

## **ENFORCEMENT**

### **INTRODUCTION**

#### **GENERAL INFORMATION**

Various remedies are available to assist Child Support Services (CSS) staff with the proper enforcement of civil and criminal court orders. This chapter contains policy, procedures, and other information on the following topics:

1. [Enforcement overview](#);
2. [Bankruptcy](#);
3. [Billing](#);
4. [Bonds](#);
5. [Change of venue](#);
6. [Consumer credit reporting](#);
7. [Estates collection](#);
8. [Federal Criminal Prosecution \(PSOC\)](#);
9. [Financial Institution Data Match \(FIDM\) and securing assets from financial institutions](#);
10. [Income withholding](#);
11. [Other income withholding situations \(income other than wages, UIB, Workers' Comp., Work Release\)](#);
12. [Insurance settlement liens](#);
13. [License revocation/suspension/reinstatement](#);
14. [Liens](#);
15. [Medical support enforcement](#);
16. [Passport denial/reinstatement](#);
17. [Service of process](#);
18. [Show Cause for civil contempt proceedings](#);
19. [Sum-certain judgments](#);
20. [Tax intercept](#);
21. [Thrift Savings Plan Garnishment](#);
22. [Unclaimed property](#);
23. [The Uniform Fraudulent Transfer Act](#);
24. [Vendor collections](#);
25. [Other Enforcement remedies](#);
26. [Additional Enforcement information](#).

### **ENFORCEMENT OVERVIEW**

#### **GENERAL INFORMATION**

This topic contains information on the following subjects:

1. [An overview of Enforcement policy](#);
2. [How ACTS supports the Enforcement process](#).

#### **ENFORCEMENT POLICY OVERVIEW**

Proper enforcement of both criminal and civil court orders is absolutely mandatory. The appropriate enforcement action must be taken within thirty (30) calendar days of identifying noncompliance or locating the noncustodial parent (NCP), unless service of process is necessary before such action can proceed. If service of process is necessary, CSS must take the appropriate enforcement action within sixty (60) calendar days of identifying the failure to comply with the

court order or CSS must document unsuccessful attempts at service. Whenever enforcement attempts are unsuccessful, CSS caseworkers must examine the reason(s) for the failure, determine when further action would be appropriate, and take such action at the proper time.

If the NCP is cited to appear in court, the CSS agency must attempt to update information on the defaulting parent's income and resources in order to be prepared to testify to such in court.

When citing a NCP to appear in court, CSS reviews the order to determine if the payment frequency and due date need to be modified. If the payments in the order are not due monthly and payable on the first day of each month, local agencies are to request this modification to the order.

If the defendant is not present and has not appeared at a prior hearing or signed a consent order for the case, signifying awareness of the action, CSS must file an affidavit with the court that indicates whether or not the defendant is in the military or that CSS does not know whether or not the defendant is in the military before a default order is entered. For more information, see the "[Military](#)" Chapter.

#### **HOW ACTS SUPPORTS THE ENFORCEMENT PROCESS**

ACTS supports the enforcement process in the following ways:

1. ACTS identifies any CSS cases in which the total amount of arrearages that are owed on the case is equal to at least one month's current support, based on the balances on the court order screen. ACTS then places these cases in the Delinquency processing status. Most of the time ACTS suggests the most appropriate enforcement action.
2. When a case first enters Delinquency status, ACTS notifies the caseworker who is responsible for enforcement on the case.
3. If a noncustodial parent's (NCP's) mailing address is recorded in ACTS, he/she receives a bill and payment coupons each month. As long as any of his/her cases are in Delinquency status, the monthly bill contains a prominent Delinquency Notice. However, if the NCP is under an active income withholding order with a current employer, ACTS does not produce a monthly bill. Enforcement actions in this situation are directed at the employer.
4. If the order on which the NCP has become delinquent does not include an immediate income withholding provision because it was established before October 1, 1989, ACTS automatically generates the Notice of Intent to Income Withhold for Payment of Child Support (DSS-4485). If Good Cause has been found or an alternative arrangement has been ordered and the NCP becomes delinquent, ACTS places the CSS case on a weekly report. The responsible caseworker must then assess the case and initiate income withholding, if appropriate.
5. ACTS continually searches locate sources for information about employers, income, assets, and addresses. ACTS performs these searches on all cases, whether they are in delinquency status or not.
6. If the order is subject to immediate income withholding but no employer is known, ACTS automatically generates the Notice of Obligation To Withhold after a verified employer is recorded in the system. ACTS automatically initiates Unemployment Insurance Benefit (UIB) withholding when the interface with the division

of Employment Security (DES) indicates that a delinquent NCP is receiving benefits.

7. ACTS provides caseworkers with specific places to record data about an NCP's assets (real and personal property, liens, and lien releases), which can be used to collect arrearages. When assets are identified, caseworkers can use ACTS to pursue "sum certain" judgments, liens, and attachments.
8. When a Show Cause court action is appropriate, ACTS automatically places the case on a list for the responsible caseworker. ACTS tracks the amount of arrearages that have accrued since the last court appearance and alerts the caseworker that another Show Cause is warranted by placing the case on the Show Cause list. Caseworkers can also use ACTS to generate documents for CSS cases that warrant a Show Cause hearing.
9. ACTS provides caseworkers with a means to record data about compliance bonds and to track funds that are available in bonds. Collections can then be deducted when a delinquency occurs.
10. ACTS automatically reports support obligation and payment performance information to consumer credit reporting agencies.
11. ACTS automatically generates and updates tax intercept certifications. The system automatically generates tapes for Federal tax intercept and tapes and forms for state tax intercept.
12. ACTS submits cases that meet certain criteria to a contracted vendor for the collection of arrearages that are owed to the State.
13. Through an interface with the Industrial Commission, ACTS automatically identifies NCPs who have pending and approved Workers' Compensation claims. The system records the amount of insurance and settlements paid, and it allows caseworkers to generate documents that can be used to intercept benefits.
14. ACTS obtains information through an interface on prisoners who have Work Release income. It allows caseworkers to generate documents that can be used to withhold Work Release funds.
15. ACTS allows caseworkers to generate documents that are required to initiate criminal enforcement actions.
16. ACTS allows caseworkers to generate notices and documents for certified mail and personal service.

## **BANKRUPTCY**

This topic contains information on the following subjects:

1. [An overview of bankruptcy information related to enforcement activities;](#)
2. [The types of bankruptcy;](#)
3. [The advantages for CSS agencies when NCPs file bankruptcy petitions;](#)
4. [Enforcement policy related to bankruptcy.](#)

### **BANKRUPTCY - OVERVIEW**

Public Law 109-8, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), governs the disposition of bankruptcy petitions, including what actions can be taken by the CSS agency to establish and enforce child support obligations. Bankruptcy law at PL 109-8 is specific to bankruptcy petitions filed on or after October

17, 2005. It is not retroactive. For information on prior bankruptcy laws, consult the CSS agency attorney.

Bankruptcy laws specify how the available resources of a debtor are to be managed, including what actions can be taken by creditors and a priority system for the collection of debts.

Child support obligations are afforded priority number one (1).

Certain debts can be discharged in a bankruptcy plan, meaning that the debtor is not required by law to pay the debt. A child support debt that is owed either to the custodial parent (CP - coded "CLI") or to the State is exempt from discharge by the bankruptcy court.

An automatic "stay" to prevent creditors from taking actions to collect debts while a bankruptcy plan is in effect does not always apply to child support matters. Bankruptcy law exempts actions to establish paternity and actions to establish or modify child support from such automatic stays. However, some restrictions on collection activities do apply to child support debts. For more information, see "[Bankruptcy-Related Enforcement Policy](#)".

#### **TYPES OF BANKRUPTCY**

Chapter 7 bankruptcy is called a "straight bankruptcy" or "liquidation". Most debtors who file a Chapter 7 bankruptcy have few assets that can be distributed to creditors. The bankruptcy trustee reduces any available assets to cash and uses it to pay off the debtor's creditors.

Chapter 11 bankruptcy is called a "reorganization". It is filed by individuals or businesses who need time to restructure or scale back their business.

Chapter 13 bankruptcy is called a "wage earner plan". It is a court-supervised installment payment plan that does not require the approval of creditors. The debtor seeks the guidance of a bankruptcy trustee to devise and carry out a plan to make payments to the trustee, who pays this money to creditors. The plan can call for either full or partial payment of the debts owed.

#### **BANKRUPTCY PETITIONS - ADVANTAGES FOR CSS AGENCIES**

A bankruptcy filing can be beneficial to CSS's efforts to collect child support, since the petitioner must disclose his/her full financial situation to the court, including all assets and liabilities.

In Chapter 13 filings, the noncustodial parent (NCP) is required to keep all post-petition payments current so that the bankruptcy plan remains valid. The bankruptcy court can dismiss the bankruptcy petition and/or payment plan if the NCP fails to pay ALL of his/her child support obligations in full and on time. Once the payment plan is completed under either Chapter 7 or Chapter 13, some of the NCP's debts can be discharged. Child support debts to the State or to the custodial parent (CP) are not dischargeable. Prior law allowed debts owed to the State to be discharged.

The trustee also has the duty to provide information about a domestic support obligation to the CSS agency. A "domestic support obligation" is defined in part as "a debt that accrues before, on, or after the date of an order of the bankruptcy court and that is owed to a spouse, former spouse, child of the debtor or such child's parent, legal guardian, or responsible relative or a governmental unit in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent."

Once the trustee is aware that a domestic support obligation exists, the trustee has certain responsibilities which include:

1. Providing written notice to the CSS agency of the support claim, including the name, address, and telephone number of the holder;
2. Upon successful completion of the bankruptcy matter, providing written notice to the holder and to the CSS agency, including the most recent address of the NCP, the name and address of the NCP's most recent employer, and the name of each creditor listed in the petition who still holds a claim or debt against the NCP.

After the bankruptcy petition has been successfully completed, the CSS agency can contact a creditor listed in the petition who still holds a claim or debt and request that the creditor reveal the NCP's last known address.

#### **BANKRUPTCY-RELATED ENFORCEMENT POLICY**

CSS workers MUST notify the CSS attorney as soon as they become aware that a noncustodial parent (NCP) has filed or might have filed a bankruptcy petition. The CSS attorney should contact the US Bankruptcy Court to verify the filing, that the court is aware of the child support obligation and to determine what enforcement actions can be taken. No action should be taken in the case, until the CSS attorney advises the responsible worker of the bankruptcy court's response.

Until lifted, the "automatic stay" prohibits CSS from taking certain enforcement actions.

CSS workers CANNOT:

- Begin or continue civil contempt actions for child support payments that are due prior to the bankruptcy petition being filed;
- Begin a civil contempt action to pay child support obligations that became due after the bankruptcy petition was filed, UNLESS the support will be paid from property that is not part of the bankruptcy estate ("all legal and equitable interests of the debtor in property at the time of the bankruptcy filing");
- Execute certain liens and judgments; and/or
- Seize the debtor's bank account for "pre-bankruptcy" child support obligations.

CSS workers CAN pursue the following actions without requesting that the "automatic stay" be lifted by the bankruptcy court:

- Implement and/or continue income withholding orders, after confirmation from the CSS attorney that this is an appropriate enforcement measure;
- Revoke licenses, report to consumer reporting agencies, enforce medical support orders, and intercept federal and state tax refunds;
- refunds;
- Initiate or continue actions to establish paternity; and
- Initiate or continue actions to establish or modify a support obligation.

## **BILLING**

### **GENERAL INFORMATION**

This topic contains information on the following subjects:

1. [The criteria for generating billing statements;](#)
2. [The monthly billing statement;](#)
3. [Suppressing the billing process.](#)

### **CRITERIA FOR GENERATING BILLING STATEMENTS**

The Billing function in ACTS notifies the noncustodial parent (NCP) on a timely basis of his/her ordered obligations that are due for the current month. ACTS uses pre-defined criteria to generate billing statements and prints a monthly bill for each CSS case not under income withholding with a support obligation or an arrearage due.

### **MONTHLY BILLING STATEMENT**

The billing statement displays and explains the activities that have taken place for the NCP's accounts. It also contains coupons that are to be returned with payments along with instructions on how to use them. When a CSS case becomes delinquent, the billing statement also includes a notice of delinquency. It is printed each month.

The name and address of the responsible county/local CSS agency appears at the top of the monthly billing statement, followed by the NCP's name and address. The first section of this document displays the NCP's MPI #, the statement date, the court docket number, and the CSS case (IV-D) number.

The "PREVIOUS ACTIVITY" section displays the date range and total amount of payments received during the prior billing period. If no payments were received during that billing period, "\$0.00" appears along with the following message: "NO PAYMENTS RECEIVED".

The "AMOUNT DUE FOR CURRENT PERIOD" section displays the support type (Children, Spousal, Medicaid, Medical, Miscellaneous) and the payment frequency amount due for current support, arrearages, and fees for each support type. If no amount is due or no obligation exists for a support type, "\$0.00" appears for that category. This is followed by the total amount due and the date by which that amount is due.

The "BALANCES DUE AS OF (MM/DD/CCYY)" section displays the total amount of in-state arrearages, out-of-state arrearages, and fees that are owed as of the date of this billing statement.

The last section of the bill is used to display a notice of delinquency. When the NCP's case is not delinquent, this message is printed on the billing statement:

"FAILURE TO PAY AS ORDERED MAY RESULT IN IMMEDIATE COURT ACTION."

When the NCP's case becomes delinquent, the following message is printed on the billing statement:

"PAYMENTS ARE PAST DUE. FAILURE TO PAY TOTAL ARREARS BALANCE OR TO MAKE ARRANGEMENTS TO PAY PERIODICALLY MAY RESULT IN CONTEMPT OF COURT ACTION BEING FILED AGAINST YOU."

Below the notice of delinquency, information regarding the new credit card payment option appears. Child support payments can be made by bank draft or credit card via the web at ["http://www.ncchildsupport.com"](http://www.ncchildsupport.com).

Five coupons are printed per bill to accommodate weekly payments. One coupon is printed at the bottom of the first page of the billing statement, and four additional coupons are printed on the second page. NCPs only need to use the number of coupons that are appropriate for their payment frequency.

#### ***ELECTRONIC BILLING STATEMENT***

NCPs can receive e-mail notification and view their monthly billing statements free of charge on-line by accessing this web site: ["http://www.ncchildsupport.com"](http://www.ncchildsupport.com) and registering through the "Pay Child Support" link. Those NCPs who meet the criteria for receiving billing statements by mail but do not register for electronic billing statements continue to receive their billing statements by mail.

Once registered:

- NCPs receive e-mail notification when their e-statement is available. (It might take one or two billing cycles after registration before they start receiving e-mail notification.)
- NCPs can access their e-statements for up to six (6) previous months (once that many e-statements have accrued), view their current child support bill, and print a coupon to send with their payment to NC Child Support Centralized Collections.
- NCPs can access same web site and link to stop the e-mail notification and e-statement process at any time and resume receiving their billing statements by mail.

#### **SUPPRESSING BILLING**

If a CSS case qualifies for billing but for some reason billing is not appropriate, the responsible caseworker can suppress the billing process for a specified period of time.

## BONDS

### GENERAL INFORMATION

Bonds are "holds" placed on amounts of cash to ensure that timely payments are made. This topic contains information on the following subjects:

1. [Enforcement policy related to bonds;](#)
2. [The bonds process.](#)

### PERFORMANCE BONDS POLICY

The use of a bond or security can provide some form of guarantee that a noncustodial parent (NCP) meets the child support obligation. Under the provisions of NCGS Chapter 50-13.4(f)(1), the court can require an NCP to post a compliance bond with the Clerk of Court's office or to give security or some other guarantee of payment for current (or overdue) child support.

Procuring a bond or security can be useful in the following situations:

1. The NCP is self-employed or receives income from commissions or other irregular income sources such as stocks, bonds, or negotiable instruments, for which income withholding might not be effective;
2. The NCP makes sporadic payments;
3. The NCP has a history of successfully evading service of process or changing addresses frequently;
4. The NCP works outside the United States and the employer does not do business in the United States; or
5. The NCP is mobile due to his employment (for example, a long distance truck driver.)

Recommendation to the court that a bond be applied can be a viable alternative to repeated contempt or other enforcement actions. The ordering of a bond can either provide the needed incentive for an NCP to make the prescribed payments or produce a source of funds with which to provide support, if the NCP fails to pay as ordered.

If the bond or security is posted by another person on behalf of the NCP, that person assumes a responsibility for compliance with the order. By risking the forfeiture of the money or property that is used as a guarantee, the person who posted the bond has an interest in seeing that the NCP fulfills the obligation. If the NCP should attempt to flee, CSS could also have an ally with the incentive to help locate the NCP.

When using the bond remedy, CSS caseworkers must be aware of the difference between a performance bond and an appearance bond. A "performance" bond is used to guarantee compliance with a court order. Funds from a performance bond are considered to be income that can be applied to the support obligation when regular payments are not made.

An "appearance" bond is used to guarantee the appearance in court of a person who has failed to appear when previously ordered to do so. Funds from appearance bonds are collected when an NCP fails to appear in court. In accordance with NCGS115C-452, these funds are remitted

to the local school board. The Child Support Payment Transmittal (AOC-CV-641) is not used to transmit money held or received by the Clerk of Court as an appearance bond.

### **PERFORMANCE BONDS PROCESS**

When securing a bond or other form of guarantee, CSS caseworkers should:

1. Determine that the NCP has resources that are suitable for use as a bond, such as property (or possessions) of particular importance to him/her or funds available from a bank account, an inheritance, a law suit settlement, or a lottery prize.
2. Prepare and file a motion with the court requesting that a bond be required to cover current support and/or arrearages.
3. Provide notice to the NCP by serving a copy of the motion, allowing him/her the opportunity to contest the action.
4. At the hearing, provide the court with evidence that the NCP has a history of noncompliance, bad credit, or is otherwise unlikely to abide by the support order and with evidence that resources are available for a bond.
5. Ensure that the resulting order clarifies the following: that any funds that might be produced are properly directed to the Clerk of Court for posting to the CSS case(s); the bond start date, end date, and amount; and that any funds remaining when the bond end date is reached are to be released by the Clerk of Court to the poster of the bond.
6. Once the bond is ordered, create a bond record in ACTS.
7. Monitor the case for the need to apply bond funds to the support obligation. If a bond record exists and the case meets Delinquency testing criteria, ACTS notifies the responsible caseworker.
8. Request that the Clerk of Court apply performance bond funds to the support obligation if payment is not made.
9. Update the bond record to reflect payments made from the bond.
10. When the bond end date is reached, advise the Clerk of Court to release any remaining funds to the poster of the bond as directed in the bond order. Then, delete the bond record.

### **CHANGE OF VENUE**

#### **GENERAL INFORMATION**

This topic contains information on the following subjects:

1. [Change of venue policy](#);
2. [Administrative change of venue](#);
3. [Judicial change of venue](#).

#### **CHANGE OF VENUE POLICY**

Change of venue is the movement of a court order from the jurisdiction of one county to another. Change of venue can occur through administrative action in certain situations or by an order of the court.

If a court order for child support contains language that specifically allows administrative change of venue, the Clerk of Court transfers the order for a CSS case to another jurisdiction at the request of the CSS agency without the necessity of a court order. NCGS 50-13.4 (e1) addresses this procedure.

All support order documents in ACTS contain appropriate language for administrative change of venue. It is important to review all orders for the case to determine if the enabling language is present.

If a court order for child support does not include language that specifically allows administrative change of venue, a Motion for Change of Venue must be filed, in accordance with NCGS 1-83, with the court of the county where the order resides. A hearing is scheduled and the matter is heard. If the motion is granted, an Order for Change of Venue is issued by the court. The court file is then transferred to the Clerk of Court in the new county.

At times, the party who requests a change of venue also requests a modification to the order (such as the reinstatement of a suspended order or an increase or decrease to the existing order). In these situations, the only responsibility of the transferring county is to file the motion for change of venue. It is the responsibility of the receiving county to file any other motion for the case.

However, if CSS is not already a party to the legal action, the transferring county must file and schedule a Motion To Intervene (DSS-4649) simultaneously with the Motion for Change of Venue.

For more information, see "[Judicial Change of Venue](#)".

#### **CRITERIA FOR CHANGE OF VENUE**

For CSS in-state cases, a request for change of venue must meet the following criteria:

- CSS must receive a written request from either the custodial parent (CP) or noncustodial parent (NCP) in the case;
- The addresses of all participants in the case are known and verified;
- Neither the custodial parent, child, nor NCP continues to reside in the county where the order is entered;
- Either the CP, child or NCP currently resides in the county to which the venue change is requested; and

Unless ALL of the preceding criteria are met for in-state cases, CSS does not proceed with change of venue.

#### **ADMINISTRATIVE CHANGE OF VENUE**

EX: An order exists in County A. One participant moves to County B and requests that the order be moved to that county.

A change of venue request can be made to either County A's CSS agency or County B's CSS agency. CSS must determine if the case meets the [criteria for change of venue](#).

If the request is made to the new county of residence, County B's CSS agency must:

1. Open a new CSS case, if none currently exists;
2. Verify the addresses of all parties;
3. Once the addresses are verified and it is confirmed that the case meets the criteria for change of venue, reassign the case to County A's CSS agency and County A's supervisor is notified;
4. Mail the original request from the participant to County A's CSS agency and retain a copy.

When County A's CSS agency receives an appropriate change of venue request either from County B's CSS agency or directly from either participant in the case, the responsible worker must:

1. Open a new CSS case, if none currently exists;
2. Verify the addresses of all parties;
3. Once the addresses are verified and it is confirmed that the case meets the criteria for change of venue, generate the Intrastate Administrative Notice For Change of Venue (DSS-4708) and submit it to the Clerk of Court. Workers indicate which party made the request and to which county venue is to be changed;
4. When the venue change has been verified, document that the venue is changed;
5. Complete all other appropriate activities for the CSS case;
6. Once it is confirmed that the Clerk of Court has transferred the court file to County B, notify County B's supervisor that the CSS has been transferred and the case file is en route. Then transfer the case to County B's agency;
7. Mail the CSS paper file to County B's CSS agency to provide a history for the CSS case.

When County B receives the case, the new responsible worker must:

1. Contact County B's Clerk of Court to confirm receipt of the order and obtain the new docket number.
2. Enter the new support order in the case record in ACTS.
3. Send the Intrastate Notice Of Transfer (DSS-4707) to the CP and NCP, as notice of the change of venue and the transfer of the case to County B's CSS agency;
4. If a party wants to contest the change of venue after receiving the Intrastate Notice Of Transfer (DSS-4707), he/she must file the action in the receiving county to which venue has been changed.

#### **JUDICIAL CHANGE OF VENUE**

EX: An order exists in County A. One participant moves to County B and requests that the order be moved to that county.

A change of venue request can be made to either County A's CSS agency or County B's CSS agency. CSS must determine if the case meets the [criteria for change of venue](#).

If the request is made to the new county of residence, County B's CSS agency must:

1. Open a new CSS case, if none currently exists;
2. Verify the addresses of all parties;

3. Once the addresses are verified and it is confirmed that the case meets the criteria for change of venue, reassign the case to County A's CSS agency and notify County A's supervisor, stating a request for change of venue;
4. Mail the original request from the participant to County A's CSS agency and retain a copy.

When County A's CSS agency receives an appropriate change of venue request either from County B's CSS agency or directly from either participant in the case, the responsible CSS worker must:

1. Open a new CSS case, if none currently exists;
2. Verify the addresses of all parties;
3. Once the addresses are verified and it is confirmed that the case meets the criteria for change of venue, generate a Motion For Change Of Venue (DSS-4654) and file it with County A's Clerk of Court and schedule the matter for the next available session. Indicate which party made the request and to which county venue is to be changed;
4. Obtain a copy of the signed order(s). Verify with County A's Clerk of Court that the order is transferred.
5. Send copies of the court order(s) to the CP and NCP;
6. Complete all other appropriate activities for the CSS case;
7. Reassign the case to County B's CSS agency;
8. Mail the CSS paper case file and a copy of the order(s) to County B's CSS agency. Notify County B's CSS supervisor that the case has been transferred and that the case file is en route.

When County B's CSS agency receives the case, new responsible worker must:

1. Obtain the new docket number from County B's Clerk of Court and modify the court order to include the new docket number;
2. Send the Notice of Court Order (DSS-4477) and a copy of the court order changing venue to the CP and NCP and transfer the case to County B's CSS agency.

Any party involved in the CSS case can contest this change of venue by filing a motion in the cause in the receiving county.

## **CONSUMER CREDIT REPORTING (TRADE LINE/CREDIT BUREAU REPORTING)**

### **GENERAL INFORMATION**

This topic contains information on the following subjects:

1. [An overview of consumer credit reporting;](#)
2. [Definitions of terms used in the consumer credit reporting;](#)
3. [The benefits of consumer credit reporting;](#)
4. [The authority to report to consumer credit agencies;](#)
5. [The requirement to provide notice of and opportunity to contest consumer credit reporting;](#)
6. [Contesting the reported information;](#)
7. [Conditions when credit bureau reporting is not appropriate;](#)
8. [Ongoing procedures after the initial reporting;](#)
9. [Requests for information from credit bureaus;](#)
10. [The consumer credit reporting process.](#)

## **CONSUMER CREDIT REPORTING OVERVIEW**

Federal law mandates that periodic reporting of the names of noncustodial parents (NCPs) and child support information be made to consumer reporting agencies. In North Carolina, the trade line reporting procedure is utilized, which includes reporting the obligation amount specified by a court order, as well as any accumulated arrearages. ACTS submits this information to consumer reporting agencies on a monthly basis.

## **DEFINITIONS OF TERMS USED IN THE CONSUMER CREDIT REPORTING PROCESS**

### ***"Consumer Reporting Agency" -***

The Fair Credit Reporting Act defines a consumer reporting agency as "any person which for monetary fees, dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports."

### ***"Credit Bureau" -***

These are establishments that make a business of collecting credit information about individuals and businesses for the purpose of furnishing this information (credit reports) with its subscribers (merchants, banks, etc.) Their practices are regulated by Federal and state statutes.

### ***"Trade Line Reporting" -***

This type of consumer credit reporting provides information on an individual's debts and the status of those debts. Sharing court order and payment information with credit reporting agencies provides them with information on what is owed and what has been paid.

## **BENEFITS OF CONSUMER CREDIT (TRADE LINE) REPORTING**

Consumer credit (trade line) reporting has the following benefits:

1. It serves as an incentive to make prompt and consistent payments to avoid a negative report;
2. It is effective for self-employed parents who may be dependent on credit to operate a business;
3. It limits other debts that can interfere with parents' ability to pay child support;
4. A credit report can be a source to substantiate income and aid in securing additional credit.

## **AUTHORITY TO REPORT**

Child support obligations are considered to be judgments, renewable each month, and therefore, are appropriate to be reported to consumer reporting agencies. Each monthly payment satisfies the current month's obligation, but each new month begins a new obligation until child support is no longer owed, such as when the child reaches the age of emancipation. The Fair Credit Reporting Act was amended by Congress in October, 1992, to mandate consumer reporting agencies to

include in their reports information on the failure of the consumer to pay overdue support.

#### **PROVIDING NOTICE OF AND OPPORTUNITY TO CONTEST REPORTING**

Federal regulations require Child Enforcement Services agencies to notify NCPs who owe support in advance concerning the proposed release of information to consumer reporting and to inform NCPs of the methods available for contesting the accuracy of that information. In interstate CSS cases in which an initiating state has requested a responding state to enforce a support order, the responding state reports child support obligations to consumer reporting agencies.

Parents must be notified of the reporting either as part of the court order or through a manual notice. Court orders should include the following language indicating that the case will be reported to consumer reporting agencies at the time of establishment:

"In accordance with 42 USC 651 et seq. and its implementing regulations, the child support enforcement agency can report this obligation to the appropriate credit reporting agency."

In addition, all complaints or other prayers for relief must include a request that the CSS agency be allowed to report obligations to credit reporting agencies in accordance with 42 USC 651 et seq and its implementing regulations.

If the provision for credit bureau reporting is not included in the initial support order, the NCP must be sent a manual notice by the local CSS agency advising them of trade line reporting. It is imperative that a copy of this notice be retained on file in the local CSS office, since the information provided in this notice would be necessary if the NCP decides to appeal trade line reporting.

After an NCP has been properly notified of trade line reporting through either a court order or separate notice, no further notification of this process is required.

If initial orders and prayers for relief do not contain the recommended language indicating that the CSS case will be reported to consumer reporting agencies, free-form text fields are provided in most orders that allow the language to be added. If the document does not have space for text or if caseworkers fail to include the language in the order, the NCP must be provided with a manual notice of the reporting.

#### **CONTESTING REPORTED INFORMATION**

If language indicating that the CSS case will be reported to consumer credit reporting agencies is included in the support order, it is not necessary to provide the noncustodial parent (NCP) with any additional notice. The language in the order serves as the NCP's notice. These cases are automatically reported to credit bureaus, unless the case is coded otherwise by the agency.

When an NCP is notified of the reporting by a separate notice, that NCP has sixty (60) days from the date of the notice to contest the accuracy of the information and request a hearing. However, the only grounds for contesting the reporting are:

1. The NCP is not the person named in the notice.
2. The debt listed in the notice is not correct.

The agency should attempt to resolve the NCPs' concerns regarding information contained in the notice before encouraging them to request a hearing. If the NCP points out an error in the calculation of the obligation or the arrearages, and the agency agrees to correct the error, the agency must ensure that the ACTS system is updated immediately so that the reporting reflects the appropriate information. However, it is important to contact the NCP in writing to explain what changes were made to the reporting.

To contest the information, the NCP must submit an original and one copy of a completed Petition For A Contested Case Hearing (DSS-4659) form to the Office of Administrative Hearings within sixty (60) days from the date of this notice and provide a copy of the Petition to the Department of Health and Human Services (DHHS). These agencies then notify the Attorney General staff assigned to the Program of the appeal. The petition can be obtained from either the local child support agency or through OAH.

Each order is reported separately to credit bureaus; a notice should be submitted for each court order if there are multiple orders and/or multiple counties are involved. The NCPs needs a separate petition to appeal for each order.

Because the state, not the county, is the entity submitting the NCP to consumer reporting agencies, a member of the Attorney General's staff assigned to the program provides legal representation for these hearings. The responsible county is contacted by the state's attorney, advised that a hearing will be held, and instructed as to what documentation is needed from the agent responsible for the CSS case. The agent then compiles the requested information and forwards it to the attorney within ten (10) days of receipt of the request. Such information can include requests for certified copies of orders and modifications. The hearing is held where the hearing officer deems appropriate.

If the NCP does contest the reporting, the case is not reported until the matter has been resolved. If the findings indicate that the case should be reported, the system refers the case the next month. If OAH decides that the information is inaccurate, CSS either can appeal the decision or correct the CSS records, whichever is appropriate for the case findings. If the agency decides to correct its records, the case should not be coded to report until the correction is made.

If the NCP does not request a hearing within sixty (60) days, then the right to contest is deemed waived and the obligation is reported to consumer credit agencies the following month after the 60-day period has passed.

#### **CONDITIONS NOT TO REPORT**

Consumer credit (trade line) reporting is not appropriate when any of following conditions exist:

1. The NCP lives in another state and North Carolina is the Initiating state in an Interstate action.
2. The CSS case is closed.

3. The NCP has not been provided proper notification of the trade line process.
4. The notice of trade line reporting has returned to the local CSS office as undeliverable.
5. The court has ordered that trade line not be used on the case.

*NOTE: If a judge orders that CSS NOT report the NCP to credit bureau agencies OR that the NCP only be reported if arrearages accrue, please consult with the local CSS Attorney. The CSS agency should probably appeal the case in these situations. Any questions regarding this issue can be directed from the local CSS Attorney to the Attorney General's staff assigned to the CSS program.*

#### **ONGOING PROCEDURES AFTER INITIAL REPORTING**

Once trade line reporting begins, the NCP must contact the credit bureau if there are disputes regarding the accuracy or completeness of information contained in the file. If the NCP contacts the local CSS agency after the initial reporting begins, the individual can be directed to contact the credit bureaus directly. The credit bureau then contacts the Trade Line Reporting Coordinator in the Tax Intercept Unit at the CSS Central Office. This individual is responsible for resolving the discrepancy and contacts local agencies to request information. Such disputes could include whether the debt is owed by the NCP or the debt has been paid since first reported. If the agency can confirm the information, the credit bureau ends its investigation.

If the information is not verified by the CSS agency within thirty (30) days, the credit bureau can delete all or part of the file from the report. If the entire file is deleted, the Trade Line Coordinator notifies the local CSS agency that the file has been deleted. The NCP must be sent a new manual notice regarding trade line in order to begin reporting again.

If the dispute is not resolved in favor of the NCP, the NCP has the right to file a statement with the consumer reporting agency, explaining the nature of the dispute. This information is provided to any person requesting the NCP's file. Once given proper notice of trade line reporting, the NCP does not have the ability to prevent CSS from reporting the status of the child support account or the right to appeal placement of the information concerning past due support through the trade line reporting process.

#### **REQUESTS FOR INFORMATION FROM CREDIT BUREAU AGENCIES**

CSS agencies are required to provide arrearage information to a consumer reporting agency upon request if the NCP's arrearages are greater than \$500.00. If the NCP's total arrearages in all cases are more than \$500.00, a notice is sent to the NCP, indicating the amount of the total arrearages and the impending release of the information to the requesting agency. If the NCP does not contest within fifteen (15) days, the information is then released to the credit bureau. If the arrearages are less than \$500.00, CSS notifies the requesting agency that the case does not meet the criteria for the release of information.

## CONSUMER CREDIT REPORTING (TRADE LINE/CREDIT BUREAU) PROCESS

ACTS reports payment and subaccount information to consumer reporting agencies (Experian and Innovis) on a monthly basis, regardless of whether the NCP has an arrearage balance or not. A consumer reporting agency gathers this payment history data in order to report the individual's status to credit bureaus. This status can be good or bad, just like an individual's mortgage or credit card payment history. It is not always a negative credit report.

ACTS reports the account status of the noncustodial parent's (NCP's) subaccounts for his/her CSS cases that are in the Collection Processing Status. There are four (4) possible statuses:

1. Good standing - less than sixty (60) days delinquent;
2. Sixty (60) days past due;
3. Ninety (90) days past due; and
4. Seriously delinquent - over ninety (90) days past due.

*NOTE: Remember that a CSS case moves to the Delinquency Processing status in ACTS when a current support subaccount or an arrearage subaccount with a frequency amount due is behind by an amount equal to one (1) month's support, based on the balances on the court order screens. Therefore, a CSS could be "delinquent" in ACTS, but still in "good standing" when reported to the credit bureaus, if less than sixty (60) days delinquent.*

Arrearage subaccounts with no frequency amount due are included in the amounts submitted to the consumer reporting agencies. However, the account statuses for these arrearages are reported in "good standing."

When an initial court order is entered in ACTS (including future orders and those entered after a Docket # Only order, but NOT orders in kind), the system generates a Trade Line Reporting Notice (DSS-4478) for the NCP, unless the NCP's subaccount status should not be submitted to credit bureaus, a notice was included in the court order, or Good Cause is pending.

In situations when the Trade Line Reporting Notice (DSS-4478) is not automatically generated, CSS caseworkers can manually generate this document. Caseworkers should always make an additional copy of the Notice. The original is sent to the NCP, and the copy is filed at the agency, so it can be produced at the hearing. The notice informs the NCP that he/she must respond within sixty (60) days. The NCP has sixty-five (65) days to file an appeal.

*NOTE: If the NCP is notified through a court order (including a VSA), the following recommended language should be included to indicate that the status of the account(s) will be reported to credit agencies:*

*"In accordance with 42 USC 651 et seq. and its implementing regulations, the child support enforcement agency can report this obligation to the appropriate reporting agency."*

Once the NCP is notified through this court order, he/she waives the right to appeal the reporting process.

