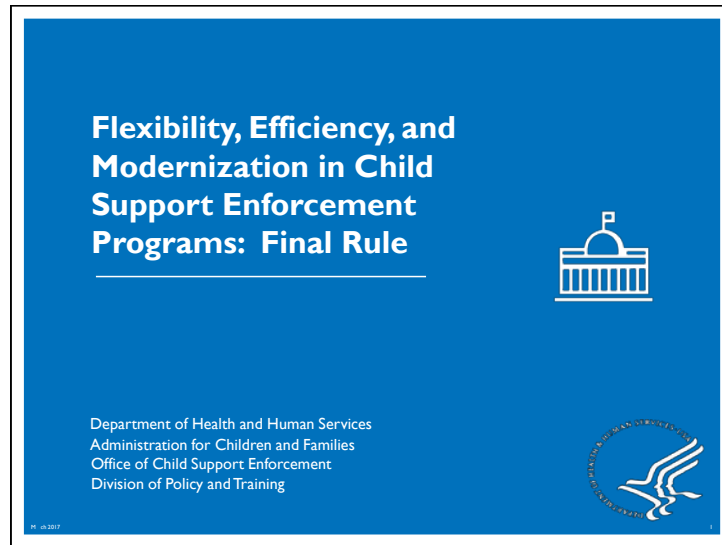


Slide 1



Notes:

Introduce purpose of presentation and presenters (AT-16-06)

[This presentation covers the most significant revisions, however it will not cover ALL the changes. Therefore, we encourage you to review the regulation in its entirety, including the preamble and response to comments.]

Slide 2

Final Rule

- First comprehensive revision of the child support regulations since welfare reform.
- Amends existing regulations to incorporate evidence-based practices and innovative approaches including:
 - strengthening procedural fairness;
 - streamlining program operations; and
 - updating technology requirements to keep up with advances in automated systems (such as electronic records and filings).

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Notes:

As part of President Obama's Accountable Government Initiative, executive branch agencies were directed to identify and consider regulatory approaches that improve program flexibility, efficiency, and responsiveness; promote technological and programmatic innovation; and update outmoded ways of doing business.

In response, the federal Office of Child Support Enforcement (OCSE) conducted a comprehensive review of its regulations to identify areas where it could increase state and employer flexibility to better serve families; improve program effectiveness, efficiency, and innovation; streamline intergovernmental case processing, improve customer service, and remove barriers identified by employers, states, and families that impede efficient and timely child support payments.

This final rule is the first comprehensive revision of the child support regulations since welfare reform. This rule amends existing regulations to incorporate evidence-based practices and state innovative approaches including:

- strengthening procedural fairness;
- streamlining program operations; and
- updating technology requirements to keep up with advances in automated systems.

Child Support Rulemaking Authority

- Section 452(a)(1) of the Social Security Act
 - “Establish such standards for State programs for locating noncustodial parents, establishing paternity, and obtaining child support...as he determines to be necessary to assure that such programs will be effective.”
- Section 454(13) of the Social Security Act
 - Provides that “the State will comply with such other requirements and standards as the Secretary determines to be necessary to the establishment of an effective program for locating noncustodial parents, establishing paternity, obtaining support orders, and collecting support payments and provide that information requests by parents who are residents of other States be treated with the same priority as requests by parents who are residents of the State submitting the plan.”

Slide 4

OCSE Final Rule Resources

- Central resource library for all information about the final rule including the AT-16-06, Overview of the final rule, OCSE Fact Sheets, Compliance Date chart, and future documents relating to the rule.
- OCSE Fact sheets
 - Final Rule Summary;
 - Guidelines;
 - Modification for Incarcerated Parents;
 - Civil Contempt - Ensuring Noncustodial Parents Have the Ability to Pay; and
 - Case Closure.
- URL: <https://www.acf.hhs.gov/css/resource/final-rule-resources>

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Notes:

OCSE has compiled a single resource page that houses all documentation regarding the final rule.

Slide 5

Final Rule Objectives

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

Topic 2: Updates to Account for Advances in Technology

Topic 3: Technical Corrections

March 2017

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Notes:

This structure assists in understanding the major concepts and the rationale for proposed changes.

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.

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Notes:

Throughout the regulation, where appropriate, the words “written” and “in writing” have been removed and the words “record” or “in a record” have been inserted. These simple changes provide OCSE, states, and others the option to use cost-saving and efficient technologies, such as email or electronic document storage, wherever possible.

Where written formats are required by statute, OCSE did not change the regulatory language. Additionally, because not everyone has access to the latest technology, wherever individual members of the public are involved, OCSE did not remove any statutory or regulatory requirements that the information be provided in a written format.

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;
 - Adding language in § 305.35 to clarify the definition of State Current Spending Level and consequences for non-compliance for purposes of determining if the state has met or fulfilled the baseline expenditure level;
 - Updating regulatory references; and
 - Changing the name of the State Employment Security Administration (SESA) to State Workforce Agency (SWA).

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Notes:

There are a number of technical changes to ensure that the child support regulations are accurate, aligned, and up-to-date. For example, the final rule:

- revises the outdated § 301.15, “Grants” section, including modifying that financial forms be submitted no later than 45 days following the end of the quarter;
- changes references to Part 74 to Part 75; (Cost principles)
- adds language in § 305.35 – Reinvestment to clarify the definition of state current spending level **and consequences for non-compliance** for purposes of determining if a state has met the baseline expenditure level, which had been previously addressed in AT-01-04; and
- changes the name of the State Employment Security Administration (SESA) to State Workforce Agency (SWA).

