

# **Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs: Notice of Proposed Rulemaking**

**Department of Health and Human Services  
Administration for Children and Families  
Office of Child Support Enforcement  
January 2015**



# Background

- In response to *Executive Order 13563: Improving Regulation and Regulatory Review*, we:
  - conducted a comprehensive review of existing regulations;
  - sought recommendations from State and Tribal IV-D programs, and other stakeholders; and
  - identified outmoded requirements and technical fixes.

# Background (continued)

## ■ Tribal Leader Consultations

- Written

  - Dear Tribal Leader Letter

- Face-to-Face

  - ACF Tribal Consultation Sessions

  - OCSE Tribal Consultation Session

## ■ Tribal Conversations

# Evolution of Child Support Program

## Welfare cost-recovery



- Debt-driven enforcement
- Imputing income to set orders
- Standardized “one size fits all” processes
- Recovering welfare costs
- Routine incarceration

## Family-centered strategies

- Consistent, on-time payments
- Setting accurate orders
- Caseload segmentation: (“right tool for right case at right time”)
- Early intervention to prevent arrears
- Debt management
- Family distribution (95%)
- Enforcement + services

# Five Evidence-Based Tools to Increase Collections

- Right-sized orders (Formoso, 2003; HHS/OIG, 2000)
- Debt reduction (Heinrich, 2009; Cancian, 2009)
- Family distribution (Wheaton, 2008; Meyer, 2003; Bloom, 1998)
- Parenting time (Pearson, 2006)
- Employment services (Sorensen, 2011; Shroeder, 2009; Miller, 2001)

# NPRM Layout

**Topic 1:** Procedures to Promote Program Flexibility,  
Efficiency, and Modernization

**Topic 2:** Updates to Account for Advances in  
Technology

**Topic 3:** Technical Corrections

## Effective Dates

- Request public comment on the steps necessary to implement proposed provisions and amount of time needed.
- Will 1 year after publication date be sufficient?
- NPRM includes standard language if State legislation is needed.

(Exception: Proposal to implement the guidelines requirements within one year after completion of State's next quadrennial review)

# Topic 1: Procedures to Promote Program Flexibility, Efficiency, and Modernization

The following proposed regulations are designed to:

- add more flexibility for States to better serve families;
- promote efforts that enable States to work with Tribes more effectively; and
- remove regulatory barriers to cost-effective approaches to increase reliable support payments.

# Collection and Distribution of Child Support Payments by the IV-D Agency (§ 302.32)

- Describes the State's responsibility to establish and operate a State Disbursement Unit (SDU):
  - for all cases enforced under the State IV-D plan
  - for all non-IV-D cases in which the support order was established after January 1, 1994, and in which the income of the noncustodial parent is subject to withholding pursuant to section 466(a)(8)(B) of the Act.

## Limited Services (§ 302.33 and § 303.11)

- **Services to individuals not receiving title IV-A assistance (§ 302.33)**
  - Gives States and parents more flexibility to use limited services instead of the “all-or-nothing” approach in current rules.
  - Allows a State to provide applicants the option to request limited services.
    - If a State elects to do so, it must define its policy, require all mandatory enforcement services (if enforcement services are requested), and charge appropriate fees.

## Limited Services (continued)

- **Case closure criteria (§ 303.11)**

- Allows a State to “automatically and immediately” close non-IV-A cases after a limited service has been completed.

## Payments to the Family (§ 302.38)

- Requires State Disbursement Units (SDU) to disburse child support payments directly to the resident parent, legal guardian, or caretaker relative.

