congress enacted this provision to ensure that Immediate Wage Withholding would be available to all custodial parents without the need of filing an application for child support services. The state clearly has in place provisions for immediate wage withholding generally.

However, Alaska Statute 25.27.062 (d) describes the method for contesting wage withholding, and, as the statute now stands it is unapprovable. Federal regulations require states to have procedures for contesting a wage withhold order only if there exist "mistakes of fact." Alaska Statute 25.27.062 (d) is in conflict with 45 Code of Federal Regulations § 303.100(h)(1)(iii) because it goes further than federal law intended by adding "...or any other legal defense."

By adding this option for contesting a wage withholding order, the state is giving the non-custodial parent an opportunity to include areas not intended by federal regulations, in terms of contesting the wage withholding order.

It is my understanding that you have had telephone conversations with Phyllis Benton regarding your noncompliance with the Wage Withholding requirement. In that conversation you were able to resolve one of our concerns regarding whether or not the days referenced in Alaska's statutes and procedures are calendar days as required by federal requirements. According to federal policy, when days are stated in state statutes and procedures, as below 10 days, they are universally counted as working days. When days are listed as 10 days or more, they are counted as calendar days. I understand that this issue has been resolved and Alaska uses the federal policy when referring to days. I also understand that a bill will be introduced in the Alaska legislature by a legislator that will modify Alaska Statute 25.27.062. As of your last conversation with Ms. Benton you did not know when the bill would be written and introduced.

As Alaska's state plan now stands, it is not approvable. Failure to enact an appropriate revised statutory provision and to correct the areas we noted in your state plan submission may mean that your state plan is not approvable. This may result in the cessation of federal reimbursement of expenditures for your child support program and possible Title IV-A financial sanctions.

Based on information available at this time, my office will defer approval or disapproval of your state plan. We prefer to allow the state to pursue securing the necessary legislation. To that end we ask that Alaska submit its new statute 90 days after the legislative session ends, or by August 31, 1993, with a new transmittal sheet.

Again, the sole area of noncompliance that we are citing here is the state statutory provision enabling non-custodial parents to contest a wage withhold order, not only as to "mistake of fact," but also as to "any other legal defense."

I hope this information has been helpful. My office is available to assist you in meeting your state Plan requirements. Please contact Phyllis Benton at (503) 553-0943 if you have any questions.

Sincerely,

Stephen S. Henigson
Regional Administrator

Enclosure

cc: Darrel J. Rexwinkel, Commissioner
Department of Revenue
Larry Lufkin, Area Audit Supervisor

DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF CHILD SUPPORT ENFORCEMENT

ADMINISTRATION FOR CHILDREN AND FAMILI
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

Program Instruction

ACTION TRANSMITTAL
OCSE-AT-93-06

TO: STATE AGENCIES ADMINISTERING CHILD SUPPORT ENFORCEMENT PLANS UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT AND OTHER INTERESTED INDIVIDUALS

SUBJECT: Statutory Requirements for Immediate Wage Withholding in All Child Support Orders Initially Issued In the State Not Being Enforced Under Title IV-D of the Social Security Act

STATUTORY REFERENCE: 42 U.S.C. 666(a)(8)(B)

EFFECTIVE DATE: January 1, 1994

BACKGROUND: Section 101 of the Family Support Act of 1988 (P.L. 100-485) amended section 466 of the Social Security Act (the Act) to require that States enact laws and implement procedures for immediate wage withholding in certain cases. For those cases being enforced under title IV-D of the Act, section 466(b)(3)(A) requires States to provide for immediate withholding, in all new or modified orders established on and after November 1, 1990, regardless of whether child support payments are in arrears, on the effective date of the order. Two exceptions to imposing immediate withholding are permitted: (1) if one of the parties demonstrates, and the court or administrative process finds good cause not to require withholding; (2) or a written agreement is reached between both parties for an alternative arrangement. Final regulations at 45 CFR 303.100 implementing this statutory mandate were published on July 10, 1992 [OCSE-AT-92-02).

Section 101 of the Family Support Act also requires that, effective January 1, 1994, States implement immediate withholding in all support orders initially issued in the State which are not being enforced under title IV-D. This program

instruction provides guidance for States in enacting laws and developing procedures, in accordance with amended section 466(a)(8)(B) of the Act, 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 title IV-D of the Act are subject to immediate withholding.

ATTACHMENT: State Plan Preprint Page 2-12-8B

INQUIRIES: ACF Regional Administrators

Robert Harris
Acting Deputy Director
Office of Child Support Enforcement

I. Introduction

This Action Transmittal sets forth the statutory requirements which States must meet in implementing section 466(a)(8)(B) of the Act. States may choose to extend these immediate wage withholding requirements to apply to orders in non-IV-D cases which are modified after January 1, 1994, in addition to orders initially issued after that date. The instructions also address issues raised with respect to implementing immediate withholding in non-IV-D cases.

II. State Plan Requirements

As a condition of Federal funding, a State must comply with the statutory requirements of Section 454 of the Act. Section 454(20) requires that the State IV-D plan provide that the State shall have in effect all of the laws required under the mandatory procedures established in section 466 of the Act. Since the requirements for non-IV-D withholding are part of the mandatory procedures set forth in section 466, States must demonstrate conformity with these requirements as a condition for having an approved State IV-D plan. Section 466(a)(8)(B) of the Act specifies that each State must have laws requiring the use of procedures under which all child support orders initially issued in the State on and after January 1, 1994 and which are not being enforced under Title IV-D will include provisions for:

- Immediate withholding, with exceptions for good cause and alternative arrangements;
- Withholding for overdue support in addition to current support;
- Limitations on amounts withheld based on the Federal Consumer Credit Protection Act (CCPA);
- Withholding without the need to apply for IV-D services or amendment to the order or further action by court/administrative authority;
- Administration of withholding by a public agency or a publicly-accountable alternative;
- Prompt distribution of amounts withheld;
- Employer requirements; 25.27.250
- Priority over other legal process against the same wages under State law; 25.27.250 L
- Optional extension to other forms of income;
- Extension to enforcement of orders of other States; 25.27.032
- Provisions for terminating withholding. 7 AS 25.27.0

These requirements will be described and discussed in the following section.

Attached, is a new State plan preprint page at page 2-12-8B, which must be submitted to the ACF Regional Office by March 31, 1994 (i.e., the end of the first quarter in which the requirement is effective). States failing to demonstrate conformity with the statutory requirements will be subject to State plan disapproval procedures outlined in OCSE-AT-86-21. Non-conformity could result in the suspension of all IV-D funding as well as a portion of title IV-A funding to the State.

III. Explanation of Non-IV-D Withholding Requirements

Section 466(a)(8)(B) of the Act requires immediate withholding for all non-IV-D child support orders initially issued in the State on or after January 1, 1994. In addition, by cross-reference, it extends the same statutory requirements applicable to title IV-D at paragraph (1) and, where applicable, paragraphs (2), (4), (5), (6), (7), (8), (9) and (10) of section 466(b). The specific requirements applicable in non-IV-D cases effective January 1, 1994, are:

A. When Immediate Withholding Is Required; Exceptions

The wages of an non-custodial parent must be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order. As in the case of orders being enforced in IV-D cases, two exceptions to immediate withholding are permitted Wages shall not be subject to withholding in any case where: (1) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate withholding; or (2) a written agreement is reached between both parties which provides for an alternative arrangement.

B. Limitations on Amounts Withheld

(1) So much of the non-custodial parent's wages must be withheld as is necessary to comply with the order and provide for any fee to the employer which may be required, up to the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)) [CCPA].

(2) If there are arrearages to be collected, amounts withheld to pay such arrearages, when added to the amounts withheld to pay current support and provide for the fee, may not exceed the limit permitted under such section 303(b), but the State need not withhold up to the maximum amount permitted under such section in order to satisfy arrearages.

C. No Further Action By Court

Withholding must occur without the need for further action (other than those actions required under these procedures) by the court or other entity which issued such order.

D. Administration of Withholding by Public Agency

Withholding must be administered by a public agency designated by the State, and the amounts withheld must be expeditiously distributed by the State or such agency under procedures (specified by the State) adequate to document payments of support and to track and monitor such payments.

The law also allows a State to establish or permit the establishment of alternative procedures for the collection and distribution of such amounts (under the supervision of a public agency) otherwise than through a public agency so long as:

(a) The entity making the collection and distribution is publicly accountable for its actions taken in carrying out such procedures; and,

(b) The procedures assure prompt distribution, provide for the keeping of adequate records to document payments of support, and permit the tracking and monitoring of such payments.

E. Employer Responsibilities

1) The employer of any parent who is subject to immediate withholding in a non-IV-D case, upon being given notice of such action, must be required by the State to withhold from the non-custodial parent's wages the amount specified by the notice (which may include a fee, established by the State, to be paid to the employer unless waived by the employer).

(2) The employer must pay such amount (after deducting any fee) to the appropriate agency (or other entity authorized to collect such amounts withheld under the alternative procedure established by the State) for distribution.

(3) The notice given to the employer shall contain only such information as may be necessary for the employer to comply with the withholding order.

(4) Methods must be established by the State to simplify the withholding process for employers to the greatest extent possible, including permitting any employer to combine all withheld amounts into a single payment to each appropriate

agency or entity (with the portion which is attributable to each individual employee being separately designated).

(5) The employer must be held liable to the State for any amount which the employer fails to withhold from wages due an employee following receipt by the employer of notice, but the employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph.

(6) Provision must be made for the imposition of a fine against any employer who discharges from employment, refuses to employ, or takes disciplinary action against a non-custodial parent subject to wage withholding because of the existence of the withholding or additional obligations which it imposes upon the employer.

F. Priority Over Other Legal Process

The State must provide that withholding of child support obligations be given priority over any other legal process under State law against the same wages.

G. Other Forms of Income

The State may take such actions as may be necessary to extend its system of withholding so that the system will include withholding from forms of income other than wages, in order to assure that child support owed by non-custodial parents in the State will be collected without regard to the types of such parents' income or the nature of their income-producing activities.

H. Interstate Requirements

The State must extend its withholding system so that such system will include withholding from income derived within the State in cases where the applicable support orders were issued in other States, in order to assure that child support owed by non-custodial parents in the State or any other State will be collected without regard to the residence of the child for whom the support is payable or of the child's custodial parent.

I. Termination

Provision must be made for terminating withholding.

J. Due Process Requirements

Withholding from income of amounts payable as support must be carried out in full compliance with all procedural due process requirements of the State.

IV. Availability of Federal Financial Participation (FFP)

Although States are required to enact laws and procedures for non-IV-D withholding as a condition of having an approved State IV-D plan, the activities mandated at section 466(a)(8)(B) of the Act are for cases not being enforced under a IV-D State plan. FFP is only available for services provided in cases receiving services under title IV-D of the Act. However, in cases where a State has chosen to use its IV-D agency to implement non-IV-D withholding, FFP would only be available for the IV-D costs incurred in implementing a cost allocation system to identify expenditures in IV-D and non-IV-D cases.

V. Exemptions

The provisions at section 466(d) of the Act with respect to exemptions apply to the non-IV-D withholding requirements. States may request, and OCSE may approve, an exemption from one or more of the requirements for the enactment of any law or the use of any procedure or procedures for non-IV-D withholding if the State can demonstrate that the adoption of such laws or procedures would not improve the effectiveness and efficiency of the State child support program. Requests should be sent the appropriate ACF Regional Office in accordance with regulations at 45 CFR 302.70(d) and program instructions set forth in OCSE-AT-88-19.

VI. Questions & Answers Regarding Statutory Requirements

1. Question: Must a public agency administer non-IV-D withholding? What are possible options a State may consider in meeting the administrative requirements?

Answer: The State must specify which public entity is responsible for immediate wage withholding in non-IV-D cases. As the Federal statute provides, States may establish, or permit the establishment of, alternative procedures to carry out non-IV-D withholding as long as the entity it designates is under the supervision of a public agency. The entity must follow procedures which will assure prompt distribution of amounts withheld, provide for the keeping of adequate records to document payments of support, and permit the tracking and monitoring of such payments.

A State could designate the IV-D agency, or the entity which administers withholding in IV-D cases, to be responsible for the administration of non-IV-D withholding. If so, there must be a system for allocating costs between IV-D and non-IV-D operations, since FFP is not available for providing services to non-IV-D cases.

Since October 1, 1985, States have had the option set forth in §302.57 of establishing procedures under which support payments are made through the IV-D agency or the entity designated by the State to administer the State's withholding system upon the request of either the non-custodial parent or custodial parent, regardless of whether or not arrearages exist or withholding procedures have been instituted. States may charge a fee for these services, not to exceed $25 annually and not to exceed State costs. A State may adapt this option to meet the 1994 non-IV-D withholding requirements.

A State could also opt to designate clerks of court or other appropriate judicial entities to administer non-IV-D withholding, since immediate withholding is applied at the time the support order is initially entered.

Alternatively, the State could choose a private entity, such as a bank, to administer this activity in non-IV-D cases as long as the entity is publicly accountable for the collection and distribution of support withheld.

2. Question: Must the State designate only one entity in each jurisdiction to administer withholding?

Answer: No. Although IV-D regulations at 45 CFR 303.100(g)(2)(ii) require that States may designate only one entity to administer withholding in each jurisdiction, such a restriction does not apply to withholding in non-IV-D cases.

3. Question: If there is no FFP for non-IV-D withholding activities, may the State pass costs on to the user through fees or other cost recovery systems?

Answer: Yes. States may finance their withholding responsibilities in non-IV-D cases by charging fees and recovering costs. However, in cases where the State has elected to use the option set forth at 45 CFR 302.57, and all withholding payments are made through the IV-D agency or entity designated by the State to administer the State's IV-D withholding system, the fee must not exceed $25 per year or actual costs (whichever is less). If the State designates a bank or other public entity (other than the agency designated to administer IV-D withholding), then these limitations do not apply.

4. Question: Is non-IV-D withholding subject to specific regulatory requirements at 45 CFR 303.100, for timeframes for distribution of amounts withheld?

Answer: No. Federal regulatory requirements applicable to IV-D cases do not apply to immediate wage withholding in non-IV-D cases.

5. Question: Must States meet the criteria in Federal regulations for a finding of good cause or for an alternative arrangement in IV-D cases in extending immediate withholding to non-IV-D cases?

Answer: No. Federal regulations at 45 CFR 303.100(b)(2) and (3), which set certain minimum criteria for good cause findings and alternative arrangements in IV-D cases, do not apply to non-IV-D cases. Consequently, States may develop their own criteria for non-IV-D cases which differ from or are consistent with those required under IV-D regulations.

6. Question: Is the State responsible for sending the notice of withholding to the employer in non-IV-D cases effective January 1, 1994?

Answer: No. Federal statutory requirements for withholding in non-IV-D cases do not require States to send the withholding notice to the employer. States may choose to do so or may direct the obligor, obligee, or their attorneys, to send the withholding notice to the employer as soon as the initial child support order is issued.

Many States have already developed standardized wage withholding notices which incorporate the information which must be given to employers. States may adapt these documents for use in non-IV-D situations.

7. Question: Is the State required to take enforcement actions in non-IV-D cases when there have been good cause findings, or alternative arrangements and the non-custodial parent subsequently becomes delinquent in an amount which would trigger an initiated withholding under IV-D requirements? Or when the non-custodial parent leaves employment and becomes delinquent?

Answer: No. The statute does not require the State to take enforcement actions, initiate, or to re-initiate withholding in non-IV-D cases beyond subjecting the non-custodial parent to immediate withholding when a child support order is initially issued in the State. Enforcement of withholding orders may be done by States or left to obligees or their attorneys to take such action. Any individual who wants child support enforcement services may also apply for IV-D services.

8. Question: What are the State's responsibilities with respect to allocation of withheld amounts when there are multiple withholding notices involving both non-IV-D and IV-D cases for a single non-custodial parent?

Answer: If multiple withholdings from a single non-custodial parent's earnings involve both a IV-D and a non-IV-D case, Federal requirements must be applied to all withholdings with respect to that non-custodial parent. Federal regulations at 45 CFR 303.100(a)(5), governing IV-D cases, require States, in cases where there are more than one withholding against a single non-custodial parent, to allocate withholding, but in no case should the allocation result in one family getting nothing. For consistency, States may choose to adopt allocation methods mandated in Federal regulations for IV-D cases for all withholdings, whether IV-D or non-IV-D. Since receipt of current support is essential to many families, the State should attempt to ensure that current support is paid first to any family due current support.

9. Question: Do the specific criteria for termination of withholding in IV-D cases apply to non-IV-D withholding?

Answer: No. Federal regulations at 45 CFR 303.100(a)(7) which set certain minimum criteria for termination of withholding in IV-D cases do not apply to non-IV-D cases.

DEPARTMENT OF HEALTH & HUMAN SERVICES

ADVANCE COPY

ADMINISTRATION FOR CHILDREN AND FAM
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

FINAL RULE

OFFICE OF CHILD SUPPORT ENFORCEMENT

ACTION TRANSMITTAL
OCSE-AT-92-02
July 10, 1992

TO: STATE AGENCIES ADMINISTERING CHILD SUPPORT ENFORCEMENT PLANS UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT AND OTHER INTERESTED INDIVIDUALS

SUBJECT: Final Rule - Immediate Income Withholding; Review and Adjustment of Child Support Orders; Notice of Assigned Support Collected

ATTACHMENT: Attached is a final rule which implements sections 101, 103(c) and 104 of the Family Support Act of 1988 (P.L. 100-485). Current Federal regulations are revised to require that States establish immediate income withholding, with certain exceptions, in the case of support orders issued or modified on or after November 1, 1990, and being enforced under the IV-D State plan; effective October 13, 1990, to require periodic review of support orders pursuant to a State plan, and adjustment of such orders, as appropriate, in accordance with State guidelines for support award amounts; and, beginning January 1, 1993, to require that States provide monthly notices of collections to individuals who have assigned their rights to support to the State unless the State obtains a waiver in order to send quarterly notices. Section 103(c) also establishes more specific review and adjustment requirements effective October 13, 1993, and those requirements will be addressed in a separate rulemaking.

REGULATION REFERENCE: 45 CFR Parts 302 and 303.

SUPERSEDED MATERIAL: OCSE-AT-90-07, dated August 17, 1990

EFFECTIVE DATE: July 10, 1992

INQUIRIES: ACF Regional Administrators

Allie Page Matthews
Deputy Director
Office of Child Support Enforcement

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 302 and 303

RIN 0970-AA63

Child Support Enforcement Program: Immediate Income Withholding; Review and Adjustment of Child Support Orders; Notice of Assigned Support Collected

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements three provisions of the Family Support Act of 1988 (Pub. L. 100-485). Section 101 of this Act requires immediate wage withholding, with certain exceptions, in the case of support orders issued or modified on or after November 1, 1990, and being enforced under the IV-D State plan. Immediate wage withholding begins January 1, 1994, for orders issued on or after that date, if the case is not being enforced by the IV-D program. Section 103(c) of this Act requires periodic review of support orders and adjustment, as appropriate, in accordance with State guidelines for support award amounts, effective October 13, 1990. Section 103(c) also establishes more specific review and adjustment requirements effective October 13, 1993; those requirements will be addressed in a separate rulemaking. Section 104 of this Act requires monthly notices of collections to individuals who have assigned their rights to support to the State. Monthly notices are required beginning January 1, 1993, unless the State obtains a waiver in order to send quarterly notices.

DATES: *Effective date:* This rule is effective July 10, 1992.

Compliance dates: The various compliance dates of the statutory requirements are:

November 1, 1990—Immediate Income Withholding (§ § 302.70 and 303.100)
October 13, 1990—Review and Adjustment of Orders (§ § 302.70, 303.4, and 303.8)
October 13, 1993—Review and Adjustment of Orders
January 1, 1993—Notice of Assigned Support Collected (§ 302.54)
January 1, 1994—Immediate Income Withholding, all orders.

FOR FURTHER INFORMATION CONTACT: Policy Branch, OCSE, specifically:

Marilyn Cohen (202) 401-5366 regarding review and adjustment of child support orders;
Lourdes Henry (202) 401-5440 regarding monthly notice of support collected;
Craig Hathaway (202) 401-5367 regarding immediate wage withholding.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Public reporting burden for the collection of information requirements in this final regulation, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, is estimated as follows:

Requirement	Average time per response
§ 302.54(b) (1) and (2): notices	30 seconds.
§ 302.54(c): waiver	1 hour, one time.
§ 302.70(a)(10): procedures	8 hours, one time.
§ 303.8(b)(1): plan	8 hours, one time.
§ 303.100(b)(2): agreement	1 minute.
§ 303.100(b)(1)(ii): payment	30 seconds.

These information collection requirements were approved under OMB control number 0970-0110.

Statutory Authority

This regulation is published under the authority of the following provisions of the Social Security Act (the Act), as amended by Public Law 100-485: sections 466 (a)(8) and (b)(3) with respect to immediate income withholding; section 466(a)(10) with respect to periodic review of individual support award amounts; and section 454(5)(A) covering timing of notice of support collections. This regulation is also published under the general authority of section 1102 of the Act, which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Background and Description of Regulatory Provisions

1. Notice of Assigned Support Collected

Former 45 CFR 302.54 required States, at least annually, to provide notice of the amount of support payments collected during the past year to individuals who have assigned rights to support under 45 CFR 232.11. The notice must list separately payments collected from each absent parent when more than one absent parent owes support to the family and indicate the amount of

support collected which was paid to the family. This regulation implemented section 454(5) of the Act as amended by the Child Support Enforcement Amendments of 1984.

Section 104 of the Family Support Act of 1988 amended section 454(5)(A) of the Act to require States to send a monthly notice of support payments to individuals who have assigned support rights to the State. A State may provide quarterly notices if the Secretary determines that a monthly notice would impose an unreasonable administrative burden on the State.

To implement these statutory changes, we redesignated the current §§ 302.54 (a) and (b) as new paragraphs (a) (1) and (2) which remain in effect until December 31, 1992.

Effective January 1, 1993, § 302.54(b) requires that the State have in effect procedures for issuing monthly notices.

Under § 302.54(b)(1), the IV-D agency is required to provide a monthly notice of the amount of support payments collected for each month to individuals who have assigned rights to support under § 232.11, unless no collection is made in the month, and the assignment is no longer in effect, or the conditions for issuance of a quarterly notice set forth in paragraph (c) are met. If, in a former AFDC case which continues to receive IV-D services, a State is collecting support for a previous period for which the assignment remains in effect in accordance with § 302.51(f), the State must send a monthly notice to the family.

Section 302.54(b)(2) requires the monthly notice to list separately payments collected from each absent parent when more than one absent parent owes support to the family and indicate the amount of current support and arrearages collected and the amount of support collected which was paid to the family. If no support collection is made during a month, the State is not required to provide a notice to the family. A State may, at its option, provide a monthly notice when no support collections are received.

Under § 302.54(c), a waiver may be granted allowing the State to provide quarterly, rather than monthly, notices if the State does not have an automated system that performs child support enforcement program activities, or has an automated system that is unable to generate monthly notices. Effective October 1, 1995, States are required to have in effect automated systems that perform child support enforcement activities. Upon the request of a State, the Office may grant a waiver to permit a State to provide quarterly, rather than monthly, notices, if the State: (1) Until September 30, 1995, does not have an automated system that performs child support enforcement activities consistent with § 302.85 or has an automated system that is unable to generate monthly notices; or (2) uses an automated voice response system which provides the information required under paragraph (b)(2).

Under paragraph (c)(2), a quarterly notice must be provided in accordance with conditions set forth in paragraph (b)(1) and must contain the information set forth in paragraph (b)(2).

2. Review and Adjustment of Child Support Orders

Beginning with the enactment of the Child Support Enforcement Amendments of 1984 (Pub. L. 98-378), each State had to establish guidelines for child support award amounts in the State, as a condition for State IV-D plan approval. These guidelines were not binding, but had to be made available to all judges and other officials with authority to determine award amounts.

Under section 103 of Public Law 100-485, Congress required that States use the guidelines as a rebuttable presumption that the amount of the award computed according to the guidelines is the correct amount of child support to be awarded. A written or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined by State criteria, is sufficient to rebut the presumption in that case. To ensure further that the use of the guidelines will result in appropriate support award amounts, section 103 requires that the guidelines be reviewed at least once every four years. Final regulations governing these aspects of section 103 were published on May 15, 1991 (56 FR 22335).

Use of guidelines does not ensure that orders, over time, continue to meet the support standards set by the guidelines. To address this problem, section 103 of Public Law 100-485 phases in a requirement for the periodic review and adjustment of support orders, in accordance with the support guidelines in the State. Under section 103, the Social Security Act (the Act) is amended by adding a new section 466(a)(10) of the Act. Section 466(a)(10)(A), effective October 13, 1990, requires States to have procedures for review and adjustment of orders in IV-D cases, consistent with a State plan indicating how and when review and adjustment would occur. Review may take place at the request of either parent subject to the order or may be initiated by the State itself. An adjustment to the award is required, as appropriate, if the award amount is found not to be in accordance with the State's guidelines, which must be used as a rebuttable presumption in establishing or adjusting support obligations in the State.

The new section 466(a)(10)(B), effective October 13, 1993 (or earlier at State option), requires the State to have implemented a process whereby orders enforced under title IV-D will be reviewed within 36 months after establishment of the order or the most recent review of the order and adjusted in accordance with the State's guidelines for support award amounts.

The new section 466(a)(10)(C) requires States to have procedures for notifying each parent subject to an order in effect in the State, that is being enforced under the State plan, of their rights concerning reviews and proposed adjustments. Each parent must be notified: of the right to request the State to review the order; of any review, at least 30 days before it commences; and of a proposed adjustment or of a determination that there should be no change in the award amount. In the latter case, the parent must have at least 30 days after notification to initiate proceedings to challenge the proposed adjustment or determination.

Proposed regulations governing review and adjustment requirements of section 103 were published on August 15, 1990 (55 FR 33414). We received many comments in response to the proposed rule which urged that we delay publication of final regulations governing review and adjustment requirements until demonstration projects underway in a number of States were completed. These projects, mandated by section 103(e) of Public Law 100-485, are developing, testing and evaluating model procedures for reviewing child support award amounts in Delaware, Colorado, Illinois and Florida. The results of the demonstration projects are required to be reported to Congress by March 31, 1993. A similar project was conducted in Oregon and the final report was issued in April 1991. Commenters also raised difficult issues with respect to review and adjustment, especially those concerning requirements for interstate cases. In response to these concerns, we have decided to publish a separate rule on the review and adjustment requirements which are effective October 13, 1993 to benefit fully from the wisdom gained from the review and adjustment projects. We believe this is the most prudent approach, given the time remaining before the 1993 requirements go into effect. Therefore, this final rule only addresses the requirements for

review and adjustment effective October 13, 1990.