Slide 8

Topic I: Procedures to Promote Program Flexibility, Efficiency, and Modernization

The final regulations are designed to:

- add 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.

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Notes:

The final rule makes changes to better align existing regulations with current knowledge and practices in the field. These changes are designed to add more flexibility to allow states to tailor policies that better serve families; to promote efforts that enable states to work with tribes more effectively; and to remove regulatory barriers to cost-effective approaches that will increase the reliability of support payments.

Effective and Compliance Dates

- The Final Rule effective date is January 19, 2017.
- Compliance dates, or when states must comply with the final rule, vary for the various sections.
- Generally, a compliance date will be 60 days after the final rule is published, or February 21, 2017, except for:
 - Guidelines for setting child support orders [§ 302.56(a) – (g)], Establishment of Support Obligations (§ 303.4), and Review and Adjustment [(§ 303.8(c) and (d))] – Compliance date is one (1) 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.

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Notes:

This final rule was published in the Federal Register on December 20, 2016 and is effective 30 days after the publication date, or January 19, 2017. States may comply any time after the effective date, but before the final compliance date. The compliance dates vary. The reasons for delayed compliance dates include, for example, state legislative changes, system modifications, and avoiding the need for a special guidelines commission review.

Since there are varying dates to comply with different provisions of the rule, the regulation uses compliance dates to indicate when states must comply with the final rule (see AT-16-06 for chart).

The compliance dates will be 60 days after issue date or February 21, 2017, except, as noted below:

- *Guidelines for setting child support orders, Establishment of support obligations, and Review and adjustment of child support orders* related to incarceration and healthcare needs: The compliance date is one year after completion of the first quadrennial review of the state’s guidelines that commences more than one year after December 20, 2016.

Slide 10

Compliance Date Quadrennial Review example

Quadrennial Review Schedule	Quadrennial Review More than 1 year after Publication?	Next Quadrennial Review	Compliance Date (Apply State Law Scenario)
2016	No	2020	2021
2017	No	2021	2022
2018	Yes	N/A	2019
2019	Yes	N/A	2020
2020	Yes	N/A	2021

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Notes:

OCSE developed this chart to clarify the compliance date schedule based on when the state's next quadrennial review is due. If the quadrennial review is scheduled in 2016 or 2017, the state does not have to conduct a review until the following quadrennial.

Compliance Dates (continued)

- Reviewing Guidelines [§ 302.56(h)] – Compliance date is the first quadrennial review of the state’s guidelines that commences after the state’s guidelines have initially been revised under this final rule.
- Continuation of service for IV-E cases [§ 302.33(a)(4)], Location of noncustodial parents in IV-D cases [§ 303.3], Mandatory notice under Review and adjustment of child support orders [§ 303.8(b)(7)(ii)], Mandatory provisions of Case Closure criteria [§ 303.11(c) and (d)] and Functional requirements for computerized support enforcement systems [§ 307.11(c)(3)(i) and (ii)] – Compliance date is one year after publication.
 - If state law changes are needed, then the compliance date will be 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 final rule.

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Notes:

The compliance date for the requirements related to the quadrennial reviews of guidelines is the first quadrennial review of the guidelines commencing after the state’s guidelines have initially been revised under this final rule.

The compliance date for the new requirements under *Continuation of service for IV-E cases, Location of noncustodial parents in IV-D cases, Mandatory notice under Review and adjustment of child support orders, Mandatory provisions of Case closure criteria and Functional requirements for computerized support enforcement systems in operation by October 1, 2000* is one year from date of publication of the final rule, or December 20, 2017. However, if state law changes are needed, then the compliance date will be the first day of the second calendar quarter beginning after the close of the first regular session of the state legislature that begins after January 19, 2017.

Compliance Dates (continued)

- Optional provisions (such as Paternity-only Limited Service [§ 302.33(a)(6)], Case closure criteria [§ 303.11(b)], Review and adjustment of child support orders [§ 303.8(b)(2)], Availability and rate of Federal financial participation [§ 304.20], and Topic 2 revisions): No specific compliance date.
- Payments to the family [§ 302.38], Enforcement of support obligations [§ 303.6(c)(4)], and Medical Support [§ 303.31] – 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. If state law revisions are not needed, the compliance date is 60 days after the publication of the final rule.

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Notes:

There is no specific compliance date for optional provisions such as *Case closure criteria*, *Review and adjustment of child support orders*, *Availability and rate of Federal financial participation*, and *Topic 2 Revisions*.

For *Payments to the family*, *Enforcement of support obligations*, and *Securing and enforcing medical support obligations*, 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. If state law revisions are not needed, the compliance date is 60 days after publication of the final rule, or February 21, 2017.

Compliance Dates (continued)

- Collection and disbursement of support [§ 302.32], Required State laws [§ 302.70], Income Withholding [§ 303.100], FFP is not available [§ 304.23], and Topic 3 revisions – Compliance date is same as effective date.

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Notes:

Finally, the compliance date for *Collection and disbursement of support payments by the IV-D agency, Required State laws, Procedures for income withholding, Expenditures for which Federal financial participation is not available*, and Topic 3 revisions is the same as the effective date for the regulation, or January 19, 2017, since these revisions reflect existing requirements.

Limited Services (§ 302.33 and § 303.11)

- Services to individuals not receiving title IV-A assistance [§ 302.33(a)(6)]
 - Gives states and parents flexibility to use limited services instead of the “all-or-nothing” approach in the past rule.
 - Allows a state to provide applicants the option to request paternity-only limited services. OCSE narrowed the scope to paternity-only services:
 - ❖ Due to commenters’ concerns regarding difficulty and costs, and
 - ❖ Due to intergovernmental enforcement issues, OCSE also limited to **intrastate** cases only.

