

# Overview - Final Rule

## 2016 Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs

### Background

The child support program ensures noncustodial parents provide financial support for their children, primarily collected through payroll withholding. Child support payments lift approximately one million families out of poverty each year. Among poor single mothers with children that receive it, child support accounts for 41 percent of the family's income.

In 2015, the child support program collected \$28.6 billion for almost 16 million children. Eighty-six percent of all child support cases had support orders in place, and nearly 72 percent of those cases had at least some payments during the year. The child support program collects \$5.26 for every government dollar spent.

The final rule makes changes to increase the effectiveness of the child support program for all families, which will result in an increase in timely payments to families, a decline in the nonpayment rate, and an increase in the number of noncustodial parents working and supporting their children.

The new rule removes regulatory barriers to cost-effective approaches to give states needed flexibility to increase the accuracy and accountability of support orders. The changes are consistent with research evidence and knowledge in the field and informed by many successful state-led innovations over the past two decades.

The rule also increases program efficiency and simplifies operational requirements by removing outdated barriers to electronic communication and document management. Given that three-quarters of child support payments are collected by employers through payroll withholding, the rule standardizes and streamlines payment processing so employers are not unduly burdened. Most importantly, these new provisions and guidelines are expected to result in families receiving more consistent payment of child support.

### Summary

The Flexibility, Efficiency, and Modernization in Child Support Programs Final Rule strengthens and updates the child support program by amending existing rules, some of which are 35 years old, to:

- Ensure child support obligations are accurate and based upon the noncustodial parents' ability to pay;
- Increase consistent, on time payments to families;
- Move nonpaying cases to paying status;
- Increase the number of noncustodial parents supporting their children;
- Improve child support collection rates;
- Reduce the accumulation of unpaid and uncollectible child support arrearages; and
- Incorporate technological advances and evidence-based standards that support good customer service and cost-effective management practices.

# Major Provisions

## Setting Accurate Support Orders Based on the Specific Case Facts

Research finds that setting an accurate order based upon the noncustodial parent's ability to pay improves the chances that the parent will comply with the support order and continue to pay over time. The new rule incorporates the longstanding federal requirement that child support orders reflect the noncustodial parent's ability to pay established under income-based guidelines adopted by each state. The rule :

- Increases public participation and transparency in state guidelines review processes;
- Requires child support agencies to increase their case investigative efforts to improve the accuracy of child support orders by ensuring that all relevant information is collected;
- Includes language for states to consider the noncustodial parent's specific circumstances in imputing income when evidence of income is limited;
- Standardizes and streamlines payment processing to ensure that processing payments from payroll withholding, a highly effective support enforcement tool that accounts for three-fourths of child support payments, does not unduly burden employers;
- Increases state flexibility in ensuring that parents meet their medical support obligations by providing health care coverage or payments for medical expenses that are reasonable in cost and best meet the health care needs of the child; and
- Clarifies that health care coverage for purposes of medical support obligations includes public and private insurance.

## Implementing Due Process Safeguards in *Turner v. Rogers*

The rule incorporates civil contempt due process requirements to implement the 2011 Supreme Court decision in *Turner v. Rogers*. The final rule establishes criteria that child support agencies must use to determine which cases to refer to court for a civil contempt action and how they prepare cases for a civil contempt proceeding. Under the rule:

- State child support agencies must maintain and use an effective system for enforcing the support obligation by establishing criteria for filing civil contempt petitions in child support cases funded under Title IV-D. The criteria must include requirements that the IV-D agency:
  - screen the case for information regarding the noncustodial parent's ability to pay or otherwise comply with the order;
  - provide the court with such information regarding the noncustodial parent's ability to pay, or otherwise comply with the order, which may assist the court in making a factual determination regarding the noncustodial parent's ability to pay the purge amount or comply with the purge conditions; and
  - provide clear notice to the noncustodial parent that his or her ability to pay constitutes the critical question in the civil contempt action.



