NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

Comments of the National Women's Law Center on Notice of Proposed Rulemaking, "Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs," published November 17, 2014 (Vol. 79 FR No. 221 68548)

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The National Women's Law Center appreciates the opportunity to submit comments on this important NPRM.

The National Women's Law Center (NWLC) is a non-profit organization whose mission is to expand the possibilities for women and their families by working to remove barriers based on gender, open opportunities, and help women and their families lead economically secure, healthy, and fulfilled lives—with special attention to the needs of low-income women and their families. NWLC has been an advocate for reforms to the child support system for several decades; many of those reforms have been enacted by Congress and implemented in the states, substantially increasing the support that children receive from both their parents.

Overall, the proposed regulations should further improve the child support program, modernizing it and improving its flexibility and efficiency. In particular, many of the proposals should improve the effectiveness and fairness of the program for low-income custodial and noncustodial parents and their children. Indeed, several of the proposals are consistent with recommendations developed through a collaborative project of NWLC and the then-Center on Fathers, Families, and Public Policy (now the Center for Family Policy and Practice) that included a diverse group of public policy advocates, practitioners, and researchers.[1]

The proposed rules reflect the expanding mission of the child support program beyond establishing and collecting economic child support to promoting the positive engagement of noncustodial parents, particularly low-income fathers, in their children's lives. This approach offers potential benefits to many families, both economic and noneconomic, but it also increases opportunities for noncustodial parents to exert pressure on custodial parents and children in domestic violence situations. While progress has been made by a number of child support agencies in addressing domestic violence in the enforcement context, several of the proposals, particularly around the limited services option and parenting time, will require expanded training and new protocols—at a time when program resources are already strained.

The comments below explain NWLC's concerns about some of the proposals and recommend changes, as well as highlight some of the proposed rules that NWLC supports.

Section 302.33(a)(6), Limited Services Option

NWLC supports providing parents the option to request limited services. Many children are born to cohabiting parents who may want to have paternity established, but not to have an order established or enforced. But, as the Preamble notes, there are risks of domestic violence associated with this option. An abusive noncustodial parent could seek to have paternity established but pressure the custodial parent not to seek to establish or enforce an order for child support. To reduce those risks, when a request for limited services is made, the rule should require the IV-D agency to interview the custodial parent out of the presence of the noncustodial parent, by phone or in person, to affirmatively determine whether the custodial parent agrees to the limited services, and to pay particular attention to the possibility of domestic violence. If the agency decides to deny the request for limited services, it should provide a neutral notice of the denial without indicating that it is due to the objection of the custodial parent.

The proposed rule also provides at § 303.11(b)(13) that when the limited service is completed, the case will be closed. The limited services option would better serve the needs of families in varied circumstances if it included the option to request suspension of enforcement activities without case closure. For example, this would allow a custodial parent who has reunited with the other parent but is uncertain about the future the opportunity to request a suspension of enforcement activities, but allow her to avoid the expense (and the agency to avoid the additional burden) of reopening the case if they should separate again.

Section 302.38, Direct Payments to the Family

NWLC supports this proposed amendment, which provides that IV-D agencies that collect child support due to a child should pay it directly to the resident parent, legal guardian, or caretaker relative of the child having custody of or responsibility for the child or children. The proposal simply conforms the regulation to the explicit language of the distribution provision of the statute at 42 U.S.C. § 457(11)(B). Yet the change is necessary to ensure that IV-D agencies do not act as collection agents for private child support collection companies that have an unfortunate history of exploiting and abusing both custodial and noncustodial parents.

Section 302.56(c), Guidelines for Setting Child Support Awards—Realistic Orders

NWLC supports the amendment to § 302.56(c)(1) to provide that orders be based upon a noncustodial parent's actual earnings and income. Unrealistically high orders based on imputed income are not only unfair; often they provide no real benefit to children and custodial parents, because overall, they result in lower payments. For the same reason, NWLC also supports the amendment to § 302.56(c)(5) providing that incarceration may not be treated as voluntary unemployment in establishing and modifying support orders.

Having impossibly large arrears accrue during a period of incarceration may make it even more difficult for a noncustodial parent to find employment and pay support upon release.

