

	<b>INDIANA DEPARTMENT OF CHILD SERVICES</b> <b>TITLE IV-D POLICY MANUAL</b>	
	<b>Chapter 12: Enforcement</b>	<b>Effective Date: 03/22/2021</b>
	<b>Section 2.1: Income Withholding Orders</b>	<b>Version: 2</b> <b>Revision Date: 03/22/2021</b>

**BACKGROUND**

A key change in the Family Support Act of 1988 was the introduction of “immediate income withholding” to ensure regular payments are distributed to the obligee.<sup>1</sup> With the passage of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in 1996, the Title IV-D agency was given the authority to administratively issue income withholding orders (IWOs) using a uniform form prescribed by the Secretary of the Department of Health and Human Services.<sup>2</sup>

**DEFINITIONS**

1. **“Delinquent”**, for the purposes of income withholding, means the obligor is in arrears in the amount equivalent to one (1) month of court ordered child support.<sup>3</sup>
2. **“Income”**, for the purposes of income withholding, means earnings or other periodic payments of money from any source, and any other property subject to withholding for child support under Indiana law.<sup>4</sup>
3. **“Income payor”**, for the purposes of income withholding, means an employer or any other person who owes income to a child support obligor.<sup>5</sup>

**POLICY**

In all Indiana child support proceedings where a Court establishes, modifies, or enforces a child support order, the Court is required to include in its order immediate income withholding for child support payments, unless the Court issues a stay of implementation.<sup>6</sup> In a Title IV-D case where the Court does not order immediate income withholding and does not issue a stay of implementation, the Child Support Bureau (CSB) or Title IV-D Prosecutor’s Office shall issue an IWO.<sup>7</sup>

When the Title IV-D Prosecutor’s Office or CSB issues an initial IWO in a Title IV-D case, a Notice of Income Withholding (NOW) is automatically issued to the obligor concurrently with the IWO issued to the income payor.<sup>8</sup> The NOW provides information about the IWO and details on

<sup>1</sup> P.L. 100-485

<sup>2</sup> 42 U.S.C. § 666(c)(1)(F); 42 U.S.C. § 654a(g)(1)(A)

<sup>3</sup> IC 31-9-2-36(a)

<sup>4</sup> IC 31-9-2-56(a)

<sup>5</sup> IC 31-9-2-57(a)

<sup>6</sup> IC 31-16-15-0.5(a); 42 U.S.C. § 666(a)(8); 45 C.F.R. § 303.100(g)

<sup>7</sup> IC 31-16-15-2.5; IC 31-25-4-17(a)(4); 42 U.S.C. § 666(b)(2)

<sup>8</sup> IC 31-16-15-3.5(a); 42 U.S.C. § 666(b)(4)

how the obligor can contest implementation of the IWO.<sup>9</sup> If required by local rules established by the Title IV-D Prosecutor's Office, additional NOWs may be issued manually and concurrently with each subsequent IWO issued on the case.

Subsequent IWOs may be issued when:

1. The amount of current child support has been modified;
2. Arrears have been adjudicated;
3. Unadjudicated arrears have increased and additional withholding for arrears is permitted by statute; or
4. A new income payor is identified.

## REFERENCES

- [IC 31-9-2-36](#): "Delinquent"
- [IC 31-9-2-56](#): "Income"
- [IC 31-9-2-57](#): "Income payor"
- [IC 31-16-15-0.5](#): Income withholding orders; stay
- [IC 31-16-15-2](#): Lifting stay of implementation of income withholding order
- [IC 31-16-15-2.5](#): Income withholding order issued by Title IV-D agency; implementation
- [IC 31-16-15-3.5](#): Notice to withhold income
- [IC 31-16-15-4.3](#): Income withholding order; contesting implementation
- [IC 31-16-15-5.5](#): Income withholding order; lifting stay of implementation
- [IC 31-16-15-19](#): Severance pay, accumulated sick pay, vacation pay, accumulated commissions, bonuses, or other lump sum payments; withholding of support arrearages
- [IC 31-16-15-22](#): Termination of income withholding
- [IC 31-16-15-23](#): Liability of income payors
- [IC 31-25-4-17](#): Support related duties of the bureau
- [IC 33-37-5-6](#): Support and maintenance payments; fees
- [465 IAC 3-3-3](#): Request for hearing
- [15 U.S.C. § 1673](#): Restriction on garnishment
- [42 U.S.C. § 654a](#): Automated data processing
- [42 U.S.C. § 666](#): Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement
- [45 C.F.R. § 303.2](#): Establishment of cases and maintenance of case records
- [45 C.F.R. § 303.100](#): Procedures for income withholding
- [PL 100-485](#): Family Support Act of 1988