## Ensuring the Right of All Parents to Seek a Review of Their Order When Their Circumstances Change

Federal law requires states to review, and if appropriate, adjust support orders when either parent has experienced a substantial change in financial circumstances, so that the support orders continue to reflect a parent's ability to pay. However, some states continue to legally bar review and adjustment of orders when parents are incarcerated on the grounds that these parents are "voluntarily unemployed." While children continue to need the support, their parents usually have limited earnings ability while in prison. As a result, they can accrue tens of thousands of dollars of child support debt that interfere with employment success, resulting in higher rates of nonpayment upon release from prison, which is not in the best interests of children. The final rule requires that:

- A state may not exclude incarceration from consideration as a substantial change in circumstances, such as by treating incarceration as "voluntary unemployment."
- When modifying an order, states may consider an incarcerated parent's income and assets in setting the order amount. However, states retain the authority to set the level of the order based upon the parent's ability to pay.
  - ◻ In addition, after learning that a parent who owes support will be incarcerated for more than 180 calendar days, the state must either send a notice to both parents of the right to request a review and adjustment or automatically initiate a review and adjustment after notifying both parents.

## Increasing State Flexibilities and Evidence-Based Innovation

The rule also supports state flexibilities and encourages evidence-based innovation by:

- Giving states the flexibility to offer "unbundled" paternity establishment services to allow applicants for child support services to request help only with establishing paternity, without receiving order establishment and enforcement services, in cases in which this is the preference of both parents and both parents reside in the state.
- Expanding the circumstances in which a state may close certain types of cases where a determination has been made that collections are extremely unlikely based on the circumstances, such as very serious work-limiting disability of the noncustodial parent, in an effort to direct resources for cases where collections are possible and ensure that families have more control over whether to receive child support services.
- Strengthening notice provisions to ensure that safeguards are in place to keep recipients informed about case closure actions.
- Removing outdated barriers to electronic communication and document management, which frequently limit methods of storing or communicating information to a written or paper format.
- Incorporating several technical changes to update, clarify, revise, or delete former regulations to ensure that the child support regulations are accurate, aligned with current state practice, and up-to-date.

## Significant Changes Made by the Final Rule

HHS received over 2,000 helpful comments from the public, states, members of Congress and other stakeholders, and we carefully considered all of the comments we received. Most commenters were supportive of the main provisions of the final rule and, importantly, states broadly supported the rule's provisions and recognized that they build on the work states have done to identify best practices and build the evidence base for what works in maximizing child support collections and supporting families. Many comments provided helpful recommendations, and the impact of these comments can be seen throughout the final rule.

In response to comments, we made some significant changes in the final rule, including:

- Removal of a technical provision designed to clarify cost allocation requirements in situations where states consider parenting time in calculating child support order amounts or address parenting time and child support in the same judicial proceeding. While the provision was strongly supported, the comments reflected considerable misunderstanding about the provision's scope and raised questions about whether federal matching funds could be used to establish parenting time. We decided the provision was duplicative of existing federal cost principles and therefore not necessary.
- Removal of a provision that would have allowed states, at their option, to use child support funds to provide job services to noncustodial parents whose barrier to paying child support was a lack of a job and job skills. While this provision received strong support, concerns about the provision also were raised and we think the issue merits further study and discussion.
- Clarifying the provision that support orders must be based on parental income, earnings, and other evidence of ability to pay, emphasizing the need for an evidentiary basis for determining support order amounts, and providing additional guidance on use of imputed income.
- Strengthening the responsibility of child support agencies to investigate and screen cases scheduled for civil contempt proceedings in order to assist the court in making ability to pay determinations required pursuant to *Turner v. Rogers*.
- Increasing the number of days an individual must be expected to be incarcerated in order for states to be required to send a notice to parents of the right to request a review and adjustment.
- Narrowing the scope of limited services to paternity-only services for parents who live in the same state instead of allowing a wide range of limited services. Several commenters had expressed concerns about the difficulty and cost for states to implement a broader menu of limited services in the context of intergovernmental enforcement.



