

whereby any payment or installment of support under any child support order is, on and after the date it is due, a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State and is entitled, as such, to full faith and credit in such State and in any other State.

While the effective date of this statute is October 21, 1986, under section 9103(b)(2) of Pub. L. 99-509, if a State demonstrates to the Secretary, HHS, that State legislation is required to conform the State IV-D plan to the requirements of this statute, a delay based on the need for legislation may be granted. In such a case, the State's plan would not be regarded as failing to comply solely by reason of its failure to meet the requirements imposed by the new amendments until the beginning of the fourth month beginning after the end of the first session of the State's legislature which ends on or after October 21, 1986.

**DATES:** Consideration will be given to comments received by November 13, 1987.

**ADDRESS:** Address comments to: Director, Office of Child Support Enforcement, Family Support Administration, Department of Health and Human Services, Room 2090, Switzer Building, 330 C Street SW., Washington, DC 20201, Attention: Director, Policy and Planning Division. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m., in Room 2090 of the Department's office at the above address.

**FOR FURTHER INFORMATION CONTACT:** Susan Corriveau, Policy Branch, OCSE (202) 245-1978.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 9103 of Pub. L. 99-509 is a result of Congress' recognition of the disparity among States regarding the modification of child support arrearages. Although most States permit child support orders to be modified only prospectively, thus affecting only future child support payments, some States allow child support awards to be modified retroactively. In such States, the court or administrative entity has the authority to reduce or nullify arrearages by reducing the amounts owed for past periods.

Prior to enactment of section 9103 of Pub. L. 99-509, 18 States permitted child support orders to be modified retroactively. The vast majority of such retroactive modifications had the effect of reducing the amount of child support ordered. Thus, for example, an order for

\$200 a month for child support, which was unpaid for 36 months should accumulate an arrearage of \$7,200. Yet, if the obligor was brought to court, having made no prior attempt to modify the order, the order might be reduced to \$100 a month retroactive to 36 months prior to the date of modification. This has the effect of reducing the arrearage from \$7,200 to \$3,600. The order is reduced without placing any diligence requirement on the absent parent to petition in a timely manner to reduce the order, if for some reason circumstances change.

It further permits arguments to be made about changed circumstances in prior periods at a time when evidence may not be abundant or clear.

In interstate cases involving registration of out of State orders, where the absent parent resides in a State different from the one where his or her children reside or where the child support order was entered, the problem may be exacerbated by the fact that the custodial parent usually is not present when the case is heard in the absent parent's State and is unable to testify about any claimed past change in circumstances.

In addition to the 18 States which prior to enactment of Pub. L. 99-509 permitted retroactive modification of orders, 17 other States did not meet the requirement of reducing to final judgment amounts of child support ordered as the payments become due. Because Pub. L. 99-509 requires that child support payments be judgments as they become due, they are entitled to full faith and credit and may be registered and enforced in any State.

In light of this situation, section 9103 added a new requirement to section 466(a) of the Act which States must meet in order to have an approved title IV-D State Plan. Specifically, under section 466(a)(9), States must have in effect laws requiring the use of procedures under which any payment or installment on a child support order is a judgment, on and after the date each payment is due, and retroactive modification of child support orders is prohibited with the following exception. Modification may be permitted with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

In the past, when a custodial parent or absent parent moves out of the State where a support obligation has been established, the IV-D agency often

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of Child Support Enforcement**

45 CFR Parts 302, 303, and 305

**Child Support Enforcement Program; Prohibition of Retroactive Modification of Child Support Arrearages**

**AGENCY:** Office of Child Support Enforcement, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule implements section 9103 of Pub. L. 99-509, the Omnibus Budget Reconciliation Act of 1986, which amends section 466(a) of the Social Security Act (the Act), effective October 21, 1986. Section 9103 requires that, as a condition of State IV-D plan approval, States have in effect laws requiring the use of procedures to prohibit retroactive modification of child support arrearages. However, such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice has been given, either directly or through the appropriate agent, to the obligee (or where the petitioner is the obligee) to the obligor. Specifically, State IV-D agencies must have in effect and use procedures

would enforce the order using the Uniform Reciprocal Enforcement of Support Act, (URESA). Using URESA is time consuming and frustrating for the custodial parent owed a support obligation. Under URESA, the absent parent has the opportunity to allege inability to pay the established support amount, which may result in a lower support order. Under the new requirement specified by section 9103, all child support orders in a State, including orders entered before October 21, 1986, can now be enforced by any other State without creating a new child support order. Such a provision will ensure that the processing of interstate cases will be less time consuming and less costly because new child support orders will not have to be created and collections will increase because accumulated arrearage debts will stay intact and not be reduced or forgiven. Specific remedies to enforce these judgments shall be determined by the State, pursuant to State law.

