

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Administration for Children and Families

### Office of Child Support Enforcement

#### 45 CFR Part 303

RIN 0970-AB67

### Child Support Enforcement Program Quarterly Wage and Unemployment Compensations Claims Reporting to the National Directory of New Hires

**AGENCY:** Office of Child Support Enforcement (OCSE), HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would implement section 453A(g)(2)(B) of the Social Security Act (the Act), as added by section 313(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and amended by section 5533 of Public Law 105-33, section 303(h) of the Act, in part, as amended by section 316(g) of PRWORA, and section 3304(a)(16) of the Internal Revenue Code of 1986, as amended by section 316(g) of PRWORA. These provisions require certain State entities to furnish quarterly wage and unemployment compensation data to the National Directory of New Hires or to the Secretary of Health and Human Services.

**DATES:** Consideration will be given to comments received by December 8, 1997.

**ADDRESSES:** Send comments to Director, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, S.W., 4th floor, Washington, D.C. 20447. Attention: Director, Policy and Planning Division, Mail Stop: OCSE/DPP. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m. on the 4th floor of the Department's offices at the above address.

**FOR FURTHER INFORMATION CONTACT:** Anne Benson, Policy Branch, OCSE (202) 401-1467, e-mail: abenson@acf.dhhs.gov. Deaf and hearing-impaired individuals may call the federal Dual Party Relay Service at 1-800-877-8339 between 8:00 a.m. and 7:00 p.m. Eastern time.

#### SUPPLEMENTARY INFORMATION:

##### Statutory Authority

This proposed regulation is published under the authority of section 453A(g)(2)(B) of the Social Security Act (the Act), 42 U.S.C. 653A(g)(2)(B), as added by section 313(b) of the Personal

Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193 and amended by section 5533 of Public Law 105-33, section 303(h) of the Act, in part, 42 U.S.C. 503(h), as amended by section 316(g) of PRWORA, and section 3304(a)(16) of the Internal Revenue Code of 1986, 26 U.S.C. 3304(a)(16), as amended by section 316(g) of PRWORA.

This regulation is also proposed under the authority granted to the Secretary of Health and Human Services (Secretary) by section 1102 of the Act, 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which she is responsible under the Act.

Section 453A(g)(2)(B) of the Act requires the State Directory of New Hires to furnish, on a quarterly basis, data concerning the wages and unemployment compensation paid to individuals to the National Directory of New Hires. Pursuant to section 453A(g)(2)(B) of the Act, the Secretary of the Department of Health and Human Services is required to publish regulations to identify the dates, format, and data elements necessary for the State Directory of New Hires to furnish the quarterly wage and unemployment compensation data to the National Directory of New Hires.

Section 3304(a)(16) of the Internal Revenue Code of 1986 contains requirements that must be included in State Unemployment Compensation laws for employers in the State to receive Federal Unemployment Tax credits. Section 316(g) of Public Law 104-193 amended section 3304(a)(16) of the Internal Revenue Code of 1986 to provide that the wage and unemployment compensation information contained in the records of the State agency administering that program shall be furnished to the Secretary of Health and Human Services, in accordance with regulations promulgated by the Secretary, as may be necessary for the purposes of the National Directory of New Hires under section 453(i)(1) of the Act. The Secretary intends to maintain the quarterly wage and unemployment compensation data reported pursuant to section 3304(a)(16) in the National Directory of New Hires (NDNH), which is being established pursuant to section 453 of the Act.

Section 303(h)(1)(A) of the Act, as amended by section 316(g) of Public Law 104-193, requires the State agency charged with the administration of the unemployment compensation program, on a reimbursable basis, to disclose

quarterly, to the Secretary of Health and Human Services, wage and claim information, as required pursuant to section 453(i)(1) of the Act, that is contained in the records of such agency. As is the case with information reported pursuant to section 3304(a)(16) of the Internal Revenue Code of 1986, the Secretary intends to maintain any quarterly wage and unemployment compensation data reported pursuant to section 303(h) of the Act in the NDNH. Section 303(h)(3)(A) of the Act defines "wage information" as "information regarding wages paid to an individual, the social security account number of such individual, and the name, address, State, and the Federal employer identification number of the employer paying such wages to such individual." Section 303(h)(3)(B) defines "claim information" as "information regarding whether an individual is receiving, has received, or has made application for, unemployment compensation, the amount of any such compensation being received (or to be received by such individual), and the individual's current (or most recent) home address." Title III of the Act, Grants to States for Unemployment Compensation Administration, is directly administered by the Department of Labor. We are referencing section 303(h)(1)(A) of the Act because this provision references information required pursuant to section 453(i)(1) of the Act. Section 453(i)(1) is administered by the Department of Health and Human Services, and the information that is required pursuant to that section (which in turn references information supplied pursuant to section 453A(g)(2)) is being established in this proposed rule. The Secretary also adopted the definitions included in section 303(h) in the proposed rule in order to enable the implementation of the provisions in an integrated and complementary manner.