## Final Rule Summary

### Overview

This [final rule](#) strengthens and updates the child support program by amending existing rules, some of which are 35 years old, to:

- set accurate child support obligations based on the noncustodial parents' ability to pay;
- increase consistent, on-time payments to families;
- move nonpaying cases to paying status;
- increase the number of noncustodial parents supporting their children;
- improve child support collection rates;
- reduce the accumulation of unpaid and uncollectible child support arrearages; and
- incorporate technological advances and evidence-based standards that support good customer service and cost-effective management practices.

### What is new

Research finds that setting an accurate order based on the noncustodial parent's ability to pay improves the chances that the parent will comply with the support order and continue to pay over time. The final rule incorporates the longstanding federal requirement that child support orders reflect the noncustodial parents' ability to pay established under income-based guidelines adopted by each state. The rule increases public participation and transparency in state guidelines review processes. The rule also requires child support agencies to increase their case investigative efforts to improve the accuracy of child support orders. The rule includes language for states to consider the noncustodial parent's specific circumstances in imputing income when evidence of income is limited. Because three-fourths of child support payments are collected through payroll withholding, the rule standardizes and streamlines payment processing to ensure that this highly effective support enforcement tool does not unduly burden employers. The regulations clarify that health care coverage includes public and private insurance to increase state flexibility in ensuring that parents meet their medical support obligations by providing health care coverage or payments for medical expenses that are reasonable in cost and best meet the health care needs of the child.

The rule incorporates civil contempt due process requirements to implement the 2011 Supreme Court decision in *Turner v. Rogers*. The final rule establishes criteria that child support agencies must use to determine which cases to refer to court for a civil contempt action and how they prepare cases for a civil contempt proceeding. Under the rule, state child support agencies must maintain and use an effective system for enforcing the support obligation by establishing criteria for filing civil contempt petitions in child support cases funded under title IV-D. The criteria must include requirements that the child support agency: (i) screen the case for information regarding the noncustodial parent's ability to pay or otherwise comply with the order; (ii) provide the court with such information regarding the noncustodial parent's ability to pay, or otherwise comply with the order, which may assist the court in making a factual determination regarding the noncustodial parent's ability to pay the purge amount or comply with the purge conditions; and (iii) provide clear notice to the noncustodial parent that his or her ability to pay constitutes the critical question in the civil contempt action.

Federal law requires states to review, and if appropriate, adjust support orders when either parent has experienced a substantial change in circumstances. The rule provides that a state may not exclude incarceration from consideration as a "substantial change in circumstances." In addition, after learning that a parent who owes support will be incarcerated for more than 180 calendar days, the state must either send a notice to both parents of their right to request a review and adjustment or automatically initiate a review and adjustment with notice to the parents. When modifying orders, states may consider an incarcerated parent's income and assets in setting the order amount.

To better meet the needs of unmarried parents, this rule also gives states the flexibility to allow applicants for child support services to request help with establishing paternity only in cases in which both parents reside in the state. In an effort to direct resources for cases where collections are possible and ensure that families have more control over whether to receive child support services, the rule expands the circumstances in which a state may close cases. The revised regulation also strengthens notice provisions to ensure that safeguards are in place to keep recipients informed about case closure actions.

The rule also removes outdated barriers to electronic communication and document management, updating existing child support regulations, which frequently limit methods of storing or communicating information to a written or paper format. Finally, the rule incorporates several technical changes to update, clarify, revise, or delete former regulations to ensure that the child support regulations are accurate, aligned with current state practice, and up-to-date.