However, a considerable amount of income and earnings are not officially reported and do not show up in automated systems. Therefore, NWLC supports the amendment to § 302.56(c)(4) that requires guidelines to consider other evidence of ability to pay, such as testimony that reported income or assets are not consistent with a noncustodial parent's actual standard of living.

Sections 302.56(h) and 304.20(b)(4)(vii), Parenting Time

While NWLC believes that children generally benefit from the opportunity to have safe, positive, and consistent contact with both parents, it is concerned that the proposed rule goes further in encouraging state IV-D agencies to include parenting time provisions in child support awards than is warranted at this time.

Establishing a parenting time order may help to facilitate safe, positive, and consistent contact. But to do that, there must be effective safeguards against domestic violence, and child support workers generally do not have the training to identify the domestic violence considerations that arise in the parenting time order context, where contacts between parents will be far more frequent than in the enforcement context. And establishing a parenting time order is different from setting an order for financial support in other ways. Financial support orders are set using a numerical formula; deviations are permitted but must be justified and factors are to be spelled out in guidelines. In contrast, parenting time orders need to be individualized to the circumstances and schedules of each parent and the needs of the child or children involved. Coming up with a parenting time order that facilitates safe, positive, and consistent contact with both parents may be particularly difficult when parents work in low-wage jobs with unpredictable work hours, have limited access to transportation or stable housing, or the children have special needs.

The description of the provision in the preamble says that it is intended to be limited in scope: "This new parenting time provision is not intended to require State IV-D agencies to undertake new activities. IV-D program costs must be minimal and incidental to IV-D establishment activities and would not have any impact on the federal budget. Our proposed regulation is intended simply to allow the inclusion of an uncontested and agreed upon parenting time provision incidental to the establishment of a child support order when convenient to the parties, IV-D agency, and court to do so." (68556)

Yet the rule as drafted, § 302.56(h), would allow child support awards to recognize parenting time provisions "pursuant to State child support guidelines or when both parents have agreed to the parenting time provisions." This expands the potential application of the rule enormously, since most, if not all, guidelines provide in some way for consideration of parenting time—at least if it exceeds a certain minimum threshold—

but do not necessarily require the development of a specific parenting time schedule. Moreover, the addition of this section to the regulations on guidelines—which generally set out factors that guidelines must take into consideration—may encourage more states to amend their guidelines to provide for a reduction in child support awards for small increases in scheduled, if not actual, parenting time. This may provide an incentive for an abusive parent to coerce a custodial parent to agree to a parenting time order in an effort to reduce child support payments.

Even if the "or" in the proposed rule were changed to an "and"—so that parenting plans would be entered only when parents agreed—the risks would not be eliminated. It would still be necessary for programs to ensure that domestic violence safeguards and protocols are in place to ensure that agreement to the plan was not coerced and that the arrangements are safe. Yet the proposed rule does not require programs that would enter parenting time orders to develop such procedures—and the limit on federal financial participation set in § 304.20(b)(4)(vii) (only de minimus costs associated with the inclusion of parenting time provisions entered as part of a child support order are eligible) means that states' ability to implement such protections would be limited.

Only a handful of jurisdictions currently have child support program initiatives that incorporate parenting time agreements into child support orders; domestic violence safeguards are an important part of these programs.[2] Recognizing the need to learn more about how child support agencies could safely and effectively establish parenting time orders along with new child support orders, OCSE awarded four-year grants in FY 2012 for several pilot projects to develop, implement, and evaluate procedures for establishing child support awards, but the projects have not yet been completed or evaluated.[3]

For these reasons, NWLC recommends that §§ 302.56(h) and 304.20(b)(4)(vii) be dropped from the proposed rule, and that this issue be reviewed after the Parenting Time Opportunities pilots have been evaluated.

Sections 302.76, 303.6(c)(5) and 304.20(b)(ix), Job Services

NWLC supports allowing IV-D agencies to offer certain job services to eligible noncustodial parents and providing federal financial participation for those activities.

