

CLASP

CENTER FOR LAW AND SOCIAL POLICY

MEMORANDUM

TO: Interested Parties

FROM: Paula Roberts

DATE: May 30, 2006

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

One of the functions of the child support (IVD) 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. This process is to occur at least once every three years. (States can choose to review and adjust more frequently if they wish.)¹ The review is currently not automatic: one of the parents or the state TANF agency (if the family receives assistance from that program) must request such a review.²

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:

- 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. (guidelines review method);
- Employing a formula that reflects changes in the cost-of-living. (COLA method);
- Using automated methods to identify orders eligible for review and making adjustments under any threshold established by the state (automated method).³

Most states use the guidelines review method. With one exception⁴ federal regulations 45 CFR § 303.8 have, since 1992, interpreted the statute so that whatever method is used, states need not adjust every order in which there is a potential change. Instead, they can establish a quantitative standard for seeking an actual adjustment. That standard can be either a fixed dollar amount or a percentage change or both.⁵ For example, a state might adopt a standard under which it will not adjust an order that does not change by at least \$20 or 15 percent.

¹ 42 USC § 666(a)(10)(A)(i).

² Under Section 7302 of the Deficit Reduction Act of 2005, this will change effective October 1, 2007. States will then be required to review all cases in which there is an assignment under Title IVA at least once every three years.

³ 42 USC § 666(a)(10)(A)(i)(I)-(III).

⁴ In 2003, OCSE issued regulations that required states to seek a guidelines adjustment whenever there was a deviation from the guidelines amount: quantitative standards for declining to seek an adjustment were no longer an option for states using this method. (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 specified in the statute.

⁵ 45 CFR § 303.8(d)(2).

The most recent reiteration of this position occurred on December 28, 2004 (69 Fed. Reg. 77659-77661). At that time OCSE issued an Interim Final Rule with Comment Period. On May 23, 2006, that rule was finalized without change (71 Fed. Reg. 29590-29592).

CLASP submitted a comment on the Interim Final rule arguing that, in states using the guidelines review method, the failure to adjust *all* orders hurt low-income custodial and non-custodial parents. For example, assume a state adopted a \$20/15 percent standard for pursuing an adjustment and the existing order was \$100 a month. A guidelines review indicated that the order should increase to \$110 a month. Since the amount of potential increase did not meet the quantitative standard, the state would 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 indicated the order should be decreased to \$90 a month, an adjustment would 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.

OCSE rejected this comment because it was aware of “no evidence of harm done to families or obligated parents.” (71 Fed. Reg. 29592) Advocates in states using the guidelines review method which have also adopted a quantitative standard for actual adjustment might want to document cases where problems have occurred as there may be an opportunity to raise this issue again when proposed regulations implementing the changes authorized by the Deficit Reduction Act of 2005 are offered.