## PROCEDURE

### 1. Stay of Withholding

When a Court establishes or modifies a child support order, the Court is also generally required to enter an order for the immediate withholding of the obligor's income.<sup>10</sup> However, at the Court's discretion, the Court may authorize or order a stay of immediate withholding upon either:

- a. A finding of good cause; or

<sup>9</sup> IC 31-16-15-3.5(b); 42 U.S.C. § 666(b)(4); 45 C.F.R. § 303.100(d)

<sup>10</sup> IC 31-16-15-0.5

b. The submission to the Court of a written agreement by the parties.<sup>11</sup>

a. Good Cause

A Court may find good cause to not order immediate income withholding. To support a Court's finding of good cause, one of the parties must demonstrate, and the Court must find, all of the following:

- i. A stay of implementation of the IWO is in the best interest of the child;
- ii. The obligor has a history of substantially uninterrupted, full, and timely child support payments, other than payments made through an IWO or another mandatory process of previously ordered child support, during the previous 12 months; and
- iii. An IWO would cause extraordinary hardship on the obligor.<sup>12</sup>

b. Written Agreement

A Court may stay the issuance of immediate withholding if the Court approves a written agreement submitted by the parties that contains all of the following:

- i. A statement that an IWO is not implemented immediately but that an IWO will be implemented if the:
  1. Obligor becomes delinquent; or
  2. Obligor requests implementation of the IWO;
- ii. A detailed description of an alternative payment arrangement between the parties to ensure timely payment of child support; and
- iii. A provision that the obligor shall provide current information to the Court concerning the following:
  1. The name, address, and telephone number of the obligor's place of employment; and
  2. Any health coverage available to the obligor as a benefit of employment or maintained by the obligor, including information on the:
    - a. Name of the carrier;
    - b. Health insurance policy, certificate, or contact number; and
    - c. If applicable, names and birth dates of the persons for whose benefit the obligor maintains health coverage under health insurance policy, certificate, or contract.<sup>13</sup>

When staying the implementation of an IWO based on written agreement between the parties, the Court shall also specify the date on which the stay of implementation of the IWO terminates automatically.<sup>14</sup>

c. Lifting of Stay by Court

A stay of income withholding shall be lifted by the Court when:

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<sup>11</sup> 42 U.S.C. § 666(a)(8)(B)(i); 42 U.S.C. § 666(b)(3)(A)

<sup>12</sup> IC 31-16-15-0.5(c)(1); 45 C.F.R. § 303.100(b)(2)

<sup>13</sup> IC 31-16-15-0.5(c)(2); IC 31-16-15-0.5(d)

<sup>14</sup> IC 31-16-15-0.5(e)

- i. The obligor is in arrears in an amount equivalent to one (1) month of court ordered child support;<sup>15</sup> or
- ii. The obligor requests the implementation of the IWO.<sup>16</sup>

A stay of income withholding may be lifted by the Court at the request of the obligee.<sup>17</sup> If the obligee files a petition to lift the stay of implementation, a hearing shall be set no more than 20 days after the date the petition was filed and a notice of the hearing shall be sent to the obligor.<sup>18</sup>

The Court shall grant the petition to lift the stay of implementation of the IWO at the hearing if the obligor has failed to comply with the provisions of the child support order unless the parties submit a written agreement that is approved by the Court.<sup>19</sup>

If the Court grants the petition to lift the stay of implementation of the IWO, the Court shall implement the IWO and send the IWO to the obligor's income payor.<sup>20</sup>

#### d. Lifting of Stay by Title IV-D Agency

The Title IV-D agency may lift the stay of implementation when:

- i. The obligor is in arrears in an amount equivalent to one (1) month of court ordered child support;<sup>21</sup> or
- ii. The obligor requests the implementation of the IWO.<sup>22</sup>

If the obligor requests the implementation of the IWO, the NOW is not required.<sup>23</sup>

If the Title IV-D agency lifts a court ordered stay and issues an IWO due to delinquency, the Title IV-D agency shall issue a Notice to Withhold Income (NOW) to the obligor.