This new statute adds a ninth mandatory requirement to section 466(a) of the Act which requires States to have in effect laws requiring the use of certain procedures to increase the effectiveness of their child support enforcement programs in order to have an approved Title IV-D State plan. These mandatory requirements are:

(1) Procedures for carrying out a program of withholding under which new or existing support orders are subject to the State law governing withholding so that a portion of the absent parent's wages may be withheld.

(2) Expedited processes to establish and enforce child support obligations.

(3) Procedures for obtaining overdue support from State income tax refunds on behalf of recipients of aid under the State's title IV-A or IV-E plan.

(4) Procedures for the imposition of liens against the real and personal property of absent parents who owe overdue support.

(5) Procedures for the establishment of paternity at least until the child's 18th birthday

(6) Procedures which require that an absent parent give security or post a bond or some other guarantee to secure payment of support

(7) Procedures for making information regarding the amount of overdue support owed by an absent parent available to consumer reporting agencies.

(8) Procedures under which all child support orders which are issued or modified in the State will include provision for withholding from wages.

(9) Procedures which require that any

payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due):

(A) A judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced;

(B) Entitled as a judgment to full faith and credit in such State and in any other State; and

(C) Not subject to retroactive modification by such State or by any other State.

However, such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice has been given, either directly or through the appropriate agent, to the obligee (or where the obligee is the petitioner) to the obligor.

While the effective date of this statute is October 21, 1986, under section 9103(b)(2) of Pub. L. 99-509, if a State demonstrates to the Secretary, HHS, that State legislation is required to conform the State IV-D plan to the requirements of the statute, a delay in implementation based on the need for legislation may be granted. In such a case, the State's IV-D plan would not be regarded as failing to comply with the requirements imposed by the new amendment until the beginning of the fourth month beginning after the end of the first session of the State's legislature which ends on or after October 21, 1986.

#### Statutory Authority

This proposed rule is published under the authority of section 1102 of the Social Security Act (the Act) which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Section 466 of the Act requires that States have in effect and use certain mandatory provisions. Section 9103 of Pub. L. 99-509 added a new paragraph (9) under section 466(a) which requires that States have in effect laws requiring the use of procedures which provide that any payment or installment of support under any child support order is a judgment, entitled to full faith and credit, and not subject to retroactive modification.

#### Regulatory Provisions

This proposed regulation revises § 302.70(a) to specify that the effective date for paragraphs (1) through (8) is

October 1, 1985 and for paragraph (9) is October 21, 1986.

In addition, this regulation would add a new paragraph (9) under § 302.70(a) to require that any payment or installment of support under any child support order is, on and after the date it is due, a judgment, and may not be modified retroactively.

This regulation would also amend 45 CFR Part 303 to add a new § 303.106 entitled, Procedures to prohibit retroactive modification of child support arrearages. Paragraph (a) of this section would require States to have in effect and use procedures which provide that any payment of child support, on and after the date it is due, be a judgment, by operation of law. This requirement would provide that the child support installment must become a judgment without the need for any action by any entity; it becomes a judgment simply by a payment falling due.

Paragraph (a)(2) of § 303.106 would require that the judgment be entitled to full faith and credit in the originating State and in any other State. Full faith and credit is a Constitutional principle which provides that the various States must recognize the judgments of the other States within the United States.

Paragraph (a)(3) would state that the judgment is not subject to retroactive modification, except as provided under paragraph (b) of this section. The intent of this requirement is to prohibit courts or administrative entities from forgiving or reducing arrearages.

Paragraph (b) provides for the exception referred to in paragraph (a)(3) that will permit limited retroactive modification of child support orders. The first condition is that modification may be permitted for any period during which there is pending a petition for modification. The second condition requires that the modification may only be permitted from the date that notice of such petition has been given, either directly or through the appropriate agent to the obligee or (where the obligee is the petitioner) to the obligor.

