

830 CMR 119A.00: CHILD SUPPORT ENFORCEMENT

Section

119A.5.1: Child Support Enforcement Electronic Funds Transfer Program

119A.6.1: Assessment of Interest and Penalties on Past-due Child Support

119A.6.2: Settlement or Equitable Adjustment of Child Support Arrearages Owed to the Commonwealth

119A.5.1: Child Support Enforcement Electronic Funds Transfer Program

(1) Statement of Purpose; Effective Date; Outline of Topics.

(a) Statement of Purpose. The purpose of 830 CMR 119A.5.1 is to implement M.G.L. c. 119A, § 5 under which the Child Support Enforcement Division of the Department of Revenue is required to use automated procedures, electronic processes and computer-driven technology to the maximum extent feasible, efficient and economical for the receipt of child support payments from employers. 830 CMR 119A.5.1 explains the procedures prescribed by the Commissioner for payment of child support by employers through the Child Support Enforcement Electronic Funds Transfer (EFT) program.

(b) Effective Date. 830 CMR 119A.5.1 shall take effect on January 1, 2004.

(c) Outline of Topics. 830 CMR 119A.5.1 is organized as follows:

1. Statement of Purpose, Effective Date, Outline of Topics.
2. Definitions.
3. Child Support EFT Program Participation.
4. Child Support Enforcement EFT Program Registration Requirements.
5. Child Support EFT Payment Requirements.
6. Timely Child Support EFT Payments.
7. Use of Payroll Processing Services.
8. Notification of Errors, Incorrect Information and Changes, Additions and Deletions of Information.
9. Penalties.

(2) Definitions. For the purpose of 830 CMR 119A.5.1, the following terms have the following meanings, unless the text requires otherwise:

Automated Clearing House (ACH), any entity that operates as a clearing house to transmit or receive entries electronically, pursuant to an agreement with an association that is a member of the National Automated Clearing House Association (NACHA).

ACH Credit Transaction Method, one of the national standards of the banking industry to transfer funds electronically among banks using the Automated Clearing House (ACH) network. In a child support ACH credit transaction, an employer, through its bank, originates an entry to credit a designated bank account and to debit its own bank account for the amount of child support payment.

Child Support Enforcement Division of the Department of Revenue (DOR), the single state agency for the Commonwealth responsible for establishing parentage and establishing, modifying and enforcing child support orders pursuant to Title IV, Part D of the Social Security Act, 42 U.S.C. § 651 *et seq.*, and M.G.L. c. 119A. The Child Support Enforcement Division is a division contained within the Department of Revenue.

Child Support Enforcement EFT Program, payment of child support by the transfer of funds electronically from an employer's financial institution to the Commonwealth's designated depository bank, in accordance with 830 CMR 119A.5.1 and procedures prescribed by the Commissioner.

Commissioner, the Commissioner of Revenue or the Commissioner's duly authorized representative.

Electronic Funds Transfer (EFT), a system used to transfer payments or funds electronically; any transfer of funds (other than a transaction originated by check, draft or similar paper instrument) that is initiated through an electronic terminal, telephonic instrument, computer or magnetic tape, to authorize a financial institution to debit or credit an account.

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Employer, as the term is defined in M.G.L. c. 119A, § 1A.

National Automated Clearing House Association (NACHA), the association that establishes the standards, rules and procedures that enable depository financial institutions to exchange ACH payments on a national basis.

Obligee, an individual to whom support is owed or in whose favor a support order has been issued or the Commonwealth if there is an assignment of child support rights pursuant to Title IV, Parts A and E, or Title XIX of the Social Security Act. *See* M.G.L. c. 119A, § 2.

(3) Child Support Enforcement EFT Program Participation.

(a) Child Support Enforcement EFT Program in General. Under the Child Support Enforcement EFT program, certain employers that are required to withhold and remit child support payments pursuant to M.G.L. c. 119A, § 12(f) must make child support payments to DOR by the electronic transfer of funds. The Child Support Enforcement EFT program uses the Automated Clearing House (ACH) credit transaction method of payment. An employer that participates in the Child Support Enforcement EFT program transfers funds by instructing its designated financial institution to credit the Commonwealth's depository bank and to debit the employer's bank account for the amount of the child support payment.