## 2. Notice to Withhold Income (NOW)

A NOW shall be sent to the obligor when an initial IWO is generated by the statewide child support system (unless a stay of withholding was ordered by the Court and is lifted based on the obligor's request for implementation of an IWO).<sup>24</sup> If required by local rules established by the Title IV-D Prosecutor's Office, additional NOWs may be issued manually and concurrently with each subsequent IWO issued on the case.

The NOW provides notice to the child support obligor of the following:

- a. Income withholding has commenced and that an IWO will be sent to all current and future income payors;
- b. The amount of child support arrears that exists on the case;

<sup>15</sup> IC 31-9-2-36(a); IC 31-16-15-2; 45 C.F.R. § 303.100(c)(1)

<sup>16</sup> IC 31-16-15-2; 45 C.F.R. § 303.100(c)(1)(i)

<sup>17</sup> IC 31-16-15-5.5(a)

<sup>18</sup> IC 31-16-15-5.5(b)

<sup>19</sup> IC 31-16-15-0.5(c)(2); IC 31-16-15-0.5(d)

<sup>20</sup> IC 31-16-15-5.5(f)

<sup>21</sup> IC 31-9-2-36(a); IC 31-16-15-2.5(b)(1)

<sup>22</sup> IC 31-16-15-2.5(b)(2)

<sup>23</sup> IC 31-16-15-2.5(c)

<sup>24</sup> IC 31-16-15-3.5(a); 42 U.S.C. § 666(b)(4); 45 C.F.R. § 303.100(d)(1)

- c. The amount of income to be withheld as the sum of the following:
  - i. The amount of the obligor's current child support obligation;
  - ii. The amount of any court ordered payments toward arrears;
  - iii. The amount of any statutory payment toward unadjudicated arrears; and
  - iv. A \$2.00 fee to be paid by the obligor, at the income payor's option, for each payment forwarded by the income payor to the Indiana State Central Collection Unit (INSCCU); and
- d. How to contest the initial IWO, due to a mistake of fact, via written request to CSB no more than 20 days after the NOW is issued.<sup>25</sup>

### 3. Contesting Withholding Through Administrative Hearing<sup>26</sup>

If the obligor wishes to contest the issuance of an IWO, within 20 days of the date the NOW is mailed, the obligor must submit a written request for an administrative hearing to CSB.<sup>27</sup> The only basis for contesting an IWO is that a "mistake of fact" has occurred.<sup>28</sup> A mistake of fact, for the purposes of contesting an IWO, is either:

- a. An error in the amount of current or past due support listed on the NOW; or
- b. Mistaken identity of the obligor.<sup>29</sup>

### 4. Automatic Default IWOs

In a Title IV-D case where a child support obligation has been ordered or modified and where the Court does not issue a stay of withholding, or where the court ordered stay is lifted by the Title IV-D agency at the obligor's request or due to the obligor's delinquency, the statewide child support system utilizes various triggers to determine when to automatically do the following:

- b. Generate a default IWO to issue to the income payor; and
- c. Generate a NOW to issue to the obligor concurrently with the IWO issued to the income payor where there is no record of a prior NOW issued for the case.<sup>30</sup>

An automatic default IWO is created by the statewide child support system using existing employment, court order, and subaccount balance data in the statewide child support system.

### 5. Manual or Custom IWOs

IWOs manually created by the Title IV-D Prosecutor's Office or CSB may be customized to amend the amounts to withhold and/or change the income payor to which the IWO is directed.