##### Background

The Federal Parent Locator Service (FPLS) is a computerized network established pursuant to section 453 of the Act, 42 U.S.C. 653, through which States may request information from Federal and State agencies to find noncustodial parents and/or their employers for purposes of establishing paternity and securing support. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires the Secretary to develop an expanded FPLS to improve States' ability to locate child support obligors and to establish and enforce child support orders, as well as for other specified purposes in Title IV-D of the Act. The Office of Child Support

Enforcement (OCSE), within the Administration for Children and Families (ACF), is charged with the task of developing, implementing, and maintaining the expanded FPLS. The Secretary will house the expanded FPLS in the Social Security Administration's National Computer Center, because locating the expanded FPLS there will provide the most efficient and cost-effective mechanism for developing the expanded FPLS, as well as ensuring state-of-the-art standards for system security and confidentiality of the data.

The expanded FPLS will include the National Directory of New Hires (operational no later than October 1, 1997) and a Federal Case Registry (operational no later than October 1, 1998), and will maintain the capability to seek information from existing FPLS data sources, including, but not limited to, the Internal Revenue Service, Social Security Administration, Department of Defense, and Department of Veterans Affairs. The expanded FPLS will perform regular cross matches between the National Directory of New Hires and the Federal Case Registry. With these new FPLS resources, the interstate matching of child support obligors and employment, earnings, and benefits data will flow more efficiently and quickly between States.

The NDNH will contain three types of information. First, the NDNH will maintain employment data on newly-hired employees (new hire reporting) submitted by State Directories of New Hires pursuant to section 453A(g)(2)(A) of the Act, and by federal agencies pursuant to section 453A(b)(1)(C) of the Act. Second, the NDNH will maintain quarterly wage information on individual employees received pursuant to sections 453A(g)(2)(B) and 303(h) of the Act, and section 3304(a)(16) of the Internal Revenue Code of 1986, as well as quarterly wage information on federal employees received pursuant to 453(n) of the Act. Third, the NDNH will maintain unemployment compensation claims data received pursuant to sections 453A(g)(2)(B) and 303(h) of the Act, and section 3304(a)(16) of the Internal Revenue Code of 1986. States will be required to transmit new hire, quarterly wage and unemployment compensation claims data electronically to the NDNH. This proposed rule addresses specifically quarterly wage and unemployment compensation claims reporting to the National Directory of New Hires. Policy guidance and program instructions on new hire reporting will be forthcoming (see also OCSE Action Transmittal 97-04, March 12, 1997).

The purpose of the NDNH is to develop a repository of information on newly-hired employees, and on the earnings and unemployment compensation claims data of employees. The purpose of including quarterly wage and unemployment compensation claims data in the NDNH is to provide States with the ability to quickly locate information on the address of, employment of, and unemployment compensation being paid to, parents with child support obligations who are residing or working in other States. States will be seeking to locate these parents and their employers to either establish or enforce a child support order. Quarterly wage and unemployment compensation claims data will provide information on continuously employed and unemployed individuals who would not be located solely by new hire reporting.

Most States have been matching their quarterly wage and unemployment compensation claims data against their respective State child support caseloads since the 1980's. In addition, since 1990 the Federal Parent Locator Service has conducted cross-matches between State child support locate requests and State Employment Security Agencies, although such matches are currently limited to 250,000 cases per State per bi-weekly cross-match. The information generated from cross-matches between quarterly wage, claims and child support data, both at the State level and in the more limited FPLS context, has proven extremely beneficial for the location of child support obligors and their wages. The inclusion of quarterly wage and unemployment compensations claims data in the NDNH will allow for a substantially higher volume of interstate cross-matching than is currently possible.

The Federal Case Registry will be a national registry of individuals involved in child support cases, constructed from abstracts of child support case and order information that State Case Registries will transmit to the Federal Case Registry. The expanded FPLS, through a matching process between NDNH and the Federal Case Registry, will be able to automatically provide States with information on address, employment, and unemployment compensation claims data on parents owing child support. The expanded FPLS will also alert States to other States that have registered the same individual.