The Notice includes the responsible caseworker's name and office telephone number. If the NCP contacts the caseworker with questions

or concerns regarding the Trade Line Reporting and/or the amount of the arrearage, caseworkers should discuss the arrearage with the NCP (to the extent possible.) If the NCP still does not agree with the amount of arrearages after a reasonable discussion, caseworkers should offer the NCP the option to appeal and provide a copy of the appeal form.

When NCPs want to appeal Trade Line Reporting, they must submit an original and one copy of the Petition For A Contested Case Hearing (DSS-4659) to the Office for Administrative Hearings (OAH). A copy must also be served on the process agent for the Department of Health and Human Services (DHHS). Mailing instructions are included on the appeal form.

The mailing addresses for these recipients are listed below:

Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh, NC 27699-6714

Emery Edwards Milliken  
NC Department of Health and Human Services  
2001 Mail Service Center  
Raleigh, NC 27699-2001

If the NCP appeals trade line reporting in more than one CSS case (or county), the Office of Administrative Hearings can consolidate the appeals into one hearing, even though the NCP has a separate petition for each CSS case.

When an NCP appeals trade line reporting, the Credit Reporting Coordinators (CRCs) at the CSS Central Office are responsible for documenting the appeal in ACTS, which prevents the CSS case from being placed on the monthly submittal tape. The CRC must also schedule the appeal hearing in ACTS. After the appeal hearing has occurred, the CRC is responsible for documenting the outcome of the appeal.

If the order has not been flagged within sixty (60) days after the generation of the Notice with a disposition code indicating not to submit, ACTS submits the court-ordered obligation to the credit bureaus during the next monthly submittal.

If the Notice is returned due to an invalid address, responsible caseworkers should then take the appropriate locate action.

If the NCP disagrees with the arrearage amount(s) after waiving his/her rights to appeal or after an appeal has been denied, the NCP must contact the credit reporting agency. The credit reporting agency then sends a request for verification of the arrearage amount(s) to the CSS Central Office. If the CSS Central Office does not meet the required 30-day time frame for verification, the credit reporting agency must pull the NCP's records from their files.

ACTS submits payments that are made by the NCP and the current support and arrearage subaccount balances that are associated with all court orders that are flagged for submittal to two (2) major credit reporting agencies (Experian and Innovis) on a monthly basis, unless Good Cause is pending for the CSS case.

When a credit bureau requests payment and/or subaccount information for a CSS case for which a Trade Line Reporting Notice (DSS-4478) has

not previously been sent, responsible caseworkers must manually generate the Notice and allow the NCP sixty (60) days to appeal. If the NCP does not make an appeal in sixty (60) days, caseworkers can generate a Letter To Consumer Reporting Agency (DSS-4652).

*NOTE: The local CSS agency should be careful to release only the required information for the NCP. Under no circumstances should information for the custodial parent be released to a consumer reporting agency. Legal requirements do not preclude a CSS agency from obtaining information from consumer reporting agencies that can prove valuable in location efforts.*

At the end of the month in which an NCP's last case is closed, ACTS submits that NCP's account to the credit reporting agencies with a zero (\$0.00) arrearage balance.

## **ESTATES COLLECTION**

### **ESTATES COLLECTION POLICY**

Upon the date of death, all of a decedent's (deceased person's) assets become the property of that decedent's estate. The decedent's estate must be disposed of so that moneys due the decedent are collected, all creditors of the decedent are paid, and any remaining property is disbursed to the heirs. A personal representative is designated by the Clerk of Superior Court to manage this process. If the decedent had a will, this representative is the "executor" of the will. If no will exists, an "administrator" can be appointed as the representative.

CSS does not provide services to collect debts owed to estates; however, CSS must take steps to provide the personal representative with notice of any child support debt that is owed to the estate or of any debt that is owed by the decedent.

To obtain contact information for an authorized personal representative for an estate, CSS should contact the Estates Division of the Clerk of Superior Court in the decedent's county of residence. If no estate has been filed with the court, other case participants might be able to provide information about who could be handling these affairs.

When responsible CSS caseworkers learn of the death of a custodial parent, noncustodial parent (NCP), or child, they must verify the date of death and assess and complete all appropriate case actions as soon as possible.

Until all necessary verifications and assessments are completed, no funds should be disbursed and the CSS case should not be closed.

When the custodial parent is the decedent:

- The current support obligation to the custodial parent ends on the date of death;
- All arrearages that were owed to the custodial parent as of the date of death are owed to the estate; and
- A new case with a new caretaker cannot be opened until CSS receives a completed application or DSS referral for services.

When the NCP is the decedent:

- The support obligation ends on the date of death; and
- Arrearages that the NCP owed as of the date of death are a debt for which a claim can be filed against the estate.

When the child is the decedent:

- The current support obligation for the child ends on the date of death; and
- Arrearages that the NCP owed up to the date of death are a collectable debt.

Once the case is closed, caseworkers should take no further actions on the case. Therefore, it is imperative that they review the case thoroughly, ensure that all funds are disbursed properly, and take all necessary case actions PRIOR TO closing the case.

- Reopening a case to manage payments that were received prior to closure without a new application or DSS referral for services is inappropriate.
- Any payments that are received after case closure are to be refunded to the payor.

## **FEDERAL CRIMINAL PROCSECUTION (PROJECT SAVE OUR CHILDREN)**

### ***FEDERAL CRIMINAL PROSECUTION (PSOC) POLICY***

The Child Support Recovery Act of 1992 makes the willful nonpayment of past due child support for a child living in another state a federal crime. This law was amended by the Deadbeat Parents Punishment Act of 1998, which made it a felony to cross state lines with the intention of avoiding child support payments and provided strict guidelines for the penalties for this offense. These provisions are found in federal law at 18 USC 228.

The federal criminal prosecution remedy is available only through the Child Enforcement Services program. This remedy can be sought when all other available enforcement remedies are exhausted and well-documented. The United States Attorney's Office is responsible for the criminal prosecution of the NCP.

Project Save Our Children (PSOC) is the vehicle used by OCSE to manage the referral process for cases being submitted for federal criminal prosecution. PSOC's roles are as follows:

- Local CSS submits a case to the state PSOC Coordinator;
- The state PSOC Coordinator reviews the case and submits it to OCSE PSOC Coordinator;
- The OCSE PSOC Coordinator ensures that the case is referred to the correct OIG (Office of the Inspector General) field office;
- OIG assigns the case to the appropriate US Attorney for prosecution; and
- The US Attorney determines whether the case will actually be prosecuted and, if so, handles the prosecution.

**CRITERIA FOR FEDERAL CRIMINAL PROSECUTION -**

Under federal law at 18 USC Section 228, failure to pay child support can be prosecuted as a federal offense if the parent and child reside in different states and either:

- The obligation has been unpaid for longer than one (1) year or arrearages are more than \$5000.00; or
- The obligation has been unpaid for longer than two (2) years or arrearages are more than \$10,000.00.

Eligibility for referral for federal criminal prosecution also requires that:

- The CSS case is classified as an open Interstate case;
- An order for current support is in place. No known issues of domestic violence exist for the case;
- Reason exists to believe that the parent has the ability to pay support; and
- All possible enforcement remedies have been exhausted and documented in the case record.

Since all PSOC referrals must be open CSS cases, requests for referral from private attorneys or individuals can be made to local CSS. If no open CSS case exists, an application for the full range of services must be completed and the application fee paid. CSS caseworkers then must exhaust all other available enforcement remedies before eligibility for federal criminal prosecution can be evaluated. If the case meets all criteria, a PSOC referral can be made. If not the custodial parent can elect to continue CSS services or close the case.

**CASE SELECTION CONSIDERATIONS -**

Careful screening is necessary when selecting cases to submit for federal criminal prosecution. CSS should submit only cases for which all available state remedies have been exhausted, yet reason exists to believe that the parent is able to comply with the terms of a support obligation, but is failing to do so. When evaluating a case, CSS should consider the following factors:

1. Whether or not the evidence is sufficient to prove the charge beyond a reasonable doubt;
2. Whether or not a pattern exists of repeated flight from state to state to avoid payment or flight after service of process for contempt or contempt hearing;
3. Whether or not a pattern of deception to avoid payment exists, such as repeatedly changing employment, concealing assets or location, using false Social Security numbers, or hiding assets and income for self-employed parents;
4. Whether or not the NCP has failed to make support payments after being held in contempt of court;
5. Whether or not the NCP's failure to make child support payments is connected to other potential federal charges such as bankruptcy fraud or federal income tax charges;
6. The degree of noncompliance demonstrated by the NCP from the inception of the child support obligation;
7. The amount of past due obligation;
8. The strength of the evidence demonstrating the defendant's ability to pay past due child support payments; and/or

9. The availability of an adequate non-federal criminal, civil, or administrative alternative to federal prosecution.

***PUNISHMENT FOR FAILURE TO PAY LEGAL CHILD SUPPORT OBLIGATIONS -***

A conviction of non-support is punishable by:

- If the arrearages remain unpaid for more than one (1) year or are greater than \$5000.00:

**First offense** - Fine OR imprisonment for not more than six (6) months OR both;

**Subsequent offense** - Fine OR imprisonment for not more than two (2) years OR both.

- If the arrearages remain unpaid for more than two (2) years or are greater than \$10,000.00, fine OR imprisonment of not more than two (2) years OR both.

Conviction of willful failure to support also requires the court to order restitution in the total amount of unpaid support. The federal court distributes restitution (arrearage) payments to NC Centralized Collections (NCCSCC).

In addition to these punishments, the NCP can be placed on probation. The specific terms of probation include:

- Paying current support as required by the existing support order;
- Pursuing employment in order to continue making the support payments or performing community service; and
- Appearing in court as necessary, specifically for child support hearings.

Federal probation officers periodically monitor the payments to determine whether probation should be revoked and the NCP should be imprisoned. Local CSS caseworkers can release payment information to federal probation officers in an effort to enforce the child support order.

***ENFORCEMENT OF FEDERAL PROSECUTION CASES -***

CSS is responsible for all necessary enforcement activities for a case that is referred for federal criminal prosecution until the US Attorney accepts that case for prosecution.

Once the US Attorney accepts a case:

- CSS must provide any available updated information on the case;
- CSS should not request termination of federal criminal prosecution based on a payment or promise of payment by the NCP. If extenuating circumstances exist, CSS should contact the US Attorney to determine the appropriate course of action.

After federal criminal charges are filed, CSS enforcement activities should be stopped until further notice from the federal court.

The CSS agency remains responsible for the collection and distribution of current support.

## **FINANCIAL INSTITUTION DATA MATCH (FIDM)/SECURING ASSETS FROM FINANCIAL INSTITUTIONS**

### **GENERAL INFORMATION**

This topic contains information on the following subjects:

1. [Financial Institution Data Match \(FIDM\) policy;](#)
2. [Policy related to FIDM involving more than one state;](#)
3. [The criteria for FIDM;](#)
4. [The FIDM process;](#)
5. [Policy related to securing assets from financial institutions;](#)
6. [Process for securing assets from financial institutions.](#)

### **FINANCIAL INSTITUTION DATA MATCH (FIDM) POLICY**

NCGS 110-139.2 requires the Child Enforcement Services program and financial institutions that do business in the state to enter into agreements to secure information leading to the enforcement of child support orders. A data match system has been developed that requires financial institutions to provide quarterly the name, Social Security number, address, telephone number, account numbers, and other identifying data for any person who maintains an account at the financial institution and who owes past-due support.

A "financial institution" is defined as a Federal, state, commercial, or savings bank; savings and loan association and cooperative bank; Federal or state chartered credit unions benefit association; insurance company; safe deposit company; money market mutual fund; or investment company doing business in this state or incorporated under the laws of this state.

For use in this process, an "account" is defined as any demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money market mutual fund account.

Financial institutions are not liable for disclosure of information to the state CSS agency or for any other action taken by the financial institution in good faith to comply with the requirements for the data match.

NC CSS submits a file with the name and Social Security number of each noncustodial parent (NCP) who meets the FIDM levy criteria for quarterly matching with the account holder files of financial institutions that do business in North Carolina. See "[Financial Institution Data Match Criteria](#)".

If a match is received, The NC CSS FIDM Unit receives the matching participant's data. See "[Financial Institution Data Match Process](#)".

NCGS 110-139.2 allows use of the FIDM levy process by other states. If a matched account is located in NC, other states' CSS agencies can issue a levy directly to the financial institution. NC CSS is not involved in the process. However, many financial institutions do not honor levy requests from a state other than the state where a financial account is located.

The IDEC AEI (Automated Enforcement of Interstate Cases) database stores account information received from participating financial institutions in states that are members of the IDEC FIDM program. It allows FIDM workers to access an NCP's financial institution account information through a web-based application and submit an electronic levy request to the state where the financial institution account exists.

The responding state can then seize the NCP's funds and remit them to NC Member states currently participating in IDEC AEI are Alabama, Arkansas, Georgia, Kentucky, Louisiana, New Mexico, North Carolina, Oklahoma, South Carolina, and South Dakota.

#### **MULTISTATE FINANCIAL INSTITUTION DATA MATCH POLICY**

Public Law 105-200, Child Support Performance and Incentive Act of 1998, modified Title IV-D of the Social Security Act and the Personal Responsibility and Work Opportunity Act of 1996 to facilitate the data match for financial institutions operating businesses in more than one state. It allows the Federal Office of Child Support Enforcement (OCSE) to assist states in conducting matches with multistate financial institutions.

Financial institutions that operate in more than one state can choose to simplify the data match process by conducting one match with OCSE instead of matching with several states. OCSE utilizes the Federal tax refund intercept (offset) files from each state to extract data for submittal to multistate financial institutions that are in agreement with OCSE to conduct the matches. Multistate financial institutions conduct the match and return matched data to OCSE for disbursement to the states. Information that is returned from OCSE is transmitted to the states through the Federal Case Registry within forty-eight (48) hours.

The Multistate Financial Institution Data Match (MSFIDM) process is similar to the data match process for financial institutions that only operate in North Carolina in the following areas:

- Data match criteria;
- Quarterly matches occur;
- Liability;
- Fees;
- Types of accounts that are subject to the match; and
- Data exchange.

The MSFIDM process differs from the intrastate financial data match process in that:

1. Multistate financial institutions must submit matches quarterly, but they are allowed to submit the matches on varying dates within a quarter. Therefore, updates from OCSE to the states can occur on a daily basis;
2. All of an NCP's cases that are eligible for Federal tax refund intercept (offset) are matched. Once the matched data is returned from OCSE, the cases not meeting the criteria of an amount of unpaid support equal to six (6) months' support or \$1000.00 (whichever is less) and cases for which a barrier is documented in ACTS are deleted before the system is updated with

the matched data. See "[Financial Institution Data Match Criteria](#)".

3. Multistate financial institution data matching return files from OCSE can contain information from institutions on accounts matched only by Social Security number. It is possible that the name submitted for the match might not be the name on the financial institution account. If the name on the account is not a previous alias for the NCP, the FIDM Unit worker investigates to determine if this person is the NCP before proceeding with the levy process.

The policy and procedures for securing assets from multistate financial institutions are the same as the intrastate process.

#### **FINANCIAL INSTITUTION DATA MATCH CRITERIA**

Cases with an amount of unpaid support owed that is at least \$1000 or an amount equal to six (6) months' current support, whichever is less, are eligible to be submitted for the FIDM levy process.

However, cases ARE NOT submitted if they also meet one of the following exclusions:

- Cases that have an existing arrearage payment plan, and the arrearages could be paid off within a year based on that plan.
- Cases that have a barrier code documented in ACTS that excludes them from the FIDM levy process.

#### **FINANCIAL INSTITUTION DATA MATCH PROCESS**

- For intrastate match processing, NC CSS submits a file that contains the names, Social Security numbers, and MPI numbers of all noncustodial parents (NCPs) who meet the FIDM match criteria to the IDEC vendor, who compiles data from each member state and sends it to the participating financial institutions in those states. The participating states are Alabama, Arkansas, Delaware, Georgia, Kentucky, Louisiana, New Mexico, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Virginia, and West Virginia. For the MSFIDM (multistate) match, the CSS Central Office also sends data to OCSE via the federal tax refund intercept (offset) file. For more information, see [FIDM match criteria](#) and [MSFIDM](#).
- Intrastate and multistate files are sent to financial institutions that have agreements established to conduct the match.
- The financial institutions match against Social Security numbers. When a match occurs, they return the following data to the IDEC vendor and/or OCSE: name, address, phone number, account numbers, and account types.
- The IDEC vendor and OCSE return the data from the match to the participating states. If the return file is from a multistate financial institution, the data is sent to each state agency.
- The CSS Central Office downloads the data match file into ACTS. As a result of this, ACTS creates a financial institution data match record and notifies the responsible caseworker that the match has occurred. The account number and the reporting month/year are documented in the case history.

### **ACCOUNTS THAT ARE EXEMPT FROM THE FIDM LEVY PROCESS**

Certain trust fund or escrow accounts are matched during the FIDM process, but they are exempt from levy. Once placed in these accounts, the funds no longer belong to the NCP and cannot be removed by the NCP. The exempt accounts types are:

- IOLTA (Interest on Lawyer's Trust Account) Accounts
- Mortgage Escrow Accounts
- Security Deposit/Real Estate Accounts
- UTMA/UGMA (Uniform Transfer or Gift to Minors Act) Account

### **SECURING ASSETS FROM FINANCIAL INSTITUTIONS POLICY**

In accordance with NCGS 110-139.2(b1), CSS can secure assets from accounts of NCPs when a financial institution data match occurs. See ["Financial Institution Data Match Policy"](#).

When the FIDM process identifies eligible cases and financial accounts, the FIDM Unit at the CSS Central Office initiates action to secure funds from the account(s) by sending a Notice of Intent To Levy document to the financial institution and the NCP. The Notice of Intent to Levy identifies all of the NCP's eligible cases and all of the matched accounts at a specific financial institution. Notice to the financial institution is served in accordance with Rule 5 of the NC Rules of Civil Procedure. Notice to the NCP must be served under Rule 4.

### **USING THE NOTICE OF INTENT TO LEVY TO THE FINANCIAL INSTITUTION**

The Notice Of Intent To Levy To Financial Institution (DSS-7075) document certifies the total amount of unpaid support that is owed for all of the NCP's eligible cases. It instructs the financial institution to:

- Place a lien on the account up to the total amount of the arrearages (if available) and provide CSS with the account balance and date of attachment; or
- Provide CSS with the reason that the account could not be attached.

The financial institution returns this information on Part B of the DSS-7075 document.

If the account balance is below \$10.00 or the account is otherwise not attachable, the FIDM Unit sends a Notice To Financial Institution To Lift Levy (DSS-7078) to the financial institution to end the action. If the account is attached, the funds in the account remain frozen until further notice from the FIDM Unit.

*NOTE: A financial institution can voluntarily report an account balance in the match file. If a balance less than \$500.00 is reported in the match, the account is eliminated from the levy process. If a balance is not reported in the match file, the case is eligible for selection. It is eliminated if the response to the DSS-7075 document indicates a balance below \$10.00.*

### **USING THE NOTICE OF INTENT TO LEVY TO THE NCP**

The Notice Of Intent To Levy On Financial Institution Account (DSS-7076) document is sent to the NCP and advises him/her of:

- The placement of a lien on the NCP's financial account(s);
- The intent to levy (seize) an amount from the account(s);
- The NCP's right to contest the levy;
- How to contest the levy; and
- The NCP's option to pay the debt from other resources.

### **NCP RESPONSE TO THE NOTICE OF INTENT TO LEVY**

An action in response to the Notice Of Intent must be made within ten (10) calendar days of the date of service of process. Any response that is received more than ten (10) days after the date of service should be considered the same as if no action was taken.

1. **Contesting the Levy** - Contests must be made in writing within ten (10) days of receipt of the notice. Levies can be contested if:

- The recipient of the notice is not the person who was identified as owing the child support debt, or
- The NCP's total amount of unpaid support owed is less than an amount equal to six (6) months' current support or is under \$1000.00, whichever is less.

To contest a levy, the NCP must:

- Notify the local CSS agency that manages the case, in writing, of the intent and reason for the contest.
- File a Request For Hearing To Contest Levy (AOC-CV-643) in the District Court of the county where the order is entered.

The ruling of the court determines how the levy will proceed. The court could allow, amend, or deny the CSS levy action. The court could also assess court costs to the losing party. An Order On Hearing To Contest Levy (AOC-CV-644) is completed after the hearing. Local CSS notifies the FIDM Unit of the outcome of the hearing.

If the NCP's contest is successful, the FIDM Unit sends a Notice To Financial Institution To Lift Levy (DSS-7078) to end the action. If the contest is not successful, the FIDM Unit sends a Notice To Financial Institution To Remit Funds (DSS-7077), which advises the institution of the amount to be paid to NCCSCC and includes a payment transmittal form. Using the DSS-7077 document identifies the FIDM payment so that it only prorates to eligible cases.

2. **Objections That Do Not Meet Contest Requirements** - If the NCP states objections to the intent to levy other than those allowed by statute, local CSS should attempt to resolve the issues.

If an NCP alleges that the amount of unpaid support owed is incorrect as stated on the Notice Of Intent To Levy, the responsible caseworker must review the case account to verify

the correct amount for the NCP and correct the account if an error exists.

If the NCP is the primary account owner of the account, a match is appropriate, regardless of whether other persons also are named on the account.

Case law exists that assumes the account belongs to the NCP, regardless of whether the NCP is primary or secondary payee on the account. Also, Jimenez v. Brown (509 S.E.2nd NCAppe. 1998) supports CSS's right to pursue the account for the NCP's portion of the funds in the account.

If the NCP or another person alleges that, although the name of the NCP appears on the account, some or all of the funds in the account actually belong to someone else, the objection might be resolved without a formal contest in the following circumstances:

- If the account is a joint account with a spouse and it is shown that the spouse contributes funds to the account, CSS should agree to a levy of one half (1/2) of the available amount that could be obtained from the account, regardless of the amount that each person contributed. If the NCP elects to make a payment to avoid the levy, CSS should prepare the payment transmittal for one half (1/2) of the available amount.
- If it is shown that the account actually belongs to someone else and the NCP is acting in an assisting capacity to an account owner, such as managing the account of an elderly relative, the levy should be terminated.
- If the account is in the name of the NCP, but it is shown that it was established for the benefit or use of a minor, the levy should be terminated.

Agreements to modify or end a levy in any other situations are not to be considered.

3. **Payment to Avoid a Levy** - The NCP can avoid a FIDM levy by paying the amount of unpaid support from other resources within ten (10) days of receiving notice of a FIDM lien. The payment amount must be equal to what could have been obtained from the financial account.

*EX. 1: The amount owed is \$5000.00 and the account balance is \$2000.00. The maximum amount that can be obtained from the levy is \$2000.00. The payment to avoid a levy must be at least \$2000.00.*

*EX. 2: The amount owed is \$3000.00 and the account balance is \$8000.00. The maximum amount that could be taken from the account is \$3000.00. The payment to avoid a levy must be no less than \$3000.00.*

*EX. 3: The amount owed is \$7500.00 and the account balance is \$5000.00. This account is jointly owned by the NCP and spouse, who both contribute to the account. The payment to avoid levy must be at least \$2500.00, which is one half (1/2) of the available amount that could be obtained from the account.*

To take this action, the NCP must send a certified check or money order in the required amount accompanied by a Child Support Payment Transmittal (DSS-7079) to NCCSCC. When the payment is posted, the FIDM Unit sends a Notice To Financial Institution To Lift Levy (DSS-7078) to end the action.

4. **No Action by NCP** - If the NCP does not contest or arrange payment from other funds within ten (10) days of service of the Notice of Intent To Levy, the FIDM Unit sends the Notice To Financial Institution To Remit Funds (DSS-7077). This notice advises the institution of the amount to be paid to NCCSCC and includes a payment transmittal form that identifies all cases and the amounts to be applied to each case. Once the payment is processed by NCCSCC, the action is ended.

Financial institution levy actions can be completed by:

- The generation of a Notice To Financial Institution To Lift Levy (DSS-7078).
- The generation of a Notice To Financial Institution To Remit Funds (DSS-7077) and the subsequent receipt of a payment from the financial institution.
- The generation of a Notice To Financial Institution To Lift Levy (DSS-7078) and the receipt of a payment from the NCP.
- The decision by CSS not to initiate a levy action prior to generation of a Notice Of Intent To Levy.

Until the action on a match is concluded, no new matches with the same account are made. However, a match on other accounts with the same or a different institution can occur. FIDM Unit workers determine if it is appropriate to initiate action on a subsequent match.

#### ***SECURING ASSETS VIA QUALIFIED DOMESTIC RELATIONS ORDER***

Federal and state laws require the use of a a Qualified Domestic Relations Order (QDRO) to access funds in ERISA (401K) and IRA/KEOGH (Individual Retirement Account) plan accounts.

A QDRO is a court order that requires financial institutions to release funds to pay support for dependent children, child support arrearages, and alimony. This type of order requires the inclusion of case specific information; therefore, the assistance of the CSS attorney could be required. This remedy can be used without requiring an order to reduce arrearages to a judgment or to establish a lien.

#### **SECURING ASSETS FROM FINANCIAL INSTITUTIONS PROCESS**

##### ***BARRIERS TO APPLYING A FIDM LEVY***

Certain barriers can exist that make the use of a FIDM levy inappropriate for a case. Local CSS caseworkers can exclude a case from the FIDM levy process for the following reasons:

- The NCP has an open bankruptcy claim. CSS Central Office workers in the FIDM Unit review these cases to determine if the levy process is appropriate for the NCP's assets that are not included in the bankruptcy claim.

- The NCP is experiencing a catastrophic illness or event that would prevent compliance with the court order.
- A court has ordered that the FIDM levy not be used.
- Pending litigation involving the case makes FIDM levy inappropriate at this time.

When one of these barriers is documented in ACTS, the NCP's cases are not selected for FIDM levy, even if the eligibility criteria are otherwise met. ACTS searches for these barriers before sending a match file and after match data is returned. A barrier that is entered after this is not considered in the levy process unless a local caseworker notifies the FIDM Unit worker to end the levy action.

When the barrier no longer exists, the responsible caseworker should remove the barrier in ACTS so that the case can be selected if future matches are made.

When a match is made, ACTS documents it in the case history record and notifies the responsible FIDM Unit worker of the match.

Other barriers to a successful levy action exist in addition to those that can be identified by workers. FIDM Unit workers must review each case to determine if these barriers can be resolved and the case selected for levy. The following list describes the barriers that prevent automatic selection:

- The case is an Interstate Initiating case. The other state is contacted to see if NC should proceed with the levy.
- The account name and the NCP name in ACTS do not match. The FIDM Unit researches to determine if these names are the same individual.
- No mailing or residential) address exists in ACTS for the NCP. FIDM Unit and/or SPLS workers make Locate attempts.
- The matched account type (EX: 401-K, IRA, KEOGH) requires a QDRO (Qualified Domestic Relations Order) to access funds. FIDM Unit workers prepare the QDRO for approval by the plan administrator.
- The matched account is a checking account. Although levy on checking accounts is allowed, CSS has elected to omit them at this time.
- The account balance reported in the match is below \$500.00. It is not cost effective or otherwise advisable to pursue these small accounts.
- A levy on this account from a previous match is being processed. The account remains ineligible until the existing levy action is completed.
- No action on the account is allowed until further notice. A court order, levy barrier code entered by the CSS caseworker, or other circumstance could be preventing action.
- No Third Party Table (TPT) address exists for the financial institution that is holding the account. FIDM Unit workers obtain the address to be used for service of process and submits it for entry in the TPT.
- An additional Notice Of Intent is needed. If the Notice Of Intent document does not have enough space to list more accounts, FIDM Unit workers generate another Notice Of Intent for the additional accounts.

### ***SERVICE OF THE NOTICE OF INTENT TO LEVY***

If no barriers exist when a match is made, ACTS automatically generates the Notice Of Intent To Levy To Financial Institution (DSS-7075) and the Notice Of Intent To Levy On Financial Institution Account (To NCP) (DSS-7076). When a barrier prevents the automatic generation of these documents, FIDM Unit workers must examine the reason for the barrier and determine if the levy can proceed. If the levy can be pursued, FIDM Unit workers generate and issue these documents for service on the institution by Rule 5 of the Rules of Civil Procedure and for service on the NCP by Rule 4.

Upon service, the financial institution returns Part B of the Notice Of Intent to the FIDM Unit, providing EITHER the date of attachment and the balance of the account OR the reason why the account could not be attached. FIDM Unit workers then document the account balance and date of attachment in ACTS.

### ***WAIVING SERVICE OF PROCESS AND PROCEEDING WITH A LEVY***

If an NCP who has not received service of the Notice Of Intent To Levy learns of the action and wishes to proceed with the levy, service of process can be waived. To waive service for this purpose, the NCP must provide local CSS with a written statement that he/she is waiving official notification and is not contesting the levy.

Local CSS caseworkers must document the waiver in ACTS and notify the FIDM Unit worker that service is completed. If multiple cases in different counties are included in the levy action, the NCP can waive service for all of these cases to one local CSS agency.

When multiple cases are certified, FIDM workers determine the appropriate remittance amounts for each case using the [levy proration formula](#).

### ***CONTESTATION OF THE LEVY***

To contest the levy, the NCP must give local CSS written notice of the contest AND file a Request For Hearing To Contest Levy (AOC-CV-643) with the court within ten (10) days after receiving the Notice Of Intent To Levy.

NCPs can meet the requirement to notify CSS by giving the agency a copy of the Request For Hearing To Contest Levy that was filed with the court or any other written document that contains the NCP's name, the reason for contesting, and the CSS case (IV-D) numbers and account numbers that are being contested.

Upon receiving a contest notice, local caseworkers should first verify the service of process data. If service was accomplished within the past ten (10) days, caseworkers should instruct the NCP to request a hearing with the Clerk of Superior Court. If more than ten (10) days have elapsed since service, they should advise the NCP that the opportunity to contest has expired and that CSS will object to a contest action that was not made in a timely manner.

To request a hearing, the NCP must complete a Request For Hearing To Contest Levy (AOC-CV-643) and file it with the Clerk of Superior Court in the county where the order is entered. The NCP must file a separate request for each case in which the levy is being contested.

It is recommended that the NCP provide the Clerk a copy of the Notice Of Intent when filing the request for a hearing. The NCP must provide the CSS agency with a copy of the Request For Hearing that has the request for hearing, notice of hearing, and certificate of service sections completed.

*NOTE: AOC forms are available from the Clerk of Court or from the North Carolina Court System web site (<http://www.nccourts.org>).*

**WAIVING SERVICE OF PROCESS AND PROCEEDING WITH A CONTEST**

If an NCP who wishes to contest the levy has knowledge of the Notice Of Intent but has not received service of process, the filing of the Request For Hearing To Contest Levy (AOC-CV-643) with the court constitutes a waiver of service of process to proceed with the contest.

When served with a copy of the Request for Hearing document, local CSS reviews the service of process documentation, schedules the hearing, requests a copy of the Notice Of Intent To Levy On Financial Institution Account (DSS-7076) that was sent to the NCP and the proof of service documentation from the FIDM Unit, attends the hearing, provides evidence and testimony as appropriate, and documents these activities in ACTS.

Following the ruling of the court, the court clerk or CSS prepares the Order On Hearing To Contest Levy (AOC-CV-644), according to local procedures. Local caseworkers must also document the results of the contest hearing in ACTS and notify the appropriate FIDM Unit worker of the outcome of the contest hearing.

If the NCP succeeded in contesting the levy, local CSS caseworkers notify the appropriate FIDM Unit worker.

If the NCP's contest was not successful, local CSS caseworkers:

- Notify the appropriate FIDM Unit worker and include information on any specific amounts or other terms for the levy that were ordered by the court.
- Generate the Cover Letter/Order On Contest Of Levy (DSS-7080) and send it with copies of the court order to the custodial parent and NCP.

If the NCP succeeded in contesting the levy, FIDM Unit workers:

- Generate a Notice To Financial Institution To Lift Levy (DSS-7078), selecting the accounts on which the levy is to be lifted. The FIDM Unit worker sends this document to the financial institution.
- Document the successful contest in ACTS. The levy process is completed.

If the NCP's contest was not successful, the FIDM Unit worker:

- Generates the Notice To Financial Institution To Remit Funds (DSS-7077), using the [levy proration formula](#) to determine the amounts to be remitted for each certified case. ACTS transfers these amounts to the payment transmittal, Part B of the notice.

- Documents the unsuccessful contest in ACTS. The system notifies the FIDM Unit worker when the levy payment is posted. The levy process is completed.

**OBJECTIONS THAT DO NOT MEET CONTEST REQUIREMENTS**

Objections to the levy can be resolved by local CSS for the following reasons:

- NCP alleges that the amount of unpaid support as stated on the Notice Of Intent To Levy is incorrect.
- The account is a joint account held by the NCP and a spouse.
- The account belongs to someone else, and the NCP is acting in an assisting capacity to an account owner.
- The account is in the name of the NCP, but it was established for the benefit or use of a minor.

**PAYMENT TO AVOID A LEVY**

Action to avoid a levy must be taken within ten (10) days of service of process of the Notice Of Intent To Levy. To avoid the levy, the NCP must notify local CSS and make a payment to local CSS in an amount no less than the amount that could have been obtained from the levy on the account.

To verify the required payment amount, local CSS must review the account balance on the FIDM match record and the certified amount of unpaid support owed as stated on the Notice of Intent to Levy. The required payment amount is the lesser of these two amounts. If multiple cases are included in the levy, the NCP cannot choose to pay on only some cases. The required payment to avoid levy is always the total amount that could be obtained for all certified cases.

If cases that are certified for levy are in multiple counties, the NCP can make arrangements for payment on all of the cases with a single local CSS agency. The payment arrangements should be documented in ACTS for each case.

When an NCP elects to make this payment, local CSS generates a Child Support Payment Transmittal (DSS-7079) and affixes a bar code label to the form. Remittance amounts for each case must be entered. ACTS computes and enters the total remittance amount.

**Levy Proration Formula -**

The following formula is used to determine the appropriate remittance amounts for a levy with multiple certified cases:

$$\text{Case 1 -} \\ \frac{\text{Certified amount owed}}{\text{Total certified amount owed for all cases}} \times \text{Account balance} = \text{Remittance amount}$$

$$\text{Case 2 -} \\ \frac{\text{Certified amount owed}}{\text{Total certified amount owed for all cases}} \times \text{Account balance} = \text{Remittance amount}$$

$$\text{Case 1 Remittance Amount} + \text{Case 2 Remittance Amount} = \text{TOTAL REMITTANCE AMOUNT}$$

The NCP mails a certified check or money order with the transmittal to NCCSCC. ACTS notifies the FIDM Unit worker when the payment is posted. If notification is not sent within ten (10) days after the transmittal was generated, the FIDM Unit worker reviews the case record. If research shows no payment intended as a FIDM payment and no extenuating circumstances are documented, a Notice To Remit Funds can be sent to the financial institution.

When the payment is confirmed, the FIDM Unit worker sends a Notice To Financial Institution To Lift Levy (DSS-7078) to cancel the lien on the account. The process is completed.

#### **NO CONTEST - NO PAYMENT TO AVOID LEVY**

If the NCP has not contested or avoided the levy within ten (10) days after receiving the notice, the FIDM Unit worker generates the Notice To Financial Institution To Remit Funds (DSS-7077). The amounts to be remitted for each certified case are determined using the [levy proration formula](#).

*NOTE: The amount that is remitted can be less than the amount requested, if the institution withholds any service or membership fees.*

ACTS transfers the remittance amounts to Part B of the notice. The FIDM Unit worker affixes a bar code label to Part B of the Payment Transmittal and sends the notice to the institution. When ACTS notifies the FIDM Unit of the FIDM payment being posted, the process is completed.