Low-income custodial and noncustodial parents face many of the same barriers to employment.[4] Partnerships between child support agencies, courts, fatherhood programs, and workforce development programs offering the types of services authorized by the proposed rule have helped noncustodial parents find and keep jobs and increase the support they provide to their children.[5]

Boosting earnings significantly over the longer term for disadvantaged workers requires more than limited employment services—but access to such services is severely limited for custodial as well as noncustodial parents. The Temporary Assistance to Needy

Families (TANF) program provides only limited employment services for custodial parents: the combination of restrictive work participation rules that emphasize a "work first" approach and funding frozen at 1996 levels means that most TANF programs do little to help custodial parents find family-supporting jobs.

Subsidized employment programs were created or expanded with funding from the TANF Emergency Fund under the American Recovery and Reinvestment Act of 2009 and had promising results.[6] Unfortunately, because Congress allowed the program to expire in 2010, the opportunities for low-income custodial parents to secure subsidized employment are severely limited.

Subsidized employment programs can be effective, but they are also more expensive than the other employment services the regulation would authorize. Even with a federal match, state IV-D programs would likely have to divert resources from other key functions, such as establishing orders and enforcing support in more difficult cases and helping victims of domestic violence seek support safely, to maintain a program of paying wage subsidies. And it is unclear how much they would increase support payments. Even if child support were withheld from IV-D funded subsidized wages—an option that the Preamble invites comments on—the amounts are likely to be small if a self-support reserve to meet the subsistence needs of the noncustodial parent is allowed. (It should be noted that when custodial parents cannot find work, TANF and other safety-net programs fall far short of meeting the subsistence needs of children. In every state, TANF cash benefits leave families below 50 percent of the federal poverty line; even when SNAP benefits are added, families with no other income fall below the poverty line in every state.[7])

NWLC supports the proposed regulations which will enable IV-D programs to provide limited employment services to noncustodial parents; these are comparable to those offered to custodial parents under TANF. But in an environment when employment services for low-income custodial parents are limited and IV-D resources are strained, it is unable to recommend expanding the list of IV-D-funded services to include subsidized employment for non-custodial parents.

Section 303.6(c)(4), Civil Contempt

NWLC supports the proposed rule, which will ensure that a noncustodial parent receives the basic due process protection of a determination that he or she is able to comply with the support order in a civil contempt proceeding. Consistent with the Supreme Court's decision in *Turner v. Rogers*, 564 U.S. __, 131S. Ct. 2507 (2011), the rule would require that in a civil contempt proceeding, the purge amount must take into account the actual earnings and income and subsistence needs of the noncustodial parent, and be based upon a written finding that the noncustodial parent actually has the ability to pay.

Section 303.8, Review and Adjustment of Child Support Orders—Incarceration

NWLC supports the proposal in § 303.8(b)(2) to allow states to provide in their state plan that they may initiate review of a child support order when they are notified that a noncustodial parent will be incarcerated for more than 90 days, without a specific request, and upon notice to both parents. This will help to reduce the accumulation of uncollectible arrears during a period of incarceration which can make it even harder for a noncustodial parent to be employed and provide support upon release. However, the State plan should also provide for the IV-D agency to be informed when a noncustodial parent is released from incarceration and to initiate a review at that time without a specific request. In addition to facilitating an appropriate adjustment of the order, this would help connect parents reentering the community to available services.

For states that do not elect the above option, § 303.8(b)(7)(ii) would require IV-D agencies, when they learn that a noncustodial parent is incarcerated, to notify both parents of the right to request a review and information about how the request should be made. States that elect the option should also be required to issue a notice to both parents of the right to request review when a noncustodial parent is released.

Sections 303.8(d) and 303.31, Medical Support

NWLC supports the changes to allow Medicaid, CHIP, and other public plans to be considered medical support. This will help insure that children in lower-income families—who are disproportionately served by the IV-D program—receive appropriate insurance coverage, consistent with the goals of the Affordable Care Act, while the resources of their parents can help meet other family needs.

Section 303.11, Case Closure Criteria

NWLC supports most of the changes to case closure criteria proposed in this section. However, it has concerns about a few because recent developments may have expanded the possibilities for successful locate efforts.

Section 303.11(b)(7)(i) would allow states to close cases after two years, reduced from the current three, when states have full locate information, including full names, dates of birth, and verified Social Security numbers but locate efforts have been unsuccessful. This is an inappropriate time to shorten the period for states to make locate efforts for this population. More low-income noncustodial parents may come forward to take advantage of the expanded availability of health insurance under the Affordable Care Act, creating more opportunities for successful locate efforts. Therefore, NWLC recommends that this proposal be dropped.