In an effort to be responsive to the President's Memorandum of March 4, 1995 to heads of Departments and Agencies which announced a government-wide Regulatory Reinvention Initiative to reduce or

eliminate burdens on States, other governmental agencies or the private sector, OCSE formed an FPLS workgroup which held three meetings between September, 1996 and March, 1997. The purpose of the FPLS workgroup is to provide consultation regarding the design, development, and regulatory requirements for the expanded FPLS. This group is comprised of representatives from State Child Support Agencies, State Employment Security Agencies, the Federal Office of Child Support Enforcement, the U.S. Department of Labor, the Social Security Administration, the Interstate Conference of State Employment Security Agencies, employer groups, payroll associations, and other interested individuals. The workgroup members provided information regarding quarterly wage and unemployment compensation claims reporting which was considered in developing these proposed regulations.

#### **Description of Regulatory Provisions**

We are proposing to implement the three new statutory reporting requirements by adding a new section, 45 CFR 303.108, "Quarterly Wage and Unemployment Compensations Claims Reporting to the National Directory of New Hires," to existing rules governing the child support enforcement program under Title IV-D of the Act. Although there are three separate reporting provisions, the information required to be reported is substantially the same for all three. Therefore, OCSE proposes to address the Secretary's responsibilities under all three provisions by a single regulation which will permit the data required to be furnished under the three provisions to be supplied in a single, quarterly submission. Further, OCSE will consider the reporting requirements to have been satisfied if any one of the required reporting entities submits the information in accordance with the provisions of the regulation. OCSE intends to leave the decision as to which entity will report up to the individual States. Accordingly, the regulation refers to the "State" as the entity that must transmit data to the NDNH. However, if data is not reported as required under the proposed regulation, OCSE intends to hold the State Title IV-D agency accountable for the failure of the State Directory of New Hires to report as required under section 453A(g)(2)(B). Section 454(28) of the Act, as added by section 313(a) of PRWORA, added a new State plan requirement for Title IV-D agencies to operate a State Directory of New Hires in accordance with section 453A of the

Act. The failure to report as required pursuant to section 303(h) of the Act or section 3304(a)(16) of the Internal Revenue Code of 1986 may also result in actions being taken by the Secretary of Labor.

The proposed 45 CFR 303.108(a) contains definitions designed to clarify quarterly wage and unemployment compensation claims reporting. Paragraph (a)(1) defines "Reporting period" as the time elapsed during a calendar quarter, e.g. January–March, April–June, July–September, October–December. "Wage information" is defined in paragraph (a)(2) as: (1) the name of the employee; (2) the employee's social security number; (3) aggregate wages of the employee during the reporting period; and (4) the name and address (and optionally, any second address for wage withholding purposes) and Federal employer identification number of the employer reporting wages. In the event that an individual is working more than one job, the State must transmit separate quarterly records containing the "wage information" for each job an individual has held. The information being included as wage information is the minimal amount of data needed to meet the purposes of the NDNH. OCSE is requesting data on the names of employees in order to meet the requirements of section 453(j)(1) of the Act, 42 U.S.C. 653(j)(1). Section 453(j)(1) requires the Secretary of Health and Human Services to transmit the information in the NDNH to the Social Security Administration to verify the accuracy of the name, social security number, and birth date of each individual. "Unemployment compensation or claim information" is defined in paragraph (a)(3) as: (1) Whether an individual is receiving, has received or has applied for unemployment compensation; (2) the individual's name and current (or most recent) home address; (3) the individual's social security number; and (4) the aggregate gross amount of compensation the claimant received during the reporting quarter.

The proposed paragraph (b) of 45 CFR 303.108 contains the requirements for quarterly wage and unemployment compensation claims reporting. Under proposed paragraph (b), the State would be required to disclose quarterly, to the National Directory of New Hires, wage and claim information, as defined in paragraph (a), that is collected pursuant to a State's unemployment compensation program referenced in Title III of the Act or pursuant to section 1137 of the Act. OCSE does not propose to require the collection or reporting of any additional wage information for

purposes of the NDNH beyond that which is currently being collected. Wage and unemployment claim information is currently reported to agencies administering unemployment compensation laws under title III of the Act or to other agencies pursuant to section 1137(a) of the Act as part of the income and eligibility verification program, so proposed paragraph (b) will not impose an additional information requirement. OCSE is also aware that some States' compensation records either do not include employee names or record only a partial set of the letters in the employee's name. Similarly, OCSE is aware that State unemployment compensation laws do not require all employers to report information. In the proposed regulation, the State is only required to supply wage information which is already contained in the records of the State. Therefore, in the case of employee names or wages, a State is required to send us as much information on employee names or wages as exists in the unemployment compensation records, or in the records maintained for purposes of section 1137 of the Act if the information is maintained by another agency. The reference to section 1137 has been included to cover those situations where States have alternate data collection systems to make it clear that the data in such alternate systems would be covered by the regulation.

