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February 17, 2015

Ms. Vicki Turetsky
Commissioner
Office of Child Support Enforcement
Administration for Children and Families
Mail Stop: OCSE/DP
370 L'Enfant Promenade SW
Washington, DC 20447

Dear Commissioner Turetsky:

Thank you for the opportunity to provide comments on aspects of the Child Support Enforcement Program for the report to Congress, as required by the Preventing Sex Trafficking and Strengthening Families Act[1].

The National Payroll Reporting Consortium (NPRC) is a non-profit trade association whose member organizations provide payroll processing and related services to over 1.5 million employers nationwide, covering over one-third of the private sector work force. Payroll service providers have long served an important role in our nation's tax and Child Support collection systems as a conduit between employers and government authorities. Payroll service providers improve the efficiency of government tax and child support collections, and improve compliance. NPRC actively supports and encourages appropriate electronic filing and related administrative systems to improve efficiency and effectiveness.

We appreciate OCSE's recognition that some three-fourths of child support payments are collected by employers through income withholding, and we applaud the effort to periodically analyze and consider whether various elements of the laws and systems can be improved; for example by standardizing and streamlining reporting and payment processing, for better results.

Employers incur substantial burden to comply with current support enforcement rules and systems; burden that could be minimized through a collaborative effort to update certain federal and/or state laws. We also believe that child support collections could be substantially improved through such an effort. We make recommendations in three areas:

1. New Hire Reporting
2. "Lump Sum Payment" Reporting and Withholding
3. Further Standardizing State Practices

1. New Hire Reporting: Lack of Enforcement Harms Child Support and Other Programs

Lack of enforcement of new-hire reporting requirements has led to employer compliance rates under 50% in some states, which harms the child support program and families. All states were

[1] Section 305 of Pub. L. 113-183

required to enact New Hire Reporting requirements by the 1996 federal Welfare Reform law (PRWORA[2]). New Hire Reporting is a critical element in enabling rapid re-establishment of child support orders when an obligor changes jobs. Child support collections have been dramatically improved since this reporting was implemented, to the benefit of families that depend on such collections. Further, many other government benefit programs have been able to dramatically reduce improper payments made to individuals who no longer qualify for benefits; notably Unemployment Insurance, but also many means-tested benefit programs.

New Hire Reporting is universally acknowledged as the most effective solution to reduce improper benefit payments ever devised for Unemployment Insurance (UI) integrity; far faster and more effective than cross-matching against UI wage data[3]. The largest cause of improper UI payments is claimants that fail to promptly notify the state agency when they obtain a new job. For the three-year period July 2009 through June 2012, UI improper payments for claimants collecting while working were over $5 billion, which is 29% of over $17 billion - the estimated amount of UI benefits overpaid[4]. Similarly, child support collections are often also disrupted - - unnecessarily and avoidably - - if a person changes jobs and a new hire report is not submitted.

States have criticized New Hire Reporting's low compliance rate, which is reportedly below 50% in some states (e.g., an Idaho press release said that only 30% of employers comply with new-hire reporting). A low rate of compliance should not come as a surprise, however, because few states do anything to enforce the New Hire Reporting law. The problem is that although all employers are required to file new-hire reports, employers that hire infrequently often don't know about the requirement or forget to report new workers (unless they use a payroll service provider that automatically generates new hire reports). Without reinforcement, people forget about the requirement.

At least 22 states have no enforcement provision (no penalty) in their law. Another three have vague or conspiracy-only provisions. Only one state actually enforces a penalty for noncompliance. NPRC would never suggest employer penalties, but it may be appropriate to require the states to send warning notices to employers who fail to report new hires.

Some states promote new hire reporting generally as a means to reduce UI fraud and employer UI taxes. Others have issued general reminders and articles explaining the benefits of New Hire Reporting, but these do not have the behavioral impact of a letter directly warning a person of his or her specific infraction.

Compliance with new-hire reporting is very easy to monitor. The states only need to compare each quarter's wage files (uniformly reported by employers under state UI laws) to that of the prior quarter. Generally, if an employee in one wage file was not present in the prior quarter's

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[2] The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104–193)

[3] *U.S. Department of Labor—Office of Inspector General; Unemployment Insurance Benefit Payment Control: New Hire Detection Is A Better Method For Establishing UI Overpayments Than The Wage/UI Benefit Crossmatch, September 30, 2004, (Report 05-04-002-03-315)*

[4] *http://www.workforcesecurity.doleta.gov/unemploy/improp_payinitiatives.asp#*

wage file, that person should be on the new hire registry. Further, the Federal Office of Child Support Enforcement already administers an analysis program to identify employers that have failed to report new hires. OCSE can already supply the states with a quarterly electronic list of employers that did not comply with new hire reporting requirements. Despite the availability of these reports, few states do anything with the information.

