CLASP

CENTER FOR LAW AND SOCIAL POLICY

MEMORANDUM

TO: Interested People

FROM: Paula Roberts

DATE: February 7, 2005

RE: New Regulation on Review and Adjustment of Child Support Orders

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One of the functions of the child support (IV-D) agency is to periodically review and (if appropriate) adjust support orders. Depending on the circumstances of the parents, this can result in a new order that is higher or lower than the existing order. Under current law, this process is to occur at least once every three years (states can choose to review and adjust more frequently if they wish.) 42 USC § 666(a)(10(A)(i). The review is not automatic: one of the parents or the state Temporary Assistance for Needy Families (TANF) agency (if the family receives assistance from that program) must request such a review. Moreover, the review and adjustment must take into account "the best interests of the child." Id.

In conducting a review, the state has a choice of what method to use in determining whether an adjustment is actually warranted. These methods are:

1. Applying the state's child support guidelines and adjusting the order if the "amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines."
2. Employing a formula that reflects changes in the cost-of-living.
3. Using automated methods to identify orders eligible for review and making adjustments "under any threshold established by the State."

42 USC § 666(a)(10)(A)(i)(I)-(III).

In 1992, the federal Office of Child Support Enforcement (OCSE) issued regulations implementing this statute. 45 CFR § 303.8. Under those regulations, states using the guideline review method did not have to adjust every order that deviated from the guidelines. Instead, they could establish a quantitative standard for seeking an adjustment. That standard could be either a fixed dollar amount or a percentage change or both. Id. § 303.8(d)(2). In essence, OCSE imported the language of the third option—

allowing states to set a threshold for review—into the first option. OCSE reiterated this position after the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). See OCSE AT 97-10 (July 30, 1997).

Thus, upon review, a state could determine that it would only seek an adjustment if the guideline change was at least $20 or 15 percent, whichever is larger. States that took advantage of this flexibility by using this—or a similar—standard were somewhat less likely to seek adjustments (up or down) for low-income parents. For example, assume a state adopted the $20 or 15 percent standard, and the existing order is for $100 a month. A guidelines review indicates that the order should increase to $110 a month. Since the amount of potential increase does not meet the quantitative standard, the state need not pursue an adjustment. In that case, a needy child would be deprived of $120 a year, a not insignificant amount of income. Similarly, if the guidelines review indicates the order should be decreased to $90 a month, an adjustment need not be sought. In that instance, a low-income obligor would either be burdened with an excessive order or fall into arrears on his/her obligation.

In 2003, OCSE issued a new set of regulations that were more consistent with the language of the statute quoted above. These regulations required states to seek a guideline adjustment whenever there was a deviation from the guidelines amount; quantitative standards for declining to seek an adjustment were no longer a state option. 68 Fed. Reg. 25293 (May 12, 2003). Use of a quantitative standard in deciding whether or not to pursue an adjustment was allowed only if the state used the automated adjustment method as specified in the statute.

On December 28, 2004, OCSE changed the regulation once more. 69 Fed. Reg. 77659-77661. In an Interim Final Rule with Comment Period, OCSE changed 45 CFR § 303.8 to again allow states to adopt quantitative standards for seeking a guidelines adjustment. As justification for this change, OCSE cites the need to "allow States to manage their resources and refrain from unreasonably small order adjustments that may be costly and perhaps involve changes in States automated systems." 69 Fed. Reg. 77660. It also notes that the rule "minimizes the burden, stress and uncertainty families would face in opening up the orders to change despite little anticipated gain." Id. Finally, OCSE notes that the new rule "reduces complex agency and tribunal record-keeping that could lead to errors and lessens the burden on employers who would need to respond to constantly adjusting income withholding orders to address small differences in the amount withheld." Id. 7760-7761.

Comments on this change may be submitted to OCSE by February 28, 2005. While some states do use cost-of-living or automated methods to adjust orders, most use the guidelines review process. Moreover, not all states using the guidelines method for review and adjustment have adopted a quantitative standard. *This might be a good time to check on what process your state is using.* If you find that your state is using both the guidelines method and the quantitative standard, you might want to submit comments on the proposed change. Specific examples of how this affects custodial and non-custodial parents are always helpful and should be included if possible. In addition, comments on

whether the new regulation is consistent with the statute and whether it reflects a position consistent with "the best interests of the child" might also be offered. CLASP will likely file a comment as well. If you would like to receive a copy of that comment, please contact Michelle Vinson, and she will get a copy to you as soon as it is done. Michelle can be reached at mvinson@clasp.org.