



Guidelines

Overview

The [Final Rule: Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs](#) updates guidelines for setting child support orders at 45 CFR 302.56 and the establishment of child support orders at 45 CFR 303.4. This fact sheet discusses specific revisions made to §§ 302.56(a), 302.56(c)(1), and 303.4(b).

The goal of these revisions is to increase reliable child support for children by setting child support orders based on the noncustodial parent's earnings, income, or other evidence of ability to pay. Orders set beyond a parent's ability to pay can lead to unintended consequences, such as unmanageable debt, reduced employment, participation in the underground economy, and increased criminal activities.¹ It is counterproductive and not in children's best interests to have their parents engage in a cycle of nonpayment, illegal income generation, and incarceration. Support orders based on the noncustodial parent's ability to pay should result in less conflict between parents, fewer requests for hearings, and less time and resources spent on enforcement.

What is new

This rule makes the following changes to child support guidelines (§ 302.56(c)(1)). First, state child support guidelines must provide that a child support order be "based on the noncustodial parent's earnings, income, and other evidence of ability to pay". This change codifies OCSE's longstanding interpretation of statutory guideline requirements² and reflects the basic principle underlying the federal child support guidelines statute – that application of state guidelines should result in income-based orders. The existing federal regulation that guidelines must consider all earnings and income of the noncustodial parent is unchanged. Child support guidelines must take into consideration the basic subsistence needs of the noncustodial parent who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve, or some other method determined by the state. This means states have flexibility to determine the best approach to meeting this requirement. Nearly all states already incorporate a self-support reserve or low-income adjustment into their child support guidelines.³ If income imputation is authorized under a state's child support guidelines, then child support guidelines must take into consideration the specific circumstances of the noncustodial parent to the extent known when determining the amount of imputed income, and may not use a standard amount in lieu of fact-gathering in a specific case.

The rule also revises the "establishing support obligations" regulations at § 303.4(b) by requiring child support agencies funded under title IV-D of the Social Security Act to base support obligations or recommended support obligation amounts on the earnings and income of the noncustodial parent whenever available. If evidence of earnings and income are unavailable or insufficient to use as the measure of the parent's ability to pay, then the recommended support obligation amount should be based on available information about the specific circumstances of the noncustodial parent. The rule addresses a divergence in the way public and private child support cases are currently handled. It requires cases handled by the state child support agency to meet similar evidentiary standards for establishing an order and imputing income as are applied in private cases. Without an evidentiary basis, imputed income is fictitious income and does not generally result in orders based on the noncustodial parent's ability to pay.

How this affects states

Child support agencies will need to take steps to determine the factual basis for the support obligation through case conferencing, interviews, questionnaires, and other strategies. They will need to gather information regarding the earnings and income of the noncustodial parents, and when this information is unavailable, obtain information on the specific circumstances of the noncustodial parent. Imputing income will need to be done on a case-by-case basis, when there is an evidentiary gap. Child support

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agencies will no longer be able to impute standard amounts in default cases based on a state minimum wage or statewide occupational wage rates because these practices are not based on evidence of the noncustodial parent's ability to pay and therefore are unlikely to result in an order that reflects the specific facts of the case.

States must revise their child support guidelines to meet the requirements of the rule changes within one year after completion of the state's first quadrennial review of its child support guidelines that commences more than one year after publication of the final rule.

How this affects families

With this rule change, noncustodial parents will be more likely to meet their child support obligations, benefiting their children by improving child support compliance and payment consistency, and reducing uncollectable debt. The research indicates that orders set too high result in less, not more, payments to families. Other negative effects associated with orders set beyond a noncustodial parent's ability to pay may also decline, such as reduced contact with their children, lower employment, and increased underground activities.⁴

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1. Mincy, Ronald et al, *Failing Our Fathers: Confronting the Crisis of Economically Vulnerable Nonresident Fathers*, Oxford University Press, 2014; Kotloff, Lauren, J., *Leaving the Street: Young Fathers Move From Hustling to Legitimate Work*, Public/Private Ventures, 2005; and Rich, Lauren, M., *Regular and Irregular Earnings of Unwed Fathers: Implications for Child Support Practices*, *Children and Youth Services Review*, April–May 2001, 23(4/5): 353–376, available at: <https://www.sciencedirect.com/science/article/pii/S0190740901001396>.
 2. See [AT-93-04](#) and [PIQ-00-03](#).
 3. Venohr, Jane, *Child Support Guidelines and Guidelines Reviews: State Differences and Common Issues*, *Family Law Quarterly*, Fall 2013, 47(3): 327–352, available at: http://static1.squarespace.com/static/5154a075e4b08fo5odc20996/t/54e34dd2e4b04coeab578456/1424182738603/3fall13_venohr.pdf.
 4. Pamela Holcomb, Kathryn Edin, Jeffrey Max, Alford Young, Jr., Angela Valdovinos D'Angelo, Daniel Friend, Elizabeth Clary, Waldo E. Johnson, Jr., 2015, *In Their Own Voices: The Hopes and Struggles of Responsible Fatherhood Program Participants in the Parents and Children Together Evaluation*. Report submitted to the Office of Planning, Research, and Evaluation. OPRE Report #2015–67 available at: <http://www.acf.hhs.gov/programs/opre/resource/in-their-voices-hopes-struggles-responsible-fatherhood-parents-children-evaluation>; and Maureen Waller and Robert Plotnick, *Effective child support policy for low-income families: evidence from street level research*, *Journal of Policy Analysis and Management*, 2001, 20(1): 89–110.