

OFFICE OF THE ATTORNEY GENERAL

NOTICE OF FINAL RULEMAKING

The Acting Attorney General for the District of Columbia, pursuant to section 27c(a)(7)(B), (c), and (i) of the District of Columbia Child Support Enforcement Amendment Act of 1985 (Act), effective April 3, 2001 (D.C. Law 13-269; D.C. Official Code § 46-226.03), hereby gives notice of his intent to adopt the following new Chapter 81 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled “Child Support Administrative Financial Institution Data Match”. The final rulemaking will implement the authority of the Office of the Attorney General under section 27c of the Act to enforce child support orders by attaching and seizing assets owned by obligors and held in financial institutions without obtaining a court order. These rules were originally published in the *D.C. Register* on August 8, 2008 at 55 DCR 8526 and were amended to incorporate comments received after publication. They were republished on September 26, 2008 at 55 DCR 10015.

Title 29, DCMR (Public Welfare) is amended by adding the following new Chapter 81 to read as follows:

CHAPTER 81

CHILD SUPPORT ADMINISTRATIVE FINANCIAL INSTITUTION DATA MATCH

Secs.

8101	Scope
8102	Identification of Funds Subject to Attachment
8103	Attachment and Seizure of Funds
8104	Administrative Hearing
8105	Financial Institutions
8106	Appeal Procedure
8107	Confidentiality
8199	Definitions

8101 SCOPE

8101.1 The purpose of this chapter is to implement the Child Support Administrative Financial Institution Data Match Program to enforce child support orders by attaching and seizing funds owned by obligors and held in financial institutions.

8101.2 The Child Support Services Division (CSSD) of the Office of the Attorney General (OAG) shall be responsible for the implementation of this chapter, which shall apply to all obligors and financial institutions.

8102 IDENTIFICATION OF FUNDS SUBJECT TO ATTACHMENT

- 8102.1 CSSD shall submit DCCSES files to the Federal Parent Locator Service (FPLS) operated by the Federal Office of Child Support Enforcement to identify obligors with funds in financial institutions that meet the criteria for attachment in § 8103.1. The FPLS maintains data on funds held in multi-state financial institutions for the purpose of identifying funds owned by obligors with unpaid child support obligations.
- 8102.2 Based on individual agreements with single-state financial institutions located in the District of Columbia, CSSD will work to identify obligors with funds in financial institutions that meet the criteria for attachment in 8103.1.

8103 ATTACHMENT AND SEIZURE OF FUNDS

- 8103.1 Funds in a financial institution shall be subject to attachment when:
- (a) The case is an active case and
 - (1) The current support obligation is thirty (30) days past due; or
 - (2) A judgment support obligation is sixty (60) days past due; or
 - (b) The case is an arrears-only case and the total amount of arrears is greater than or equal to five hundred dollars (\$500).
- 8103.2 If a data match establishes that an obligor has funds in a financial institution and these funds are subject to attachment under § 8103.1, CSSD shall:
- (a) Serve a Writ of Attachment on the financial institution directing attachment of the amount owed for child support; and
 - (b) Send written notice of the Writ of Attachment and impending seizure of funds to the obligor and any joint account holder by first class mail to the last known address of the obligor or joint account holder . This notice shall advise the obligor and joint account holder of his or her right to request an agency review pursuant to § 8103.4.
- 8103.3 Upon receipt of the Writ of Attachment, the financial institution shall freeze the funds in the obligor's accounts up to the amount stated in the Writ.
- 8103.4 An obligor whose funds are subject to a Writ of Attachment may request an agency review within fifteen (15) calendar days from the date of the notice of the Writ of Attachment described in § 8103.2(b). The obligor may request the agency review by advising CSSD of his or her objections to the Writ of Attachment by

phone or in person at CSSD. A joint owner of the attached funds may also request an agency review within fifteen (15) calendar days after the date of the notice of the Writ of Attachment.

8103.5 Grounds for contesting the Writ of Attachment include:

- (a) Notice was issued to the wrong person;
- (b) Arrears are incorrect because of a failure to account for all child support payments, an incorrect computation of the balance due, or a failure to give effect to a prior suspension or modification of the support obligation; or
- (c) Any affirmative defense to enforcement of this money judgment authorized by applicable law, but nothing in these rules authorizes any modification of the support order or any underlying money judgment.

8103.6 Upon receipt of a request for an agency review from an obligor or a joint account holder, CSSD shall review the case and respond to the obligor or joint account holder in writing within ten (10) calendar days. CSSD shall either:

- (a) Withdraw the Writ of Attachment; or
- (b) Advise the obligor or joint account holder of CSSD's intent to move forward with seizure of funds.

8103.7 Funds in a financial institution shall be subject to seizure when:

- (a) The obligor's pay is not currently being withheld and the amount of the funds in the obligor's accounts is greater than or equal to two (2) months of current support; or
- (b) The obligor's pay is being withheld and
 - (1) The total amount of the arrears is greater than or equal to five thousand dollars (\$5,000); and
 - (2) The amount of funds in the obligor's accounts is greater than or equal to two thousand five hundred dollars (\$2,500).