(b) Mandatory Participation.

1. Employers Required to Withhold and Remit Child Support Payments for Five or More Employees. As of January 1, 2004, any employer required to withhold and remit child support payments pursuant to M.G.L. c. 119A, § 12(f) for five or more employees shall make all child support payments through the Child Support Enforcement EFT program. Once an employer is registered as a mandatory participant in the Child Support Enforcement EFT program, the employer may not withdraw from the Child Support Enforcement EFT program even if the number of employees for whom the employer is required to withhold and remit child support payments decreases to less than five.

2. Other Employers. Regardless of the number of employees for whom an employer is required to withhold and remit child support payments, any employer required to make child support payments to DOR by income withholding pursuant to M.G.L. c. 119A, § 12(f) with a history of two or more checks returned for insufficient funds, a history of irregular or untimely payments or other instances of failure to remit child support payments shall be required to make all child support payments through the Child Support Enforcement EFT program.

(c) Voluntary Participation. Any employer required to withhold and remit child support payments pursuant to M.G.L. c. 119A, § 12(f) for fewer than five employees may participate in the Child Support Enforcement EFT program on a voluntary basis. Once an employer is registered as a voluntary participant, the employer shall remain subject to 830 CMR 119A.5.1 and DOR's procedures established for mandatory participation, except as provided in 830 CMR 119A.5.1(3)(d)2.

(d) Waiver and Withdrawal from Participation. An employer may request a waiver from participation in the Child Support Enforcement EFT program, as described in 830 CMR 119A.5.1(3)(d)1. and 2.

1. Mandatory Participants. Any employer required to participate in the Child Support Enforcement EFT program by 830 CMR 119A.5.1 may request a waiver from participation by writing to the Child Support Enforcement EFT unit. The Commissioner shall review each request for a waiver from participation in the Child Support Enforcement EFT program on a case by case basis to determine if the request for waiver is warranted.

2. Voluntary Participants. Withdrawal from participation in the Child Support Enforcement EFT program will be granted to voluntary participants upon written request, provided the employer does not meet the requirements of 830 CMR 119A.5.1 for mandatory participation in the Child Support Enforcement EFT program.

(4) Child Support Enforcement EFT Program Registration Requirements.

(a) Registration. To register for mandatory or voluntary participation in the Child Support Enforcement EFT program, an employer must obtain a Massachusetts Child Support EFT Manual (Manual) and submit its registration with the required identifying information for each employee as set forth in the Massachusetts Child Support EFT Manual.

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(b) Reconciliation of Identifying Information. Before making any child support EFT payments, an employer must ensure that the employer's identifying information for the employee matches exactly the identifying information for the employee in DOR's child support enforcement automated data system. The Child Support Enforcement EFT unit will compare the identifying information submitted by the employer for each employee with identifying information in DOR's child support enforcement automated data system. The Child Support Enforcement EFT unit shall notify the employer if there are any discrepancies between the employer's and DOR's identifying information and the employer shall cooperate with the Child Support Enforcement EFT unit to reconcile any discrepancies.

(c) DOR's Information to Employer. DOR shall provide to the employer all necessary information for completing the EFT, such as its financial institution and account number.

(5) Child Support EFT Payment Requirements

(a) Employer's Obligation. An employer shall take all action necessary to ensure that child support EFT payments will be credited to the proper child support account for each employee including, but not limited to, ensuring that the employer has the capability of creating and successfully transmitting an ACH file to its financial institution, confirming that its financial institution has the capability of remitting payments through the ACH network and meeting all NACHA standards, regulations and requirements.

(b) Employer's Test Transmission with its Financial Institution. Before making its first child support EFT payment, an employer must provide to its financial institution all relevant information as set forth in the Massachusetts Child Support EFT Manual and must conduct a test transmission of child support withholding information with its financial institution.

