

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Office of Child Support, Ohio Department of Job and Family Services

Regulation/Package Title: Child Support – 5 Year Review

Rule Number(s): 5101:12-50-12

Date: 7/20/2012

**Rule Type:**

New

Amended

5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **Regulatory Intent**

**1. Please briefly describe the draft regulation in plain language.**

OAC rule 5101:12-50-12 describes the actions to be taken by a child support enforcement agency (CSEA) when notified by a payor, such as an employer or other entity that pays income to an obligor, that an obligor is eligible to receive a lump sum payment. The rule informs the CSEA that state law (sections 3121.037 and 3121.12 of the Revised Code) requires a payor to notify the CSEA when a lump sum payment is to be issued to the obligor.

**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

Sections 3121.037, 3121.12, and 3125.25 of the Revised Code.

- 3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

Yes, 45 CFR Part 303.100 requires that states establish procedures to implement collections of child support via an income withholding.

- 4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not Applicable.

- 5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The rule was promulgated pursuant to the requirements of the Revised Code to collect child support obligations from obligors who owe child support arrears.

- 6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

Success is measured by collecting child support obligations from obligors.

### **Development of the Regulation**

- 7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

This rule was made available for public comment by stakeholders (including CSEAs and other child support professionals, as well as payors/employers) during the ODJFS policy clearance process from 7/15/12 to 7/23/12.

- 8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

Received no substantial comments from child support professionals; no comments were received from payors/employers.

- 9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

Not applicable.

- 10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

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The rule was developed to comply with the Revised Code.

**11. Did the Agency specifically consider a performance-based regulation? Please explain.**

No, rather this rule was developed to comply with the Revised Code.

**12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The rule was reviewed by the Office of Legal and Acquisition within the Ohio Department of Job and Family Services to ensure that there was no duplication with other agency rules. This rule was promulgated pursuant to the Revised Code.

**13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

The procedures and process described in this rule were implemented in 1989 and have been in continuous operation without substantive alteration since that time.

**Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community;**

Any payor, such as an employer or other entity that pays income to an obligor is required to comply with the Revised Code requirement.

**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

The requirement of this rule is consistent with the statute, and any resulting costs of payor time for compliance. Affected entities are currently required to establish a process internally to identify lump sum payments to be made to individuals subject to income withholding; and to hold payments pending notification by the CSEA.

**c. Quantify the expected adverse impact from the regulation.**

No new impact. The Revised Code procedures and process described in this rule were implemented in 1989 and have been in continuous operation without substantive alteration since that time.

**15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

The rule was developed to comply with the Revised Code.

**Regulatory Flexibility**

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**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

No, compliance is required by the Revised Code.

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

Not Applicable.

**18. What resources are available to assist small businesses with compliance of the regulation?**

The local CSEA are available to answer any questions that a payor may have concerning compliance and the process.

\*\*\* DRAFT - NOT YET FILED \*\*\*

5101:12-50-12            **Lump sum payments.**

(A) This rule describes the responsibilities of a payor and a child support enforcement agency (CSEA) regarding lump sum payments to be made to an obligor by a payor when the obligor is subject to income withholding pursuant to section 3121.03 of the Revised Code.

(B) The following definitions are applicable to this rule:

- (1) "Cash out of vacation pay" means income disbursed to an employee in lieu of actual vacation or leave taken. When a payor notifies a CSEA of a lump sum payment that is for a cash out of vacation pay, the CSEA shall proceed in accordance with this rule.
- (2) "Lump sum payment" means a supplemental payment that an obligor is receiving or is eligible to receive from a payor who has received an income withholding notice regarding the obligor.