Section 302.70 Required Laws.

Under § 302.70 States are required to enact certain laws and implement certain procedures designed to improve the effectiveness of the Child Support Enforcement program. Paragraph (a)(10) requires States to enact necessary laws and have procedures in effect for the review and adjustment of child support orders in accordance with the requirements of 45 CFR 303.8. Because of the addition of paragraph (a)(10) and revisions to § 303.100, we are making technical corrections to § 302.70(a) by revising paragraph (a)(8). We are making technical corrections to § 302.70(d)(1) and (2) to clarify that a State may apply for an exemption from any of the requirements of § 302.70(a) if it can demonstrate that compliance would not increase the effectiveness and efficiency of its Child Support Enforcement program.

Section 303.4 Establishment of Support Obligations

Section 303.4(c) is amended to require States to periodically review and adjust child support orders, as appropriate, in accordance with § 303.8.

Section 303.7 Provision of Services in Interstate IV–D Cases

Section 303.7(b)(2) is amended to clarify that the 20 calendar day time frame for referral of an interstate case is tied to the receipt of any information necessary to process the case, if appropriate.

Section 303.8 Review and Adjustment of Orders

The title of this section has been changed to "Review and Adjustment of Child Support Orders," to be consistent with the statutory language of Public Law 100–485.

Section 303.8(a) Definitions

Section 303.8(a) contains definitions designed to clarify key aspects of the review and adjustment process.

Paragraph § 303.8(a)(1) limits "adjustment" to the child support provisions of an order. Under § 303.8(a)(1)(i), "adjustment" means an upward or downward change in the amount of child support based upon an application of State guidelines for setting and adjusting child support awards. Under § 303.8(a)(1)(ii), "adjustment" also means the provision for the health care needs of the child through health insurance or other means.

Paragraph (a)(2) defines "parent" for purposes of § 303.8 to include any custodial parent or noncustodial parent (or, for purposes of requesting a review, any other person or entity who may have standing to request an adjustment to the child support order).

Paragraph (a)(3) defines "review" as an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body or agency, of information necessary for application of the State's guidelines for support to determine the appropriate support award amount, and the need for a provision in the order addressing the child(ren)'s health care needs through health insurance or other means under State guidelines.

Section 303.8(b) Plan for Review and Adjustment

Plan

Paragraph (b) requires the State to develop and implement a plan for review and adjustment of orders by October 13, 1990. Under paragraph (b)(1), the State must have a written and publicly available plan indicating how and when a child support order, in effect in the State, will be periodically reviewed and adjusted. Paragraph (b)(2) specifies the requirements that the State must meet for the period October 13, 1990 through October 12, 1993 with respect to orders being enforced in IV–D cases. Paragraph (b)(2)(i) requires that the State must use the plan specified in paragraph (b)(1) to determine whether such orders should be reviewed. Paragraph (b)(2)(ii) specifies that the State must initiate a review, in accordance with the plan, at the request of either parent subject to the order or of a IV–D agency.

Pre-Review Notice

Paragraph (b)(2)(iii) specifies the requirements for notifying each parent subject to a child support order in effect in the State regarding review and adjustment. Under this paragraph, the State must notify each parent of any planned review of the order at least 30 calendar days before commencement of the review.

Adjustment of the Order

Paragraph (b)(2)(iv) specifies that if the review determines that there should be a change in the child support award amount, the State must adjust the order in accordance with the State's guidelines for child support described in § 302.56. In addition, an adjustment must be made if the review determines that provision for the health care needs of the child(ren) in the form of health insurance or other means, as indicated by the State's guidelines, is required.

Post-Review Notice

Paragraph (b)(2)(v) specifies the requirements for notifying each parent subject to a child support order in effect in the State following any review. This paragraph requires notification of (A) any adjustment or a determination that there should be no change in the order; and (B) each parent's right to initiate proceedings to challenge the adjustment or determination, either through pre-decision review, appeal or administrative review, within at least 30 calendar days of the date of the notice.

2. Wage or Income Withholding

Section 3 of the Child Support Enforcement Amendments of 1984 (Pub. L. 98–378) added sections 454(20) and 466 of the Act to require all States to implement certain mandatory procedures which had been proven to noticeably increase the effectiveness of State programs, including procedures for wage withholding.

Section 466 required that States have in effect two distinct procedures for carrying out a program for wage withholding. The first, required under section 466(a)(1) and (b) of the Act, pertained only to cases being enforced through the IV–D agency. Under this requirement, States must have and use a procedure under which wages of an absent parent shall be subject to withholding in IV–D cases on the date the absent parent fails to make payments in an amount equal to one-month's support obligation. States were also required to implement the withholding at any earlier date that is in accordance with State law or that the absent parent may request. Withholding was to begin without amendment to the order or further action by the court. The Act also specified other elements of the withholding system for IV–D cases such as requirements for prior notice to the absent parent, basis for appeal, restrictions on the maximum amounts to be withheld, notice to the employer, and interstate withholding. These requirements were implemented in regulations at former 45 CFR 303.100 (a) through (g).

The second procedure, required by section 466(a)(8) of the Act and implemented at former § 303.100(h), provided that all new or modified orders issued in the State include a provision for wage withholding when an arrearage occurs, in order to ensure that withholding is available without the necessity of filing an application for IV–D services.

Section 101 of Public Law 100-485 amends section 466 of the Act to require that States enact laws and implement procedures for immediate income withholding in certain cases. Under amended section 466(b)(3), a new subparagraph (A) provides that immediate withholding is required, effective November 1, 1990, for all IV-D cases with new or modified orders on the effective date of the order, unless one of the parties demonstrates, and the court or administrative authority finds good cause not to require the withholding, or a written agreement is reached between the parties which provides for an alternative arrangement.

For cases being enforced by the IV-D agency which are not subject to immediate withholding, section 101 of Public Law 100-485 amends the current requirements at section 466(b)(3) by creating a new subparagraph (B) which provides that the absent parent's wage shall be subject to withholding on the earliest of: The date on which arrearages occur which are at least equal to the support payable for one month; the date on which the absent parent requests that withholding begin; the date on which the custodial parent requests that withholding begin (in accordance with the standards and procedures the State may establish); or an earlier date the State may select.

Section 101 of Public Law 100-485 also amends section 466(a)(8) of the Act by revising the current language as redesignated subparagraph (a) to require that child support orders not described in subparagraph (B) contain wage withholding provisions, and creating a new subparagraph (B) to require that, effective January 1, 1994, States have procedures providing for withholding in all support orders not being enforced by the IV-D agency, regardless of whether support payments are in arrears, on the effective date of the order, except that such wages shall not be subject to withholding in any case where one of the parties demonstrates, and the court or administrative authority finds that there is good cause not to require immediate income withholding or a written agreement is reached between the parties which provides for an alternative arrangement.

To address these statutory changes we have adopted the following regulatory amendments:

We have amended § 303.100 to reiterate the statutory changes outlined above by revising paragraph (a) so that it will now cover withholding requirements which are common to all orders being enforced under the IV-D State plan, and redesignating paragraphs (b) and (c) as new paragraphs (d) and (e), to provide for advance notice to the absent parent and for procedures when the absent parent contests the withholding in cases where it is not immediate (i.e., initiated withholding). We have created a new paragraph (b) providing for immediate withholding for those orders which are issued or modified on or after November 1, 1990, and a new paragraph (c) providing for initiated withholding for orders not subject to immediate withholding under paragraph (b). We have also redesignated paragraphs (d), (e) and (g) as new paragraphs (f), (g), and (h) to provide for, in both immediate and initiated IV-D withholding, notice to the employer, procedures for administration, and interstate withholding. Former paragraph (f), which allowed States the option to extend withholding to other forms of income, has been moved to a new paragraph (a)(9) since it is applicable to all types of withholding. Finally, we have redesignated paragraph (h) as new paragraph (i) to address provision for withholding in non-IV-D child support orders.

General Withholding Requirements

We have consolidated the requirements which are common to all IV-D withholdings in § 303.100(a) using the unchanged statutory authority of section 466(b) of the Act. Paragraphs (a)(1) and (2) require that States must provide for wage withholding for all IV-D cases for both current and overdue support. Paragraph (a)(3) establishes limits of amounts to be withheld in all IV-D cases, as required by the Consumer Credit Protection Act (hereinafter CCPA). Paragraph (a)(4) requires that withholding in all IV-D cases must occur without the need for any amendment to the order or any other action by the court or entity that issued it, except actions required or permitted under § 303.100.

Paragraph (a)(5), requires that States develop procedures for allocation of support among families when there is more than one withholding in a case but in no case shall the allocation result in a withholding not being implemented for one of the support obligations. This revision is not specified in the statute. However, we are using the authority granted to the Secretary at section 1102 of the Act to publish regulations not inconsistent with the Act which may be necessary to efficiently administer the Secretary's functions under the Act. Upon publication of the current requirement in 1985, we stated that, in response to comments received on the proposed rule, we had changed the requirement that the employer respond to multiple withholdings on a first-come-first-served basis to one in which the State would allocate support payments among the families. We also suggested several mechanisms States could use in allocating amounts to be withheld, one of which was to give top priority to AFDC cases. We have since become aware that some States may have implemented this suggestion by deciding to allocate all available withholding up to the CCPA limit to the AFDC family, leaving no amounts available for a second non-AFDC family. This was not our intent, and this language in paragraph (a)(5) clarifies that, although a State may give priority to AFDC families, in no case shall the allocation result in another non-AFDC family receiving no support through the withholding process.

Paragraph (a)(6) requires that IV-D withholdings be carried out in full compliance with all procedural and due process requirements of the State.

Paragraph (a)(7) requires States to have procedures for promptly terminating withholding in all cases when there is no longer a current order and all arrearages have been satisfied. At State option, a State may also allow termination when the absent parent requests termination and withholding has not been terminated previously and subsequently initiated, and the absent parent meets the conditions for an alternative arrangement set forth under paragraph (b)(3).

Paragraph (a)(8) requires that States must have procedures for promptly refunding amounts improperly withheld. Paragraph (a)(9) permits a State to extend its withholding system to include forms of income other than wages.

Under paragraph (a)(10), support orders issued or modified in IV-D cases must require the absent parent to keep the IV-D agency informed of the name and address of his or her current employer, whether the absent parent has access to employment-related health insurance coverage and, if so, the health insurance policy information. This will simplify implementation of withholding.

Immediate Withholding in IV-D Cases

We have implemented section 466(b)(3)(A) of the Act by creating a new § 303.100(b) providing for immediate wage withholding. Paragraph (b)(1) requires that, in the case of a support order being enforced under title IV-D that is issued or modified on or after November 1, 1990, the wages of an absent parent shall be subject to withholding, regardless of whether support payments are in arrears, on the effective date of the order, except that

such wages shall not be subject to withholding in any case where one of the parties demonstrates, and the court or administrative authority finds, that there is good cause not to require immediate withholding, or a written agreement is reached between the parties which provides for an alternative arrangement.

Paragraphs (b)(2) and (b)(3) establish minimum definitions of "good cause" and "written agreement." Although not specified in the statute, we are using our authority under section 1102 of the Act to set these requirements because we believe that Congress intended that immediate withholding would be implemented in most cases. Consequently, paragraph (b)(2) provides that a finding of good cause by the court or administrative authority must be based on, at a minimum: (i) A written determination and explanation of why implementing immediate 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. We believe that the best interests of the child should remain paramount and other concerns secondary. Certainly, payment of past-ordered support will provide a measure of the absent parent's good faith. In modification proceedings, States may choose not to allow past timely payment to justify avoiding immediate withholding.

These criteria were formulated to exclude certain other considerations. For example, we do not believe that good cause would be demonstrated if the absent parent objects to immediate withholding on the grounds that it would be inconvenient, since the purpose of the support order and withholding is to provide for the best interests of the child. Payroll deduction is a convenient means of paying debts. Moreover, the overall thrust of the immediate withholding provisions have, in effect, removed any reason for an employer to believe that the employee is not meeting his or her obligations in a responsible manner, since all child support orders (IV-D and non-IV-D) will eventually be subject to this automatic provision. This also means that a demonstration by the absent parent that he or she has established a good credit rating should not qualify for good cause, since the imposition of immediate withholding contains no assumption that the absent parent would default on support payments. Also, a credit rating may or may not take into consideration an absent parent's support obligation, or that obligation may not be heavily weighted.

Paragraph (b)(3) provides that a "written agreement" means a written alternative arrangement signed by both parents, and, at State option, 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 by an administrative authority. We have given States the option in IV-D cases in which there is an assignment of support rights to the State to be a party to any alternative arrangement between the absent and custodial parents which meets the above condition because of the State and Federal interest in securing support for those in need of public assistance. We have provided that such written agreement be reviewed and entered in the record by the court or administrative authority for protection of the best interests of the child as well as the parents. Such an agreement may contain stipulations between the custodial and absent parents; and, at State option, the State in IV-D cases in which support rights have been assigned, which are in addition to those required under this paragraph.

Initiated Wage Withholding

We have implemented revised section 466(b)(3)(B) of the Act by creating a new § 303.100(c) for initiated wage withholding in cases where immediate withholding, as set forth in § 303.100(b), would not apply because the support order was issued before, and not modified after, November 1, 1990. Paragraph (c), in conjunction with paragraphs (a), (d), (e), and (f) will continue, with some modification, the original wage withholding requirements contained in Public Law 98-378 for existing orders being enforced under title IV-D.

Section 303.100(c) sets forth requirements for withholding with respect to cases in which wages are not subject to immediate withholding in paragraph (b), including cases subject to a good cause finding or a written agreement. Under paragraph (1), the wages of the absent parent shall become subject to withholding on the date on which payments which the absent 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 absent 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. In the latter instance, we have specified that the State may select an earlier date via law or procedure to indicate that this must apply on an across-the-board, rather than a case-by-case basis. For example, a State may wish to set a lower trigger of one week's support delinquency, rather than the outside limit of a month's delinquency required by statute and regulation. The State may not apply a more stringent standard on an individual case basis, but must apply it to all cases if this approach is selected.

These provisions parallel the requirements of Public Law 98-378 with one important exception. The new requirement at section 466(b)(3)(B)(ii) of the Act and at § 303.100(c)(1)(ii) now allows the custodial parent to request that withholding be imposed without regard to whether support payments are in arrears, if the State agrees based on procedures and standards which it may establish to determine when this is appropriate. Since the statute has given States authority to determine the criteria under which such requests by the custodial parent may be approved, we have not established requirements for these procedures and standards. However, such procedures and standards may not limit custodial parents' requests to cases where the 30-day triggering arrearage is met or cases where the custodial parent requests review and adjustment of the order and the order is adjusted. Under this provision, a State could choose to establish a simple administrative procedure to implement withholding upon custodial parent request if an absent parent is not meeting the terms of a written agreement for an alternative arrangement, or the support order was established or modified before November 1, 1990. Alternatively, a State may opt to require a return to court in order to implement withholding where no qualifying arrearage exists. In any case, State statute, rules or procedures must provide for withholding upon request in cases not subject to withholding in which the 30-day triggering arrearage has not been met and in which State standards are met. This provision will also enable States which desire to do so to bridge the gap between the original initiated withholding mandated in Public Law 98-378 and the new immediate withholding requirements of Public Law 100-485 by incorporating either some, or all, of the new immediate withholding provisions on behalf of their existing initiated

withholding caseload. We encourage States to establish expedited procedures for custodial parents in such cases to request withholding as a means of ensuring regular and timely support payments consistent with protecting the due process rights of the other parent.

Paragraph (c)(2) requires the State to send the advance notice required under paragraph (d) to the absent parent within 15 calendar days of the appropriate date under paragraph (c)(1) if the absent parent's address is known on that date, or, if the absent parent's address is not known on that date, within 15 calendar days of locating the absent parent. Obviously, advance notice is unnecessary if the absent parent requests withholding under paragraph (c)(1)(i).

Paragraph (c)(3) requires that the only basis for contesting an initiated withholding is a mistake of fact, defined as an error in identity of the absent parent or in the amount of support due.

Advance Notice to the Absent Parent in Cases of Initiated Withholding

Section 303.100(d)(1) requires timely advance notice to the absent parent in cases of initiated withholding on the date specified in paragraph (c)(2) and specifies the required contents of the notice. We have also established a timeframe, in paragraph (d)(2)(ii), for sending notice to the employer in States which are not required to provide advance notice to the absent parent because they had a withholding system in effect on August 16, 1984, which provides any other procedures necessary to meet the procedural due process requirements of State law. Under this timeframe, a State is required to send notice to the employer under paragraph (f) within 15 calendar days of the appropriate date specified in paragraph (c)(1) if the employer's address is known on that date, or, if the employer's address is not known on that date, within 15 calendar days of locating the employer's address.

State Procedures When the Absent Parent Contests Initiated Withholding in Response to the Advance Notice

Section 303.100(e) addresses State procedures to be followed when the absent parent contests a proposed initiated withholding. We have changed the citations within this paragraph to reflect the redesignation of other paragraphs in this section.

Notice to the Employer for Immediate and Initiated Withholding

Section 303.100(f) provides for notice to the employer for both immediate and initiated wage withholding. In paragraph (f)(1)(ii), we have added a requirement that the employer report to the State the date on which the amount sent to the State was withheld from the absent parent's wages. This date is needed by the State to ensure proper distribution of support under current statute and regulations. If the employer fails to report this date to the State, the IV–D agency must, in accordance with § 302.51(a)(4), reconstruct the date of withholding by contacting the employer or comparing actual amounts collected with the pay schedule specified in the court or administrative order.

Paragraph (f)(2) requires that, in the case of immediate wage withholding under paragraph (b), the State must issued the notice to the employer specified in paragraph (f)(1) within 15 calendar days from the date the support order is entered if the employer's address is known on that date, or, if the address is unknown on that date, within 15 calendar days of locating the employer's address. We believe that a 15-day turnabout is consistent with the intent of immediate wage withholding. Paragraph (f)(3) requires that, in cases of initiated withholding, if the absent parent fails to contest withholding within the period specified, the State must send the notice to the employer within 15 calendar days of the end of the contest period if the employer's address is known on that date, or, if the address is unknown on that date, within 15 calendar days of locating the employer's address. Paragraph (f)(4) requires that if the absent parent changes employment within the State when a withholding is in effect, the State must notify the absent parent's new employer within 15 calendar days of locating the new employer's address, in accordance with the requirements of paragraph (f)(1) that the withholding is binding on the new employer.

Administration of Withholding

Section 303.100(g) provides for certain administrative actions by the States and is applicable to both immediate and initiated withholding.

With the technology available to transfer funds electronically, many employers have payroll systems (or contracts with service bureaus) which can automatically deposit wages in more than one financial account. We encourage employers, who currently have the capability to do so, to begin remitting withheld wages electronically as soon as possible to any State's withholding agency which has the capability to receive such funds electronically on the same day funds are deposited in employees' bank accounts. OCSE is developing model procedures for electronic transfer of child support payments through cooperation with the National Automated Clearinghouse Association (NACHA) which sets rules and administers the Automated Clearinghouse Network. A work group has also been formed representing employers, financial institutions and child support agencies to develop a standard format for transferring both income withholding payments and the related data. OCSE will continue to keep States informed of efforts in this area. In anticipation of the requirement that all States have operational automated child support enforcement systems by October 1, 1995, in accordance with section 123 of Public Law 100–485, we require in paragraph (g)(2) that, no later than October 1, 1995, the State must be capable of receiving withheld amounts and accounting information which are electronically transmitted by the employer to the State. This will greatly reduce the time it takes for support payments to reach families in need of them.

Under § 303.100(g), States are allowed to designate more than one public or private entity to administer withholding on a State or local basis under the supervision of the State withholding agency. However, because of the need to reduce the burden on employers and to simplify procedures for electronic transfer of withheld amounts, we encourage States to designate a single public agency to administer withholding in IV–D cases. This will simplify withholding for employers in both intrastate and interstate cases whether it is accomplished through electronic transfer or other means, and is essential to ensure a simple process for electronic transfer of withheld child support obligations.

We also encourage States to use electronic funds transfer for withholding wages in non-IV–D cases. In many States, funds paid through wage withholding could be deposited directly in custodial parents' bank accounts. Custodial parents' bank account statements would provide good documentation of payments received. Using non-IV–D cases would enable States to implement wage withholding easily in non-IV–D cases. (Historically, payment in IV–D cases have gone through the IV–D system rather than directly to custodial parents' accounts because of additional information needed in IV–D cases.)

Interstate Withholding

Section 303.100(h), requiring that State law must provide for procedures to extend the State's withholding system

so that system will include interstate cases, is applicable to immediate and initiated withholding. Paragraph (h)(1) provides that a responding State may register orders for purposes of 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 original support order or resolution of custody or visitation disputes); and does not delay implementation of withholding beyond the timeframes in paragraph (h)(5). This is a formal statement in the regulations of our policy since wage withholding was originally enacted in 1984, with a clarification that "delay" means a delay beyond required timeframes.

Paragraph (h)(3) requires that the initiating State must notify the State in which the absent parent is employed 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 the withholding. For consistency, we have also amended the requirements at § 303.7(b)(2), for provision of services in interstate cases, to require that within 20 calendar days of determining the absent parent is in another State, and, if appropriate, the receipt of any information needed to process the case, the initiating IV–D agency must refer any interstate case to the responding State's interstate registry for action, including UIFSA petitions and requests for location, document verification, administrative reviews in Federal income tax refund offset cases, wage withholding, and State income tax refund offset in IV–D cases. In addition, the last sentence of paragraph (h)(3) requires that, 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 the request for information.

Under paragraph (h)(4), the State in which the absent parent is employed must implement withholding in accordance with paragraph (h)(5) upon receipt of the notice required in paragraph (h)(3). Finally, paragraph (h)(5) requires that the State where the absent parent is employed must provide the absent parent with notice, if appropriate; an opportunity to contest an initiated withholding, if appropriate; send notice to the employer; and notify the initiating State when the absent parent is no longer employed in the responding State. Paragraphs (h) (6) and (7) set forth choice of law requirements in interstate cases.

Provision for Withholding in Child Support Orders

Paragraph (i) amends the former requirement in 45 CFR 303.100(b) which implemented the requirement in section 466(a)(8) of the Act that all child support orders include provision for withholding, to assure that withholding is available if arrearages occur, without the necessity of filing application for IV–D services. In requiring all orders issued after January 1, 1994, to be subject to immediate withholding (except where exclusions due to good cause or alternate arrangement between the parties are applicable), section 103(b) of Public Law 100–485 redesignated prior section 466(a)(8) (which was effective October 1, 1985) as section 466(a)(8)(A) and limited its applicability to orders *not* covered under the immediate withholding requirement for all non-IV–D orders issued in 1994 and thereafter. Therefore, since prior section 466(a)(8) was effective October 1, 1985, we have limited the applicability of 45 CFR 303.100(i) to orders which were issued between October 1, 1985 and January 1, 1994, or are modified on or after January 1, 1994. In response to comments on the proposed rule, we are not including in this final rule requirements effective for non-IV–D orders issued in 1994 and thereafter.

Response to Comments

We received comments on the proposed rule published August 15, 1990, in the *Federal Register* (55 FR 33414) from over 70 commenters representing national organizations, State and local IV–D agencies, child advocacy groups and private citizens. Comments and our responses appear below.

1. Notice of Assigned Support Collected

General

1. *Comment:* We received many comments stating that sending monthly notices to individuals who have assigned rights to support under § 232.11 would be costly due to the price of postage; would be time-consuming and take time away from providing other mandated services; create a tremendous burden on the States; and cause confusion on the part of the AFDC recipient resulting in increased letters and phone calls. Another commenter recommended that States be permitted to provide quarterly notices of collection to avoid increased program costs. One commenter suggested that the regulation be amended to require a monthly notice only upon request.

Response: Section 104 of the Family Support Act of 1988 amended section 454(5)(A) of the Social Security Act to require States to send a monthly notice of support payments collected to individuals who have assigned rights to support to the State. The statute does not authorize States to send notices only upon request but does allow a State to provide quarterly notices if the Secretary determines with respect to a State that requiring such notice on a monthly basis would impose an unreasonable administrative burden.

2. *Comment:* One commenter asked, if States are contracting with individual counties to provide IV–D services, is the monthly notice requirement at § 302.54(b)(2) passed on to the counties?

Response: Yes, a political subdivision operating the IV–D program for the State must provide monthly notice in accordance with § 302.54. However, it is permissible for the State to issue all such notices at its option.

3. *Comment:* One commenter asked us to clarify whether the amount of support collected includes the $50 pass-through payments for each months of collection.

Response: Yes, the notice should reflect the amount of support collected, including the $50 pass-through payments.

Content of Notice

1. *Comment:* We received several comments suggesting including additional information in the notice, i.e., the amount of support paid that month, year to date amount paid and amount applied to the AFDC debt and the debt to the family. The commenters suggested that the notice should be sent to non-AFDC, AFDC and Medicaid clients and should be sent at least quarterly even if no payments have been made.

Response: The monthly notice must include the amount of support paid during that month. However, the Federal requirements are minimum standards. States have the option to include additional information in the monthly notice to individuals who have assigned rights to support under § 232.11 or to send notice to individuals other than those who have assigned rights to support under § 232.11.

Providing One-time Notice Under Proposed Section 302.54(b)(1)

1. *Comment:* Many commenters objected to the proposed requirement at § 302.54(b)(1) and the IV–D agency must notify individuals who have assigned rights under § 232.11 that a monthly notice will be provided for each month in which support is collected. Some commenters maintained that there is no statutory requirement for providing such a notice, and that the proposed language went beyond the intent of Congress.

Several commenters felt that such a notice would be redundant, costly, and confusing. Another commenter asserted that this one-time notice would involve the production and mailing of notices at considerable expense to the States, with no benefit to clients. One commenter claimed that there was no compelling reason for announcing that monthly notices will be provided and contended that if the monthly notices were clearly worded and understandable, no prior explanation should be required. These commenters recommended that the advance notice requirement be deleted. One commenter suggested that a notice be required even when no collection had been made in that month so as not to cause confusion and an increase in the number of telephone inquiries. This commenter suggested giving the client the option of waiving the right to receive the notice on a monthly basis.