### **How this affects states**

This final rule draws on research and successful state practices to recognize and incorporate standards designed to improve the effectiveness and efficiency of the child support program. The final rule will make child support program operations and enforcement procedures more effective for families and more flexible and efficient for states and employers. The rule also recognizes advancements in technology that can enable improved collection rates and the move toward electronic communication and document management. This final rule will improve and simplify program operations and remove outmoded limitations to program innovations to serve families better. The rule makes significant changes to the regulations on case closure, child support guidelines, civil contempt, and medical support enforcement. The rule is intended to increase child support collection rates.

### **How this affects families**

The rule is evidence-based and is expected to result in families receiving more consistent payment of child support. The rule is intended to improve the accuracy of and compliance with child support orders by requiring state child support agencies to increase case investigation efforts and develop a sufficient evidentiary basis for child support orders. The final rule also ensures that the quadrennial state guidelines review process is more transparent by making the review results available to the public and allowing citizens an opportunity to provide meaningful input into the review process. States may not preclude incarcerated parents from seeking a review and adjustment of their orders, helping to reduce uncollectible debt, participation in illegal income-generating activities, and recidivism. Electing to offer paternity-only limited services will allow parents who are living together to legally establish paternity of their children, will better meet the needs of the modern family, and will result in a more flexible and family-friendly child support program.



# 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.<sup>1</sup> 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 requirements<sup>2</sup> 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.<sup>3</sup> 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

## Guidelines

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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.<sup>4</sup>

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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](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.



# Civil Contempt - Ensuring Noncustodial Parents Have the Ability to Pay

## Overview

As the federal agency responsible for funding and oversight of state child support programs, OCSE has an interest in ensuring that:

- constitutional principles articulated in the U.S. Supreme Court Decision in *Turner v. Rogers*, 564 U.S. \_\_\_\_, 131 S.Ct. 2507 (2011) are carried out in the child support program,
- child support case outcomes are just and comply with due process, and
- enforcement proceedings are cost-effective and in the best interest of the child.

The *Turner* case provides OCSE and state child support agencies with an opportunity to evaluate the appropriate use of civil contempt and to improve program effectiveness, including adequate case investigation. As the U.S. Supreme Court stated in *Turner v. Rogers*, a noncustodial parent's ability to pay constitutes the "critical question" in a civil contempt case, whether the state provides legal counsel or alternative procedures designed to protect the indigent obligor's constitutional rights.

The [final rule](#) revises 45 CFR 303.6(c)(4), by establishing criteria that child support agencies must use to determine which cases to refer and how they prepare cases for a civil contempt proceeding. The main goal is to increase consistent child support payments for children by ensuring that low-income parents are not incarcerated unconstitutionally because they are poor and unable to comply with orders that do not reflect their ability to pay. In addition, the final rule is intended to reduce the routine use of costly and often ineffective contempt proceedings and increase case investigation and more cost-effective collection efforts.

## What is new

Section §303.6(c)(4) of the final rule requires the state child support agency to establish procedures for the use of civil contempt petitions. Before filing a civil contempt action that could result in the noncustodial parent being sent to jail, states must ensure that the child support agency has screened the case to determine whether the facts support a finding that the noncustodial parent has the "actual and present" ability to pay or to comply with the support order.

The child support agency must also provide the court with information regarding the noncustodial parent's ability to pay or otherwise comply with the order to help the court make a factual determination regarding the parent's ability to pay the purge amount or comply with the purge conditions.

Finally, prior to going to court, the state must give clear notice to the noncustodial parent that his or her ability to pay constitutes the critical question in the civil contempt action.

## How this affects states

The new rule provides state child support agencies with a guide for conducting constitutionally acceptable proceedings. The final rule will reduce the risk of erroneous deprivation of the noncustodial parent's liberty, without imposing significant fiscal or administrative burden on the state. States that have reduced their over-reliance on contempt proceedings have found that they increased collections and reduced costs at the same time. There is no evidence that the routine use of contempt proceedings improves collection rates or consistent support payments to families.

States have considerable flexibility in implementing these provisions. The provisions are based upon successful case practice in a number of states that conduct case-specific investigations and data analyses. Child support agencies will need to take steps to determine how to implement these changes in their states, which may include educating and collaborating with the judiciary.

