

National Council of Child Support Directors
2018 Annual Meeting & Conference
Child Support: A Safe Harbor for the Future
May 13 – 16, 2018 • Norfolk, Virginia



Knotty Issues: The Final Rule – Incarceration, Case Closure, and others

May 14, 2018 • 9:00 a.m. – 10:30 a.m.

Jim Fleming, North Dakota IV-D Director – Moderator

Alice Burlinson, Virginia Office of the Attorney General

Yvette Hilderson Riddick, Office of Child Support Enforcement

Liesa Stockdale, Utah IV-D Director

What is required by the Final Rule?

(a refresher)



Final Rule: Overview

- The federal Office of Child Support Enforcement's final rule—*Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs*—was published on December 20, 2016
- The final rule revises existing federal regulations governing the child support enforcement program





Final Rule: Overview

- Goals:
 - Increase state and employer flexibility to better serve families
 - Improve program effectiveness, efficiency, and innovation
 - Improve customer service
 - Remove barriers identified by employers, states, and families that impede efficient and timely child support payments

Final Rule: Purpose

- Set accurate obligations based on a parent's actual ability to pay
- Increase consistent, on-time payments
- Move non-paying cases to paying status
- Increase number of parents supporting their children





Final Rule: Purpose

- Improve collection rates
- Reduce accumulation of unpaid and uncollectible arrears
- Incorporate technological advances and evidence-based standards that support good customer service and cost-effective management practices



Available Resources

- OCSE website: <https://www.acf.hhs.gov/css/resource/final-rule-resources>
 - Final Rule Compliance Dates:
https://www.acf.hhs.gov/sites/default/files/programs/css/final_rule_compliance_dates_table_1220.pdf
 - Fact Sheets
 - Training PowerPoints
- NCCSD Final Report
- Digital version of the final rule:
<https://www.federalregister.gov/documents/2016/12/20/2016-29598/flexibility-efficiency-and-modernization-in-child-support-enforcement-programs>

Civil Contempt



45 CFR § 303.6(c)(4)

Enforcement of support obligations

States must establish guidelines for using civil contempt that include procedures to:

- **Screen case** for information regarding **NCP's ability to pay or otherwise comply** with order
 - **Provide clear notice** to NCP that ability to pay constitutes **the critical question in civil contempt actions**
 - **Provide court** with this information, which may assist the court in making a factual determination regarding NCP's **ability to pay purge or comply** with purge conditions





Virginia's definition:

- **Ability to pay** is established by showing that the obligor either has income, cash or assets sufficient to pay or that there are steps the obligor can take that would allow him/her to pay some or all of the amount owing. *Jones v. Jones*, 62 N.C.App. 748, 303 S.E.2d 583 (1983)

Enforcement Rules



- Review the case for judicial enforcement if the NCP:
 1. does not appear to have any barriers; or
 2. was referred for Family Engagement Services and did not cooperate; or
 3. is non-responsive to requests for contact; AND
 4. it has been more than 90 days since payment has been received and the arrearages are at least \$500.

Judicial Enforcement Assessment

- A Show Cause should not be filed unless the Show Cause Assets Checklist indicates that the NCP has an ability to pay or comply with the support obligation.





Assessment Checklist



2018 Show Cause
Assets Checklist



Incarceration

- Step one – incarceration may not be treated as voluntary unemployment

- Step two – upon learning that a parent will be incarcerated for more than 180 calendar days, pick your option:
 1. Initiate a review without waiting for a request, and adjust the order if appropriate
 2. Notify both parents, within 15 business days of learning of the incarceration, of the right to request review and any appropriate adjustment to the order
 3. Or, “[n]either the notice nor a review is required ... if the State has a comparable law or rule that modifies a child support obligation upon incarceration by operation of State law”



Imputation

- Changes in two areas
 - Child support guidelines
 - Procedures for establishing or modifying an order



Imputation – Guidelines Changes

- Guidelines must provide that an order is based on earnings, income, and ability to pay that takes into consideration:
 - All earnings and income of the parent
 - Subsistence needs of the parent through a low-income adjustment as determined by the State
 - The specific circumstances of the parent if known (if imputation of income is authorized)
 - An extensive list of factors is included in the regulation



Imputation – Establish or Modify Orders

- Reasonable steps to develop a factual basis for the obligation
- Gather information regarding parent's earnings and income
- When earnings information is **unavailable or insufficient**, gather any **available** information about the parent's circumstances
- Base the support obligation " on the earnings and income of the noncustodial parent **whenever available**. If evidence of earnings and income is **unavailable or insufficient** to use as the measure of the noncustodial parent's ability to pay, then the support obligation ... amount should be based on **available** information about the specific circumstances of the noncustodial parent
- Document the factual basis for the obligation in the case record



Imputation – Establish or Modify Orders

- NCCSD recommendations
 - Imputation is not prohibited
 - Emphasis is on information that is available **and** sufficient
 - Imputation can be used to fill any evidentiary gaps after exhausting all available sources of information regarding a parent's income and earnings and the parent's specific circumstances

Case Closure – the lighthouse at the end of the voyage

- How do you decide when to steam forward or return to port?
- No current support and all arrears are assigned – close right away, or after a period of no or nominal collections?
- No current support, children reached age of majority, parent is in long-term care with no income above subsistence
- The child is living with the parent who owes support as primary caregiver or an intact family and services are “not appropriate”
 - What if the order is still accruing? What if the other parent objects?
- Parent is incarcerated with no support potential during child’s minority beyond subsistence
- Parent is incarcerated after child has reached majority and has no support potential above subsistence – for how long?



Case Closure – the lighthouse at the end of the voyage

- Parent's sole income is from SSI or SSI combined with SSDI
- All requested limited services have been completed
- Inappropriate referrals from another program
- Tribal transfer upon notice and no objection received
- (Mandatory) Case opened because of a Medicaid referral solely based on receipt of as a result of services provided by an Indian Health Program to a child eligible for Indian Health Services
- Electronic notices are authorized

Child Support Guidelines

- Public Process, including internet and chance to give input
- Consider economic data on the cost of raising children, labor market data by occupation and skill-level for the State and local job markets, the impact of guidelines policies and amounts on parents who have family incomes below 200 percent of the Federal poverty level, and factors that influence employment rates among noncustodial parents and compliance with child support orders;
- Analyze case data, gathered through sampling or other methods, on the application of and deviations from, the child support guidelines, as well as the rates of default and imputed child support orders and orders determined using the low-income adjustment required under paragraph (c)(1)(ii) of this section. The analysis must also include a comparison of payments on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment required under paragraph (c)(1)(ii).



Medical Support

- AT-08-08 + public coverage
 - [Preamble to 2008 medical support rule](#)
- How far do you want to go?
- What is impact of repeal of ACA penalty in the new tax code?

