

PROPOSED REGULATION

830 CMR: DEPARTMENT OF REVENUE

830 CMR 119A: CHILD SUPPORT ENFORCEMENT

830 CMR 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 these provisions.

(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

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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.

(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.

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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 this regulation 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 herein.

A settlement or equitable adjustment agreement under this regulation 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 this regulation. Should an obligor fail to comply with the terms and conditions of an agreement under this regulation, the Commissioner may void the agreement and thereafter the Child Support Enforcement Division may take any action authorized by General Laws chapter 119A to collect the full amount of assigned arrearages owed by the obligor.

REGULATORY AUTHORITY

830 CMR 119A.6.2: M.G.L. c. 119A, § 6.

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