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Notes:

Under § 302.33(a)(6), a state has the option of providing limited services for paternity-only services in intrastate cases to any applicant who requests such services. The rule indicates that a state may elect in its state plan to allow an individual who files an application to request paternity-only limited services in an intrastate case. If the state chooses this option, the state must define how this process will be implemented and must establish and use procedures, including domestic violence safeguards, which are reflected in a record, that specify when paternity-only limited services will be available.

An application is considered full-service unless the parent specifically applies for paternity-only_limited services in accordance with the state’s procedures. If one parent specifically requests paternity-only limited services and the other parent in the state requests full services, the case will automatically receive full services.

The state is required to charge the application and service fees for paternity-only limited services cases, and may recover costs if the state has chosen this option in its state plan. The state must provide the applicant with an application form and information on the availability of paternity-only limited services, consequences of selecting this limited service, and an explanation that the case will be closed when the limited service is completed.

Before a state chooses to implement this new criteria, it must ensure that its automated system can be modified to effectively track what child support services are requested.

If, during the course of providing paternity-only limited services, one of the parties moves out of state, the state may pursue paternity establishment using long-arm procedures. If this is not appropriate, then the state should contact the applicant to determine whether to pursue a full-services intergovernmental case.

Limited Services (continued)

- Case closure criteria [§ 303.11(b)(13)]
 - Final rule requires a state to notify the limited services applicant that the case will be closed when the limited service is completed. Additionally, the notice must provide information regarding reapplying for child support services and the consequences of receiving services, including any state fees, cost recovery, and distribution policies.
 - If the recipient of services reapplies for child support services, the recipient must complete a new application for IV-D services and pay any applicable fees.

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Notes:

Paragraph (b)(13) of the case closure regulations adds a criterion to allow the state to close a non-IV-A case after completion of a limited service under § 302.33(a)(6).

The final rule requires a state to notify the limited services applicant that their case will be closed upon completion of the limited service. The notice must also provide information regarding reapplying for child support services and the consequences of receiving such services, including any state fees, cost recovery policies, and distribution policies.

After the case is closed, if the former recipient of services reapplies for child support services, the recipient must complete a new application and pay any applicable fees.

Guidelines for Setting Child Support Orders (§ 302.56)

- Guidelines must provide that the child support order is based on the noncustodial parent's earnings, income, and other evidence of ability to pay that:
 - takes into consideration all earnings and income of the noncustodial parent;
 - takes into consideration the basic subsistence needs of the noncustodial parent who has a limited ability to pay by incorporating low-income adjustment, such as a self-support reserve or some other method;
 - if imputation of income is authorized, considers the specific circumstances of the noncustodial parent.

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Notes:

Each state is required to revise the guidelines in accordance with the final rule within one year after completion of the state's next quadrennial review of its child support guidelines, that commences more than one year after publication of the final rule as a condition of approval of its state plan.

OCSE made major revisions in guidelines. The rule continues to require that guidelines must provide that the child support order is based on the noncustodial parent's earnings and income. The final rule adds that orders must also be based on "other evidence of ability to pay." This provision codifies the basic guidelines standard for setting order amounts, reflecting OCSE's longstanding interpretation of statutory guidelines requirements that are addressed in AT-93-04 and PIQ-00-03.

The final rule continues to require that guidelines consider "all income and earnings" of the noncustodial parent. The rule adds that the state may also consider the custodial parent's earnings and income.

The final rule adds that the guidelines consider 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. The final rule also gives states the option of considering the custodial parent's and

children's basic subsistence needs in addition to the subsistence needs of the noncustodial parent.

Regarding imputed income, the final rule adds a provision to require that if the state allows imputation of income, then the guidelines must consider the specific circumstances of the noncustodial parent (and at the state's discretion, the custodial parent) to the extent known.

Guidelines (continued)

- Specific circumstances includes such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.
- States have discretion to also consider custodial parent's income and specific circumstances.
- Guidelines must address how the parent will provide for the child's healthcare needs through private or public health coverage and/or through cash medical support.
- Must prohibit the treatment of incarceration as "voluntary unemployment."

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Notes:

The final rule prohibits the treatment of incarceration as "voluntary unemployment" when establishing or modifying support orders because state policies that treat incarceration as voluntary unemployment effectively block application of the federal review and adjustment law in section 466(a)(10) of the Act. This section of the Act requires review, and if appropriate, adjustment of an order upward or downward upon a showing of a substantial change in circumstances.

Guidelines (continued)

- Guidelines must be reviewed at least once every 4 years. States must publish on the internet and make accessible to the public all aspects of the child support guidelines reviewing body, the membership of the reviewing body, the effective date of the guidelines, and the date of the next quadrennial review.
- Review of guidelines must provide meaningful opportunity for public input, including input from low-income parents. Must obtain the views and advice of state child support agencies.
- Review of the guidelines must consider economic data of raising children, labor market data by occupation and skill level for state and local job markets, impact of guideline policy on families who have income below 200% of Federal poverty level, and factors influencing employment rates and compliance with current orders.
- Guidelines review must also analyze case data including rates of default and imputed orders and orders using low-income adjustments.

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Notes:

The final rule continues to require that each state conduct a quadrennial review, and revise its guidelines, if appropriate, to ensure that their application results in the determination of appropriate child support order amounts. However, states are now required to publish the guidelines on the internet and make accessible to the public all reports of the child support guidelines reviewing body, the membership of the reviewing body, the effective date of the guidelines, and the date of the next quadrennial review.