### How this affects families

Research shows that routine use of civil contempt is costly and counterproductive to the goals of the child support program.<sup>1</sup> All too often it results in the incarceration of noncustodial parents who are unable to pay to meet their purge requirements.<sup>2</sup> Modernizing practices in this area will encourage parents to comply with child support orders, maintain legitimate employment, and minimize the accumulation of unpaid child support debt. These guideline provisions help ensure that child support case outcomes are just and comply with due process, and that enforcement proceedings are cost-effective and in the best interest of the child.

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1. See Elizabeth G. Patterson, *Civil Contempt & the Indigent Child Support Obligor: The Silent Return of Debtor's Prison*, 18 Cornell Journal of Law & Public Policy 95, 126 (2008) (*Civil Contempt*), available at: <http://www.lawschool.cornell.edu/research/jlpp/upload/patterson.pdf>.
  2. See Rebecca May & Marguerite Roulet, Ctr. for Family Policy & Practice, *A Look at Arrests of Low-Income Fathers for Child Support Nonpayment: Enforcement, Court and Program Practices*, 40 (2005), available at: <http://www.cffpp.org/publications/LookAtArrests.pdf>.



## Modification for Incarcerated Parents

### Overview

The majority of federal and state prisoners are parents, and many have child support orders that were established before incarceration.<sup>1</sup> Incarceration can result in the accumulation of high levels of child support debt because parents have little to no ability to earn income while they are incarcerated and reduced ability to pay off the debt when released.<sup>2</sup> Studies find that incarcerated parents leave prison with an average of \$20,000 or more in unpaid child support, with no means to pay upon release.<sup>3</sup> This accumulated child support debt is rarely paid. Research finds that uncollectible debt substantially reduces noncustodial parent earnings, which in turn reduces child support payments to their families. One study found that people released from jail are unemployed 9 weeks more per year and annual earnings are reduced by 40%.<sup>4</sup> On the other hand, reducing uncollectible debt can increase payments.<sup>5</sup>

The goal of the [final rule](#) revisions is to increase consistent child support payments for children by setting child support orders based on the noncustodial parent's earnings, income, or other evidence of ability to pay, including for incarcerated parents. Children do not benefit when their parents engage in a cycle of nonpayment, underground income generation, and re-incarceration. Support orders modified for incarcerated parents, based on their current ability to pay, result in less debt accrual, more formal employment, more child support payments, and less need for enforcement after they are released.

Despite the significant research on the consequences of continuing the accrual of support when it is clear there is no ability to pay, about one quarter of states treat incarceration as “voluntary unemployment”. These “voluntary unemployment” rules typically pre-date the federal review and adjustment statute that requires states to modify support orders when parents experience a substantial change in circumstances, and block the federal rule's application.

### What is new

The final rule provides that state guidelines under 45 CFR 302.56(c)(3) may not treat incarceration as “voluntary unemployment” in establishing or modifying child support orders. The new rule prohibits states from legally barring modification of support obligations during incarceration. We have also revised § 303.8(c) to indicate that the reasonable quantitative standards that the state develops for review and adjustment must not treat incarceration as a legal bar for petitioning for and receiving an adjustment of an order.

Existing review and adjustment regulations specify the requirements that a state must meet for adjusting to child support orders in IV-D cases. The rule adds a requirement that state child support agencies may elect in its state plan to initiate review of an order after learning that a noncustodial parent will be incarcerated more than 180 calendar days. If the state has not elected this new option, then within 15 business days of learning that the noncustodial parent will be incarcerated more than 180 calendar days, the state must notify both parents of their right to request a review.