Optimally, states would send a warning letter to specifically advise employers who fail to report new hires that the state has noted the omission. Such a letter should remind the employer of the reporting requirement and explain that there may be penalties for noncompliance. U.S. Department of Labor officials expressed support in its response to the Office of Inspector General report cited above: "ETA officials will ask DHHS to encourage those state agencies responsible for compiling the SDNH to expand monitoring and outreach programs that will improve employer compliance." It would help the states to justify the modest expense of sending warning letters if the law was amended to require them. We believe that such letters would be much more impactful than current general promotional messaging, and would have the needed behavioral effect, moving compliance rates from below 50% to near-90%.

In the meantime, employers are paying higher UI taxes than necessary because compliance with the New Hire Reporting program is not where it should be. Families are going without child support because compliance with New Hire Reporting is not where it should be.

Recommendation: Require states to send warning notices to employers that fail to report new hires.

2. "Lump Sum Payment" Reporting and Withholding

The current "lump sum payment" reporting and withholding regime should be replaced with advance guidance on amounts to withhold. Currently, employers are expected to notify states of lump-sum amounts to be paid, and wait for days or weeks for instructions on how much to withhold. There are many problems with this approach:

- Not all employers/payroll departments know of qualifying payments in advance; e.g., severance and related payouts – vacation etc., can be required on a same-day basis.
- State definitions vary as to what is a reportable lump sum; threshold amounts to be reported; how long employer must hold the funds; CCPA limitations, etc. Definitions are often vague or overly broad, potentially making employers liable for failure to withhold on even relatively minor routine payments.
- Our sense is that only the largest 1% of employers is even aware of these requirements. If OCSE wishes to reach the other 99%, the entire system should be replaced with permanent advance guidance that can be built into payroll systems.

We believe that the current approach fails to capture significant child support collections, and that a simplified approach would both improve collections and reduce employer burden.

Discussion:

In many states, bonus and lump-sum payments of various kinds are subject to special

procedures for child support garnishments; e.g., bonuses, severance, vacation, commissions, stock options, etc. Many states require employers to report such payments several days or weeks before paying them to employees. Requirements vary, including the length of time employers must hold the payment to allow the state time to notify the employer of the amount to withhold. Depending on the state definitions and the employee's marital status, dependents and arrears status, different withholding limits apply.

Awareness is lacking. These requirements are generally communicated within withholding orders, but once a withholding order is set up in a payroll system, the paper order is filed, and compliance thereafter depends upon whether a payroll administrator or busy business owner/manager remains mindful of the special procedures surrounding non-routine wage payments. Reliance on human awareness and memory too often leads to noncompliance, potentially making the employer liable for amounts that should have been withheld and reducing child support collections.

Requirements to stop and report such payments, and then wait 10 (or more) days is disruptive. Other than annual recurring payments such as bonuses, such payments are frequently not known in advance, and are probably rarely known 10 days or more in advance. Stopping the process causes problems, and in some cases conflicts of law. State labor laws generally require payment of wages when due, and in many cases specifically require payment of severance, wages, accrued vacation and the like on the day of termination - - which can be on a same-day basis. Employers can be fined (treble damages in some states) for delays in paying wages when due; yet the lump-sum reporting requirement would make the employer liable for amounts that should have been withheld under state child support collections law.

Some states are not very responsive to reporting, and the lead time required before a payment can be released varies. This leaves employers and employees waiting and causes friction. Diverse definitions and practices across the states present a very substantial burden to multistate employers. Arguably, the vast majority of employers are single-state employers, to whom diverse definitions and practices across the states do not present a problem. Yet even for single-state employers, rules and definitions within a state are often vague, which in effect shifts liability to employers for incorrect interpretations. One example: State definitions of payments considered lump sums vary considerably.

- FL: "Lump sum is not specifically defined in statute, however F.S. 61.1301(1)(b)(5) states, ... 'bonus' means a payment in addition to an obligor's usual compensation and which is in addition to any amounts contracted for or otherwise legally due and shall not include any commission payments …"
- IN: "There is not a definition however our statute does give examples of the type of payment from an income payor that is subject to a withholding order. For example, severance pay, sick pay, vacation pay, commissions, bonus payments, or *any other lump sum payment*"
- IA: "sole payment or payments occurring at two-month or greater intervals"
- MN: "a lump sum is payment from a payor of funds of $500 gross or more. Lump sums may include (but are not limited to): - severance pay - accumulated vacation pay - accumulated sick pay - bonuses - commissions - *other types of pay or benefits"*

Many state definitions (e.g., "other types of pay or benefits") are wide open for broad

interpretations, arguably including application to some types of compensation which can be complicated. For example, employees often work directly with third party stock option administrators to execute stock options or sell restricted stock. Is that compensation for employment? Yes. Is the employer aware in advance? No, not until the administrator later advises them of taxes to remit. Can the employer report the payment in advance and withhold any part of it? No. Is the employer then liable for the amount that should have been withheld?