Additionally, the review of the guidelines must provide a meaningful opportunity for public input. The state must also obtain the views and advice of the state child support agency funded under title IV-D.

As part of the review of a state's guidelines, a state must continue to consider economic data on the cost of raising children. However, the rule adds that the states must also consider the labor market data (such as unemployment rates, hours worked, and earnings) by occupation and skill-level for the state and local job markets, the impact of guideline policies and amounts on custodial and noncustodial 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 current support orders.

Finally, the final rule adds that the state is required to analyze case data, gathered through sampling or other methods: to analyze the rates of default of child support orders by case characteristics (such as imputed orders, default orders, orders determined using the low-income adjustment), to compare payments on orders by case characteristics, and to ensure that deviations from the guidelines are limited and guideline amounts are appropriate based on the deviation criteria established by the state.

Establishment of Support Obligations (§ 303.4)

- The added rule provisions are based on state best practices.
- Requires state child support agencies to implement and use procedures in IV-D cases related to applying the guidelines regulation. These requirements would not be applicable to non-IV-D cases.
- Requires states to use appropriate state statutes, procedures, and legal processes in establishing and modifying support obligations in accordance with § 302.56.

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Notes:

The final rule also made changes in the Establishment of Support Obligations provisions based on various best practices on how states are considering the noncustodial parents' ability to pay and specific circumstances in establishing and modifying support orders.

The final rule requires state child support agencies to implement and use procedures in IV-D cases related to applying the guidelines regulation. However, these requirements are not applicable to non-IV-D cases.

State agencies are required to use appropriate state statutes, procedures, and legal processes in establishing and modifying support obligations in accordance with the guidelines regulation.

Support Obligations (continued)

- States must:
 - take reasonable steps to develop a sufficient factual basis for the support obligation, through investigations, case conferencing, interviews with both parties, appear and disclose procedures, parent questionnaires, testimony, and electronic data sources.
 - gather information regarding the earning and income of the noncustodial parent, including factors listed under § 302.56(c)(iii).
 - base the support obligation or recommended support obligation amount on the earnings and income of the noncustodial parent whenever available. If evidence of earnings and income is not available or insufficient to use to measure the parent's ability to pay, then the amount should be based on available information about the specific circumstances of the noncustodial parent listed under § 302.56(c)(iii).
 - document the factual basis for the support obligation or the recommended support obligation in the case record.

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Notes:

The final rule adds provisions that state child support agencies must meet in establishing and modifying support obligations. First, states are required to take reasonable steps to develop a sufficient factual basis for the support obligation, through such means as interviews with both parties, parent questionnaires, investigations, case conferencing, appear and disclose procedures, testimony, and electronic data sources.

Second, states must gather information regarding the earnings and income of the noncustodial parent and, when earning and income information is unavailable in a case, gather available information about the specific circumstances of the noncustodial parent, including the factors listed in the guidelines regulation.

Additionally, the support obligation or recommended support obligation amount must be based on the earnings and income of the noncustodial parent whenever available. If evidence of earnings and income is not available or insufficient to use as the measure of the noncustodial parent's ability to pay, then the support obligation or recommended support obligation amount should be based on available information about the specific circumstances of the noncustodial parent.

Finally, the final rule includes a requirement for documenting the factual basis for the support obligation or the recommended support obligation in the case record.

**Enforcement of Support Obligations –
Civil Contempt [§ 303.6(c)(4)]**

- A state must establish guidelines for the use of civil contempt citations in IV-D cases. Guidelines 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 contempt action.

March 2017

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Notes:

The final rule revises the civil contempt provisions under the “Enforcement of Support Obligation” regulation. The rule focuses the regulation on the criteria that state child support agencies must use to determine which cases to refer and how to prepare cases for a civil contempt proceeding. The rule requires that state child support agencies establish guidelines for the use of civil contempt citations in IV-D cases.

The rule sets out minimum requirements that state child support agencies must meet when bringing a civil contempt action to court and provides adequate safeguards to ensure that the noncustodial parent has the ability to comply with the order, but has willfully failed to do so. It is the responsibility of the state child support agency to ensure that prior to filing for civil contempt that could result in incarceration, the IV-D agency has carefully reviewed the case to determine whether the facts support a finding that the noncustodial parent has the “actual and present” ability to pay or comply with the support order and the requested purge amount or condition, and to bring those facts to the court’s attention. States must also provide clear notice to the noncustodial parent that his or her ability to pay constitutes the critical question in the contempt action.

OCSE strongly encourages state agencies to consider some of the innovative alternatives to incarceration discussed in IM-12-01, when the facts support that the noncustodial parent does not have the ability to comply with the order. If the noncustodial parent has

no earnings or there is no evidence that the noncustodial parent has the ability to pay, the child support agency should not initiate civil contempt proceedings, but should investigate further, consider modifying the order, or refer the parent to employment or other services when available.

Review and Adjustment of Child Support Orders (§ 303.8)

- Requires a state to notify both parents of the right to request review and adjustment within 15 business days of learning that a noncustodial parent will be incarcerated > 180 days.
- Authorizes a state to review and adjust a child support order:
 - after being notified that a noncustodial parent will be incarcerated for more than 180 days;
 - **without waiting for a specific request** to initiate review and adjustment; and
 - after providing notice to both parents.
- In the final rule, OCSE added a requirement that the state's reasonable quantitative standard not exclude incarceration as a basis for review and adjustment of a child support order.