## **INCOME WITHHOLDING**

### **GENERAL INFORMATION**

Child Enforcement Services (CSS) agencies must always use income withholding as an initial enforcement effort, when appropriate. It is an efficient and reliable means of collecting periodic child support obligations. This topic contains information on the following subjects:

1. [General income withholding policy](#);
2. [Immediate income withholding \(INCO cases\)](#);
3. [Administrative income withholding](#);
4. [Good Cause/Alternative Arrangement \(INGC/INAA cases\)](#);
5. [Income withholding based on arrearages \(INCO, REGP, INGC, and INAA cases\)](#);
6. [Income withholding for military personnel](#);
7. [Income withholding for New Hires](#);
8. [Income withholding of Non-IV-D obligations](#);
9. [Income withholding when requested by the obligor/obligee](#);
10. [Manually initiating income withholding when the I/W notices are not automatically generated](#);
11. [Notice of intent to withhold income](#);
12. [Notice of obligation to withhold income](#);
13. [Income Withholding For Support \(DSS-4702\) document](#);
14. [Payment of withheld funds](#);
15. [Proration of income withholding payments](#);
16. [Communication with the employer](#);
17. [Employer compliance](#);

18. [Changing the amount of income withholding;](#)
19. [Transfer of income withholding;](#)
20. [Income withholding when CSS services are terminated;](#)
21. [Termination of income withholding;](#)

**INCOME WITHHOLDING POLICY (NCGS 110-136.3, 136.4, 136.6, 136.7, 136.8, 136.9, 136.10)**

Income withholding is an efficient and reliable means of collecting periodic child support obligations. Money is deducted from a noncustodial parent's (NCP's) paycheck and forwarded to the NCCSCC by the NCP's employer within seven (7) business days. (A business day is defined as any day that the CSS Central Office is open to conduct normal business.) Income withholding must always be used as an initial enforcement effort in appropriate CSS cases as defined in the next section. Income withholding can also be initiated with entities other than employers when the NCP has other sources of income, such as [Social Security \(SSA\) benefits](#), [Unemployment Insurance Benefits](#), and [Worker's Compensation](#).

Nongovernmental entities or individuals can also use the income withholding process. These entities are to submit a copy of the withholding order to employers/payors along with an [Income Withholding For Support](#) (DSS-4702) document, if initiating an income withholding.

NCGS 110-136.3(b) (3) provides for the implementation of income withholding through [immediate income withholding](#), [withholding based on arrearages](#), or withholding initiated at the request of either the obligor or the obligee or on the obligor's eligibility for withholding.

Income withholding can also be implemented to collect child support arrearages that have been reduced to a judgement (Griffin v. Griffin, 404 S.E. 2d 478 1991) or to enforce medical support orders for specified dollar amounts.

NCGS 108A-69 requires that if the defendant fails to comply with the court order to provide medical coverage for the dependent child(ren) and the coverage is available through the employer/payor, the employer/payor must enroll the child under family coverage upon receipt of the [National Medical Support Notice](#) (DSS-4733) from the CSS agency. In addition, the employer/payor must deduct the amount of insurance premium from the wages of the defendant and send the premium to the health insurance provider.

Withholding, attachments, or garnishments imposed by the Internal Revenue Service for the collection of delinquent income taxes has priority over a child support withholding requirement.

Income withholding can be initiated for an NCP who has an order in North Carolina but is located in another state. The [Income Withholding For Support](#) (DSS-4702) should be served on the employer/payor.

***DISPOSABLE INCOME***

***Definition of Disposable Income***

"Disposable income" is defined as any form of periodic payment to an individual, regardless of the source. This includes (but is not

limited to) wages, salary, commission, self-employment income, bonus pay, severance pay, sick pay, incentive pay, vacation pay, compensation as an independent contractor, Workers' Compensation, Unemployment Insurance Benefits, disability, annuity, survivor's benefits, pension and retirement benefits, interest, dividends, rents, royalties, trust income, and other similar payments that remain after the deduction of Federal, state, and local taxes, Social Security, and involuntary retirement contributions.

#### ***Disposable Income for Military Personnel***

For military personnel, including veterans, disposable income includes military pension and retirement benefits, military active duty and special pay, and Federal civilian employee's pay. Social Security retirement and disability benefits and state-administered retirement pay are also considered disposable income.

#### ***Verification of Disposable Income***

Information needed to verify disposable income can be sought from the NCP and/or directly from the employer or other payor. NCGS 110-136.8(b)(6) requires that employers/payors of disposable income cooperate with the CSS agency in the verification of the amount of the NCP's income.

#### ***FUNDS EXEMPTED FROM INCOME WITHHOLDING***

Longshoreman workers' compensation and unemployment benefits generally are exempt from attachment; however, attachment is allowed in some instances. Contact the local attorney on a case by case basis to determine if attachment is feasible.

Longshoreman workers' compensation, longshoreman unemployment benefits, veterans' disability, and death benefits are to be considered a source of income when establishing an order for child support.

Veterans' benefits are subject to attachment through garnishment or income withholding only when the veteran is eligible to receive military retired/retainer pay and has waived a portion of the retired/retainer pay in order to receive disability compensation from the Department of Veterans' Affairs. Veterans' benefits are a disability payment, not unlike Social Security disability and SSI. A retired veteran's retirement is paid by the Department of Defense, not the Department of Veterans' Affairs. That portion of the VA benefit received in lieu of retired/retainer pay is subject to garnishment or income withholding.

The VA regional office serving the veteran determines if the veteran has waived any portion of retired/retainer pay in order to receive VA benefits. To effect income withholding from veterans' benefits, caseworkers must complete the Notice To Withhold Other Than Wages (DSS-4630) document.

The director of the VA Regional Office that serves the veteran receives the notice. The VA Regional Office reports whether the veteran has waived any portion of retired/retainer pay in order to receive VA benefits in answer to the DSS-4630 document.

With the exceptions of California, Maryland, Massachusetts, New York, Pennsylvania, Texas, Virginia, and West Virginia, each state is served by one VA Regional Office located within the state.

If the veteran's children are not residing with the veteran and the veteran is not reasonably discharging his/her responsibility for the child(ren) by providing support, all or any part of the veteran's pension, compensation, or emergency officers' retirement pay can be apportioned.

Where a hardship is shown to exist, the Department of Veterans' Affairs authorizes a special apportionment of a beneficiary's pension, compensation, emergency officers' retirement pay, or dependency and indemnity compensation between the veteran and his/her dependents.

To expedite the process, caseworkers should send an Appointment Review Request with the DSS-4630 document. This request is addressed to the Director of the Regional Office and must be on the agency's letterhead. Both the responsible CSS caseworker and the custodial parent/custodial parent must sign the request.

Caseworkers must complete and attach a "Statement in Support of Claim" (VA Form 21-4138) to the apportionment review request and record information concerning the income (including TANF and SSI, if applicable) and the resources of the custodian on the form.

*NOTE: In order for the apportionment review request to succeed, one of the following two conditions must be met. EITHER the claimant (the custodian of the child) must show expenses that exceed household income, OR the veteran must be receiving additional veterans' benefits for dependents, and evidence must show that the veteran is not reasonably contributing to the dependents' support.*

Other funds that are not subject to withholding include:

1. Work First/Temporary Assistance to Needy Families (WFFA/TANF);
2. Supplemental Security Income;
3. Federal Black Lung Benefits;
4. Federal Death Benefits;
5. Payments under the Federal Torts Claims Act;
6. Federal grants and fellowships;
7. Veteran's Educational Assistance Payments;
8. Refunds from erroneous payment or overpayment of Federal income tax;
9. Travel, transportation, uniform, relocation, and other allowances for civilian employees on military posts; and
10. ROTC subsistence allowance.

Funds held for individuals in a wage and hour dispute with an employer for whom the Department of Labor or other Federal agency is acting as mediator are not subject to income withholding. However, once the funds have been disbursed to an NCP, the CSS agency can pursue collection through garnishment of the obligor's account. The CSS agency can also seek an order of the court to deposit the back pay award in the form of a bond or security to guarantee payment.

***INCOME WITHHOLDING FOR SOCIAL SECURITY ADMINISTRATION (SSA) / TITLE II BENEFITS***

Social Security Administration (SSA) benefits received by an NCP can be considered for the purposes of income withholding. However, if any portion of the SSA check is for the benefit of a dependent child, this portion is not considered as a source of income for the purpose of income withholding.

Income withholding documents for a benefit payment from the Social Security Administration (SSA) are sent to the nearest local Social Security office, regardless of the address of the custodial parent or noncustodial parent. The documents must be sent by regular mail to the office manager of the local field office. SSA cannot process income withholding orders sent directly to a Program Service Center (PSC) or the Central Office of Disability Operations located in Baltimore, and it will return the documents to the sending agency.

The field office does accept service of process and will determine the benefit status of the NCP. If the person is receiving benefits, the local office notifies the appropriate SSA PSC to begin the withholding. The PSC notifies the local CSS agency once the withholding is initiated. If the NCP's claim is pending and no benefits are being paid currently, the local SSA office staff loads the withholding information into the SSA's Court Order Garnishment System (COGS). The information remains in COGS until SSA resolves the NCP's SSA claim.

If a claim is pending, the PSC begins the income withholding once the claim has been approved. Since the application review process can take several months, the NCP's first benefit check might be a lump-sum payment for retroactive benefits from the date of the application. The child support withholding payment can also be retroactive for the same period of time.

***MAXIMUM ALLOWABLE PERCENTAGE (AMOUNT TO WITHHOLD FROM INCOME)***

The income withholding must always recognize an amount sufficient to pay the current support obligation, health insurance premiums for the enrollment of the child(ren), cash medical payments, spousal support (if included in the income withholding), an additional amount toward any accrued arrearages (under certain conditions that are discussed later in this section), and a \$2.00 processing fee, which can be retained by the payor.

Withholding can be from any type of the NCP's disposable income, including (but not limited to) regular wages, overtime pay, vacation pay, or lump sum payments. The employer/payor is responsible for calculating the NCP's disposable income and determining the amount that can be withheld based on the maximum percentage amount that State law allows.

However, once the employer/payor has withheld the total monthly amount that is indicated on the Income Withholding For Support document (DSS-4702), no further withholding can be required from any additional income paid to the NCP during that month. CSS must not advise an employer or other payor to withhold more than the required withholding amount or the maximum amount allowed by State law.

Under NCGS 110-136.6, the total amount withheld from the NCP's disposable income for one (1) pay period cannot exceed the following limitations:

1. Twenty-five percent (25%) of Unemployment Insurance Benefits (UIB), regardless of the number of support orders;
2. Forty percent (40%) of disposable income when withholding for ONE support order;
3. Forty-five percent (45%) of disposable income when withholding for MULTIPLE support orders and the NCP is providing direct support for a spouse or other dependent children;
4. Fifty percent (50%) of disposable income when withholding for MULTIPLE support orders and the NCP is not providing direct support for a spouse or other dependent children.
5. If alimony or postseparation support payable to the custodial parent is being enforced with the child support order, the limitations that are set by the [Federal Consumer Credit Protection Act](#) apply.

The Federal Consumer Credit Protection Act percentages are:

1. Fifty percent (50%) of disposable income if the NCP is supporting a current spouse or child;
2. Fifty-five percent (55%) of disposable income if the NCP is supporting a current spouse or child AND the NCP is twelve (12) weeks or more in arrears;
3. Sixty percent (60%) of disposable income if the NCP is NOT supporting a current spouse or child;
4. Sixty-five percent (65%) of disposable income if the NCP is NOT supporting a current spouse or child AND the NCP is twelve (12) weeks or more in arrears.

ACTS does not calculate the percentages that an employer/payor should withhold when an NCP is six (6) weeks past due. Therefore, the only FCCPA percentage limit that can appear on an Income Withholding for Support (DSS-4702) document when spousal support is included is 50% or 60%.

All support obligations, including NIVD court orders and direct support, must be considered when computing the amount to withhold. To ensure that ACTS applies the correct maximum withholding amount that is allowed by State law, it is imperative that the I/W Worksheet include all appropriate cases and that ACTS is updated to indicate whether the NCP is supporting a family in addition to court-ordered support obligations.

If the amount required to satisfy the current support obligation is more than the maximum allowable withholding, the NCP should be informed that it is his/her responsibility to ensure that the payments are current. NCPs must arrange another payment method to make up the difference. It is not the responsibility of the employer/payor to monitor the arrearages that are created if the amount sent is less than the obligation amount.

It is important that the responsible caseworker advise the NCP that any additional amounts withheld through such a request are prorated among all of the NCP's cases.

When the maximum allowable amount of withholding is more than the amount that is required to satisfy the current support obligation, the difference between these amounts should be applied to any arrearages in the case, if the following conditions exist:

1. When there is a frequency amount due ordered for an arrearage, this amount should be withheld in addition to the current support obligation.
2. When the NCP has been served with a Notice Of Intent To Increase IW To 40% (DSS-4481) and does not contest it within ten (10) days, the maximum allowable percentage can be withheld until the arrearages are paid.

The responsible caseworker can elect to apply a lesser amount to arrearages, if circumstances for that case justify a lesser amount. However, local CSS agencies should use a consistent procedure to determine the amount to apply for arrearages.

In multiple withholdings, withholding for current support that is collectible by income withholding has priority over arrearages, and each custodial parent must receive a pro rata share of the total amount withheld, based on the amounts of the child support orders being enforced.

For multiple cases, when it becomes necessary (due to the NCP's neglect or refusal to obtain dependent insurance coverage) to have an employer/payor deduct the amount of the insurance premium, current support and medical support has priority over arrearages. The withheld amount must not exceed the maximum allowable percentage that is permitted by State law.

If alimony or postseparation support payable to the custodial parent is being enforced with the child support order, the withholding percentage is limited to the percentages that are set by the [Federal Consumer Credit Protection Act](#). This act limits the amount of the withholding to sixty-five percent (65%); therefore, current support, insurance premium, arrearages, and alimony or postseparation support cannot exceed this limit.

*NOTE: When the amount of money is not sufficient to take the court-ordered amount for the arrearages in each of an NCP's cases, then each case receives a pro rata share of what is left. At no time should the State maximum of fifty percent (50%) be exceeded. If it is appropriate to apply the [Federal Consumer Protection Act](#) maximum of sixty-five percent (65%), that percentage should not be exceeded.*

#### ***EMPLOYER/PAYOR PROCESSING FEE FOR INCOME WITHHOLDING***

A processing fee of \$2.00 per withholding can be retained by the employer/payor (unless it is UIB withholding.) This fee is not included in the total amount that the employer/payor is told to withhold, but it must be assumed that the employer/payor will retain it.

If the NCP's current support obligation is less than the maximum allowable amount, the employer/payor withholds the obligation and also the \$2.00 processing fee. (See Example A below.) If the NCP's current support obligation is greater than or equal to the maximum allowable amount, the employer/payor can only withhold an amount of the NCP's disposable income up to the maximum allowable percentage specified on the Income Withholding For Support (DSS-4702); however, the employer/payor can keep \$2.00 of that amount as a processing fee. (See Example B.)

**Example A -**

Obligation	=	\$200.00
Maximum allowable amount	=	\$250.00
Amount withheld for support	=	\$200.00
Amount withheld for processing fee	=	\$ 2.00
Total amount withheld by payor	=	\$202.00

**Example B -**

Obligation	=	\$200.00
Maximum allowable amount	=	\$175.00
Amount withheld for support	=	\$173.00
Amount withheld for processing fee	=	\$ 2.00
Total amount withheld by payor	=	\$175.00

**IMMEDIATE INCOME WITHHOLDING**

All criminal or civil child support orders that are entered or modified on or after October 1, 1989, must contain a provision ordering income withholding to take effect immediately. If the NCP does not have a verified employer/payor at the time the support order goes into effect, income withholding is implemented as soon as a verified employer/payor is entered into the system. The NCP must be advised to make any payments that might become due prior to the employer/payor implementing the withholding.

Cases are eligible for immediate income withholding unless:

1. "Good cause" exists for not implementing immediate income withholding; or
2. Some other alternative arrangement has been ordered.

If a court order mandates immediate income withholding, caseworkers must initiate this type of income withholding when entering the court order information in ACTS. The NCP must have a current employment record in ACTS for income withholding to be initiated. CSS sends an [Income Withholding For Support](#) (DSS-4702) document for each of the NCP's eligible cases. If the NCP has more than one active and verified employer/payor, ACTS also generates a DSS-4702 document for each employer/payor.

**ADMINISTRATIVE INCOME WITHHOLDING**

The CSS program has authority to administratively increase an income withholding order in the collection of overdue child support. This can be done if a frequency amount due exists for the repayment of arrearages, or if the issue of frequency has not been addressed. It can be appropriate to administratively increase an income withholding due to a change in employment that results in additional income or to a promotion or increase in salary.

The income withholding must be completed in accordance with due process requirements. Pursuant to Rule 4 of the North Carolina Rules of Civil Procedure, the NCP must be served by certified mail (return receipt requested), by publication, or by the sheriff.

ACTS allows caseworkers to administratively increase an income

withholding amount, even if no frequency amount due for arrearages exists. The amount of the increase must not exceed the maximum allowable percentage amount of disposable income. The additional funds can be collected and applied toward the arrearages of NCPs with a disposable income that is high enough to support an administrative

#### **GOOD CAUSE/ALTERNATIVE ARRANGEMENT**

Immediate withholding is not implemented for a case if either party can show good cause that such a withholding is not in the best interest of the child. A finding of good cause must include an explanation of why the implementation of immediate withholding would not be in the best interest of the child, and for cases involving the modification of support orders, it must show proof of timely payment of previously ordered support.

An alternative arrangement that benefits the child must be agreed upon by both parties.

*NOTE: In WFFA/TANF cases, the CSS agency is the obligee (due to the assignment of rights to support.) However, in NPA cases, the custodial parent must also sign any agreement for an alternative arrangement, which must be written and signed by the appropriate parties.*

Some examples of good cause or alternative arrangements are listed below:

1. Securing a deed of trust;
2. Transfer of real property;
3. The NCP has an excellent support payment history at the time of a modification to the order;
4. The NCP filed a Chapter 13 bankruptcy claim prior to October 17, 2005, and that bankruptcy petition is still active and the stay against collecting child support has not been lifted.

The child support order must contain a statement of any agreement for an alternative arrangement and a statement that if the NCP subsequently does not abide by the agreement or defaults on the support payments, income withholding based on arrearages or the obligor's or obligee's request would apply per NCGS 110-136.4(a).

#### **INCOME WITHHOLDING BASED ON ARREARAGES**

##### ***I/W BASED ON ARREARAGES POLICY***

A case that does not meet the criteria for immediate income withholding can be subject to withholding based on arrearages. Income withholding based on arrearages can be implemented if the following conditions are met:

1. The location of the NCP can be determined;
2. The NCP has a verifiable source of disposable income;
3. The NCP is delinquent in payment. ("Delinquency" is defined as being behind in payment by an amount equal to one month's current support.)

For withholding based on arrearages, the CSS agency must provide advance notice of the intent to withhold to the NCP before

implementing the withholding. In accordance with Rule 4 of the North Carolina Rules of Civil Procedure, the NCP must be served by certified mail (return receipt requested) or by the sheriff.

#### **INCOME WITHHOLDING FOR MILITARY PERSONNEL**

Active duty, reserve, and retired members of the uniformed services (Army, Navy, Air Force, and Marines) are subject to the withholding statutes. The income withholding notice is sent to the Defense Finance and Accounting Service (DFAS) through Electronic Income Withholding ("e-IWO"). Otherwise, income withholdings for military personnel and civilian personnel on military installations are processed in the same manner as income withholdings for civilian employees. (See "[Electronic Income Withholding](#)".)

#### **INCOME WITHHOLDING FOR NEW HIRES**

##### ***I/W FOR NEW HIRES POLICY***

##### ***General Information***

NCGS 110-129.2(f) states that within two (2) business days of the date when employment information is entered into the NC New Hire Directory, a notice directing the employer of the newly hired employee to withhold child support from the employee's income must be transmitted to the employer. An interface between ACTS and the New Hire Directory is run twice a week, which attempts to match based on the NCP's Social Security number. Upon a successful match, CSS sends an [Income Withholding For Support](#) (DSS-4702) document for each of the NCP's cases that have a court order and are subject to income withholding.

If the employer participates in [electronic income withholding \(e-IWO\)](#) with North Carolina, ACTS transmits the income withholding electronically to the New Hire employer.

When appropriate, CSS also sends the Notice Of Transfer I/W (DSS-4486).

It is imperative that caseworkers make the appropriate number of copies for the court file, the NCP, and the office file. The employer's copy must be sent immediately by regular mail to comply with the two-day time frame. If the employer participates in e-IWO, caseworkers must follow the procedures for service of the e-IWO. Notices are sent to the most recent address stored in ACTS for the NCP.

An Employer Verification Letter (DSS-4685) is generated and sent from the State Print Shop Office at the same time the income withholding notices are produced. Because of the two-day time frame, however, the automatically generated I/W notices must be sent out before caseworkers can receive verified income information from the new employer.

Caseworkers should also contact an NCP's previous employer(s) immediately to determine whether or not the NCP still works there. If not, caseworkers should record the date when the NCP stopped working for that employer in ACTS

For purposes of New Hire income withholding, the definition of support obligation includes the latest order for current support and any order for payment of past due support that includes a frequency amount due. This should reduce the risk of withholding too much income in those instances where the obligation has changed or arrearages have been liquidated since the last withholding. The amount of withholding reported to the new employer/payor does not include any amounts increased administratively to collect arrearages sent to a previous employer/payor.

Once information that verifies employment and income is received from the new employer/payor, caseworkers must generate the Notice Of Income Withholding Increase to 40% (DSS-4481) again for the NCP before they can send an Income Withholding For Support (DSS-4702) document to the new employer/payor to withhold more than the default maximum allowable percentage ordered amounts.

If the new employer has not responded to the Employer Verification Letter (DSS-4685) within thirty (30) days, caseworkers can consider sending a change notice to increase the amount of withholding administratively at that time.

#### ***Multiple Employment Situations***

Since notices to the new employer are produced automatically upon making a match, a few cases can exist where the NCP has not actually changed employment, but is now working at a second job. This situation increases the potential of having two withholdings in place and of withholding too much income to satisfy the child support obligation.

Upon learning of such situations, caseworkers are expected to:

1. Verify whether or not the NCP has left a previous employer. If appropriate, record the date when employment ended on the applicable employment record in ACTS. (If this information can be verified before the end of the two-day time frame, caseworkers are encouraged to do so before mailing the notice. However, under no circumstances should workers delay mailing for longer than the time frame due to lack of verification.)
2. If the NCP is working two jobs, review the Employer Verification Letter (DSS-4685) from the new employer to determine the next appropriate action. (For example, if the NCP's income is not sufficient to satisfy the child support obligation, income withholding can be established at both jobs.)
3. Change or terminate the withholding, if necessary, to avoid exceeding the percentage allowed by law to be withheld from the NCP's income.
4. Refund promptly any overpayment made by the NCP due to overwithholding, unless the NCP consents to letting these funds be applied toward current support and arrearages until the withholding can be adjusted.

#### ***Updating New Hire Employer Information***

After receiving income information from the new employer, caseworkers must update the employer record that was created in ACTS by the New Hire match, so that the CSS case is included on the I/W Worksheet.

## **INCOME WITHHOLDING OF NON-IV-D OBLIGATIONS**

ACTS notifies the responsible caseworker when an NCP with a court order that meets the criteria for income withholding also has another support order that is outside CSS. If the NCP has a Non-IV-D (NIVD) support order under income withholding, either ACTS generates the [Income Withholding For Support](#) (DSS-4702) document automatically or the caseworker generates this document manually, depending on certain settings for the NCP in ACTS.

DSS-4702 documents for NIVD cases are printed at the NIVD Unit at CSS Central Office, and NIVD workers mail these documents weekly to the appropriate Clerks of Court, who process and mail them. Caseworkers must contact the Clerk of Court who is enforcing the NIVD order and remind the Clerk to review the income withholding documents and, if appropriate, serve them on the employer/payor as soon as possible. This enables CSS to get its share of the withheld wages. NCGS 110-136.5 addresses income withholding for NIVD cases and the responsibility that the court has regarding income withholding for NIVD cases.

Caseworkers must send the original DSS-4702 document for the IV-D case to the NCP's employer/payor (or that employer's/payor's registered agent) by regular mail and a copy to the NCP by regular mail. They also file a copy of the DSS-4702 document along with a Certificate Of Service in the court record and retain copies in the case file.

Income withholding begins on the date when the NCP's employer/payor (or that employer's/payor's registered agent) receives the notice. If the employer/payor participates in [electronic income withholding \(e-IWO\)](#), caseworkers follow e-IWO procedures for the IV-D case.

## **INCOME WITHHOLDING REQUESTED BY THE OBLIGOR OR OBLIGEE**

If an obligor's support order does not provide for immediate income withholding, the obligor can request that income withholding be initiated. When the obligor makes the request for income withholding, local CSS must obtain a notarized written statement

NCGS 110-136.3 allows the obligee to request that income withholding be implemented to collect child support. Since the obligee in a CSS case is defined as the CSS agency (NCGS 110-129), the agency can initiate income withholding before a 30-day arrearage has accumulated if the location of the NCP can be determined and that NCP has a verified NC employer or a NC registered agent. A request for withholding from the custodial parent is honored if the same criteria are met. However, if the NCP is in compliance with the terms of an alternative arrangement, such a request should be denied.

For withholding by request, the CSS agency must notify the NCP in advance of the intent to withhold before implementing withholding. In accordance with Rule 4 of the North Carolina Rules of Civil Procedure, the NCP must be served by certified mail (return receipt requested) or by the sheriff.

## **MANUALLY INITIATING INCOME WITHHOLDING WHEN NOTICES ARE NOT AUTOMATICALLY GENERATED**

The following situations are examples of when the income withholding notices are NOT automatically generated:

1. The NCP requests income withholding; see [Income Withholding Requested by Obligor or Obligee](#).
2. The NCP requests an increase in the [maximum percentage](#) to be withheld from his/her income;
3. The NCP's [disposable income](#) increases, but his/her employer remains the same;
4. The NCP has a Non-IV-D obligation under income withholding, and this fact is documented in ACTS.

#### **NOTICE OF INTENT TO REQUIRE INCOME WITHHOLDING FOR PAYMENT OF CHILD SUPPORT**

The Notice of Intent to Income Withhold (DSS-4485) provides advance notice to the NCP that CSS intends to implement income withholding based on arrearages or a party's request. This document includes the amount of the withholding and the procedure for contesting. The Notice of Intent should be sent by certified mail (return receipt requested) or served by the Sheriff.

The Notice of Intent is not necessary when [immediate income withholding](#) is ordered. The court order containing the immediate income withholding provision serves as notice to the NCP of the impending withholding. Once the order containing this provision has been signed by the judge, CSS must notify any known employer to implement income withholding within fifteen (15) calendar days.

Rules of civil procedure require that proof of service of this notice be a part of the court file. An affidavit signed by the CSS attorney must be filed, along with a copy of the green card showing proof of service, within five (5) days of receipt of the return. Since the original green card is considered evidence of proof of service, it is preferable to file a copy of the return with the court. The green card must be maintained in the hard-copy CSS case file.

If the notice is returned by the post office as undeliverable, it can be mailed "restricted delivery" to the NCP at his/her place of employment. If the notice cannot be successfully served by certified mail and the NCP's location is known, the local CSS agency should obtain personal service through the sheriff's department. The withholding cannot be implemented until the NCP is served with the notice either in person or by certified mail (NCGS 1A-1, Rule 4, Rules of Civil Procedure).

#### **CONTESTING THE WITHHOLDING**

The NCP has ten (10) days from the date of receipt of the Notice of Intent to Income Withhold (DSS-4485) to contest the requirement for withholding in the local District Court. In addition to requesting a hearing in the District Court, the NCP must inform the local CSS agency on what grounds the withholding is being contested. The Notice also instructs the NCP to contact the local CSS agency when officially requesting a hearing since most NCPs' concerns should be resolved without a hearing. The withholding can be contested based only on one or more of the mistakes of fact listed below:

1. The notified person is not the individual who is responsible for the child support in the CSS case;

2. The NCP did not owe the current support or arrearage amount that was stated on the specified date;
3. The rate of withholding exceeds the amount of support specified in the court order;
4. Block 1a. of the form is checked and the arrearage amount does not equal at least one (1) month's support payments; and/or
5. Block 1b. of the form is checked and the NCP claims that he/she did not request that income withholding begin.

*NOTE: The payment of arrearages can never be a basis for canceling or for not implementing withholding.*

If the NCP's concerns cannot be resolved without a hearing, the NCP can request a hearing by completing the Request for Hearing to Contest Income Withholding to Enforce Child Support (AOC-CV-619), which is obtained from the Clerk of Court.

The Clerk of Court should send a copy of the NCP's request to the CSS caseworker. This form should include the place, date, and time of the hearing. Caseworkers should advise the NCP to cancel a formally requested hearing if his/her concerns are resolved prior to the court date.

The hearing to contest the withholding must be held within thirty (30) days of the date when the NCP receives the Notice of Intent to Income Withhold (DSS-4485). No withholding can occur in a contested case until the hearing decision has been made. If the NCP appeals the hearing decision, the withholding is not stayed. However, if the appeal is ultimately decided in favor of the NCP, the withholding must be terminated and all amounts promptly repaid to the NCP.

When this occurs, the employer/payor should be sent the [Income Withholding For Support](#) (DSS-4702) document. The local caseworker must also request that the Distribution Unit at the CSS Central Office adjust the account balances in ACTS and issue a refund.

#### **NOTICE OF OBLIGATION TO WITHHOLD FROM WAGES FOR CHILD SUPPORT**

If an NCP's child support payments are to be withheld from wages, the NCP's employer is sent an [Income Withholding For Support](#) (DSS-4702) document, which notifies the employer of the requirement to withhold. If income other than wages is to be withheld, the payor responsible for withholding the income is sent the Notice Of Obligation To Withhold Other Than Wages (DSS-4630), which notifies them of the requirement to withhold.

Local CSS serves the DSS-4702 document or the DSS-4630 document on the employer/payor by regular mail within fifteen (15) calendar days of the order for [immediate income withholding](#). If the employer/payor participates in [electronic income withholding \(e-IWO\)](#), caseworkers follow e-IWO procedures.

A copy of the I/W notice, accompanied by an affidavit of service signed by the CSS attorney, must be filed with the Clerk of Court within five (5) days of service. Local CSS must also send a copy of the I/W notice to the NCP by regular mail at the same time the I/W notice is sent to the employer/payor.

In uncontested withholdings based on arrearages or request, the local CSS agency completes and forwards the I/W notice by certified mail (return receipt requested) to the NCP's employer/payor, within fifteen (15) days of the end of the 10-day response period.

In contested cases in which a hearing determines that no mistake of fact exists (or the hearing decision is being appealed), the notice must be forwarded within forty-five (45) days of the NCP's receipt of Notice of Intent to Income Withhold (DSS-4485).

#### **EMPLOYER RESPONSIBILITIES RELATED TO I/W**

The employer is responsible for notifying the local CSS agency when an NCP is no longer employed. If the employers know the NCP's last known address and/or new employer, they must provide this information to the CSS agency. If the court finds that the employer or other payor has willfully refused to comply with the withholding requirement, the employer or payor is required to pay any amounts that would have been withheld and continue the withholding.

Employers are prohibited from firing, refusing to hire, or taking disciplinary action against an NCP solely because of the withholding; however, the local CSS agency does not represent the NCP in such a dispute. If NCPs inquire about their rights, the local CSS agency should advise them to seek legal counsel. NCGS 110-136.8(e) addresses the penalties that an employer faces for violation of these provisions.

If a court finds that an employer has taken any of these actions, a civil penalty must be paid to the county. The penalties include:

- \$100.00 for the first offense;
- \$500.00 for the second offense; or
- \$1,000.00 for the third offense.

A payor can also be held liable for reasonable damages suffered by the obligor, and the reinstatement of NCPs to their former position can be ordered. This action has a statute of limitations of one (1) year.

#### **INCOME WITHHOLDING FOR SUPPORT (DSS-4702) DOCUMENT**

Per Federal regulations, the CSS program, courts, tribes that operate CSS programs, private entities, and individuals are all required to use the Income Withholding For Support (DSS-4702) document. This document contains appropriate wording and instructions for all entities submitting the form to employers for collection through income withholding.

*NOTE: Nongovernmental entities or individuals are required to submit a copy of the withholding order along with their Income Withholding For Support (DSS-4702) document. This requirement does not apply to CSS cases or support orders enforced by AOC.*

The Income Withholding For Support (DSS-4702) document is generated when:

1. Caseworkers create/update an employment record in ACTS and the NCP has a court order in ACTS that is subject to income withholding.

2. ACTS creates an employment record that results from data from the New Hire database, and the NCP has a court order in ACTS that is subject to income withholding.
3. Caseworkers initiate income withholding when entering or modifying a court order in ACTS.
4. Caseworkers create an I/W Worksheet.
5. Caseworkers print (or reprint) a copy of the DSS-4702 document for an active I/W Worksheet.
6. Caseworkers print (or reprint) a DSS-4702 document through the Document Generation menu in ACTS.

Depending on the case circumstances, a field on this document indicates whether this document is an ORIGINAL, AMENDED, or TERMINATE DSS-4702 document. More information on the three types of this document follows:

**"ORIGINAL" ORDER/NOTICE**

Once the criteria to initiate income withholding have been met, ACTS generates an ORIGINAL DSS-4702 document for each of the NCP's cases that is under income withholding. (The information on this document is based on the total court-ordered frequency amounts for the NCP and any administrative increase, if applicable.)

As part of the income withholding process, the [maximum allowable percentage](#) of withholding is determined. If the disposable wages for a pay period are less than the required amount, the maximum allowable percentage is set to the smaller of the following two (2) amounts:

1. The NCP's disposable income multiplied by the maximum allowable percentage minus the \$2.00 processing fee; or
2. The sum of the frequency amounts due on all the subaccounts that are associated with the court order.

If caseworkers perform an administrative increase for an NCP that has multiple cases, the amount of that administrative increase is prorated among all of the NCP's cases.

**"AMENDED" ORDER/NOTICE**

When changes have been made to income withholding for a case and a new I/W Worksheet is created by caseworkers or the system to reflect these changes, ACTS generates an AMENDED DSS-4702 document for each of the NCP's cases that is under income withholding. (The information on this document is based on the total court-ordered frequency amounts for the NCP and any administrative increase, if applicable.)

**"TERMINATE" ORDER/NOTICE**

When income withholding is terminated for a case and a new I/W Worksheet is created by the caseworker or the system to reflect this change, ACTS generates a TERMINATE DSS-4702 document for each of the NCP's cases that is under income withholding.. (The case and employer/payor information on this document is based on the most recent I/W Worksheet.)

**DOCUMENT DESCRIPTION**

The first page of the Income Withholding For Support (DSS-4702) document includes the following information:

1. Check boxes below the title that indicate whether the document is an ORIGINAL, AMENDED, ONE-TIME (LUMP SUM), Or TERMINATE DSS-4702 document.
2. The date when the document was generated.
3. Check boxes that indicate whether a CSS agency, the court, an attorney, or a private individual/entity is completing this form.
4. A note that states that the I/W notice must be regular on its face (not altered), or under certain circumstances, employers must reject it and return it to the sender and that provides a web site with employer instructions regarding the notice.
5. The name of the state/tribe/territory, the remittance identifier (the CSS case number), the city/county/district/tribe, the order identifier (the docket number), the name of the private individual/entity, and/or the CSE agency case identifier (the CSS case number).
6. The employer/other withholder's name, address, and Federal EIN number.
7. The employee/obligor's name (last, first, MI) and Social Security number, and the custodial party's/obligee's name (last, first, MI).
8. The names (last, first, MI) and dates of birth for up to six (6) children.
9. An "ORDER INFORMATION" section that names the state where this support/withholding order originated; and informs employers that they are required by law to withhold the specified amount(s) from the employee/obligor's wages until otherwise notified. This section also includes:
  - A. The MONTHLY amount that the employee/obligor owes for each listed support type (current and/or past due child support, current and/or past due medical support, current and/or past due spousal support, and other support) and the total MONTHLY amount to withhold.
  - B. A check box is provided beside the past due child support information to indicate whether the obligor has been in arrears for more than twelve (12) weeks.
  - C. Following the "other" support field is a field that is designated as "Administrative Increase" automatically, if applicable.
  - D. The "Total Amount to Withhold" field is the sum total amount of the seven (7) preceding fields. This field also includes the frequency amount(s) for legal and/or genetic testing fees, if the court ordered them as frequency payments due.
10. An "AMOUNTS TO WITHHOLD" section that informs employers of:
  - A. The amount to withhold if their pay cycle does not match the ordered support payment cycle that is indicated in the "ORDER INFORMATION" section. It displays how much the employer should withhold for WEEKLY, BIWEEKLY, SEMI-MONTHLY, and MONTHLY pay periods.
  - B. The amount of a ONE-TIME LUMP SUM PAYMENT. (CSS workers are NOT to use this field unless such a one-time payment is ordered by the court. Using this field does not stop any existing I/W order. If income withholding is terminated, a TERMINATE DSS-4702 document must be sent to the employer.)