Response: We proposed that a one-time notice be provided to individuals who have assigned rights to support under § 232.11 to inform these individuals that if no support collection was made during a month, the State would no longer provide a notice to the family. Prior policy with respect to annual notice of support collections required States to provide an annual notice even if no collections were made during the year. Because States will be required, effective January 1, 1993, to provide monthly, rather than annual notice, we are not requiring States effective that date to send a monthly notice even if no collection is made. In view of the overwhelming negative response to the one-time advance notice requirement, and the distinct possibility that it will create more confusion than it will eliminate, we are deleting it from the final rule. States may determine how or whether to deal with any confusion over this change in policy. One suggestion would be to include this change in policy as part of the last annual notice before monthly notices begin to be sent.

Automated Voice Response System/ Toll-Free Telephone Numbers

1. *Comment:* We received a number of comments in favor of using an automated voice response system to meet the monthly notice requirements. The commenters believe this method is faster, more cost effective and more convenient than a computer-generated form mailed to the custodial parent once a month. One commenter requested that we put language in the regulation regarding using an automated voice response system. Another commenter stated that providing a monthly notice at the request of the recipient, is contradicting HHS's position on the proper interpretation of the statute that notice may not be sent only upon request. On the other hand, another commenter argued that the final regulations should change the word "provide" to "send" for consistency with the statute, clarify that written notice must be sent and that an automated voice response system does not meet the requirement for sending a monthly notice.

Response: Section 454(5)(A) does not require that monthly notice be "sent," but rather that the AFDC "individual will be notified on a monthly basis * * *." We believe that automated voice response systems have proven to be worthwhile, cost-effective and in some ways more responsive than monthly written notice. In using an automated voice response system, an individual would place a toll-free call to a specified telephone number, provide certain personal identification information to guarantee confidentiality, and receive a message over the telephone regarding the amount of support collected during the month on his or her behalf, case status and other information. A number of States currently use such a system with positive responses from AFDC recipients. In the State of Washington, the Department of Social and Health Services has an automatic response system called KIDS (Kids Information Delivery System) which responds to questions regarding child support case activities. This system receives an average of 23,000 calls per day. The IV-D staff view the system as a relief from the overwhelming number of calls (freeing them to pursue establishment and enforcement activities), and clients see the benefits of obtaining quick information about their payments. The District of Columbia also has an automated voice response system that handles more than 700 calls per day. The system operates 24-hours a day and can handle more telephone calls more efficiently than a comparable activity using human operators. Agency staff use the time made available by this system to perform needed enforcement activities. This system is updated daily with no necessity of downtime. In addition, the IV-D program in Philadelphia, Pennsylvania has an automated voice response system which handles more than 2,000 calls per day.

However, we agree that the use of an automated voice response system alone may not be adequate. Therefore, these final regulations require States which have an automated voice response system to provide quarterly, rather than monthly, written notices. In this way, individuals entitled to notice of collections will benefit from both easy access to information through the automated voice response system as well as being assured quarterly written notice of collections. (See also discussion following under *Waivers.*)

2. *Comment:* One commenter stated that since an automated voice response system only reaches those who want the information, a State with a non-automated hotline should be allowed to do likewise. The State can answer the inquiries manually by accessing its automated distribution system. Local offices can also respond to such inquiries. The option should be given to all States regardless of whether the State has an automated voice response system.

Response: While use of both systems require a request to be made for information, we do not believe use of a hotline is equally effective. Use of an automated voice response system eliminates the need for State employees to respond to individual requests, a task that has proved overwhelming in State after State. Use of an automated voice response system allows State employees to work cases, not just answer questions about status. While use of a hotline manned by caseworkers can be a helpful public service, it may not substitute for monthly notice. Access to information through an automated voice response system enables individuals served by the program to obtain information quickly and conveniently.

3. *Comment:* One commenter indicated that clients should receive a monthly written notice if payments are made, and that having a toll-free number available for them to call is not acceptable. Many low-income families do not have telephones.

Response: While some families do not have telephones, anyone has access to a public telephone. Automated voice response systems are accessed using toll-free numbers and, therefore, obviate any long distance telephone charges. In addition, quarterly notices must be sent if the State uses an automated voice response system.

4. *Comment:* One commenter asked us not to allow States to substitute phone inquiry systems, automated or otherwise, for monthly written notices of child support collections. The information needed to make the notice meaningful is much too complex to be conveyed in response to a telephone inquiry.

Response: Automated voice response systems have proved to be very effective at providing information about case status and collections. Automated

daily updates of this information are also possible. We believe that a system of this type can be designed to be easily understandable, effective, and efficient and provide all of the information required by these regulations.

5. *Comment:* One commenter asked us to clarify whether or not the automated voice response system is eligible for enhanced Federal Financial Participation (FFP).

Response: The development of an automated voice response system is eligible for enhanced Federal funding at the 90 percent matching rate if the functionality is an integral part of an approved Statewide comprehensive automated system and if all other requirements for IV–D funding are met. If the automated voice response system is developed apart from the Statewide comprehensive system, funding is available at the regular match rate of 66 percent. In either case, Federal matching at 66 percent is available for operation of the automated voice response system.

Waivers Under Proposed Section 302.34(c)

1. *Comment:* One commenter suggested that a waiver be allowed even if a State has an operational automated system which can produce the monthly notices and that waivers be renewable periodically after October 1, 1995. A commenter requested continuing waivers especially if a State is under court order requiring the issuance of notices more complex than those required to meet Federal regulatory requirements. Another commenter asked if the availability of a toll-free phone number for collection information (as well as general information) would be considered as an additional factor justifying permission being granted for quarterly notices. One commenter asked if a State can apply for a waiver of the monthly notice requirement if it has a certified automated system, but believes that the mailing costs would be excessive.

Response: We revised the regulations to allow indefinite waiver of the monthly notice requirement if States send quarterly notices and have an automated voice response system which provides all required information in § 302.34(b)(2). We believe that the combination of quarterly notices and an automated voice response system adequately addresses divergent concerns with respect to administrative burden and a State's responsibility to provide notice. The regulation does not allow use of a hotline manned by agency employees during regular business hours to justify sending quarterly notices because it is not as accessible as an automated response system, is too labor intensive, can divert resources from other pressing enforcement agency responsibilities, and, too frequently, is inadequate to meet the demands for information. Given the availability and advantages of an automated voice response system and the mandate that all States develop automated information management systems by 1995, we do not believe use of a hotline is an adequate substitute for monthly or quarterly notice.

With respect to granting waivers based on mailing costs, section 454(5)(A) of the Act allows quarterly notices only if a State demonstrates an unreasonable administrative (not just cost) burden. Any such costs, moreover, must be balanced against the benefits of frequent notices of collection which the Congress perceived in enacting this statutory requirement.

States that generate monthly notices using their automated system and States which receive waivers to provide quarterly notices should not be overly burdened by these requirements. Therefore, the Office may grant a waiver to permit a State to provide quarterly, rather than monthly, notices, if the State: (1) Until September 30, 1995, does not have an automated child support enforcement system that performs child support enforcement activities consistent with § 302.85 or has an automated system that is unable to generate monthly notices; or (2) uses an automated voice response system which provides the information required under paragraph (b)(2). A quarterly notice must be provided in accordance with conditions set forth in paragraph (b)(1) and must contain the information set forth in paragraph (b)(2). For a waiver to provide quarterly notices to be extended beyond September 30, 1995, the State must use an automated voice response system which provides the information required under paragraph (b)(2). Waivers will be granted as a part of the State plan approval process.

2. *Comment:* A few commenters stated that waivers should not be given to States with computer systems that do not currently generate notices. States should be required to program computers to generate notices.

Response: Effective October 1, 1995, States are required to have in effect Statewide automated child support enforcement systems. However, many States do not currently have a comprehensive automated system. Any automated system developed to meet the 1995 requirements for a Statewide system must produce mandated notices of collections. We believe it is reasonable to allow a State that cannot currently generate notices using an automated system a waiver to send quarterly notices because sending monthly notices would impose an unreasonable administrative burden on the State.

3. *Comment:* One commenter asked us to clarify for those States which are not State-administered whether the waiver will include all jurisdictions within the State.

Response: For States which are not State-administered, the waiver will include all jurisdictions within the State.

II. Review and Adjustment of Support Orders

This final regulation only addresses requirements for review and adjustment of support orders effective October 13, 1990. We are issuing a separate regulation to address the requirements for review and adjustment which take effect on and after October 13, 1993. In that regulation, we will address, for the post-October 1993 period, specific requirements for interstate review and adjustment, grounds for adjustment, timeframes for review and adjustment, and notice of the right to request a review.

Comments and our responses which relate to the October 13, 1990 requirements for review and adjustment appear below:

Section 302.70—Required State Laws

1. *Comment:* Several commenters indicated that State agencies need a strong Federal mandate to support their efforts to obtain new legislation that will facilitate a comprehensive periodic review and adjustment program. They suggested that § 302.70(a)(10) be expanded to specifically require States to adopt laws that provide for: (1) A quantitative standard for adjustment, (2) agency subpoena power that may be enforced administratively and (3) a clear statement that agreements between parents settling child support obligations are contrary to public policy.

Response: Section 303.8 sets forth specific Federal requirements for review and adjustment of orders effective October 13, 1990. Congress allowed States discretion in developing their plans for how and when child support orders in effect in the State will be periodically reviewed and adjusted between 1990 and 1993. In 1993, more stringent requirements become effective requiring reviews in certain cases at 36-month intervals. As States develop their plans and enact legislation implementing review and adjustment in the States, we encourage them to consider authorizing agency subpoena

power that may be enforced administratively, and otherwise facilitating the review and adjustment process in anticipation of the 1993 statutory mandates. The OCSE is funding several demonstrations related to periodic review and adjustment, and we are committed to widely disseminating knowledge of desirable practices employed by the demonstration States or learned elsewhere across the country. However, we do not believe such specific mandates were intended by the Congress with respect to States' review and adjustment activities between 1990 and 1993.

With respect to stipulated agreements, any child support obligation incorporated within such agreement must be set in accordance with State guidelines for child support awards, or there must be a written finding or finding on the record by the court or administrative agency determining that the guideline amount is unjust or inappropriate in the particular case. (See final rules on presumptive guidelines published May 15, 1991 (56 FR 22335)).

2. Comment: In response to the requirement that States have laws effective October 13, 1990 requiring that States have procedures for review and adjustment of child support orders, one commenter contended that this timeframe was unreasonable as it would be virtually impossible to have State law enacted by October 13, 1990.

Response: Section 466(a)(10) of the Act was enacted on October 13, 1988. This permitted States a full two-year implementation period within which to enact legislation and procedures in order to be in compliance with the requirements effective on October 13, 1990.

3. Comment: One commenter requested that § 302.70(d)(1) be changed to permit States to apply for an exemption from the required State law criteria for review and adjustment. The commenter indicated that under certain circumstances a State could demonstrate that procedures for review and modification would not increase the effectiveness and efficiency of its Child Support Enforcement program based on the cost of implementing these procedures.

Response: We have revised paragraph § 302.70(d)(1) to eliminate reference to specific mandated procedures. By referencing § 302.70(a) in its entirety, States may request an exemption from any mandated procedure, including review and adjustment of orders. Exemption requests must meet the requirements of OCSE-AT-88-19 (December 28, 1988).

4. Comment: One commenter asked whether OCSE has the authority to direct the activities of courts or other agencies serving non-IV-D clients in regard to review and modification of support orders.

Response: OCSE does not have the authority under the Family Support Act to direct the activities of courts or other agencies with respect to review and adjustment of orders in non-IV-D cases. However, the State, in order to have an approved State IV-D plan, may need to enact laws and procedures which bind the courts and other authorities involved in the review and adjustment of orders being enforced under the IV-D program. As directed by the Congress, the Secretary of HHS is also conducting a study of the impact of extending review and adjustment services to non-IV-D cases.

Section 303.4—Establishment of Support Obligations

1. Comment: Several commenters urged OCSE to put timeframes in a separate section, independent of the timeframes for establishing support orders set forth in § 303.4 because 90 days is insufficient time for review and adjustment in certain cases such as interstate cases.

Response: We have not included timeframes for review and adjustment in § 303.4(d) because we agree that separate timeframes for review and adjustment are warranted. States have flexibility in their plans for review and adjustment to indicate how and when child support orders will be periodically reviewed and adjusted for the three years commencing on October 13, 1990. Therefore, we are not setting timeframes for review and adjustment in this final rule. We address timeframes for review and adjustment of orders in a separate regulation to be issued governing requirements effective on and after October 13, 1993.

State Responsibilities and IV-D Agency Responsibilities

1. Comment: Questions were raised on the State's responsibilities as differentiated from the IV-D agency's responsibilities. One commenter noted that the language of Public Law 100-485 distinguishes the State's duties which may be carried out by the IV-D agency or by some other arm of the State from other duties which are specifically the responsibility of the State IV-D agency. The commenter further noted that proposed § 303.8 reflected this distinction in the description of the State's responsibilities for conducting the review and adjustment process. The commenter was concerned that the preamble rationale contradicted this by specifying that the IV-D agency must respond to requests for review by the absent parent for review and adjustment.

The commenter presented the following rationale: The review and adjustment section of Public Law 100-485 clearly distinguishes between the "State" and "State child support enforcement agency," or IV-D agency. Under that section, some duties lie generally with the State, which means that they may be carried out by the IV-D agency, or by some other arm of the State, according to the individual State scheme. Other duties are assigned to the State child support agency, and are specifically the responsibility of that entity.

Section 466(a)(10)(A) states, "The State must, at the request of either parent subject to the order, or (at the request) of a State child support enforcement agency, initiate a review of such order, and adjust such order, as appropriate, in accordance with the guidelines * * *." The statute makes a clear distinction between the "State" and the "State child support enforcement (or IV-D) agency," a distinction that is recognized throughout the Federal regulations, most particularly in the definition 45 CFR 301.1. There, "State" is defined as "the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam," while "IV-D agency" (the State child support enforcement agency referred to in the Family Support Act) is defined as "the single and separate organizational unit in the State that has the responsibility for administering or supervising the administration of the State plan under title IV-D of the Act." To interpret the statute any other way would require the IV-D agency to respond to a request for modification from itself, a function not within its power to provide, and by its terms contradictory.

This distinction between the duties of the State and those of the IV-D agency is crucial. State child support enforcement agencies were created under title IV-D of the Social Security

Act with a specific goal and purpose: to reduce AFDC dependency and promote family economic self-sufficiency, by establishing and enforcing child support awards. This is a valid State purpose, carried out by one State entity. Yet States have many goals and interests, carried out by many entities. States have, for example, an interest in creating just and impartial forums for the resolution of disputes and protection of all State citizens. Commonly, this State purpose is realized through the State court system, quasi-judicial processes, State administrative processes, or some combination thereof.

Response: We agree with the commenter's characterization of the statute and believe it is the best way to accommodate divergent State processes for establishing/adjusting child support awards. Therefore, § 303.8 reflects the distinction between the State and the IV-D agency in the description contained therein of the State's responsibilities for conducting the review and adjustment process. Throughout the provision, the regulation consistently describes the duty of conducting the review and adjustment process as a State responsibility. This appropriately reflects the Act, which does not specify the IV-D agency (or any other State entity) as the specific focus for the State's responsibility to conduct reviews and adjustments. The commenter was correct in pointing out that our statement in the preamble should have stated that the State, not the IV-D agency, responds to the absent parent's request for review and adjustment. At the State's discretion, the forum for review and adjustment may be the State court system, a State administrative process, or some other mechanism.

These regulations appropriately reflect statutory language which places responsibility for review and adjustment with the State. However, while this allows States to develop review and adjustment processes within appropriate forums or agencies in the State, it in no way relieves the State of the responsibility to meet Federal requirements, as a condition of IV-D State plan approval, or from the consequences specified by statute should they fail to do so.

States may allocate the various review and adjustment functions as they see fit between the administrative agency and the courts, or based on the availability of administrative, quasi-judicial, and judicial processes. By virtue of their varied administrative and judicial structures, States may choose to allocate differently the screening, review, and adjustment functions, with some conducting much of the review process in the administrative agency, while others place the review process in the adjudicatory body, whether it be through quasi-judicial or judicial process, or a combination thereof.

We urge States to examine the work underway in those States with Federally-supported demonstration projects or who are otherwise pursuing innovative approaches to carry out review and adjustment. For example, both Florida and Colorado review and adjust orders using the judicial system but attempt to obtain obligor and obligee stipulations to a modified order prior to filing a motion to adjust in court. Delaware uses the IV-D administrative agency for some processes and the court for others. Delaware is testing two review and adjustment processes: a mediation process using the existing structure and a mail-based stipulation process, thereby requiring two separate sets of procedures. Oregon uses the IV-D agency for the entire review and adjustment process. The Oregon agency found advantages to using an administrative process, including the fact that it was less costly and that hearings could be conducted with the parties by telephone.

The regulations would allow States to address issues which arise in some States where there may be a perceived conflict of interest for a IV-D agency attorney, such as representing or advocating for an obligor seeking a downward adjustment. The IV-D agency must provide services deemed appropriate and in the best interests of the child. In cases in which application of the guidelines indicates the appropriate support award amount is less than the obligor is currently required to pay, we do not believe there will be a conflict for the State IV-D agency to serve primarily an administrative function rather than that of legal advocate and present these facts to the decision-maker.

Section 303.8—Review and Adjustment of Child Support Orders

Scope of Adjustment—Section 303.8(a)(1)

1. Comment: Several commenters suggested that the regulatory language refer to "adjustment" rather than "modification" to be consistent with the statutory language. They indicated that the use of the term "adjustment" would enable States to change the support award amount in accordance with guidelines without having to otherwise show a change in circumstances necessary to warrant a modification, which may be required by State statutory or case law.

Response: We concur with the suggestion that regulatory language be consistent with statutory language. Therefore, we use the term "adjustment" instead of "modification". In addition, we are using "orders" instead of "obligations" as "orders" is the term used in section 466(a)(10) of the Act.

2. Comment: One commenter requested that we add a definition of "support" to include the availability of health insurance coverage as a basis for triggering the modification process.

Response: Under current regulations at § 303.31(b)(1), the IV-D agency is required to petition for health insurance that is available to the absent parent at reasonable cost in cases in which there is an assignment of support rights to the State and the custodial parent does not have satisfactory health insurance other than Medicaid, and in other cases when requested by the individual applying for services. Rather than define "support" we believe it is more appropriate, and achieves the same goal, to define "adjustment" to mean an upward or downward change in the amount of child support based upon an application of State guidelines, consistent with the requirements at § 302.56, for setting and adjusting child support awards and/or providing for the child's health care needs through health insurance or other means.

3. Comment: One commenter asked whether the IV-D agency is responsible for modification of alimony provisions of an order. The commenter questioned mortgage and schooling provisions when treated as support in an order, and suggested that IV-D services be clearly limited to situations where child support is explicitly spelled out. Applications for services should be rejected if other factors are weighed heavily in the original order.

Response: Section 103 of the Family Support Act specifically provides for review and adjustment of child support orders only. Clearly, under the law which this regulation implements, review and adjustment does not extend to aspects of the decree other than child support. The law links the review and adjustment process to use of guidelines for setting child support awards. Therefore, neither the law nor these regulations provide an avenue under the IV-D program for adjusting spousal support awards. Under § 302.31(a)(2), effective October 1, 1985, the State must secure support for a spouse or former spouse who is living with the child or children, but only if a support obligation has been established for that spouse and

the child support obligation is being enforced under the title IV–D State plan. Furthermore, these regulations are not meant to create an avenue under the IV–D program for review and adjustment of ancillary provisions for orders, such as custody or visitation rights. The IV–D agency should inform the applicant of what services are available under the IV–D program; what other services may be available and the cost thereof, and what services the IV–D agency may not provide.

Definition of Parent—Section 303.8(a)(2)

1. Comment: One commenter requested us to define parent to include "custodial parent, non-custodial parent or any custodial beneficiary".

Response: We complied with this request in our definition of parent. This will ensure that the appropriate persons affected by a review and/or adjustment will be contacted during the process.

2. Comment: Several commenters asked that the definition of "parent" be extended to include State IV–E and Medicaid agencies.

Response: We have defined "parent" to include any custodial parent or non-custodial parent (or for purposes of requesting a review, any person or entity who may have standing to request an adjustment to the child support order). We have not further delineated what persons or entities may be considered a "parent" for purposes of review. While we recognize that, generally, the parties to a child support order are the two parents, other custodial placements for children receiving IV–D services are possible, under which an individual or entity acts in the stead of a parent. For example, a child for whom child support is due under an order may be in foster care placement and receiving services through the State IV–E program. Certainly, if the State is either a party to the underlying support order or, under State law or procedure, has standing to bring or intervene in a legal proceeding for adjustment of the amount of child support, the State IV–E agency could request a review in such a case.

3. Comment: Several commenters raised concerns about providing review and adjustment of orders in Medical Assistance Only (MAO) cases. One commenter noted that such cases have medical support rights assigned to the Medicaid Agency, not to the IV–D agency. Another commenter requested MAO cases be treated as non-AFDC cases as there is no child support assignment.

Response: Non-AFDC applicants for Medicaid services are required to assign medical support rights to the State as a condition of receiving Medicaid and are treated as non-AFDC cases under the IV–D program. See final regulations on providing services in these cases published February 28, 1991 (56 FR 7988). The IV–D agency is required to seek health insurance coverage in these cases in accordance with § 303.31. However, if the custodial parent has satisfactory health insurance coverage or the order requires the absent parent to provide health insurance coverage, the State must review and adjust the order only upon request of the absent or custodial parent.

Definition of Review—Section 303.8(b)(3)

1. Comment: One commenter requested the definition of review be placed with other definitions in § 303.8 for clarity.

Response: We agree that all the definitions pertaining to reviews should be in one section. Therefore, we have placed the definition of review in § 303.8(a).

2. Comment: Several commenters requested that we not require "complete, accurate, up-to-date" information as part of our definition of review to allow States to impute income to a parent who may be unemployed or underemployed or for whom no income information could be obtained.

Response: We agree with this suggestion and have deleted these terms in the final regulation. "Review" is defined as an objective evaluation of information necessary for application of the guidelines. Income may be imputed to a party by a decisionmaker, when appropriate, and permitted under State law and procedures.

3. Comment: A commenter suggested that review and adjustment be defined as a "legal proceeding before a court or administrative body at which a new support award is determined by engaging in fact-finding to determine those facts necessary for the calculation of a support award under the State's guidelines and determining what the new award shall be". Another commenter suggested that review be defined as an administrative, quasi-judicial or judicial process with a right of appeal.

Response: We agree with these commenters and have incorporated their concepts in the definition of "review". The definition of "review" is "an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body, or agency, of information necessary for application of the State's guidelines for support to determine: (i) the appropriate support award amount, and (ii) the need to provide for the health care needs of the child(ren), through health insurance or other means. The definition is broad enough to allow flexibility concerning where the review takes place to recognize variances in State processes across the country. Therefore, States may decide the appropriate forum for conducting reviews.

Plan for Review and Adjustment—Section 303.8(b)

Written and Publicly Available Plan—Section 303.8(b)(1)

1. Comment: One commenter felt that public availability of the plan for review and adjustment would be too burdensome. Another commenter recommended public input to the State's plan for review and adjustment.

Response: We have reviewed these suggestions and believe it is important for the plan to be available to the public. This requirement need not be burdensome if States publicize where one may go to examine a copy of the State's plan which is available for public inspection. Although there is no requirement to have input, we encourage States to ask for and respond to public comments.

2. Comment: One commenter suggested we maintain the distinction between the State's plan for review and adjustment and the State IV–D plan in the final rule and preamble.

Response: We have maintained the distinction between the State's plan for review and adjustment and the State IV–D plan by noting, as appropriate, the title IV–D State plan or State's plan for review and adjustment.

Commitment of Resources

1. Comment: The proposed regulation required that the plan must "* * * show the commitment of resources necessary to review orders in all IV–D cases upon the request of either parent subject to the order or of a State child support enforcement agency." Numerous commenters asked for a definition of resources and felt that it would be difficult for a State to show the commitment of resources. They pointed out that this requirement is not specified in the Family Support Act nor in any other pertinent regulation.

Response: In response to many comments stressing how difficult it would be for States to show the commitment of resources, we are deleting this proposed requirement. We believe the requirement is unnecessary because existing regulations at § 303.20(c)(5) require States to have an organizational structure and sufficient resources to meet program requirements.

including performance and time standards contained in Federal regulations. This includes adequate resources to establish and adjust support orders.

Targeting Cases for Review

1. Comment: Numerous commenters requested that we delete the proposed requirement that the plan must target cases for review between 1990 and 1993, and modify orders, if appropriate, in IV-D cases in which there is an assignment of support rights to the State because there is no justification for giving priority to public assistance clients over non-public-assistance clients. One commenter asked whether a State plan can specify reviewing only AFDC cases with support orders over 10 years old.

Response: We have deleted this requirement from the final regulation. From October 13, 1990 to October 13, 1993, the IV-D agency may request review in those cases that meet the criteria for review and adjustment under the State's plan. This is consistent with Congressional intent to allow States flexibility during the first three years of review and adjustment of orders. We encourage States to seriously explore and test innovative processes during this period. States should use the period between October 13, 1990 and October 12, 1993 to prepare and plan for more stringent requirements in 1993. However, we strongly encourage States to target for review and adjustment the oldest cases or those cases that seem ripe for review (particularly those in which there is an assignment of support rights to the State) in anticipation of the 1993 requirement that specifies "* * * the order is to reviewed not later than 36 months after the establishment of the order or the most recent review * * *." (See also responses in next section for discussion of the need for States to anticipate impact of reviewing most orders over three years old effective October 13, 1993.)

With respect to reviewing only AFDC cases with support orders over 10 years old, a State's plan for review and adjustment may not exclude large categories of IV-D cases, for example non-AFDC cases, entirely.

Which Orders Must Be Reviewed

1. Comment: One commenter recommended we make clear that the State must initiate a review at the request of either parent only if the case meets the criteria set out in the State's plan.

Response: Effective October 13, 1990, each State is required to have developed and implemented a plan for the review and adjustment of orders. The plan must indicate how and when child support orders in effect in the State are to be reviewed. Between October 13, 1990 and October 12, 1993 each State's plan would specify adequate thresholds, grounds, timeframes or other conditions governing the review and adjustment process in the State. We agree that upon receipt of a request from either parent or the IV-D agency, a decision to review and adjust, if appropriate, must be made based on the State's plan.