Similarly, the State is only required to supply claim information which is already contained in the records of the State agency administering the unemployment compensation program or the records maintained for purposes of section 1137 of the Act. There is no requirement being imposed to collect additional claim information for purposes of the NDNH. In addition, the State is only being required to furnish the NDNH with claim information that is processed electronically. OCSE believes that it is neither feasible nor cost effective to require that States transmit claims data for those relatively few benefit programs which are processed manually. State Employment Security Agencies and the Department of Labor have indicated that manually processed claims comprise a very small portion of total claims. We understand that the unemployment compensation programs being administered by States cover any compensation payable under State unemployment compensation law (including amounts payable in accordance with agreements under any Federal unemployment compensation law) and extended benefits, unemployment compensation for

Federal employees, unemployment compensation for ex-servicemen, trade readjustment allowances, and disaster unemployment assistance. We invite comment regarding the regulatory language and whether it appropriately covers these benefits.

The proposed 45 CFR 303.108(c) sets the time frames for quarterly wage and claims reporting. The State would be required to report wage information for the reporting period no later than the end of the fourth month following the reporting period. For the reporting period of July–September, 1997, the first period for which wage reporting would be required, the State would be required to furnish wage information to the Secretary no later than January 31, 1998. Currently, State laws generally allow employers one month following the reporting period to report quarterly wages to the State agency administering the unemployment compensation program. We believe that the time frame for States to report wage information to the Secretary for the purposes of the NDNH will ensure that States have adequate time to enter, edit, and transmit wage information to the Secretary. Given the necessity and importance of maintaining accurate wage data in the NDNH, the proposed schedule for reporting allows States ample time to work with employers to correct inaccurate wage reports and to submit complete and comprehensive wage information on employees within a State.

The State would be required to report claim information for the reporting period no later than the end of the first month following the end of the reporting period. The State would be required to begin the reporting of claim information for the reporting period of October–December, 1997. We believe that a shorter time frame for submitting claim information, as opposed to wage information, is appropriate because the State agency charged with administering the unemployment compensation program maintains this data on an ongoing basis. Also, as noted above, the collection of wage information lags behind the collection of claim information because of the time required to ensure that wage information submitted is accurate.

In order to ensure the effective implementation of the NDNH, the Secretary is planning a staggered schedule for initial data submissions to the NDNH. The reporting of new hire data will begin on October 1, 1997, followed by initial quarterly wage and claims information submissions on January 31, 1998. For this reason, the Secretary will require that claims

information be submitted for the period beginning October–December, 1997, rather than July–September, 1997.

The proposed 45 CFR 303.108(d) provides that the Secretary will establish standardized formats for reporting quarterly wage and claim information and that the States will be required to adhere to such formats for reporting purposes. The formats identify the data elements, descriptions and tape specifications for reporting quarterly wage and claim information. These formats were published in the **Federal Register** for comment on July 25, 1997 (62 FR 40092).

#### **Paperwork Reduction Act of 1995**

Sections 453A(g)(2)(B) and 303(h) of the Act and section 3304(a)(16) of the Internal Revenue Code of 1986 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Administration for Children and Families has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

As discussed earlier, sections 453A(g)(2)(B) and 303(h) of the Act, and section 3304(a)(16) of the Internal Revenue Code of 1986, require various State entities to furnish to the Secretary of Health and Human Services or the National Directory of New Hires, on a quarterly basis, data concerning the wages and unemployment compensation paid to individuals. The Secretary of the Department of Health and Human Services is required to publish regulations to identify the dates, format, and data elements necessary for States to furnish this data. The purpose of these requirements is to develop a repository of information on the earnings and unemployment compensation claims data on all employees to provide the necessary information to locate individuals for child support purposes, as well as for other specified purposes in Title IV–D of the Act. This data will be combined with new hire data to be reported to the NDNH pursuant to section 453A of the Act. Quarterly wage and unemployment compensation claims data will provide for the location of continuously employed and unemployed individuals who would not be located by new hire reporting.