11. A "REMITTANCE INFORMATION" section that contains the following information:
  - A. If the employee/obligor's principal place of employment is in NC, employers must begin withholding no later than the first pay period that occurs fourteen (14) days after the date when this order/notice was served.
  - B. The first payment must be sent within seven (7) working days of the pay date/date of withholding.
  - C. The maximum percentage that can be withheld (including the processing fee) from the employee/obligor's aggregate disposable earnings if employers cannot withhold the total ordered amount for any or all of the employee/ obligor's orders.
  - D. If the employee/obligor's principal place of employment is not in NC, employers must follow the laws/procedures of the "work state" concerning limits on withholding, time requirements, and any allowable employer fees. This section provides a web site address to aid employers in determining other states' laws/ procedures.
  - E. Employer instructions to contact the EFT/EDI web site before and to call the EFT Contact at the CSS Central Office (919-855-4755) before the first submittal of an EFT/EDI payment.
  - F. Employer instructions to include the Remittance Identifier (including the FIPS code, if necessary) with the payment, the SDU (State Disbursement Unit) name and address where the payment is to be sent, and a checkbox for employers to complete if they are returning the document because the payment is not directed to an SDU/tribal payee or the document is not regular on its face (it has been altered).
  - G. A space for the worker's signature and date of signature, and the printed name (last, first) and title of the issuing official.
  - H. A check box to indicate whether the employer is required to provide a copy of this form to the employee/obligor. (If the employee/obligor works in a different state than the one indicated on this document, employers/other withholders must provide the employee/obligor with a copy, even if the box is not checked.
  
12. An "ADDITIONAL INFORMATION FOR EMPLOYERS AND OTHER INCOME WITHHOLDERS" section that contains the following information:
  - A. A website which contains state-specific information for withholders:  
["http://www.acf.hhs.gov/programs/cse/newhire/employer/contracts/contact\\_map.htm"](http://www.acf.hhs.gov/programs/cse/newhire/employer/contracts/contact_map.htm).
  - B. "Priority" - A subsection stating that this withholding order/notice has priority over any other legal process under state law against the same income. (If a federal tax levy is in effect, the contact person listed on this document should be notified.)
  - C. "Combining Payments" - A subsection stating that employers can combine withheld amounts from multiple employees/ obligors in one payment to an SDU or tribal child support agency, as long as they identify the portion that is attributable to each employee/obligor.
  - D. "Payments to SDU" - A subsection stating that employers must must send the income withholding payments to the appropriate SDU or tribal child support agency. If the

notice instructs the employer to send a payment to another entity (such as the custodial parent, court, or attorney), employers must check the "Return to Sender" box and return the notice to the sender. (EXCEPTION: If the notice was sent by a court, attorney, or private individual and the initial order was entered prior to January 1, 1994, or the order was issued by a tribal child support agency, employers must follow the "Remit Payment to" instructions on the notice.)

- E. "Reporting the Pay Date" - A subsection stating that employers must report the pay date/date of withholding when sending the payment. This date is when the amount was withheld from the employee's wages. Employers must comply with the law of the state of the employee/obligor's principal place of employment.
- F. "Multiple IWOs" -A subsection stating that if employees/obligors have multiple income withholding orders (IWOs) and employers are unable to honor all support orders/notices due to Federal, state, or tribal withholding limits, they must follow the state or tribal law of the employee's principal place of employment. Employers must honor orders/notices to the greatest extent possible.
- G. "Lump Sum Payments" -A subsection stating that the employer could be required to notify a state or tribal CSS agency of upcoming lump sum payments to the employee (such as bonuses, commissions, or severance pay) and that the employer should contact the agency or person listed on the I/W document to determine if they are required to report and/or withhold lump sum payments.
- H. "Liability" - A subsection stating that if employers have doubts about the validity of the I/W notice to contact the sender. It also informs employers that if they fail to withhold income as the order/notice directs, they are liable for both the accumulated amount that should have been withheld and any other penalties set by state or tribal law/procedure.
- I. "Anti-discrimination" -A subsection stating that if employers discharge, refuse to employ, or take disciplinary action against an employee/obligor because of the I/W notice, they are subject to a fine (or fines) determined under state or tribal law/procedures of the employee/obligor's principal place of employment.
- J. "Withholding Limits" - A subsection stating that the employer cannot withhold more than the lesser of:
  - 1.) The amounts allowed by the [Federal Consumer Credit Protection Act](#) (CCPA) (15 USC 1673(b)); or
  - 2.) The amounts allowed by the state or tribe of the employee/obligor's principal place of employment. Disposable income is the net income left after making mandatory deductions such as: state, federal, local taxes, Social Security taxes, statutory pension contributions, and Medicare taxes. The federal limit is fifty percent (50%) of the disposable income if the obligor is supporting another family and sixty percent (60%) of the disposable income if the obligor is not supporting another family. However, that fifty percent (50%) limit is increased to fifty-five percent (55%) and that sixty percent (60%) limit is increased to

sixty-five percent (65%) if the arrearages are greater than twelve (12) weeks. If permitted by the state or tribe, employers can deduct a fee for administrative costs. The combined support amount and the fee cannot exceed the limit indicated in this subsection. Depending on the state or tribal law, employers might need to consider the amounts paid for health care premiums in determining disposable income and applying appropriate withholding limits.

- K. "Arrears greater than 12 weeks?" - A subsection stating that if the order information does not indicate whether the arrears are greater than twelve (12) weeks, then the employer should calculate the CCPA limit using the lower percentage. For tribal orders, the employer cannot withhold more than the amounts allowed under the law of the issuing tribe. For tribal employers who receive a State order, the employer cannot withhold more than the lesser of the limit set by the law of the jurisdiction in which the employer is located or the maximum amount permitted under section 303(d) of the CCPA (15 USC 1673 (b)). Depending upon applicable state law, the employer might need to take into consideration the amounts paid for health care premiums in determining disposable income and applying appropriate withholding limits.
- L. "Additional Information" - A subsection containing additional information, such as fees that an employer can charge for income withholding or children's names and dates of birth on the document if more than six (6) children exist for the case.

- 13. A "NOTIFICATION OF EMPLOYMENT TERMINATION OR INCOME STATUS" section stating that employers must promptly notify the CSS agency or the person listed in the "Contact Information" section if:
  - A. The person has never worked for that employer nor received periodic income; or
  - B. The person no longer works for that employer nor receives periodic income.

It provides fields for the employer to complete with the employee's termination date, last known phone number and home address, the date and amount of the final payment submitted to NCCSCC, and the employee's new employer's name and address.

A header appears on the top of the page containing this section that displays the employer's name and FEIN, the Agency Case Identifier (the CSS case number), and the Order Identifier (the court docket number).

- 14. A "CONTACT INFORMATION" section which provides to the employer:
  - A. The name, phone number, fax number, and e-mail or web site address of a contact person; and
  - B. The address to send a termination/ income status notice and/or other correspondence.
- 15. A "TO EMPLOYEE/OBLIGOR" section which provides the employee a contact person's name, phone number, fax number, and e-mail or

website address in the event that the employee has any questions.

If the Income Withholding For Support (DSS-4702) notice is transmitted by e-IWO (Electronic Income Withholding), "\*\*\*\*EIWO\*\*\*\*" appears at the bottom of each page of the notice. For more information, see "[e-IWO](#)".

***SERVICE OF PROCESS FOR INCOME WITHHOLDING FOR SUPPORT (DSS-4702) DOCUMENT***

Caseworkers must have each DSS-4702 document served by regular mail. If for some reason multiple CSS cases with the same docket number exist for a single NCP/custodial parent pair, multiple I/W notices are generated. In this situation, caseworkers can send all these notices together and place a single certificate of service in the court file.

**PAYMENT OF WITHHELD FUNDS**

Once income withholding has been established, employers (or other payors) must withhold child support payments from the NCP's first pay period that occurs fourteen (14) days AFTER the employer/other payor received the [Income Withholding For Support](#) (DSS-4702) document. Employers/other payors must forward these funds to the North Carolina Child Support Centralized Collections Operation (NCCSCC) within seven (7) days of the NCP's payday and indicate the date when each payment was withheld from the NCP's income.

An employer/other payors can combine the amounts withheld for all cases with the same court in a single payment to NCCSCC, but they must identify separately the portion of the single payment that is attributable to each NCP by name and docket number and include the date when each payment was withheld.

**PRORATION OF CURRENT SUPPORT/ARREARAGES**

ACTS distributes a noncustodial parent's (NCP's) payment according to the federal distribution hierarchy when prorating the payment. The system first applies the payment to the current support (CSUP) subaccount(s) until the total CSUP obligation amount is met for the charging cycle. It then applies any excess amount of the payment toward the arrearage frequency amount(s) due. If any funds from the payment still remain, ACTS distributes them to the arrearage subaccount that is highest in the distribution hierarchy up to the balance in that subaccount, before applying any remaining funds to the next arrearage subaccount in the hierarchy.

To prorate a payment made by the NCP, ACTS multiplies the custodial parent's (CP's) support obligation by the payment amount and divides the resulting amount by the sum of the obligations. (ACTS performs this calculation when the system distributes collections in accordance with the established rules of distribution.)

***PRORATION OF I/W PAYMENTS FOR MULTIPLE CSS CASES***

If an NCP's income is being withheld for more than one case, any current support and arrearage collections are automatically prorated across the cases that are listed on the MOST RECENT I/W Worksheet.

The current support obligations determine the amount of current support collections and the arrearage balances determine the amount of arrearage collections that are allocated to each case on the most recent I/W Worksheet.

When ACTS receives an income withholding payment, it first distributes the money to ALL of the NCP's current support obligations. Once they are satisfied for the charge cycle, ACTS then distributes payments to arrearage subaccounts with ordered frequency amount(s) due.

Any funds that remain are prorated toward any remaining obligations according to the standard distribution hierarchy.

Examples of proration of I/W payments for multiple cases follow:

*In this example, payment is less than the amount due for multiple CSUP obligations. No amount can be applied to arrearages because the current support obligations have priority over any arrearages, and the payment amount is not sufficient to meet the current support obligations.*

**Custodial Parent (CP) A** - \$100 support obligation  
**Custodial Parent (CP) B** - \$ 50 support obligation  
\$150 sum of obligations

Payment amount = \$140

After proration:

**CP A** receives **\$93.33** =  $\$100 \times \$140 / \$150$

**CP B** receives **\$46.67** =  $\$ 50 \times \$140 / \$150$

*When payment amount is greater than the total of the NCP's multiple CSUP obligations but is less than the sum of the CSUP obligations and the total of the arrearage frequency amount(s) due, the same type of calculation is used to determine the proration for the arrearage frequency amounts.*

**CP A** - \$200 NPA arrearage balance with \$20 frequency amount due  
**CP B** - \$400 NPA arrearage balance with \$40 frequency amount due  
\$60 total freq. amt. due

Payment amount = \$630

Current support due = \$600

\$ 30 must be prorated

**CP A** receives **\$10.00** =  $\$20 \times \$30 / \$60$

**CP B** receives **\$20.00** =  $\$40 \times \$30 / \$60$

When the payment is greater than the total of the amounts due for multiple CSUP obligations and arrearage frequency amount(s), a pro rata share of the difference between the payment amount and the sum of the CSUP obligation amounts and the arrearage frequency amount(s) due can be applied to the remaining arrearages. To prorate the amount to be applied toward arrearages after the amounts for current support and arrearage frequency amount(s) due have been deducted, one CP's arrearage is multiplied by the remaining payment amount, and that amount is divided by the sum of the arrearages for all CPs.

ACTS also uses the distribution hierarchy to determine the distribution of the excess payment. (EX: If one CP has arrearages only in an NPAAU subaccount and the other CP has arrearages only in an AFDCU subaccount, the payment is distributed to the NPAAU subaccount until that subaccount is satisfied and before any of the payment is applied to the AFDCU subaccount.)

*In this example, the NCP owes current support (CSUP), arrearage frequency amounts, and NPAAU arrearages to two CPs; the NCP makes a \$350 payment.*

**CP A** - \$100 CSUP obligation & \$360 arrearage w/ \$10 arrs. freq. due

**CP B** - \$150 CSUP obligation & \$715 arrearage w/ \$15 arrs. freq. due

Total paid for CSUP	\$250 = (\$100+\$150)
Total paid for arrearage frequency amount due	\$ 25 = (\$ 10+\$ 15)
Total paid for CSUP and arrearage freq. amt. due	\$275

Payment amount = \$350

- \$275 (Total paid for CSUP & arrearage freq. amt. due)  
 \$ 75 Amount to be prorated for arrearages

**CP A** - Arrearage balance is now \$ 350 = (\$360 - \$10)

**CP B** - Arrearage balance is now \$ 700 = (\$715 - \$15)

\$1050 - Total arrearages

**CP A** receives for arrearages **\$25.00** = \$350 x \$75 / \$1050

**CP B** receives for arrearages **\$50.00** = \$700 x \$75 / \$1050

#### COMMUNICATION WITH THE EMPLOYER

The income withholding notices that are sent to employers/payors advise them to call or write the local CSS agency when they have questions regarding the appropriate amount to withhold. If an employer/payor informs the agency that the NCP's disposable income has been temporarily reduced, it is not necessary to modify the withholding.

When caseworkers call the employer/payor, they should document the call. Regardless of whether an employer/payor or a caseworker initiated the telephone call, caseworkers can follow up on the telephone communication by sending a letter to the employer/payor to confirm the information that was provided over the telephone. In addition, caseworkers should document this information in ACTS.

#### EMPLOYER COMPLIANCE (INCOME WITHHOLDING)

Once employers (or other payors) have received the [Income Withholding For Support](#) (DSS-4702) document, they must begin withholding from the first pay period that occurs fourteen (14) days following the service date. After income withholding has been established, the employer/other payor is required to submit payments to the NCCSCC within seven (7) days after withholding the money (or notify the local CSS agency of the reason for not doing so.)

If either of the two conditions above is unmet, the employer/other payor is "out of compliance". ACTS monitors employer compliance by

first calculating fourteen (14) days from the service date, and then identifying the next pay date for that employee and counting an additional fourteen (14) days. If a payment is not received by that compliance date, CSS sends an Employer Non-Compliance Letter (DSS-4484) to the NCP's employer/other payor as notice of their failure to comply.

*NOTE: If employers are flagged as exempt from delinquency testing, no action is taken against them when they are out of compliance. (Only the CSS Central Office can set this exemption flag, and it is set only in rare circumstances.)*

ACTS monitors employer compliance until either CSS notifies the employer/other payor to terminate the withholding or the employer/other payor notifies CSS that the NCP's employment has been terminated or suspended.

The SECOND time that ACTS finds an employer/other payor to be out of compliance, it notifies the responsible caseworker for each case under income withholding with that employer. The THIRD time that ACTS finds an employer/other payor to be out of compliance, it notifies the responsible caseworker(s) and generates the Motion To Join Employer (DSS-4483). Caseworkers send this document to the employer/other payor by certified mail (return receipt requested) or by personal service.

When the Motion To Join Employer has been served, caseworkers enter the service of process information in ACTS and schedule a hearing to join employer as third-party defendant) on the next court date available thirty-three (33) days after the date of service.

If the employer/other payor is not successfully joined during the hearing and is subsequently found to be out of compliance, ACTS notifies the responsible caseworker. ACTS does NOT generate the Motion To Join Employer (DSS-4483) in this situation. If caseworkers choose to make another attempt to join the employer/other payor, they must generate the Motion to Join document using ACTS.

*NOTE: ACTS functionality does not allow caseworkers to enter the name of the NCP's employer/other payor on any document that is related to employer compliance monitoring. Caseworkers should consult with the local CSS attorney regarding the entry of the employer's/other payor's name as a third-party defendant on the order and any other pertinent documents. The employer/other payor remains a third-party defendant, and the employer's/other payor's name remains on the court order and on all motions arising out of the court order, until such time as the employer/other payor files a motion to be removed as a third-party defendant and the judge approves such a motion.*

If the NCP has multiple employers/other payors and ACTS detects that a payment is late, the system notifies the responsible caseworker. Caseworkers then determine which employer/other payor is out of compliance and send an Employer Non-Compliance Letter (DSS-4484) to the appropriate employer/other payor.

If caseworkers determine that the employer/other employer is not responsible for the delay in income withholding payments (for example, the NCP is unable to work and is not being paid), they can change the compliance indicator in ACTS.

### ***SUSPENDING EMPLOYER COMPLIANCE MONITORING***

Circumstances can exist when employer compliance monitoring should be suspended for a specific period of time. For example, if an NCP is out of work due to an injury and is expected to return in six weeks, the responsible caseworker can suspend employer compliance monitoring for that time period by:

1. Verifying the date range when the NCP will not receive wages from the employer.
2. Setting a date range in ACTS when compliance monitoring will be suspended. (ACTS does not monitor employer compliance during the specified date range.)
3. Contacting the employer/other payor (1) week before the end of the suspension period to confirm that I/W payments are resuming as indicated in the date range.

If the time period for suspension is extended, caseworkers can repeat these steps.

*NOTE: Employer compliance tracks from the original notice and service date once the suspension period ends.*

### **CHANGING THE AMOUNT OF INCOME WITHHOLDING**

The amount of income withholding can change under the following circumstances:

1. Adjudicated arrearages have been paid off when a frequency amount due for the arrearages was included in the withholding;
2. An order under income withholding is modified;
3. An order under income withholding expires;
4. Caseworkers implement an administrative increase.

The NCP and the employer/payor must be informed of changes to the amount of income withholding through the I/W documents that CSS generates. The type and number of these documents are determined by the type of income that the NCP receives, the number of cases that the NCP has under order for I/W, and the number of employers/payors that the NCP has.

If the NCP has one (or multiple) cases under income withholding for one (or multiple) court orders and the amount of the withholding changes, ACTS generates an AMENDED [Income Withholding For Support](#) (DSS-4702) document for each eligible case.

If the NCP has one (or multiple) active and verified employers/payors, ACTS generates a DSS-4702 document for each employer/payor and notifies the responsible caseworker. Caseworkers must determine whether the records that show the NCP having multiple employers/payors are accurate.

If the NCP is under income withholding but only has unearned (or non-wage) income, caseworkers must destroy the Order/Notice(s) that were generated and manually generate a Notice Of Change/Termination Other Than Wages (DSS-4631) for each appropriate case and payor/source of that unearned income.

Caseworkers must send a copy of the appropriate document(s) to the NCP and each employer/payor by regular mail. A copy of each notice must be filed with the Clerk of Superior Court along with proof of service that is signed by the CSS attorney. The local CSS agency must also maintain hard copies of these documents in the case file for future reference.

If the NCP becomes unemployed while under income withholding and begins to receive Unemployment Insurance Benefits (UIB), income can be withheld from these benefits. When the NCP becomes employed again, ACTS generates a Notice Of Transfer Of Income Withholding (DSS-4486) that is sent to the NCP. ACTS also generates an Order/Notice To Withhold Income for each new verified employer/payor and each of the NCP's eligible cases.

#### **TRANSFER OF INCOME WITHHOLDING**

If the NCP's source of income changes while income withholding is in effect, the requirement for the withholding continues. The NCP cannot contest the transfer of income withholding. The law requires that once income withholding has been established, it must be transferred to new employers/payors.

ACTS generates a Notice Of Transfer Of Income Withholding (DSS-4486) when an NCP who has previously been under income withholding has a new verified employer/payor.

If the amount of the withholding remains the same, the Notice of Transfer can be sent to the NCP by first class mail. Whenever there is change in the amount of the withholding, the NCP must be served with notice prior to the action.

*NOTE: While the Notice of Transfer is sent to the NCP, the [Income Withholding For Support](#) (DSS-4702) or the Notice To Withhold Other Than Wages (DSS-4630) must be sent to the new verified employer/payor by regular mail.*

In many instances, an NCP returns to a previous employer/payor with whom income withholding has already been established. Caseworkers must determine whether or the interface with the Division of Employment Security (DES) has created a new employment record in ACTS. Once caseworkers receive verification from the employer/payor, they enter the necessary information for income withholding

Once the new employer/payor has been verified in ACTS, the system generates the DSS-4702 document to the employer/payor for each of the NCP's eligible cases.

If the income withholding has been transferred to a new employer and the NCP returns to a previous employer (with whom income withholding was established previously), caseworkers must notify the NCP of the transfer. CSS generates the Notice Of Transfer Of Income Withholding (DSS-4486) when the new employment record is entered and verified in ACTS. This notice is sent to the NCP by certified mail (return receipt requested) or served by the sheriff in accordance with Rule 4 of NC Civil Procedures.

#### **INCOME WITHHOLDING WHEN CSS SERVICES TERMINATED**

When CSS services are terminated while income withholding is in place, the withholding remains in effect; however, the NCP, custodial parent, and the Clerk of Court must be notified that the CSS agency is no longer responsible for the case. The custodial parent should be clearly informed that local CSS will provide no further services, make any changes, or do any follow-up whatsoever. The responsibility for enforcement remains with CSS until all WFFA/TANF arrearages, overpayments, and/or cost recovery amounts are paid. Once these amounts are paid, the responsible caseworker generates a Redirection Notice To Clerk (DSS-4473) and mails it to the Clerk of Superior Court. A copy of this notice is also mailed to the NCP.

#### **TERMINATION OF WITHHOLDING**

The requirement for withholding can be terminated and the employer/payor notified to stop withholding for the following reasons ONLY:

1. An ongoing child support obligation no longer exists, and all arrearages have been paid;
2. The local CSS agency, the NCP, and the district court judge agree to termination because other adequate means exist to collect the child support and/or arrearages;
3. The location of the child and the custodial parent are unknown, and WFFA/TANF arrearages do not exist for the case.

#### ***I/W TERMINATED BY ACTS***

If an NCP has only one case, ACTS can terminate income withholding for the following reasons:

1. The court order has expired, and no arrearages exist for the case.
2. The case has an ordered frequency amount due for arrearages, the adjudicated arrearage balance equals \$0.00, and no current support is owed for the case.

When ACTS terminates income withholding, it generates the [TERMINATE Income Withholding For Support](#) (DSS-4702) document and notifies the responsible caseworker.

If the NCP only has unearned income, caseworkers must destroy this notice and manually generate a Notice Of Change/Termination Other Than Wages (DSS-4631).

Caseworkers must send the original DSS-4702 to the employer/payor, to that employer's/payor's registered agent, or to the other source of income through regular mail; file a copy of the DSS-4702 document with the clerk of court; and send a copy of the DSS-4702 document to the NCP through regular mail.

*NOTE: If unadjudicated arrearages exist for the case, caseworkers should NOT send the document to the NCP, employer/payor, or other source of income.*

#### ***I/W TERMINATED BY CASEWORKER***

If the NCP only has one case with an ordered frequency amount due, the arrearage balances are \$0.00 (or judge has decided not to require a

frequency amount due for the arrearages), AND the NCP no longer owes current support, caseworkers can terminate income withholding by:

1. Entering a court order modification to close the current support subaccount.
2. Creating a new I/W Worksheet to reflect the fact that no arrearage balances exist and the NCP owes no current support for the case. ACTS generates the TERMINATE [Income Withholding For Support](#) (DSS-4702) document and notifies the responsible caseworker. If the NCP only has unearned income, caseworkers must destroy this notice and manually generate a Notice Of Change/Termination Other Than Wages (DSS-4631). Caseworkers must send the original DSS-4702 to the employer/payor, to that employer's/payor's registered agent, or to the other source of income through regular mail; file a copy of the DSS-4702 document with the clerk of court; and send a copy of the DSS-4702 document to the NCP through regular mail.

## **INCOME WITHHOLDING – OTHER SITUATIONS**

### **GENERAL INFORMATION**

This topic contains information on the following subjects:

1. [Electronic income withholding \(e-IWO\);](#)
2. [The requirement to withhold income other than wages;](#)
3. [Social Security Administration \(SSA\) benefits withholding;](#)
4. [Unemployment Insurance Benefits \(UIB\) withholding/intercept;](#)
5. [Wage garnishment;](#)
6. [Workers' Compensation withholding;](#)
7. [Work Release funds withholding.](#)

### **ELECTRONIC INCOME WITHHOLDING (E-IWO)**

A variety of government, public, and private employers elect to use the e-IWO process. With a few exceptions, the actions that caseworkers must take for e-IWO are the same as for other [income withholding](#).

Employers have an FEIN (Federal Employer Identification Number) that is specific to their business or government entity. When sending an e-IWO, caseworkers must use the employer-specific FEIN to submit the initial, amended, and/or terminate I/W notice to the employer.

CSS caseworkers must initiate electronic income withholding for any NCP who has an order for income withholding and whose employer participates with NC in the e-IWO process by creating an employment record for the NCP in ACTS.

Active duty, retired, and reserve military employers under the Department of Defense participate in e-IWO. The US Coast Guard, which is under the Department of Homeland Security, uses immediate income withholding for its members.

### **REQUIREMENT TO WITHHOLD FOR CHILD SUPPORT FROM INCOME OTHER THAN WAGES**

If the withholding is being made from a source of income other than wages, the payor of that income must be notified by the Notice to Withhold for Child Support From Income Other Than Wages (DSS-4630). The same procedures and requirements for withholding from wages must be followed when withholding from income other than wages.

When attempting to withhold income from Worker's Compensation, the DSS-4630 document must be forwarded by certified mail (return receipt requested) to the insurance carrier, not the Industrial Commission. See [Workers' Compensation Withholding](#).

## **SOCIAL SECURITY ADMINISTRATION (SSA) / TITLE II BENEFITS WITHHOLDING**

The Social Security Administration (SSA) pays benefits to individuals (beneficiaries) who have earned credits for working, have applied for SSA services, and are determined by SSA to be disabled or retired. Family members of retired, disabled, or deceased wage earners (EX: children, spouses, or widows/widowers) can also receive benefits if they meet SSA's criteria for such benefits.

## **UNEMPLOYMENT INSURANCE BENEFITS (UIB) WITHHOLDING/INTERCEPT**

### ***GENERAL INFORMATION***

The interception of Unemployment Insurance Benefits (UIB) is another means of collecting current child support and arrearages. ACTS can identify, track, and process cases with noncustodial parents (NCPs) who are receiving unemployment compensation. UIB withholding is accomplished in much the same way as withholding from [income other than wages](#).

### ***UIB WITHHOLDING/INTERCEPT PROCESS***

The UIB withholding process begins during the automated Locate process when the interface between ACTS and the Division of Employment Security (DES) makes a successful match between an NCP in ACTS and an individual in the DES database. This matching process also identifies NCPs who are receiving UIB.

ACTS sends a weekly tape to DES that contains the Social Security and MPI numbers of the NCPs who qualify for UIB withholding, along with the amount to be withheld. (The selection criteria for these NCPs appear later in this section.) DES returns a tape to ACTS that contains the Social Security and MPI numbers of the qualifying NCPs, along with the amount withheld and the date of the withholding.

If the NCP has never been under income withholding, CSS sends a Notice of Intent to Income Withhold (DSS-4485). If the NCP has previously been under an order to income withhold, CSS sends a Notice of Transfer of Income Withholding (DSS-4486) for the NCP and notifies DES through the weekly tape.

When the court order is modified or an arrearage balance is paid off, CSS sends an AMENDED [Income Withholding For Support](#) (DSS-4702) document to DES. If the new amount of UIB is less than the minimum amount that can be withheld, CSS sends a TERMINATE [Income Withholding For Support](#) (DSS-4702) document to DES.

### **SELECTION CRITERIA FOR UIB WITHHOLDING/INTERCEPT**

After the interface with DES notifies ACTS that an NCP is receiving UIB, ACTS submits a list of NCPs who meet the criteria for UIB intercept to DES, so that withholding can be initiated. The following criteria must be met for a NCP's case to be submitted for UIB intercept:

1. The NCP has an open CSS case that contains at least one open subaccount.
2. The NCP's Social Security number is documented in ACTS.
3. The NCP is currently unemployed.
4. The NCP has been given due notice of intent according to the standards for income withholding.

### **UIB WITHHOLDING/INTERCEPT AMOUNT**

The UIB withholding/intercept amount must be a whole dollar amount (no cents). The \$2.00 processing fee normally taken by the employer that is doing the withholding is not applicable to UIB intercept.

The MINIMUM UIB withholding/intercept amount is \$8.00. The MAXIMUM UIB withholding/intercept amount is EITHER twenty-five percent (25%) of the NCP's weekly UIB benefit (as obtained from the DES unemployment compensation table) OR the total WEEKLY amount of current support and ORDERED arrearages due on ALL of the NCP's cases, whichever is less. (Because the latter amount is based on the NCP's weekly current support and ordered arrearages due, caseworkers must calculate the amount due if the ordered pay frequency is not weekly.)

*EX: If the NCP has an ordered pay frequency of \$100.00 biweekly, the UIB withholding/intercept amount is \$50.00 per week. If the NCP's weekly benefit is less than \$200.00, it would be twenty-five percent (25%) of the benefit amount.*

### **UIB COLLECTION FEES**

DES bills CSS for the cost of intercepting the previous month's UIB payments. This cost is distributed among the counties, based on the number of CSS cases within each county that collected UIB funds.

### **WAGE GARNISHMENT**

In situations in which it is impossible to use income withholding procedures, filing a garnishment as provided for under NCGS 110-136 can be the appropriate enforcement remedy. Garnishments can be filed if the following prerequisites are met:

1. A valid civil court order for child support from any state's court is in effect; and
2. The responsible NCP been erratic and/or delinquent in making payments under the prior support order.

### **WORKERS' COMPENSATION WITHHOLDING**

On the first Wednesday of each month, ACTS creates a Workers' Compensation submittal tape and sends it to the Industrial Commission in order to obtain information about NCPs who are receiving Workers'

Compensation. ACTS selects all NCPs with a support obligation for their open cases, unless Good Cause is pending for the case, the NCP is a TANF recipient, or the case is a NC Responding Interstate CSS case.

ACTS submits the following information to the Industrial Commission:

1. The NCP's MPI #;
2. The NCP's SSN;
3. The NCP's Industrial Commission # (if available); and
4. The NCP's name (last name, first name, and middle initial).

When a match is found for a submitted NCP, the Industrial Commission sends back the following information for NCPs who are receiving Workers' Compensation:

1. The Employer name and address;
2. The insurance carrier name and address;
3. The insurance file #;
4. The attorney of record's name and address;
5. The date that the claim began;
6. The weekly benefit amount; and
7. The final disposition.

If the monthly interface with the Industrial Commission returns NCP data that is different than what is currently stored in ACTS, the appropriate fields in ACTS are updated on the next day and the old claim date is deleted. ACTS notifies the responsible caseworkers to review the data and take any necessary actions.

Based on the data returned from the Industrial Commission, caseworkers might want to check the case periodically for updates or call the insurance company for further information, such as how long the NCP might be out of work and collecting Workers' Compensation.

Caseworkers can initiate withholding on Workers' Compensation income. As with other types of income, GS 110-136.6 governs the limitations to the amount that can be withheld. For more information, see [Maximum allowable percentage](#).

## **WORK RELEASE FUNDS WITHHOLDING**

### ***GENERAL INFORMATION***

NCGS 148-33.1 establishes provisions for sentencing, quartering, and control of prisoners with Work Release privileges. Prisoners who are employed through the Work Release program are required to surrender their earnings to the Department of Corrections (DOC) for disbursement.

As with other types of wages, child support payments can be withheld from the earnings of NCPs who are participants in a Work Release program. GS 110-136.6 governs the limitations to the amount that can be withheld. For more information, see [Maximum allowable percentage](#).

### ***CSS NOTIFIED OF WORK RELEASE FUNDS BY DEPARTMENT OF CORRECTIONS***

The DOC interface with ACTS runs every ninety (90) days after the NCP/prisoner's date of incarceration. When an NCP participates in a Work Release program, the DOC interface notifies ACTS, which then

notifies all CSS caseworkers with cases containing that NCP as a participant. Upon receiving this notification, caseworkers set the Work Release indicator in ACTS for that NCP, and ACTS generates a Work Release Letter (DSS-4613) at the local office.

***CSS NOTIFIED OF WORK RELEASE FUNDS BY DEPARTMENT OF SOCIAL SERVICES***

Caseworkers can also receive notification of an NCP's Work Release status from the Department of Social Services (DSS) in the county where the custodial parent resides. DSS receives notice from DOC when a prisoner is participating in a Work Release program. Local DSS notifies CSS and requests a copy of the court order for child support from CSS if one is in effect. For TANF cases, DSS then sends the order to the DOC Work Release Accounting Unit. Payments are disbursed by DOC as specified in the court order. Therefore, it might be necessary for the local CSS agency to amend an existing court order to allow enforcement activities to be redirected to CSS and payments to be directed to NCCSCC.

For TANF cases with no order in effect, local DSS advises DOC that the the prisoner's dependents are in need of financial support. Payments in these cases are made directly to the family and counted in the WFFA/TANF budget for eligibility determination purposes. Local CSS should attempt to establish an order for support if at all possible.

If an NPA case is on file, local CSS notifies DOC about whether or not an order for child support is in effect. If an order is in effect, payments are disbursed as specified by the court order. Again, it might be necessary for local CSS to amend the order to allow enforcement activities to be redirected to CSS and payments to be directed to NCCSCC. If no order is in effect, CSS takes the necessary and appropriate actions to establish an order for child support.

***NONCUSTODIAL PARENT INCARCERATED - NO WORK RELEASE***

If an NCP is incarcerated and is not on Work Release, all of the NCP's CSS cases must be classified as unworkable until the NCP is released.

***DISBURSEMENT OF WORK RELEASE FUNDS***

DOC deducts the cost of a prisoner's upkeep from his/her earnings and also retains a portion of the prisoner's earnings in order to accumulate a reasonable sum that is paid to the prisoner upon parole or discharge from prison. The remaining balance of any earnings can be disbursed according to the following priority:

1. Payment of travel and other expenses made necessary by the prisoner's employment;
2. Payments for the support of the prisoner's dependents in accordance with:
  - An order of support of a court of competent jurisdiction; or
  - A determination of dependency status and need made by the local Department of Social Services in the resident county of the dependents;
3. Restitution as provided in NCGS 148-133.2;
4. Compliance with any court orders regarding the payment of an obligation for any case before the court.

## **INSURANCE SETTLEMENT LIENS**

### **GENERAL INFORMATION**

This topic contains information on the following subjects:

1. [Insurance settlement liens policy;](#)
2. [Certification requirements for insurance settlement liens;](#)
3. [Distribution of insurance settlement lien payments;](#)
4. [Noncompliance procedures for insurance settlement liens.](#)

### **INSURANCE SETTLEMENT LIENS POLICY**

Effective July 1, 1996, NCGS Chapter 58 allows the Department of Health and Human Services (DHHS) to create a lien against insurance settlements due a noncustodial parent (NCP) for the payment of past-due child support obligations. When CSS sends an Insurance Settlement Lien Notice (DSS-4736) to notify an insurance company that a beneficiary or claimant owes past due child support, a lien is created upon any proceeds from this insurance settlement in favor of DHHS or the obligee. This notice certifies that the NCP is past due in meeting the child support obligation and must be accompanied by a certified copy of the original support order.

The settlement must be equal to or exceed \$3000 either as nonrecurring payment or as periodic payments whose aggregate amount equals or exceeds that amount. If the amount of the settlement does not meet this criterion, the settlement can still be intercepted either through judicial means or through withholding procedures for income other than wages. This procedure can also be used if the NCP is located in another state, but the insurance company does business in North Carolina.