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Notes:

Research has found that very few incarcerated parents petition for a modification, even though their order could be suspended during incarceration. As a result, by the time the parent is released from incarceration, the parent has accrued significant child support arrearages, which may help drive the parent into the underground economy to avoid paying support.

To help remedy this problem, the final rule adds a new criterion that will require a state child support agency to notify both parents of the right to request a review and adjustment within 15 business days of learning that a noncustodial parent is incarcerated for more than 180 days.

OCSE allows a state child support agency to elect the option in its state plan to initiate the review of a child support order and seek to adjust the order, if appropriate, after being notified that a noncustodial parent will be incarcerated for more than 180 days, without the need for a specific request, after providing notice to both parents. When modifying orders, states may consider an incarcerated parent's income and assets in setting the order amount. OCSE encourages 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. In electing this state plan option, state agencies may also need to consider whether further changes to state laws are required to implement this procedure.

In the final rule, a provision was added in the Review and Adjustment regulation to address that the quantitative standards, developed by the state for determining when to petition for an adjustment of an order, must not exclude incarceration as a basis for a review and adjustment of a child support order.

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 having custody of or responsibility for the child or children.
- Final rule adds:
 - conservator representing the custodial parent and child directly with a legal and fiduciary duty; or
 - alternate caretaker designated in a record by the custodial parent. An alternate caretaker is a nonrelative caretaker who is designated in a record by the custodial parent to take care of the children for a temporary time period.

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Notes:

Section 302.38 reinforces the requirements found in section 454(11)(B) of the Act for disbursing payments to families. The provision in the rule requires that a state’s IV-D plan “provide that any payment required to be made under §§ 302.32 and 302.51 to a family will be made directly to the resident parent, legal guardian, caretaker relative having custody of or responsibility for the child or children, conservator representing the custodial parent and child directly with a legal and fiduciary duty, or alternate caretaker designated in a record by the custodial parent.”

OCSE modernized the rule by adding “judicially-appointed conservator with a legal and fiduciary duty to the custodial parent and the child” and “alternate caretaker designated in a record by the custodial parent” to the list of individuals to whom payments can be made. An alternate caretaker is a nonrelative caretaker who is designated in a record by the custodial parent to take care of the children for a temporary time period. These additional criteria provide state IV-D agencies with additional options for disbursing payments to families. For example, the designation of an alternate caretaker by the custodial parent in temporary situations such as a hospital stay, a jail sentence, or being deployed in the military allow the IV-D agency to distribute payments to the alternative caretaker without requiring a formal court order change.

It is important to note that the rule does not authorize payments to be made directly to a private attorney or a private collection agency because both of these entities charge fees in child support cases that reduce support to the child and could adversely affect family relationship.

Medical Support [§ 303.31 and § 303.8(d)]

- Securing and enforcing medical support obligations
 - Clarifies that health care coverage includes both public health care coverage and private insurance;
 - Removes 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.

March 2017 24

Notes:

The final rule amends the medical support regulations to provide a state with flexibility to permit parents to 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. OCSE clarifies that health care coverage includes both public and private forms of coverage and is sufficient for meeting court ordered medical support requirements. States do not have an option in distinguishing between private and public forms of health care coverage. The rule defines “health care coverage” since this is the terminology used in sections 452(f) and 466(a)(19) of the Social Security Act. By including public coverage, such as Medicaid, Children’s Health Insurance Program (CHIP), and other state health programs as part of medical support, states have greater flexibility to ensure that medical support is provided for all children.

OCSE removed the requirement that the cost of health insurance be measured based on the marginal cost of adding the child to the policy. Therefore, this change gives states additional flexibility to define reasonable medical support obligations.

The final rule indicates that the need to provide for the child’s health care needs in an order, through health insurance or other means, must be an adequate basis under state law to initiate an adjustment of an order, regardless of whether an adjustment in the amount of child support is necessary.

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.

March 2017 25

Notes:

The final rule amends the “Required state law” regulations to allow a state to request extensions of its IV-D state plan exemptions every 5 years. OCSE believes that the past requirement to request an extension every 3 years is unnecessary and that a 5-year review is more appropriate. There are two reasons for this change.

First, OCSE reviews and analyzes initial exemption requests thoroughly to ensure that the statutory requirements pursuant to section 466(d) of the Act are met.

Second, in over 20 years, OCSE has never denied an extension request for approved exemptions. This amendment to request extensions of IV-D state plan exemptions every 5 years does not change OCSE’s authority to review and to potentially revoke a state’s exemption at any time.

The final rule promotes efficiency by reducing the burden imposed on states.

Federal Benefits Excluded from Garnishment

- § 307.11: Functional requirements for computerized support enforcement systems
 - Requires a state to identify cases where the noncustodial parent receives SSI payments or concurrent SSI payments and Social Security Disability Insurance (SSDI) benefits under title II of the Act to prevent garnishment of these funds.
 - Requires a state to refund monies within 5 days after the IV-D agency determines the account has been incorrectly garnished.
- § 303.11: Case Closure
 - Allows a state to close a case when a noncustodial parent's sole income is from SSI payments or from both SSI payments and SSDI benefits under title II of the Act concurrently.

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Notes:

As a result of the recent Treasury rule on garnishment and congressional and public interest, OCSE added provisions related to garnishing federal benefits in the statewide systems and the case closure regulations. OCSE added two new provisions under Section 307.11, Functional requirements for Computerized Support enforcements to provide additional safeguards so low-income NCP's financial accounts are not garnished when they are only receiving federal benefits that are exempt from garnishment. First, OCSE added a new requirement that states develop automated procedures in their statewide system to identify cases that have been previously identified as having a NCP who is a recipient of Supplemental Security Income (SSI) or concurrent SSI and Social Security Disability Insurance (SSDI) benefits under Title II of the Act, to prevent automatic garnishment of the NCP's financial account. OCSE also added a requirement for states to have automated procedures in place to return inappropriately garnished funds to a NCP, within 5 business days after the agency determines that SSI or concurrent SSI and SSDI benefits under Title II of the Act have been inappropriately garnished from a NCP's financial account.