While States are given latitude in conducting reviews according to individual State plans between 1990 and 1993, we advise States to consider implementing the 1993 requirements from the very beginning in both statute, where needed, and in the State's plan for review. This would ensure a minimum of disruption from an administrative standpoint, as well as encourage a more rapid implementation of the program changes that Congress envisioned. Between now and 1993, States should plan to review their existing IV-D cases in which support is assigned to the State and the orders will be more than three years old by October 13, 1993. States should anticipate the statutory requirement that, effective October 13, 1993, the State must review and adjust, if appropriate, most orders in AFDC cases which have not been reviewed or modified within the past 36 months. Some States have implemented plans under which the entire AFDC caseload is being reviewed in equal monthly proportions (and opportunity is being given to the parties in non-AFDC cases to request a review) in advance of the October 13, 1993 effective date, so that the number of cases with orders over three years old will be fewer on that date, and more manageable. Advance planning in recognition of the potential impact of, and mandatory requirement for, the periodic review of cases at three-year intervals is a prudent consideration.

2. Comment: Several commenters have requested clarification of the State's responsibilities as of October 13, 1993. They would like to know whether all cases that are 36 months old or older are immediately subject to review on October 13, 1993, if there is an assignment of support rights to the State. These commenters argued that the State merely has to begin a process to review such orders on that date and has until some future date, perhaps 3 years later, to complete reviews on all old orders.

Response: Section 466(a)(10)(B) of the Act specifies "* * * beginning 5 years after enactment of this paragraph or such earlier date as the State may select, the State must implement a process for the periodic review and adjustment of child support orders being enforced under this part under which the order is to be reviewed not later than 36 months after the establishment of the order or the most recent review * * *." The statute requires this review, and adjustment if appropriate, in most AFDC cases but only upon request in non-AFDC cases. Therefore, starting on October 13, 1993, States are required to review child support orders in AFDC cases that are 36 months old or older unless the State determines the review would not be in the best interests of the child and neither parent has requested a review. The statute does not allow States an extended period after 1993 to complete reviews in old orders.

We disagree with commenters that States should be given additional time after 1993 to review and adjust orders over three years old. Congress has given States five years to prepare for the 1993 requirements and did not intend a State to wait a full five years after enactment of the Family Support Act to begin to review old orders. States have considerable advance notice in order to adopt any necessary laws, to anticipate the number of cases potentially needing review when the 36-month requirement becomes effective, and to otherwise address the operational implementation in a meaningful way. Further delay would only result in children being deprived of the appropriate amount of financial and medical support to which they are entitled. Therefore, starting in 1993 is not enough: States should be anticipating the impact of the 1993 date and should be working to reduce the number of old orders which require review. States are strongly urged to begin this process as soon as possible so that it is not too cumbersome a task in 1993.

3. Comment: One commenter asked if the review is to be initiated or completed 36 months after establishment of the order or of the most recent review.

Response: A review must be initiated, not completed, within 36 months after establishment of the order or the most recent review.

4. Comment: Commenters suggested that States be required to adopt criteria that are broad and inclusive, thus ensuring that orders that have never been updated or are very old will automatically qualify; that AFDC and non-AFDC cases be treated the same; and that no category of cases is systematically excluded from review.

Response: States have discretion to establish conditions and circumstances to qualify a case for review in their plan

for review and adjustment. However, they cannot categorically exclude any segment of the caseload, e.g., non-AFDC cases or interstate cases in which there is an order in the State that can be adjusted under State law.

5. Comment: One commenter asked whether the plan can identify circumstances that would not warrant a review. Commenters asked whether a request may be rejecting if it is deemed frivolous. Another commenter noted that the plan adopted by the State should articulate the standards which the State will employ in determining whether an award will be subject to review.

Response: States' plans for review and adjustment must articulate how and when orders in the State will be reviewed. This means the State's plan must address what the process for review and adjustment is, as well as under what circumstances an order will or will not be reviewed and adjusted. Therefore, States should adopt plans for review and adjustment of orders which articulate standards and criteria for rejected requests as frivolous, such as frequent requests where there is no indication of a substantial change in circumstances. If the criteria for review articulated in the State's plan are not met in a particular case in which review has been requested, the State may decline to conduct the review.

6. Comment: The majority of commenters recommended that inconsistency with the guidelines be adequate grounds for adjustments, regardless of whether the order was established under the guidelines, unless the inconsistency is considered negligible under the State's procedures. The commenters argued that the award amount indicated by the guidelines is rebuttable, thereby permitting an opportunity to present additional information that may have been taken into consideration in setting the original award amount.

Response: Section 466(a)(10)(A) of the Act requires that orders be adjusted, as appropriate, according to the State's guidelines. This rule applies regardless of whether or not the original order was established under the State's guidelines. Section 467 of the Act and regulations published on May 15, 1991, at 45 CFR 302.56 require guidelines to be used as a rebuttable presumption in setting all child support awards. We agree that information applied in setting the original order and still relevant may be presented during the review to rebut the amount of support indicated by the guidelines.

Because of the discretion given to the States during the first three years of review and adjustment, we are not mandating that inconsistency with the guidelines be adequate grounds for adjustment between 1990 and 1993. Many State laws require proof of a substantial change in circumstances before adjusting an order and inconsistency with the guidelines would not currently meet that test. States are encouraged to adopt quantitative standards (percentage and/or fixed dollar amounts or both) to determine whether an inconsistency is sufficient to justify an adjustment.

7. Comment: One commenter stated that no guidance is given as to whether and under what circumstances the IV–D agency has an affirmative duty to request a review. The commenter suggested that regulations could further define IV–D agency responsibilities by directing that the IV–D agency request reviews in all cases in which (a) the support rights have been assigned to the State; (b) the IV–D agency determines that the present award is lower than the amount likely to be ordered under the State's guidelines and the difference is not negligible; and (c) the agency determines that said review would be in the best interests of the child.

Response: While we have not specified in this final rule governing 1990–1993 requirements under what circumstances the IV–D agency has an affirmative duty to request a review, we strongly encourage States to include the commenter's suggestions in their plan for review and adjustment. Affirmative, aggressive action during the period prior to October 1993, will ensure an easier transition to the more stringent requirements that become effective at that time.

8. Comment: Several commenters asked how a State documents a review when automatic matches with appropriate databases indicate that modification should not currently be pursued. Another commenter asked whether computer matching of IV–D cases against wage reporting systems, public assistance records, unemployment insurance rolls, etc., constitute a review assuming neither parent requests a review. Another commenter asked how a review is defined when the State initiates an evaluation of cases by applying certain criteria to computer-generated case listings and matches these against other databases. Several commenters questioned whether notices need to be sent to parties where pre-screening indicates that no modification would be warranted under the State's guidelines.

Response: There is no requirement for pre-screening or pre-review, but States may place pre-screening procedures in their plans for review and adjustment. These pre-screening procedures may identify cases with low potential for adjustment. A State's plan between 1990 and 1993 establishes under what circumstances a review will be conducted. A State is not required to review orders absent a request for a review by a parent or IV–D agency between 1990 and 1993 unless its plan requires it to do so.

Some States, however, are reviewing cases whether or not there is a request. This is especially worthwhile in AFDC cases given the requirement for review of most orders in AFDC cases which is effective October 13, 1993. However, regardless of the basis for review, States should not rely solely on computer matching to conduct a review as it may not ensure up-to-date, complete and accurate information necessary to apply the State's guidelines. In conducting a review, it may be necessary to obtain information from the parties, in addition to use of the automated resources.

Oregon, in its final report on the review and adjustment demonstration project, determined that disposition of cases using their Partial Automated Review (PAR) procedure often took longer and was more labor intensive. Experience showed that the new award amounts computed by PAR after accessing automated data sources were frequently based on incomplete data as to earnings or allowable deductions. Accordingly, the parents usually submitted additional information so that a new calculation had to be performed. Moreover, the preliminary results obtained under PAR created false expectations in many situations, with the consequence that staff time was consumed in responding to parents' complaints when the final result was lower or higher than expected.

It is important to recognize the distinction between review and "pre-screening". Pre-screening of cases against automated records in accordance with the State's review and adjustment plan to determine whether a case qualifies for a review is appropriate. However, pre-screening does not meet the definition of a review as specified in § 303.8(a)(3). Therefore, a complete review must be conducted if a case meets the conditions for review under a State's review and adjustment plan. Otherwise, the specification in the statute that a review will produce a determination that an order should be adjusted or that no change is necessary would not be met. The advance notice is only required if a review is to be conducted.

9. Comment: Some commenters had concerns about the use of pro se

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processes. One commenter recommended that we clearly state in regulations that a State is not required to review and adjust an order if the parties elect to proceed on their own, either pro se or with a private attorney. Another commenter asked whether the requesting party can proceed with a pro se action without the IV–D agency being involved. Commenters questioned whether the agency can recommend use of a pro se process if the case does not meet the criteria for modification but a parent insists it take place.

Response: Establishing pro se processes for seeking adjustments to orders simplifies the process and ensures access to reviews for anyone who may seek an adjustment. If a party elects to proceed on their own behalf, either pro se or through private counsel, the State is not required to review the order or seek an adjustment. Pro se kits can be offered when a request for review and adjustment does not meet the State's criteria for review under its review and adjustment plan. At least one State which utilizes an administrative review and adjustment process has a pro se "do it yourself" kit for court adjustment of orders. This kit is provided to requestors in cases which the IV–D agency has deemed through a preliminary review do not meet the criteria for review under the State's plan. In addition, the kit is provided to: (1) Requestors who the agency deemed do not qualify for a review, (2) those who meet the agency criteria but prefer court review, (3) those whose change in income is the reason for the request but recomputation using the guidelines does not meet the required minimum threshold for adjustment, (4) those requestors who claim a special circumstance requiring court determination, and (5) those cases in which the agency finding is disputed and cannot be resolved through supervisory review. The State's forum for pro se adjustment can be judicial, administrative or a combination of the two.

Advance Notice of Review—Section 303.8(b)(2)(iii)

1. Comment: Numerous commenters indicated confusion as to who is entitled to an advance notice of review. One commenter suggested having different types of notices required when one party to a case requests a review as compared to when the State initiates a review. Another commenter recommended that each parent be notified of a review.

Response: The State must notify each parent of a review regardless of whether one or both of the parties requested the review or the State initiated the review. One form of notice can be used whether a parent, both parents, or the State makes the request for review.

2. Comment: One commenter asked if the purpose of the 30-day advance notice is to advise the parties that a review which could result in modification with be conducted; or to advise the parties that a completed review indicates a modification is appropriate. In addition, this commenter also wanted to know if this means that the review cannot be conducted until the 30-day period expires.

Response: The purpose of the 30-day advance notice required under § 303.8(b)(2)(iii) is to advise the parties that a review will be conducted and to give them an opportunity to submit pertinent information. Generally, as required by the statute, the review cannot be conducted until the 30 days expire. However, the parties may jointly agree to waive this 30 day requirement. Following a review, another notice is required under § 303.8(b)(2)(v) advising each parent of any adjustment or determination that there should be no change in the child support award amount and of each parent's right to initiate proceedings to challenge the adjustment or determination within at least 30 calendar days after the date of the notice.

3. Comment: There were several comments on notifying parents of the likely outcome of the review in the advance notice. One commenter requested the parents be notified in the advance notice of review of: (1) The amount of the proposed adjustment, (2) a date by which a party must note an objection, (3) the date and time of the proceeding and (4) the adjustment or determination that there should be no change.

Response: Because the review has not taken place, the advance notice of review required under § 303.8(b)(2)(iii) should not include the amount of the proposed adjustment or date by which a party must note an objection. (See earlier discussion about the results of the Oregon demonstration project's Partial Automated Review and notice to parents.) The notice should include details about when and where the review will take place, as well as any necessary information the parties must provide the State. The proposed adjustment or determination that there should be no change in the order and date by which objections can be made are specified in the notice to the parties required under § 303.8(b)(2)(v) which is provided after the review is completed.

4. Comment: Several commenters inquired about providing advance notice and subsequent reviews of support orders to parents who had not been located. They asked whether the State can forward the notice to the last address of record.

Response: Generally, notices cannot be sent to individuals whom the State is unable to locate. However, if permitted by State due process requirements, notices by publication or by mailing to the last known address of record may be used. If a party to an order cannot be located, the State may be unable to secure information necessary to conduct the review. If the State cannot proceed with the review because of inadequate information, the case file should be documented and no review would be required until location efforts required under § 303.3 are successful.

5. Comment: Several commenters asked for clarification about whether the requirement to notify parties of a proposed review is satisfied by sending the parties copies of a legal pleading such as a complaint or petition to modify or an administrative notice of review.

Response: Sending the parties copies of the complaint or petition to adjust the order will satisfy the requirement to provide advance notice of a review if the copies are sent 30 days before the complaint or petition is heard.

6. Comment: One commenter asked us to remove the requirement to wait 30 days before initiating the review after sending the advance notice so that the review could be commenced immediately upon selection of the case.

Response: The 30-day advance notice is mandated by statute and cannot be deleted. In addition, 30 days allows adequate time to gather information necessary to conduct the review. However, as indicated previously, parties may jointly stipulate to a waiver of the 30 day requirement.

7. Comment: There was an inquiry as to whether the notice requirement applies in AFDC and foster care cases.

Response: Section 303.8(b)(2)(iii) requires States to send advance notice to "notify each parent subject to a child support order in effect in the State of any review of the order at least 30 calendar days before commencement of the review" in *any IV–D case* in which an order is to be reviewed.

Requiring Parents to Provide Necessary Information

1. Comment: Several commenters recommended that we require that support orders require parties to the order to provide information necessary

to conduct a review. Another commenter felt it is unreasonable to assume tat either party will provide the necessary information. There were questions concerning safeguarding of shared information.

Response: A State may require in its advance notice that each party provide specified information necessary to conduct the review. States are also permitted and encouraged to make the provision of information a requirement in the support order. States must make every effort to obtain and use information necessary to apply the State's guidelines. States should attempt to secure the necessary information by accessing employment security or other records rather than relying totally on the parties to provide the information. With respect to concerns about safeguarding of shared information under § 303.21(a)(1), the use or disclosure of information concerning applicants or recipients of support enforcement services is limited to the purposes directly connected with the administration of the plan or program for Child Support Enforcement and AFDC programs, among others.

2. *Comment:* One commenter asked us to clarify that requests for information to accomplish the review be sent at the same time as the notice of review.

Response: We encourage the States to request specific information needed to accomplish the review in the advance notice of review.

3. *Comment:* A number of commenters raised concerns about financial information. One commenter asked that we define the income verification process, whether the parents can be provided with court-approved financial affidavits and if wage reporting information can be required to be verified with the payor prior to review. One commenter asked whether sending financial statements is sufficient advance notice of a review. In addition, they asked whether a review may commence if all documentation is received before the 30-day period expires.

Response: The State may send financial statements to be completed by parties as part of the advance notice of review. However, the parties must be notified that a review will take place 30 days following the notice. With respect to starting the review as soon as all information is received, section 466(a)(10)(C)(i) of the Act requires States to notify the parties 30 days before commencing the review. Therefore, the State must wait the full 30 days before starting the review unless the parties jointly agree to waive the requirement. The necessity and extent of income verification is determined according to State standards and guidelines.

4. *Comment:* A commenter asked us to require States to adopt laws granting IV–D agencies administrative subpoena power.

Response: We are not requiring States to enact such laws in this rule because of the flexibility given States by the Congress to develop processes for review and adjustment over the 1990–1993 period. However, we encourage them to do so as a means of improving their ability to obtain information. One of the demonstration States, Illinois, found legislation enacted giving subpoena power to the administrative agency to be very beneficial. The Illinois IV–D agency reports that the information gained from employers is useful not only in assessing the financial status of the responsible relative, but also in updating addresses and locating the absent parent. The use of administrative subpoena power has reduced delays in the filing of motions as the legal representatives do not have to wait for additional evidence to support their findings. In Colorado, another demonstration State, the IV–D agency issues administrative subpoenas to any obligor who fails to return an affidavit for child support issued with the initial notice. The administrative subpoenas require the non-responding parties to bring the requested financial information to an adjustment hearing at the IV–D office. Obligors who fail to respond to the administrative subpoena may be served with a motion to compel, which requires a court appearance. Because information on the financial situation of both parents is necessary for application of Colorado guidelines, administrative subpoenas may also be served upon non-AFDC obligees who fail to return affidavits.

Post-Review Notice of Results and Right to Challenge—Section 303.8(b)(2)(v)

1. *Comment:* One commenter felt 30 days to challenge the adjustment or determination that there should be no adjustment is an unnecessary and time consuming step. Another commenter recommended allowing 30 days to appeal the decision.

Response: This requirement is mandated by section 466(a)(10)(C) of the Act. States are required to notify each parent "of a proposed adjustment (or determination that there should be no change) in the child support award amount and (that) such parent is afforded not less than 30 days after such notification to initiate proceedings to challenge such adjustment (or determination)."

2. *Comment:* One commenter asked if the notice of results of the review could be an order of a referee, a recommendation of a mediator, or an administrative finding subject to judicial review, rather than a letter without legal impact.

Response: Any of these alternatives are acceptable, if they are acceptable under the State's law and procedures.

3. *Comment:* One commenter inquired how the post-review notice requirement relates to the right to appeal when review is conducted in a judicial setting. The commenter felt that the proposed regulation was written in such a way that the court notification cannot substitute for IV–D notice as the court will not "propose" a modification.

Response: The post-review notice is to inform each parent of the result of the review and the right of each parent to challenge the adjustment or determination, not to adjust by initiating proceedings within at least 30 calendar days after the notice. In jurisdictions that permit "de novo" review in these instances, the parties may present additional information at the hearing or appeal. The post-review requirement can be met by States with traditional judicial processes as long as any party to the order has not less than 30 days to challenge the determination. Since we believe appeal of a decision meets the intent of Congress, § 303.8(b)(2)(v) refers to any adjustment to the order. Our change is to minimize any duplication of, or delay in, the process as long as an individual's due process rights are protected.

4. *Comment:* One commenter suggested the challenge occur within the modification process to eliminate some of the duplicate notices, waiting periods, and guessing about what the court will do.

Response: While objections can be raised and supporting evidence offered during the process, a challenge to the finding by the decisionmaker cannot be raised until the results are reported to the parents. Upon notice of the results, either or both parents may decide to challenge the results.

5. *Comment:* A commenter asked if the regulations need to specify whether the challenge to the review is to be heard through an administrative or judicial process or whether it is up to the State.

Response: States have discretion and authority to designate the appropriate forum for hearing challenges to adjustments or determinations that there be no adjustment to the order.

Miscellaneous Questions on the Audit and Interstate Process

1. Comment: One commenter asked whether a State would be subject to an audit exception if, following the criteria in the State's plan for review and adjustment, the State rejects a frivolous request for review.

Response: The State would not be subject to an audit exception if it follows its plan's criteria for review and adjustment of orders.

2. Comment: One commenter asked how States will be audited against the 1990 review and adjustment requirements.

Response: The States will be audited to determine if they are in substantial compliance with requirements for review and adjustment or orders effective October 13, 1990, in accordance with the requirements of § 303.8, and the State's plan for review and adjustment established in accordance with § 303.8.

3. Comment: Numerous comments were made regarding the need for explicit guidance and requirements governing interstate processing of review and adjustment requests.

Response: Because of the complexities of interstate review and adjustment and State flexibility with respect to review and adjustment between 1990 and 1993, we are allowing States to determine how best to perform review and adjustment in interstate cases for those three years but will address specific interstate case processing requirements beginning October 13, 1993, under separate rule.

Between October 13, 1990 and October 12, 1993, the States must have established State plans for review and adjustment and implement and follow these plans. Interstate cases must be processed according to the requirements of § 303.7. If an initiating State sends a request for review and adjustment to the responding State, the responding State must decide if the review is appropriate in accordance with its plan for review and must adjust the order if appropriate and permitted under its State law.

III. Immediate Income Withholding

Section 303.100—Wage or Income Withholding

General Withholding Requirements

1. Comment: One commenter asked that we clarify that the wage withholding requirements apply to spousal support when such support is included in the child support order being enforced by the State.

Response: Spousal support must be withheld in cases where such support is included in the child support order being enforced under the title IV-D State plan.

2. Comment: Section 303.100(a)(2) requires that, in addition to the amount 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. A commenter claimed that this requirement will pose problems for States because of requirements for presumptive guidelines at 45 CFR 302.56. The commenter was concerned that judges may be encouraged to determine the amount of the obligation according to the guidelines, but then allocate a portion of that amount to be applied to overdue support, thereby reducing the amount available for current support.

Response: Neither the wage withholding requirements of this section nor the presumptive guidelines requirements at 45 CFR 302.56 support this interpretation. Guidelines are used to determine the underlying obligation, not the payment schedule. The total amount to be withheld to satisfy current and overdue support is subject to limitations contained in paragraph (a)(3) regarding maximum amounts allowed under the Consumer Credit Protection Act (CCPA). In any case, amounts withheld must be used first to satisfy current support, and any additional amounts applied to satisfy arrearages. The presumptive guidelines should not be used as either a basis or a limit for determining the amount to be withheld to satisfy arrearages.

3. Comment: One commenter asked that we define overdue support for purposes of wage withholding. This commenter was concerned that in some paternity cases the initial support award contains, in addition to current support, a support debt for a prior period, and should not be considered arrearages for purposes of wage withholding.

Response: Section 301.1 defines overdue support as a delinquency pursuant to an obligation determined under a court order or established under State law. A support debt created for a prior period in an initial support order entered prior to November 1, 1990, would not meet the conditions established in § 303.100(c)(1) as an arrearage qualifying for triggering initiated withholding, since this amount would not reflect payments which the absent parent failed to make under a support order, i.e., payments which accrued pursuant to a support order and which were not paid timely. In cases of immediate withholding under § 303.100(b), an amount applied to reduce this debt may be included in the total amount to be withheld. However, the existence of such a support debt would not preclude the obligor from meeting the requirements for good cause or an alternative arrangement under paragraphs (b)(2)(i) and (ii) if the order requires an amount to be paid periodically toward liquidation of the debt.

4. Comment: One commenter asked that paragraph (a)(3), limiting withheld amounts to the limits imposed by the CCPA, be cross-referenced with paragraph (a)(9) allowing States to extend withholding to income other than wages.

Response: We did not revise paragraph (a)(3) as requested because the CCPA limits under 15 U.S.C. 1673(b) apply only to periodic payment of compensation for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension or retirement program, and including payments under title II of the Social Security Act for disability, since those payments are based on coverage earned through wages or salaries. Some States may extend withholding to other forms of income (State lottery winnings, dividend payments, etc.) which do not fall within the CCPA definition of compensation for personal service and would therefore not be subject to the CCPA limits.

5. Comment: A commenter asked that we clarify the requirement in paragraph (a)(4) that withholding must occur without the need for any amendment to the order involved or any other action by the court or entity that issued it, since provisions under this section may require hearings or establishment of fact at paragraph (e) or where a State requires the court or administrative entity to reverse a good cause finding.

Response: We agree, and have added the phrase "other than that required or permitted under this section" to the end of paragraph (4). For example, a return to court may be appropriate or necessary to reverse a good cause finding, cancel an alternative arrangement, or implement withholding upon the custodial parent's request if the triggering arrearage has not been met. In cases of triggered withholding, returning to court to amend the underlying support order to provide for withholding is explicitly prohibited. As we stated previously in response to comments in the final rule on implementation of the Child Support Amendments of 1984 (50 FR 19623), the requirement at 466(b)(2) of the Act does not rule out a judge signing a withholding order, if this process does not involve a hearing or a court appearance.

6. *Comment:* A number of commenters responded to the proposed change in paragraph (a)(5), that in cases where there is more than one notice for withholding, the State must allocate amounts available, but in no case shall allocation result in withholding not being implemented for one of the families. Several commenters felt that the proposed change was not specific enough and that it would not remedy the problem of unequal or unfair allocations adequately. A commenter pointed out that a State could satisfy this requirement by allocating a token amount (one dollar) in withholding for one of the families involved. Some commenters wanted the language to require the court or administrative authority which issued the support order(s) to allocate amounts, not the IV-D agency. Other commenters felt that any change to the former requirement, which allowed States to allocate according to their own criteria, would further complicate an allocation process already misunderstood by many families. Some commenters felt that allocation was an insurmountable problem at this time and should not be regulated until further study. Finally, one commenter insisted that this allocation policy could result in situations where an absent parent has two obligations only one of which is for current support, in the family with the order for current support receiving the entire allocation and the other family none.

Response: We believe that the clarification in paragraph (a)(5), which will ensure that allocation will result in each family benefiting from withholding, reasonably addresses the problem. We do not agree this clarification complicates allocation or that a State would allocate a token amount to a family. We agree that, in giving current support a priority, in some cases an allocation by the IV-D agency will result in withholding not being implemented for the family which is owed arrearages only. However, other enforcement tools such as Federal and State income tax refund offset are available.

7. *Comment:* Many commenters strongly objected to the proposed language in paragraph (a)(7)(ii) that withholding could be terminated when the absent parent requests termination, withholding has not been terminated previously and subsequently initiated, and the absent parent meets the conditions for an alternative arrangement. Many commenters felt that withholding should only be terminated according to paragraph (a)(7)(i), i.e., when there is no longer a current order for support and all arrearages have been satisfied. Several commenters also felt that allowing termination for any other reason would be contrary to the intent of Congress in establishing immediate withholding. Other commenters objected to allowing the absent parent to request termination, noting that terminating withholding would never be consistent with the best interests of the child. Several commenters claimed that termination procedures would be administratively burdensome, requiring costly staff time to deal with requests and additional staff time to re-apply withholding when arrearages subsequently occurred. Other commenters claimed that States had in many cases already restricted termination based on assurances by Congress that immediate and constant wage withholding are the best way to assure payments and protect the well being of children. Some commenters expressed their concern that, if a subsequent alternative arrangement is allowed, some absent parents would subject custodial parents to undue pressure. One commenter pointed out that in its State 50 percent of all collections are through wage withholding and that 75 percent of all obligors eventually accrue arrearages. Another commenter felt that if the custodial and absent parents wanted termination after implementation of withholding, the IV-D case should be closed. One commenter asked that a good cause finding be added to the criteria for termination.