Types of insurance authorized in North Carolina (pursuant to NCGS 58-7-15) include, but are certainly not limited to, life insurance, annuities, accident and health, fire, property, water damage, burglary and theft, glass, boiler and machinery, elevator, animal, collision, personal liability, property damage liability, worker's compensation, fidelity and surety, credit, title, motor vehicle, aircraft, marine, and marine protection and indemnity insurance. For purposes of this procedure, the statute specifically includes disability income insurance.

When considering the placement of a lien on an insurance settlement as a possible enforcement action, CSS caseworkers should investigate who the beneficiary of the claim will be (for example, the insured could be the NCP, but the beneficiary of the claim could be another injured party), the amount of the settlement, the type of claim, the anticipated distribution date, the name of the attorney who is handling the claim (if applicable), and whether the claim is still pending, settled or denied. Caseworkers should also inquire as to whether or not the policy and the subsequent settlement are in more than one name. If it is not clear from the settlement that the NCP is the sole beneficiary of the claim, caseworkers should consult with the CSS attorney on whether or not to use the lien procedure.

### **CERTIFICATION REQUIREMENTS FOR INSURANCE LIENS**

Local CSS agencies might learn of an pending insurance settlement from the custodial parent or the NCP. Information can be verified by consulting the civil index books in the local Clerk of Court's office to determine if the NCP's name is listed and by reviewing estate records that list the NCP as a beneficiary of an insurance policy, newspaper articles that list local accidents or lawsuits, or civil court calendars.

CSS agencies can also learn of the settlement through testimony in a contempt hearing in which the NCP or custodial parent might testify that the NCP has been involved in an accident and is expecting a settlement. Caseworkers should gather as much detail as possible regarding the settlement in order to determine if the case is a candidate for the lien process.

The Deficit Reduction Act of 2005 (DRA) assists in the discovery of pending insurance claims. The Office of Child Support Enforcement (OCSE) Insurance Match Initiative is the result of this legislation. Individuals owing past due child support are compared to information that is maintained by insurers concerning insurance claims, settlements, awards, and payments.

Caseworkers can receive information about claims through a cooperative agreement with OCSE, the Insurance Service Office (ISO), state workers' compensation agencies from eleven (11) states, and the Department of Labor. ISO is made up of over three hundred (300) insurance agencies who have agreed to share their customer claim information with OCSE. The Department of Labor provides disability compensation to all civilian and Federal employees with work-related injuries.

OCSE matches the tax intercept file submitted by NC CSS with claim information provided by ISO, participating state workers' compensation agencies, and the Department of Labor. A report of the matches is forwarded to the CSS Central Office, where it is reviewed by the Insurance Match Coordinator, who forwards this information to county CSS supervisors.

Even if the settlement meets the criteria for placing a lien on the claim, in some instances using withholding on income other than wages could be more advantageous. For example, Workers' Compensation claims can be periodic payments of short duration.

In this situation, income withholding procedures could be more desirable since payments might be more timely, and income withholding sanctions would apply if the insurance company does not comply. If the Workers' Compensation claim is awarded as a lump sum, it would be more advantageous to use the lien procedure, since the CSS agency would not be restricted to applying the income withholding percentages to the award.

If the CSS agency determines that this insurance claim meets the criteria for a lien, caseworkers should obtain a certified copy of the original court order, a certified copy of the most recent order for adjudicated arrearages. Caseworkers should mail the Insurance Settlement Lien Notice (DSS-4736), the orders, and a copy of the State Statute regarding the insurance settlement lien process to the insurance company or the attorney that is handling the claim.

The Insurance Lien Information Letter (DSS-4737) can also be attached the notice, if needed. If the amount of the settlement does not meet

the lien criterion, the settlement can still be intercepted either through judicial means or through withholding procedures for income other than wages. However, if the insurance company fails to respond to this request for information, the CSS agency is not barred from proceeding with the action.

Three (3) situations exist where the CSS agency might choose to file a motion in the cause to adjudicate the current amount of arrearages:

1. A subsequent order for adjudicated arrearages might not exist.
2. A substantial period of time has passed between the last order for adjudicated arrearages and the date when funds were distributed.
3. The amount of arrearages might have substantially increased since the arrearages were first certified.

CSS agencies can also consult with the CSS attorney to consider asking the court to enter a temporary restraining order to block distribution of the settlement until the amount of arrearages can be established. If unsuccessful service of process has made establishing an order for arrearages difficult, it might be possible to serve the NCP's attorney who is currently handling the insurance settlement action.

If a new arrearage amount is established after the initial certification to the insurance company, the certification can be updated by sending another Insurance Settlement Lien Notice (DSS-4736) and the new order reflecting the current amount of adjudicated arrearages. CSS needs to advise the insurance company that this certification is not new, but rather an update to the amount of arrearages to be certified.

If all parties to the action agree on the current arrearage amount, it is permissible to send a certified copy of the obligor's payment record to the insurance company rather than the most recent order for adjudicated arrearages.

Caseworkers should send this notice to the insurance company and the attorney handling the claim (if applicable) by certified mail (return receipt requested) with a copy also sent to the NCP by regular mail.

It is also recommended that a copy of this notice be included in the court record of the NCP along with an affidavit of service as a way to document that this enforcement technique was employed by the CSS agency. This information could be useful in subsequent court actions.

#### **DISTRIBUTION OF INSURANCE SETTLEMENT LIEN PAYMENTS**

When arrearages are paid off or the CSS case closes and no arrearages are owed before the distribution of funds is made by the insurance company, the local CSS agency must notify the insurance company to remove the lien on the settlement. It is recommended that this letter also be sent to the insurance company by certified mail. A substantial period of time could pass between when the arrearages are certified and the funds are actually distributed. If the settlement amount is larger than the arrearages at the time of distribution, the local CSS agency must take action to refund the difference to the NCP immediately upon identifying this payment as a future balance without requiring the NCP to request the refund. The local CSS agency must employ a method to track the distribution of insurance settlements so that money can be properly refunded, if necessary.

CSS should be monitor the case to determine whether or not the lien was successful.

If the insurance settlement is being handled by an attorney, the settlement is sent to the attorney, who distributes the funds to the appropriate parties. If the insurance company has already sent the settlement to the attorney but the attorney has not yet distributed the funds, the agency can still certify the arrearages to both the insurance company and the attorney and intercept the insurance claim.

Upon receipt of the notice, the insurance company or the attorney determines whether the settlement meets the criteria for placing a lien on the payments. Before retaining any amount of the settlement for child support arrearages, the insurance company or the attorney first retains the attorney fees (if applicable), then any claims for drugs, medical supplies, ambulance services, medical attention, and hospital services.

#### ***MULTIPLE ORDERS***

If the NCP owes past due support for more than one order, each arrearage must be certified separately to the insurance company. If the total amount of the settlement is not sufficient to cover all the certified arrearages, payments are prorated among all the NCP's cases in ACTS.

#### **NONCOMPLIANCE PROCEDURES FOR INSURANCE SETTLEMENT LIENS**

If an insurance company does not send the payment to the NC Child Support Centralized Collections (NCCSCC) operation as directed in the notice, CSS caseworkers should consult with the CSS attorney to decide what, if any, action should be taken against the insurance company. It could be more cost effective to take a court action against the NCP rather than the insurance company in order to prevent the NCP from spending the settlement before the court can order him/her to apply it to his/her child support arrearages.

### **LICENSE REVOCATION/SUSPENSION/REINSTATEMENT**

#### **GENERAL INFORMATION**

This topic contains information on the following subjects:

1. [Driver licenses and motor vehicle registration policy;](#)
2. [Occupational, business, and professional licenses policy;](#)
3. [Wildlife \(hunting, fishing, trapping, etc.\) licenses policy.](#)

#### **DRIVER LICENSE/MOTOR VEHICLE REGISTRATION POLICY**

##### ***GENERAL INFORMATION***

NCGS 110-142.2 provides an enforcement remedy to suspend and/or restrict a noncustodial parent's (NCP's) ability to drive or register a motor vehicle if the NCP is at least ninety (90) days delinquent in child support payments or fails to comply with a subpoena pursuant to paternity and/or child support establishment.

The 90-day delinquency definition includes the following types of CSS cases:

- Cases with current support arrearage balances that are equal to or greater than the amount owed for a 90-day period;
- Cases that are closed collecting on arrearages with past due support payments equal to or greater than the amount due for ninety (90) days and that are not compliant with a payment plan or court order in effect;
- Cases that are closed collecting on arrearages with no repayment plan in effect and with arrearages that are equal to or greater than the support obligation that would have been owed for a 90-day period when the obligation was in effect; and
- Cases with an order for PPPA repayment that are ninety (90) days or more delinquent.

If the NCP has been found by the court to be in civil or criminal contempt for failure to pay child support three (3) or more times after 10/01/1999, the court shall order any one or more of the license or vehicle revocations as applicable.

These enforcement remedies apply to orders entered or registered in North Carolina. These remedies are not appropriate for Interstate cases under direct income withholding.

Each case that meets the 90-day delinquency criteria needs to be examined to determine if these enforcement remedies are appropriate. For example, these remedies would not be appropriate for a case that meets the 90-day delinquency criteria with an NCP who is complying with the conditions of a repayment plan for current support and arrearages.

#### ***COURT PREPARATION***

Local caseworkers should access the North Carolina State Automation Driver License System (SADLS) and the State Title and Registration System (STARS) as part of the standard investigative work that is required to prepare a CSS case for court. The information needed to pursue license suspension and vehicle registration blockage includes:

- The NCP's valid commercial or regular driver license information (including the driver license number);
- Information on any current driver license suspension (including the beginning and ending dates), the number and effective dates of previous suspensions for failure to pay child support, and any current limited driving privileges;
- Information on vehicles that are registered to the NCP, such as the vehicle identification number (VIN number), make, model, and license, and plate number; and
- The number of civil or criminal contempt findings (after 10/01/1999) for which the NCP has been adjudicated for failure to pay child support.

When considering the appropriate remedies to pursue for effective child support enforcement, caseworkers need to examine each case to determine the remedy that might have the most impact. If the NCP's driver license is currently suspended or the NCP has a suspension with a limited driving privilege, this case would not be a good candidate

for driver license suspension. If the NCP has recently registered a motor vehicle, a request for registration blockage would have little impact since the law requires yearly registration.

Vehicles that are jointly owned by the NCP and another party can be targeted for vehicle registration blockage. If a judge orders a vehicle block on a jointly owned vehicle, the co-owner would have to address the matter with the judge or consult with a private attorney to get the matter resolved.

Leased vehicles are appropriate for a block because the person who is leasing the vehicle is responsible for providing tags or plates for the vehicle. Upon citing an NCP (who meets the subpoena compliance or 90-day delinquency criteria) to court on a Motion/Order To Show Cause, the caseworker and/or CSS attorney presents information about licenses and/or motor vehicles to the judge for consideration.

#### ***DRIVER LICENSE SUSPENSION POLICY***

Judges have several options when an NCP with a valid North Carolina driver license is cited to court on a Motion And Order To Show Cause. A judge can order a time-limited or an indefinite driver license suspension. Either of these suspensions can have limited driving privileges attached to them. A limited driving privilege allows the NCP to drive on days and times specified by the judge. A judge could decide to suspend a driver license and stay the suspension conditional on the NCP entering into a payment plan. Policies related to the various possible types of license suspensions follow:

#### ***Driver License Suspension/Limited Driving Privileges***

When a hearing is held and the NCP is found in contempt, the judge can order the suspension of the NCP's driver license or suspend the license with limited driving privileges.

- The NCP surrenders the license in court to the caseworker, who destroys the license.
- The caseworker issues the Acknowledgement And/Or Receipt For Surrender Of North Carolina License (DL-53) for the license in court and gives the NCP a copy of the receipt.
- The original receipt is filed in the court file and a copy is mailed to the Division of Motor Vehicles.
- The date of the receipt is the effective date of suspension.
- Caseworkers use the Order For Civil Contempt (DSS-4650) or the Order For Criminal Contempt (DSS-4651) to document the results of the court hearing, as appropriate for the case.
- Caseworkers should add notes about the suspension in ACTS. If limited driving privileges are ordered, it is imperative that the NCP be provided with a signed copy of the order as quickly as possible quickly as possible because this serves as his/her driver's license.
- The Receipt For Surrender Of North Carolina License (DL-53) is printed at the Division of Motor Vehicles. Additional copies can be obtained.

#### ***Stayed Driver License Suspension***

A judge orders the suspension of a driver license but stays the suspension conditional on the NCP complying with the subpoena or entering into a payment plan.

- The payment plan is to include provisions for maintaining current support as well as for regular payment on arrearages to be paid in full over a reasonable amount of time (as determined by the judge.) The NCP's ability to pay and the amount of the child support arrearages are to be considered when determining the payment plan.
- The payment plan must take into consideration whether or not the NCP has multiple obligations, since ongoing payments made by the NCP are prorated across all obligations. Caseworkers are to remind the NCP that payments must be current on all his/her cases if the expectation is to reduce the arrearages on this case.
- The NCP is required to make an immediate purge payment representing at least five percent (5%) of the total delinquency or \$500.00, whichever is less.
- The terms of the payment plan and immediate payment requirement are recorded in the resulting order. Caseworkers should document the stay in ACTS.
- Stayed conditions are not recorded in the SADLS system because a suspension has not actually occurred.
- Payments are to be monitored for compliance.

#### ***MOTOR VEHICLE REGISTRATION BLOCKAGE POLICY***

When an NCP meets the subpoena noncompliance or 90-day delinquency criteria and is cited in court on a Motion And Order To Show Cause, the judge can order a block on motor vehicle registration as an enforcement remedy. Vehicle registration blockage prevents the NCP from renewing his/her vehicle license tags.

#### ***Stayed Vehicle Registration Blockage***

As with driver license suspensions, motor vehicle registration blocks can be stayed. The block can be stayed conditionally on the NCP entering into a payment plan or complying with a subpoena. The Order For Civil Contempt (DSS-4650) or the Order For Criminal Contempt (DSS-4651) can be used to report the conditions of the court order.

The Division of Motor Vehicles (DMV) is not notified of a block that has been stayed. NCGS 110-142.2 (h) permits local CSS to notify DMV electronically to block registration of a motor vehicle identified in the court order without further application to the court if the NCP violates the terms of the stay.

#### ***DRIVER LICENSE REINSTATEMENT/VEHICLE REGISTRATION BLOCKAGE REMOVAL***

Two options are available to NCPs who want to have driver licenses reinstated or vehicle registration blockages removed:

1. The NCP requests certification from CSS:
  - The NCP completes the Request For Certification Of Reinstatement And Certificate Authorizing Reinstatement Of Licensing Privileges (AOC-CV-653) or the Request For Certification Of Reinstatement (DSS-4691) and the Certificate Authorizing Reinstatement Of Licensing Privileges (AOC-CV-653) to request reinstatement by local CSS. This request is

conditional on full payment of arrearages or compliance with subpoena.

- The caseworker reviews the NCP's payment record to assure compliance. If the arrearages have been paid in full or the NCP has complied with the subpoena, the caseworker certifies that the NCP is complying by completing the Request For Certification Of Reinstatement (DSS-4691). Appropriate language should be added to address subpoena compliance.
- The caseworker notifies DMV of the reinstatement of a driver license or the removal of a vehicle registration blockage by accessing the SADLS or STARS system. Reinstatement/blockage removal occurs live online.
- Any fees associated with the license reinstatement/blockage removal process are the responsibility of the NCP.

2. The NCP files a petition with the court; this option is available when the NCP has not complied with a subpoena or has not satisfied the arrearages:

- The NCP completes the Petition For Reinstatement Of Licensing Privileges (AOC-CV-651) and files it with the Clerk of Court.
- A hearing is held. If the judge orders reinstatement of a driver license or removal of a vehicle block, caseworkers access the SADLS or STARS system to notify DMV on the day when reinstatement or removal is ordered. Reinstatement and removal occur online.
- If the judge reinstates driver license or vehicle registration privileges conditional on a payment plan, it is recommended that caseworkers use the Memorandum Order (DSS-4607) to document the terms of the court order. Caseworkers should add notes to record the terms of the court order in ACTS.
- Any fees associated with the reinstatement/blockage removal process are the responsibility of the NCP.
- Payments are to be monitored for compliance.

#### **REDIRECTION OF CASES WITH DRIVER LICENSE SUSPENSION/VEHICLE REGISTRATION BLOCKAGE**

##### ***License Suspension***

NCGS 110-142.2 provides license suspension as an enforcement remedy if the NCP is ninety (90) days delinquent in support payments.

- Redirection information is entered into the SADLS system for cases with existing driver license suspensions. This assists the DMV Help Desk in directing the NCP to the appropriate agency for assistance.

##### ***Vehicle Registration Blockage***

- If the NCP pays off all arrearages and requests certification to have the block removed, local CSS must follow the reinstatement process.
- If a CSS case is redirected to the Clerk of Court and a vehicle registration block is present, local CSS is the appropriate agency to be involved in the reinstatement process when the NCP requests certification.

- Upon receiving satisfactory proof that arrearages have been satisfied, local CSS completes the Request For Certification Of Reinstatement And Certificate Authorizing Reinstatement Of Licensing Privileges (AOC-CV-653). The original certificate is filed in the court file and a copy provided to the NCP.
- Local CSS then removes the vehicle registration blockage by accessing the STARS system.

## **OCCUPATIONAL/BUSINESS/PROFESSIONAL LICENSES POLICY**

NCGS 110.142 prescribes an administrative process for the revocation of occupational licenses as a remedy for collection of child support arrearages and ensuring cooperation of NCPs in support and/or paternity establishment proceedings. Occupational licenses are defined by statute as any "license, certificate, permit, registration or other authorization issued by a licensing board which allows one to engage in an occupation or profession."

This remedy can be employed for cases for which an order has been entered or registered in North Carolina and the payments for current support or periodic payments on arrearages or reimbursement of Public Assistance are more than ninety (90) days delinquent. This remedy can also apply to NCPs not in compliance with a subpoena issued in conjunction with a child support or paternity establishment proceeding.

Upon notification by the CSS agency of a child support delinquency or noncompliance with a subpoena issued pursuant to a support or paternity proceeding, a licensing board notifies the licensee (NCP) of the intent to revoke or suspend the license in twenty (20) days unless the licensee is in compliance with the support order or subpoena or has entered into a repayment agreement.

### ***CERTIFICATION OF CASES***

The case certification process consists of notifying professional licensing boards to initiate license revocation against those NCPs who meet the delinquency criteria. Cases that meet any of the conditions listed below are eligible for certification:

- Cases for which current support arrearages are equal to or greater than the amount owed for a 90-day period;
- Cases that are closed, collecting on arrearages, with past due payments that are equal to or greater than the amount due for ninety (90) days under any repayment plan or court order in effect;
- Cases that are closed, collecting on arrearages, with no repayment plan in effect and with arrearages that are equal to or greater than the support obligation that would have been owed for a 90-day period when the obligation was in effect;
- Cases for which an order for repayment of past paid public assistance is at least ninety (90) days delinquent; and
- Cases in which a subpoena has been issued pursuant to a child support or paternity establishment proceeding, and the NCP is not in compliance with the subpoena.

ACTS notifies the responsible caseworker(s) when a match with a professional licensing board occurs for an NCP under order who meets

the 90-day delinquency criteria. Caseworkers are provided with a 3-digit professional licensing board code, the name of the licensing board, and the license number.

Caseworkers should review the court order to determine if the arrearages are correct and the NCP meets the delinquency criteria for professional license revocation. They should also check to see if the NCP has a current mailing address record in ACTS. This information can aid the licensing board in serving the notice of revocation.

Caseworkers certify NCPs for license revocation, and at the end of the month, a report containing all certified NCPs is printed at the CSS Central Office. The CSS Central Office forwards this report to the appropriate licensing board for revocation.

If (at the discretion of the local CSS agency) other enforcement remedies are more appropriate, the case might not be certified for license revocation. If this occurs, caseworkers should document in ACTS the reason why license revocation was not used.

Once an NCP is certified for license revocation, it is not appropriate to re-certify that case until the license has been reinstated and another 90-day delinquency has occurred. However, an NCP who has multiple cases can be certified on more than one occasion.

*EX: If Case A is certified in Month 1 and the NCP becomes ninety (90) days delinquent in Case B in Month 4, Case B should be certified in Month 4, regardless of the status of the Case A delinquency.*

*NOTE: Most licensing boards are expected to provide new licensee information no more than semi-annually. However, caseworkers must review the system monthly for certification of cases that have newly met the certification criteria.*

#### **NOTIFICATION OF LICENSING BOARDS**

Each affected licensing board is sent an Occupational License Revocation list of all of its licensees or applicants who have been certified for license revocation within thirty (30) days of the CSS Central Office compiling those lists. The lists include the name, last known address, and SSN of each licensee and the name and address of the CSS agency that certified the arrearages.

#### **NOTIFICATION TO NONCUSTODIAL PARENT OF INTENT TO REVOKE LICENSE**

Upon receipt of the certified list from the CSS Central Office, the licensing board sends a Notice To The Obligor to each listed licensee (NCP), advising of the intent to revoke the license or withhold issuance of a new license in twenty (20) days of the date of the notice. Notice shall be made by personal service or certified mail to the licensee's known mailing address on file with the board. The notice informs the licensee that revocation can only be avoided by receipt by the board of a Certificate Of Compliance (DSS-4729) from the CSS agency and that if a license is revoked or application denied, the board is not required to refund fees paid by the licensee.

The notice must include the address and telephone number of the local CSS agency that submitted the request for revocation. It instructs the licensee to contact that CSS agency by mail or by telephone to request a review of the arrearages or further information, or to

arrange for repayment of the arrearages. The notice advises that if the licensee fails to contact local CSS within fourteen (14) days from the date of the notice, the revocation will take place.

***RESPONSE OF THE LICENSEE (NONCUSTODIAL PARENT)***

If the NCP decides to pay the arrearages, contacts the CSS agency regarding a repayment plan, complies with a subpoena pursuant to child support or paternity establishment, or challenges the referral within the allotted 14-day period, local CSS must immediately notify the licensing board to stop the revocation process. Within six (6) days of the date of the NCP's action, local CSS notifies the licensing board to halt any steps to revoke the license until further notice from CSS. If there is no contact, the licensing board revokes or suspends the license twenty (20) days from the date of the Notice To The Obligor.

The board notifies the CSS Central Office Occupational License Coordinator of the revocation within thirty (30) days. The coordinator documents the fact that the board revoked the license in ACTS and notifies the responsible caseworker of the revocation. If the license is revoked for failure to comply with a subpoena, the coordinator documents this fact and notifies the responsible caseworker.

Potential NCP responses and resulting actions are:

1. If the NCP fails to comply with the subpoena, pay the arrearages, or contact local CSS to arrange a repayment plan or challenge the submittal, CSS does not contact the licensing board, and the license is revoked. The board then contacts the Occupational License Coordinator about the revocation, and the coordinator updates the case record. When a license is revoked or an application is denied under this remedy, a licensing board is not required to refund the fees paid by the licensee.
2. If the NCP complies with the subpoena or pays the arrearages in full, local CSS must immediately send a Certificate Of Compliance (DSS-4729) to the licensing board, directing the board to take no action to revoke or suspend a license. The NCP must also be sent a copy of this Certificate Of Compliance.
3. If the NCP requests a review, local CSS sends the Request For Review Of Professional License Revocation (DSS-4730) to the appropriate licensing board(s) within six (6) days of the request, requiring that revocation action be stayed until further notice from CSS. Local CSS reviews the case and must address any or all of the NCP's following concerns:
  - The amount of the arrearages and any relevant defenses;
  - The process for obtaining a modification of a support order;
  - The establishment of a payment plan for liquidation of the arrearages; and/or
  - The compliance with subpoena issued in conjunction with paternity and support establishment proceedings.

Although no time frames for the review are mandated, it is important that the review be conducted as soon as possible following a request, since the effectiveness of this remedy depends on completion of the revocation process. If a review is requested but the NCP fails to appear for the review, provide needed information, or otherwise follow through, this should be

treated the same as no response to the Notice Of Immediate Revocation (DSS-4731).

Upon completion of the review, caseworkers must provide the findings and decision to the NCP, using the Notice Of Pending License Revocation Review (DSS-4732).

The results of the review determine the next appropriate action in the revocation process. Possible actions are:

- CSS and the NCP might agree upon a repayment plan that is acceptable to both. The agreement should be in the form of a Modified VSA or a Consent Order, whichever is appropriate, that contains the terms of the plan for payment of arrearages and for the maintenance of the current support obligation. The Modified VSA or Consent Order should specify that if the NCP fails to abide by the terms of the plan, the appropriate licensing agency will immediately revoke the license.

It is important for caseworkers to investigate whether or not the NCP has multiple obligations. Payments made by the NCP are prorated across all obligations. The NCP can comply with a payoff plan or an amount agreed upon to reduce arrearages, but the account does not reflect this due to proration.

Caseworkers must either investigate this possibility before taking further enforcement action or allow for the proration when initially establishing a repayment plan. It is important to remind the NCP that payments must be current on all cases if the expectation is to reduce arrearages on the case for which enforcement action might have been taken originally.

Upon filing the Modified VSA with the court, local CSS must send a Certificate Of Compliance (DSS-4729) to the appropriate licensing board, advising that the license should not be revoked. The NCP must be sent copies of the Modified VSA and the Certificate Of Compliance (DSS-4729).

If the NCP subsequently fails to comply with the repayment plan, CSS sends the appropriate licensing board a Notice Of Immediate Revocation (DSS-4731) to revoke the license. No further notice to the NCP is required. The board then notifies the Occupational License Coordinator of the revocation and the coordinator updates the case record.

- If the review indicates that a 90-day arrearage does not exist, the board must be notified by a Certificate Of Compliance (DSS-4729) that no action to revoke the license should be taken. Caseworkers must send the NCP a Notice Of Pending License Revocation Review (DSS-4732) and a copy of the Certificate Of Compliance (DSS-4729).
- If a review of the case does not alter the decision of local CSS to request revocation, caseworkers must send a Notice Of Immediate Revocation (DSS-4731) to the licensing board. The boards then notifies the Occupational License Coordinator of the revocation, and the coordinator updates the case record.

Caseworkers should also send a Notice Of Pending License Revocation Review (DSS-4732) to the NCP. This notice informs

the NCP of his/her right to file a motion with the court for a judicial review of the decision of CSS or for a modification of the support order. The filing of such a motion by the NCP does not stay the revocation process. The NCP must provide local CSS with notice of this action within seven (7) days of filing the motion with the court.

If the judicial review determines that the NCP is in compliance or should be given the opportunity to comply with the order, local CSS must immediately notify the board to reinstate the affected license. An appeal of the judicial review does not stay the revocation unless specifically ordered by the court.

No case review should remain uncompleted more than sixty (60) days following the first appearance on the certification list. If no resolution has been reached in this time, local CSS should verify whether or not subpoena noncompliance or a 90-day delinquency currently exists.

If payments have been brought into compliance or the NCP is in compliance with the subpoena, a Certificate Of Compliance (DSS-4729) should be forwarded to the board and a copy sent to the NCP.

If not, the review process should be concluded, indicating that the NCP is not in compliance with the support order or the subpoena. The Notice Of Immediate Revocation (DSS-4731) should be sent to the licensing board and the Notice Of Pending License Revocation Review (DSS-4732) sent to the NCP.

The board then notifies the Occupational License Coordinator of the revocation, and the coordinator updates the case record.

*NOTE: All correspondence between CSS and the NCP is conducted by regular mail. Certified mail or personal service is only required when the licensing board notifies the licensee that a license is to be revoked.*

In addition to the administrative revocation process, revocation of business or professional licenses can also be applied, pursuant to NCGS 50-13.12, upon a finding by a district court that the parent is willfully not complying with a subpoena pursuant to paternity or support establishment or delinquent in child support payments equal to at least one (1) month's child support. The court can order that a license be revoked or application be halted until the delinquency is paid in full, or it can stay such action under the condition that the NCP is complying with the subpoena or a repayment plan is in effect.

Notice to a licensing board to revoke a license under this statute is made by the Clerk of Superior Court. When the requirements for reinstatement of the license have been met, the Clerk certifies to the appropriate licensing board that the license should be reinstated.

#### **WILDLIFE (HUNTING/FISHING/TRAPPING) LICENSE POLICY/PROCEDURES**

NCGS 110-142.2 provides an enforcement remedy to suspend and/or restrict an NCP's ability to hunt, fish, and/or trap if the NCP is at

least ninety (90) days delinquent in child support payments or fails to comply with a subpoena pursuant to paternity and/or child support establishment. The 90-day delinquency definition is the same one used for driver licenses and vehicle registration.

If the NCP has been found by the court to be in civil or criminal contempt for failure to pay child support three (3) or more times after 10/01/1999, the court shall order wildlife license revocations, as applicable.

These enforcement remedies apply to orders entered or registered in North Carolina. These remedies are not appropriate for Interstate cases under direct income withholding.

Each case that meets the 90-day delinquency criteria needs to be examined to determine if these enforcement remedies are appropriate. For example, these remedies would not be appropriate for a case that meets the 90-day delinquency criteria with an NCP who is complying with the conditions of a repayment plan for current support and arrearages.

#### ***COURT PREPARATION***

Until the Department of Environment and Natural Resources Wildlife Resource Commission is automated, any information pertaining to hunting, fishing, or trapping licenses (such as type of license and license number) must be obtained while interviewing either the custodial parent or NCP or under cross examination in court by the CSS attorney.

When considering appropriate remedies to pursue for effective child support enforcement, caseworkers need to examine each case to determine which remedy might have the most impact.

#### ***WILDLIFE LICENSE SUSPENSION POLICY***

A judge can order the suspension of a hunting, fishing, or trapping license as an enforcement remedy when an NCP meets the 90-day delinquency or subpoena noncompliance criteria and is in court on a Motion to Show Cause. When a hearing is held and the judge orders any or all wildlife license(s) suspended:

- The NCP surrenders the license in court to the caseworker. The caseworker destroys the license. Under NCGS 110-142.2, caseworkers are not required to issue a receipt.
- Caseworkers use the Order For Civil Contempt (DSS-4650) or the Order For Criminal Contempt (DSS-4651), as appropriate for the case, to record the terms of the order.
- The caseworker completes the Wildlife License Revocation Notice (DSS-4728) and forwards it to the Wildlife Resources Commission. The Wildlife Resources Commission matches the license suspension with daily receipts for license purchases. If a match is found, the information is forwarded to the appropriate wildlife officer for enforcement.

#### ***Stayed Wildlife License Suspension***

A judge orders the suspension of a hunting, fishing, or trapping license and stays the suspension conditional on the NCP entering into a payment plan or complying with a subpoena.

- The payment plan is to include provisions for maintaining current support in addition to regular payment on arrearages to be paid in full over a reasonable amount of time (as determined by the judge.) The NCP's ability to pay and the amount of child support arrearages are to be considered when determining the payment plan.
- The payment plan must take into consideration whether or not the NCP has multiple obligations, since ongoing payments made by the NCP are prorated across all obligations. It is important to remind the NCP that payments must be current on all cases if the expectation is to reduce arrearages on this case.
- The NCP is required to make an immediate purge payment representing at least five percent (5%) of the total delinquency or \$500.00 (whichever is less.)
- The terms of the payment plan and immediate payment requirement are recorded in the resulting order. Caseworkers should add notes about the stay in ACTS.
- Stayed license suspension information is not forwarded to the Wildlife Resources Commission.
- Payments are monitored for compliance.

***WILDLIFE LICENSE REINSTATEMENT***

Two options are available to NCPs want to have their wildlife licenses reinstated:

1. The NCP requests certification from CSS:
  - The NCP completes the Reinstatement and Certificate Authorizing Reinstatement of Licensing Privileges (AOC-CV-653) or the Request For Certification Of Reinstatement (DSS-4691) and the Certificate Authorizing Reinstatement of Licensing Privileges (AOC-CV-653) to request reinstatement by local CSS. This request is conditional on full payment of arrearages or complying with subpoena.
  - The caseworker reviews the NCP's payment record to assure compliance. If the arrearages have been paid in full or the NCP has complied with the subpoena, the CSS caseworker certifies that the NCP is complying by completing the Request For Certification Of Reinstatement (DSS-4691). Appropriate language should be added to address subpoena compliance.
  - The caseworker notifies the Wildlife Resources Commission about wildlife license reinstatements by completing the Wildlife License Reinstatement Notice (DSS-4728). This form is forwarded to the Wildlife Resources Commission.
  - Any fees associated with the reinstatement process are the responsibility of the NCP.
2. The NCP files a petition with the court; this option is available when the NCP has not complied with a subpoena or has not satisfied the arrearages:
  - The NCP completes the Petition for Reinstatement of Licensing Privileges (AOC-CV-651) and files it with the Clerk of Court.
  - A hearing is held. If the judge orders reinstatement of a wildlife license, the caseworker notifies the Wildlife Resources Commission by completing the Wildlife License Reinstatement Notice (DSS-4728). This form is forwarded to the Wildlife Resources Commission.
  - If the judge reinstates license privileges conditional on a payment plan, it is recommended that the Memorandum Order

(DSS-4607) be used to document the terms of the court order. Caseworkers should document the terms of the court order in ACTS.

- Any fees associated with the reinstatement process are the responsibility of the NCP.
- Payments are monitored for compliance.

#### **REDIRECTION OF CASES WITH WILDLIFE LICENSE SUSPENSION**

CSS does not need to notify the Wildlife Resources Commission about redirected cases with wildlife license suspensions.

## **LIENS**

### **GENERAL INFORMATION**

Liens are "holds" placed on property to ensure that payments are made. When a lien is placed on a property, the owner cannot liquidate that property until the lien is released. When ACTS receives funds from a lien payment for a noncustodial parent's (NCP's) case and posts them during batch processing, it notifies the responsible CSS caseworker. This topic contains information on the following subjects:

1. [The imposition of liens;](#)
2. [Sources to research for possible assets;](#)
3. [The criteria for establishing liens;](#)
4. [The process for establishing liens;](#)
5. [The filing and perfection of liens;](#)
6. [The modification of liens;](#)
7. [Execution on liens;](#)
8. [Discharging liens;](#)
9. [Policy concerning out-of-state liens.](#)

### **IMPOSITION OF LIENS**

A general lien is a non-possessory interest created upon the real and personal property of any person who is delinquent in the payment of court-ordered child support. It can be used in conjunction with other enforcement remedies (NCGS 44-86, 44-87).

"Real property" is defined as land and, generally, what is erected, growing, or affixed to land. Houses, mobile homes (when secured to a foundation), and crops in the field are real property. "Personal property" is everything owned that is not real property, things of a personal nature, or that are movable. Furniture, cars, mobile homes (on wheels), harvested crops, and merchandise are personal property.

Advantages to this method of enforcement are:

1. Obtaining a lien is a relatively simple procedure;
2. The credit rating of the NCP is affected;
3. The proceeds from sale of the property can be directed toward the payment of the debt;
4. The psychological pressure of knowing that one's property might be taken could produce the desired payment.

The creation of a general lien might be all that is required for effective enforcement if the CSS caseworker believes that the NCP will

pay his/her arrearages and satisfy the lien to clear his/her credit record or to be able to sell the property (or use it as collateral.)

