



## **Resolution in Support of Setting and Maintaining Current Support Based on Ability to Pay**

### **Introduction**

There is currently significant variance among states in how they ensure current child support orders are established and maintained at an appropriate amount. “Right-sized” obligations promote reliable, sustained collections of child support. When current child support is set, or allowed to remain, at an inappropriate level, there is an increase in non-compliance and ever-increasing arrears. In addition, the effort spent on uncollectible cases dilutes the resources that are available for cases where child support efforts are more likely to be successful.

The National Child Support Enforcement Association (NCSEA) takes the position that, as a general rule, child support guidelines and orders should reflect actual income of parents and be changed proactively to ensure current support orders reflect current circumstances of the parents and to encourage regular child support payments. Therefore, as recognized in the 2016 federal child support regulation amendments, orders based on imputed income, including presumed or default orders, should occur only in limited circumstances. The ideas and proposed legislation identified below would benefit the child support program and the families it serves.

### **Background**

Past-due child support, referred to as child support arrears, have reached unprecedented levels in recent years, according to a study conducted by the Urban Institute for the U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. In Federal Fiscal Year (FFY) 2007, the total nationwide child support arrearages were \$106,463,340,323. In FFY 2019, despite expansion of case closure criteria in 2016, that figure rose to \$117,728,564,962.<sup>1</sup> By comparison, total distributed collections for FFY 2019 were \$28,767,185,944.<sup>2</sup>

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<sup>1</sup> [OCSE Preliminary Report FY 2019](#) Table P-85

<sup>2</sup> [Id.](#) at Table P-4



The best approach to dealing with the arrearage issue is to prevent the arrears from accruing in the first place. Prevention is most likely accomplished by ensuring all current support obligations are based on an individual's ability to pay, as established by applying the state child support guidelines to current case circumstances and providing an accelerated path to modification if case circumstances change.

1. One of the most difficult resource management issues faced by child support is whether to increase the resources committed to early reviews with the hope that comparable amounts of time and resources will be saved in the long run from not trying to collect unrealistic amounts of support. Federal guidance and standards would be beneficial and promote consistent services from state to state.
2. Orders based on imputed income are often not aligned with the parent's ability to pay child support and may cause excessive accumulation of arrears resulting in detrimental impacts to that parent owing support. Default judgments for current support are commonly entered based on a presumed ability to earn, imputed wages, or minimum wage. Often, these are set at a higher amount than the parent owing support would be required to pay had current income been shared. However, there is also a risk the amount is based too low, which in turn is unfair to the parent receiving support. NCSEA believes a total bar on default judgments goes too far, in that the parent owing support might see it as an opportunity to delay the process. However, states should encourage parents owing support to appear at a hearing so defaults can be avoided. Further, if a default order is entered and the parent owing support subsequently contacts the child support program, the program should take steps to assist in getting the default order adjusted to the correct amount based on the parent's ability to pay.
3. A significant portion of the nationwide arrears are owed by parents with little or no reported income. To help prevent the accrual of inappropriate amounts of child support, federal child support regulations as amended in 2016 require state child support guidelines to provide that a child support order is based on the parent's earnings, income, and other evidence of ability to pay that takes into consideration the basic subsistence needs (defined as the minimum necessary to support life) of the parent owing support..
4. Many states' child support guidelines permit or mandate the imposition of a retroactive child support judgment at the time a current child support obligation is



established. However, assessing retroactive support for periods prior to the date of an order often contributes to arrears. When access to income for these prior periods is unavailable, states may impute retroactive support based on ability to earn, imputed wages or minimum wage. Just as these are ineffective approaches to establishing a current order, they may be equally impractical when establishing a retroactive support amount. On occasion, a delay in establishing an order is the result of the actions of a parent who should not be rewarded for failing to cooperate and act diligently. Flexibility on whether to order retroactive support, and then how the amount should be calculated, is necessary to avoid a “one size fits all” approach to the issue.

5. If the federal Office of Child Support Enforcement (OCSE) is able to access databases from the Social Security Administration (SSA) or other agencies, the data could be “mined” to help states identify additional orders for which review is warranted based on a change (up or down) in the parent’s income.
6. As an independent third party, and not an advocate for either parent, a child support agency has an independent interest in avoiding the accrual of uncollectible support which it may later be required to attempt to collect. When a child support agency possesses reliable income information that suggests a change in the child support obligation would be appropriate, there is a benefit to initiating a review and modification process rather than waiting for a parent to act on that information by requesting a review. It would be beneficial for OCSE to confirm that states may proactively initiate a review process without waiting for a request from a parent.

**THEREFORE, NCSEA resolves to advocate for the following:**

1. Federal guidance regarding the selective pursuit of retroactive support.
2. Data-matching of child support systems with other state and federal agencies systems such as unemployment, Medicaid, SSA, TANF, SNAP, and quarterly wage information, to proactively initiate the review or modification process.
3. Collaboration between child support agencies and state labor departments to produce and disseminate data that could be useful to determining ability to pay, including in instances where income imputation is necessary.



4. Federal support for modification-specific outreach by state child support agencies so parties know when and how to use the process.
5. Federal guidance confirming that states may proactively initiate the review or modification of current child support orders without waiting for a request from a parent, including non-assistance cases.

**Adopted by the NCSEA Board of Directors on August 11, 2020**