Other IWOs may be manually generated by the Title IV-D Prosecutor's Office or by CSB to income payors for income owed to obligors in the form of lump sums, funds in financial accounts, and proceeds from insurance claims.

<sup>25</sup> IC 31-16-15-3.5(b); 45 C.F.R. § 303.100(d)

<sup>26</sup> Chapter 12: Enforcement, Section 6: Administrative Hearings

<sup>27</sup> IC 31-16-15-4.3(a); 465 IAC 3-3-3(c)

<sup>28</sup> IC 31-16-15-4.3(b)

<sup>29</sup> IC 31-16-15-4.3; 465 IAC 3-3-3(k); 45 C.F.R. § 303.100(c)(2)

<sup>30</sup> For more information on the data and conditions which will trigger an automatic default IWO, see the ISETS Income Withholding Complete Guide

If a manual IWO is generated for a case in which a previous NOW has never been provided, the Title IV-D Prosecutor's Office or CSB, whichever is issuing the IWO, shall also generate a NOW to be sent to the child support obligor.<sup>31</sup>

## 6. Sending the IWO

### a. Electronic IWO (e-IWO)<sup>32</sup>

An income payor may opt to receive an electronic IWO (e-IWO). When the statewide child support system transmits an e-IWO, a paper copy of the IWO will also print for the case file unless the Title IV-D Prosecutor's Office has chosen to have all IWOs printed centrally at CSB. The paper copy of an e-IWO is not to be mailed to the income payor unless a paper copy is requested to resolve a problem.

E-IWOs require the recipient to acknowledge the receipt of the e-IWO with either:

- i. A rejection and a reason; or
- ii. An acceptance.

### b. Mail or Fax IWO

Except for e-IWOs as outlined above, IWOs generated through the statewide child support system are:

- i. Printed at and mailed or faxed by the Title IV-D Prosecutor's Office; or
- ii. Printed and mailed centrally if the Title IV-D Prosecutor's Office has chosen to have those documents printed centrally at CSB.

A daily report lists the cases where IWOs and NOWs were automatically produced.

## 7. Additional Withholding Amounts

If there is an adjudicated arrears amount, the Court may order an amount be paid toward the arrears in addition to the current child support obligation. Furthermore, if any unadjudicated amount of arrears has accrued, the Title IV-D Prosecutor's Office or the CSB may add the following additional amounts to the IWO.<sup>33</sup> The statewide child support system automatically adds the following amounts when a default IWO is generated.

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<sup>31</sup> IC 31-16-15-3.5(a); 42 U.S.C. § 666(b)(4); 45 C.F.R. § 303.100(d)(1)

<sup>32</sup> See the e-IWO Acknowledgements and Checking for e-IWO Instructions Guide for additional information

<sup>33</sup> IC 31-16-15-2.5(f)

Unadjudicated Arrears Withholding Amount	
Amount of Arrears	Additional Amount to Withhold
\$500.00-\$2,999.99	\$20.00 per week
\$3,000.00-\$4,999.99	\$25.00 per week
\$5,000.00-\$9,999.99	\$30.00 per week
\$10,000.00-\$14,999.99	\$35.00 per week
\$15,000.00-\$19,999.99	\$40.00 per week
\$20,000.00-\$24,999.99	\$45.00 per week
\$25,000.00 and greater	\$50.00 per week

Additionally, if the unadjudicated arrears is between \$10.00 and \$499.99, the Title IV-D Prosecutor's Office may manually add up to \$10.00 per week to the IWO.<sup>34</sup>

## 6. Withholding Limits

The Consumer Credit Protection Act (CCPA) sets limits on the maximum amount of a person's disposable earnings that can be withheld from the obligor's wages or lump sum earnings.<sup>35</sup> The CCPA limits the income withholding amounts to:

- a. 50%, if the obligor is supporting a spouse and/or child other than the spouse and/or child named in the order;
- b. 60%, if the obligor is not supporting another spouse and/or child; and
- c. 55% or 65% respectively, if the IWO includes an arrears greater than 12 weeks (at least three (3) months of past-due child support).<sup>36</sup>

IWOs generated through the statewide child support system will prepopulate the applicable CCPA withholding percentage at 50% or 55%, depending on whether the obligor owes arrears constituting at least 12 weeks of past due child support.