Response: In response to these comments, we have provided that States who believe that termination of immediate withholding should be restricted have the authority to do so. Paragraph (a)(7)(i) now requires that, for all cases, the State must have procedures for promptly terminating withholding when there is no longer a current order for support and all arrearages have been satisfied. States who wish to afford the absent parent the added opportunity to request termination at an earlier date have the option at paragraph (a)(7)(ii) to provide for this if withholding has not been terminated previously and subsequently initiated and the absent parent meets the conditions for an alternate arrangement set forth under paragraph (b)(3). We agree that States who expressed concerns regarding the termination of withholding, the subsequent occurrence of future delinquencies, and the unavoidable administrative burden if arrearages again occur, should have the authority to limit termination, if they so choose.

8. *Comment:* Several commenters objected to the requirement at paragraph (a)(8) that the State have procedures for promptly refunding to absent parents amounts which have been improperly withheld. One commenter asked that we make clear that this referred only to withheld amounts retained by the State, since if it were otherwise, the State would have to recoup the overpayment from the custodial parent. Another commenter asked that this "new" requirement be delated, since if withheld amounts have been passed on to the custodial parent, the absent parent should pursue reimbursement from the custodial parent. This commenter felt it would be administratively burdensome to the State and the absent parent should use remedies under State law. Another commenter suggested that it would be administratively simpler to allow the IV-D agency to credit the absent parent's account.

Response: This is not a new requirement; it is a restatement of former paragraph (a)(10). This provision does not refer only to withheld amounts retained by the State. Any amounts improperly withheld, even if they have been sent to the custodial parent, must be promptly refunded by the State to the absent parent. Subsequent to the refund, the State may attempt to recover any amounts sent to the custodial parent. Federal funding is not available under 45 CFR 304.20 for these refunds. OMB Circular A-87 precludes Federal funding for "any loss arising from uncollectible accounts and other claims and related costs." However, this does not preclude the State from negotiating directly with the absent parent under State law to apply the refund to other arrearages or future support.

Immediate Withholding

1. *Comment:* Several commenters objected to the provisions establishing exceptions to immediate withholding which were set forth in paragraphs (b)(1) and (2). These commenters felt that the provisions for good cause and for alternative arrangements would not meet the goal of immediate withholding for all cases and would be administratively burdensome to States.

Response: The provisions for good cause and alternative arrangements are mandated by the statute at section 466(b)(3)(A) of the Act. However, as stated in the preamble to the proposed rule, we are aware that some States have laws and procedures which do not allow exceptions to immediate withholding for good cause and/or alternative arrangements. States have

the option of applying for an exemption from these provisions in accordance with regulations at 45 CFR 302.70(d) and program instructions at OCSE-AT-88-12 dated December 12, 1988 if they can demonstrate that the enactment of these requirements would not increase the effectiveness and efficiency of the State Child Support Enforcement Program.

2. *Comment:* A number of commenters responded to our solicitation of comments on whether the establishment of escrow accounts should be included as conditions for good cause and/or alternative arrangements. Most favored requiring escrow accounts in the amount equal to the support payable for two months as a condition for both a finding of good cause and for an alternative arrangement. One commenter urged that the escrow account be for an amount equal to one year's support. Another commenter recommended either an escrow account or a form of electronic funds transfer as an alternative requirement. Several commenters stated that such a requirement would ensure that the family would continue to receive support upon a default in payment. One commenter suggested that escrow accounts be allowed as an option.

Response: Although many commenters advocated requiring escrow accounts in an amount equal to the support payable for two months as a condition for both a finding of good cause and an alternative arrangement, we have not mandated escrow accounts because there is no evidence of the need for Federal regulation in this regard. Federal regulations at 45 CFR 303.103 already require States to have in effect and use procedures which require that absent parents post security, bond or give some other guarantee to secure support in appropriate cases. Certainly, States who believe this to be a valuable tool may require an escrow account as a means to ensure that funds are available should the obligor become delinquent.

3. *Comment:* One commenter pointed out that the proposed requirements that the absent parent agree to keep the IV-D agency apprised of his or her current employer and information on any employment related health insurance coverage at paragraphs (b)(2)(iii) and (b)(3) for good cause and alternative arrangements, respectively, were duplicative of the requirement at paragraph (a)(10) for all withholding orders.

Response: We agree, and have eliminated these provisions from paragraphs (b)(2) and (3).

4. *Comment:* One commenter asked if the conditions for reaching a determination of good cause contained in paragraphs (b)(2)(i), and (ii) must both be met, or if the phrase "at least" meant that meeting one of the conditions was sufficient for a finding of good cause.

Response: Both remaining conditions must be met as the minimum criteria for a finding of good cause.

5. *Comment:* One commenter recommended that there would be other reasons for allowing good cause beyond the best interest of the child, such as extraordinary hardship on the obligor.

Response: The provisions of paragraph (b)(2) are minimum requirements, and States may establish criteria in addition to those set forth in this rule. However, we do not believe that an automatic withholding of support from an obligor's wages should constitute an extraordinary hardship.

6. *Comment:* Several commenters claimed that the establishment of a definition for good cause was an abuse of regulatory authority and that alternatively, courts should be required to provide written justifications of their good cause findings.

Response: Although the statute did not define good cause, we have used our authority under section 1102 of the Act to set these requirements because we believe that Congress intended that immediate withholding would be implemented in most cases.

7. *Comment:* We received many comments in response to our solicitation of views regarding whether the State should be a required party, rather than a party at State option, to any alternative arrangement between the absent and custodial parents in an IV-D case in which there is an assignment of support rights to the State. Several commenters felt that the State should be a required party in all IV-D cases, not just those in which support rights have been assigned. These commenters were concerned that it would be unlikely for any alternate arrangement to be in the best interest of a child and that State oversight was needed. One commenter favored the State being a required party in all cases because of the administrative burden caused by subsequent delinquencies. Another commenter asked that the States not be precluded from being a required party to an alternate agreement in any IV-D case because there should be no distinction between cases with assigned support and those without. Some commenters recommended that the State be a required party only in AFDC cases where both the State and the Federal governments had a vested interest in securing support for those in need of public assistance. A number of commenters favored the language in the proposed rule, allowing the State to be a required party to any alternate arrangement at State option in cases in which there is an assignment of support rights. One commenter asked if the phrase "at State option" meant that the option would allow individual county jurisdictions within the State to exercise or not to exercise the option.

Response: The final rule retains the language in the proposed rule allowing States the option of requiring the State to be a party to a written alternate arrangement in cases in which there is an assignment of support rights to the State. Since opinions on this issue varied so greatly, we believe that States should be allowed the flexibility to choose the best approach. Any State which believes it is essential for the State to be a party in any case involving assigned support may so require under this option. If a State chooses to exercise this option, it may establish procedures which allow local jurisdictions discretion for State involvement based on the circumstances of the case.

8. *Comment:* Several commenters asked for clarification of the requirement that the written agreement be reviewed and entered by the court or administrative authority. Several commenters wanted the final rule to explicitly require that the court have the authority to approve the written agreement and not to enter agreements found to be inappropriate. Other commenters were concerned that the court or administrative authority could substitute its judgment for that of the parties if the review included approval authority. These commenters urged that the final rule specify that the court or administrative authority could not disapprove alternative agreements.

Response: The statute at section 466(b)(3)(A) clearly requires the court or administrative authority to determine whether good cause not to implement withholding exists. The statute does not create a similar role for the court or administrative authority with respect to written agreements for alternative arrangements. We have used our regulatory authority only to require the court or administrative authority in these cases to review and enter such agreements in the record.

Initiated Wage Withholding

1. *Comment:* One commenter requested that the definition of payments which the absent parent has failed to make at paragraph (c)(1) be based on the absent parent's established payment schedule (i.e., weekly, biweekly or monthly payments). This commenter reasoned that withholding

should be initiated if the absent parent missed any one payment.

Response: Section 466(b)(3)(B) of the Act requires that, in cases not subject to immediate withholding, the wages of an absent parent shall become subject to withholding on the date on which payments which the absent parent has failed to make are at least equal to the support payable for one month. The requirement is based on the amount which is owed, not when it is due. However, the statute at section 466(b)(3)(B)(iii) allows States to establish an earlier triggering date if they so choose.

2. *Comment:* Another commenter asked that the regulations should make provisions for potential changes in States' laws which may allow violations of visitation agreements to trigger withholding.

Response: Matters pertaining to visitation and custody are separate from support and should not be used to trigger withholding. Withholding should not be used as a punitive measure, particularly for reasons which do not relate to child support.

3. *Comment:* We received many comments regarding paragraph (c)(1)(ii) which requires that, in cases not subject to immediate withholding, withholding be implemented on the date the custodial parent requests that withholding begin, if the State determines, under such procedures and standards as it may establish, the request should be approved. Several commenters stated that the custodial parent should not be allowed to request withholding if the absent parent had not accrued a qualifying arrearage. One commenter stated that such a provision was inconsistent with the requirements for advance notice to the absent parent when arrearages occur. Another commenter claimed that this provision could be used by the custodial parent to harass the absent parent. One commenter questioned why a State would implement withholding if the case is not before the court for modification or there is no arrearage. Another commenter felt that this provision would add to the enforcement tools available under title IV–D and would provide a bridge between the former withholding requirements and those mandated through immediate withholding for those cases which have support orders entered before November 1, 1990. This commenter recommended that the provision be further strengthened by specifying that, for cases in which support rights had been assigned to the State, the State may request that withholding be implemented.

Response: Section 466(b)(3)(B)(ii) of the Act explicitly requires withholding to be triggered, without regard to whether there is an arrearage, on the date the custodial parent requests it, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved. Therefore, States must establish procedures which specify the circumstances in which a custodial parent request for withholding will be granted in cases not subject to immediate withholding and in which the 30 day triggering arrearage has not been met. If the State determines that withholding will be implemented under those procedures, the absent parent must be given advance notice of the withholding in accordance with paragraphs (c)(2) and (d)(1). Moreover, the procedures and standards adopted by the State for approving the custodial parent's request should prevent harassment.

In establishing its procedures, a State should consider whether it is appropriate to require further action by the court for cases in which there has been a determination of good cause not to implement immediate wage withholding, an alternative arrangement exists or an order was established or modified prior to November 1, 1990. For example, a State could opt to remove the good cause determination or negate an alternative arrangement before withholding is initiated. Although we encourage States to adopt simple administrative procedures to ensure the timely initiation of custodial parent requests, we believe that States should also ensure that their procedures extend appropriate protections to the non-custodial parent as well.

Advance Notice to the Absent Parent in Initiated Withholding

1. *Comment:* The majority of commenters were concerned that the requirement that the State send the advance notice to the absent parent within 5 working days of the appropriate date under paragraph (c)(1) was unrealistic. Several commenters suggested that a 15 working day timeframe was more feasible, while other commenters were in favor of 10 working days. Another commenter stated that the 5 day timeframe could only be met when all State support enforcement programs are fully automated. One commenter felt that establishing any timeframe for this requirement violated the statutory mandate which provides that the wages of an absent parent become subject to withholding on the appropriate date identified in paragraph (c)(1). A commenter also pointed out that advance notice to the absent parent was not necessary in cases where the absent parent had requested withholding.

Response: We agree that the proposed 5 working day timeframe was too stringent. Consequently, we have changed the timeframe for sending the notice of withholding to the absent parent to within 15 calendar days of the appropriate date in paragraph (c)(1) which requires initiated withholding under certain conditions in cases where the wages of an absent parent are not subject to immediate withholding. Although the statute requires that the wages of an absent parent become subject to withholding on the date identified in paragraph (c)(1), we realize that it is unrealistic to expect that the notice be sent on that date, although it is clear that the State must have in effect procedures which identify the date when an action takes place which triggers withholding.

The former regulations for withholding at § 303.100(a)(4) addressed this issue by requiring that the State take steps to implement withholding on the appropriate date. We believe that the most realistic approach to ensuring that timely action takes place is to establish measurable timeframes for this requirement. The revised requirements at section 466(b) of the Act eliminated the requirement that advance notice be sent to the absent parent on the day wages become subject to withholding. Because Congress deleted this requirement, it is reasonable to allow States time to send the notice. Moreover, the 15 calendar day timeframe parallels several other requirements under regulations for program standards in 45 CFR part 303.

Finally, we agree with the comment that it is unnecessary for the advance notice to be sent to the absent parent when the absent parent has requested that withholding be implemented. Moreover, we would point out that notice of withholding is not required in cases subject to immediate withholding or in interstate cases in which the absent parent has previously received notice of withholding.

2. *Comment:* One commenter asked if the requirement at proposed paragraph (c)(2), that the State must send advance notice to the absent parent within 5 working days of the appropriate date under paragraph (c)(1) if the absent parent's address is known or, if not known, within 5 days of location referred to obtaining an address or verifying that the absent parent is at the location.

Response: The extent and specifics of verification procedures are left to the States. The State must ensure the absent parent's due process rights under State law are protected.

3. *Comment:* A number of commenters were concerned that the requirement at

proposed paragraph (c)(3), providing that in cases where there has been a finding of good cause, withholding not be implemented upon request of the custodial parent under paragraph (c)(1)(ii) until the finding had been reversed, was unauthorized by the statute. One commenter asked that the regulation should specify that the support order require that a good cause finding ceases only upon a qualifying delinquency. Another commenter claimed that reopening a good cause finding would result in a misuse of the State's resources.

Response: We have eliminated the specific regulatory provision that a good cause finding must be reversed before the custodial parent's request for withholding can be approved. We recognize that the statute provides both for a good cause exemption from immediate wage withholding and for custodial parents to initiate wage withholding by request without providing guidance on which provision takes precedence. However, the law does require that States must have in place procedures to review and approve, if appropriate under their procedures and standards, a custodial parent's request. Therefore, we believe that States are in the best position to determine the circumstances under which a custodial parent's request will be approved. We urge that States consider the issue of removal of good cause determination when they develop their review procedures, but will not require that it specifically be included in their procedures.

4. *Comment:* One commenter recommended that proposed paragraph (c)(4), providing that the only basis for contesting a withholding is a mistake of fact, be changed to require that if the amount of current or overdue support is at issue, the court should be required to modify the support order to reflect the correct amount of support or arrearages and issue the withholding notice rather than requiring an additional hearing on a claimed mistake of fact.

Response: This is a restatement of former language at § 303.100(a)(4). Section 466(b)(2) of the Act requires that withholding must occur without the need for any amendment to the support order involved or for any further action, other than those required under section 466, by the court or administrative authority which issued the support order. Any State law or procedure (other than to reverse a determination of good cause, cancel an alternative arrangement or implement withholding at the custodial parent's request) which requires a return to court in order to implement withholding is contrary to this requirement.

Procedures When the Absent Parent Contests Initiated Withholding

1. *Comment:* One commenter asked that the final regulation provide that the State procedures required at paragraph (e) when the absent parent contests initiated withholding include the right of the custodial parent to contest any claims.

Response: While we have not required such procedures to include the custodial parent's right to contest the claim, any procedure conducted pursuant to paragraph (e) with respect to a claim that there is a mistake of fact should provide an opportunity for all relevant evidence to be presented, including evidence from the custodial parent.

Notice to the Employer for Immediate and Initiated Withholding

1. *Comment:* One commenter asked if the provision at paragraph (f)(1)(ii), requiring the employer report to the State the date on which an amount was withheld, was intended to establish the date of collection for purposes of distribution or the initial date of receipt for meeting program standards timeframes.

Response: The date the wages were withheld establishes the date of collection for distribution purposes at 45 CFR 302.51; it is not used as the initial date of receipt in the State, which starts measurement of the timeframe within which support must be sent to the family under requirements at 45 CFR 302.32. Provisions at 45 CFR 302.51(a)(4) require that, with respect to payments made through wage or other income withholding and received by the IV-D agency on or after January 1, 1988, the date of collection for distribution purposes in all IV-D cases must be the date of withholding. If the employer fails to report the date of withholding, the IV-D agency must reconstruct that date by contacting the employer or comparing actual amounts collected with the pay schedule specified in the court or administrative order.

2. *Comment:* One commenter recommended that the requirement at paragraph (f)(1)(ii) that the employer send amounts withheld to the State within 10 working days be changed to 30 calendar days. This commenter maintained that since the statute at section 466(b)(6)(B) requires that methods must be established by the State to simplify the withholding process, and employers find it simpler to send one monthly payment, the timeframe should be extended.

Response: The 10-day requirement has been in effect since May 18, 1985. We believe that to extend this timeframe would be inconsistent with Congressional intent that support collected be expeditiously distributed.

3. *Comment:* We received several comments objecting to the proposed requirement at paragraph (f)(1)(xi) that the notice to the employer must indicate that the absent parent is required under a support order to provide health insurance coverage. One commenter stated that such a requirement would involve both the IV-D agency and the employer in a meaningless task, since, if the obligor does not sign up for coverage, the employer has no authority to compel enrollment. Another commenter pointed out that the IV-D agency is required to enforce health insurance requirements in support orders. One commenter pointed out that the IV-D agency had no authority to require employers to take action based on the information provided and such information would not assist the employer in complying with the withholding order. Another commenter felt that the requirement needed strengthening and should be amended to require the employer to report quarterly the obligor's insurance company name, policy number and dependents covered.

Response: We agree that this proposed requirement will not assist in enforcing health insurance requirements and have deleted it from the final rule. However, States with such authority, including Minnesota, Washington and Iowa, may provide such language in their notice to the employer. In addition, States at their discretion may choose to require employers to provide quarterly reports of the obligor's insurance company's name, policy number and dependents covered. In addition, Oregon has already moved in this direction through a modification of quarterly employer reporting for employment security purposes.

4. *Comment:* A number of commenters objected to the requirement at proposed paragraph (f)(2) that in a case of immediate wage withholding the State must issue the notice to the employer within 5 working days of the effective date of the order, or of locating the absent parent. Some commenters argued that the 5 day requirement was not realistic in light of administrative factors beyond the IV-D agency's control. One commenter recommended a timeframe of 10 working days; another commenter recommended 15 working days; and another commenter favored 30 calendar days. Several commenters also pointed out that marking the timeframe from the effective date of the support order would be impossible in some instances since some orders are made effective retroactive to the date a petition for support is filed or the date a paternity action is instituted. These commenters recommended that the timeframe

commence from the date the order is entered. Another commenter suggested that the requirement be changed to within 5 working days of the receipt of the order by the IV–D agency.

Response: We have changed the timeframe in the final rule to 15 calendar days. This provides a more realistic approach and is consistent with other timeframes established in this rule and in regulations for program standards. We also agree with those commenters who pointed out the difficulty in complying with a timeframe which commences with an "effective" date and have changed the final rule to provide that notice to withhold be sent to the employer within 15 calendar days of the date the support order is entered.

Administration of Withholding

1. *Comment:* One commenter was concerned that the proposed requirement at paragraph (g)(2)(ii) that the State may designate only one entity to administer withholding in each jurisdiction will mean that every wage withholding action in every support order in the State will become a IV–D case. This commenter complained that this situation would result in increases in workloads and additional tax burdens on State and local taxpayers since there is no Federal financial participation in cases where an application for IV–D services has not been made. It was suggested that since Congress authorized a study regarding the impact of immediate withholding in non-IV–D cases, this proposed requirement should not be issued in final regulations until the results of the study are available.

Response: The requirement for only one wage withholding entity in each jurisdiction applies only to administration of withholding of IV–D cases and has been in effect since October 1, 1985. States have the option of establishing a separate mechanism for the administration of withholding for non-IV–D cases.

2. *Comment:* We received comments responding to the proposed requirement at paragraph (g)(3) that effective October 1, 1993, States must be capable of receiving withheld amounts and accounting information which are electronically transmitted by the employer to the State. One commenter stated that the requirement was premature and that the issue should not be regulated until procedures for transmitting support payments have been agreed upon by OCSE and the National Automated Clearing House Association (NACHA) and the process of transmitting payments has been tested. This commenter suggested that the proposed rule be withdrawn and that OCSE promulgate this requirement in 1995. Another commenter felt that this rule should appear instead in regulations for automated systems and that it include procedures for all collections, such as transfer of interstate payments and collections from county depositories to the State agency responsible for distribution.

Response: This provision was drafted in anticipation of the requirement that all States have operational automated child support enforcement systems by October 1, 1995. We believe that it is important that States have as much advance notice of this requirement as possible so that this capability can be included in the design of their automated systems. States are encouraged to extend this capability for all collections. We are currently pursuing a national initiative on this issue in cooperation with NACHA. The goal of this project is to develop a Child Support Convention, a set of procedures with a selected format to be used by employers to electronically transfer income withholding payments and standardized data elements which will contain case related information about the withholding. As part of developing these procedures we have contacted all State IV–D agencies for assistance, and will continue to involve the States in the ongoing developments.

Interstate Withholding

1. *Comment:* We received many comments regarding the proposed requirement at paragraph (h)(1) that States may register orders from other States only if it is for the sole purpose of establishing jurisdiction for enforcement of the order, does not confer jurisdiction for any other purpose, and does not delay withholding. Most commenters strongly supported this requirement, and several stated that support orders from their States had been registered by other States when interstate withholding had been requested and that the underlying order was subsequently modified downward in the responding jurisdiction.

Several commenters recommended strengthening the requirement. One commenter stated that the phrase "does not delay" would not assure compliance, since some States would claim that registration did not delay enforcement compared to their procedures for full URESA registration. Another commenter recommended that the final rule prohibit any registration whatsoever of the support order by the responding State. One commenter claimed that the proposed requirement was designed to allow a certain State to continue to register orders, with resulting delays, and suggested that any registration was not consistent with Congressional intent.

Finally, one commenter recommended that there be no restrictions on registration. This commenter argued that the better procedure is to allow the responding State to modify the order as necessary to enforce the other State's order through withholding. The commenter claimed that the proposed language clearly prefers administrative process for interstate wage withholding and that the limitations on registration were not feasible for judicial situations, since the absent parent may raise ability to pay defenses to enforcement. It was argued that this situation would necessitate a delay in enforcement of the order, including wage withholding and that such delay illustrates the futility of separating enforcement and adjustment authority. The commenter further maintained that the complexity of the subject requires careful coordination with ongoing efforts of the Commission on Interstate Child Support authorized under section 128 of Public Law 100–485, and the National Conference of Commissioners on Uniform State Laws (NCCUSL) which is redrafting URESA.

Response: We do not believe that an absolute prohibition on registration of orders for the purpose of wage withholding is feasible at this time due to the varied legal and administrative systems among the States. However, we do agree that the language can be strengthened regarding conditions under which registration is permitted, and have added language to specify that registration create no delay beyond the timeframes contained in paragraph (h)(5) regarding notice to the obligor, opportunity of the obligor to contest, and notice to the employer.

With respect to the comment recommending that there be no limits on registration, we strongly disagree. Registration of the underlying support order for the purpose of enforcement of a withholding notice may not open the underlying order to modification. Any State which allows such modifications is not in conformance with the requirements of section 466(b)(2) of the Act which provides that withholding must occur without the need for any amendment to the support order involved and section 466(b)(9) which provides that a State must extend its withholding system so that system will include withholding from income derived within such State in cases where its applicable support orders were issued in other States.

Congressional intent on this issue has been clearly articulated since the adoption of Public Law 98–378 in 1984: "Withholding must occur without amendment of the order or further action by the court. The Committee

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believes that this requirement is particularly crucial to the effectiveness of any income withholding provision, because it means that the custodial parent will not have to experience the costs and delays involved in returning to court to get a garnishment decree or a new support order." (Senate Report 98-387, page 27). In addition, the Model Interstate Income Withholding Act, published in 1984 by the American Bar Association and the National Conference of State Legislatures (under a contract from OCSE), explicitly provides that entry by the responding State of the initiating States's support order shall not confer jurisdiction on the courts or agencies of the responding State for any purpose other than income withholding. OCSE recently conducted a review of State law and practices on this issue, and has notified States identified as having problems in this area that any responding State's registration procedure which opens the underlying support order to modification or delays implementation of withholding is not in conformance with Federal requirements.

We agree with the need for ongoing coordination with the Interstate Commission and with the NCCUSL. In fact, the NCCUSL's Drafting Committee and the Interstate Commission's members have agreed to coordinate their efforts with respect to interstate child support enforcement. As referenced earlier, the work of both groups is scheduled for completion in 1992.

2. *Comment:* One commenter requested that the final rule clarify the requirements for notifying the obligor in interstate wage withholding proceedings.

Response: Under paragraph (h)(5)(i) notice must be given to the absent parent in accordance with paragraph (d), *if appropriate*, and under paragraph (h)(5)(ii), the absent parent must be given an opportunity to contest the withholding in accordance with paragraph (e), if appropriate. Notice would not be appropriate and, in fact, is not permitted, in immediate withholding in interstate cases, or in cases in which withholding was previously ordered as a result of a triggering arrearage.

3. *Comment:* Several commenters noted that the proposed requirement at paragraph (h)(3) providing that the initiating State must notify the responding State to implement wage withholding within 5 days of a determination that withholding is required was inconsistent with other regulatory requirements. These commenters pointed out that this conflicts with existing requirements at 45 CFR 303.7(b)(2) providing that the initiating State refer an interstate case for enforcement to the responding State's central registry within 20 calendar days of determining that the absent parent is in another State. Other commenters asked that the proposed requirement be changed to 30 calendar days.

Response: We agree that the proposed timeframe of 5 working days was inconsistent with existing requirements and have changed this timeframe in the final rule at paragraph (h)(3) to provide that the initiating State must notify the responding State to implement withholding within 20 calendar days of determining that withholding is required in a particular case, and, if appropriate, receipt of any information necessary to carry out the withholding. For consistency, we are also revising § 303.7(b)(2) to tie the 20 calendar day timeframe for referral of an interstate case to the receipt of any information necessary to process the case. An interstate request for withholding is, of course, not needed in cases where a State has long arm jurisdiction over the employer and can implement withholding directly.

4. *Comment:* We received comments objecting to the 5-day requirement at proposed paragraph (h)(5) for the responding State to send the notice of withholding to the employer, as unrealistic.

Response: We agree and have changed this timeframe to 15 calendar days in the final rule which is consistent with a number of other timeframes in this section.

Immediate Withholding in Non-IV-D Cases

1. *Comment:* A number of commenters complained that the requirements set forth in paragraph (f), for immediate withholding in non-IV-D cases, were premature since the requirement had a statutory effective date of January 1, 1994. Several commenters pointed out that, since section 101(c) of Public Law 100-485 required that OCSE conduct a study on making immediate withholding mandatory in all cases, final regulations should be postponed so that questions regarding the administrative feasibility and cost implications of such a requirement could be evaluated in light of the fact that no Federal financial participation was available for this activity. One commenter cited preliminary information on one project indicating that there were many complaints from private parties who objected to immediate withholding when a IV-D application had not been filed.