Additionally, OCSE is allowing a state to close a case when the noncustodial parent's sole income is from SSI or from concurrent SSI and SSDI benefits pursuant to Title II of the Act because the NCP's income meets the eligibility requirements for SSI.

Currently, OCSE's federal policy on child support garnishments in DCL-00-103 and PIQ-09-01 recognizes these exceptions by directing child support agencies not to collect against SSI benefits. OCSE believes that these cases should be closed, since they would be unproductive to pursue because these NCPs do not have income or assets above the subsistence level that could be levied or attached.

Case Closure Criteria (§ 303.11)

- Clarifies that case closure regulations are optional, with the exception of sections (c) and (d).
- Emphasizes that closing a case will not affect underlying order.
- Requires supporting documentation be maintained in the case record.
- Allows a state to close cases when:
 - there is no current support order; and
 - all arrearages are owed to the state.

March 2017 27

Notes:

Case closure regulations are designed to give a state the option to close cases, if certain conditions are met, to provide flexibility to manage its caseload. The final rule clarifies that case closure regulations are optional. There is an exception for sections (c) and (d) where case closure regulations are not optional.

States may elect to close their case under the new final rule provisions. By doing so, OCSE requires the state to maintain supporting documentation for its decision in the case record. OCSE emphasizes that closing a case will 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.

Under the new case closure criteria, states are allowed to close cases where there is no current support order and all arrearages are owed to the state. As an example, in a case where a state has forgiven outstanding state arrears and there is no current support order, this closure criteria will allow the state to initiate case closure. This provision is intended to afford the state more resources to enforce those cases where debt is owed to families, rather than to the state.

Case Closure Criteria (continued)

- Allows a state to close arrears-only cases:
 - against low-income seniors who are entering or have entered long-term care placement;
 - has no income or assets available above the subsistence level; and
 - whose children have already reached majority age.
- Allows a state to close cases that the agency has determined, services are not appropriate or no longer appropriate when:
 - 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.

March 2017 28

Notes:

Old child support debt, carried well after the children have become adults and sometimes parents themselves, could pose a barrier for aging low-income parents to obtain affordable housing, basic income, and health care. Enforcement efforts against these parents are not only ineffective but also an inefficient way to expend IV-D resources.

As such the new rule also addresses arrearage-only cases:

States are allowed to close arrearage-only cases against low-income seniors who are entering or have entered long-term care placement and whose children have already reached majority age. These noncustodial parents must have no income or assets available above the subsistence level that could be levied or attached.

The next case closure provision allows a state to close cases when the noncustodial parent is either living with the minor children as the primary caregiver or is a part of an intact two-parent household, and the IV-D agency has determined that services are no longer appropriate.

This provision is intended to address situations where parents reconcile, as well as intact two-parent families where one parent works or is seeking work out of state.

Case Closure Criteria (continued)

Locate provisions:

- Revise the 3-year locate period to 2 years for cases with identifying information and verified Social Security Numbers.
- Allow a state to close cases after 6 months if it does not have sufficient identifying information.
- Allow a state to close cases after one year if it has sufficient information to initiate an automated locate effort, but locate interfaces are unable to verify Social Security Numbers.

March 2017 29

Notes:

The final rule addresses changes in the case closure requirements for locate cases. States are permitted to close cases that have identifying information, such as full names, dates of birth, and verified Social Security Numbers, when locate efforts have been exhausted after 2 years (rather than the previous 3 year requirement). With enhanced locate tools and with sufficient information, state experience has been, that if the state is able to locate parents and assets, it is generally within 2 years. Coincidentally, the National Directory of New Hires data are only retained for 2 years. This changed criteria allows states to close these cases and focus efforts on productive cases.

Similarly, states are allowed to close cases after a 6-month period (rather than one year) if it does not have sufficient identifying information, such as a date of birth or a verified Social Security Number, to initiate an automated locate effort.

Additionally, OCSE has added a provision to allow a state to close cases after a 1-year period when there is sufficient information to initiate an automated locate effort, such as full names and dates of birth, however are unable to verify Social Security Numbers by locate interfaces. If after one year neither Enumeration Verification System (EVS) nor FPLS are able to verify Social Security Numbers, OCSE believes that case closure is warranted. Without sufficient information to use enhanced locate tools like EVS and the FPLS, locate efforts are futile and work time may be better allocated to other areas of enforcement.

Case Closure Criteria (continued)

- A state may close current and arrears-only cases when it has determined that throughout the duration of the child's minority (or after the child has reached the age of majority), the noncustodial parent cannot pay support because the parent:
 - has been institutionalized in a psychiatric facility; or
 - is incarcerated; or
 - has a medically verified total and permanent disability.
- For these cases, a determination must be made that the noncustodial parent has no income or assets above the subsistence level that could be levied or attached.

March 2017 30

Notes:

This case closure criterion has been amended to permit case closure when a IV-D agency has determined that throughout the duration of the child's minority (or after the child has reached the age of majority), the noncustodial parent cannot pay support and shows no evidence of support potential because the parent has been institutionalized in a psychiatric facility, is incarcerated, or has a medically-verified total and permanent disability. The state must also determine that the noncustodial parent has **no income or assets** available above the subsistence level that could be levied or attached for support.