All 50 States, as well as the District of Columbia, the Virgin Islands, and Puerto Rico, will be required to report quarterly wage and unemployment compensation claims data to the NDNH. The proposed regulation requires the State to disclose quarterly, to the NDNH, wage and claim information that is

currently being collected pursuant to a State's unemployment compensation program referenced in Title III of the Act or pursuant to section 1137 of the Act. Wage information is defined to include: (1) the name of the employee; (2) the employee's social security number; (3) aggregate wages of the employee during the reported period; and, (4) the name, address (and optionally, any second address for wage withholding purposes), and Federal employer identification number of the employer reporting wages under a State unemployment compensation law. Claim information is defined as: (1) The status of an individual's claim for unemployment compensation (i.e., is receiving, has received, or has made application for benefits); (2) The individual's name and current (or most recent) home address; (3) the individual's social security number; and, (4) the aggregate gross amount of compensation the claimant received during the reporting quarter. To ensure that public comments have maximum effect in developing the final regulations, ACF urges that each commenter clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

Because all quarterly wage and unemployment compensation claims data will be reported from the State to the NDNH electronically and will be limited to data already being collected, the burden on the States will be minimal. The average burden per response is estimated to be 2 minutes (.03 hours). States may also have a one-time initial start-up burden of two weeks (80 hours) for reprogramming their systems to comply with Federal reporting requirements. The total annual reporting and recordkeeping burden that will result from the collection of information is estimated to be 7.13 hours.

The Administration for Children and Families will consider comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection is necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of ACF's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and

- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting non-electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington D.C. 20503, Attn: Ms. Wendy Taylor.

#### *Regulatory Flexibility Analysis*

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this proposed regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and individuals. State governments are not considered small entities under the Act.

#### *Executive Order 12866*

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. The proposed rule implements the statutory provisions by specifying the wage and unemployment compensation claims information that must be reported to the Secretary of Health and Human Services.

#### *Unfunded Mandates Act*

The Department has determined that this proposed rule is not a significant regulatory action within the meaning of the Unfunded Mandates Reform Act of 1995 (P.L. 104–4).

#### **List of Subjects in 45 CFR Part 303**

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program)

Dated: July 8, 1997.

**Olivia A. Golden,**

*Principal Deputy Assistant, Secretary for Children and Families.*

Approved: August 14, 1997.

**Donna E. Shalala,**

*Secretary, Department of Health Human Services.*

For the reasons discussed above, we propose to amend title 45 CFR Chapter III of the Code of Federal Regulations as follows:

### **PART 303—STANDARDS FOR PROGRAM OPERATIONS**

1. The authority citation of Part 303 continues to read as follows:

**Authority:** 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. A new 303.108 is added to read as follows:

#### **§ 303.108 Quarterly wage and unemployment compensation claims reporting to the national directory of new hires.**

(a) *What definitions apply to quarterly wage and unemployment compensation*

*claims reporting?* When used in this section:

(1) *Reporting period* means time elapsed during a calendar quarter, e.g. January–March, April–June, July–September, October–December.

(2) *Wage information* means:

(i) The name of the employee;

(ii) The social security number of the employee;

(iii) The aggregate wages of the employee during the reporting period; and

(iv) The name, address (and optionally, any second address for wage withholding purposes), and Federal employer identification number of an employer reporting wages.

(3) *Unemployment compensation or claim information* means:

(i) Whether an individual is receiving, has received or has applied for unemployment compensation;

(ii) The individual's name and current (or most recent) home address;

(iii) The individual's social security number; and

(iv) The aggregate gross amount of compensation the claimant received during the reporting quarter.

(b) *What data must be transmitted to the National Directory of New Hires?*

The State shall disclose quarterly, to the National Directory of New Hires, wage and claim information as defined in paragraph (a) that is collected pursuant to a State's unemployment compensation program referenced in Title III of the Act or pursuant to section 1137 of the Act.

(c) *What time frames apply for reporting quarterly wage and unemployment compensation claims data?* The State shall report wage information for the reporting period no later than the end of the fourth month following the reporting period. The State shall report claim information for the reporting period no later than the end of the first month following the reporting period.

(d) *What reporting formats will be used for reporting data?* The State must use standardized formats established by the Secretary of Health and Human Services for reporting wage and claim information.

[FR Doc. 97–26538 Filed 10–6–97; 8:45 am]

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