(c) Pre-notification Test. Before making a first child support EFT payment to DOR, an employer's financial institution should conduct a pre-notification test (pre-note test), which is a banking industry safeguard, to verify the Commonwealth's routing/transit number and bank account number. A pre-notification test is a zero-dollar transaction processed at least ten days before the employer's first child support EFT payment. The Child Support Enforcement EFT unit shall notify the employer as to whether the pre-note test was successful or whether any errors occurred in the pre-note test.

(6) Timely Child Support EFT Payments.

(a) Child Support Payment Due Date. All child support EFT payments must be credited to the Commonwealth's designated bank account by the statutory payment due date set forth in M.G.L. c. 119A, § 12(f). The Child Support Enforcement EFT program does not change any existing requirements of the Commonwealth's child support laws. An employer should determine with its financial institution when to originate its payment so that it will be timely paid. If a child support ACH credit payment cannot be timely made due to circumstances beyond the control of an employer or the employer's financial institution, the employer must remit the child support payment to DOR by means other than EFT to ensure timely payment.

(b) Proof of Child Support Payment. An employer should obtain from its financial institution verification that the proper amount of child support payment was transferred from the employer's account to the Commonwealth's account and that its child support payment was timely made. The employer has the burden of proof of proper child support payments.

(7) Use of Payroll Processing Services. An employer may use a payroll processing service to withhold and remit child support payments to DOR. A payroll processing service is subject to all requirements of 830 CMR 119A.5.1. A payroll processing service that withholds and remits child support payments on behalf of an employer for five or more employees shall be a mandatory participant in the Child Support Enforcement EFT program pursuant to 830 CMR 119A.5.1(3)(b)1. A payroll processing service that withholds and remits child support payments on behalf of an employer for fewer than five employees may be a voluntary participant in the Child Support Enforcement EFT program pursuant to 830 CMR 119A.5.1(3)(b)2.

(8) Notification of Errors, Incorrect Information and Changes, Additions and Deletions of Information.

(a) Notification of Child Support EFT Payment Errors. If an employer discovers that an error has been made in a child support EFT payment, the employer must notify the Child Support Enforcement EFT unit within two business days and must contact its financial institution for correction procedures. If DOR finds a recurring error in child support EFT payments, the Child Support Enforcement EFT unit will notify the employer.

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(b) Incorrect Information. If the Child Support Enforcement EFT unit notifies an employer that incorrect or incomplete identifying information for an employee has been submitted with a child support EFT payment, the employer must submit the correct information with the next child support EFT payment. If the employer continues to submit incorrect or incomplete information, the employer may be subject to penalties. *See* 830 CMR 119A.5.1(9).

(c) Changes, Additions and Deletions. Any changes in information (*i.e.*, a change in an employer's transmitting bank), additions of new employees or deletions of existing employees must be reported in writing to the Child Support Enforcement EFT unit within two business days of the change, addition or deletion.

(9) Penalties. Any employer required by 830 CMR 119A.5.1 to make child support payments to DOR by EFT who fails, without reasonable cause, to comply with the requirements of 830 CMR 119A.5.1 may be subject to penalties pursuant to M.G.L. c. 119A, § 12(f) or any other penalty authorized by law.

119A.6.1: Assessment of Interest and Penalties on Past-due Child Support

(1) Statement of Purpose, Effective Date, Outline.

(a) Statement of Purpose. M.G.L. c. 119A, § 6(a) authorizes the Child Support Enforcement Division of the Massachusetts Department of Revenue (DOR) to assess interest and penalties on past-due child support owed by obligors. The purpose of 830 CMR 119A.6.1 is to implement M.G.L. c. 119A, § 6(a).

(b) Effective Date. 830 CMR 119A.6.1 will take effect on July 1, 2010.

