



ADMINISTRATION FOR
CHILDREN & FAMILIES

Office of Child Support Enforcement | 330 C Street, S.W., 5th Floor
Washington, DC 20201 | www.acf.hhs.gov/css

December 9, 2022

Frank DiBiase, Director
Office of Child Support Services
77 Dorrance Street
Providence, RI 02903

Dear Mr. DiBiase:

This letter serves as a reminder to ensure that Rhode Island Child Support Services complies with the Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs (FEM) final rule published December 20, 2016.

The FEM rule requires that state guidelines under 45 CFR 302.56(c)(3) may not treat incarceration as voluntary unemployment in establishing or modifying child support orders. It further requires in § 303.8(c) that a state's "reasonable qualitative standard must not exclude incarceration as a basis for determining whether an inconsistency between the existing child support order amount and the amount of support determined as the result of a review is adequate grounds for petitioning for adjustment of the order." Exceptions to these prohibitions – such as incarceration for crimes against family members or nonpayment of support – are not permitted. However, Rhode Island General Laws §15-5-16.2(c)(3) specifically provides an exception to these prohibitions, nonpayment of support.

In accordance with 45 CFR 302.56(c)(1), state child support guidelines must provide that a child support order be "based on the noncustodial parent's earnings, income, and other evidence of ability to pay." This provision codifies OCSE's longstanding interpretation of statutory guideline requirements (see AT-93-04 and PIQ-00-03) and reflects the basic principle underlying federal child support guidelines statutes – that applying state guidelines should result in income-based orders.

In AT-16-06, dated December 20, 2016, OCSE provided compliance dates, based on individual requirements, for child support regulations amended by the final rule. Note that the date to comply with federal requirements on guidelines for setting orders was one year after completion of the first quadrennial review of the state's guidelines that commenced more than one year after December 20, 2016.

Please ensure that the aforementioned Rhode Island state law is amended to conform with the requirements at 45 CFR 302.56(c)(3) and §303.8(c) prior to completion of the state's next quadrennial guidelines review.

If you need additional guidance or clarification, please contact OCSE Regional Program Manager Michael Ginns at michael.ginns@acf.hhs.gov

Sincerely,

Tangler Gray
Commissioner

cc: Yvette Riddick, Director, OCSE Division of Policy and Training
Melissa Johnson, Director, OCSE Division of Regional Operations
Michael Ginns, OCSE Regional Program Manager, Region 1