

RE: IV-D Agency Assistance with Out-of-State Liens to In-State Financial Institutions  
FROM: Barry Brooks

### Statutory Provisions

One of the main provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) was the development of a process for matching financial institution accounts with child support debtors, commonly know as the Financial Institution Data Match (FIDM). In addition to the actual matching of data, Congress wanted to assure that actions could be taken regarding accounts that were found. And, recognizing the regional operations of some financial institutions but also wanting a mechanism for obtaining collections in the interstate context, the legislation specifically addresses how the matter is to be resolved. Specifically, federal law now provides:

#### TITLE 42, CHAPTER 7, SUBCHAPTER IV, Part D

#### § 666. Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement

##### (a) Types of procedures required

In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

##### (4) Liens.— Procedures under which—

(A) liens arise by operation of law against real and personal property for amounts of overdue support owed by a noncustodial parent who resides or owns property in the State; and

(B) the State accords full faith and credit to liens described in subparagraph (A) arising in another State, when the State agency, party, or other entity seeking to enforce such a lien complies with the procedural rules relating to recording or serving liens that arise within the State, except that such rules may not require judicial notice or hearing prior to the enforcement of such a lien.

##### (17) Financial institution data matches.—

(A) In general.— Procedures under which the State agency shall enter into agreements with financial institutions doing business in the State—

(i) to develop and operate, in coordination with such financial institutions, and the Federal Parent Locator Service in the case of financial institutions doing business in two or more States, a data match system, using automated data exchanges to the maximum extent feasible, in which each such financial institution is required to provide for each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such institution and who owes past-due support, as identified by the State by name and social security number or other taxpayer identification number; and

(ii) in response to a notice of lien or levy, encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a child support lien pursuant to paragraph (4).

With respect to the IV-D Agency of one state assisting with the processing of liens from another state, the first significant provision is 42 USC 666(a)(17)(A)(ii) which compels the “assisting” State to have laws in place to lien and/or levy the identified account. The second component of the actual processing of the lien is found in 42 USC 666(a)(4)(B) which not only re-affirms the recognition of the lien but also provides that the process used for intrastate liens and levies should be the same process available for interstate liens and levies. Significantly, the statute forbids any judicial action which clearly means the no action has to be taken under the Uniform Interstate Family Support Act (UIFSA) to Register the underlying support order or lien notice for enforcement.

### Standard Interstate Lien Form

To further assist and emphasize that the process for asserting a lien across state lines was to be expeditious, Congress mandated that the federal Office of Child Support Enforcement (OCSE) was to promulgate a standard form to be used. It then went on to mandate:

42 USC § 654. State plan for child and spousal support  
A State plan for child and spousal support must—  
(9) provide that the State will, in accordance with standards prescribed by the Secretary, cooperate with any other State—  
(E) not later than March 1, 1997, in using the forms promulgated pursuant to section 652 (a)(11) of this title for income withholding, imposition of liens, and issuance of administrative subpoenas in interstate child support cases;

### State Plan Provisions

To document and assure the State IV-D Agency is complying with federal mandates, OCSE requires each State to file a “State Plan” that attests to the compliance. A State IV-D Agency can seek a waiver of a specific requirement. Absent the waiver, the State IV-D Agency must comply or risk losing federal funding. With respect to the role a State IV-D Agency must take with respect to FIDM, the standard State Plan provides:

#### State Plan Section 2.12, Procedures to Improve Program Effectiveness

##### 4. Liens

The State has in effect laws requiring the use of procedures under which liens arise by operation of law against real and personal property for amounts of overdue support owed by a noncustodial parent who resides or owns property in the State; and the State accords full faith and credit to liens arising in another State in accordance with § 466(a)(4)

##### 17. Financial Institution Data Matches

The State has in effect laws requiring the use of procedures for the IV-D agency entering into agreements with financial institutions doing business in the State to develop and operate a data match system to identify accounts of individual owing past-due support and to encumber or surrender assets held by such institution on behalf of any noncustodial parent who is subject to a child support lien in accordance with § 466(a)(17).

**NOTE:** the reference to § 466 in the State Plan is corresponds to § 666 of Title 42 of the U. S. Code.

Whether a result of inadvertent omission or conscious decision, there does not appear to be a State Plan specific requirement regarding the use of the OCSE promulgated forms.

Thus, it is completely clear that each State should have laws in effect to enable the assertion of claims based upon a FIDM and to have the financial institution asset holder honor a lien submitted to it based on a claim coming from another state.

### Agency Assistance Options

In meeting the obligation to assure a lien claim from one state is accorded full faith and credit by a financial institution in another state, a dichotomy has developed in the role the IV-D Agency in the asset state must take.

The “direct lien” approach basically enacts the provisions mandated by PRWORA by simply stating that the asset holder is to follow the child support lien law of that state regardless of the origin of the lien. This origin can be another IV-D Agency, a private collection agency, or the obligee or legal representative. A few states have fulfilled the requirements by reciting that the OCSE promulgated form is the document that can or should be used. For some recalcitrant financial institutions, the IV-D Agency has agreed to assist the out-of-state IV-D Agency by putting a “cover letter” on the lien documents stating that the lien is “valid” and should be honored by the financial institution in the state.

It is immutable that the IV-D Agency in the asset state can not simply “refuse services”. At a minimum, the IV-D Agency should provide the other agency with the specific laws it has represented are in place regarding not only the ability to encumber the asset but also that an out-of-state lien is entitled to full faith and credit. In identifying the applicable laws, it must be noted that the federal mandate contemplates there will be no resort to any judicial process, i.e. no necessity for Registration under UIFSA or any version of the Uniform Enforcement of Foreign Judgments Act (UEFJA) or any other judicial “domestication” procedure.

If the statutory provisions in the asset state only provide for the assertion of a child support lien by the local IV-D Agency, then that Agency must accept a referral for a lien action and process it the same as an intrastate action. While it is generally associated with the services an Assisting State must provide as part of the High-Volume, Automated Administrative Enforcement in Interstate Cases (AEI) requirements of 42 U.S.C. 666(a) (14), the requirement to assist in processing the lien or levy against an identified asset is a requirement independent of how the asset came to be identified. The provision of this service has been referred to as a “limited service”. This requirement that the state where the asset is located provide “limited service” assistance, upon request, has been recently restated in AT-08-06:

QUESTION 13: What are the assisting State's responsibilities when responding to requests for assistance under AEI?

ANSWER 13: The assisting State must: . . . ; 2) seize any identified assets, for example, accounts

in FIs, to satisfy the support debt; . . .

QUESTION 16: How do assisting States fulfill the enforcement requirement?

ANSWER 16: . . . When assets are uncovered, the assisting State must take steps to seize the obligor's assets and send them to the requesting State. . . .

When an asset belonging to a delinquent obligor is identified, the assisting State must proceed to collect the indicated debt, pursuant to applicable State law.

And it must again be noted that this “limited service” must be in conformity with the administrative laws and procedures applicable to intrastate liens and levies and does not involve any type of UIFSA or other judicial action.

### Conclusion

There should be no doubt that each State must comply with the requirement to have a procedure for a child support lien arising in another state to be treated the same as a child support lien arising in the state. If the procedures do not enable the Claimant to file or deliver the lien directly to the asset holder, the IV-D agency in the asset state must provide the “limited service” to accomplish the process. And, regardless of the procedure adopted, it can not compel any type of judicial action pursuant to UIFSA or any other statute.