(c) Outline. 830 CMR 119A.6.1 is organized as follows:

1. Statement of Purpose, Effective Date, Outline.
2. Definitions.
3. Computation of Interest.
4. Computation of Penalties.
5. Assessment of Interest and Penalties.
6. Notice to Obligor.
7. Distribution of Partial Payments, Interest and Penalties.
8. Enforcement of Interest and Penalties.
9. Previously Accrued Interest and Penalties.
10. Waiver of Interest and Penalties Owed to the Commonwealth.

(2) Definitions. For purposes of 830 CMR 119A.6.1, the following terms have the following meanings:

Assessment Date, the last day of each month, the date on which interest and penalties are assessed.

Child Support Enforcement Division of the Department of Revenue (DOR), the single state agency for the Commonwealth responsible for establishing parentage and establishing, modifying and enforcing child support orders pursuant to Title IV, Part D of the Social Security Act, 42 U.S.C. § 651 *et seq.*, and M.G.L. c. 119A. The Child Support Enforcement Division is a division contained within the Department of Revenue.

Commissioner, the Commissioner of Revenue or the Commissioner's duly authorized representative.

Interest, a monthly charge authorized by M.G.L. c. 119A, § 6, for failing to pay an amount of child support due as of the Assessment Date, to be paid to an obligee.

Most Recent Monthly Obligation, the total amount of current child support owed by an obligor during the current month or, in cases in which there is no longer a current child support order, but the obligor owes past-due child support, an amount equal to 100% of the monthly amount of the obligor's last current child support obligation, the monthly amount of any income levy issued by DOR, or, if DOR has not issued an income levy, the monthly amount billed by DOR.

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Obligee, an individual to whom support is owed or in whose favor a support order has been issued or the Commonwealth if there is an assignment of child support rights pursuant to Title IV, Parts A and E, or Title XIX of the Social Security Act. *See* M.G.L. c. 119A, § 2.

Obligor, an individual, or the estate of a decedent, who owes a duty of support, or who is liable under a child support order. *See* M.G.L. c. 119A, § 2.

Past-due Child Support, the principal amount of child support, including medical support, which is due under a child support order or family support order issued by a court of the Commonwealth and which is unpaid as of the date on which it was due, whether the amount due is a fixed sum or is accruing periodically, including any amount of restitution ordered by a court or an administrative agency of competent jurisdiction. *See* M.G.L. c. 119A, § 6(b)(1).

Penalties, a monthly charge authorized by M.G.L. c. 119A, § 6, for failing to pay an amount of child support due as of the Assessment Date.

(3) Computation of Interest. Interest on past-due child support will be assessed at a monthly rate of .5%. Interest will be computed on the total past-due child support owed on the Assessment Date. In the event that DOR makes an adjustment of the total past-due child support owed after the Assessment Date, DOR will reassess the interest based on the adjustment in the amount of past-due child support owed. Interest will apply to all past-due child support owed on July 1, 2010, and to all past-due child support which accrues from July 1, 2010, forward, including all restitution from the date established or July 1, 2010, whichever is later. Interest will not be assessed on interest or penalties.

(4) Computation of Penalties. Penalties on past-due child support will be assessed at a monthly rate of .5%. Penalties will be computed on the total past-due child support owed on the Assessment Date. In the event that DOR makes an adjustment of the total past-due child support owed after the Assessment Date, DOR will reassess the penalties based on the adjustment in the amount of past-due child support owed. Penalties will apply to all past-due child support owed on July 1, 2010, and to all past-due child support which accrues from July 1, 2010 forward, including all restitution from the date established or July 1, 2010, whichever is later. Penalties will not be assessed on interest or penalties.

(5) Assessment of Interest and Penalties.

(a) Monthly Assessment of Interest and Penalties. Interest and penalties will be assessed monthly pursuant to 830 CMR 119A.6.1(3) and (4) if, on the Assessment Date, the past-due child support amount exceeds \$500, unless the obligor satisfies one of the exclusion criteria set forth in 830 CMR 119A.6.1(5)(b) or one of the exemption criteria set forth in 830 CMR 119A.6.1 (5)(c).