Response: We agree with commenters that it is premature to attempt to regulate this issue. Consequently, we have eliminated proposed paragraph (f) for immediate withholding in non-IV-D cases. As a result, new paragraph (f) requires that there be a provision for withholding in non-IV-D child support orders, to ensure that withholding as a means of support is available without the necessity of filing an application for IV-D services.

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a "major" rule. A major rule is one that is likely to result in:

(1) An annual effect on the economy of $100 million;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule implements specific requirements of Public Law 100-485 and will not result in additional costs to the States of $100 million or more. Any costs will be administrative, and we believe increased collections as a result of support order adjustments and immediate wage withholding will exceed increased administrative costs.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and individuals, which are not considered small entities under the Act.

List of Subjects

45 CFR Part 302

Child support, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Unemployment compensation.

45 CFR Part 303

Child support, Grant programs—social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 93.023, Child Support Enforcement Program.)

Dated: September 3, 1991.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: January 16, 1992

Louis W. Sullivan,

Secretary

For the reasons set out in the preamble, 45 CFR chapter III is amended to read as follows:

1. The title of 45 CFR Chapter III is revised to read "Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services".

PART 302—STATE PLAN REQUIREMENTS

1a. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. Section 302.54 is revised to read as follows:

§ 302.54 Notice of collection of assigned support.

(a) Until December 31, 1992, the State plan shall provide as follows:

(1) The IV–D agency, at least annually, must send a notice of the amount of support payments collected during the past year to individuals who have assigned rights to support under § 232.11 of this title.

(2) The notice must list separately payments collected from each absent parent when more than one absent parent owes support to the family and must indicate the amount of support collected which was paid to the family.

(b) Effective January 1, 1993, the State plan shall provide that the State has in effect procedures for issuing notices of collections as follows:

(1) The IV–D agency must provide a monthly notice of the amount of support payments collected for each month to individuals who have assigned rights to support under § 232.11 of this title, unless no collection is made in the month, the assignment is no longer in effect and there are no longer any assigned arrearages, or the conditions in paragraph (c) of this section are met.

(2) The monthly notice must list separately payments collected from each absent parent when more than one absent parent owes support to the family and must indicate the amount of current support, the amount of arrearages collected and the amount of support collected which was paid to the family.

(c)(1) The Office may grant a waiver to permit a State to provide quarterly, rather than monthly, notices, if the State:

(i) Until September 30, 1995, does not have an automated system that performs child support enforcement activities consistent with § 302.85 or has an automated system that is unable to generate monthly notices; or

(ii) Uses a toll-free automated voice response system which provides the information required under paragraph (b)(2) of this section.

(2) A quarterly notice must be provided in accordance with conditions set forth in paragraph (b)(1) of this section and such notice must contain the information set forth in paragraph (b)(2) of this section.

3. Section 302.70 is amended by revising paragraph (a)(8); adding a new paragraph (a)(10); revising paragraph (d)(1) and the first sentence of (d)(2) to read as follows:

§ 302.70 [Amended]

(a) * * *

(8) Procedures under which all child support orders which are issued or modified in the State will include provision for withholding from wages, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing an application for services under § 302.33 of this part, in accordance with § 303.100(i) of this chapter;

* * * * * *

(10) Effective October 13, 1990, procedures for the review and adjustment of child support orders, in accordance with the requirements of § 303.8 of this chapter.

* * * * * *

(d)(1) *Exemption.* A State may apply for an exemption from any of the requirements of paragraph (a) of this section by the submittal of a request for exemption to the appropriate Regional Office.

(2) *Basis for granting exemption.* The Secretary will grant a State, or political subdivision in the case of paragraph (a)(2) of this section, an exemption from any of the requirements of paragraph (a) of this section for a period not to exceed three years if the State demonstrates that compliance would not increase the effectiveness and efficiency of its Child Support Enforcement program. * * *

* * * * * *

PART 303—[AMENDED]

4. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

5. In § 303.4, paragraph (c) is revised to read as follows:

§ 303.4 Establishment of support obligations.

* * * * * *

(c) Periodically review and adjust child support orders, as appropriate, in accordance with § 303.8.

* * * * * *

6. In § 303.7, paragraph (b)(2) is revised to read as follows:

§ 303.7 Provision of services in interstate IV–D cases.

* * * * * *

(b) * * *

(2) Except as provided in paragraph (b)(1) of this section, within 20 calendar days of determining that the absent parent is in another State, and, if appropriate, receipt of any necessary information needed to process the case, refer any interstate IV–D case to the responding State's interstate central registry for action, including URESA petitions and requests for location, document verification, administrative reviews in Federal income tax refund offset cases, wage withholding, and State income tax refund offset in IV–D cases.

* * * * * *

7. A new § 303.8 is added to read as follows:

§ 303.8 Review and adjustment of child support orders.

(a) *Definitions.* For purposes of this section:

(1) *Adjustment* applies only to the child support provisions of the order, and means:

(i) An upward or downward change in the amount of child support based upon an application of State guidelines for setting and adjusting child support awards; and/or

(ii) Provision for the child's health care needs, through health insurance coverage or other means.

(2) *Parent* includes any custodial parent or non-custodial parent (or for purposes of requesting a review, any other person or entity who may have standing to request an adjustment to the child support order).

(3) *Review* means an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body or agency, of information necessary for application of the State's guidelines for support to determine:

(i) The appropriate support award amount; and

(ii) The need to provide for the child's health care needs in the order through health insurance coverage or other means.

(b) *Plan for review and adjustment.* (1) Effective on October 13, 1990, the State must have a written and publicly available plan indicating how and when child support orders in effect in the State will be periodically reviewed and adjusted.

(2) During the period from October 13, 1990 through October 12, 1993, the State must, for orders being enforced under this chapter:

(i) Determine whether such orders should be reviewed, using the plan

specified in paragraph (b)(1) of this section:

(ii) Initiate a review, in accordance with the plan, at the request of either parent subject to the order or of a IV–D agency;

(iii) Notify each parent subject to a child support order of any review of the order at least 30 calendar days before commencement of the review;

(iv) Adjust the order when the review determines that there should be a change in the child support award amount, or that health insurance should be required, as indicated by the review in accordance with the State's guidelines for support described in § 302.56 of this chapter.

(v) Following any review, notify each parent subject to a child support order in effect in the State, of:

(A) Any adjustment or a determination that there should be no change in the order; and

(B) Each parent's right to initiate proceedings to challenge the adjustment or determination, either through pre-decision review, appeal, or administrative review, within at least 30 calendar days after the date of the notice.

8. Section 303.100 is revised as follows:

§ 303.100 Procedures for wage or income withholding.

(a) *General withholding requirements.* (1) The State must ensure that in the case of each absent 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 wages 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 absent 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 absent parent requests termination and withholding has not been terminated previously and subsequently initiated, and the absent 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 absent parents amounts which have been improperly withheld.

(9) The State may extend its withholding to include withholding from forms of income other than wages.

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

(b) *Immediate withholding in 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 wages of an absent 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 wages shall not be subject to withholding under this paragraph in any case where:

(i) Either the absent 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 wage 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 absent 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 wages 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 wages of the absent parent shall become subject to the withholding on the date on which the payments which the absent 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 absent 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 State must send the advance notice required under paragraph (d) of this section to the absent parent within 15 calendar days of the appropriate date under paragraph (c)(1) of this section if the absent parent's address is known on that date, or, if the absent parent's address is not known on that date, within 15 calendar days of locating the absent parent.

(3) 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 absent parent.

(d) *Advance notice to the absent parent in cases of initiated withholding.* (1) On the date specified in paragraph (c)(2) of this section, the State must send advance notice to the absent parent regarding the initiated withholding. The notice must inform the absent parent:

(i) Of the amount of overdue support that is owed, if any, and the amount of wages that will be withheld;

(ii) That the provision for withholding

applies to any current or subsequent employer or period of employment:

(iii) Of the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact;

(iv) Of the period within which the absent parent must contact the State in order to contest the withholding and that failure to contact the State within the specified time limit will result in the State notifying the employer to begin withholding; and

(v) Of the actions the State will take if the individual contests the withholding, including the procedures established under paragraph (e) of this section.

(2) (i) The requirement for advance notice to the absent parent under paragraph (d)(1) of this section and for State procedures when the absent parent contests the withholding in response to the advance notice under paragraph (e) of this section do not apply in the case of any State which had a withholding system in effect on August 16, 1984 if the system provided on that date, and continues to provide, any other procedures as may be necessary to meet the procedural due process requirements of State law.

(ii) Any State to which paragraph (d)(2)(i) of this section applies must meet all other requirements of this section and must send notice to the employer under paragraph (f) of this section within 15 calendar days of the appropriate date specified in paragraph (c)(1) of this section if the employer's address is known on that date, or, if the employer's address is not known on that date, within 15 calendar days of locating the employer's address.

(e) *State procedures when the absent parent contests initiated withholding in response to the advance notice.* The State must establish procedures for use when an absent parent contests the withholding. Within 45 calendar days of sending advance notice to the absent parent under paragraph (d) of this section, the State must:

(1) Provide the absent parent an opportunity to present his or her case to the State;

(2) Determine if the withholding shall occur based on an evaluation of the facts, including the absent parent's statement of his or her case;

(3) Notify the absent parent whether or not the withholding is to occur and, if it is to occur, include in the notice the time frames within which the withholding will begin and the information given to the employer in the notice required under paragraph (f) of this section; and

(4) If withholding is to occur, send the notice required under paragraph (f) of this section.

(f) *Notice to the employer for immediate and initiated withholding.* (1) To initiate withholding, the State must send the absent parent's employer a notice which includes the following:

(i) The amount to be withheld from the absent parent's wages, and a statement that the amount actually withheld for support and other purposes, including the fee specified under paragraph (f)(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 State (or to such other individual or entity as the State may direct) within 10 working days of the date the absent parent is paid, and must report to the State (or to such other individual or entity as the State may direct) the date on which the amount was withheld from the absent parent's wages;

(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 an absent parent from employment, refusing to employ, or taking disciplinary action against any absent parent because of the withholding;

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

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

(viii) That the employer may combine withheld amounts from absent parents' wages 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 absent parent;

(ix) That the employer must implement withholding no later than the first pay period that occurs after 14 working days following the date the notice was mailed; and

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

(2) In the case of an immediate wage withholding under paragraph (b) of this section, the State must issue the notice to the employer specified in paragraph (f)(1) of this section within 15 calendar days of the date the support order is entered if the employer's address is known on that date, or, if the address is unknown on that date, within 15 calendar days of locating the employer's address.

(3) In the case of initiated withholding, if the absent parent fails to contact the State to contest withholding within the period specified in the advance notice in accordance with the requirements of paragraph (d)(1)(iv) of this section, the State must send the notice to the employer required under paragraph (f)(1) of this section within 15 calendar days of the end of the contact period if the employer's address is known on that date, or, if the address is unknown on that date, within 15 calendar days of locating the employer's address.

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

(g) *Administration of withholding.* (1) The State must designate a public agency to administer withholding in accordance with procedures specified by the State for keeping adequate records to document, track, and monitor support payments.

(2)(i) The State may designate public or private entities to administer withholding on a State or local basis under the supervision of the State withholding agency if the entity or entities are publicly accountable and follow the procedures specified by the State; and (ii) the State may designate only one entity to administer withholding in each jurisdiction.

(3) Effective October 1, 1995, the State must be capable of receiving withheld amounts and accounting information which are electronically transmitted by the employer to the State.

(4) Amounts withheld must be distributed in accordance with section 457 of the Act and §§ 302.32, 302.51 and 302.52 of this chapter.

(5) The State must reduce its IV-D expenditures by any interest earned by the State's designee on withheld amounts.

(h) *Interstate withholding.* (1) The State law must provide for procedures to extend the State's withholding system

so that the system will include withholding from income or wages derived within the State in cases where the applicable support orders were issued in other States. A State may require registration of 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 paragraph (h)(5) of this section.

(2) The State law must require employers to comply with a withholding notice issued by the State.

(3) 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 absent 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.

(4) The State in which the absent parent is employed must implement withholding in accordance with paragraph (h)(5) of this section upon receipt of the notice required in paragraph (h)(3) of this section.

(5) The State in which the absent parent is employed must:

(i) Within 15 calendar days of location of the absent parent and his or her employer, send notice to the absent parent, if appropriate, in accordance with the requirements of paragraph (d) of this section;

(ii) Provide the absent parent with an opportunity to contest the withholding, if appropriate, in accordance with paragraph (e) of this section;

(iii) Send notice to the employer in accordance with the requirements of paragraph (f) of this section; and

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

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

(7) 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 absent parent is employed shall apply.

(i) *Provision for withholding in all child support orders.* Child support orders issued or modified in the State between October 1, 1985, and January 1, 1994, or modified on or after January 1, 1994, must have a provision for withholding of wages, in order to ensure that withholding as a means of support is available if arrearages occur without the necessity of filing an application for IV–D services. 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.

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(c) In a court proceeding where the support of a minor child is at issue, the court may order either or both parents to pay the amount necessary for support, maintenance, nurture, and education of the child. The court shall issue a medical support order as part of a child support order if health care coverage is available to the obligor at a reasonable cost. Upon a showing of good cause the court may order the parents required to pay support to give reasonable security for payments.

(d) An order for prospective child support may be modified or revoked under AS 25.24.170. (§ 1 ch 251 SLA 1976; am § 21 ch 126 SLA 1977; am § 8 ch 40 SLA 1985; am § 6 ch 68 SLA 1988)

Revisor's notes. — Formerly AS 47.23.060. Renumbered in 1990.

Effect of amendments. — The 1988 amendment designated the previously undesignated last sentence in subsection (c) as subsection (d) and substituted "under AS 25.24.170" for "as the court considers necessary" therein.

NOTES TO DECISIONS

Effect of waiver of child support. — A waiver freely executed by custodial parent can be asserted by noncustodial parent to bar recovery of child support arrearages without any formalities such as consideration or contemporaneous judicial scrutiny, absent a finding that such a result would be deleterious to the child. Malekos v. Chloe Ann Yin, 655 P.2d 728 (Alaska 1982).

Retraction of waiver. — Custodial parent may retract waiver of decretory child support at any time by initiating proceedings to enforce support obligation, and once withdrawn, the support obligation is renewed, subject to the court's continuing authority to modify the support obligation in light of changed circumstances. Malekos v. Chloe Ann Yin, 655 P.2d 728 (Alaska 1982).

Cited in Murphy v. Murphy, Sup. Ct. Op. No. 3700 (File No. S-3693), ___ P.2d ___ (1991).

Sec. 25.27.062. Income withholding order for support. (a) A judgment, court order, or order of the agency under this chapter providing for support must contain an income withholding order. An income withholding order under this section may not be enforced unless the obligor had notice of the order when it was made or an application for the order was served on the obligor in the manner provided for service of a summons under Rule 4, Alaska Rules of Civil Procedure.

(b) An income withholding order must direct the obligor, the obligor's employer, future employer, and any person, political subdivision, or department of the state to withhold money due or to be due the obligor and pay the money to the agency, in an amount determined under (i) of this section.

(c) If support payments are in arrears in an amount at least equal to support payable for one month, the agency, on behalf of an obligee or person or public agency designated to receive support payments, shall request an income withholding order against the obligor to take effect by filing a sworn statement with the court that alleges that the

obligor is in arrears in an amount at least equal to the support payable for one month.

(d) If an application is filed with the clerk of court, notice shall be served upon the obligor by the agency in the manner provided by Rule 5, Alaska Rules of Civil Procedure or any other method permitted by law. The notice shall inform the obligor that the income withholding order will take effect 15 days after the date on which the notice is served unless the obligor requests a hearing within the 15 days after the notice is served. If the obligor requests a hearing, an income withholding order may not take effect until the conclusion of the hearing. The court shall hold a hearing requested under this section within 15 days after the date the obligor requests the hearing, to determine if there are any mistakes of fact that make the withholding order improper, if the amount to be withheld is incorrect, or if there are any other legal defenses. The court shall inform the obligor, either at the hearing or within 15 days after the hearing, whether or not the withholding will occur and of the date on which it is to commence. It is not a defense under this section that less than one full month's payment is due if at least one full month's payment was due on the date notice was served under this section.

(e) The obligee or person or public agency that requested the income withholding order shall immediately send a copy of the income withholding order, a copy of AS 25.27.260 and this section, and an explanation of the effect of the statutes by certified mail to persons who may owe money to an obligor. An income withholding order made under this section is binding upon a person, employer, political subdivision, or department of the state immediately upon receipt of a copy of the income withholding order. An employer shall begin withholding the specified amount from the employee's wages 14 days after the mailing date on the notice of withholding or on the first day of the next pay period, if earlier. The amount withheld shall be sent to the agency.

(f) An employer may not discharge, discipline, or refuse to employ an obligor on the basis of an income withholding order issued under this section. If an employer discharges, disciplines, or refuses to employ an obligor because of an income withholding obligation, the court, after notice and hearing, may order reinstatement or restitution to the obligor, or both. A person who violates this subsection or a regulation adopted to implement it, is liable for a civil penalty of not more than $1,000.

(g) An income withholding order under this section has priority over all other attachments, executions, garnishments, or other legal process brought under state law against the same property unless otherwise ordered by the court. An income withholding order is not limited to the wages of an obligor but may include all money owed to

the obligor not otherwise exempt by law. Exemptions under AS 09.38 do not apply to income withholdings under this section.

(h) The court may order payment of all court costs that resulted from an income withholding proceeding under this section.

(i) An employer shall, to the extent permitted under 15 U.S.C. 1673(b), withhold the current support obligation from an obligor's wages. An employer shall withhold additional income, to the extent permitted under 15 U.S.C. 1673(b), from an obligor's wages for any support arrearage.

(j) An employer may combine into a single payment to the agency amounts withheld from more than one obligor if the employer specifies the portion of the payment attributable to each obligor.

(k) At the time an obligor terminates employment with an employer then in receipt of an unsatisfied income withholding order regarding the obligor, the employer shall immediately inform the agency of the obligor's name and last known address and the name and address of all other known employers of the obligor.

(*l*) An obligor may petition the court to terminate or modify an income withholding order if the obligor has made payments under the order for at least 12 months and all arrearages have been paid. Upon receipt of the petition under this subsection, the court may terminate or modify the income withholding order unless the court finds good cause to deny the petition due to the obligor's payment history or other grounds. The court may not terminate or modify an income withholding order solely on the ground that the obligor has paid all arrearages. (§ 1 ch 96 SLA 1981; am §§ 16, 17 ch 59 SLA 1982; am § 1 ch 118 SLA 1982; am § 39 ch 6 SLA 1984; am § 2 ch 144 SLA 1984; am §§ 1, 2 ch 40 SLA 1985; am §§ 2 — 5 ch 72 SLA 1986; am §§ 7, 8 ch 68 SLA 1988)

Revisor's notes. — Formerly AS 09.65.132. Renumbered as AS 47.23.062 in 1985. Renumbered again in 1990.

Effect of amendments. — The 1988 amendment substituted "property" for "money" in the first sentence in subsection (g) and repealed and reenacted subsection (*l*), which formerly related to the same subject matter.

Legislative history reports. — For House letter of intent relating to the 1985 amendment to this section, see 1985 House Journal page 740.

NOTES TO DECISIONS

Collection of accrued back child support. — Income assignment order can be used to collect a judgment for back child support accruing before the order of support was issued. Ralston v. State, Child Support Enforcement Div. ex rel. Wall, 728 P.2d 635 (Alaska 1986).

Although this section does not speak specifically to whether arrearages include amounts owed due to a judgment of back child support, the state supreme court concluded that the purposes behind the section justify use of an income assignment order to collect accrued back child support; there is no language in AS 47 which explicitly prohibits such use. Ralston v. State, Child Support Enforcement Div. ex rel. Wall, 728 P.2d 635 (Alaska 1986).

Cited in Rubalcava v. Hall, 674 P.2d

(3) enforce by execution, in accordance with AS 25.27.230 — 25.27.270, or otherwise, a support order entered in favor of the obligee.

(b) To establish or enforce an order of support, based on the subrogation of the state, the agency is not limited to the amount of assistance being granted to the minor child.

(c) The recovery of any amount for which the obligor is liable that exceeds the total assistance granted under AS 47.25.310 — 47.25.420 shall be paid to the obligee.

(d) Except as provided in (f) of this section, if the obligee is not receiving assistance under AS 47.25.310 — 47.25.420 at the time the state recovers money in an action under this section, the recovery of any amount for which the obligor is liable shall be distributed to the obligee for support payments that have become due and unpaid since the termination of assistance under AS 47.25.310 — 47.25.420 under a support order in favor of the obligee.

(e) After payment to the obligee under (d) of this section, the state may retain an amount not to exceed the total unreimbursed assistance paid on behalf of the obligee under AS 47.25.310 — 47.25.420.

(f) Notwithstanding (d) of this section, the state shall, if required under federal law or regulations, distribute amounts recovered through offset of the obligor's federal tax refund as past due support with first distribution to the state for unpaid support assigned to the state under AS 47.25.345. (§ 29 ch 126 SLA 1977; am § 5 ch 96 SLA 1981; am § 3 ch 75 SLA 1991)

Revisor's notes. — Formerly AS 47.23.130. Renumbered in 1990.

Effect of amendments. — The 1991 amendment, effective January 1, 1992, added subsections (d)-(f).

Sec. 25.27.135. Limitation on actions to establish child support obligation. If the same causes of action concerning a duty of child support are pending concurrently in court and before the agency, the second action filed may be abated upon the motion of a party or the agency. The court or the agency may award full costs and attorney fees to the party prevailing on the abatement motion. (§ 11 ch 68 SLA 1988)

Revisor's notes. — Formerly AS 47.23.135. Renumbered in 1990.

Sec. 25.27.140. Authority and procedures to administratively establish and enforce support obligation. (a) If no support order has been entered, the agency may establish a duty of support utilizing the procedures prescribed in AS 25.27.160 — 25.27.220 and may enforce a duty of support utilizing the procedure prescribed in AS 25.27.230 — 25.27.270. Action under this subsection may be under-

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1977; am § 10 ch 40 SLA

Revisor's notes. — Formerly
47.23.150. Renumbered in 1990.

Effect of amendments. — The

NOTES

Quoted in Smith v. State, Dep't of R
enue, 790 P.2d 1352 (Alaska 1990)

**Sec. 25.27.160. Initiation of
support duty; required notice**
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receipt requested, for restricted d
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(b) The notice and finding of fin
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taken upon application of an obligee, or at the agency own discretion if the obligor is liable to the state under AS 25.27.120(a) or (b).

(b) If a support order has been entered, the agency may enforce the support order utilizing the procedures prescribed in AS 25.27.150 and 25.27.230 — 25.27.270.

(c) A decision of the agency determining a duty of support shall include an income withholding order as provided under AS 25.27.062. (§ 29 ch 126 SLA 1977; am § 6 ch 96 SLA 1981)

Revisor's notes. — Formerly AS 47.23.140. Renumbered in 1990. In 1990, "withholding order" was substituted for "assignment order" in subsection (c) to correct a drafting oversight in ch. 40, SLA 1985.

Sec. 25.27.150. Initiation of administrative enforcement of orders; required notice. (a) Action to enforce a support order administratively under AS 25.27.230 — 25.27.270 is initiated by the agency serving a notice on the obligor of the obligor's liability under the support order. Notice under this subsection shall be served upon the obligor by the agency by certified mail to the last known address of the obligor. Service by mail is effected when the notice is properly addressed, certified, and mailed.

(b) Notice served under (a) of this section must state the amount of the obligor's liability under the support order and that the property of the obligor is subject to execution in that amount in accordance with the procedures prescribed in AS 25.27.230 — 25.27.270 at the expiration of 30 days from the date of service of the notice. (§ 29 ch 126 SLA 1977; am § 10 ch 40 SLA 1985; am § 12 ch 68 SLA 1988)

Revisor's notes. — Formerly AS 47.23.150. Renumbered in 1990.

Effect of amendments. — The 1988 amendment added the last two sentences in subsection (a).

NOTES TO DECISIONS

Quoted in Smith v. State, Dep't of Revenue, 790 P.2d 1352 (Alaska 1990).

Sec. 25.27.160. Initiation of administrative action to establish support duty; required notice. (a) An action to establish a duty of support authorized under AS 25.27.140(a) is initiated by the agency serving on the alleged obligor a notice and finding of financial responsibility. The notice and finding served under this subsection shall be served personally or by registered, certified, or insured mail, return receipt requested, for restricted delivery only to the person to whom the notice and finding is directed or to the person authorized under federal regulation to receive that person's restricted delivery mail.

(b) The notice and finding of financial responsibility served under (a) of this section must state

(1) the sum or periodic payments for which the alleged obligor is found to be responsible, calculated by taking into consideration the need of the alleged obligee, the alleged obligor's liability to the state under AS 25.27.130 if any, and the duty of support under the law;

(2) the name of the alleged obligee and the obligee's custodian;

(3) that the alleged obligor may appear and show cause in a hearing held by the agency why the finding is incorrect, should not be finally ordered, and should be modified or rescinded, because

(A) no duty of support is owed; or

(B) the amount of support found to be owed is incorrect;

(4) that if the person served with the notice and finding of financial responsibility does not request a hearing within 30 days, the property of the person will be subject to execution in accordance with AS 25.27.230 — 25.27.270 in the amounts stated in the finding without further notice or hearing. (§ 29 ch 126 SLA 1977)

Revisor's notes. — Formerly AS 47.23.160. Renumbered in 1990.

Sec. 25.27.170. Hearings in administrative action to establish support duty. (a) A person served with a notice and finding of financial responsibility is entitled to a hearing if a request in writing for a hearing is served on the agency by registered mail, return receipt requested, within 30 days of the date of service of the notice of financial responsibility.

(b) If a request under (a) of this section is made, the execution under AS 25.27.230 — 25.27.270 shall be stayed pending the decision on the hearing, or the decision of a court, if appealed. If no request for a hearing is made, the finding of responsibility is final at the expiration of the 30-day period.

(c) If a hearing is requested, it shall be held within 30 days of the date of service of the request for hearing on the agency.

