PIQ-TRIBAL-04-01

DATE: October 28, 2004

TO: Tribal and State IV-D Directors

FROM: Sherri Z. Heller, Ed.D.
Commissioner
Office of Child Support Enforcement

SUBJECT: Direct Income Withholding when Employers are Subject to a Tribe's Jurisdiction, Providing Tribal IV-D Services and Access to State Data.

OCSE issues Policy Interpretation Questions (PIQs) on a myriad of policy issues in the child support enforcement community. This is the first PIQ-Tribal to be issued by OCSE.

Income withholding is universally acknowledged as an effective means of enforcing child support obligations. The Final Rule requirements for income withholding for tribes operating a IV-D program (found at 45 CFR 309.110) are substantially the same as those requirements governing states' IV-D programs. Tribes are encouraged to take full advantage of income withholding for enforcement of their own orders and to assure efficient and effective enforcement of orders referred to the tribal IV-D agency for enforcement in intergovernmental cases.

While the Uniform Interstate Family Support Act (UIFSA) compels an employer subject to state jurisdiction to honor a withholding order sent directly from another state or an Indian tribe, tribes are not subject to UIFSA. However, the Full Faith and Credit for Child Support Orders Act (FFCCSOA) 28 USC 1738B requires tribes to enforce child support orders made by a court or administrative agency which had appropriate jurisdiction and afforded the parties a reasonable opportunity to be heard. This would include enforcement of orders providing for income withholding.

The regulation at 45 CFR 309.110(d) states that the income withholding must be carried out in compliance with the procedural due process requirements established by the tribe or tribal organization. Accordingly, tribes may conduct preliminary reviews of foreign orders to ensure that the court or administrative authority properly entered the order, but such processing of orders must be done expeditiously to ensure that orders are promptly served on employers within the tribe's jurisdiction pursuant to the regulation at 45 CFR

309.110(n). In accordance with 309.110(j), the only basis for contesting a withholding is a mistake of fact, which means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.

While the regulations do not require tribes to have laws and procedures which mandate that employers subject to the tribe's jurisdiction must honor direct income withholding orders from another state or tribe, a tribe may choose to permit such withholding as a matter of administrative efficiency or comity between the tribe and other tribes and states.

QUESTION 1: May a tribe enter into an agreement with a state or another tribe, under which the tribe allows income withholding orders to be sent directly to the tribe itself as an employer, a business owned by the tribe, or to a business on tribal land owned by a tribal member or non-Indian that is not subject to state jurisdiction, without requiring a preliminary due process review of those orders by the tribal authority?

RESPONSE 1: Yes. Nothing in the statute or Federal regulations precludes a tribe from allowing a state or another tribe to utilize direct income withholding on employers who are subject to the jurisdiction of the tribe. Even where direct withholding is utilized, the non-custodial parent can still contest the withholding, but the only basis would be a mistake of fact, meaning an error in the amount of current or overdue support or in the identity of the alleged parent. 45 CFR 309.110(j).

QUESTION 2: Should a tribe utilize an expeditious due process review in situations where direct withholding is not authorized?

RESPONSE 2: Yes. The regulations at 45 CFR 309.110(n) require that the "tribal IV-D agency is responsible for reviewing and processing income withholding orders from states, tribes, and other entities, and ensuring orders are properly and promptly served on employers within the tribe's jurisdiction." (Emphasis added.) An expeditious review process will assure that due process was properly afforded in entering the original withholding order and also ensure prompt service upon the employer to minimize any lapse in payments to the family.

QUESTION 3: If a tribe enters into an agreement with a particular IV-D agency to allow that IV-D agency to utilize direct income withholding on employers subject to the tribe's jurisdiction, must the tribe also allow direct income withholding orders from all other IV-D agencies?

RESPONSE 3: No. If a tribe enters into an agreement with a particular IV-D agency to allow that agency to utilize direct income withholding on employers subject to the tribe's jurisdiction, it is reasonable to expect that similar agreements with other IV-D agencies would be acceptable to the tribe. However, even if a tribe is not willing to allow universal direct withholding, the provisions of FFCCSOA discussed above, still assure that all income withholding orders will be accorded full faith and credit, and the regulations require that they be promptly served upon employers.

QUESTION 4: May a tribe that is receiving direct funding for operating a IV-D program choose to provide services only to tribal members or members of other Indian tribes?

RESPONSE 4: No. The final rule at 45 CFR 309.65(a)(2) states that a tribe demonstrates capacity to operate a tribal IV-D program by providing evidence that the tribe or tribal organization has in place procedures for accepting all applications for IV-D services and promptly providing IV-D services required by law and regulations.

The final rule requires that all child support agencies accept applications for service from anyone and requires that the child support agency provide appropriate services. This includes taking all applications, determining what services are needed and may be provided by the tribal IV-D agency, and providing all of those services required by tribal IV-D regulations. In most cases where an applicant seeks services the tribe should be able to provide basic assistance, such as location, preparation of documents for intergovernmental processing, and case monitoring and distribution of collections forwarded from another jurisdiction. There will be instances in which states and tribes must work together to ensure that families receive the support they deserve.

QUESTION 5: Must a tribal IV-D agency respond to a request from another IV-D agency for assistance in locating custodial or noncustodial parents or sources of income and/or assets?

RESPONSE 5: Yes. Pursuant to 45 CFR 309.95, when such information is necessary for action in a case, whether it is the tribe's or another IV-D agency's case, a tribe that receives direct Federal funding to administer a IV-D program must attempt such location using all sources of information and records which are reasonably available. In addition, 45 CFR 309.120 requires that the tribal IV-D agency must comply with such intergovernmental requests for assistance.

QUESTION 6: May state IV-D programs provide child support case information to tribal IV-D programs for child support purposes?

RESPONSE 6: Yes. State child support enforcement regulations at 45 CFR 307.13(a)(1) require state IV-D agencies to have written policies concerning the sharing of child support case information to the extent necessary to carry out the state IV-D program. A state IV-D agency may share data with a tribal IV-A or IV-D program to the extent necessary for working a state IV-D case. This would allow a state IV-D program to provide data to a tribal IV-A or IV-D program where there is a case in common between the state and tribe.

Inquiries should be directed to the appropriate Regional Office.

CC: Regional Program Managers