(b) Exclusion from Monthly Assessment of Interest and Penalties. If the amount of past-due child support exceeds \$500 as stated under 830 CMR 119A.6.1(5)(a), DOR will not assess interest and penalties for the month ending on the Assessment Date if the obligor has made support payments during the month that equal the most recent monthly obligation as defined in 830 CMR 119A.6.1 (2).

(c) Exemption from Assessment of Interest and Penalties. The obligor may be eligible for an exemption from the assessment of interest and penalties if he satisfactorily documents the existence of one of the following criteria and does not otherwise have the financial ability to pay the child support. The determination as to what constitutes satisfactory documentation is in DOR's sole discretion.

1. The obligor is receiving cash benefits from a needs-based program, including, but not limited to, Supplemental Security Income (SSI), Transitional Assistance to Needy Families (TANF), and State Veterans' benefits.
2. The unemancipated child for whom support is owed is living with the obligor, either because the obligor has physical custody of the child or because the obligor and obligee are cohabiting, and the current support order has been terminated.
3. The obligor has been temporarily unable to meet his support obligation due to loss of employment, provided:

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- a. the obligor is actively seeking employment; or
 - b. a workers' compensation insurer, the Department of Unemployment Assistance (DUA) or another state's unemployment agency is remitting child support to DOR on behalf of the obligor, but the amount of the withholding is insufficient to satisfy the total monthly obligation.
4. The obligor has a medically verified disability that affects earning capacity and does not otherwise have the financial ability to meet the support obligation. An obligor may be eligible for the exemption if child support is being withheld from SSDI, veterans' benefits or other disability benefits and remitted to DOR, but the amount of the withholding is insufficient to satisfy the total monthly obligation in full.
 5. The obligor has been institutionalized in a psychiatric facility, hospice, long term care facility, nursing home, rehabilitation facility or other similar facility and has no financial ability to pay child support.
 6. The obligor has been incarcerated but is participating in or has successfully completed a counseling, job training or self-improvement program approved by DOR.
 7. The obligor has obtained a reduction, termination or suspension of the current support obligation after filing a modification complaint in the appropriate probate and family court, provided that the exemption is not available if the reduction, termination or suspension of the current support obligation arose in the context of a contempt action. The exemption will be retroactive only to the date of filing of the modification complaint.
 8. The obligor is on active duty in the United States Armed Forces and is paying child support by income withholding, but the amount of withholding is insufficient to satisfy the total monthly obligation in full.
 9. The obligor has been approved for a hardship exemption by DOR.

For purposes of 830 CMR 119A.6.1(5)(c), a person is deemed to have the financial ability to pay the support obligation if he receives unemployment compensation benefits, workers' compensation benefits, Social Security Disability Insurance (SSDI), federal veterans' disability benefits or benefits under a disability policy of insurance.

(d) Conditions for Exemption from Assessment of Interest and Penalties. It shall be the responsibility of the obligor to notify DOR of the existence of any of the exemption criteria set forth in 830 CMR 119A.6.1(5)(c). The exemption from assessment of interest and penalties will apply only for as long as the obligor meets one of the criteria set forth in 830 CMR 119A.6.1(5)(c). The obligor is not entitled to receive an exemption from the assessment of any interest and penalties once DOR has collected the assessed interest or penalties.

(6) Notice to Obligor. DOR will notify the obligor of the interest and penalties owed on past-due child support at least once annually.

(7) Distribution of Partial Payments, Interest and Penalties.

(a) Distribution of Partial Payments. Any payments DOR receives in excess of both current and past-due support owed will be applied to interest first and then to penalties that have accrued.

(b) Distribution of Interest.

1. If an obligor owes interest for more than one family, DOR will distribute interest collected *pro rata*, based on the amount of interest owed for each family, including interest assessed on past-due child support owed to the Commonwealth as a result of an assignment of child support rights pursuant to Title IV, Parts A and E, or Title XIX of the Social Security Act.