### How this affects states

States should determine whether they have “voluntary unemployment” policies or standards that legally prevent incarcerated parents from obtaining a review and adjustment of their orders upon a showing of a substantial change in circumstances. If so, they must conform their policies within one year after completion of the first quadrennial review of the state's guidelines that commences more than one year after publication of the final rule. Since states may elect to initiate the review upon learning of the noncustodial parent's incarceration for over 180 calendar days, we encourage states to implement this proactive approach to ensure that orders are based on the noncustodial parent's ability to pay during his or her incarceration. When modifying orders, states may consider an incarcerated parent's income and assets in setting the order amount. In electing this state plan option, the state may also need to consider whether further changes to state laws are required to implement this procedure.

## Modification for Incarcerated Parents

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A number of states conduct data matches with correctional facilities in the state to determine whether a parent is incarcerated. We encourage, but are not requiring states to actively establish partnerships with federal, state, local, and private prisons to conduct data matches to locate, as well as to educate incarcerated parents about the child support program. We encourage states to develop electronic interfaces with corrections institutions to maximize the identification of incarcerated parents and to implement outreach strategies designed to educate incarcerated parents of their rights to request reviews of their support orders, which will help to increase program efficiency.

### How this affects families

Setting and modifying realistic child support obligations for incarcerated parents can improve their ability to provide consistent support for their children upon release from prison.<sup>6</sup> With this rule change, formerly incarcerated noncustodial parents will be more likely to meet their child support obligations, benefiting their children by improving child support compliance and reliability, and reducing uncollectable debt. Other collateral consequences associated with orders set beyond a noncustodial parent's ability to pay may also decline, such as increased underground employment activity and reduced contact with their children. We also expect that more incarcerated parents learn about their right to request a review of their child support orders early in their prison terms in an effort to manage their debt.

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1. Christopher Mumola, *Incarcerated Parents and Their Children*, Bureau of Justice Statistics Special Report, August 2000, NCJ 182335.
  2. Council of State Governments, *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community*, Justice Center, 2005, available at: <http://www.csgjusticecenter.org/wp-content/uploads/2013/04/1694-11.pdf>. For further background, see Jessica Pearson's article, Pearson, Jessica, "Building Debt While Doing Time: Child Support and Incarceration," *Judges' Journal* 43:1, Winter 2004, available at: <https://csdaca.org/wp-content/uploads/2014/11/BuildingDebt-2.pdf>.
  3. U.S. Department of Health and Human Services, Office of Child Support Enforcement, *Incarceration, Reentry, and Child Support Issues: National and State Research Overview*, 2006; Pamela Ovwigho, et al., *The Intersection of Incarceration and Child Support: A Snapshot of Maryland's Caseload*, School of Social Work, University of Maryland, 2005; Esther Griswold and Jessica Pearson, *Twelve Reasons for Collaboration Between Departments of Correction and Child Support Enforcement Agencies*, *Corrections Today*, June 2003.
  4. See our, "Jobs not Jail Infographic", published October 2015 on OCSE website at: [http://www.acf.hhs.gov/sites/default/files/programs/css/jobs\\_not\\_jail\\_final\\_10\\_02.pdf](http://www.acf.hhs.gov/sites/default/files/programs/css/jobs_not_jail_final_10_02.pdf) and *Collateral Costs: Incarceration's Effect on Economic Mobility*. The Pew Charitable Trusts. (2010, September), available at: [http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes\\_assets/2010/collateralcosts1pdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2010/collateralcosts1pdf.pdf).
  5. For further information, see Carolyn J. Heinrich, Brett C. Burkhardt, and Hilary M. Shager, *Reducing Child Support Debt and Its Consequences: Can Forgiveness Benefit All?* (2010), available at: [http://www.irp.wisc.edu/research/childsup/cspolicy/pdfs/2007-09/FamiliesForward\\_3\\_19\\_10.pdf](http://www.irp.wisc.edu/research/childsup/cspolicy/pdfs/2007-09/FamiliesForward_3_19_10.pdf); Maria Cancian, Carolyn Heinrich, and Yiyoon Chung, *Does Debt Discourage Employment and Payment of Child Support?* (2009), available at: <http://www.irp.wisc.edu/publications/dps/pdfs/dp136609.pdf>; and Harry Holzer, Paul Offner, and Elaine Sorensen, *Declining Employment Among Young Black Less-Educated Men: The Role Of Incarceration and Child Support* (2004), available at: [http://www.urban.org/uploadedpdf/411035\\_declining\\_employment.pdf](http://www.urban.org/uploadedpdf/411035_declining_employment.pdf).
  6. Alicia Bannon, Mitali Nagrecha and Rebekah Diller, *Criminal Justice Debt a Barrier to Reentry*, Brennan Center for Justice, 2010; *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community*, Council of State Governments, 2005; Esther Griswold and Jessica Pearson, *Twelve Reasons for Collaboration between Departments of Correction and Child Support Enforcement Agencies*, *Corrections Today*, June 2003.