This regulation would also amend the audit regulation by adding a new § 305.57 entitled Retroactive modification of child support arrearages. This audit criterion would provide that, in order to meet the requirements of title IV-D, the State must have laws in effect and be using procedures which require that any payment or installment of support under any child support order is, on and after the date it is due, a judgment, and may not be modified retroactively.

**Paperwork Reduction Act**

This proposed rule at 45 CFR 302.70(a)(9), 303.106, and 305.57 contains information collection requirements which are subject to OMB review under the Paperwork Reduction Act of 1980 (Pub. L. 96-511). As required by section 3504(h) of Pub. L. 96-511, we have submitted a copy of this proposed rule to OMB for its review of the information collection requirements listed above. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, attention: Desk Officer for HHS.

**Regulatory Impact Analysis**

The Secretary has determined, in accordance with executive Order 12291 that this rule does not constitute a "major" rule for the following reasons:

(1) The annual effect on the economy is less than \$100 million;

(2) This rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) This rule will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Regulatory Flexibility Analysis**

Under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), we are required to prepare a regulatory flexibility analysis for those rules which will have a significant economic impact on a substantial number of small entities. Its principle impact is on State IV-D agencies who will be required to expend minimal effort, and on the judicial system. This provision could potentially save money for both the Federal Government and the States by increasing amounts available for collection. Further, the cost of interstate enforcement activities will be reduced by eliminating the need to obtain a child support order in more than one State. Therefore, a regulatory flexibility analysis is not required.

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program)

Dated: July 17, 1987.

Wayne A. Stanton,  
Director, Office of Child Support  
Enforcement.

Approved: July 31, 1987.

Otis R. Brown,  
Secretary.

**List of Subjects****45 CFR Part 302**

Child support, Grant programs, Social programs, Penalties, Reporting and recordkeeping requirements, Unemployment compensation.

**45 CFR Part 303**

Child support, Grant programs, Social programs, Reporting and recordkeeping requirements.

**45 CFR Part 305**

Accounting, Child support, Grant programs, Social programs, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Title 45, Chapter III of the Code of Federal Regulations is amended as follows:

**PART 302—[AMENDED]**

1. The authority citation for Part 302 continues to read as follows:

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

2. Section 302.70 is amended by revising paragraph (a) introductory text; removing the word "and" at the end of paragraph (a)(7); removing the period at the end of paragraph (a)(8) and inserting "; and" in its place; and, adding paragraph (a)(9) to read as follows:

**§ 302.70 Required State laws.**

(a) *Required laws.* Effective October 1, 1985, with respect to paragraphs 1 through 8, and effective October 21, 1986, with respect to paragraph 9, the State plan shall provide that, in accordance with sections 454(20) and 466 of the Act, the State has in effect laws providing for and has implemented the following procedures to improve program effectiveness:

(9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (a)(2) of this section, is (on and after the date it is due):

(i) A judgment by operation of law with the full force, effect, and attributes

of a judgment of the State, including the ability to be enforced;

(ii) Entitled as a judgment to full faith and credit in such State and in any other State; and

(iii) Not subject to retroactive modification by such State or by any other State, except as provided in § 303.106 paragraph (b).

**PART 303—[AMENDED]**

3. The authority citation for Part 303 continues to read as follows:

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

4. Part 303 is amended by adding § 303.106 to read as follows:

**§ 303.106 Procedures to prohibit retroactive modification of child support arrearages.**

(a) The State shall have in effect and use procedures which require that any payment or installment of support under any child support order is, on and after the date it is due:

(1) A judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced;

(2) Entitled as a judgment to full faith and credit in such State or in any other State; and

(3) Not subject to retroactive modification by such State or by any other State except as provided in paragraph (b) of this section.

(b) The procedures referred to in paragraph (a)(3) may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

**PART 305—[AMENDED]**

5. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 603(h), 604(d), 652(a) (1) and (4), and 1302.

6. Part 305 is amended by adding § 305.57 to read as follows:

**§ 305.57 Retroactive modification of child support arrearages.**

For the purposes of this part, in order to be found in compliance with the State plan requirement to prohibit the retroactive modification of child support arrearages (45 CFR 302.70(a)(9)), a State must have in effect laws which provide

that any payment or installment under any child support order is, on and after the date it is due, a judgment and procedures which prohibit retroactive modification of child support arrearages as provided in 48 CFR 393.106 of this chapter.

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