2. If an obligor owes interest to both a family and the Commonwealth as a result of an assignment of child support rights pursuant to Title IV, Parts A and E, or Title XIX of the Social Security Act, DOR will distribute interest collected to the family first, provided that the family is not receiving public assistance. If the family is receiving public assistance, DOR will distribute interest collected to the Commonwealth first, and then to the family.

(c) Distribution of Penalties. DOR will retain penalties collected and will deposit such penalties into the Child Support Trust Fund. *See* M.G.L. c. 119A, §§ 2 and 9.

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(8) Enforcement of Interest and Penalties. Interest shall be considered child support and shall be collected and enforced by any means authorized under M.G.L. c. 119A for the enforcement and collection of child support. Penalties shall be collected and enforced by any means authorized under M.G.L. c. 119A for the enforcement and collection of child support.

(9) Previously Accrued Interest and Penalties. Any interest and penalties which were assessed before the Effective Date provided by 830 CMR 119A.6.1(1) will not be affected by the provisions of 830 CMR 119A.6.1.

(10) Waiver of Interest and Penalties Owed to the Commonwealth. The Commissioner may waive all or a portion of the interest and penalties owed to the Commonwealth if the Commissioner determines such waiver is in the best interest of the Commonwealth and will maximize collection of current child support and past-due support owed to individual obligees and to the Commonwealth as a result of an assignment of child support rights pursuant to Title IV, Parts A and E, or Title XIX of the Social Security Act.

119A.6.2: Settlement or Equitable Adjustment of Child Support Arrearages Owed to the Commonwealth(1) Statement of Purpose; Outline.

(a) Statement of Purpose. To maximize collection of child support arrearages owed to the Commonwealth, the Commissioner may accept an offer in settlement that is less than the full amount of such arrearages owed by an obligor as settlement of all or a portion of such arrearages, where there is serious doubt as to liability or collectibility of such arrearages. The Commissioner may also equitably adjust the amount of child support arrearages owed to the Commonwealth when the obligor has no present or future ability to pay the full arrearages. Any settlement or equitable adjustment shall be based upon a determination by the Commissioner that such settlement or adjustment of the assigned arrearages is in the best interests of the Commonwealth and in furtherance of the public policy of the Commonwealth that dependent children be maintained, as completely as possible, from the resources of their parents, thereby relieving or avoiding, at least in part, the burden borne by the citizens of the Commonwealth. The Commissioner's authority is wholly discretionary; no obligor has a right to a settlement or equitable adjustment under 830 CMR 119A.6.2.

(b) Outline. 830 CMR 119A.6.2 is organized as follows:

1. Statement of Purpose; Outline
2. Definitions
3. Settlement and Equitable Adjustment of Arrearages Owed to the Commonwealth
4. Factors Affecting Agreement to Settle or Equitably Adjust Arrearages Owed to the Commonwealth
5. Procedure
6. Effect of Settlement Agreement

(2) Definitions. For purposes of 830 CMR 119A.6.2 the following terms have the following meanings:

Child Support Arrearages, the principal amount of child support, including medical support, which is unpaid as of the date on which it was due, whether the amount due is a fixed sum or is accruing periodically, including any amount of restitution ordered by a court or an administrative agency of competent jurisdiction. *See* M.G.L. c. 119A, § 6(b)(1).

Child Support Enforcement Division, the single state agency for the Commonwealth responsible for establishing parentage and establishing, modifying and enforcing child support orders pursuant to Title IV, Part D of the Social Security Act, 42 U.S.C. § 651 *et seq.*, and M.G.L. c. 119A. The Child Support Enforcement Division is a division contained within the Department of Revenue.

Commissioner, the Commissioner of Revenue or the Commissioner's duly authorized representative.

Obligor, an individual, or the estate of a decedent, who owes a duty of support, or who is liable under a child support obligation. *See* M.G.L. c. 119A, § 2.

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(3) Settlement and Equitable Adjustment of Arrearages Owed to the Commonwealth.

