

Date: April 30, 2026

RE: Proposed changes to income withholding order/notice and instructions
Federal Register Volume 91, No. 47, page 11979 (March 11, 2026)

I am submitting these comments on behalf of the Child Support Section of the North Dakota Department of Health and Human Services (NDCS), which is responsible for administering child support services under Title IV-D of the Social Security Act.

Through its participation on the NCCSD Employer Collaboration Committee, NDCS is familiar with many of the challenges faced by employers and other income payers in complying with income withholding orders (IWOs) issued by State IV-D agencies. While we believe some changes to the proposed form and instructions are needed for clarity, NDCS supports the proposed changes to the IWO form and instructions.

NDCS understands that a binding IWO can be issued to an income payer who makes regular payments to an independent contractor, but the risk exists that the income payer will neglect to check whether the income payer is making ongoing payments to the obligor listed in the IWO as an independent contractor rather than an employee. This would lead to inadvertent noncompliance with the IWO. The inclusion of the checkboxes in the IWO, even if neither box is checked by the IV-D agency, will remind the income payer to check with both payroll and accounts payable to determine if funds are otherwise payable to the obligor and need to be withheld. We further support the additional comment in the instruction that ultimate responsibility for complying with the IWO rests with the income payer. In fact, due to the importance of an employer diligently searching its records for any recipient matching the name of the payor listed in the IWO, we recommend that the new reminder to employers about their duty to investigate and comply should be moved from the instructions to the form itself.

The proposed instructions use the heading "Optional Checkboxes." This heading suggests that the inclusion of the check boxes is optional. However, we believe OCSE's intent is to require the inclusion of the checkboxes yet leave it up to states whether to check either, both, or neither box. If that is the case, we recommend removing the word "Optional" from the heading and reword the instruction perhaps as follows:

Please note: These are ~~optional~~ checkboxes that can be used to indicate the employment status of the obligor. Whether either, both, or neither box is checked is optional, but the checkboxes must be included in the order.

Even in a state like North Dakota which has twice considered and rejected legislation to mandate new hire reporting of independent contractors, we issue IWOs to income payers regardless of whether the income is in the form of wages or contract payments, and we agree that the checkboxes, even if unchecked, will foster improved compliance.

We recommend the addition of a third checkbox for "other/unknown." Some IWOs are issued for recurring payments to recipients that are not properly categorized as employee or independent contractor. Recipients of workers' compensation coverage or unemployment insurance benefits are two common examples. In addition, a IV-D agency may receive a reliable tip from a recipient parent that the payor is working for a business, but neither the tipster nor the IV-D agency would be in a position to know whether the work is provided as an employee or contractor; hence, "unknown" would be the applicable response.

The proposed instructions continue to cite Action Transmittal 16-04, which NDCS believes is no longer appropriate. On February 19, 2026, state IV-D agencies were advised by OCSE that archived guidance

such as AT-16-04 is “eliminated, “rescinded,” and “no longer constitute[s] active guidance.” It would add confusion to income payers to continue to cite an archived federal document, especially when the archived guidance is fairly straightforward. We recommend that the sentence referencing AT-16-04 be removed in its entirety.

Although daily pay and pay-on-demand are not yet in widespread use in North Dakota, there are a few cases where the obligor is paid in that manner and NDCS supports the proposed change.

As the proposed change is worded, it provides clear guidance to an income payer who uses a daily payroll cycle. What is less clear is whether an employer should withhold at the daily rate for an obligor who is paid on demand. For example:

Employee works for four non-consecutive days (but not a full work week) and then demands payment. One could argue that such a pay period is neither weekly nor daily. Should the income payer withhold based on the daily withholding amount multiplied by the four work days?

NDCS suggests this ambiguity be resolved in the instructions perhaps as follows:

Per Daily Pay Period. Total amount an employer/income withholder should withhold if the employee/obligor is paid daily. If employee/obligor is paid on demand, the total amount an employer/income withholding should withhold is the daily withholding amount multiplied by the number of workdays for which the employee/obligor is being paid.

In several places, full URLs are proposed to be replaced with hyperlinks. This change appears to be based on the mistaken impression that the IWO or instructions will always be received in electronic form. Our mainframe-based certified case management system cannot produce a hyperlink, nor would such a hyperlink be active in a printed copy of the IWO or instructions. While we support the overall effort to improve readability, we ask that the full URLs be retained and not use hyperlinks. Otherwise, the printed version will lack the URL and simply appear as plain text, and be less helpful to the reader.

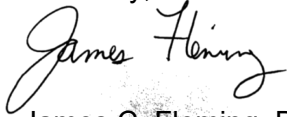
Finally, NDCS asks OCSE to use restraint in updating various terms or the location of language. In our mainframe computer system, the IWO and instructions are “hard coded,” and each change needs to be made manually and then tested to ensure remaining formatting of the document remains correct. Examples include:

- “CSA” replaced with “child support agency”
- “Be in compliance” replaced with “comply”
- **“Note: You may not remit payments using the OCSE Child Support Portal”** is proposed to be relocated.
- “May not” replaced with “cannot”
- “the federal Office of Child Support Enforcement” replaced with “OCSE”
- “Lump Sum Payments” replaced with “Report Lump Sums”
- “lump sum payments” replaced with “lump sums” (multiple places)

Without disagreeing with the semantic improvements that would be made with most of these word changes, NDCS suggests the marginal improvement of such changes is not worth the effort to change state forms accordingly.

Thank you for the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink that reads "James Fleming". The signature is written in a cursive style with a large, stylized "F".

James C. Fleming, Director
Child Support Section
North Dakota Department of Health and Human Services