(C) In accordance with division (A)(~~1011~~) of section 3121.037 of the Revised Code, a payor is required to do all of the following:

- (1) Notify the CSEA of any lump sum payment of any kind of one hundred fifty dollars or more that is to be made to an obligor for whom support is being withheld. The payor must notify the CSEA of the lump sum payment:
  - (a) No later than forty-five days before the lump sum payment is to be made;  
or
  - (b) On the date that the payor determines the lump sum payment is due the obligor when that date is less than forty-five days before the payment is to be made.
- (2) Hold the lump sum payment for thirty days after the date on which the lump sum payment would otherwise have been paid to the obligor.
- (3) Upon receipt of an order from the court or CSEA that issued the support order, pay all or a specified amount of the lump sum payment to the child support payment central (CSPC) within the office of child support.

(D) The CSEA shall, upon notification by a payor that a lump sum payment of one

hundred fifty dollars or more is to be made to the obligor, determine whether the obligor has any arrears or is in default under the support order.

When an obligor had no existing arrears before the issuance of an income withholding or deduction notice and collections are received as a result of the income withholding or deduction notice in the amount required, the CSEA shall not consider the obligor as having arrears for the purpose of lump sum attachment when periodic temporary arrears are created due to a discrepancy between the payment schedule and the monthly obligation.

- (1) When the CSEA determines that the obligor is not in default or has no arrears, the CSEA shall:
  - (a) In the case of an administrative child support order, issue an administrative order directing the payor to immediately pay the full amount of the lump sum payment to the obligor; or
  - (b) In the case of a court support order, issue a notice to the court recommending that the lump sum payment be released to the obligor.
- (2) When the CSEA determines that the obligor has ~~an~~ arrears or is in default, the CSEA shall:
  - (a) In the case of an administrative child support order, issue the JFS 07726, "Administrative Order for Transmittal of Lump Sum Payment" (rev. 06/2005), to the payor and issue a copy of the JFS 07726 to the obligor.
    - (i) When the lump sum payment is less than or equal to the total arrears, the CSEA shall require the payor to transmit the total lump sum payment to CSPC.
    - (ii) When the lump sum payment is greater than the total arrears, the CSEA shall require the payor to transmit an amount equal to the total arrears to CSPC and to release the balance of the lump sum payment to the obligor.
  - (b) In the case of a court support order, issue a notice to the court that a lump sum payment is to be made to the obligor. The notice shall include the amount of the lump sum payment, when known, and the amount of the arrears.
    - (i) When the lump sum payment is less than or equal to the total arrears,

the CSEA shall recommend to the court that the court issue an order requiring the payor to transmit the total lump sum payment to CSPC.

- (ii) When the lump sum payment is greater than the total arrears, the CSEA shall recommend to the court that the court issue an order requiring the payor to transmit an amount equal to the total arrears to CSPC and to release the balance of the lump sum payment to the obligor.

- (E) Should the CSEA receive a notice from a payor that a lump sum payment of less than one hundred fifty dollars is to be paid to an obligor who is subject to a court or administrative child support order, the CSEA may take action pursuant to paragraph (D) of this rule.

The CSEA shall document in its handbook of internal procedures when the CSEA will use the optional enforcement technique pertaining to lump sum payments of less than one hundred fifty dollars.

- (F) In accordance with section 3121.0311 of the Revised Code, for workers' compensation claims pending or filed on or after June 30, 2006, the administrator of the bureau of workers' compensation or a self-insuring employer is responsible for the deduction of attorney's fees and necessary expenses before notifying the CSEA of the lump sum.

The administrator of the bureau or self-insuring employer is not required to notify the CSEA of the lump sum when, following the deduction of attorney's fees and necessary expenses, the balance is less than one hundred fifty dollars.

Effective:

R.C. 119.032 review dates:

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Certification

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Date

Promulgated Under:	119.03
Statutory Authority:	3125.25
Rule Amplifies:	3121.03, 3121.037, 3121.0311, 3121.12, 3125.03
Prior Effective Dates:	4/1/89, 6/1/90, 7/15/92, 1/1/98, 12/1/02, 09/1/05, 8/15/07