# Guidelines for Setting Accurate Child Support Awards (§ 302.56)

- A State's child support guidelines take into consideration:
  - a noncustodial parent's actual, not presumed, ability to pay; and
  - subsistence needs (e.g., self-support reserve).
- A State may set an order based on evidence of income or assets in absence of proof of earnings (e.g., lifestyle inconsistent with reported income)
- A State may deviate from guidelines by exception based on factors established by the State (e.g., willful refusal to support)
- State guidelines may not treat incarceration as “voluntary unemployment.”
- State child support guidelines recognize parenting time provisions. (See next slide)

# Parenting Time

- State child support orders may address parenting time if pursuant to State child support or parenting time guidelines, or when both parents have agreed to parenting time provisions.
- Does not allow FFP, except for *de minimis* costs associated with establishing parenting time provisions incidental to establishing a child support order.

## Required State laws (§ 302.70)

- Extends the requirement for States to request an extension of its IV-D State plan exemptions to every 5 years.

## Job Services [§ 302.76 and § 303.6(5)]

- The State plan may provide for job services for eligible noncustodial parents.
- Federal financial participation (FFP) is available for job services for eligible noncustodial parents that are identified in the state plan. (§ 304.20)
- The noncustodial parent must have a IV-D case, a current child support order, be unemployed or not making child regular child support payments and not be receiving job services in certain benefit programs.
- Job services may include:
  - job search assistance;
  - job readiness training;
  - job development and job placement service;
  - skills assessment to facilitate job placement;
  - job retention services; and
  - certificate programs and other skills training directly relates to employment; and work supports such as transportation, uniforms, and tools.

# Enforcement of Support Obligations (§ 303.6)

A State must:

- have procedures to ensure that in civil contempt proceedings, such enforcement activities take into consideration the noncustodial parent's subsistence needs and income level;
- require that any purge amount a noncustodial parent pays in order to avoid jail in a civil contempt hearing takes into consideration the parent's actual income and subsistence needs (implementing Turner v. Rogers).

# Review and Adjustment of Child Support Orders (§ 303.8)

- Requires a State to notify both parents of the right to request review and adjustment when a parent is incarcerated.
- Allows a State to review and adjust a child support order:
  - after being notified that a noncustodial parent will be incarcerated for more than 90 days;
  - without waiting for a specific request to initiate review and adjustment; and
  - after providing notice to both parents.

# Federal Benefits Excluded from Garnishment

## ■ § 303.11: Case Closure

- Allows a State to close a case when a noncustodial parent's sole income is from SSI, from both SSI and Title II benefits concurrently, or other needs-based benefits.

## ■ § 307.11: Functional requirements for computerized support enforcement systems

- Requires a State to identify cases where the noncustodial parent receives those Federal benefits exempt from garnishment (e.g., SSI).
- Requires a State to refund monies within 2 days after IV-D determines account has been incorrectly garnished.

## Case Closure Criteria (§ 303.11)

- Clarifies that case closure regulations are optional.
- Allows a State to close cases when:
  - there is no current support order; and
  - all arrearages are owed to the State.
- Allows a State to close arrearages-only cases:
  - against low-income seniors who are entering or have entered long-term care placement; and
  - whose children have already reached majority age.

## Case Closure Criteria (continued)

- Allows a State to close cases if:
  - the noncustodial parent is living with the minor children as the primary caregiver; or
  - the noncustodial parent is a part of an intact two-parent household and the IV-D **agency** has determined that services are no longer appropriate.

## Case Closure Criteria (continued)

- Revises the 3-year locate period to 2 years.
- Allows a State to close cases after 6 months if it does not have sufficient identifying information.
- Allows a State to close cases after 1 year if it has sufficient information to initiate an automated locate effort, but locate interfaces are unable to verify Social Security Numbers.

## Case Closure Criteria (continued)

- Allows a State to close current and arrearages-only cases, if the noncustodial parent cannot pay support because the parent:
  - has been institutionalized in a psychiatric facility; or
  - is incarcerated; or
  - has medically-verified total and permanent disabilities; or
  - shows no evidence of support potential despite multiple referrals for services over a 5-year period.
- The State must also determine that the noncustodial parent has no income or assets above subsistence level that could be levied or attached.