Before requesting the establishment or execution of a lien, the CSS agency must weigh the factors involved to determine if this action is appropriate. Consideration should be given to the following factors:

1. **Existence of Other Lien Holders** - Since liens are satisfied in the order of filing, caseworkers should review the judgment book to determine if other liens have been filed and whether the sale of the property would likely yield sufficient proceeds to satisfy any prior liens AND the child support lien.
2. **Form of Ownership** - It is not possible to establish a lien on any real property that is jointly owned by the NCP and his/her current spouse. However, it might be possible to establish a lien on the non-custodial parent's interest on property that is jointly owned by the NCP and another party.
3. **Value of Property** - Consideration should be given to the current market value for such property, as well as to any appraised value and/or equity in the property and its importance to the debtor before determining that the execution of a lien would be profitable.
4. **Cost of the Lien** - The potential costs of filing fees, attorney fees, sheriff's fees, the cost to store property after seizure, and any other related costs must be considered when evaluating the anticipated proceeds from the sale of the property. The payment to be applied to the arrearage should be significant enough to make this action appropriate.
5. **Affect on Ability to Pay** - Consider whether the seizure of a particular property will cause the NCP to be unable to comply with the order. For example, seizure of an automobile that is needed for transportation to work or of the tools of the NCP's trade can produce payment on an arrearage, but it could also decrease the NCP's ability to make future payments.
6. **Bankruptcy claims** - Consult the CSS attorney; in some cases, enforcement actions are ceased until approval of the bankruptcy court is received.

#### **SOURCES TO RESEARCH FOR POSSIBLE ASSETS**

Several sources are available to research the possible assets of the NCP:

1. **Custodial parent** - For potential property information;
2. **DMV** - For vehicle ownership, review the N.A.D.A. blue book to get the value of the vehicle;
3. **County Tax Assessment Office** - For listings and values of real and personal property such as land, boats, trailers, mobile homes, business property or equipment, and automobiles;
4. **Register of Deeds** - For real property and business or farm equipment titled in the NCP's name. If property is found, then contact the tax assessment office for value.

#### **CRITERIA FOR ESTABLISHING LIENS**

A lien is an appropriate enforcement remedy when:

1. The NCP's arrearages equal three (3) months of the child support obligation or \$3000.00;
2. Evidence exists that the NCP owns real or personal property; and

3. The NCP owns property that would satisfy part or all of the lien debt.

#### **PROCESS FOR ESTABLISHING LIENS**

Once CSS caseworkers have determined that a lien is necessary, they complete a Verified Statement For Claim Of Lien/Notice Of Filing Of Verified Statement For Claim Of Lien (DSS-4698/4699) for child support delinquency. The Verified Statement For Claim Of Lien contains the following:

1. The caption and file docket number of the case for which child support was ordered;
2. The date of the order of support;
3. The amount of the child support obligation that was established by the order;
4. The amount of the arrearage as of the date of the statement; and
5. A request for issuance of transcripts of the docketed statement to any other counties where the NCP has property, if applicable.

Caseworkers then submit the Verified Statement and proof of property to the supervisor or the attorney for review. The Verified Statement is filed with the Clerk of Superior Court in the county where the child support was ordered. At the time of filing, the NCP is served with the Notice Of Filing by sheriff, certified mail, private process server, or publication. The return of service must be filed with the Clerk of Court. The notice must state how the NCP can satisfy or discharge the lien.

If the NCP is not served notice of the lien, this does not prevent execution on the lien. In accordance with NCGS 44-86(f), thirty (30) days after the lien is perfected, CSS can execute on the lien. CSS must attempt service of the notice in one of the methods listed earlier in this section. It is the NCP's responsibility to keep CSS abreast of all address changes.

#### **FILING AND PERFECTION OF LIENS**

A lien is perfected when the Verified Statement is filed with the Clerk of Court. The Clerk of Court docket and indexes the statement on the judgment docket and issues a transcript of the docketed statement to the Clerk of any other county as requested. The Clerk of Court receiving the transcript shall docket and index the transcript. The NCP can contest the lien by filing a motion in the cause.

A lien on personal property attaches when the property is seized by the sheriff. A lien on real property attaches when the perfected lien is docketed and indexed on the judgment book. This lien is superior over all subsequent liens and continues from the date of filing until discharged.

When a lien has been docketed, it has the following effect on subsequent enforcement actions. If a contempt action is taken following the docketing of a lien, the Order to Show Cause must request compliance only with arrearages accrued since the date of perfection of the lien. The agency attorney should advise the court that a lien is docketed and notify the court of the original and remaining amount of the lien. The court can then consider either only arrearages that accrued after the lien was docketed or arrearages that were included in the judgment and the arrearages accruing afterward.

## **MODIFICATION OF LIENS**

A lien must be modified to reflect payments that are made on the arrearage amount entered in the judgment docket book. The Notice Of Reduction, Satisfaction, or Dismissal Of Judgment/Lien (DSS-4474) is used to reduce the docket book entry amount by the amount that is paid. Caseworkers file this Notice with the Clerk of Court in the county where the lien is originally recorded.

This notice should be generated only when the NCP has made payments that reduce the amount entered on the judgment docket book. When a court order modifies the judgment amount entered, caseworkers must provide the Clerk with a copy of the court order and state that the judgment entry must be modified to reflect the amount in the court order. The lien record is updated or deleted when appropriate.

## **EXECUTION ON LIENS**

"Execution" is the enforcement of an existing lien against the NCP's property. It requires that the property be sold and the proceeds be used to pay the arrearage. At any time after thirty (30) days of receipt of the perfected lien, CSS can notify the Clerk of Court to execute on the lien. At the direction of the Clerk of Court, the sheriff must seize and sell the property and apply the proceeds to amount of the lien.

The Clerk of Court transmits proceeds received as a result of the lien execution to NCCSCC. Such payments are accompanied by a Child Support Payment Transmittal (AOC-CV-641) with a lien payment type checked on the form. This payment type does not prorate across multiple obligations.

## **DISCHARGING LIENS**

A lien can be discharged through one of the following actions:

1. The full amount of the lien has been satisfied, CSS generates a Notice Of Reduction Or Satisfaction Of Judgment/Lien (DSS-4474). This Notice is filed with the Clerk of Court. For information the partial reduction of a lien, see [Modification of Liens](#).
2. The NCP pays the Clerk of Court an amount equal to the amount of the claim and files a petition in the cause, requesting a district court judge to determine the validity of the lien. The money is not disbursed except by order of a district court judge following the hearing.
3. An unsatisfied lien is discharged under one of the following circumstances:
  - The action to enforce the lien is dismissed by the child support agency. An unsatisfied lien must be dismissed before closing a CSS case, and it also can be dismissed upon the determination that it is no longer appropriate to pursue this remedy for the case. To dismiss a lien, a motion in the cause is filed, citing the date and amount of the docketed judgment, the unpaid balance due, and the reason that CSS is requesting dismissal.

- A judgment is rendered against the CSS agency in the action to enforce the lien. The Clerk of Court enters the dismissal in the judgment docket book.

## **LIENS ARISING OUT OF STATE**

Full faith and credit is given to child support liens arising from another state when the CSS agency or other party or entity that is seeking to enforce the lien complies with the requirements of recording and serving child support liens and the requirements of foreign judgments.

## **MEDICAL SUPPORT ENFORCEMENT**

### **GENERAL INFORMATION**

This topic contains information on the following subjects:

1. [General medical support enforcement policies](#);
2. [The medical support enforcement process](#);
3. [The National Medical Support Notice \(DSS-4733\)](#).

### **MEDICAL SUPPORT ENFORCEMENT POLICY**

Once medical support coverage has been included in an order, or a responsible parent has been ordered to obtain medical support coverage, Federal regulations mandate that steps must be taken to enforce these medical support obligations. The CSS program must also collect and distribute medical support included in previously entered court orders with a specific dollar amount, such as periodic payments or lump-sum payments. The CSS case history should contain complete documentation of all efforts to establish and enforce medical support.

Enforcement procedures must include the following:

1. The use of contingent language in the order requiring the noncustodial parent (NCP) to notify the court or CSS agency when ordered coverage is obtained or terminated. (See the recommended language that follows.)

VSA: "I hereby agree that I will obtain employment-related health insurance coverage when it is available, and I will notify either the court or the CSS agency in writing when I have obtained the agreed medical support coverage and/or when such coverage is terminated."

Order: "The defendant is hereby ordered to obtain employer-related health insurance coverage when it is available and to notify either the court or CSS agency in writing when the required medical support coverage has been obtained or terminated."

2. Sending the [National Medical Support Notice](#) (DSS-4733) to the NCP's employer(s) within five (5) days of the entry of an order that contains a provision for employment-related medical insurance coverage for the child(ren).
3. Verification that coverage has been obtained as ordered or enrollment of the child if the parent fails to do so.

4. Upon verification of a change in an NCP's employment or as a result of New Hire reporting, sending a [National Medical Support Notice](#) (DSS-4733) to the NCP's employer(s) if the court order contains a provision for employment-related medical insurance coverage for the child(ren).
5. Review of cases with other pending court action for compliance with the medical support provisions, and if appropriate, inclusion of contempt action for noncompliance.
6. Citation of the NCP for contempt when not complying with the medical support provisions of the order, even if child support payments are current.
7. If both income withholding and insurance premiums are being deducted from earnings, verification that total deduction does not exceed the maximum amount allowed by State law.
8. A motion to join employer who refuses to comply with requests to enroll the child(ren), in order to compel enrollment. Civil legal action also can be taken against the health plan administrator if coverage is available but the NCP's child is not enrolled.
9. Communication with the Medicaid agency for the exchange of information regarding medical coverage (*EX: the transmittal of new coverage information if the NCP changes jobs and notification of any lapses in coverage of Medicaid applicants and recipients.*)
10. Communication with employers and others who offer group health insurance coverage being enforced by CSS, requesting notification to the CSS agency of any lapses in coverage. (If coverage terminated but still available, ensure that child not disenrolled without proof of termination of order or enrollment in other coverage.)
11. Implementation of income withholding for medical support designated as a specific dollar amount.
12. Monitor the insurance coverage status of cases for which the NCP has group insurance in place that is not employment-related.

If the NCP fails to obtain health insurance coverage as ordered, caseworkers must use the appropriate enforcement remedies as outlined above.

Also if the NCP fails to obtain the coverage as ordered, allows the coverage to lapse when it was in fact still available, or fails to cover the child at a new employer if it is available, the NCP shall be held liable for medical expenses incurred from the date of the court order, NCGS 50-13.11(E). Upon hearing evidence of the amount of medical expenses incurred and the NCP's failure to provide insurance coverage, the court can order that the NCP be held responsible for the actual expenses incurred.

If medical insurance coverage for the child(ren) is not immediately available, the case must be monitored by the CSS agency and appropriate action taken to obtain coverage if circumstances change.

Other enforcement activities such as monitoring Medicaid claims and payments and pursuing third-party medical support are the responsibility of the State Medicaid Agency.

**MONITORING COMPLIANCE WHEN A NON-CASE PARTICIPANT PROVIDES MEDICAL INSURANCE**

Monitoring compliance for medical insurance when a non-case participant (such as a grandparent, stepparent, or other relative of

the child) provides medical insurance is a manual process. The NCP is compliant with the court order to provide medical insurance if a non-case participant volunteers to provide medical insurance for a dependent, but non-case participants are not required to provide, continue to provide, or notify CSS when no longer providing medical insurance.

Caseworkers should never direct correspondence to a non-case participant or to a non-case participant's employer or insurance provider. ACTS does not generate documents to the non-case participant when non-case participant data is present on the medical insurance record. All correspondence regarding insurance coverage should be sent to the case participant (custodial parent or NCP) who is ordered to provide medical insurance.

#### **MEDICAL SUPPORT ORDERS WITH SPECIFIED DOLLAR AMOUNTS**

Federal regulation 45 CFR 302.51 requires the CSS agency to collect and distribute medical support from a previously established order if the order specifies a dollar amount (*EX: an order for \$20.00 per month or a \$1600.00 lump-sum order for orthodontics*). Payments must be directed to the Department of Health and Human Services (DHHS) for distribution to either the custodial parent or to the Division of Medical Assistance (DMA).

#### **RESTRICTIVE COVERAGE**

NCGS 58-51 prescribes that an insurer shall not deny enrollment in a parent's health benefit plan to a child who:

1. Is eligible for or receiving Medicaid;
2. Was born out-of-wedlock;
3. Is not claimed as a tax dependent of that parent;
4. Does not reside with the parent or in the insurer's service area;
5. Was or is in the process of being adopted by the parent;
6. Has been placed in the foster care of the covered individual.

CSS agencies are often asked to mediate in situations regarding medical support that might not fall under the CSS Program's control or responsibility. The following are typical case situations:

1. Pre-enrollment physical examinations;
2. Large deductibles;
3. Pre-existing medical conditions that the policy does not cover; and/or
4. A requirement to use only prescribed providers.

In instances such as these, the CSS agency's responsibility is to enforce health insurance coverage and medical support specifying a dollar amount. Unless it is specifically stated in the court order that the NCP is responsible for the deductible, arranging for a physical, etc., the custodial parent can be held responsible for these additional expenses. Issues related to insurer requirements and the recoupment of any improper reimbursement to an NCP in Medicaid cases are the responsibility of Third Party Recovery. The CSS agency is not involved in the resolution of these matters.

However, in some instances, the CSS agency can take appropriate court action. For example, if an NCP appears to the CSS agency to be evading the medical support obligation by opting for the most

restrictive health insurance coverage for the child(ren) when broader options are available through the employer, the CSS agency must enforce this provision. The same would be true if the NCP subsequently obtained dependent insurance coverage that was not employment-related to avoid paying higher premiums or receives reimbursement for expenses that were paid initially by the custodial parent and fails to reimburse the custodial parent. This can be accomplished through a court action or show cause to further delineate the NCP's medical support responsibilities.

### ***Insurer Requirements***

The insurer must:

1. Allow enrollment of a child without regard to any enrollment season restrictions;
2. Enroll a child upon application of the child's other parent or the child support agency if the parent is enrolled but fails to apply for coverage for the child;
3. Not disenroll or eliminate coverage of a child unless provided written evidence that the order is no longer in effect or that comparable coverage has taken effect;
4. Provide information to the custodial parent as necessary to obtain benefits of the coverage;
5. Permit the custodial parent to submit claims for covered services, without the approval of the NCP; and
6. Make payments on claims to the custodial parent, the provider or DHHS, as appropriate.

If the insurer denies coverage or other difficulties are encountered, the CSS caseworker should contact the CSS attorney and/or Third Party Recovery before taking action in the matter.

### ***Employer Requirements***

The statute also prescribes that when a parent is ordered to provide health insurance using the dependent coverage available through the employer's benefit plan, the employer must:

1. Allow enrollment of the child without regard to any enrollment season restrictions;
2. Enroll the child on application of the other parent or the child support agency, if the parent is enrolled but fails to enroll the child;
3. Not eliminate coverage for the child unless the order is no longer in effect or the child has other comparable coverage or the employer eliminates family health benefits to all employees; and
4. Withhold the employee's share of the premiums for the health benefit coverage from the employee's compensation, not to exceed the maximum amount allowed by State law, and pay this amount to the health insurer.

## **MEDICAL SUPPORT ENFORCEMENT PROCESS**

ACTS generates the Employer Letter To Verify Continued Insurance Coverage (DSS-4653) ACTS semi-annually. This letter is sent to the verified employers of noncustodial parents (NCPs) who have been ordered to provide dependent medical insurance.

The employer returns verification of whether or not dependent medical insurance coverage is available to the responsible caseworker. Caseworkers must then update the NCP's employment information in ACTS.

ACTS checks the terms of the current court order to determine if the NCP is required to provide medical insurance for the child(ren). If medical insurance has not been ordered and caseworkers have indicated that it is available, ACTS generates a Medical Insurance Modification Request (DSS-4565). This letter is sent to the NCP and requests that he/she voluntarily agree to provide medical insurance for the child(ren).

If the NCP does not respond in thirty (30) days, caseworkers generate a Motion To Modify Order (DSS-4654) to add dependent medical insurance to the support order. Then caseworkers schedule a court hearing and generate the appropriate hearing notice document(s). When the court makes a decision, caseworkers must update the court order information in ACTS, based on that decision.

When the dependent medical insurance policy end date is reached, that policy is no longer in effect. ACTS checks the current court terms to determine if the NCP has been ordered to provide medical insurance for the child(ren). If the court has ordered the NCP to provide medical insurance for the child(ren) and the policy is no longer in effect, ACTS generates the Demand for Insurance Coverage Compliance (DSS-4494). This document notifies the NCP of his/her failure to provide medical coverage for the child(ren) and advises him/her to acquire medical coverage for the child(ren) within thirty (30) days.

If responsible caseworkers do not receive a response from the NCP within thirty (30) days, they manually generate a Motion/Order To Appear And Show Cause For Medical Insurance (DSS-4642). Caseworkers should also schedule a court hearing and generate the appropriate hearing notice document(s). When the court hears the case and renders a judgment, caseworkers must update the support order information in ACTS, based upon the court's decision.

## **NATIONAL MEDICAL SUPPORT NOTICE**

### ***GENERAL INFORMATION***

The National Medical Support Notice (DSS-4733) is a standardized form that Federal regulation 45 CFR 303.32 requires all states to use in enforcing medical child support orders. Tribal CSE agencies are not required to use this form. The Notice provides a means of communication between child support agencies, employers, and group health plan administrators regarding the medical support obligations of NCPs. It also serves as a "qualified medical child support order."

### ***NATIONAL MEDICAL SUPPORT NOTICE POLICY***

Effective August 1, 2002, when the court orders NCPs to provide employment-related health insurance coverage for their child(ren), the National Medical Support Notice (DSS-4733) must be served on the NCP's employer. Service must occur within five (5) business days after an initial order has been entered, within two (2) business days of the NCP being added to the New Hire Directory, or as soon as caseworkers become aware that the NCP has changed employment.

### ***EXCEPTIONS:***

This notice is not used:

- When the court has ordered nonemployment-based health insurance coverage;
- When the parties have stipulated to nonemployment-based health insurance coverage; or
- To enroll (or verify the enrollment of) a military member/NCP's child in TRICARE/CHAMPUS.

The National Medical Support Notice is divided into two parts and includes four different documents.

Part A:

- NOTICE TO WITHHOLD FOR HEALTH CARE COVERAGE - The local CSS agency agency completes this document, including the type of coverage that is ordered and the percentage limits of income withholding, and sends the entire NMSN to the employer.
- EMPLOYER RESPONSE - Employers are required to complete and return this document to the local CSS agency, regardless of whether they provide group health insurance benefits or the NCP is no longer employed by the employer.

Part B:

- MEDICAL SUPPORT NOTICE TO PLAN ADMINISTRATOR - Employers send this document to notify the health plan administrator of the obligation to provide health care coverage.
- PLAN ADMINISTRATOR RESPONSE - Plan administrators complete and return this document to notify the local CSS agency of the action taken.

### ***Employer Responsibilities***

After the local CSS agency mails the Notice to the NCP's employer, the employer is required to transfer Part B within twenty (20) business days to the health insurer, health care plan administrator, or other organization (including a labor union) that provides health care benefits to the NCP, unless:

- The NCP has never been employed by the employer;
- The employer does not maintain or contribute to plans providing dependent or family health insurance;
- The employee is not eligible for a family health insurance plan maintained by the employer or to which the employer contributes. This condition is not applicable if the NCP is only temporarily ineligible; or
- The employee no longer works for the employer.

If employers are not required to transfer the Notice due to one of these reasons, they must notify the local CSS agency in writing within twenty (20) business days after the date of the Notice.

If none of these reasons apply, employers forward the Notice to the health insurer or plan administrator or complete the Notice if the employer serves as the plan administrator (at the end of any eligibility waiting period).

If the employee has already enrolled the child(ren) in the plan, employers should contact the local CSS agency to provide coverage information.

If the plan administrator informs the employer that the Notice does not meet their requirements for a "qualified medical child support order," the employer must notify the local CSS agency in writing. If the plan administrator informs the employer of an enrollment waiting period for the employee, the employer must notify the plan administrator when the employee is eligible for enrollment in the health care plan.

If the plan administrator informs the employer that withholding limitations prevent the employer from withholding the amount required to obtain insurance, the employer must then inform the local CSS agency in writing. For more information about withholding limitations, see [Maximum Allowable Percentage](#).

The health insurer or health plan administrator notifies the employer of any applicable enrollment waiting periods, and the employer notifies the local CSS agency of the enrollment time. The plan administrator also notifies the employer about the cost of the dependent coverage. The employer withholds this amount from the NCP's wages and transfers this amount directly to the insurer or plan administrator.

If the NCP/employee contests the withholding, the employer shall initiate and continue the withholding until the employer receives notice that the contested case is resolved.

Employers that are obligated to provide health benefit plan coverage must inform the local CSS agency in writing within ten (10) business days of the NCP's termination of employment. Employers must include the NCP's last known address and telephone number and the name, address, and telephone number of the new employer, if known.

An employer cannot fire, refuse to employ, or take disciplinary action against an NCP solely because of the withholding.

If a court finds that an employer has failed to comply with these provisions, the employer is liable as a payor and liable in a civil action for reasonable damages.

### ***Plan Administrator Responsibilities***

The plan administrator must complete the "Plan Administrator Response" section of Part B and return it to the local CSS agency within forty (40) business days after the date on the National Medical Support Notice. Plan administrators can include the following information:

- Whether the criteria are present for the Notice to be determined a "qualified medical child support order;"
- Whether the Notice is determined NOT to be a "qualified medical support child order," and the reasons it is determined not to be one;
- Whether the NCP's child(ren) are enrolled and under what type of health insurance coverage;
- When is the effective date of the coverage; and
- Whether more than one health care option is available under the health plan.

If more than one health care option is available under the health plan, the insurer or health plan administrator notifies the local CSS agency. The responsible caseworker must consult with the custodial parent, select an option, and inform the plan administrator of the option selected within twenty (20) calendar days from the date when the plan administrator notified the local CSS agency.

If the Notice is determined to be a "qualified medical child support order," the plan administrator enrolls the child(ren), determines the cost of the coverage, and notifies the employer of the amount to be withheld.

The plan administrator notifies the local CSS agency, employer, NCP, and custodial parent of any enrollment waiting periods for the employee. After the waiting period has ended, the plan administrator must enroll the child(ren).

If either the employer, the health insurer, or plan administrator does not comply with these provisions, they can be held liable for a civil penalty and are subject to a civil suit for reasonable damages.

#### ***Termination of Medical Insurance***

When an NCP is no longer under order to provide medical insurance for the child(ren), the CSS agency enforcing the medical obligation must send a Medical Insurance Termination Notice (DSS-4734) within ten (10) business days to notify the employer(s) of the end of the medical obligation.

#### ***CRITERIA FOR AUTOMATIC GENERATION OF NATIONAL MEDICAL SUPPORT NOTICE***

ACTS generates the National Medical Support Notice (DSS-4733) when the following conditions are met:

1. CSS caseworkers create a Medical Insurance Only (MIO) order, AND the NCP has a current employment record in ACTS with the availability of medical insurance documented.
2. An [Income Withholding For Support](#) (DSS-4702) document is generated for the NCP's new employer, the NCP's current employment record in ACTS indicates the availability of dependent medical insurance, and the terms of the court order in ACTS indicate that the court has ordered dependent medical insurance coverage.
3. ACTS creates an employment record as a result of data received from the New Hire database, and the terms of the court order in ACTS indicate that that dependent medical insurance coverage has been ordered.
4. CSS caseworkers modify an existing court order in ACTS to include medical insurance for thr child(ren), AND the NCP has a current employment record in ACTS with the availability of dependent medical insurance documented.

If the court has ordered the noncustodial parent to obtain insurance other than employment-related insurance for the child(ren), CSS DOES NOT send the National Medical Support Notice.

#### ***WHEN NONCUSTODIAL PARENTS CONTEST MEDICAL INSURANCE WITHHOLDING***

When NCPs contest the medical insurance withholding, caseworkers should advise them that they can hire an attorney at their own expense

and file a Motion for Modification with the Clerk of Court. If the court rules that the NCP is not required to provide the employment-related dependent insurance, notify the employer to stop the withholding for the health care premium.

## **PASSPORT DENIAL/REINSTATEMENT**

### **GENERAL INFORMATION**

This topic contains information on the following subjects:

1. [The passport denial policy;](#)
2. [The passport denial process;](#)
3. [Contesting a passport denial determination;](#)
4. [Passport reinstatement policy;](#)
5. [Passport reinstatement process;](#)
6. [Passport reinstatement for members of the military;](#)
7. [Emergency passport reinstatement policy;](#)
8. [Emergency passport reinstatement process.](#)

### **PASSPORT DENIAL POLICY**

In accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and Federal Regulation 22CFR51.60(a)(1), the US Department of State is required to refuse to issue a passport, except a passport for direct return to the United States, to any noncustodial parent (NCP) who has been certified by the Secretary of Health and Human Services as owing a child support arrearage amount that is greater than \$2500.00.

State child support agencies must provide the NCP with notice of the amount of the arrearage, the consequences of this arrearage amount, and the opportunity to contest the arrearage amount. NC CSS includes this information in the tax intercept (offset) Pre-Offset Notice (DSS-4495).

NCPs can contest the denial of a passport to the local CSS program management. State courts have no jurisdiction in this remedy, since it is authorized under federal law. For more information, see "[Contesting a Passport Denial Determination](#)".

### **PASSPORT DENIAL PROCESS**

- The Federal Office of Child Support Enforcement (OCSE) extracts the names of NCPs who owe more than \$2500.00 in child support arrearages from the Federal tax intercept files that are submitted by each state.
- OCSE submits a file to the US Department of State containing the name, Social Security number, place of birth, date of birth, and gender of each qualifying NCP. Once submitted, an NCP's name remains on the passport denial list until OCSE submits a subsequent file that shows that NCP's arrearage balance as zero (\$0.00) or until a state CSS agency notifies OCSE that the NCP either has paid all arrearages or has met the criteria for emergency passport reinstatement.
- These files are matched against every applicant for a passport.

- If a match is found, the applicant/NCP receives a letter from the US Department of State, advising that the application for a passport is denied. This letter includes instruction to contact the state child support agency to resolve the matter. If the matter is resolved and reported to the passport agency within ninety (90) days, the application can be approved.
- Neither state nor local CSS agencies are sent a letter or other notice of the passport denial.

#### **CONTESTING A PASSPORT DENIAL DETERMINATION**

If the NCP asserts that the calculation of arrearages used in the certification for passport denial is in error, CSS caseworkers must examine the order and payment records to determine their accuracy. If this examination indicates that an error was made, caseworkers must take corrective action to update the case record and document the results of the examination of the case record and inform the NCP of the corrected information.

If the examination indicates that the arrearage and certification were correct, CSS caseworkers must document the results of the examination of the case record and inform the NCP of the results and of the right to request additional review by CSS program management.

If the NCP requests a review, responsible CSS caseworkers must document this request in the case record, including the reason for the request, and immediately notify the appropriate CSS management reviewer of the request.

For DSS-operated county CSS offices, the appropriate reviewer is the County DSS Director or that director's designee. For non-DSS-operated county offices or contracted CSS offices, the appropriate reviewer is the CSS Regional Representative or that representative's designee.

Management reviews must be completed within thirty (30) days of the NCP's request, taking into consideration any urgency of need for the passport. Reviewers schedule the meeting, notify all parties, and conduct the review.

Reviewers receive and evaluate evidence and statements about the amount of the arrearage that are presented by the NCP and the CSS agency. Then they make a recommendation on whether the arrearage and certification are correct to NC CSS.

After the review is completed:

- The review must submit a "Passport Denial Review Results" form with supporting documentation, including the CSS payment record, payment verification from the NCP, notes that describe the review, and any other appropriate materials to NC CSS.
- The responsible CSS caseworker must retain copies of the review packet in the case record and document the review information.

When NC CSS receives the review packet, NC CSS management reviews the county's recommendation and makes a final determination on whether the passport denial is removed or remains in effect. The Tax Intercept Unit Supervisor notifies the Tax Intercept Unit, the NCP, the reviewer, and the responsible CSS caseworker of the decision.

The Tax Intercept Unit Supervisor reviews the management reviewer's recommendation, makes the final determination on whether the passport denial is removed or remains in effect, and notifies the Tax Intercept Unit, the NCP, the reviewer, and the responsible CSS caseworker of the decision.

Because passport denial is authorized by federal law, state courts do not have authority to overrule a determination made by NC CSS. If a state court orders the release of a passport denial, the local agency attorney should file a motion for relief under Rule 60 (b) of the NC Rules of Civil Procedure.

If the certification was made in error, Tax Intercept Unit workers document local CSS's request that the NCP's name be removed from the passport denial file and then they request that OCSE remove the NCP's name from the passport denial file. OCSE notifies the Department of State when the restriction has been lifted.

If the arrearage was correctly certified, CSS takes no further action. Any further challenge to the determination of amount of the arrearage must be made to the District Court.

#### **PASSPORT REINSTATEMENT POLICY**

Passport privileges can be reinstated when:

- An NCP whose arrearage balance is reduced to zero (\$0.00) makes a request for reinstatement; or
- An NCP presents proper verification of a need for a passport that meets the criteria for emergency reinstatement.
- An NCP, who does not owe more than \$2500.00 in child support arrearages, or other individual was submitted in error.

#### **PASSPORT REINSTATEMENT PROCESS**

When the NCP makes a request for reinstatement of passport privileges to local CSS, responsible caseworkers must determine whether that NCP meets the criteria for reinstatement.

If reinstatement is appropriate, caseworkers should:

1. Provide the NCP with a copy of the "Passport Reinstatement Information/Instructions" document.
2. Explain the reinstatement process to the NCP:
  - NC CSS sends a request to the Federal Office of Child Support Enforcement (OCSE) to remove the NCP's name from the passport denial file.
  - OCSE notifies the US Department of State in the next weekly file update. It can take up to ten to fifteen (10-15) business days from the date of the state's deletion request for the passport to be issued.
  - Once the NC CSS has notified OCSE to lift the restriction, the NCP can expedite the process by contacting the National Passport Agency at the telephone number shown on the passport denial letter and requesting that the passport status be updated and the application processed.

3. Obtain the following information from the NCP to assist in processing the request and for statistical purposes:
  - The NCP's name (as it appears on the birth certificate);
  - The NCP's place of birth (city and state);
  - The NCP's current address;
  - The NCP's home and work telephone numbers;
  - The name of the passport agency that appears on the passport denial letter that the NCP received;
  - The reason for reinstatement (EX: payment of arrearages, emergency, submitted in error) and the reason for the planned travel (EX: employment, vacation, military deployment, etc.)
4. Send a request to the Tax Intercept Unit, asking them to process the request for removal of the passport denial and providing the information that was obtained from the NCP in Step #3.

Tax Intercept Unit workers must do the following:

1. Verify that the NCP's arrearage balance has been reduced to zero (\$0.00).
2. Document local CSS's request that the NCP's name be removed from the passport denial file, including the reason for reinstatement.
3. Request that OCSE remove the NCP's name from the passport denial file. OCSE notifies the Department of State when the restriction has been lifted.

#### **PASSPORT REINSTATEMENT - MILITARY SERVICE MEMBERS**

Military service members who are deployed outside the United States are issued military passports. CSS does not revoke or deny military passports. Military service members also could need a civilian passport for certain military functions or for personal travel while on leave. Military member/NCPs who are denied a civilian passport due to a child support arrearage are required to pay the full amount of the debt before the passport denial is removed.

If the NCP needs the passport due to deployment, CSS must:

- Verify that the total arrearage amount has been paid;
- Obtain a copy of the NCP's deployment orders. Keep the copy in the case file;
- Follow the standard passport reinstatement procedures.

If the NCP needs the passport for personal use, follow the standard passport reinstatement procedures. Obtaining a copy of the deployment orders is not necessary.

#### **EMERGENCY PASSPORT REINSTATEMENT POLICY**

Special reinstatement policies apply when the NCP needs a passport to travel for certain emergency situations. When an NCP requests reinstatement due to a situation that meets one of the definitions that follow, passport denial can be lifted without the requirement for payment of the arrearage amount. However, CSS workers should advise

the NCP that the existing arrearage must be reduced to avoid future denials. Emergency situations are defined as:

- The imminent death, funeral, or serious illness of (or a dangerous medical operation being performed on) an immediate family member of the NCP that causes the NCP to need a passport for travel; or
- The denial of a passport to a person who has never owed child support and who was submitted in error.

For the purposes of emergency passport reinstatement, an "immediate family member of the NCP" is defined as:

- Spouse;
- Child (natural or adopted);
- Parent/guardian or step-parent;
- Sibling or step-sibling;
- Grandparent; and/or
- Aunt/uncle.

#### **EMERGENCY PASSPORT REINSTATEMENT PROCESS**

When an NCP declares an emergency need for a passport, the responsible CSS caseworker must do the following:

1. Determine that the request meets all aspects of an emergency situation.
2. Obtain a copy of the death certificate, a letter from an attending physician, or Red Cross verification (as proof of the emergency).
3. Prepare and fax an Emergency Passport Reinstatement Request form to the Tax Intercept Unit at the CSS Central Office.
4. Give the NCP a copy of the "Passport Reinstatement Information/Instructions" document to use when contacting the passport agency.

Tax Intercept Unit workers review the request and supporting information. They notify the submitting CSS caseworker immediately of any discrepancies in the request.

If the request is accepted, the Tax Intercept Unit supervisor advises OCSE to remove the NCP's name from the passport denial file. OCSE notifies the Department of State (DOS) that the restriction has been lifted. DOS should release the hold on the passport within twenty-four (24) hours.

### **SERVICE OF PROCESS (ENFORCEMENT)**

#### **GENERAL INFORMATION**

This topic contains information on the following subjects:

1. [Service of process policy](#);
2. [Service of process procedures](#).

#### **SERVICE OF PROCESS POLICY**

It is vital that local CSS agencies keep abreast of service of process to ensure that documents are served. Whenever possible, CSS caseworkers should provide employer information, directions to the noncustodial parent's (NCP's) residence, and any other information that would assist the Sheriff's Department in obtaining service on the NCP.

When location information is deemed sufficient for the successful service of process, the papers should be resubmitted according to the guidelines for diligent service of process.

## **SERVICE OF PROCESS PROCEDURES**

When caseworkers generate documents for enforcement activities that require service of process, ACTS automatically selects the NCP's mailing address that is stored in ACTS to appear on those documents. However, the actual physical address where the NCP should be served might be different. (The NCP's mailing address could be a Post Office Box.)

Service of process can be accomplished by certified mail or personal service by the Sheriff's Department, depending on the local office's preference. When caseworkers learn whether or not the service of process was successful, they must update ACTS.

If an attempt to serve the NCP at a home address fails and the employer is recorded in the system, caseworkers should immediately issue the documents for service at the employer's address. Similarly, if an attempt to serve the documents at the employer's address fails and the NCP's current mailing or residential address is recorded in ACTS, caseworkers immediately should issue new documents for service at the mailing/residential address.

If service was unsuccessful because the NCP's address is wrong or no longer valid or if an attempt to serve an NCP at the employer's address reveals that the NCP is no longer employed there, CSS caseworkers need to document this information in ACTS.

If the service is unsuccessful due to evasion or because the NCP is "unavailable", caseworkers should generate new documents as appropriate and reissue them. However, if the return of service indicates a date when the NCP parent will become "available", CSS caseworkers should document that date so that the necessary service of process documents can be issued at that time.

## **SHOW CAUSE PROCEEDINGS**

### **GENERAL INFORMATION**

This topic contains information on the following subjects:

1. [Turner v. Rogers;](#)
2. [Civil contempt proceedings;](#)
3. [Pre-court negotiations;](#)
4. [Administrative Enforcement.](#)

## **TURNER V. ROGERS**

### ***GENERAL INFORMATION***

The 14th Amendment of the US Constitution requires states to provide legal counsel to an indigent person (noncustodial parent) at a child support civil contempt hearing that could lead to incarceration in circumstances where the custodial parent or opposing party was not represented by legal counsel. In the US Supreme Court appeals case, *Turner v. Rogers*, the Court held that a state does not need to automatically provide counsel to a defendant in a child support civil contempt proceeding, as long as the state provides due process protection.

### ***PROCEDURAL SAFEGUARDS***

The Federal Office of Child Support Enforcement (OCSE) recommends that states use procedures to safeguard the NCP from being cited to court for a contempt court action. These include:

- Setting up income-based orders considering the noncustodial parent's (NCP's) actual ability to pay;
- Verifying and using accurate income information (limiting use of imputed income) to establish or enforce an order based on the NCP's ability to pay;
- Courtesy letters or phone calls to the custodial parent and/or NCP; or
- Temporary modifications (by consent of the custodial parent and NCP) when a loss of income or other change of circumstances exists.