## Case Closure

### Overview

The [Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Final Rule](#) makes a number of changes to federal case closure criteria, codified at 45 CFR 303.11. These changes provide greater state flexibility while protecting families by recognizing more circumstances in which a state is permitted to close a case. These changes help states direct resources for cases where collections are possible and carry out good customer service and management practices. They reflect advances in technology and recommendations by states for improving the effectiveness and efficiency of the child support program. Additionally, the rule strengthens notice provisions to ensure that safeguards are in place to keep recipients informed about case closure actions. Cases may not be closed without considering new information provided by the parties to the case.

### What is new

New criteria permit case closure for certain situations, such as:

- when there is no current support order and all arrearages are owed to the state;
- there is an intact two-parent household;
- limited services have been provided; or
- there is an inappropriate referral.

The final rule also revises the locate criteria for closing cases and adds a provision for closing and transferring cases to a tribal child support program. Please see the regulations at § 303.11 for all of the case closure criteria.

### How this affects states

States have the discretion to adopt any of the case closure criteria under § 303.11(b). The rule makes it clear that, generally, case closure is not required. Case closure regulations are designed to give a state the option to close cases, if certain conditions are met, and flexibility to manage its caseload. These additional criteria provide states with greater flexibility to better manage limited program resources and provide good customer service.

### How this affects families

Many factors affect whether a state closes a case or adopts any of the optional case closure criteria. The rule supports continued enforcement of cases with collection potential. The final rule emphasizes the requirement that states provide the recipient of services:

- notice of the intent to close the case; and
- an opportunity to respond with information and request that the case be kept open or, reopen the case, after the case is closed.

Closing a case does not affect the legality of the underlying order. The child support order, including any payment or installment of support such as arrearages due under the order, remains in effect and legally binding.

## COMPLIANCE DATES FOR THE FLEXIBILITY, EFFICIENCY, AND MODERNIZATION IN CHILD SUPPORT ENFORCEMENT PROGRAMS FINAL RULE

**Effective Date** (when the final rule goes into effect): 30 Days after Federal Register Issue Date, or January 19, 2017

**Compliance Date** (when states must comply with the final rule revisions): 60 Days after Issue Date, or February 21, 2017, **except for:**