(a) Settlement of Arrearages Owed to the Commonwealth. The Commissioner may accept an offer in settlement, including an offer payable by installments, that is less than the full amount of arrearages owed to the Commonwealth as a result of an assignment of child support rights pursuant to Title IV, Parts A and E, or Title XIX of the Social Security Act, where there is serious doubt as to liability or collectibility of such arrearages and upon a determination by the Commissioner that such settlement is in the best interests of the Commonwealth.

(b) Equitable Adjustment of Arrearages Owed to the Commonwealth. The Commissioner, in his discretion, may adjust arrearages owed to the Commonwealth as a result of an assignment of child support rights pursuant to Title IV, Parts A and E, or Title XIX of the Social Security Act when an obligor does not have the ability to pay the arrearages and principles of equity warrant such an adjustment and upon a determination by the Commissioner that such adjustment is in the best interests of the Commonwealth. In considering whether such equitable adjustment is appropriate, the Commissioner may consider the following factors:

1. the arrearages owed to the Commonwealth accrued during periods the obligor received public assistance from any federal or state needs-based program;
2. the arrearages owed to the Commonwealth accrued during periods the obligor was incapacitated, unemployed or incarcerated and the obligor may have been eligible for a modification of the child support obligation had one been pursued for these periods and the obligor presents mitigating circumstances as to why no such modification was sought;
3. the obligor is reconciled with the custodial parent or is now the custodial parent, and a dependent child resides in the obligor's household; or
4. any other factor the Commissioner deems relevant, including the obligor's payment history, communication and cooperation with the Child Support Enforcement Division and attempts to secure a modification during any periods in which arrearages to the Commonwealth accrued.

(c) Conditions of Settlement of Equitable Adjustment. In accepting any settlement or request for equitable adjustment of arrearages owed to the Commonwealth, the Commissioner may require the obligor to abide by certain terms and conditions, including those set forth in 830 CMR 119A.6.2(5)(b).

(d) Commissioner's Authority. The Commissioner's authority is wholly discretionary; no obligor has a right to a settlement or equitable adjustment under these provisions. The Commissioner may delegate the authority granted pursuant to 830 CMR 119A.6.2 and the Deputy Commissioner of the Child Support Enforcement Division shall serve as the Commissioner's designee.

(4) Factors Affecting Agreement to Settle or Equitably Adjust Arrearages Owed to the Commonwealth.

(a) Best Interests of the Commonwealth. The Commissioner shall consider the best interests of the Commonwealth in determining whether to settle or equitably adjust arrearages owed to the Commonwealth. The best interests of the Commonwealth are furthered by policies that promote payment of current support, promote responsible parenthood in support of a child's financial and emotional wellbeing, promote the best interests of the child, avoid the accrual of uncollectible debt that has a negative effect on the Commonwealth's child support program as measured by Title IV, Part D of the Social Security Act, and maximize receipt by the Commonwealth of federal incentives based on the performance of the child support program.

(b) Collectibility and Liability. Any child support arrearages owed to the Commonwealth may be settled or equitably adjusted upon a determination by the Commissioner that there is serious doubt as to either collectibility of the outstanding child support debt, or the obligor's liability. Serious doubt as to liability means the Commissioner has determined that the Child Support Enforcement Division's ability to prevail in a judicial enforcement proceeding is questionable. Serious doubt as to collectibility means the Commissioner has determined the obligor had no ability to pay the support when it first became due and had reason for not obtaining a modification; has no present ability to pay the arrearages owed to the Commonwealth; and no likely future ability to pay such arrearages.

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(c) Fraud. The Commissioner will not settle a liability for child support arrearages owed to the Commonwealth where the Commissioner finds that the obligor has acted with intent to defraud, or has intentionally concealed assets or financial history from the Commissioner. Concealment of assets shall include the placement of assets beyond the reach of the Commissioner or the failure to disclose information relating to assets which obscures the existence of such assets, whether accompanied by act, misrepresentation, silence or suppression of the truth. The Commissioner may void any agreement to settle or equitably adjust arrearages owed to the Commonwealth when such agreement was entered into based upon fraudulent information.