Prior to citing an NCP to appear in court for failure to pay, CSS caseworkers must review the NCP's case(s) and determine if the NCP has the current ability to pay. Caseworker must attempt to identify information about the defaulting parent's income and resources in order to be prepared to testify to such information in court if the NCP is cited for a contempt action.

### ***DUE PROCESS REQUIREMENTS***

To meet minimum due process requirements, the CSS agency should follow certain procedural safeguards when citing the NCP to court for a contempt hearing:

- Provide notice to the NCP with specific notice about the contempt hearing;
- Provide notice to the NCP that the court will consider the NCP's inability to pay in determining if the NCP's failure to pay was willful;
- Provide notice to the NCP that a finding of contempt might lead to incarceration;
- Provide a document with which to obtain the NCP's financial information;
- Provide an opportunity at the contempt hearing for the NCP to respond to statements and questions about his/her financial status;
- Require an express finding by the court that the NCP has the ability to pay based upon the individual facts of the case.

The Motion/Order to Appear and Show Cause (DSS-4663) covers several of these due process requirements. The Findings of Fact in the resulting Order For Civil Contempt (DSS-4650) must include that the NCP has "ability to pay" the resulting ordered purge amount. Contempt sanctions can include such directives for the NCP as: participation in available workforce programs, fatherhood programs, or substance abuse programs, if appropriate.

#### **CIVIL CONTEMPT PROCEEDINGS**

Civil Contempt proceedings can be initiated when the obligor fails to abide by the terms of a voluntary support agreement or a civil court order that arose out of a hearing before a judge or jury, providing that the obligor has the ability to pay and procedural safeguards are followed. See [Turner v. Rogers](#) above.

The following is an explanation of civil contempt procedures:

1. Proceedings for Civil Contempt as specified under NCGS 5A-23 are initiated either by order or notice of a judicial official (Clerk or assistant Clerk - per NCGS 7A-103(5)) or by a judge, directing the responsible parent to appear at a specified time, not less than five (5) days after notice (NCRC 6d) and show cause why he/she should not be held in contempt.
2. A verified motion requesting that it be treated as an affidavit meets this requirement.
3. The judicial official issuing the order to show cause must make a finding of probable cause to believe that Civil Contempt exists.
4. Failure to comply with an order of the court is a continuing civil contempt, if all of the following conditions are met:
  - The order remains in force;
  - The purpose of the order can still be served by compliance with the order; and
  - The person to whom the order is directed is able to comply or able to take reasonable measures that enable him to comply.
5. The order of the court finding civil contempt must specify how noncustodial parent (NCP) can purge himself. The order must include a finding that the NCP has the ability to pay the purge amount that is ordered. An individual can also be found in criminal contempt for the same conduct, but total imprisonment for the same conduct cannot exceed the period of imprisonment for civil or criminal contempt (NCGS 5A-12), whichever is longer. It should be specified on the motion for an order to show cause whether the individual is being brought before the court on civil or criminal contempt.
6. Release from civil contempt must be granted when it no longer exists, whether by non-existence of one of the three conditions above, or by the individual purging himself of contempt. No order of release is required if the custodian finds compliance with the specified method by which the person can purge himself/herself. Otherwise, the judge before whom the civil contempt was found, if available, or a judge of the same division in the same district (upon motion by the NCP) can order his/her release.

#### **PRE-COURT NEGOTIATIONS**

Some judicial districts rely very heavily on pre-court negotiations to settle child support contempt actions. However, it must be noted that Clerks of Court accept only purge payments and that these payments do not prorate across all cases if the NCP has multiple obligations. If an agreement is reached after a NCP is served with a contempt action, a contempt order containing the agreed purge amount can be completed before court and presented to the judge. If accepted by the judge, the purge provision allows the NCP to pay the Clerk of Court. The Clerk does not accept any payments resulting from other types of negotiation, such as a voluntary dismissal or consent order, that do not find the NCP in contempt and contain monetary purge provisions. The NCP must mail those types of payments to the NCCSCC.

#### **ADMINISTRATIVE ENFORCEMENT**

Administrative enforcement remedies other than contempt actions can be used to enforce child support obligations. For example, it might be advantageous to contact noncustodial parents (NCPs) prior to taking any other enforcement action, especially those NCPs who have recently allowed their support payments to become delinquent. If a repayment plan can be successfully negotiated, this approach can be considered as a cost savings to the CSS agency.

If a remedy involves a repayment plan that can be negotiated to avoid the remedy (such as revocation of occupational license), CSS caseworkers must investigate whether or not the NCP has multiple obligations. Since nearly all payments made to NCCSCC are prorated across all obligations, this must be taken into consideration. Otherwise, the NCP can comply with a payoff plan or an amount agreed upon to reduce arrearages, but his/her account does not reflect this due to proration. Caseworkers must either investigate this possibility before taking further enforcement action or allow for the proration when initially establishing a repayment plan. It is important to remind the NCP that payments must be current on all cases if he/she expects to reduce arrearages on the case for which the enforcement action originally might have been taken.

#### **SUM-CERTAIN JUDGMENTS**

##### **SUM-CERTAIN JUDGMENT POLICY**

For an active case containing arrearages, local CSS agencies should take action to establish a judgment for the amount owed at the time when the ongoing obligation ends. (This is usually at the time when the last child reaches the age of majority.) Caseworkers should file a Motion For An Order To Show Cause or a separate action, requesting that a judgment be entered to set arrearages at a "sum certain" and establish periodic payments to reduce the debt.

Establishment of this sum-certain judgment creates a 10-year period during which collections can be made. If all arrearages are not paid during this time, a new action must be taken, before the expiration of the judgment due the statute of limitations, to set a sum certain for the remaining arrearages in order to continue collections.

#### **TAX INTERCEPT**

## **GENERAL INFORMATION**

The interception of funds from state and Federal tax refunds to pay child support is an important enforcement remedy. This topic contains information on the following subjects:

1. [Tax intercept policy](#);
2. [The Davis Decision](#);
3. [Information related to tax intercept that should be provided to custodial parents and noncustodial parents \(NCPs\)](#);
4. [Tax intercept submittals](#);
5. [Tax intercept appeals](#);
6. [Tax intercept processing](#);
7. [Federal refunds to NCPs](#).

## **TAX INTERCEPT POLICY**

The tax intercept process is used in all appropriate Public Assistance (PA) and Non-Public Assistance (NPA) cases as provided for in Public Law 97-35 and 98-378, and in NCGS 105A. Federal regulations stipulate that the procedure is to be used in conjunction with other appropriate enforcement remedies. Tax intercept must be implemented for all cases that meet the criteria for submittal to state and/or Federal revenue agencies. See [Tax Intercept Submittals](#).

Since January 1999, the Federal Income Tax Refund Offset (Intercept) program has been operated by the US Department of Treasury's Financial Management Service (FMS). Since January 2000, the State Income Tax Refund Offset (Intercept) program has been operated by the NC Department of Revenue (DOR).

The tax year begins March 1. For example, the processing year for the tax year 1998 began on March 1, 1999, and ended on February 29, 2000.

Before the tax certification process occurs in September every year, ACTS identifies the cases that can be excluded from Federal and state tax intercept certification due to the [Davis Decision](#).

North Carolina CSS then submits files for the delinquent NCPs who are not excluded from certification to both the Financial Management Service (FMS) and the NC Department of Revenue (DOR) so that past-due support can be collected from those NCPs' individual tax refunds.

NCPs receive a notice informing them of the total arrearages that are being certified for tax intercept. This arrearage total is broken down into WFFA/TANF, IV-E, SFHF, Medical, and Non-Public Assistance (NPA) categories, as appropriate. This includes arrearages owed for cases in which all children have reached the age of majority.

DOR (state) tax intercept can be used to collect arrearages for cases meeting the tax intercept criteria. However, if current support has not been satisfied when state income taxes are intercepted, current support is paid first and arrearages are paid according to the required hierarchy.

Court orders for redirected payments should include the appropriate findings to establish the amount of the arrearages at the point of redirection. This procedure helps to reduce the number of requests from NCPs for tax intercept appeal hearings.

## **THE DAVIS DECISION - NCGS 105a-d(b)**

Before the tax certification process is run in September every year, ACTS identifies those cases that can be excluded from the Federal and state tax intercept certification due to the Davis Decision.

### ***EXCLUSION FROM FEDERAL TAX INTERCEPT***

The Davis Decision (Davis vs. State of North Carolina) states that an NCP who is in compliance with a court-ordered repayment plan for arrearages should not be certified for Federal tax intercept (offset), even if a debt of past paid assistance is still owed. During the Federal tax certification process, ACTS searches an NCP's open cases with an ordered frequency amount for arrearages (excluding fees) to determine if the NCP has paid the amount due for those arrearages. ACTS uses the "distribution side" subaccount balances when determining compliance with the repayment plan.

If the latest court order modification for the NCP's case was due to contempt, ACTS determines compliance based on whether or not the NCP has paid the total amount due for the arrearages since that order modification. If contempt is not the reason for the court order modification, ACTS determines compliance based on whether or not the NCP has paid the total amount due for the arrearages since the last tax certification. If the total amount due for the arrearages has been paid, the NCP is excluded from Federal tax intercept. See [Tax Intercept Submittals](#).

### ***EXCLUSION FROM STATE TAX INTERCEPT***

The Davis Decision further states that an NCP who has met his/her child support obligation(s), is in compliance with an arrearage repayment plan, and can pay off the arrearages in one (1) year should not be certified for state tax intercept (offset). During the state tax certification process, ACTS searches an NCP's open cases with an ordered frequency amount for arrearages (excluding fees) to determine if the NCP has paid the amount due for those arrearages.

ACTS uses the "distribution side" subaccount balances when determining compliance with the repayment plan.

If the latest court order modification for the NCP's case was due to contempt, ACTS determines compliance based on whether or not the NCP has paid the total amount due for the arrearages since that order modification AND the remaining arrearages can be paid within one (1) year. If contempt is not the reason for the court order modification, ACTS determines compliance based on whether or not the NCP can pay the remaining arrearages within one (1) year. If the total amount due for the arrearages can be paid within a year, the NCP is excluded from state tax intercept. See [Tax Intercept Submittals](#).

## **TAX INTERCEPT-RELATED INFORMATION FOR CUSTODIAL PARENTS/NONCUSTODIAL PARENTS**

CSS caseworkers should provide the custodial parent and NCP with the following information concerning tax intercepts:

1. Federal law requires that cases for which overdue support is owed must be submitted for tax intercept.

2. Federal regulations require the recovery of arrearages in the following order: WFFA/TANF, IV-E, Medical, NPA, and SFHF.
3. The Financial Management Service (FMS) charges a fee for processing Federal tax intercepts, which is deducted from the refund. These fees are prorated across all of the cases that are certified.

*NOTE: For PA cases, the fee is not recouped. If the NCP is entitled to the refund, no fee is charged. The NC Department of Revenue does not charge a fee for state tax intercepts.*

4. If a refund for a joint return is intercepted, distribution of some or all of the intercepted funds to the NCP's case(s) can be delayed for up to six (6) months.
5. Payments that are made to a custodial parent can be subject to adjustment for six (6) years after the end of the tax year. (This includes amended returns filed by the NCP's spouse.) Any payments to the custodial parent might have to be repaid due to this process.

## **TAX INTERCEPT SUBMITTALS**

### ***CRITERIA FOR TAX INTERCEPT SUBMITTALS***

ACTS selects NCPs and cases for tax intercept certification based on the following criteria:

1. CSS cases for which payments are in compliance with the criteria set by the [Davis Decision](#) are excluded.
2. NCPs whose total arrearages equal or exceed the minimum prescribed amounts are selected.

FEDERAL minimum amounts -

- NPA arrearages are equal to or exceed \$500.00;
- PA arrearages are equal to or exceed \$150.00.

NCPs who meet these criteria are selected unless excluded by the Davis Decision. Both cases with current support and arrears-only cases that meet these criteria are selected.

ACTS makes separate certifications and creates separate tax records for NPA and PA arrearages. Total PA arrearages are the sum of the subaccount balances and interest balances for the following subaccount types: AFDCA, AFDCU, AFDCAJ, CONDA, CONDU, IVEAA, IVEAU, IVEAAJ, TEMP, and TEMPU. (All other arrearages are classified as NPA arrearages.)

STATE minimum amount -

The total arrearages are equal to or exceed \$50.00.

NCPs who meet these criteria are selected unless excluded by the Davis Decision. Both cases with current support and arrears-only cases that meet these criteria are selected.

3. Either a verified current mailing or old address record must be present in the NCP's address history in ACTS.

- If no "MAIL" address record is present, service of process is deemed to have occurred when documents are delivered to the NCP's most recent old address.
  - If an invalid address is incorrectly recorded in ACTS as an old address for the participant, the tax intercept notice could be sent to the wrong address. An address is considered invalid if the participant never lived at the address or the address is not a valid postal address.
4. The NCP's name, address, and Social Security number (SSN) must be present in the proper formats in the case record.
  5. NCPs who filed for bankruptcy on or after October 17, 2005, are selected whether the bankruptcy action has ended or remains open.
  6. Only open CSS cases are selected for certification.
  7. NCPs in NC Initiating Interstate cases with arrearages are selected. ACTS notifies the other state of tax intercept submittals, as well as collections.
  8. For State tax certification, NCPs who qualify and were not certified in the previous year are selected when the Federal submittal occurs.
    - NCPs who were certified for State tax intercept during the previous year are certified automatically without being included in the annual certification file.
    - NCPs who were certified in the previous year and still qualify for State tax intercept and who have had a name change are submitted for name change on the same annual certification file.
  9. Certifications from the previous year that no longer qualify for intercept processing are submitted for deletion on a weekly basis.

#### ***TAX INTERCEPT SUBMITTAL PROCESSING***

##### ***FMS Processing (Federal Tax Intercept)***

After receiving the tax intercept submittal file from ACTS on or about November 15 each year, the Federal Office of Child Support Enforcement (OCSE) performs edit and validation checks and consolidates all state files into one master file, which is sent to FMS (Financial Management Service).

If more than one state has the assignment of rights for a case, OCSE accepts multiple claims. The first state to submit the case has priority over collections. Priority for the other states is based on the amount of their case's arrearage, from the highest to the lowest. In turn, FMS runs the OCSE tape against the FMS master file, putting a "HOLD" on any refunds.

If a case cannot be matched with FMS information when ACTS receives a return file from OCSE, ACTS identifies the unmatchable cases. These cases cannot be corrected and submitted in the same tax year, but they should be examined to correct any information that is recorded in ACTS.

##### ***DOR Processing (State Tax Intercept)***

After receiving the tax intercept submittal file from ACTS, the NC Department of Revenue (DOR) matches the NCPs who owe \$50.00 or more in arrearages with the NCPs who have income tax refunds of \$50.00 or more. DOR sends a letter to notify each matched NCP that his/her refund is being sent automatically to CSS. This letter specifies the total amount of the NCP's refund and provides the NCP's address as listed on the tax return. DOR sends a tape that provides this information for each case to the Tax Intercept Unit at the CSS Central Office.

When a joint tax return is filed that results in a refund and one of the spouses owes a debt to the CSS program, DOR determines the portion of the refund that is owed to the debtor spouse and applies it to the debt. The portion of the refund that is owed to the non-debtor spouse is not affected. However, the amount of the debtor spouse's refund can be reduced after the initial match if DOR later determines that the debtor spouse actually owes taxes, instead of being owed a refund. Part or all of the debtor's refund can be applied to this tax debt.

The non-debtor spouses do not receive their portion of the refund until the CSS Central Office has received the debtor's portion from DOR. The CSS Central Office has no way to determine how long the non-debtor spouse's refund might be delayed.

ACTS places the funds obtained through tax intercept on hold for forty-five (45) days to allow the NCP time to appeal the intercept. Once ACTS releases the hold, funds are applied to the NCP's arrearage balances that are flagged for tax intercept. When those arrearage balances are satisfied, any remaining funds are refunded to the NCP.

#### ***NOTIFYING NONCUSTODIAL PARENTS OF TAX INTERCEPT SUBMITTALS***

##### ***Notice of Intent to NCP Regarding FEDERAL Tax Intercept***

ACTS generates the Pre-Offset Notice (DSS-4495) around September 30 each year for all NCP's who are listed for Federal tax intercept submittal. This notice informs NCPs of their certified arrearage amounts and refers them to the appropriate local CSS agency if they have any questions concerning the validity of the arrearage amounts. If an NCP has multiple cases, one Pre-Offset Notice is mailed per case.

An NCP has sixty (60) days from the date of this notice to appeal. Appeals can be made on the grounds that the person is not the NCP indicated on the notice, the NCP does not agree that the arrearages are owed, or the NCP disagrees with the amount of the arrearages. A second appeal period begins later, when the Notice To Debtor (DSS-4496) is issued.

##### ***Tax Intercept Notice Generated by FMS***

When a Federal tax intercept occurs, FMS issues a notice to inform the taxpayer of the interception of the tax refund. This notice informs the taxpayer where to call for answers to questions regarding the intercepted refund. It also provides instructions for non-debtor spouses if the intercepted tax refund came from a joint tax return. All inquiries from NCPs and non-debtor spouses concerning joint returns should be directed to the appropriate FMS center.

CSS caseworkers should not call the FMS center. (They should advise the NCP or non-debtor spouse to call.) Local CSS should contact the

Tax Intercept Unit at the CSS Central Office with other questions that cannot be answered.

However, if the non-debtor spouse chooses to waive the right to claim any reimbursement of the intercepted refund, the non-debtor can sign a notarized Affidavit For Release Of Joint Tax Refund at the local CSS office. The affidavit is then faxed to the Tax Intercept Unit, which performs the early release of the refund.

If the non-debtor spouse has already filed a 8379 Injured Spouse Claim And Allocation Form with the IRS, the non-debtor spouse must wait until the IRS responds to the claim and cannot sign an affidavit with the local CSS agency.

### ***Notice of Intent to NCP Regarding STATE Tax Intercept***

When the submittal tape is sent to DOR on or about September 30 each year, ACTS generates the Pre-Offset Notice (DSS-4495) to all NCPs who are listed for state tax submittal. This notice refers the NCP to the appropriate local CSS agency if they have any questions concerning the validity of the arrearage amount. If a NCP has multiple cases, one Pre-Offset Notice is mailed for each case.

An NCP has sixty (60) days from the date of this notice to appeal. Appeals can be made on the grounds that the person is not the NCP indicated on the notice, the NCP does not agree that the arrearages are owed, or the NCP disagrees with the amount of the arrearages.

### ***Second Stage of Submittal***

DOR returns a weekly collection file to the Tax Intercept Unit at the CSS Central Office. This file contains the name, address, SSN, and refund amount for all submitted NCPs who are owed a tax refund. Funds from intercepted tax refunds are put on hold for forty-five (45) days.

Within ten (10) days of the date when the NCP's refund was received, ACTS generates the Notice To Debtor (DSS-4496). A second appeal period begins when the Notice To Debtor is sent.

If Tax Intercept Unit workers determine that funds should be refunded to the NCP, they immediately request that the funds be refunded along with any interest, if appropriate. An interest begin date is included on the CSS collection file from DOR for funds held in error. If CSS must return the refund or a portion of the refund to the NCP, an extra five (5) days should be included, allowing for mailing and receipt to the NCP. Interest is computed on a daily basis on the principal refund.

If the NCP submits a Notice of Appeal, the local CSS caseworker notifies the Tax Intercept Unit of the NCP's appeal. See [Tax Intercept Appeals](#).

Forty-five (45) days after the Notice To Debtor is generated and no response or appeal has been received from the NCP, ACTS automatically releases the hold and distributes the money to the case(s).

### ***EARLY RELEASE OF TAX REFUNDS***

An NCP can choose to waive the right to appeal the intercept of his/her tax refund so that the funds can be applied to the NCP's case(s) prior to the end of the 45-day "hold" period. The NCP must sign the

Affidavit For Release Of Single Tax Refund at the local CSS office. The CSS worker must then fax the affidavit to the Tax Intercept Unit. Upon receipt, workers at the Tax Intercept Unit release the hold on the funds.

#### ***Refunds from Joint Tax Returns -***

To protect the right of a non-debtor spouse to receive his/her share of a refund from a tax return filed jointly with an NCP, CSS places funds received from FMS on joint refunds on hold for a period of six (6) months. The non-debtor spouse can choose to waive the right to claim reimbursement of a portion of an intercepted refund and allow the funds to be applied to the NCP's case(s) prior to the end of the hold period. The non-debtor spouse must sign the Affidavit For Release Of Joint Tax Refund at the local CSS office. The CSS worker then must fax the affidavit to the Tax Intercept Unit. Upon receipt, Tax Intercept Unit workers release the hold on the funds.

### **TAX INTERCEPT APPEALS**

When a tax intercept appeal is filed, a Tax Intercept Unit worker documents this action in ACTS and schedules an appeal hearing. This automatically sets the pending appeal indicator flags and causes the system to place a hold on any tax intercept collections processing. Once the hearing has taken place and the decision is made, the scheduled hearing is deleted and the outcome of the hearing is documented.

Workers must indicate which of the following was the outcome of the appeal:

- **Proceed with Tax Intercept** - ACTS proceeds with the tax intercept. If funds have already been collected, workers must the hold so that the tax intercept funds can be distributed.
- **Modify Tax Intercept** - Tax Intercept Unit workers must update the last reported amount(s) on the appropriate tax intercept record(s) as indicated by the appeal decision. If funds have already been collected, workers must release the hold and request a manual adjustment to refund the appropriate amount to the NCP. The remainder is distributed to the appropriate payee(s).
- **Terminate Tax Intercept** - The system also deletes the NCP from the tax intercept list. If funds have already been collected, the system releases the hold as part of creating an adjustment to refund the tax intercept money to the NCP.

### **TAX INTERCEPT PROCESSING**

#### ***COLLECTIONS PROCESSING***

##### ***FMS (Federal Tax Intercept) Collections***

When a Federal tax intercept collection is received from FMS (Financial Management Service), ACTS documents the receipt of the collection and credits the funds to the appropriate payor/NCP's account.

If one of the following situations exists, ACTS places a "HOLD" on the payor's account:

1. The payor declared bankruptcy since tax certification and prior to October 17, 2005. The funds from the tax intercept collection are placed on hold for six (6) months or until the bankruptcy is resolved.
2. The tax intercept is under an administrative appeal. The funds are placed on hold until the appeal is resolved.
3. The collection record from the IRS/FMS indicates a joint tax return. The funds are usually placed on hold for six (6) months.

However, the collection record could also indicate that the 8379 Injured Spouse And Allocation Form has already been filed with FMS and it was processed prior to the tax intercept (offset). Therefore, the intercept payment can be processed immediately without being placed on hold for six (6) months.

Tax intercept payments for certified NPA arrearages are distributed according to the Federal distribution hierarchy.

Currently, the Federal tax file from FMS cannot indicate whether or not an injured spouse claim has already been processed for certified PA arrearages. Tax intercept payments for certified PA arrearages are still put on hold for six (6) months.

If a tax intercept payment is received for both PA and NPA certified arrearages, ACTS distributes the NPA intercept payment upon receipt and puts the PA intercept payment on hold for six (6) months.

If the tax intercept submittal involves certified arrearages for multiple cases and the collection amount that is received cannot satisfy all of the NCP's cases, the collection amount is prorated across all of his/her cases for which certified arrearages were submitted.

This proration applies the funds to each case based on the certified arrearage amount for each case as a percentage of the total certified arrearage amount for all of the NCP's cases. If "like" arrearage subaccounts exist, the collection amount is prorated based on each "like" subaccount balance as a percentage of the total amount that is owed for that type of arrearage. Any arrearages that are owed to NC are paid before any arrearages that are owed out-of-state.

If funds still remain from a tax refund after all of the appropriate distributions to the NCP's cases and subaccounts, ACTS sends a check to the NCP for the remaining funds. This check is sent to the tax return address that is identified on the IRS/FMS tape. In cases involving joint returns, the check includes both the NCP's and his/her current spouse's name.

#### ***FMS (Federal) Intercept Fees***

When CSS receives the intercept file from the FMS, it contains the detail of all intercepted Federal taxes, but the check that is received with the file is for the net collections minus the tax intercept fees. NCPs are given one hundred percent (100%) credit at all times for their refunds. The fees are prorated across all of the cases that were certified for that NCP.

Once the tax detail is processed, the fees charged by FMS per county are reported to the County Administrative Reimbursement System (CARS). Funds to cover the deducted fees are forwarded to CSS along with the amount from FMS. County Administration charges each county its share of the fees. When tax intercept funds are posted to a case and a disbursement goes to the custodial parent, the fee is deducted before the custodial parent's check is issued. The fees are combined and forwarded to the finance officer of the CSS county. CSS notifies CARS of this payment to the county, and CARS then deducts the Federal share of these fees from the county's next reimbursement check.

### ***DOR (State Tax Intercept) Collections***

The NC Department of Revenue (DOR) sends weekly files with the state tax refunds that have been intercepted to CSS. CSS processes the files when it receives the checks corresponding to the tax intercepts that are listed on these files. The cutoff for intercepted funds is the end of February; incoming tax intercepts for March are treated as part of the next year's intercepts.

ACTS processes funds from DOR collections much like it does for FMS collections, but with the following differences:

1. If the NCP files an appeal, CSS must place a hold on that NCP's participant account until the appeal is resolved. If the NCP wins an appeal, the Tax Intercept Unit at the CSS Central Office must issue a refund to the NCP immediately.
2. Recoupment accounts must be set up for any custodial parent who received funds that must now be recouped.

### ***TAKE BACK PROCESS***

#### ***FEDERAL Tax Intercept Take Back Process***

Federal "Take Back" occurs when an NCP's Federal tax refund (either a "full" refund from a single return or a "partial" refund from a joint return) is intercepted incorrectly and funds need to be returned. ACTS checks the collection report to confirm that the funds were received by CSS and returns the funds to FMS.

If the funds were sent to a state agency, such as IV-A or IV-E, they are credited back to the system account.

If the funds were disbursed to an NPA custodial parent, ACTS sends that custodial parent a Notice Of Overpayment To Custodial parent (DSS-4509) and forwards a copy to the local CSS office. The notice gives the custodial parent three (3) options:

1. Pay the full amount overpaid in thirty (30) days;
2. Have CSS recoup ten percent (10%) of the current support and one hundred percent (100%) of any arrearage payments until paid in full; or
3. Request a hearing to appeal the distribution.

If the custodial parent does not respond after thirty (30) days, the CSS Central Office Distribution Unit sets up a manual adjustment to recoup the overpayment.

If the custodial parent requests an appeal, the responsible CSS caseworker provides a copy of the Petition To Appeal Distribution

(DSS-4722). The custodial parent completes the Petition and forwards it to the Office of Administrative Hearings (OAH).

ACTS releases partial Take Back balances of the intercept money to the NCP before the six (6) month hold period ends.

*NOTE: If a Take Back request occurs after the six (6) month hold period, the Distribution Unit manually searches the collection report.*

#### **STATE Tax Intercept Take Back Process**

State "Take Back" occurs when an NCP's state tax refund (either a "full" refund from a single return or a "partial" refund from a joint return) is intercepted incorrectly. DOR determines that the intercepted funds should be returned. The CSS Central Office Distribution Unit completes a manual adjustment and explains what occurred.

If the tax refund has been disbursed to a NPA custodial parent, the Distribution Unit could set up a recoupment account. If the money was sent to an agency such as IV-A or IV-E, the appropriate system account is credited. If person who filed jointly with the NCP/payor has questions, they should contact DOR.

#### **FEDERAL REFUNDS TO NONCUSTODIAL PARENTS**

In case of an agency error, Federal regulations require CSS agencies to promptly refund amounts that are improperly intercepted to the taxpayer. (*EX: An agency with two NCPS named Robert Jones has submitted Robert B. Jones' SSN in Robert A. Jones' case.*) The refund cannot be deferred until the state receives the transfer of collections from the Federal government.

When CSS identifies an error, the responsible caseworkers must immediately request an adjustment. The appropriate CSS Central Office worker must review each adjustment request on a case-by-case basis. If they determine that the agency intercepted the NCP's tax refund inappropriately, the appropriate CSS Central Office workers must perform an adjustment to refund the intercepted funds immediately.

Responsible CSS Central Office caseworkers also must request an adjustment immediately if a court order modification is not entered correctly or a discrepancy exists in the certified type of arrearages.

These types of situations also are reviewed and evaluated on a case-by-case basis to determine whether or not the intercepted refund can be paid to the custodial parent.

If a tax return that is filed by an individual using an incorrect SSN generates an improper interception of a refund (due to taxpayer error), the CSS agency should not attempt to make a refund to the individual.

*EX: John Brown Sr. files a return using John Brown Jr.'s SSN. This causes Brown Sr.'s refund to be applied to his son's debt. OR Mary Smith files her return separately from her husband Bill, using the FMS label that was mailed to him. Even though it is Mary's return,*

*it is intercepted and applied towards Bill's arrearage since his name is on the label.*

In these situations, local CSS should refer the individual to IRS/FMS for correction of the refund's interception. This should not only correct the current situation but also ensure that subsequent returns are not affected as well.

## **THRIFT SAVINGS PLAN GARNISHMENT**

### **THRIFT SAVINGS PLAN (TSP) GARNISHMENT POLICY**

Thrift Savings Plan (TSP) accounts are tax-deferred savings and investment plans for federal civilian employees and military services members. These accounts are similar to 401(k) plans offered by private corporations. Federal Regulations at 5 CFR 1653.11-1653.15 authorize the garnishment of TSP accounts to satisfy child support and spousal support debt.

Through a partnership between the Federal Retirement Thrift Investment Board (FRTIB) and the federal Office of Child Support Enforcement (OCSE), a quarterly match process is conducted to identify TSP account owners who owe past due child or spousal support. NCCSS presents match data on the "Federal Retirement Thrift Savings Plan (TSP)" report.

This information can be used in the selection of appropriate enforcement remedies for the collection of past due child and spousal support in IV-D child support cases and can also aid in determining a parent's resources when entering, modifying, or enforcing a support order.

As an enforcement remedy, TSP garnishment must be used only if other appropriate enforcement options have been proven unsuccessful. A mandatory ten percent (10%) federal tax penalty is charged to the account owner when funds are removed from a TSP account and the funds properly paid from a TSP account cannot be returned to the account. Careful examination of the case (including the accuracy of financial records, the opportunities for use of other enforcement tools, the barriers to the use of TSP garnishment, or other factors that could indicate garnishment is not appropriate) must be completed before selecting this remedy.

The selection criteria for TSP garnishment are:

- Arrearages of at least \$3000.00 owed under a single court order/ docket number. If multiple CSS cases are included in a single court order, the total arrearages for all of these cases must meet the criteria. If the noncustodial parent (NCP) has multiple support obligations in separate court orders, the arrearages under each selected order must be at least \$3000.00.
- All other appropriate enforcement remedies have been unsuccessful in collecting the past due amount.

Cases meeting these criteria must be evaluated for other potential barriers to garnishment. If any of the following circumstances are present, the case is NOT eligible for TSP garnishment:

- No "MAIL" or "RES" (Residential) address appears in ACTS for the NCP;
- The case is an Interstate Initiating case;
- The NCP has an active bankruptcy petition;
- The NCP receives Supplemental Security Income (SSI);
- A Financial Institution Data Match (FIDM) levy is in progress;
- A court order exists that bars such an enforcement action;
- The NCP is experiencing a catastrophic illness or event;
- Pending litigation involving the case exists that could make enforcement inappropriate.

When an NCP is identified on the "Federal Retirement Thrift Savings Plan (TSP)" report as having a TSP account, caseworkers should take the following steps to determine whether to select TSP garnishment as an enforcement remedy:

- Determine that the case meets the selection criteria;
- Determine that no barriers to use of the remedy are present;
- Perform a thorough financial audit of the case.

After selecting a case for garnishment, caseworkers must obtain a court order authorizing garnishment of a TSP account and submit a request to freeze the account to NCCSS Central Registry. The request is submitted to TSP, and the account is frozen until the NCP's 30-day appeal period ends. At that time, caseworkers prepare and submit a request for seizure of funds from the account to NCCSS Central Registry for forwarding to TSP for approval.

Payments received from TSP garnishment are posted with the payment source "LIEN" to the eligible case(s). If multiple cases were submitted and funds received are not enough to pay all arrearages, a prorated share of available funds is distributed to each of the cases.

## **UNCLAIMED PROPERTY**

### **GENERAL INFORMATION**

This topic contains information on the following:

1. [An introduction to unclaimed property;](#)
2. [An overview of NCCash claims;](#)
3. [The Unclaimed Property Liens Project.](#)

### **INTRODUCTION TO UNCLAIMED PROPERTY**

State law requires financial institutions, insurance companies, public agencies, and businesses to turn over unclaimed property to the State if there has been no contact with the owners for a prescribed period of time. "Unclaimed property" can be funds from bank accounts, wages, utility deposits, insurance policy proceeds, stocks, bonds, and contents of safe deposit boxes whose rightful owners cannot be contacted.

The North Carolina Department of the State Treasurer holds this unclaimed property in the form of cash. CSS can claim these funds

belonging to a noncustodial parent (NCP) who owes child support by filing a claim with the NC State Treasurer.

Previously, a project to attach a lien to the unclaimed property was conducted by agreement between the NC State Treasurer and NC CSS, but this project is no longer available. However, liens that were established through this project are still valid until discharged. For more information on this project and the management of liens that were created through it, see Unclaimed Property Liens Project.

## **NCCASH CLAIMS OVERVIEW**

A listing of unclaimed property that is held by the NC State Treasurer is available on this public website: "<http://www.nccash.com>". This website shows unclaimed properties in the amount of \$50.00 or more.

If a search of this website indicates the possibility that unclaimed funds might belong to a delinquent noncustodial parent (NCP), CSS can file a claim to have the funds paid toward that NCP's child support debt. CSS can submit a claim on held property up to the total amount of the NCP's arrearages, as long as the NCP is the sole owner of the property.

By agreement between NC CSS and the NC State Treasurer's Unclaimed Property Program (UPP), CSS can request information in addition to the listed property and property owner information that is shown on the website. Agency contact persons, who are designated by supervisors in each local CSS office, can communicate with UPP by email. All communication regarding unclaimed property must include the Claim # and Property ID # of the property in question.

Once a claim is submitted to the UPP, the property listing is removed from the website on the Monday following the date of submittal. If not paid to an owner, the property listing appears again in approximately three (3) months.

When UPP receives the claim, it reviews the provided documentation to confirm whether CSS has adequately verified that the NCP is the property owner. After completing the review, UPP sends an email to notify the local CSS contact person of whether or not the claim is accepted. If accepted, the total amount of available funds is stated in the email. This amount could be larger than the amount that was initially stated, if additional funds belonging to the NCP have been identified. If the claim is rejected, the reason is stated in the email.

Once the UPP has notified CSS that a claim has been approved, a court order is required to apply the funds to a child support debt. The responsible CSS caseworker must generate and file a "Motion To Order Holder To Apply Debtor's Funds To Judgment" and an "Order Directing Holder To Apply Debtor's Funds To Judgment" document, requesting that the court enter an order directing UPP to apply the debtor/ NCP's funds to the child support debt.

## **UNCLAIMED PROPERTY LIENS PROJECT**

### ***Project Overview***

A special liens project was conducted in 2004 by agreement between the NC State Treasurer and NC CSS. It matched the names of individuals who owned unclaimed property that was held by the NC State Treasurer with the names of individuals who owed past due child support. This agreement allowed CSS to file a lien against the unclaimed property and apply the funds to the child support debt.

This one-time project has ended; however, liens that were established through this project must be maintained until satisfied or otherwise ended. A brief description of the project procedures and the requirements for continued management of the liens that were created by the project follow.

#### ***Match Criteria for Unclaimed Property Liens***

For a case to have been eligible for the lien, it must have met the following criteria:

- The case must have been a IV-D case;
- The case must have been in the "OPEN" status;
- The case must have had arrearages of EITHER at least \$3,000.00 OR an amount equal to support owed for three (3) months;
- The amount of unclaimed funds must have been at least \$10.00.