## Case Closure Criteria (continued)

- Allows a State to close cases if another assistance program, including IV-A, IV-E, and Medicaid, has referred a case to the IV-D agency that is inappropriate to establish, enforce, or continue to enforce a child support order and the custodial or noncustodial parent has not applied for services.

## Case Closure Criteria (continued)

- Permits a State to close the case if it has been transferred to a Tribal IV-D agency, regardless of whether there is a State assignment.
  
- Before transferring the case:
  - recipient of services must request the transfer; or
  - State must obtain recipient's consent.
  
- A State may enter into an agreement with a Tribal IV-D agency to compromise any state-assigned arrearages.

## Case Closure Criteria (continued)

- Requires a State to close a case, if:
  - the child is eligible for health care services from the Indian Health Service (IHS); and
  - the IV-D case is opened because of a Medicaid reimbursement referral based solely upon health care services, including contract health services, provided through an Indian Health Program.
  
- The Centers for Medicare & Medicaid Services (CMS) is also proposing conforming changes to Medicaid policy to require that State Medicaid agencies not refer such cases for medical support enforcement services.

# Case Closure Criteria (continued)

## New Case Closure Notice Requirements

- For cases closed because they were inappropriately referred from IV-A, IV-E, or Medicaid
  - IV-D must **notify the referring agency** 60 calendar days prior to closing the case.
  - If the referring agency does not respond or does not indicate that child support is needed on the case, IV-D may close the case.
- For cases closed because of limited services or inappropriate referrals, must **notify the recipient** of the closure within 30 calendar days.

## Medical Support (§ 303.31 and § 303.8)

- Securing and enforcing medical support obligations
  - Clarifies that health insurance includes both public and private insurance;
  - Omits the requirement that health insurance costs be measured based on the marginal cost of adding the child to the policy; and
  - Deletes the language in § 303.8 that prohibits Medicaid from being considered medical support.

# Employer Concerns (§ 303.100)

- Procedures for income withholding
  - Requires a State to use the required “OMB-approved Income Withholding for Support” form.
  - Explicitly indicates that income withholding payments on non-IV-D cases must be directed through the State Disbursement Unit.

# Availability and Rate of Federal Financial Participation (§ 304.20)

- Clarifies that Federal Financial Participation (FFP) is available for child support services and activities “necessary and reasonable” to carry out the title IV-D State plan.
- Job services activities pursuant to § 303.6(c)(5).
- Allows FFP for bus fare or other minor transportation expenses.
- Authorizes FFP for activities designed to increase parents *pro se* access to adjudicative and alternative dispute resolution processes in IV-D cases.

## Availability and Rate of Federal Financial Participation (continued)

- Does not permit FFP for parenting time activities, except for *de minimis* costs associated with establishing parenting time provisions in the child support order.
- Allows FFP for educational and outreach activities.

## **Expenditures for which Federal Financial Participation Is Not Available (§ 304.23)**

- Distinguishes between the education and training “State and county employees and court personnel” may receive from other types of education and training activities provided to parents.

## Topic 2: Updates to Account for Advances in Technology

The proposed regulations in this section:

- remove “written” and “in writing” and replace with “record” or “in a record”;
- provide a State the option to use electronic records; and
- retain the “writing” provision if addressed in statute or if members of the public are involved.

## Topic 3: Technical Corrections

- Proposes a number of technical corrections that update, clarify, revise, or delete existing regulations to ensure that the child support regulations are accurate, aligned, or up-to-date. Examples include:
  - Revising the outdated § 301.15, “Grants” section, including modifying that financial forms be submitted no later than 45 days following the end of the quarter;
  - Changing references to Part 74 to Part 92;
  - Adding language in § 305.35 to clarify the definition of State Current Spending Level for purposes of determining if the State has met or fulfilled the baseline expenditure level; and
  - Changing the name of the State Employment Security Administration (SESA) to State Workforce Agency (SWA).

# Questions???

- Contact your OCSE Regional Office

**Thank You!**