(5) Procedure.

(a) Submission of Offer in Settlement or Request for Equitable Adjustment. The offer in settlement or request for equitable adjustment shall include a written statement by the obligor, signed under the penalties of perjury, setting forth the reasons why the Commissioner should either settle or adjust the child support arrearages owed to the Commonwealth for less than the full amount owed. Along with the offer in settlement or request for equitable adjustment, the obligor must submit a statement of financial condition and other information as the Commissioner may require, signed by the obligor under the penalties of perjury. Failure to provide complete information in connection with an offer to settle or a request for equitable adjustment, or the furnishing of false information related to such offer or request, shall be grounds for rejection of such offer to settle or request for equitable adjustment.

(b) Terms and Conditions. As a term or condition of a settlement or equitable adjustment, the Commissioner may require the obligor to do one or more of the following:

1. demonstrate past, present, and future inability to pay by providing financial and other records;
2. make regular payments of current child support for a specified period; or
3. actively seek paid employment, participate in a community service program, participate in an appropriate job readiness or job training program, or participate in a responsible parenthood program provided by a social services agency recognized by the Commissioner.

The Commissioner may, at his discretion, fashion such other equitable terms and conditions as the Commissioner finds to be in the best interests of the Commonwealth and that promote financial and emotional support of children.

(c) Acceptance of Offer in Settlement or Request for Equitable Adjustment. An offer in settlement or request for equitable adjustment shall be considered accepted only when the Commissioner notifies the obligor in writing of its acceptance. The Commissioner's acceptance of an offer or request may be conditioned on the posting of any security that is deemed necessary for the protection of the interests of the Commonwealth. The Deputy Commissioner for the Child Support Enforcement Division as designee of the Commissioner must approve the settlement or equitable adjustment. If the settlement or equitable adjustment is fifty thousand or more dollars less than the full amount of the arrearages owed to the Commonwealth, the settlement or equitable adjustment must be approved by the Deputy Commissioner for the Child Support Enforcement Division and the General Counsel for the Department. The written agreement shall be signed by all parties and shall set forth the terms and conditions for the Commissioner's acceptance of the settlement or equitable adjustment and all relevant information, including the names of all parties, the amount of arrearages settled or equitably adjusted, the amount actually paid under the agreement, and any other conditions of settlement or equitable adjustment agreed to by the obligor.

(d) No Stay of Collection. The submission of an offer in settlement or request for equitable adjustment shall not operate to stay the collection of any current or past-due child support.

(6) Effect of Settlement Agreement. A settlement or equitable adjustment agreement under 830 CMR 119A.6.2 relates to the amount of arrearages owed to the Commonwealth by the obligor with respect to which the offer is submitted, and the obligor's liability for such arrearages is conclusively settled thereby. Any portion of the arrearages with respect to which the offer or request is submitted, and the collection of which is not contemplated under the agreement, will be waived by the commissioner, unless the agreement is voided as provided in 830 CMR 119A.6.2.

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A settlement or equitable adjustment agreement under 830 CMR 119A.6.2 is final, and neither the obligor nor the Commissioner may reopen matters covered by the agreement, by court action or otherwise, except by reason of falsification or concealment of assets by the obligor; mutual mistake of a material fact sufficient to cause a contract to be reformed or set aside; serious doubt as to collectibility, where the agreement is based on serious doubt as to liability; or failure by an obligor to comply with the terms and conditions of a settlement or equitable adjustment agreement under 830 CMR 119A.6.2. Should an obligor fail to comply with the terms and conditions of an agreement under 830 CMR 119A.6.2, the Commissioner may void the agreement and thereafter the Child Support Enforcement Division may take any action authorized by M.G.L. c. 119A to collect the full amount of assigned arrearages owed by the obligor.

REGULATORY AUTHORITY

830 CMR 119A.00: M.G.L. c. 119A, §§ 5 and 6.