(d) The hearing officer shall determine the amount of periodic payments necessary to satisfy the past, present, and future liability of the alleged obligor under AS 25.27.130, if any, and under any duty of support imposable under the law. The amount of periodic payments determined under this subsection is not limited by the amount of any public assistance payment made to or for the benefit of the child.

(e) The hearing officer shall consider the following in making a determination under (d) of this section:

(1) the needs of the alleged obligee, disregarding the income or assets of the custodian of the alleged obligee;

(2) the amount of the alleged obligor's liability to the state under AS 25.27.120 if any;

(3) the intent of the legislature that children be supported as much as possible by their natural parents;

Revisor's notes. — Formerly AS 47.23.226. Renumbered in 1990.

Sec. 25.27.227. Nature of remedies. AS 25.27.225 and 25.27.226 provide remedies in addition to and not as a substitute for any other remedies available to the parties. (§ 9 ch 144 SLA 1984)

Revisor's notes. — Formerly AS 47.23.227. Renumbered in 1990.

Sec. 25.27.228. Court costs. The court may order an obligor to pay all court costs involved in a proceeding resulting in a court order described in AS 25.27.225, and in a proceeding under AS 25.27.226. (§ 9 ch 144 SLA 1984)

Revisor's notes. — Formerly AS 47.23.228. Renumbered in 1990.

Sec. 25.27.230. Assertion and recording of lien. (a) After the expiration of 30 days from either (1) the date of service of notice under AS 25.27.150, or (2) the date of service of a notice and finding of financial responsibility under AS 25.27.160, the agency may assert a lien upon the real or personal property of the obligor, in the amount of the obligor's liability.

(b) A lien recorded under this section has no effect against earnings, or bank deposits or balances, unless it states the amount of the obligor's liability under this chapter and unless the lien is served in accordance with AS 25.27.240.

(c) The lien shall attach to all real and personal property of the obligor and be effective on the date of recording of the lien with the recorder of the recording district in which the property attached is located. A lien against earnings shall attach and be effective upon filing with the recorder of the recording district in which the employer does business or maintains an office or agent for the purpose of doing business.

(d) Whenever a lien has been recorded under this section and there is in the possession of any person, political subdivision, or department of the state having actual notice of the lien any property that may be subject to the lien, that property may not be paid over, released, sold, transferred, encumbered, or conveyed unless

(1) a written release or waiver signed by a representative of the agency has been delivered to the person, political subdivision, or department of the state; or

(2) a decision has been made in a hearing held under AS 25.27.170 or by a superior court ordering release of the lien on the grounds that no debt exists or that the debt has been satisfied. (§ 29 ch 126 SLA 1977)

(b) An order to withhold and deliver issued to the Department of Revenue remains in effect throughout the calendar year in which it is served. That order applies to any tax refund or other disbursements to which the obligor is entitled even if the tax refund or disbursement is issued more than 30 days after service of the order. (§ 9 ch 96 SLA 1981)

Revisor's notes. — Formerly AS 47.23.253. Renumbered in 1990.

Sec. 25.27.255. Disposition of payments under income withholding orders; enforcement, modification, and termination of orders. (a) The agency shall pay to the obligee all money recovered by the agency from the obligor under an income withholding order except for court costs and money assigned to the agency under AS 25.27.120 — 25.27.150.

(b) Notwithstanding AS 25.27.250, an income withholding order contained in a decision of the agency that has not been set aside by the superior court under AS 25.27.220 shall be enforced under the procedure established in AS 25.27.062.

(c) An obligor may petition the agency to terminate or modify an income withholding order if the obligor has made payments under the order for at least 12 months and all arrearages have been paid. Upon receipt of the petition under this subsection, the agency may terminate or modify the income withholding order unless the agency finds good cause to deny the petition due to the obligor's payment history or other grounds. The agency may not terminate or modify an income withholding order solely on the ground that the obligor has paid all arrearages. The agency shall notify the obligor in writing of the reason for denying a petition under this subsection. (§ 9 ch 96 SLA 1981; am § 13 ch 40 SLA 1985; am § 17 ch 68 SLA 1988)

Revisor's notes. — Formerly AS 47.23.255. Renumbered in 1990.

Effect of amendments. — The 1988 amendment added subsection (c).

Sec. 25.27.260. Civil liability upon failure to comply with an order or lien. If any person, political subdivision, or department of the state (1) fails to make an answer to an order to withhold and deliver within the time prescribed in AS 25.27.250; (2) fails or refuses to deliver property in accordance with an order issued under AS 25.27.250; (3) pays over, releases, sells, transfers, or conveys real property subject to a lien recorded under AS 25.27.230 to or for the benefit of the obligor or any other person; (4) fails or refuses to surrender upon demand property attached; (5) fails or refuses to honor an assignment of wages or an income withholding order under AS 25.27.062 presented by the agency, the person, political subdivision, or department of the state is liable to the agency in an amount equal to 100

SB 190

MAR 07 199

SENATOR SUZANNE LITTLE

ALASKA STATE LEGISLATURE

Memorandum

To: Senator Drue Pearce

From: Senator Suzanne Little

Date: March 4, 1994

Re: SB 190 "An act relating to income withholding and other methods of enforcement for child support"

SB 190 is in the Senate Finance Committee waiting for a hearing. I would like to ask you to propose an amendment to this bill:

> Page 8, Line 24: after 25.27.255(c) INSERT and secs. 2 and 5, ch. 75, SLA 1991

This wording was removed in the Judiciary Committee over my objections. Inserting this language back into SB 190 will continue a project instituted in 1993, the Employer Reporting Project, which required employers with over 20 employees to report any new or rehired employees to Child Support Enforcement Division (CSED) on a monthly basis. CSED has been doing this since May 1991, however this project will sunset on January 1, 1995. Please consider proposing this amendment to require the agency to continue these reports permanently.

The Alaska Employer Reporting Project was successful in increasing collections overall by 12%. It was successful in locating non-custodial parents for service of administrative orders and paternity complaints. With the continuance of this project to include more employers, the cost effectiveness should increase.

January-June: STATE CAPITOL / JUNEAU, AK 99801-1182 / (907) 465-2828 / Fax: (907) 465-4779
June-December: 34824 KALIFORNSKY BEACH ROAD, SOLDOTNA, AK 99669 / (907) 262-9420 / FAX (907) 262-1881
Seldovia • Homer • Anchor Point • Clam Gulch • Nikiltchik • Kasilof • Soldotna • Sterling • Cooper Landing • Moose Pass • Seward

Facts about the Alaska Employer Reporting Project

- The initial Alaska Employer Reporting Project targeted employers who historically hire large percentages of child support obligors. From 1991 to present, the Alaska Employer Reporting Project was limited to the top 30 employers in the state.
- 12% of all child support collections from May 1991-to present were a result of this previous statute.
- The Alaska Employer Reporting Project is supported by affected employers.
- The Alaska Employer Reporting Project reduced public assistance payments from October 1991 to present.
- The Alaska Employer Reporting Project increased by 88% the number of paternity complaints served and a 7% increase in the number of administrative orders served.
- Over 90% of employers in Alaska employ fewer than 20 workers are exempt from this bill.
- During the oil spill, VECO supplied information voluntarily which enabled the state to collect an additional half million dollars in delinquent child support.

Source: Child Support Enforcement Division

STATE OF ALASKA

DEPARTMENT OF REVENUE

CHILD SUPPORT ENFORCEMENT DIVISION

WALTER J. HICKEL, GOVERNOR

550 WEST 7TH, 4TH FLOOR
ANCHORAGE, AK 99501-3556
PHONE: (907) 276-3441
TOLL FREE ALASKA: 800-478-3300
CASEWORKER FAX: (907) 263-6203
ADMINISTRATION FAX: (907) 263-6263

March 7, 1994

The Honorable Fran Ulmer
Room 601 Court
State Capitol
Juneau, AK 99801-1182

Dear Representative Ulmer:

Enclosed is a copy of the Second Year Evaluation of the Employer Reporting Project for the Child Support Enforcement Division. Also provided is a brief synopsis of the key areas for your information.

Thank you in advance for your continued support of the Child Support Enforcement Program. If you or your staff have questions concerning this project you can contact Vickie Mitchell the Project Manager at 263-6337 or myself at 263-6279.

Sincerely,

Mary Gay
Director

JUNEAU FIELD OFFICE *1111 W. 8TH STREET, ROOM 106*
PHONE: (907) 465-3327 *JUNEAU, ALASKA 99811-0100*

FAIRBANKS FIELD OFFICE *675 7TH AVENUE, STATION G*
PHONE: (907) 451-2830 *FAIRBANKS, ALASKA 99701*

EMPLOYER REPORTING PROJECT STATUS AFTER THE FIRST TWO YEARS

The Alaska Legislature amended child support laws in the 1991 Legislative Session, to allow the Child Support Enforcement Division to require selected employers, with 20 or more employees, to report all new hires and rehires to the Alaska Child Support Enforcement Division within 30 days. Alaska was subsequently awarded a three year Employer Reporting Project demonstration grant which began in October of 1991. Alaska is in the third year of this three year demonstration grant.

The first year of the project targeted reporting from employers who reported 50 or more "obligor employees" during the proceeding three years. There was a 35% increase in collections from the prior year which were attributed to the Employer Reporting Project.

The second year of the project extended the target group to seasonal employers. Seasonally employed obligors were often missed due to the delay of information reported to the Department of Labor. There was a 35% increase in the number of obligors found among the seasonal workers and a 27% increase in collections from the prior year were attributed to the Employer Reporting Project.

In the third year of the project employers will be selected by industry type.

The Employer Reporting Project clearly demonstrats that the prompt identification of newly hired or rehired employees enables Alaska Child Support Enforcement Division to initiate withholding sooner with resulting increased collections. The early reporting of information also assisted in the location of alleged fathers thereby expediting the establishment of paternity and support orders.

Contact Vickie Mitchell, Interstate Manager, at 907-269-6900 please leave a message and she will return your call..

AER

ALASKA EDUCATIONAL RESOURCES

EMPLOYER REPORTING PROJECT EVALUATION
(Second Year)

PREPARED FOR

CHILD SUPPORT ENFORCEMENT DIVISION
550 W. 7TH AVENUE, SUITE 310
ANCHORAGE, AK 99501-3556

2/14/94

Prepared by
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ACKNOWLEDGEMENTS

This evaluation could not have been completed without the assistance of Alaska Child Support Enforcement Division Staff who worked closely with the evaluation team in the definition of the task, location and development of critical data, selection of comparison groups, and preparation of needed reports.

Vickie Mitchell was responsible for the overall project. She freely provided her time and expertise in helping the evaluation team to understand the functioning of CSED data systems, explaining the coding and processing of information, facilitating the collection of information, and serving as a liaison with other CSED staff.

The data processing staff played a special role in the completion of the evaluation. Susan Goodman participated in planning and problem solving meetings. Merrill Hagens developed and refined the reports on which the evaluation rests. Ms. Hagens freely shared her programming expertise, was unflagging in her assistance in providing useful reports, and was able to quickly resolve data related problems.

EXECUTIVE SUMMARY

The Alaska Child Support Enforcement Division of the Alaska Department of Revenue has successfully established a direct employer reporting program to aid in the identification of individuals who owe child support and to speed up the process of making collections. The second year of the federally funded pilot project has extended the program to include employers which have large numbers of known obligors, brought on during the first year, and those employing seasonal workers.

There were substantial increases in the number and amount of collections from project obligors. The goal of a 25% increase in collections was more than achieved with an actual increase of 27%. The percent of payments relative to obligations reached 77% for the original employers group and 81% for the seasonal employers.

There was a substantial increase in the dollar amount of child support orders with the average obligation for employees of firms participating in the program increasing by 12% ($3,094 to $3,472). This did not quite meet the program goal of a 15% increase.

There was a more than 500% increase in the number of withhold and distribute orders in the second year of the program with the most notable increase in successful locates being found in the newly added seasonal group. The number who were successfully located increased from 4 in the pre-project year to 362 in the first year of reporting for seasonal obligors.

There was a ten fold increase in the number of modifications from 6 to 61 which went far beyond the 12% called for in the proposal.

The cost effectiveness ratio surpassed the target of 1:3 with approximately $3.09 collected for each dollar spent on the program. The total collection which might be attributed to the program based on an increase of 2.3 payments per obligor is $621,690.

The employer reporting system has proved successful in meeting the program goals of implementing a direct employer reporting system which speeds up the location of obligors and increases the number of payments made for child support.

The Child Enforcement Support Division made a substantial effort to increase collections and the number of reviews and modifications for all obligors. This overall activity of CSED resulted in the employer reporting groups and the comparison groups to achieve statistically significant gains. While the employer reporting groups consistently have the highest obligations and percentage of collections, the comparison groups made notable gains and, perhaps because of the nature of the jobs and employers, have higher average payments. This suggests that the expansion of the employer reporting system to include additional employers will result in even greater gains in collections in year three of the program.

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INTRODUCTION

Child support enforcement is always difficult. Agencies must locate and attach the income of absent parents who often do not willingly pay for the support of their children. In 1990, only 38% of monthly scheduled obligations were collected and only 33% of those payments were made voluntarily. Alaskan children are due more than 30 million dollars in support.[1]

Another continuing problem directly related to the support of children is establishing paternity. As many as 20% of the children born in the United States are born to single mothers. From 50-80% of children in the households receiving AFDC are born to unmarried parents. A key element in the collection of child support for the children of unmarried mothers is the identification and location of the absent father.[2]

Prior to the development of the Employer Reporting Project, the Child Support Enforcement Division (CSED) matched records of obligors against Alaska Department of Labor, Employment Security Division quarterly reports. The time from the employment of an obligor to the successful match of CSED files against the DOL files could take as long as five months. The five month lag made for a substantial delay in the collection of child support from some obligors and permitted other obligors who work in the highly seasonal Alaskan economy to completely avoid payments.

The Alaska Legislature recognized the problems related to the collection of child support and revised the laws in 1991 to speed up the process of obligor identification and collection. Beginning January 1, 1992, employers with 20 or more employees were required upon notification to provide information concerning new hires and rehires on a monthly basis directly to the Alaska Department of Revenue Child Support Enforcement Division.[3]

The employer reporting law is a "pilot project" with an expiration date of January 1, 1995. If the direct reporting of employers provides the benefit of increased child support without undue hardship to employers, it is expected that permanent legislation will be passed which will make direct employer reporting a continuing feature of child support enforcement.

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[1]Glenda Straube, Employer Reporting Project: First Year Evaluation - Alaska's Improvement Demonstration Grant. Child Support enforcement, Department of Revenue, State of Alaska, Juneau, AK, December, 1992.

[2]Child Support Technology Transfer Project, A Guide to Initiating A Paternity Consent Process, Office of Child support enforcement, 1989, p. 5.

[3]1991 Session Laws of Alaska, CSHB43(FIN)am Chapter 75.

The Alaska Child Support Enforcement Division found funding for a three year direct employer reporting demonstration project from the United States Department of Health and Human Services Administration for Children. The CSED proposal called for the implementation of the Alaska Employer Reporting Project over three years.

- Year 1- establish the employer reporting project with employers who have historically hired large percentages of obligors.
- Year 2 - extend the employer reporting system to collections from seasonal workers who would have otherwise been missed entirely (fishing, tourism, construction).
- Year 3 - emphasize increased collections from employers in specified industries (SIC codes).

The same four hypotheses were set out for the three periods, changing only the groups of obligors identified for emphasis and analysis.[1] The hypotheses set out in the grant application are:

1. Collections will significantly increase from obligors who work for employers in the target, or experimental, groups.
2. Obligors in the target groups will be identified and served in a shorter period of time for purposes of paternity and order establishments.
3. There will be a greater proportion of child support modifications in AFDC cases in the target group than in the control group.
4. Modifications in the target group will generate an increase in monthly child support due.

The performance standards set out in the grant are ambitious and reflect high expectations about the effects of the project. These goals set out in the grant are a clear guide for use in judging the success of the project. It is expected that:

1. For purposes of total collections, the project will be considered successful if there is a 25% increase in the amount of collections from the targeted group.
2. The project will be considered successful if the cost/effectiveness ratio of collections for the target groups meets or exceeds $3.00.

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[1] Glenda Straube, Employer Reporting Project: First Year Evaluation - Alaska's Improvement Demonstration Grant. Child Support enforcement. Department of Revenue. State of Alaska. Juneau. AK. December, 1992.

3. The project will be considered successful if there is a 12% increase in the successful locations of absent parents for paternity and order establishments.

4. The project will be considered successful if there is a 12% increase in the number of modifications and a 15% increase in the dollar amount of child support orders in the target group.

The CSED developed a series of procedures for direct reporting. Employers are encouraged to file reports on magnetic tape, computer disk, or paper reports. CSED staff met with employers and provided information to employers to assist in developing reporting procedures.

PARTICIPATING EMPLOYERS

Employers were selected for participation by the CSED, following the pattern proposed in the grant, with a first year emphasis on the employers with the largest numbers of obligors and second year expansion to employers with seasonal workforces. Companies were chosen from an Alaska Department of Labor report which identified the largest 100 employers in the state based on CSED experience with the employment patterns of obligors. Table 1 lists the participating employers and the number of obligors identified for each employer during the second year of the evaluation.

Employers in the first year included some of the largest retail and service companies in the state. Second year employers tended to be much more seasonal and include a number of businesses related to tourism, fishing, logging, and other summer activities. A few of the employers had no obligors during the second year of the project.

Table 1

Participating Employers - Year Two Obligors

Target Group 1 Employers	N	Target Group 2 Employers	N
S.E. Stevedoring Corp	71	Klukwan Forest Products	7
State of AK - Dept. of Administration	128	Anchorage Cold Storage	1
McDonalds	42	Taku Smokeries	2
Northwest Arctic Borough School. District	45	J.C. Penney Co.	8
West Coast Stevedoring Corp	2	Phoenix Logging	1
H.C. Price Cons. Co.	8	Tundra Tours	9
H.C. Price Co.	24	Icicle Seafoods	6
University of Alaska	39	Maniilaq Association	10
AK Pulp Corporation	20	Cominco Alaska	2
Carr Gottstein Foods Co.	52	Unalakleet Native Corp.	2
KTN Pulp Mill	9	Norton Sound Health Corp.	4
VRCA Environmental Services	18	Cook Inlet Processing Inc.	28
Houston Contracting Co - AK Ltd.	37	ERA Aviation	3
Osborne Consol Co. , Osborne Const.	18	Inlet Fisheries Inc	10
VECO Inc	40	Sheraton Anchorage Hotel	4
Burger King	17	Peak Oilfield Svc. Co.	16
Tesoro Northshore Co.	27	Nabors Alaska Drilling Inc.	6
North Slope Borough School Dist.	4	Beaver Village Council	1
Natchiq Inc.	4	Anchorage Westward Hilton Corp.	2
North Slope Borough	9	Trident Seafoods Corp.	6
AK Petroleum Contractors	56	Alaska Commercial Company	7
NANA Marriott Joint Venture	15	Fred Meyer Shopping Centers	8
Westmark Hotels	5	Denali Commercial Mgmt. Co.	1
Pizza Hut	20	Hoovers Movers Inc.	1
Arco AK Inc.	3	Yukon Kuskokwim Health Svc. Co.	8
CONAM Const.	3	Hickel Investment	1
Anchorage School District.	40	SE AK Regional Health Corp.	1
NW. Restaurants - Burger King	2	Sea Land Freight Svc.	2
Tesoro Petroleum Corp.	4	Sea Alaska Heritage Foundation	1
Carr Gottstein Properties	1	Anchorage Daily News	2
Dragnet Fisheries Co.	3	Denali Foods Co.	8
Captain Cook Hotel	5	Tlingit & Haida Community Council	1

table cont

Participating Employers cont

Target Group 1 Employers	N	Target Group 2 Employers	N
Municipality of Anchorage	12	Port Graham village Council	1
Seahawk Seafoods Inc.	4	Lamonts Inc.	2
ABM Company of the West	24	Safeway Inc.	1
United Healthservices Inc.	3	Market Basket Inc.	4
Tesoro Northstore Co.	4	PACE Membership Warehouse	3
Fairbanks Memorial Hospital	4	U.I.C. Construction Inc.	1
Call Earl #1 Chevron	4	United Parcel Svc. Inc.	2
Delta Western	1	ARA Services	4
GE Operations Support	3	Campbell Inc.	1
Maniliaq Manpower	1	Woolworth Corp.	4
CONAM Alaska	1	Southeast Ak Regional Health Corp	2
Carr Gottstein Inc.	1	Peter Pan - King Cove	3
		Alaska Sales and Service	3
		Ribelin Lowell & Co.	1
		Klondike Painting and Decorating	1
		Sound Development	1
		North Pacific Processors	3
		Hope Cottages	0
		U-Haul of Alaska	3
		City of Kwethluk	1
		Tommys Inc.	2
		Spenard Builders Supply	3
		Costco Wholesale Corp.	2
		Earth Movers of Fairbanks	1
		ENSTAR Natural Gas Co.	1
		Markair Express Co.	1
		AK Specialized Ed. & Training	1
		Golden Frontier Enterprises	1
		Alaska Airlines	0
		Forty Niner Transportation Inc.	1
		AK Aviation Radio	1
		E.&S. Diversified Svcs	2
		Payless Drug Stores	1
		Markair	4
		Sears Roebuck and Co	2
		1st National Bank of Anchorage	1
		Alaska USA Federal Credit Union	0

The evaluation for the first year (9 months) of the project found a 37% increase in collections from obligors, a cost effectiveness ratio of 2:1, and a 47% increase in the service of paternity and order establishments. The report failed to provide tests of significant differences for gains and did not address the increase in the percentage of modifications or the increase in dollar amount of support orders.

The second year evaluation extends the first year evaluation to cover the period 10/1/92 to 9/30/93. It examines the major questions identified in the grant proposal and extends the analysis to include statistical testing for the significance of differences.

METHODOLOGY

Alaska Educational Resources developed a research design based on the information provided by CSED, the data available from CSED data files, and the requirements of the grant. Target groups of first and second year participants and comparison groups were identified based on a uniform set of criteria. The criteria included the following:

- Each case must be an active case during the critical time periods.
- Each case must contain complete data.
- Each case must clearly fall into only one of the identified groups.

COMPARISON GROUPS

GROUPS	PRE	POST
TARGET #1 Obligors Represented by Employers with Large # Matches	1/1/91 - 9/30/91[0] 10/1/9. - 9/30/92[1]	1/1/92 - 9/30/92[1] 10/1/92 - 9/30/93[2]
TARGET #2 Obligors Represented by Seasonal Employers	10/1/91 - 9/30/92[0]	10/1/92 - 9/30/93[1]
COMPARISON Obligors Represented by Employers Not Reporting[a]	1/1/91 - 9/30/91 10/1/91 - 9/30/92	1/1/92 - 9/30/92 10/1/92 - 9/30/93

[0] This period represents the time when employer reporting was not in effect.
[1] This time frame represents the first period employer reporting was in effect.
[2] This time frame represents the second period employer reporting was in effect.
[a] Two comparison groups were pulled for the '92-'93 period to match the size of each target group. The larger one is about 3 times the size of the smaller.

Target and comparison groups were selected by CSED. The two target groups, first year companies and second year companies, were reviewed by Alaska Educational Resources. Cases excluded from the analysis included those with errors in data entry, coding problems, or missing transaction dates. Altogether, 80 of a potential 1,173 cases were excluded resulting in an exclusion rate of 6.8%.

CSED developed a series of reports which calculated the number of participants in various groups, averages of various amounts, actions with related time periods, and the standard deviations related to various averages. Alaska Educational Resources verified the calculations by independently calculating statistics from samples of data. Costs attributed to the employer reporting system, which included amortized costs of equipment and excluded the costs of evaluation, were provided by Vickie Mitchell of CSED.

Where appropriate, mean differences from pre- and post-periods and between target and comparison groups were tested using t-tests for repeated measures.[1] Computations were done using Excel 4.0 on a Macintosh computer. Statistics were then compared with a standard table to determine if the critical values required for statistical significance had been attained.[2]

RESULTS

Results, which follow, are presented as answers to a series of questions derived from the hypotheses and performance standards articulated in the CSED grant proposal. The emphasis in the analysis is on the growth from pre- to post-reporting periods and cost. Means for obligations and payments were statistically compared from pre- to post-periods and between Target and Comparison groups. Pre- and Post-test differences reported below are substantial and statistically significant. Worksheets showing the means, differences, t-test values, degrees of freedom, and levels of significance are attached in Appendix A.[3]

Did the program speed up the process of locating obligors and issuing orders?

The most direct measure of the effect of the process is the number of days between the date that an obligor is hired and the service of a withhold and deliver order. The fewer the days, the higher the number of potential payments and the more likely that a seasonally employed obligor will be located in time to make some collection. Similarly, the shorter the time, the more likely that an individual will be identified for the service of other potential orders.

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[1] Formulae for mean comparisons for averages and differences were derived from William L. Hays, Statistics for the Social Sciences, 2nd. NY: Holt, Rinehart and Winston, 1973. Formulae for calculating the degrees of freedom for testing the significance of differences between group differences were derived from Jay Devore, Probability and Statistics for Engineering Science, 2nd., Pacific Grove CA: Brooks Grove Publishers, 1991.

[2] E.S. Pearson and H.O. Hartley (eds.), The Biometrica Tables for Statisticians, vol. 1, *Biometrica*, 1966.

[3] Standard deviations are large because of distributions which reflect the differences between groups of obligors who make few payments and those who make regular payments. The data does not appear to have a normal distribution.

When the differences between the pre- and post-periods for the two selected target groups are considered, it is clear that the program is effective in shortening the time for service of withhold and delivers orders.

Table 2
Pre-Post Comparison of Orders - All Groups
Number of Orders and Average Number of Days

	Pre- Period						Post- Period					
	WID		Paternity		Admin		WID		Paternity		Admin	
	N	Days	N	Days	N	Days	N	Days	N	Days	N	Days
All	241	22	57	32	79	31	1,463	9	61	64	66	43
T-1	228	22	44	32	55	30	911	7	41	69	38	51
C-1	625	19	41	14	51	37	703	22	23	18	53	30
T-2	4	5	9	18	19	38	362	9	10	72	16	27
C-2	154	12	4	22	11	26	208	11	16	46	24	33

All = All obligors with employer reporting/ T-1 = First Year Emp./T-2 = Seasonal
C-1 & C-2 = Related comparison groups

Overall, there is a substantial decrease in the time for a withhold and deliver order to be issued with a 9 day average in the post-reporting period and a 22 day average in the pre-reporting period. That is an overall gain of 13 days or approximately 60%.