Please keep in mind that if the noncustodial parent is incarcerated for only a limited period of time, the case may not be closed.

The NCP's incarceration period must be for the duration of the child's minority or after the child has reached the age of majority.

Case Closure Criteria (continued)

- Allows a state to close cases if another assistance program 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.
- The referring assistance programs include:
 - IV-A,
 - IV-E,
 - SNAP, and
 - Medicaid.

March 2017 31

Notes:

OCSE added new criteria to provide a state with flexibility to close a case referred inappropriately by the IV-A, IV-E, SNAP, and Medicaid programs.

States are reminded that they should communicate with the IV-A agency, to ensure that the decision to close the IV-D case will not be viewed by the IV-A agency as noncooperation by the recipient of services.

OCSE encourages state IV-D agencies and assistance programs, to work together to define referral criteria to ensure only appropriate cases are referred to the IV-D agency. However, there are rare instances when a state inadvertently opens cases inappropriately referred for child support services. Therefore, this criteria will allow a IV-D agency to close a case due to an inappropriate referral from another assistance program.

Case Closure Criteria (continued)

- Permits a state to close a case, including a case with arrears assigned to the state, 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 to the tribal IV-D agency and closure with the state IV-D agency; or
 - the state must notify the recipient of services of its intent to transfer the case to the tribal IV-D agency and close the case with the state and the recipient did not respond to the notice to transfer the case within 60 calendar days from the date notice was provided.
- The tribal IV-D agency has a state-tribal agreement approved by OCSE to transfer and close cases. The state-tribal agreement must include a provision for obtaining the consent from the recipient of services to transfer and close the case.

March 2017 32

Notes:

OCSE added a case closure criterion (b)(20) to permit a state flexibility to close a case if the state has transferred it to a tribal IV-D agency, regardless of whether there is a state assignment of arrears, based on the following procedures.

First, before transferring the case to a tribal IV-D agency and closing the state's case, either the recipient of services must request the state to transfer its case and close the state's case or the IV-D agency must notify the recipient of its intent to transfer the case to the tribal IV-D agency and the recipient did not respond to the notice within 60 calendar days of the date of the notice.

Next, the state IV-D agency must completely and fully transfer and then close the case. Third, the state IV-D agency must notify the recipient that the case has been transferred to the tribal IV-D agency and closed.

Finally, if the tribal IV-D agency has a state-tribal agreement approved by OCSE to transfer and close cases, this agreement must include a provision for obtaining consent from the recipient of services to transfer and close the case.

OCSE made the following changes:

- Added that this closure criterion includes a case with arrears assigned to the state;
- Clarified that the case transfer process must include both transfer and closure; and

- Added paragraph (b)(21)(iv) related to allowing a permissible case transfer in accordance with an OCSE-approved state-tribal agreement that includes consent from the recipient of services.

As a tribal member and state resident, the recipient of services has the right to decide whether to continue receiving services from the state or to begin receiving services from the tribal IV-D agency. Therefore, the state IV-D agency must obtain the recipient's consent before transferring the case to a tribal IV-D agency and then closing the state case. However, there is no requirement that the other party or parent also consent to the transfer and closure of the case when requested by the recipient of services.

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 Purchased/Referred Care services, provided through an Indian Health Program.
- The Centers for Medicare & Medicaid Services (CMS) also made conforming changes to Medicaid policy to require that state Medicaid agencies not refer such cases for medical support enforcement services [42 CFR 433.152(b)].

March 2017 33

Notes:

The final rule adds a criterion that **requires** a state IV-D agency to close a Medicaid reimbursement referral based solely upon health care services provided through an Indian Health Service Program, including through the Purchased/Referred Care program. Unlike the other case closure criteria under paragraph (b), which are permissive, this case closure criterion under paragraph (c) is **mandatory**.

State IV-D agencies that receive Medicaid reimbursement referrals based solely on health care services, including contract health services, provided to IHS-eligible children through an Indian Health Program, are required to close such cases, as these cases will have been inappropriately referred under existing laws and policies.

The Indian Health Service (IHS) provides health care to American Indians and Alaska Natives under the Snyder Act and IHS pursues, when appropriate, third party payers or alternate resources to pay for health care services provided to IHS-eligible individuals. IHS will not seek payment from noncustodial parents of IHS-eligible children who receive health care services provided through Indian Health Programs.

In this joint rule, CMS revised their regulations to amend 42 CFR 433.152(b)(1), consistent with IHS policy, to require that state Medicaid agencies not refer cases for medical support enforcement services when the Medicaid referral is based solely upon health care services, including contract health services, provided through an Indian Health Program to a child who is eligible for health care services from the Indian Health

Service (IHS). This policy remedies the current inequity of holding noncustodial parents personally liable for services provided through the Indian Health Programs to IHS-eligible families that qualify for Medicaid, while not holding noncustodial parents personally liable for the same services for IHS-eligible families that do not qualify for Medicaid.

Background:

An IHS Medicaid recipient, who wants full child support services, will need to apply for IV-D services. However, no medical support enforcement services need to be provided to the extent that the individual is receiving all needed care through the IHS. At the time of application, if the state is aware that the applicant is a Medicaid recipient, then the state should not charge an application fee per § 302.33(a)(2). Changes in the Medicaid regulations have no impact on the assignment of rights to benefits requirements in 42 CFR 433.145.