Federal Requirement	Compliance Date
45 CFR 302.32: Collection and distribution of support payments by the IV-D agency	30 days after December 20, 2016, or January 19, 2017
45 CFR 302.33(a)(4): Services to individuals not receiving title IV-A assistance – Former IV-E recipients	If state law revisions are not needed, the compliance date is 1 year after December 20, 2016, or December 20, 2017. If state law revisions are needed, the compliance date is the first day of the second calendar quarter beginning after the close of the first regular session of the state legislature that begins after the effective date of the regulation.
45 CFR 302.33(a)(6): Services to individuals not receiving title IV-A assistance – Paternity-only Limited Service	No specific date since this is an optional requirement
45 CFR 302.38: Payments to the family	If state law revisions are not needed, the compliance date is 60 days after December 20, 2016, or February 21, 2017. If state law revisions are needed, the compliance date is the first day of the second calendar quarter beginning after the close of the first regular session of the state legislature that begins after the effective date of the regulation.
45 CFR 302.56(a) – (g): Guidelines for setting child support orders	1 year after completion of the first quadrennial review of the state’s guidelines that commences more than 1 year after December 20, 2016
45 CFR 302.56(h): Guidelines for setting child support orders	First quadrennial review of the guidelines commencing after the state’s guidelines have initially been revised after the final review
45 CFR 302.70: Required state laws – Exemptions	30 days after December 20, 2016, or January 19, 2017
45 CFR 303.3: Location of noncustodial parents	If state law revisions are not needed, the compliance date is 1 year after December 20, 2016, or December 20, 2017. If state law revisions are needed, the compliance date is the first day of the second calendar quarter beginning after the close of the first regular session of the state legislature that begins after the effective date of the regulation.
45 CFR 303.4: Establishment of support obligations	1 year after completion of the first quadrennial review of the state’s guidelines that commences more than 1 year after December 20, 2016
45 CFR 303.6(c)(4): Enforcement of support obligations – Civil contempt	If state law revisions are not needed, the compliance date is 60 days after December 20, 2016, or February 21, 2017. If state law revisions are needed, the compliance date is the first day of the second calendar quarter beginning after the close of the first regular session of the state legislature that begins after the effective date of the regulation.

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Federal Requirement	Compliance Date
45 CFR 303.8(b)(2): Review and adjustment of child support orders Optional notice for incarcerated noncustodial parents	No specific date since this is an optional requirement
45 CFR 303.8(b)(7)(ii): Review and adjustment of child support orders Mandatory notice for parents when noncustodial parent incarcerated	If state law revisions are not needed, the compliance date is 1 year after December 20, 2016, or December 20, 2017. If state law revisions are needed, the compliance date is the first day of the second calendar quarter beginning after the close of the first regular session of the state legislature that begins after the effective date of the regulation.
45 CFR 303.8(c): Review and adjustment of child support orders – Incarceration basis for adjustment	1 year after completion of the first quadrennial review of the state’s guidelines that commences more than 1 year after December 20, 2016
45 CFR 303.8(d): Review and adjustment of child support orders – Health care	1 year after completion of the first quadrennial review of the state’s guidelines that commences more than 1 year after December 20, 2016
45 CFR 303.11(b): Case closure criteria	No specific date since this is an optional requirement
45 CFR 303.11(c) and (d): Mandatory provisions of case closure criteria	If state law revisions are not needed, the compliance date is 1 year after December 20, 2016, or December 20, 2017. If state law revisions are needed, the compliance date is the first day of the second calendar quarter beginning after the close of the first regular session of the state legislature that begins after the effective date of the regulation.
45 CFR 303.31: Securing and enforcing medical support obligations	If state law revisions are not needed, the compliance date is 60 days after December 20, 2016, or February 21, 2017. If state law revisions are needed, the compliance date is the first day of the second calendar quarter beginning after the close of the first regular session of the state legislature that begins after the effective date of the regulation.
45 CFR 303.100: Procedures for income withholding	30 days after December 20, 2016, or January 19, 2017
45 CFR 304.20: Availability and rate of federal financial participation	No specific date since this is an optional requirement
45 CFR 304.23: Expenditures for which federal financial participation is not available	30 days after December 20, 2016, or January 19, 2017
45 CFR 307.11(c)(3)(i) and (ii): Functional requirements for computerized support enforcement systems in operation by October 1, 2000	If state law revisions are not needed, the compliance date is 1 year after December 20, 2016, or December 20, 2017. If state law revisions are needed, the compliance date is the first day of the second calendar quarter beginning after the close of the first regular session of the state legislature that begins after the effective date of the regulation.
Topic 2 Revisions: Electronic records	No specific date since this is an optional requirement
Topic 3 Revisions: Technical revisions	30 days after December 20, 2016, or January 19, 2017