When the original first year employer and seasonal employer groups are examined separately it appears that the 15 day gain made by the original group is greater than the 4 day gain for the seasonal groups. However, only 4 of the 362 seasonal obligors served in the second period had actually been found during the first period.

This increase from 4 to 362 obligors found in the seasonal group compares with an increase from 154 to 208 found in the control group, a 35% increase. <u>This phenomenal increase in the number of obligors found among the seasonal workers may be the most significant result of the second year of the program.</u>

The gain found in the number and the speed of issuance of withhold and deliver orders was not matched by increases in the issuance of other types of orders. The time for issuance of paternity orders increased from 32 to 64 days. The time lag for Administrative orders grew from 31 to 43 days. Of course, the issuance of Paternity and Administrative Orders are subject to a variety factors beyond those related to withhold and deliver orders and are less directly related to the identification of the initial place of employment.

Did the employer reporting system increase the amount collected?

The overall collections from 1173 individuals participating in employer reporting were $3,145,239. This was an increase of $667,173 or 27%. Part of this increase is due to administrative orders increasing some obligations to reflect increases in the rate of inflation. There was also an increase in the number of case reviews and administrative orders for all groups in 1993 over 1992 which is reflected in the substantial increases in the collections for both the target and comparison groups.

Tables 3, 4, and 5 provide a breakdown of the average collections by obligor for both of the Target groups. The first table reflects the pre- and post-periods for the first year (9 months) for Target Group 1. The two tables that follow indicate changes in collections for the current year. The substantial increases in percentages of collections reflect the overall increase in the efforts of CSED to review all cases and to increase collections.

Table 3

Pre-Post Change in Collections - Target Group 1
Average Total Collections per Obligor
1/1/91 through 9/30/91; 1/1/92 through 9/30/92

	Pre- Period	Post- Period	
	Collected	Collected	**Change**

Target Group 1 - Large # Matches
N = 308
	$ 1,374	$ 1,693	+ 23%

Comparison Group 1 N = 322	$ 1,045	$ 1,479	+ 42%

Table 4

Pre-Post Change in Collections - Target Group 1
Average Total Collections per Obligor
10/1/91 through 9/30/92; 10/1/92 through 9/30/93

	Pre- Period	Post- Period	
	Collected	Collected	**Change**

Target Group 1 - Large # Matches[1]
N = 839
	$2,301	$2,808	+22%

Comparison Group 1 N = 859	$1,763	$2,492	+41%

[1]This is the second year of participation in employer reporting for this group.

Table 5
Pre-Post Change in Collections- Target Group 2
Average Total Collections per Obligor
10/1/91 through 9/30/92; 10/1/92 through 9/30/93

	Pre-Period Collected	Post-Period Collected	Change
Target Group 2 - Seasonal N = 258	$ 1,884	$ 2,524	+ 34%
Comparison Group 2 N = 267	$ 1,731	$ 2,348	+ 36%

Examination of the tables shows that consistently higher amounts were collected from employer reporting groups. There were substantial, statistically significant[1] gains in the amounts collected for both the target and comparison groups.

Table 6 shows that employees who were under employer reporting tended to make more payments with a lower average payment than for the obligors indicated in the comparison groups. Target Group 1 obligors made an average of 12.5 payments of $225 dollars while the members of the comparison group made only 9.8 payments of $254. Obligors with the seasonal employers identified as Target 2, made an average of 10.2 payments of $252 while comparison group 2 made on average 8.6 payments of $274.07. The difference in payment amounts, of course, is related to both the amount of obligation and the wages available for collection. No effort was made to examine the average wages paid by the various companies though examination of the companies suggests that a large number of the institutions identified in the first year are engaged in retail trade or service industries where wages tend to be lower.

Table 6
Collections and Obligations - All Groups
Averages per Obligor

	Average # Payments	Average Obligation	Average Amount Paid Per Obligor	Average Payment	Percent of Oblig. Paid
Target Group 1 - Large # Matches	12.48	$3,662.41	$2807.89	$224.96	76%
Comparison 1	9.8	$3,629.29	$2,492.13	$253.61	69%
Target Group 2 - Seasonal	10.02	$3,122.48	$2,523.88	$251.71	82%
Comparison 2	8.56	$3,530.97	$2,347.50	$274.07	66%

[1] See Appendis A for summary of statistical comparisons.

Comparison of the mean differences in payments shows that for both the Target 1 and Target 2 groups the increase in total paid obligations was statistically significant from the pre to post-periods. The average increase for the employee in the Target 1 group for the second year of group reporting was $507 ($p < .01$, $t = 3.62$, $df = 838$). The average increase for the employee in the Target 2, Seasonal group for the first year of employer reporting over the prior year was $639 ($P < .05$, $t = 2.64$, $df = 259$).

When the gains are examined as a percentage of the obligation, it is clear that the employer reporting system is having an effect. The Target Group 1 obligors in the employer reporting system are paying 77% of their annual obligation as opposed to those in the comparison group who are paying only 69%. For the seasonal group, the employer reporting group are paying an average of 81% of their obligations while those in the comparison group only paid 66%

It is likely that one of the primary reasons for the increase in the percentage of payments relative to obligation is due to the increased average number of payments for the employer reporting groups. The 2.7 additional payments generated for the employers with large numbers of obligors would translate into an average increase in payments of $602.89 or approximately 16% of the total obligation. For the seasonal worker group, the average of 1.46 additional payments would result in an increase of $367.49 or approximately 12% of the total obligation.

Increased payments are a means of reducing the gap which exists between payments and obligations. When examined as the difference in the ratio between payments and obligations over the two years, the percentages of gap reduction are notable and reflects the increases in percentage of obligation paid for both the employer reporting and the comparison groups. The Target Group 1, is, of course, in the second year of the employer reporting project and had notable increases in the amount of obligations and amount paid during the prior year. As a result Group 1 has a smaller gap to close.

Table 7
Payment to Obligation Gap Reduction - All Groups
Averages per Obligor

	Pre- Period		Post- Period			
	Pd/Oblig	% Paid	Pd/Oblig	% Paid	Pd/ Oblig Change	Gap Reduction
Target Group 1 - Large # Matches	$2,301/3,346	69%	$2,808/3,662	77%	+8%	12%
Comparison 1	$1,763/3,045	58%	$2,492/3,629	69%	+11%	19%
Target Group 2 - Seasonal	$1,884/2,861	66%	$2,524/3,122	81%	+15%	23%
Comparison 2	$1,731/2,965	59%	$2,348/3,531	67%	+8%	14%

While there were significant increases in the amount of collections for both target and comparison groups, the gains made by the employer reporting group had a greater impact on the reduction of the total percentage of obligation than the increases in collections for the comparison groups.

Did employer reporting result in an increase in successful locations for order establishments?

There are a variety of types of orders issued by CSED related to the establishment of obligations beyond the basic Withhold and Deliver Orders, which have been discussed extensively in a prior section. Other common orders relate to establishing paternity or the amount to be withheld and delivered by an employer. Table 2 above provides an overall view of the changes in orders between the pre- and post-comparison periods. The increase in Withhold and Deliver Orders from 241 to 1,463 reflects an increase of over 500% in successful services.

When the groups in employer reporting are contrasted with their comparison groups, the comparable gains are from 625 to 703 (12%) for Comparison Group 1 and 154 to 208 (35%) for comparison group 2. The increase for the Target Group 1 from 228 to 911, approximately 300%, suggests that the substantial gains experienced with a group of employers will continue as the project matures.

Table 8 indicates that the number of successful services for Paternity Complaints and Administrative Orders were not substantially different from period 1 to period 2 for those under employer reporting. Table 2 above shows similar small differences for the target and comparison groups.

Table 8

Pre-Post Comparison of Orders - All Obligors Under Employer Reporting
Number of Orders and Average Number of Days

	Pre-Period		Post-Period		
Order	Number of Services	Average Number of Days	Number of Services	Average Number of Days	**Change in Service Days**
Withhold and Deliver (WID)	241	22	1,463	9	-13
Paternity Complaint	57	32	61	64	+32
Admin	79	31	66	43	+12

Did employer reporting result in an increased number in modifications?

Modifications of cases take place for a number of reasons. Common reasons include administrative orders which result from changes in the status of the obligor and court orders. Modifications have not been tracked on a regular basis and were not included in the first year evaluation report because of incomplete data. This year, a special series of reports were prepared by CSED which include the information on the review and modification of cases. Some of this information may still be incomplete for some obligors but care is now being taken to include data on modifications. This should result in a further improvement in the information for the third year evaluation. While information on modifications is included here, it should be treated with caution.

Modifications may take more than a year to process and, with the increased emphasis on the review and potential modification of all CSED cases, large differences may be expected for both the target and the comparison groups. While the overall number of modifications is small for both the target and comparison groups, the increase in the number of modifications over the past two periods has been substantial. It is notable that there are greater increases in actual modifications for the target groups than for the comparison groups.

Table 9
Modification Summary - Target Group 1

	Pre- Period	Post- Period	
	N	N	% Change
Review Requests			
- Target	98	135	38%
- Comparison	114	154	35%
Review Completed			
- Target	7	37	429%
- Comparison	5	37	640%
Modifications			
- Target	4	40	900%
- Comparison	3	25	733%

Table 10
Modification Summary - Target Group 2

	Pre- Period	Post- Period	
	N	N	% Change
Review Requests			
- Target	23	53	130%
- Comparison	25	41	69%
Review Completed			
- Target	2	11	450%
- Comparison	4	9	125%
Modifications			
- Target	0	8	
- Comparison	3	4	33%

What are the effects of employer reporting by age group?

Employer reporting should impact all obligors because of the increase in the number of potential collections. A differential effect on collections by age group should be expected because of the traditional higher job turnover and seasonal employment of younger workers. However, this may have less of an effect in Alaska where all employers react to some extent to seasonal changes.

Table 11 shows that there has been a substantial increase in the percent of average obligation paid for all of the individuals participating in employer reporting as well as increases in the amount of obligations, 9%. While the average percent of obligation paid did increase from 11% to 24% for the youngest category reported, the small number in the group minimizes the impact. It is notable that a number of older obligors, those with higher obligations and collections, have percentages paid of over 100% showing that they are now paying down their arrears.

Table 11
Pre -Post Collections by Age- All Obligors Under Employer Reporting
Average Collections per Obligor

		Pre- Period			Post- Period			
Age	N	Average Due per Obligor	Average Total Collected per Obligor	% Paid	Average Due per Obligor	Average Total Collected per Obligor	% Paid	% Change
< 21	16	$ 939	$ 106	11%	$2,925	$ 697	24%	+13%
22 - 30	252	$2,725	$ 995	37%	$3,536	$1,696	48%	+11%
31 - 40	546	$3,415	$2,134	62%	$3,711	$2,689	72%	+10%
41 - 50	307	$3,023	$3,010	100%	$3,196	$3,546	111%	+11%
> 51	39	$2,724	$3,327	122%	$2,593	$3,559	137%	+15%
Unkn	13	$2,279	$ 513	23%	$2,165	$ 841	39%	+16%
Total	1173	$3,095	$2,113	68%	$3,472	$2,681	77%	+9%

% change ≥ 100 indicates arrears were collected

What are the effects of employer reporting by area of Alaska and location of the obligation?

Alaska is a large and diverse state with a small population spread over the area equal to approximately a third of the contiguous United States, the "Lower 48." The state is characterized by concentrations of population in urban supply centers and very small rural communities. Many of the large employers are concentrated in the urban centers even though they may have employees in rural areas.

Table 12 provides some insight into the distribution of obligors and the relative success of employer reporting for various regions. Data is organized by the zip codes of employers. The table also includes a grouping of information by interstate and responding cases.

In general, it appears that the greatest success in increasing the percentage of obligation paid has been in the urban centers where employment may be more stable. However, the somewhat tenuous nature of the relationship between employer address and actual work location, suggests caution in making an assumption about the relative success of the system by region. All regions show an actual increase in the average total collected per obligor.

Table 12

Pre-Post Collections by Region- All Obligors Under Employer Reporting
Average Collections per Obligor

		Pre- Period			Post- Period			
Area	N	Average Due per Obligor	Average Total Collected per Obligor	% Paid	Average Due per Obligor	Average Total Collected per Obligor	% Paid	% Change
Inter-state	864	$3,349	$2,048	61%	$3,721	$2,625	71%	+10%
Respdg	309	$2,383	$2,292	96%	$2,778	$2,840	102%	+6%
Anch	641	$3,073	$2,104	68%	$3,452	$2,732	79%	+11%
Fbks	215	$3,136	$1,837	59%	$3,368	$2,383	71%	+12%
Jun	40	$2,883	$2,064	72%	$3,532	$2,910	82%	+10%
SE	114	$3,209	$2,546	79%	$3,647	$3,048	84%	+5%
Oth Ak	100	$3,432	$2,261	66%	$3,758	$2,543	68%	+2%
Other	63	$2,553	$2,151	84%	$3,175	$2,546	80%	-4%
Total	1,173	$3,095	$2,113	68%	$3,472	$2,681	77%	+9%

What are the effects of employer reporting on the number and amount of disbursements to AFDC and to other agencies?

The direct effect of employer reporting is an increase in the number and amount of disbursements made to agencies. The increase in number of payments and associated collections make more funds available for the reduction in obligations.

The average increase in disbursements for the second year of employer reporting for all obligors is 26%. There was a 32% increase in the number of disbursements to AFDC and a 31% increase in the total amount disbursed. The total increase in the amount collected from obligors and disbursed to agencies was over $637,000. AFDC received an additional $192,000.

Table 13
Pre-Post Disbursements - All Obligors Under Employer Reporting

	Pre- Period		Post- Period		
Recipient	Number Disbursed	Amount Disbursed	Number Disbursed	Amount Disbursed	% Change in Amount
Obligee /Other State	6,879	$1,819,273	9,270	$2,235,111	+23%
AFDC	2,679	$ 618,209	3,530	$ 810,214	+31%
Foster Care	58	$ 6,186	78	$ 16,105	+160%
Other	148	$ 49,670	278	$ 69,742	+40%
TOTAL	9,764	$2,493,339	13,126	$3,131,172	+26%

What special findings are related to the expansion of the program include to seasonal employers?

The seasonal employers added in the second year of the pilot test of direct employer reporting differ from the first year employers in that they have more transient work force, fewer employees, and fewer obligors.

As shown in Table 14, the largest number of obligors from the seasonal employers are still located in urban areas. When compared with the obligors from the first year target group, the obligors employed by the more seasonal employers had a larger percentage increase in the percent of obligation paid (15% vs 9%) and a higher overall increase in the amount of increased payments to AFDC and other agencies.

The most notable feature of the addition of the seasonal employers is the increase in the number of Withhold and Deliver Orders served on seasonal employees. The number of orders served increased from 4 in the prior period to 362 in the post reporting period. This has been the greatest gain made in any area by the employer reporting program. It demonstrates that the system is effective in locating a substantial number of transient, seasonal employees who would not otherwise be found and served.

Table 15 provides an additional picture of how collections have increased the amount of disbursements to agencies.

Table 14
Pre-Post Collections by Region- Target Group 2
Average Total Collections per Obligor

		Pre- Period			Post- Period			
Area	N	Average Due per Obligor	Average Total Collected per Obligor	% Paid	Average Due per Obligor	Average Total Collected per Obligor	% Paid	% Change
Inter-state	187	$3,012	$1,892	63%	$3,336	$2,404	72%	+9%
Respdg	73	$2,475	$1,866	75%	$2,577	$2,830	110%	+35%
Anch	142	$3,113	$2,019	65%	$3,228	$2,790	86%	+21%
Fbks	54	$2,672	$1,294	48%	$3,041	$1,886	62%	+14%
Jun	8	$1,809	$1,686	93%	$3,445	$2,407	70%	-23%
SE	16	$2,432	$1,971	81%	$2,267	$1,958	86%	+5%
Oth AK	22	$2,893	$1,760	61%	$3,277	$2,579	79%	+18%
Other	18	$2,552	$2,757	108%	$2,964	$2,827	95%	-13%
Total	260	$2,861	$1,884	66%	$3,122	$2,524	81%	+15%

Table 15
Pre-Post Disbursements - Target Group 2

	Pre- Period		Post- Period		
Recipient	Number Disbursed	Amount Disbursed	Number Disbursed	Amount Disbursed	% Change in Amount
Obligee /Other State	1,319	$367,753	1,931	$496,895	+35%
AFDC	482	$112,408	608	$140,130	+25%
Foster Care	18	$ 1,302	12	$ 2,385	+83%
Other	23	$ 8,580	48	$ 11,789	+37%
TOTAL	1,842	$490,043	2,599	$651,149	+33%

How cost effective is the employer reporting program?

The economic gains from implementation of the monthly direct employer reporting program most clearly stem from the increase in average collections per obligor generated by the increase in the number of payments. The gain may be estimated by considering the effects of added collections on the employer reporting groups.

A weighted average of the two comparison groups shows an average number of payments of 9.5. The average for all obligors under the employer reporting system is 11.6. This is a 2.3 payment advantage for employer reporting.

The 2.3 payment advantage results in an average increase in payments of $530 for each obligor or an estimated $62[illegible].000 for the program. This estimate is conservative given that the average payment made for the comparison group members is more than $20.00 above the average for the current target groups suggesting that an extension of the program might yield an increase in payments to more than $530 per obligor.

Table 16
Program Collections/CSED Cost Summary

Collections and Costs	Numbers
(a) Estimated Collections Attributed to Program(e X h)	$ 621,690
(b) Program Costs	$ 201,219
(c) Net Estimated Collections Attributed to Program(a-b)	$ 420,471
(d) Cost/Benefit Ratio	1:3.1
(e) Number of Obligors in Program	1,173
(f) Program Cost per Report Received from Employers(b/1227) [1]	$ 164
(g) Estimated Collections per Report Received from Employers(a/1227)	$ 506
(h) Estimated Collections per Obligor Attributed to Program[2]	$ 530
(i) Program Cost per Obligor(b/e)	$ 172
(j) Estimated Net Collections per Obligor (Collections Attributed to Program) (h-i)	$ 358

[1]Estimated # Reports @ 1227 given data from 9 months
[2]Ave $ per Pmt(230.60) X Extra # Payments Attributed to Program(2.3)

The $621,690 in additional collections was offset by the $201,219 cost of the program. This results in a cost benefit ratio of 1:3.1 and a net increase in collections over cost of $420,471.

CONCLUSIONS

The Alaska Child Support Enforcement Division of the Alaska Department of Revenue has successfully established a direct employer reporting program to aid in the identification of individuals who owe child support and to speed up the process of making collections. The second year of the federally funded pilot project has extended the program to include employers of both large numbers of known obligors, brought on during the first year, and those employing seasonal workers.

There were substantial increases in the number and amount of collections from project obligors. The goal of a 25% increase in collections was more than achieved with an actual increase of 27%. This reflects an increase in the total collected for all obligors in the employer reporting system from $2,478,066 to $3,145,239.

There was a substantial increase in the dollar amount of child support orders with an average obligation for employees of firms participating in the program increasing by 12% from $3,094 to $3,472. This did not quite meet the program goal of a 15% increase.

There was a more than 500% increase in the number of Withhold and Deliver Orders in the second year of the program with the most notable increase in successful locates being found in the newly added seasonal group where the number who were successfully located increased from 4 to 362.

There was a ten fold increase in the number of modifications from 6 to 61 which went far beyond the 12% called for in the proposal.

The cost effectiveness ratio surpassed the target of 1:3 with approximately $3.09 collected for each dollar spent on the program. The total collection which might be attributed to the program based on an increase of 2.3 payments per obligor is $621,690.

The employer reporting system has proved successful in meeting the program goals of implementing a direct employer reporting system which speeds up the location of obligors and increases the number of payments made for child support.

The Child Enforcement Support Division made a substantial effort to increase collections and the number of reviews and modifications for all obligors. This overall activity of CSED resulted in the employer reporting groups and the comparison groups to achieve statistically significant gains. While the employer reporting groups consistently have the highest obligations and percentage of collections, the comparison groups made notable gains and, perhaps because of the nature of the jobs and employers, have higher average payments. This suggests that the expansion of the employer reporting system to include additional employers will result in even greater gains in collections in year three of the program.

APPENDIX A

TESTS OF SIGNIFICANCE

DIFFERENCE IN PRE-POST GROUPS
DIFFERENCE IN PRE-POST DIFFERENCES

DIFFERENCE IN PRE-POST GROUPS	MEANS		STANDARD DEVIATIONS		SIZES		MEANS		
	GROUP 1	GROUP 2	GROUP 1	GROUP 2	GROUP 1	GROUP 2	DIFFERENCE	t Value	LEV OF SIG (1
SEASONAL COS									
POST 1 2 VS C 2 AVG AMT PER PD	$251 71	$274 07	31 7 7	520 86	260	269	$22	0 60	NSD
POST 1 2 VS C 2 AVG TOTAL PD	$2 523 88	$2 347 50	282 4 98	321 3 62	260	269	($1 76)	-0 67	NSD
PRE VS POST 1 2 AVG OBLIGATION	$2 861 25	$3 122 48	300 5 16	290 2 29	260	260	($2 61)	-1 01	NSD
PRE VS POST 1 2 AVG TOTAL PD	$1 884 39	$2 523 88	270 5 01	282 4 98	260	260	($6 39)	-2 64	0 001
PRE VS POST C 2 AVG OBLIGATION	$2 964 92	$3 530 97	317 4 18	318 1 02	269	269	($5 66)	-2 07	0 05
PRE VS POST C 2 AVG TOTAL PD	$1 730 77	$2 347 50	271 3 44	321 3 62	269	269	($6 17)	-2 40	0 01
PRE 1 2 VS C 2 AVG TOTAL PD	$1 884 39	$1 730 77	270 5 01	271 3 44	260	269	$1 54	0 65	0 1 NSD
COS WITH LARGE # MATCHES									
YEAR 2 1 1 VS C 1 AVG AMT PER PD	$224 96	$253 62	27 8 72	31 1 95	839	859	($2 9)	-2 00	0 05
YEAR 2 1 1 VS C 2 AVG TOTAL PD	$2 807 89	$2 492 13	283 0 56	305 4 34	839	859	$3 16	2 21	0 05
YEAR 1 VS YEAR 2 1 1 AVG OBLIGATION	$3 346 37	$3 662 41	313 4 03	326 0 08	839	839	($3 16)	-2 02	0 05
YEAR 1 VS YEAR 2 1 1 AVG TOTAL PD	$2 301 35	$2 807 89	289 7 83	283 0 56	839	839	($5 07)	-3 62	0 001
YEAR 1 VS YEAR 2 C 1 AVG OBLIGATION	$3 044 95	$3 629 29	323 6 88	356 0 96	859	859	($5 84)	-3 96	0 001
YEAR 1 VS YEAR 2 C 1 AVG TOTAL PD	$1 763 28	$2 492 13	264 1 34	305 4 34	859	859	($7 29)	-5 29	0 001
YEAR 1 1 1 VS C 1 AVG TOTAL PD	$2 301 35	$1 763 28	289 7 83	264 1 34	839	859	$5 38	4 00	0 001
COMPARISON OF GROUPS									
PRE 1 2 VS 1 1 AVG TOTAL PD	$1 684 39	$2 301 35	270 5 01	289 7 83	267	835	($4 17)	-2 15	0 001
POST 1 2 VS 1 1 AVG TOTAL PD	$2 523 88	$2 807 89	282 4 98	283 0 56	267	839	($2 84)	-1 43	NSD

DIFFERENCE IN PRE-POST DIFFERENCES	*MEANS*				*STANDARD DEVIATIONS*	
	PRE-Target	POST- Target	PRE- C-1	POST- C-1	PRE-Target	POST- Target
Diff AVE obligation Target Group 1 vs C-1	2861.25	3122.48	2964.92	3530.97	3005.16	2902.29
Diff AVE paid Target Group 1 vs C-1	1884.39	2523.88	1730.77	2347.5	2705.01	2824.98
Diff Ave obligation Target Group 2 vs C-2	3346.37	3662.41	3044.95	3629.29	3134.03	3260.08
Diff Ave paid Target Group 2 vs C-2	2301.35	2807.89	1763.28	2492.13	2897.83	2830.56
Source for t-statistic:						
TEXT: STATISTICS FOR THE SOCIAL SCIENCES WILLIAM L. HAYS SECOND EDITION HOLT, RINEHART, AND WINSTON 1973						
Source for df - Smith Sattertwaite t-test:						
TEXT: PROBABILITY AND STATISTICS FOR ENGINEERING AND SCIENCE JAY DEVORE SECOND EDITION PACIFIC GROVE CA: BROOKS GROVE PUB 1991						

csed diff tests

PRE- C-1	POST- C-1	*SIZES* Target	Comparison	DIF GROUP 1	DIF GROUP 2	DIF STD DEV 1	DIF STD DEV 2	DIF OF DIFFS
3174.18	3181.02	260	269	-261.23	-566.05	259.098095	273.992286	304.82
2713.44	3213.62	260	269	-639.49	-616.73	242.563165	256.441984	-22.76
3236.88	3560.96	839	859	-316.04	-584.34	156.123578	164.192128	268.3
2641.34	3054.34	839	859	-506.54	-728.85	139.851311	137.775736	222.31

T	SIGNIF T	DF
13.1505683	0.001	132.47
-1.0489861	NS	132.61
34.5121667	0.001	451.11
32.9902468	0.001	460.36

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 4/13/93 FURTHER: FINANCE

Date of 5-Day Notice: 2/15/94
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2/25/94

JUDICIARY Committee considered SB 190

"~~An Act~~ relating to income withholding and other methods of enforcement for orders of support and providing for an effective date
."

and recommends:

and a majority of the committee recommends it be replaced with

[X] replace with _____ CS SB 190 (JUD)

[X] same title
[ ] new title
[ ] technical title change (HB only)

[ ] attaches amendment(s)

[ ] adopts _____ Letter of Intent

[ ] further referral to the _____

[ ] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

FISCAL NOTE INFORMATION

SB Y CS

Department	Date	Zero	Fiscal
Revenue	2/21/94		V

Department	Date	Zero	Fiscal

[ ] Appropriation No Fiscal Note

[ ] Governor's Bill with Previous Fiscal Notes (enter information above)

(1) **DO PASS:** Loren Dawley

(1) Jerome R. Hill

OTHER RECOMMENDATIONS:

(1) Robert Taylor

Chair: Signature and Recommendation