This is but one area of many that employers are expected to navigate. Threshold amounts that must be reported vary. The length of time that an employer must hold such payments in anticipation of instructions from the agency varies. Applicability of CCPA limits varies. As explained by helpful charts compiled by OCSE, state laws and rules are quite diverse.

Similarly, OCSE has led the development of an elaborate electronic "debt inquiry service" to facilitate lump-sum reporting and withholding. But any system that relies upon people to recognize that a relatively routine payment may require special handling, and to take action to report a potential payment and obtain clearance from a government agency to make the payment, seems destined for use only by a relative handful of large employers.

There is a better approach. Child Support withholding is already required when ordered. Rather than stopping the presses whenever anything vaguely unusual happens (payment-wise) in order to inquire about it and manually coordinate an amount to withhold, it would be more efficient to establish standard rules, definitions and protocols in advance for all such payments, so that employers don't have to stop and ask for directions. Guidance should be sufficient for employers to apply independently. For example, the IRS and state tax authorities have special withholding rates and guidance for "supplemental payments", which are mostly bonuses and commissions. Generally the highest withholding rate is applied.

OCSE might collect far more by establishing more workable and less manual procedures; such as standard (higher) withholding rates for supplemental payments. Withholding orders should communicate the debt/arrears status related to each obligor and withholding order. Instructions should be built into initial withholding orders, which employers could automatically apply to specified types of non-routine wage payments.

We believe that the current approach fails to capture significant child support collections, and that a simplified approach would both improve collections and reduce employer burden. All of these issues have long been known and documented; for example in the Employer Symposium sponsored by OCSE in December 2005. We recognize that changes to current law may be necessary, but we would urge policymakers to recognize that administrative requirements must be designed so that they are not dependent on people, and training, and awareness, and inquiries; event-based human interactions, permissions and coordination.

Recommendation:

Eliminate all requirements to report "lump sum payments" and await withholding instructions. This regime should be replaced with clear standard definitions and advance guidance on amounts to withhold. Look to the well-established and smoothly functioning rules for income tax withholding on Supplemental Payments, which have long been administered by the IRS and state taxing authorities, as a model.

3. Further Standardizing State Practices

OCSE should be given additional authority if needed to enforce current law.

a. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 established the very appropriate and necessary centralized payment processing sites within each state by creating State Disbursement Units and standardized income withholding provisions and forms. States have long been required to establish a centralized disbursement unit, yet certain states have never done so, with no apparent effect. For example, South Carolina employers are still directed to send payments "as directed on IWOs until SC has an SDU. Currently there are 46 Clerks of Court within South Carolina receiving payments."[5]

b. States are restricted in their ability to require employers to change payroll schedules to satisfy specific monthly amounts due, yet this is still a problem in some states.

c. States should be required to support electronic notices (E-IWO), and such notices should be bi-directional to help employers justify the expense and effort to participate. We understand that even employers that accommodate electronic withholding orders via the E-IWO process must still send paper responses, which makes the overall system less efficient. We also believe that many states would welcome a mandate to participate in E-IWO. Given ever-present budgetary constraints, some states cannot otherwise justify the technology investment. Hopefully Section 306 of the Preventing Sex Trafficking and Strengthening Families Act established the authority to move forward in this area.

d. Another issue that may warrant being addressed is employees shifting between related employers. Due to tax and liability management trends, large and mid-sized employers are increasingly organizing into separate legal entities (i.e., with different Federal Employer Identification Numbers); often recognized by various laws to be related employers (controlled groups or aggregated groups). Employees often shift between such organizations (from one "FEIN" to another) while working for the same organization. Under these circumstances, when the employee moves (e.g., from one store to another), if the new location has a different federal ID, a new support order may be required to the "new" employer. It is only voluntarily that the employee can request the support order be moved. This adds extra paperwork and can disrupt child support payments. It may be worth an effort to recognize related employers under the law such that withholding orders may be automatically moved from one employer to a related employer.

We hope that OCSE finds this information to be of assistance. NPRC supports and encourages

[5] *Source: State/Employer Contact and Program Information State Disbursement Unit, 1/2/2015, page 71*

regular re-evaluation of existing rules, laws and systems, so that we can collectively improve them, thereby improving the experience of employers and increasing child support collections for families. NPRC members would be happy to participate in further discussions of these recommendations.

Sincerely,

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