If the obligor is entitled to a lump sum payment (such as severance pay, accumulated sick pay, vacation pay, commission, or bonuses) and has a child support arrears, the income payor shall withhold the lesser amount of the arrears or the weekly amount of court ordered child support, multiplied by the number of weeks represented by the lump sum payment, up to CCPA limits.<sup>37</sup>

## 7. Termination of Income Withholding

The statewide child support system will automatically generate a termination of IWO when:

- a. The duty to support a child has ended; and
- b. There are no child support arrearages.<sup>38</sup>

Termination of an IWO is sent in the same manner as IWOs above.

<sup>34</sup> IC 31-16-15-2.5(f)(1)

<sup>35</sup> 15 U.S.C. § 1673(b); 42 U.S.C. § 666(b)(1); 45 C.F.R. § 303.100(a)(3)

<sup>36</sup> 15 U.S.C. § 1673(b)

<sup>37</sup> IC 31-16-15-19

<sup>38</sup> IC 31-16-15-22(a); 45 C.F.R. § 303.100(a)(7)(i)

There may be instances when a Title IV-D Prosecutor's Office may wish to manually issue a termination IWO. The two (2) most common scenarios for a manual termination of an IWO are:

- a. When the statewide child support system generates IWOs to multiple employers and current child support is satisfied by an IWO for one (1) income payor; or
- b. In an intergovernmental case when the initiating jurisdiction requests termination of an Indiana IWO.

The reason for any manual termination of an IWO shall be documented in the statewide child support system.<sup>39</sup>

## FORMS AND TOOLS

1. [Appeals Processing: How to Process Appeals in ISETS](#)
2. [e-IWO Acknowledgements and Checking for e-IWO Instructions](#)
3. [Employer Maintenance Unit \(EMU\) Frequently Asked Questions](#)
4. [ISETS Income Withholding Complete Guide](#)
5. [Stopping Automatic Income Withholding Orders \(IWO\)](#)

## FREQUENTLY ASKED QUESTIONS

1. Q. Can the Title IV-D Prosecutor's Office or CSB modify the IWO form for a specific situation?
  - A. No. The IWO must be issued via the federal OMB-approved form for income withholding. There is a section for supplemental information on the form that may be modified and which contains information specific to the type of IWO generated through the statewide child support system. Income payors are instructed to reject non-conforming IWOs.
2. Q. Are annual support fees collected by IWO?
  - A. Yes, if the ASFE is due and not paid following the annual support fee notice sent by CSB, CSB will issue a separate IWO to the obligor's most recent employer that has not been end dated in the statewide child support system.<sup>40</sup>
3. Q. What happens if an income payor ignores an IWO?
  - A. If an income payor fails to forward the IWO payments as ordered, then the Title IV-D Prosecutor shall send a notice of failure to comply via certified mail to the income payor's address listed in the statewide child support system.<sup>41</sup> The income payor is liable for the amount of income not paid from the income IWO, any interest that accrues on the judgment, and reasonable attorney's fees and court costs.<sup>42</sup> The income payor who fails to comply with the IWO may be liable for contempt of court.<sup>43</sup>

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<sup>39</sup> 45 C.F.R. 303.2(c)

<sup>40</sup> IC 33-37-5-6(f)

<sup>41</sup> IC 31-16-15-23(a)

<sup>42</sup> IC 31-16-15-23(b)(2)

<sup>43</sup> IC 31-16-15-23(c)

<b>RELATED INFORMATION</b>
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1. Chapter 12: Enforcement, Section 6: Administrative Hearings

<b>REVISION HISTORY</b>
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<b>Version</b>	<b>Date</b>	<b>Description of Revision</b>
Version 1	04/22/2019	Final Approved Version
Version 2	03/22/2021	Reordered Procedure. Updated for consistency with the other parts of Section 2. Added FAQ for when income payor ignores IWO. Verified citations are correct.