



January 16, 2015

Director, Division of Policy
Office of Child Support Enforcement
Administration for Children and Families
370 L'Enfant Promenade SW, 5th Fl. East
Washington, DC 20024

Re: NPRM on Flexibility, Efficiency and Modernization in Child Support Enforcement Programs

The Center for Law and Social Policy (CLASP) submits these comments pursuant to the Notice of Proposed Rulemaking that was published at 79 Fed. Reg. 68548 et seq., November 17, 2014.

CLASP advocates for public policies that reduce poverty, improve the lives of poor people, and create ladders to economic security for all, regardless of race, gender, or geography. We target large-scale opportunities to reform federal and state programs, funding, and service systems, then work on the ground for effective implementation. Our research, analysis, and advocacy foster new ideas and position governments and advocates to better serve low-income people. We also work closely at the state and local level, providing technical assistance regarding the implementation of federal policies and programs

Our comments and recommendations are based on CLASP's work and expertise on both human services and workforce and post-secondary policies. We recognize that children's well-being is strongly linked to their parents, both custodial and non-custodial and that effective approaches must include a two generational approach.

Overall, we strongly support the Office of Child Support Enforcement (OCSE) commitment to treating child support as an important element of economic security for low-income children and parents, and to revising policies and practices that currently compete with that goal. In particular, we are encouraged by the efforts to modernize the child support enforcement program to better serve families in light of recent, major policy changes, particularly around health care access. We also applaud the recognition that child support orders that non-custodial parents have no capacity to meet do not lead to increased payments, and can in fact undermine their ability to obtain and keep employment and support their families. We support the proposal to allow IV-D funds to be used to support job services for non-custodial parents, and urge OCSE to encourage states to partner with their workforce and adult education systems to implement such services effectively.

Section 302.38: Payments to the family

CLASP supports the proposed change that would require payments collected by states to be paid “directly” to the custodial families, rather than to private collection agencies. Families would still have the option to enter into contracts with such agencies, but they would have to come to the families for payment, rather than intercepting funds before they get to the families. This change is consistent with a focus on payments to custodial families, and would take state agencies out of the role of indirectly enforcing private contracts.

Section 302.56: Guidelines for setting child support awards.

CLASP supports the changes at 302.56(c)(1) that would require states to consider non-custodial parents’ “actual” earnings and incomes in setting orders, rather than imputing income. When child support orders are set inappropriately based on incorrect imputations, non-custodial parents may rapidly accrue arrears that can disincentivize payment of what they are able to pay and even employment.

CLASP supports the proposed new criterion at 302.56(c)(4) that requires state guidelines to take into account subsistence needs of the non-custodial parent, and that also draw upon all available information regarding the non-custodial parent’s ability to pay.

CLASP supports the proposed new criterion at 302.56(c)(5) that would prohibit the treatment of incarceration as “voluntary unemployment.” When this occurs, income is imputed and support orders cannot be modified downward even though the incarcerated parent has little, if any, income. This practice does not result in any more child support payment being collected, but rather results in very large arrearages that often serve as a further barrier to employment when the incarcerated parent is released.

Section 302.76: Job services

CLASP applauds OCSE’s proposal to add Job Services to allow states to better support noncustodial parents in order for them to maintain employment and comply with child support orders. OSCE might consider calling this section employment services to be consistent with the terminology used under the Workforce Innovation and Opportunity Act (WIOA). At a time when employment services are underfunded, allowing states to draw down matching federal funds can make a difference for individuals who are unable to comply with their child support orders because of unemployment or low wages.

When this regulation is finalized, if job services are allowed, we urge OCSE to support state child support enforcement agencies in designing job services that use proven strategies that are aligned with the [Administration’s job-driven workforce development initiative](#), to ensure that these funds are used to effectively help noncustodial parents get placed in the jobs that are available now and to train them for the skills they need to succeed in the workforce.

We provide more detailed comments on job services below in the discussion of 303.6(c)(5).

Section 303.6: Enforcement of support obligations.

CLASP strongly supports the new paragraph 303.6(c)(4), which addresses the use of civil contempt orders leading to jail time for parents who are unable to pay child support orders. We particularly support the requirements that the purge amount that must be paid to avoid incarceration must take into account actual earnings and income and the subsistence needs of the non-custodial parent. It is unjust to jail non-custodial parents for nonpayment when they have no ability to comply by paying, as reflected by the court decision in *Turner v. Rogers*. Moreover, it is absolutely counterproductive to the goal of ensuring support for children, as jail time is likely to make it even harder for the non-custodial parent to find or keep employment needed to pay child support.

As stated above, CLASP supports the proposal to allow job services as a component of child support enforcement programs. However, we strongly recommend the following changes to the proposed language at 303.6(c)(5) to strengthen these efforts and maximize their effectiveness:

Providing complementary services under different funding streams: We recommend amending the proposal to remove the blanket denial of Job Services to individuals receiving benefits such as TANF, SNAP E&T, the Federal Pell Grant, or services through workforce development programs. We support the intent of avoiding IV-D funds being used to pay for the duplicative job services that are offered by another program. However, states that offer Job Services as part of their child support enforcement strategy should be able to leverage funds to provide different, but complementary services (for instance, funding occupational counseling with IV-D funds while coordinated training costs are paid for by WIOA or Pell grants). The regulation should enable states to braid these funds to maximize employment and training resources in a way that is not duplicative but also best supports low-income individuals who face significant barriers to employment.