Case Closure Criteria (continued)

New Case Closure Notice Requirements

- For limited services cases, the state must notify the recipient of the intent to close 60 days in advance of closing. The notice must also provide information regarding reapplying for services and consequences for receiving services. If the recipient reapplies for child support services in a case that was closed in accordance with paragraph (b)(13) of this section, the recipient must complete a new application for IV-D services and pay any applicable fee.
- Allow states to issue case closure notices to recipients electronically, on a case-by case basis, when the recipient of services consents to electronic notifications. The state must keep documentation of the recipient's authorization of the consent in the case record.

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Notes:

As previously discussed, when limited services are requested, the applicant must be notified at the time of application that the case will be closed upon completion of the limited service. Additionally, at the time of application, the state must provide information regarding reapplying for services and the consequences of such. This includes any state fees, cost recovery, and distribution policies. If the recipient of limited services later reapplies to re-open the case, then they will be required to complete a new application for services and pay any applicable fee.

States are allowed to issue case closure notices to recipients electronically, **on a case-by-case basis**, when the recipient of services **consents** to electronic notifications. The state must keep documentation of the recipient's authorization of the consent in the case record.

As a reminder, **all** records of closed cases must be kept for a minimum of 3 years.

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

- Clarifies that Federal Financial Participation (FFP) is available for child support services and expenditures that are determined by the Secretary to be necessary and reasonable to carry out the title IV-D state plan.
- Allows FFP for bus fare or other minor transportation expenses to enable custodial or noncustodial parties to participate in child support proceedings.
- Authorizes FFP for activities designed to increase parents *pro se* access to adjudicative and alternative dispute resolution processes in IV-D cases.
- Allows FFP for educational and outreach activities intended to inform the public about the Child Support Enforcement program, responsible parenting, family budgeting and financial consequences for unwed parents.

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Notes:

Federal financial participation represents the federal match available to reimburse a portion of the state’s operational expenditures incurred under the state IV-D plan. Previously, the allowable FFP regulations were formulated as a specific and limited list of “necessary” activities. The final rule clarifies that FFP is available for expenditures that the Secretary deems necessary and reasonable to carry out the state title IV-D plan.

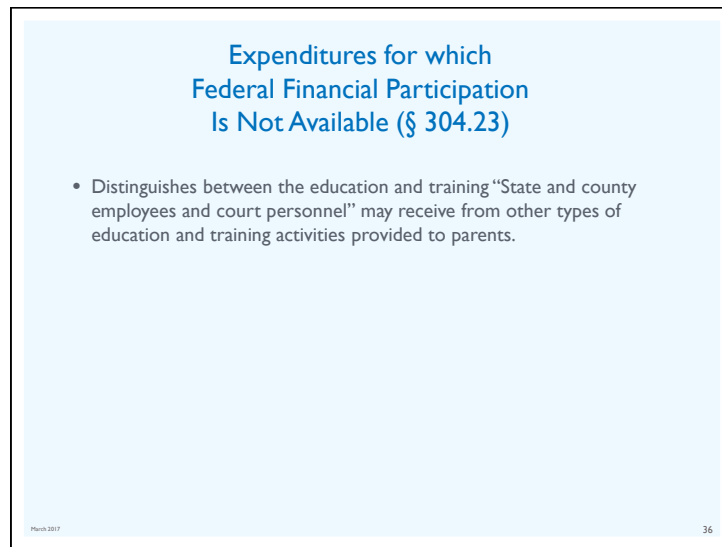
The final rule is allowing FFP for bus fare or other minor transportation expenses so that both custodial or noncustodial parties can participate in child support proceedings and related activities such as genetic testing.

FFP is allowed for activities designed to increase *pro se* access to child support proceedings and to encourage states to develop non-adversarial dispute resolution alternatives to a standard adjudicative hearing. The outcome of a child support proceeding has a substantial impact on parents’ financial circumstances and, in some states that conduct civil contempt proceedings, can result in jail time and loss of liberty for noncustodial parents. It is very important to encourage informed participation by both parents in those proceedings. Most custodial and noncustodial parents in the IV-D caseload are not represented by private attorneys and are attempting to navigate legal proceedings on a *pro se* basis. At the same time, many states have sought to reduce the adversarial nature of child support proceedings in order to positively engage both parents, reduce conflict between the parents which can be harmful to their children, and

increase compliance with support orders and customer satisfaction. In addition, resolving cases outside the court system can help reduce delays, and save money and court time.

Additionally, FFP is allowed for educational and outreach activities intended to inform the public, parents and family members, and young people who are not yet parents about the child support program, responsible parenting and co-parenting, family budgeting, and the financial consequences of raising children when the parents are not married to each other.

FFP is available for necessary and reasonable expenditures properly attributed to the child support program for services and activities designed to carry out the title IV–D state plan, including but not limited to the activities listed in the rule.



The slide content is contained within a light blue rectangular box with a black border. At the top center, the title reads "Expenditures for which Federal Financial Participation Is Not Available (§ 304.23)" in blue text. Below the title, a single bullet point in black text states: "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." In the bottom left corner of the box, the date "March 2017" is written in small black text. In the bottom right corner, the number "36" is written in small black text.

Notes:

The final rule adds “state and county employees and court personnel” as a technical clarification that this rule is intended to apply to education and training of personnel, and not other types of education and training activities (such as those provided to parents, which are addressed in other rules).

OCSE continues to pay for FFP for the short-term training provided to IV-D staff, as well as reasonable and essential short-term training related to hospital-based voluntary paternity acknowledgment programs, and reasonable and essential short-term training of court and law enforcement staff assigned on a full- or part-time basis to support enforcement functions.

However, short-term training is not related to providing general education for an individual or training that is taken for the sole purpose of earning credit hours toward a degree or certificate.

Slide 37