8103.8 CSSD shall seize the funds in the obligor's accounts that are subject to the Writ of Attachment by issuing an Order of Condemnation to the financial institution. If CSSD determines that funds subject to the Writ of Attachment are not subject to seizure under § 8103.7, CSSD shall withdraw the Writ.

8103.9 Upon a determination that seizure is appropriate; CSSD shall issue the Order of Condemnation to the financial institution and send a copy of the Order of Condemnation to the obligor and joint account holder along with instructions on how he or she can appeal the issuance of the Order of Condemnation to the Office of Administrative Hearings.

8103.10 CSSD shall send the Order of Condemnation to the financial institution, the obligor, and any joint account holder within thirty (30) calendar days of receipt of the financial institution's response to the Writ of Attachment, or if agency review had been requested, within two (2) calendar days of completion of the review.

8104 ADMINISTRATIVE HEARING

8104.1 Regardless of whether the obligor or joint account holder has sought an agency review of the Writ of Attachment, the obligor or joint account holder may object to the seizure of the funds by requesting an administrative hearing from the Office of Administrative Hearings (OAH). Grounds for requesting an administrative hearing shall be the same as the grounds for contesting the Writ of Attachment under § 8103.5.

8104.2 CSSD shall provide the obligor and joint account holder, if applicable, with notice of his or her right to an administrative hearing when CSSD sends the obligor and joint account holder a copy of the Order of Condemnation.

8104.3 The obligor or joint account holder shall request the administrative hearing in writing, either by mailing, faxing or bringing the written request to OAH. The hearing request must be received by OAH within thirty (30) calendar days after the date of the Order of Condemnation sent to the obligor or joint account holder.

8104.4 If the obligor or joint account holder does not request an administrative hearing from OAH, CSSD shall distribute the funds seized from the financial institution to the obligee at the conclusion of the thirty (30) calendar day period for requesting a hearing. If the obligor requests an administrative hearing, CSSD shall retain the funds seized until a decision is rendered by the administrative law judge. CSSD shall then either distribute the funds seized to the obligor and joint account holder or the obligee as required by the decision.

8105 FINANCIAL INSTITUTIONS

8105.1 Upon receipt of the Writ of Attachment, the financial institution shall freeze the funds in the obligor's accounts up to the amount stated in the Writ.

8105.2 The financial institution shall respond to the Writ of Attachment in writing within ten (10) calendar days of receipt. The response to the Writ of Attachment shall include the following:

- (a) The amount of funds in each of the obligor's accounts; and
- (b) The name and last known address of any joint account holder.

8105.3 Upon receipt of the Order of Condemnation, the financial institution shall send the funds to CSSD's D.C. Child Support Clearinghouse within ten (10) business days.

8106 APPEAL PROCEDURE

8106.1 The obligor, joint account holder or CSSD may seek judicial review of the administrative hearing decision at the D.C. Court of Appeals in accordance with section 11 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Official Code § 2-510) and section 19 of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.16).

8106.2 If Court of Appeals reverses OAH's order denying the obligor's or joint account holder's objections to the seizure, CSSD shall credit the obligor's child support obligation for the amount that was distributed, or send payment to the obligor as required by the Court's order.

8107 CONFIDENTIALITY

8107.1 CSSD shall maintain the confidentiality of information and records concerning an obligor's or joint account holder's financial information and shall only release information or records as permitted by applicable provisions of District or federal law.

8199 DEFINITIONS

8199.1 The following terms and phrases shall have the meanings ascribed:

Account – a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account held in any financial institution.

Active Case – a case in which a current support order exists requiring the obligor to make periodic payments on behalf of his or her minor child.

Arrears – past due current child support payments.

Arrears Only Case – a case without a current support order in which arrears are owed.

Current support – amount of ongoing payments owed for a minor child under a support order.

Data match – the process of identifying assets held in financial institutions by obligors who owe child support.

DCCSES – the District of Columbia Child Support Enforcement System, the computer system used by CSSD to manage and enforce child support cases.

Federal Parent Locator Service or FPLS – the national system for locating custodial and non-custodial parents operated by the federal Office of Child Support Enforcement. The FPLS includes the database of Administrative Financial Institution Data Match.

Financial institution – a depository institution, institution-affiliated party, any Federal or State credit union, any benefit association, insurance company, safe deposit company, money-market mutual fund, or similar entity.

Freeze – to retain an obligor's assets at the financial institution without allowing the obligor access to the assets.

Funds – monetary assets.

Judgment support -- a court ordered amount that reflects a set period in the past during which child support should have been paid.

Obligee – the person or entity to whom child support is owed.

Obligor – a person who is required pursuant to a court or administrative order to pay child support.

Wage withholding – the direct retention of ongoing support payments from the wages or earnings of an obligor ordered to pay support.

Writ of Attachment -- legal document that enforces a debt incurred by an obligor by freezing funds at a financial institution.