Clarification of option to use existing workforce delivery system: In addition, the regulation should clarify that these job services may be provided under contract by other entities, including workforce agencies, community colleges, and community based organizations. OCSE should encourage IV-D agencies to avoid duplicating existing programs and services such as those offered through their state and local workforce development system. IV-D agencies should build any Job Services programs that they establish with strong linkages and partnerships with existing education and workforce programs, as well as with local service providers that may further support job seekers with wrap-around services.

Clarification of “activities to improve literacy and basic skills”: First, we recommend that OCSE specify that English as a Second Language (ESL) services may be included as part of “activities to improve literacy and basic skills.” While it is plausible that ESL could be covered under the proposed language at 303.6(c)(5)(vi), explicit inclusion will remove any possible confusion as to whether this is permitted. Second, we recommend that the term “General Education Development (GED) certificate” be replaced with “high school equivalency” to reflect the facts that the GED is a proprietary test and an increasing number of states are using alternative exams.

Inclusion of subsidized employment: At 79 FR 68559, OCSE specifically solicited comment on the inclusion of subsidized employment as an allowable job service. CLASP supports the inclusion of subsidized employment as a Job Service for individuals who face significant barriers to employment. Subsidized employment has been shown to be a promising practice. Early evaluations found that subsidized employment improved workforce attachment and work hours among very low-skilled youth with little prior work experience and among adults with moderate-to-low levels of education and little work experience. More recently, a large-scale subsidized employment program for unemployed workers under the American Recovery and Reinvestment Act (ARRA) also showed great promise. From 2009 to 2010, states accessed \$1.3 billion in funding from the Temporary Assistance for Needy Families (TANF) Emergency Fund to help cover the costs of creating or expanding subsidized employment programs for low-income, unemployed workers in the wake of the recession. By the fund's expiration date on September 30, 2010, more than 260,000 low-income adults and youth had been placed in paid jobs during this time of high unemployment.

Subsidized employment strategies are successful because of the significant investment of federal funds toward the wages of participants which can be more costly to deliver. To address this, we recommend specific targeting of subsidized employment strategies toward individuals who face significant employment barriers and who are unlikely to be successful in securing and maintaining employment through less intensive services. Many noncustodial parents face significant barriers to employment and may require more than assistance with job search, resume preparation and career exploration to obtain employment. Through an assessment of the needs of an individual, a determination can be made as to whether they are likely able to obtain and maintain employment with less intensive services, or if they will need more intensive resources and if subsidized employment is a strategy that will best serve them.

Include reporting requirements for Job Services. We urge that reporting requirements be included for employment and training programs so that their effectiveness can be evaluated and strengthened as needed. It would be inconsistent with overall trends in workforce programs to support job services without requiring states to collect and report data such as how many individuals were placed in employment, their earnings before and after receiving job services, and the amounts of child support payments collected from noncustodial parents who receive job services. Such reports would help ensure that IV-D funds are being spent on programs that are effective in achieving the goals of promoting employment and enhancing the individual's ability to pay child support.

Allow employer and philanthropic contributions toward Job Services to count as state expenditures. Under current regulations at 45 CFR 304.30, it appears that IV-D agencies must use only public funds as the match toward claiming the federal reimbursement for their child support enforcement program. We recommend a change in regulation that would allow IV-D agencies to access philanthropic and employer contributions as the match to maximize resources and better serve participants in employment and training programs. The match for Job Services should follow the model of the federal Supplemental Nutrition Assistance Program's Employment and Training (SNAP E&T) program, which allows federal funds to be matched by contributions from third parties. Innovative efforts, such as Washington State's Basic Food Employment and Training (BFET) program, have seen great success and investment from

external stakeholders who share the vision of helping participants enter and remain in the workforce. This proposal would also alleviate concerns that allowing job services as a IV-D activity will compete with traditional IV-D services for funding.

Section 303.8: Review and adjustment of child support orders

CLASP supports the addition of the new 303.8(b)(2) that would allow child support agencies the option to initiate the review of an order when non-custodial parents are incarcerated. In most states, non-custodial parents must affirmatively request to have their orders modified, and very few do. This results in large arrears, which can in turn reduce employability of parents once they are released.

CLASP strongly supports the proposed change to 303.8(d) that would prohibit Medicaid from being considered as Medical support. This is an important change, as Medicaid and CHIP are often the most affordable, comprehensive, and geographically appropriate forms of health insurance for children. It is absolutely in the best interest of the child to consider them as possible forms of Medical support.

Section 303.31: Securing and enforcing medical child support obligations.

CLASP strongly supports the proposed changes to this section that would allow medical child support orders to take Medicaid and CHIP coverage into account, rather than requiring that children be covered by private insurance that is often more expensive, less comprehensive, and less geographically convenient. This is clearly in the best interests of the child, and reflects the realities of today's health insurance landscape. OCSE should encourage states to adopt Medicaid child support policies that maximize children's access to affordable health insurance that allows them to see health care providers that are convenient to them.

CLASP also supports the change to 303.31(b) to remove the provision that requires states to look at only the marginal cost of adding a child to a policy (e.g. the difference between Family and Self coverage) in determining whether coverage is affordable. The reality is that many low-wage parents would not otherwise purchase coverage for themselves, even if it is offered by employers, due to the high cost compared to their earnings.

Section 307.11 Functional requirements for computerized support enforcement systems

CLASP supports the provisions in this section to provide additional protections to non-custodial parents who receive SSI or concurrent SSI/SSDI benefits. These are low-income individuals with significant disabilities, and they can be severely harmed when their benefits are garnished.

The NPRM contains a number of proposals, and these comments do not address all of them. Our lack of comment on the other provisions should not be taken as either support or opposition to them.

Thank you for your consideration.

If you have any questions regarding these comments, please contact:

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