

May 16, 2000

Re: Interstate Liens and Levies in Washington State

Dear IV-D Director:

Since the Multi-state Financial Institution Data Match program (MS-FIDM) and the in-state Financial Institution Data Match program (FIDM) are underway in Washington state, and with High-Volume Automated Administrative Enforcement of Interstate Cases (AEI) soon to follow, we wanted to take this opportunity to offer other states an overview of Washington law for issuing interstate liens and levies in child support cases.

PIQ 99-06 clarifies that interstate liens and levies must comply with the law of the state where the seizure occurs. When levying against a financial institution account, Washington law allows for service of an order to withhold and deliver (OWD) upon the institution. RCW 74.20A.080 sets forth notice requirements which either must be present in the underlying support order, or via service on the noncustodial parent of a separate administrative notice, before the IV-D agency is allowed to serve an OWD. Due process requires that the noncustodial parent be put on notice that withholding action may be taken against earnings, wages, or assets without further notice. If that due process requirement has been satisfied, then the IV-D agency may serve an OWD on the institution in which the noncustodial parent's account is located.

The OWD must state the amount to be withheld and the amount of the support debt, and state in general terms the exemptions and the civil liability provisions for failure to comply, as set forth in RCW 74.20A.090 and RCW 74.20A.100. The OWD directs the financial institution to immediately withhold the asset upon receipt of the OWD, and to answer the order within twenty days after service. The IV-D agency must also mail or serve a copy of the OWD on the noncustodial parent on or before the date of service of the OWD on the financial institution.

If the noncustodial parent or the joint owner of the account disagrees with the action, they may request an administrative hearing within twenty days of the date the IV-D agency mailed the OWD, pursuant to WAC 388-14-390. The purpose of the hearing is to

determine whether the seized funds are exempt from collection. The burden of proof is on the party requesting the hearing. The noncustodial parent may also request an internal administrative review of the action by requesting a conference board, if the noncustodial parent is claiming that the action creates a hardship. *See* RCW 74.20A.160. If the noncustodial parent or any joint owner on the account fails to request a hearing within 20 days, the IV-D agency may distribute the funds on the twenty-first day.

As for AEI requests, the Washington State Division of Child Support (DCS) will begin accepting AEI requests from other states in June of 2000. If your state is submitting the AEI request on UIFSA Transmittal #3, you must indicate manually on the form that the request is a Non IV-D AEI request. Second, you must provide the names and dates of birth of the obligor's children on the request. If you are requesting Washington to take action against an account identified through MS-FIDM, you must indicate that this is the action requested. Under Section II of the form, you must indicate the certified debt amount, and should indicate the account information and the levy address for the asset you are requesting that DCS seize. Eventually, DCS will be able to accept UIFSA Transmittal #3 via CSNET, as long as the additional information listed above is included in the transmittal. DCS is currently participating in a nationwide pilot project to test using FCR to transmit and accept AEI cases. If your state is interested in transmitting cases via FCR, contact Ann Barkley, who is coordinating the national pilot at (202) 260-4697 or by e-mail abarkley@acf.dhhs.gov.

42 USC §666(a)(14) requires that states sending AEI requests certify the support debt of the obligor and certify that they have complied with all procedural due process requirements applicable to each case. Effective June 8, 2000, this requirement is further defined in Washington law that DCS may not assist another state with an AEI request unless the requesting state has certified that:

- (a) The requesting state has met all due process requirements for the establishment of the support order;
- (b) The requesting state has met all procedural due process requirements for the enforcement of the support order including that the obligor has been notified that another state may take action against the obligor's wages, earnings, assets, or benefits, and may enforce against the obligor's real and personal property under the child support statutes of this state or any other state without further notice; and
- (c) The amount of arrears transmitted by the requesting state is due under the support order.

Laws of 2000, Chapter 86, Section II.

States should also be aware that under Washington distribution laws, DCS distributes money seized as a result of an action taken on an AEI case proportionately among all of the obligor's cases.

On a similar note, 42 USC § 666(a)(4)(B) requires each state to afford full faith and credit to other states' liens when the entity seeking to enforce the lien complies with the procedural rules relating to recording or serving liens that arise within that state. Child support debts become liens against the property of the debtor by operation of law, pursuant to RCW 26.18.055. The provisions for filing and service of a child support lien are found in RCW 74.20A.060 and RCW 74.20A.070. The lien attaches to all real and personal property of the debtor on the date of filing with the county auditor in the county where the property is located. RCW 74.20A.060(3).

For your convenience, the Washington State Division of Child Support has developed a web site that allows you to download lien and release forms, and to search by town name to obtain the address of the county auditor where the property is located. The address for the web site is www.wa.gov/dshs/dcsexternal/.

Again, this letter simply provides an overview of Washington law, and is not meant to be an exhaustive description of the lien and levy process in Washington. As always, we are also happy to accept interstate referrals for enforcement against assets located within this state.

I hope that this information is useful to you in your efforts to enforce against assets held by delinquent noncustodial parents in Washington State. Please share this with your staff. If you have questions, you may contact Ellen Nolan at (360) 664-5066 or by e-mail at enolan@dshs.wa.gov.

Sincerely,

Meg Sollenberger
Director
Division of Child Support