Section 303.11(b)(7)(ii) would allow states to close cases after an unsuccessful locate period of six months, reduced from the current one year, when a date of birth or verified Social Security number is lacking. However, the President's Executive Order on

immigration will enable more undocumented workers, likely including some noncustodial parents, to obtain Social Security numbers, increasing the opportunities for successful locate efforts. Thus, this is a not an appropriate time to shorten the period for locate efforts for this population.

For similar reasons, NWLC has concerns about the new criterion in proposed § 303.11(b)(7)(iii) which would allow states to close cases after a one-year period if Social Security numbers cannot be verified. Under the Executive Order, more workers may seek to ensure that their Social Security number is correct, increasing the opportunities for successful locate efforts.

Section 303.11(b)(13) would allow a state to close a case after completing a limited service request without providing the notice under § 303.11(d)(6) to the recipient of the limited service. As discussed above in the comment to § 302.33(a)(6), in some cases—such as when the parents have reunited but the custodial parent is unsure about the stability of the relationship—it would be helpful to have the option to suspend enforcement activity, rather than close the case. In other cases, parents may have agreed to request only limited services when they were together. But since then, their relationship or circumstances may have changed, such that one parent now would like full services. Thus, when a limited service request has been completed, instead of closing the case, the IV-D agency should notify the parents of a range of options, including closing the case; keeping the case open but with enforcement suspended; or moving to full services.

Conclusion

Overall, the proposed regulations would make significant reforms to the child support program that will make it fairer and more effective for low-income families. NWLC hopes that these comments are helpful as the agencies finalize these regulations.

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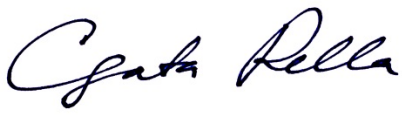

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[1] See National Women's Law Center and Center on Fathers, Families and Public Policy, Family Ties: Improving Paternity Establishment Practices and Procedures for Low-Income Mothers, Fathers, and Children, *available at* http://www.nwlc.org/resource/family-ties-improving-paternity-establishment-practices-and-procedures-low-income-mothers-f (2000) and Dollars and Sense: Improving the Determination of Child Support Obligations for Low-Income Mothers, Fathers and Children, *available at* http://www.nwlc.org/resource/dollars-and-sense-improving-determination-child-support-obligations-low-income-mothers-fath (2002).

[2] OCSE, "Child Support and Parenting Time: Improving Coordination to Benefit Children," Child Support Fact Sheet Series No. 13 (July 2013), *available at* http://www.acf.hhs.gov/sites/default/files/programs/css/13_child_support_and_parenting_time_final.pdf.

[3] OCSE, "Discretionary Grants for Parenting Time Opportunities for Children in the Child Support Program," Child Support Fact Sheet Series No. 14 (July 2013), *available at* http://www.acf.hhs.gov/sites/default/files/programs/css/14_discretionary_grants_for_ptoc_final.pdf.

[4] Karin Martinson and Demetra Nightingale, Ten Key Findings from Responsible Fatherhood Initiatives, Urban Institute (Feb. 2008), *available at* http://www.urban.org/UploadedPDF/411623_fatherhood_initiatives.pdf.

[5] OCSE, "Improving Child Support Outcomes through Employment Programs," Child Support Factsheet No. 11 (Aug. 2012), *available at* http://www.acf.hhs.gov/sites/default/files/ocse/improving_outcomes_through_employment_programs.pdf.

[6] Anne Roder and Mark Elliott, Economic Mobility Corporation, Stimulating Opportunity: An Evaluation of ARRA-Funded Subsidized Employment Programs (Sept. 2013), *available at* http://economicmobilitycorp.org/uploads/stimulating-opportunity-full-report.pdf.

[7] Ife Floyd and Liz Schott, Center for Budget and Policy Priorities, TANF Cash Benefits Have Fallen by More Than 20 Percent in Most States and Continue to Erode(Oct. 2014), *available at* http://www.cbpp.org/cms/?fa=view&id=4222.