#### ***Unclaimed Property Liens Process***

When a match is made, a NC CSS Unclaimed Property worker reviewed the case and determined if an administrative lien has been filed with the Clerk of Court. If a lien exists in the case, any amount remaining unsatisfied on the lien can be collected.

If the NCP agreed to allow the funds to be applied to the child support debt or failed to take action to contest the lien within thirty (30) days of the filing of the lien, CSS executed on the lien to obtain the funds.

After funds were received and applied to the case account, Unclaimed Property workers documented the payment. If unclaimed property funds were not sufficient to satisfy the entire lien amount, the lien remains in effect.

Even though the Unclaimed Property Liens Project has ended, the responsible CSS caseworker must still maintain the lien until it is either satisfied or dismissed.

If the local responsible caseworker wants to attach other of the NCP's properties to satisfy the remaining arrearages, no additional service of process on the NCP is needed. Only notifying the Clerk of Court to execute on the lien is required.

If it is determined that CSS will not take further action toward satisfaction of a lien, the lien must be dismissed. This action can be taken at any time during the life of the case; however, action must be taken before the case is closed.

To take any of these actions, CSS caseworkers must follow the procedures for execution, modification, and discharging of an administrative lien.

## UNIFORM FRAUDULENT TRANSFER ACT

### GENERAL INFORMATION

This topic contains information on the following subjects:

1. [An overview of the Uniform Fraudulent Transfer Act;](#)
2. [Definitions of terminology used in the Uniform Fraudulent Transfer Act;](#)
3. [Factors to consider concerning fraudulent transfer;](#)
4. [Remedies for creditors affected by fraudulent transfer;](#)
5. [Liability and protection for transferees;](#)
6. [Statute of limitations for taking action with respect to fraudulent transfer;](#)
7. [Agency responsibilities concerning fraudulent transfer.](#)

### UNIFORM FRAUDULENT TRANSFER ACT OVERVIEW

Some noncustodial parents (NCPs) transfer either property or income to another individual, partner, or corporation in order to avoid paying a child support debt. This conveyance is considered a method of defrauding creditors, and state law provides that such transactions can be voided or settled in the best interest of a child support creditor. North Carolina adopted the Uniform Fraudulent Transfer Act of 1984 (effective October 1, 1997) in order to modernize and comport its law with states that have also adopted this law. These provisions can be found in NCGS 39-3A.

### DEFINITIONS OF TERMS

The following definitions should assist in understanding the terminology used in the Uniform Fraudulent Transfer Act:

**"ASSET" -**

The property of the debtor, but this does not include property encumbered by a lien, property exempt under non-bankruptcy law, or interest in property held in tenancy by the entireties not subject to process by a creditor holding a claim against only one tenant.

**"CLAIM" -**

A right to payment.

**"CREDITOR" -**

A person who has a claim (usually the obligee in child support claims.)

**"DEBT" -**

The liability on a claim.

**"INSIDER" -**

In general terms, either a relative, a partner, or a corporation of the debtor. In order to determine if a person to whom a transfer has been made is considered an insider, consult your CSS attorney.

**"INSOLVENCY" -**

If the sum of the debtor's debts is greater than all of the debtor's assets.

**"PROPERTY" -**

Anything that can be the subject of ownership.

**"TRANSFER" -**

Every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset and include payment of money release, lease, and creation of a lien or other encumbrance. The CSS attorney decides if the transfer in question fits this definition and if the transfer could be considered fraudulent.

**FACTORS TO CONSIDER**

A transfer that is made or an obligation that is incurred by an NCP can be deemed fraudulent:

1. Whether or not the child support claim arose before or after the transfer was made with intent to hinder, delay, or defraud any creditor of the debtor; or
2. Without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was engaged in a business transaction for which the remaining assets of the debtor were unreasonably small; or
3. The debtor would incur debts beyond the ability to pay as they became due.

In determining fraudulent intent, consideration is given to whether:

1. The transfer was to an insider such as a relative, a partner, or a corporation of the debtor;
2. The debtor retained possession or control of the property after the conveyance occurred;
3. The transfer was disclosed or was concealed, particularly from the child support agency or custodial parent;
4. The transfer was made after the NCP had been either cited to court or had been told that this was the next appropriate action;
5. The debtor removed or concealed assets;
6. The debtor absconded;
7. The transfer was substantially all of the debtor's assets;
8. The value of the amount received was or was not reasonably equivalent to the value of the asset transferred;
9. The debtor was insolvent or became insolvent shortly after the transfer was made;
10. The transfer occurred shortly before or after the debt was incurred;
11. The debtor transferred the assets of a business to a lienor, who then conveyed those assets to an insider;
12. The debtor transferred the assets in the course of legitimate estate or tax planning;
13. The debtor made the transfer without receiving a reasonably equivalent value, and it is reasonable to believe that the debtor would incur debts beyond the ability to pay them as they came due.

**REMEDIES OF CREDITORS**

A child support obligee can obtain relief by:

1. An action to void the transfer or obligation to the extent that is necessary to satisfy the claim;

2. An attachment or other provisional remedy against the transferred asset or other property of the transferee (the recipient of the transfer);
3. An injunction against further disposition by the debtor and/or the transferee of the transferred asset or of other property;
4. The appointment of a receiver to take charge of the transferred asset or of other property of the transferee;
5. Any other relief the circumstances might require.

If a creditor has obtained a judgment on a claim against the debtor, the creditor can levy execution on the asset transferred or its proceeds, if the court so orders.

#### **LIABILITY AND PROTECTION OF TRANSFEREES**

A transfer is not voidable if:

1. A person took the property or obligation in good faith and for a reasonably equivalent value;
2. The insider gave a new value to the transferred property;
3. The transfer results from the termination of a lease upon default by the debtor;
4. The transfer is the result of enforcement of a security interest in compliance with the Uniform Commercial Code;
5. The transfer was made pursuant to a good-faith effort to rehabilitate the debtor;
6. The transfer was made in the ordinary course of business or financial affairs of the debtor and the insider.

If the action is voidable by the creditor, the creditor can obtain a judgment for the value of the asset transferred, or the amount necessary to satisfy the child support claim, whichever is less. This judgment can be entered against the first transferee of the asset or the person for whose benefit the transfer was made, or any subsequent transferee other than a good-faith transferee. A good faith transferee is entitled to a lien on or a right to retain any interest in the asset transferred, enforcement of any obligation incurred, or a reduction in the amount of the liability on the judgment.

#### **STATUTE OF LIMITATIONS**

Action with respect to a fraudulent or voidable transfer or obligation is extinguished (barred from taking action) unless action is brought:

1. Within four (4) years after the transfer was made, or if later, within one (1) year after the transfer or obligation was or could reasonably have been discovered by the claimant for cases of intent to hinder, delay, or defraud any creditor;
2. Within four (4) years after the transfer was made for cases in which the transfer was made without receiving a reasonably equivalent value; or
3. Within one (1) year after the transfer was made to an insider and the debtor was insolvent at the time, and the insider had reasonable cause to believe that the debtor was insolvent.

#### **AGENCY RESPONSIBILITIES**

In those situations where it appears that an NCP has purposefully transferred assets to depress his/her ability to pay support and thus

avoid paying a child support debt, it is possible to void this transfer using the Uniform Fraudulent Transfer Act. The CSS caseworker might not learn of such transfers unless alerted by conversations with the custodial parent or NCP. Upon learning of a possible fraudulent transfer, the caseworker can check such sources such as DMV, Register of Deeds, or the county tax assessment office. It is extremely important to verify whether or not the NCP has filed for bankruptcy as this action might not be considered appropriate by the Bankruptcy Court. If the agent believes through initial research that the case could qualify for relief under the Act, the case should be referred to the CSS attorney for appropriate court action.

The CSS attorney makes any determination of whether or not the transfer fits the definition of a fraudulent transfer and files the appropriate pleadings with the court to seek relief. The CSS attorney decides which remedy is appropriate to seek such as asset attachment, voiding the transfer, or an injunction to prevent further disposal of the property. No automated functionality, documents, or interfaces support this process; caseworkers must document these remedies in the case record.

## **VENDOR COLLECTIONS**

### **GENERAL INFORMATION**

This topic contains information on the following subjects:

1. [An overview of vendor collections;](#)
2. [The criteria for vendor collections;](#)
3. [Vendor collections processing.](#)

### **VENDOR COLLECTIONS - OVERVIEW**

"Vendor Collections" is a method of collecting public assistance arrearages by using a private vendor that is contracted by the State. This enforcement remedy began as a pilot project only for state-operated offices (excluding the Cherokee Tribal Court), but now it is being used by all county/local offices, except Tribal Child Support Enforcement. ACTS identifies the eligible cases and refers them to the vendor in a weekly report.

The vendor performs collection activities for those cases for a period of twelve (12) months. Once the 12-month period expires, the noncustodial parent's eligible cases are deleted from Vendor Collection services, and the vendor performs no further collection activity for the submitted case(s).

### **CRITERIA FOR VENDOR COLLECTIONS**

ACTS submits open CSS cases that meet the following criteria:

- The case is "Arrears-Only"; it has NO open Current Support subaccount; and
- The case has one or more Public Assistance arrearage subaccount with a balance equal to or greater than \$50.00; and
- No payments from the NCP, NCP's employer, or Electronic Funds Transfer (EFT) have been posted to the NCP's participant account

(MPI #) within the last three (3) months. However, if FIDM, tax intercept, lottery intercept, lien, bond, or purge payments have been posted to the NCP's MPI # within the last year, the eligible cases will be submitted; and

- The NCP is not under active income withholding; and
- The NCP for this case has no currently active employment record in ACTS.

Cases that meet these criteria are submitted for collection, regardless of the NCP's address information in ACTS.

ACTS DOES NOT submit the following:

- Cases are flagged as "unworkable" due to Good Cause approved or pending or because the NCP is receiving SSI; or
- Cases with family violence issues that are flagged in ACTS; or
- Cases with an NCP who has filed an active bankruptcy petition that is indicated in ACTS; or
- Initiating or responding interstate cases.

## **VENDOR COLLECTIONS PROCESSING**

The "Vendor Collections" process is mostly automated. ACTS identifies those cases that meet the specified criteria and submits them in a weekly report to the vendor for the collection of arrearages owed to the State.

ACTS performs the selection, submittal, reporting, and most of the deletion processes for Vendor Collections.

## **OTHER ENFORCEMENT REMEDIES**

### **GENERAL INFORMATION**

This topic contains information on the following subjects:

1. [Credit balance cases](#);
2. [Criminal Enforcement actions](#);
3. [IRS Full Collection Services](#);
4. [Lottery offset \(intercept\)](#);
5. [Public Assistance debt reduction](#).

### **CREDIT BALANCE CASES**

#### **OVERVIEW**

Credit balance cases are intrastate CSS cases in which the noncustodial parent (NCP) has been given credit for funds paid in advance and the custodial parent has already received the funds. This situation occurs when an NCP has paid "future" money toward the case prior to the case being redirected to CSS from AOC. These funds were not posted in ACTS, credited to the appropriate payor account, or paid to the custodial parent through ACTS processing; therefore, ACTS has no record of the credit balance. (If an out-of-state CSS case, this credit balance is referred to as "memo future money".)

**CREDIT BALANCE CONVERSION (TO PREVENT DELINQUENCY PROCESSING ON CREDIT BALANCE CASES)**

When a case with a credit balance is redirected to CSS from AOC, caseworkers must prevent ACTS from starting Delinquency Processing for a case with a credit balance when the NCP chooses not to make payments until the future money is "used up". (However, ACTS still processes payments and disburses funds to the custodial parent if the NCP continues to make payments.)

CSS caseworkers must contact the NCP to determine why and when the credit balance occurred. If the NCP informs the caseworker that the payment was for something different than what was recorded by AOC or that the money was a gift to the custodial parent, then the credit balance is not a true credit balance. (Nothing more needs to be done, but caseworkers must document in ACTS any action taken on the case.)

If the credit balance is a true credit balance, caseworkers should inform the custodial parent that he/she possibly might not receive payments while the NCP "uses up" his/her credit balance.

Caseworkers set (or reset) the date of next enforcement in ACTS to a future date. This date should be when the NCP's arrearages equal the credit balance (assuming that the NCP does not make payments.) ACTS postpones automatic Delinquency Processing until the next enforcement date has passed.

The next enforcement date is determined by examining the credit balance and the charge frequency and frequency amount of the court order.

*EX: If the court order specifies that the NCP should pay \$100.00 per month and the credit balance is \$400.00, then the he/she is not expected to pay the next \$100.00 until the fifth month. If CSS acquired this case on June 15 and the start date of the court order was on the first of that month, then the date of next enforcement should be set to October 1. (A \$100.00 arrearage accumulates for the months of June, July, August and September, totaling \$400.00, which is the amount of the credit balance.)*

When the next enforcement date arrives, caseworkers should review the case to determine if a credit balance remains. If a credit balance remains, caseworkers must continue to track it. If no credit balance remains, caseworkers must reset the tax intercept indicators for all the applicable subaccounts, resume Trade Line Reporting, and change the processing status of the case from "DELQ" (Delinquency) to "COLL" (Collections), if applicable.

**CRIMINAL ENFORCEMENT ACTIONS**

**CRIMINAL ENFORCEMENT ACTIONS POLICY**

1. All existing or new criminal orders should contain language to indicate how payments should be routed. Any necessary modifications of an existing order can be accomplished through the District Attorney or the local CSS attorney assisting the District Attorney.
2. Before taking action to enforce a criminal order through revocation of a suspended sentence, CSS caseworkers must first

attempt to effect income withholding when appropriate. Under Chapter 15A, Article 82, the proper enforcement technique to apply against a defendant in violation of a criminal order is to request the local Clerk of Court to initiate the revocation proceedings. Caseworkers should provide the Clerk of Court with a current financial statement. The Clerk certifies the arrearages to the District Attorney (and probation officer, if appropriate.) A defendant is brought into court for defaulting on the required support payment by service of advance notice (at least 24 hours before the scheduled hearing) of the state's intention to seek revocation of the suspended sentence.

3. Upon receipt of the information mentioned above, the District Attorney initiates the action by using Notice Of Hearing To Revoke Unsupervised Probation (AOC-CR-220). The defendant's arrearages must be alleged in the notice.
4. The following Issues are to be considered at the hearing:
  - Willful violation (did defendant have means); or
  - Without lawful justification.
5. Activation of a suspended sentence or completion of the period of probation (five years maximum) precludes a defendant from being required to pay arrearages that accrued under the criminal order.
6. Because nonsupport is a continuing criminal offense, upon completion of the invoked sentence and further nonpayment of support, another warrant can be issued. However, it is suggested that efforts be initiated to obtain a voluntary support agreement or other civil action to enable the use of broader enforcement remedies.

#### ***COLLECTION OF ARREARAGES IN CRIMINAL CSS CASES***

When an NCP is under a criminal order to support, and probation is revoked and the suspended sentence invoked, the arrearages that have accrued under the order are not collectible.

#### **IRS FULL COLLECTION SERVICES**

##### ***OVERVIEW***

IRS (Internal Revenue Service) Full Collection Services are available to CSS agencies for the collection of delinquent child support payments and arrearages. The IRS uses all means available (the same as those used for the collection of delinquent taxes) to collect on the child support debt.

##### ***IRS FULL COLLECTION SERVICES POLICY***

When local CSS agencies have exhausted every other means to recover delinquent child support payments without results, they can choose to seek recovery through the Internal Revenue Service (IRS). This remedy should be attempted when the defendant has some assets which could be liquidated by the IRS for purposes of satisfying the NCP's obligations. Substantial wages are sufficient since the IRS has Federal authority to garnish wages. This enforcement procedure is separate from, but can be used in conjunction with, tax intercept.

IRS Full Collection Services are applicable to both WFFA/TANF and NPA cases provided that the following requirements are met:

1. A civil order exists from any state's court.
2. The arrearages are not less than the amount that is owed under the terms of a court order for three (3) months, and in any case, not less than \$750.00.
3. All other applicable enforcement remedies (including a Full Faith and Credit Action) must have been exhausted.
4. Application must be made through the CSS Central Office and payment, upon notification by state CSS, of a nonreturnable, one time fee. The Social Security Administration bills state CSS for the fee.

## **LOTTERY OFFSET**

### ***LOTTERY OFFSET POLICY***

The NC State Lottery Act of 2005 (NCGS 18C-134) authorizes the offset of lottery winnings claimed by a noncustodial parent (NCP - coded "AP") to pay past due child support. Lottery offset procedures follow tax offset procedures, as defined in NCGS 105A. Before the NC Lottery Commission pays a prize in the amount of \$600.00 or more to a winner, that winner is matched against individuals that have child support arrearages of more than \$50.00. When a match exists, the Lottery Commission pays an amount up to the certified arrearages to NCCSS and any excess to the NCP. When a winner contacts the NC Lottery Commission to collect a prize, the NC Lottery Commission advises the winner of the amount that is being sent to NCCSS.

### ***LOTTERY OFFSET PROCEDURES***

The Pre-Offset Notice (DSS-4495) that is sent to NCPs on or about September 30th advises the NCP of the potential for the offset of tax refunds and lottery winnings to pay past due child support.

Before paying winnings of \$600.00 or more, the NC Lottery Commission matches the name of the lottery winner to the CSS file of NCPs who owe \$50.00 or more in arrearages. Payment of available funds up to the total owed is sent to NCCSS, and any remaining balance is paid to the NCP.

When it receives a payment from the NC Lottery Commission, the NCCSS Collections Unit:

- Confirms the identity of the NCP;
- Posts the payment to the NCP's participant account (MPI #) with the payment source code "LUCK";
- Places the funds on "HOLD" for forty-five (45) days; and
- Notifies the NCCSS Tax Unit of the payment.

Within ten (10) days of receipt of a lottery payment, the NCCSS Tax Unit sends a Notice To Debtor - Lottery (DSS-4747) to the NCP for each of the NCP's cases that are certified for offset.

### ***Lottery Offset Appeal Procedures -***

To appeal, the NCP must submit a petition (H-06 General Petition Form) to the Office of Administrative Hearings (OAH) within thirty (30) days of the Certification Date stated on the Notice to Debtor.

When an appeal is made, OAH notifies the Attorney General who represents CCSS. The attorney notifies the NCCSS Tax Unit.

If OAH allows the offset, the NCCSS Tax Unit releases the "HOLD" and the payment is processed. If OAH disallows the offset, the Tax Unit makes an adjustment request to disburse the held funds to the NCP.

***Immediate Release of Lottery Payment -***

An NCP can choose to waive the right to appeal a lottery offset so that the funds can be applied to the NCP's case(s) prior to the end of the 45-day "hold" period. The NCCSS Tax Unit sends an Affidavit For Release Of Lottery document to the NCP with the Notice to Debtor - Lottery (DSS-4747). The NCP can sign the Affidavit before a Notary Public and mail it to NCCSS or contact local CSS for assistance in completing the document. An Affidavit completed at the local CSS office must be faxed to the Tax Unit. The Tax Unit releases the "HOLD", and the payment is processed.

***No Response from NCP -***

If the NCP does not appeal the offset or request early release of the funds, the "HOLD" is released and payment is applied to all appropriate cases on the forty-fifth (45th) day after the Notice to Debtor - Lottery (DSS-4747) was sent to the NCP.

**PUBLIC ASSISTANCE DEBT REDUCTION**

***PUBLIC ASSISTANCE DEBT REDUCTION POLICY***

NCGS 110-135 provides noncustodial parents (NCPs) with the opportunity to reduce their Public Assistance (PA) debt when the NCP:

- Owes a minimum of \$15,000 in PA arrearages;
- Enters into an agreement with CSS to make twenty-four (24) consecutive monthly payments on a timely basis for both current support and an amount toward arrearages; and
- Abides by the terms of the agreement.

On a quarterly basis, ACTS selects open cases that have a CSUP (Current support) extension and PA arrearages equal to or greater than \$15,000. The PA debt is defined as a combination of TANF and IV-E arrearages. If the NCP has multiple cases under one docket number, at least one of the cases must have a CSUP (Current support) extension to be considered for the debt reduction. These cases appear on the quarterly Debt Reduction Arrears Report.

***PUBLIC ASSISTANCE DEBT REDUCTION PROCESS***

Upon receiving the Debt Reduction Arrears Report, CSS workers should determine if the NCP has the financial ability to make the agreed upon payments. NCPs might want to consider requesting a review of the order for possible modification.

The responsible CSS workers are to contact the NCPs who meet the criteria for possible debt reduction and attempt to obtain an agreement for payment of current support, plus an amount toward arrearages for twenty-four (24) consecutive months.

When an agreement is reached, the CSS worker completes a consent order, obtains approval of the court, and files a copy in the court file. It is important for CSS to advise the NCP that other remedies can also be used to collect the debt as provided by law. CSS workers should document the terms of the debt reduction consent order in the case record.

The Distribution Unit at the CSS Central Office is responsible for monitoring the case for compliance with the terms of the consent order during the 24-month period. Once the consent order is signed by the NCP and the judge, the responsible CSS worker notifies the Distribution Unit that the case is to be monitored under the debt reduction program.

If the NCP fails to pay as agreed, the Distribution Unit notifies the responsible CSS worker that the arrearages are no longer subject to the reduction under the existing agreement. The responsible CSS worker documents the noncompliance with the consent order in the case record. The NCP can renegotiate a payment plan under a new consent order to achieve twenty-four (24) consecutive months of payments.

If the NCP successfully meets the terms of the agreement, the Distribution Unit notifies the responsible CSS worker to reduce any remaining PA arrearage debt by two-thirds (2/3). The CSS worker modifies the order to reflect the two-thirds PA debt reduction and documents the successful compliance with the consent order in the case record.

If the NCP has multiple PA arrearage subaccounts for a case, the responsible CSS worker reduces each subaccount according to the distribution hierarchy on a prorata share basis.

If the NCP has multiple cases under one docket number, the responsible CSS worker prorates the reduction for each case, according to the distribution hierarchy.

*EX: Docket # "99CVD12345" covers three (3) cases, and a total of \$4000.00 in PA arrearages exist at the end of the 24-month period. The reduction of the PA arrearages is calculated as follows:*

*Case #1 has a \$1000 PA arrearage balance  
Case #2 has a \$1000 PA arrearage balance  
Case #3 has a \$2000 PA arrearage balance*

*-----  
Total \$4000*

*\$4000 x 2/3 = \$2667 total arrearage reduction*

*Arrearages for Case #1 are reduced to \$ 667.00  
Arrearages for Case #2 are reduced to \$ 667.00  
Arrearages for Case #3 are reduced to \$1333.00*

*-----  
Total Arrearage Reduction = \$2667.00*

## **ADDITIONAL ENFORCEMENT INFORMATION**

### **GENERAL INFORMATION**

This topic contains information on the following subjects:

1. [Court activity;](#)
2. [Direct payments from the obligor to the obligee;](#)
3. [Enforcement actions for minor noncustodial parents \(NCPs\);](#)
4. [The extension of support beyond the age of eighteen \(18\);](#)
5. [NCPs receiving SSI \(Supplemental Security Income\) benefits;](#)
6. [The nonaccrual of arrearages;](#)
7. [The retroactive modification of arrearages;](#)
8. [Spousal support.](#)

## **COURT ACTIVITY**

NCGS 50-13.9 states that the designated CSS agency has sole responsibility and authority in cases for:

- Monitoring compliance with court orders;
- Initiating appropriate enforcement procedures; and
- Maintaining records necessary to monitor compliance or enforce support orders, including the amounts and dates of receipt of child support payments collected.

Agency payment records are admissible evidence in any action to establish, enforce, or modify a child support order. The court shall allow the designated representative of the agency to declare the authenticity of the payment record. When a NCP is cited to appear in court, the designated CSS agency must ensure that all appropriate payment records are prepared and presented to the court.

The local CSS agency is also responsible for verifying employment and income information prior to the court date. If information is obtained through DES, New Hire, or Federal Case Registry (FCR) records, the local CSS agency should contact the employer to verify that the received information is correct.

Each case that meets contempt criteria needs to be investigated to determine which enforcement remedy is appropriate at that specific time. If the case record shows that the NCP has been found in contempt three (3) or more times since October 1, 1999, for failing to pay court-ordered child support, CSS can request the NCP's driver, hunting, fishing and/or trapping license be suspended or that the vehicle registration be blocked.

The CSS caseworker is to be present in court on the date of the NCP's appearance and prepared to testify to the facts of the case. The CSS agency attorney or the District Attorney must be available to represent the agency.

## ***JOB SEARCH/WORK REQUIREMENT***

When an individual appears in court for failure to pay past due child support, is unemployed, and has no resources with which to pay past due support, then the court can order that individual to participate in work activities such as public or private employment, job search and job readiness assistance, on-the-job training, community service, etc. Job search or participation in work activities can be court-ordered when establishing a child support obligation as well.

## **DIRECT PAYMENTS FROM OBLIGOR TO OBLIGEE**

If a supporting party makes a direct payment to a party that is entitled to receive it, as evidenced by a canceled check, money order, or written receipt for a period when a payment was not made to the NCCSCC, the payment is not past due and arrearages do not accrue. When the court becomes aware of such a situation during an enforcement proceeding or a motion is filed to reduce the arrearages by the amount of the payment made directly to the custodial parent, the court can enter an order with a provision that the NCP be credited for that payment.

The responsible CSS caseworker should enter/modify the court order in ACTS to reduce the total amount of arrearages by the amount credited to the NCP. They should send an adjustment request ONLY if other adjustments are needed to the arrearages in ACTS. (EX: The totals of the order and distribution sides in ACTS should balance after the the court order modification, but they do not.) The Distribution Unit at the CSS Central Office makes the additional adjustments.

## **ENFORCEMENT ACTIONS FOR MINOR NONCUSTODIAL PARENTS**

Criminal means of enforcement must not be used in CSS cases involving an unemancipated minor NCP. If the NCP is under age sixteen (16) and is charged with willful failure to support pursuant to NCGS 49-2, the minor is prosecuted as a delinquent juvenile. If convicted of the delinquency in juvenile court, NCGS 49-2 does not bar the juvenile from relitigating the issue of paternity in a later court action, nor from requesting that his/her juvenile record be expunged. However, other administrative and civil means of enforcement can be used to the same extent as CSS cases involving adult NCPs. Prior to bringing enforcement actions against minor NCPs who are in secondary school, verification of income or resources must be obtained whenever possible.

## **EXTENSION OF SUPPORT BEYOND THE AGE OF 18**

### ***EXTENSION OF SUPPORT POLICY***

North Carolina's age of majority is eighteen (18) years of age. A parental obligation to support a child ends at that time, unless any of the following exceptions, identified at NCGS 50-13.4(c), apply:

- Support for a child who is emancipated prior to age eighteen (18) terminates at emancipation. Emancipation can occur due to marriage, joining the US military, or by petition of the minor to the court.
- Support could continue beyond age eighteen (18) if a child is still in primary or secondary school at age eighteen (18) and until such time as the child graduates, otherwise ceases to attend school on a regular basis, fails to make satisfactory academic progress, or reaches age twenty (20), whichever comes first, unless the court in its discretion orders that payments cease at age eighteen (18) or prior to high school graduation.
- Support for a child who is enrolled in a cooperative innovative high school program that is authorized under NCGS 115C-238.50 - 115C-238.55 terminates when the child completes four (4) years in

the program or reaches the age of eighteen (18), whichever occurs later.

When a support obligation for a child continues past the age of majority, CSS services are available for enforcement of the obligation.

A parent can choose to provide support for a child for a longer period of time than can be required by law. For example, parents can agree to provide support through college or continue support for a disabled child. Such agreements, which are incorporated into a divorce or other court order, are binding and take precedence over statutory requirements.

- It is imperative that when alternate arrangements are ordered, all subsequent orders include this provision instead of standard statutory requirements regarding the duration of a support obligation until otherwise modified by the court.
- If the agreement provision is replaced by the statutory requirements in a subsequent order, the agreed upon obligation can be lost to the child.

When the child is receiving a high school education through an alternative arrangement not included at NCGS 50-13.4(c), eligibility for continued support must be assessed on a case by case basis.

- Such alternative arrangements might include home schooling, taking high school courses through a community college, on-line courses, pursuing a GED, or other alternatives.
- If it is unclear whether the educational plan meets a requirement for continued support or if the parties disagree on eligibility, a motion should be filed with the court for determination prior to the expected date of termination of the support obligation.

If the support order includes statutory or alternate provisions for support beyond the age of eighteen (18), the support obligation continues without any further order of the court and remains in effect until the child no longer meets the stated criteria.

A party who believes that support should terminate under other circumstances or otherwise be modified can elect to file a motion with the court to modify the support obligation.

When the current support obligation terminates, NCGS 50-13.4(c) requires that payments on any remaining arrearages continue in the same total amount that was due under the terms of the order or income withholding that was in effect at that time.

#### ***EXTENSION OF SUPPORT PROCESS***

Ninety (90) days before a child's emancipation date, ACTS notifies the responsible caseworker. The caseworker should request information from the custodial parent/ custodian or other sources to determine whether the child meets any criteria for continued support, using the Letter Regarding 18 Year Old Child Still In School (DSS-4567).

If the support obligation is another state's order, eligibility for extension of support is determined by the law of the order state. The caseworker should determine the child's school status and refer to the

IRG (Intergovernmental Referral Guide) for information on the order state's law.

If the child meets any criteria for continued support, the caseworker must notify the custodial parent/ custodian and the NCP that the support obligation will continue. An NCP who is not in agreement with a determination of continued support could elect to file a motion for termination of the obligation with the court.

- All support payments for cases in which support has been extended are distributed in accordance with CSS distribution regulations. If a child's public assistance eligibility continues to age nineteen (19), the support payments continue to be distributed as PA reimbursement.
- The caseworker is responsible for monitoring the child's continued eligibility for support through communication with the custodial parent/ custodian, NCP, and/or the school.

When the child no longer meets any criteria for continued support, the caseworker must determine whether there are any amounts of unpaid support due.

- If no arrearages exist, the CSS case should be closed using the Closure reason code "CNOT" (A current support order no longer is in place and arrearages are under \$500 or unenforceable under State law). No court order is required to terminate the obligation.
- If arrearages are owed, the case should remain open as an "Arrears Only" case with the "CSUP" (Current Support) subaccount closed. Payments on the remaining arrearages continue in the same total amount that was due under the terms of the order or income withholding that was in effect when the obligation ended until all arrearages are paid or until further order of the court. No court order is required to terminate the obligation or set the payment amount due on the arrearages. When all arrearages are paid, the case should be closed.

#### **NONCUSTODIAL PARENTS (NCPs) RECEIVING SSI (SUPPLEMENTAL SECURITY INCOME) BENEFITS**

Supplemental Security Income (SSI) is a program that provides financial benefits to disabled adults and children with limited income and resources. Adults without disabilities over the age of sixty-five (65) could also receive SSI benefits if they meet the program's financial criteria.

Since SSI is considered a means-tested public assistance program, SSI benefits are not counted as income for the establishment, enforcement, or modification of child support obligations. However, if the NCP in a CSS case is an SSI recipient, the case should be processed to the extent possible. In cases where paternity is at issue, paternity establishment should be pursued even if CSS is unable to establish a child support order due to the NCP's only source of income being SSI.

When CSS workers become aware that the NCP is an SSI recipient, further research is required to determine if the NCP has other resources. For example, an SSI recipient could also receive Social Security (SSA) disability or retirement benefits and those SSA benefits can be used in the calculation and enforcement of child support orders. Other sources of income could be available to the SSI

recipient, such as tobacco allotments or income from timber harvesting sales. Only upon further research indicating that no further sources of income are available to the NCP would it be appropriate to consider case closure.

#### ***SSI ONLY INCOME***

If research indicates that SSI is the sole source of income that is available to the NCP, then the case might meet the requirements for case closure listed under 45 CFR:303.11(5), which states:

"The noncustodial parent cannot pay support for the duration of the child's minority because the parent has been institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically-verified total and permanent disability with no evidence of support potential. The State must also determine that no income or assets are available to the noncustodial parent which could be levied or attached for support."

In these situations, the case should be documented concerning the unavailability of any other income or assets. A Case Closure Intent Notice (DSS-4617) should be sent the custodial parent, indicating the reason for closure. The order should be suspended, the CSS case closed, and the order redirected to the Clerk of Court.

#### **NONACCRUAL OF ARREARAGES**

Arrearages cannot accrue in the following situations:

1. From and after the date of the death of the minor child for whom support is ordered;
2. From and after the date of the death of the supporting party;
3. During any period when the child is living with the supporting party as provided in a valid court order or in response to an express or implied written or oral agreement transferring primary custody to the supporting party; or
4. During the period when the supporting party is incarcerated, is not on Work Release, and has no resources with which to make the payment. If the local CSS agency verifies that an incarcerated NCP has resources with which to continue to pay child support, however, enforcement must continue.
5. After the date when the adoption of the child has been finalized by court order. Once a child has been adopted, the noncustodial parent (NCP) no longer has a legal obligation to pay ongoing support. If arrearages accumulated prior to the date of the child's adoption, enforcement to collect arrearages must continue.
6. After the date when the parental rights of the NCP have been terminated by court order. Once an NCP's parental rights have been terminated, the NCP no longer has a legal obligation to pay ongoing support. If arrearages accumulated prior to the date of the termination of parental rights, enforcement to collect arrearages must continue.

## **RETROACTIVE MODIFICATION OF ARREARAGES**

NCGS 50-13.10 specifies that arrearages, once accrued, cannot normally be retroactively modified and are entitled to full faith and credit as a judgment as they accrue. The procedures for execution of the judgment remain the same as provided in NCGS 50-13.4(f)(8) and (10).

### ***EXCEPTIONS TO ARREARAGE MODIFICATION***

Arrearages can be modified in the following situations when a motion is filed with the court and notice is provided to all parties:

1. The moving party can file a motion before the support payment is due. Only those arrearages that accrue between the time when the motion was filed and the date of hearing can be modified by the court.
2. If the moving party was precluded from filing a timely motion due to any of the situations listed below, a motion must be filed promptly after such situation no longer exists:
  - Physical disability;
  - Mental incapacity;
  - Indigence;
  - Misrepresentation of another party; or
  - Some other compelling reason.

Only those arrearages that accrued from the time the party was precluded from filing a motion until the date of the hearing can be modified by the court.

## **SPOUSAL SUPPORT**

Spousal support includes postseparation support and/or alimony. NCGS 50-16.2A and 50-16.3A allow that postseparation support and/or alimony, respectively, can be ordered by the court under specific circumstances. Postseparation support is intended to be a temporary payment for the benefit of the dependent spouse and generally ceases once an award of alimony is either allowed or denied by the court. For CSS's purposes, these types of payments to the custodial parent are considered "spousal support".

CSS does not have the authority to establish a spousal support order, but under 45 CFR sections 302.17 and 302.31, CSS is required to collect spousal support for a spouse or former spouse with whom the responsible parent's child is living when a child support order has been established and is being enforced by CSS. The child support and spousal support can be included in the same court order or in separate orders.

Most regularly used enforcement remedies are available to collect spousal support. NCGS 50-16.7 provides the enforcement remedies of civil contempt proceedings, liens, bonds, mortgages, or deeds of trust. Income withholding under NCGS 110-136.3 can be used to collect spousal support in CSS cases. The remedies of attachment and garnishment in Article 35 of Chapter 1 of the General Statutes are available to enforce spousal support orders; however, this procedure is different from garnishment as provided in NCGS 110-136 in that the garnishment is not ongoing.

State tax intercept can be used to collect past due spousal support. Federal regulation at 45 CFR 303.72 allows the use of IRS tax intercept for the collection of spousal support arrearages in CSS cases only when the child support and spousal support are included in the same court order.

When spousal support is contained in a different court order than the child support obligation, spousal support arrearages must not be certified for federal tax offset/intercept.

When all child support services are terminated for the child(ren) who are living with the spouse, spousal support services must also end. If the spousal support order is still valid, it should be redirected to the Clerk of Court.