

**Excerpts of the Federal Final Rule, published Dec. 20, 2016  
as to the basis of child support guidelines:**

In 2014, the federal Office of Child Support Enforcement (OCSE) published proposed changes to the federal child support rules and requested stakeholder comments. On December 20, 2016, OCSE published the [Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Final Federal Rule](#) (Final Rule). Included with the Final Rule were OCSE’s responses to stakeholder comments as well as explanations on the changes made. Link to the Final Rule: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-29598.pdf>.

The final rule made a number of changes to child support rules. The changes to child support guidelines that are of particular relevance to the Child Support Task Force include:

- The final rule clarifies the provision that support orders **must be based on parental income, earnings, and other evidence of ability to pay**, emphasizes the need for an evidentiary basis for determining support order amounts, and provides additional guidance on use of imputed income. Compliance date is 2019.

In responding to comments, OCSE notes that it made major revisions in paragraph 45 CFR 302.56(c)(1) (see table of changes). OCSE moved the phrase “and other evidence of ability to pay” from paragraph (c)(4) to paragraph (c)(1) based on comments to require child support guidelines to provide that the child support order is based on the noncustodial parent’s earnings, income, and other evidence of ability to pay. “This provision codifies the basic guidelines standard for setting order amounts, reflecting OCSE’s longstanding interpretation of statutory guidelines requirements (See [AT-93-04](#)<sup>1</sup> and [PIQ-00-03](#)<sup>2</sup>).” See Final Rule, page 93494 at the link.

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**Note:** Attached to the Final Rule, published 12/20/2016, OCSE published selected stakeholder comments along with OCSE’s official response. See below for a stakeholder comment and OCSE’s response related to the issues of the cost of raising a child and parental income as a basis for child support guidelines.

**OCSE Response to Comment on Marginal Cost to Raise a Child in the Final Rule:**

*Marginal Cost to Raise a Child/ Adjustment for Parenting Time* [§ 302.56(c)(4)]

*1. Comment:* Several commenters suggested that proposed § 302.56(c)(2), which was redesignated in the final rule as § 302.56(c)(4), should be revised to indicate that the guidelines should be “based on the statewide median marginal cost for the average family to raise a first, second, or subsequent child, and result in a computation of a the support

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<sup>1</sup> Available at: <http://www.acf.hhs.gov/programs/css/resource/presumptive-guidelinesestablishment-support-unreimbursed-assistance>.

<sup>2</sup> Available at: <http://www.acf.hhs.gov/programs/css/resource/state-iv-dprogram-flexibility-low-income-obligors>.

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obligation that does not exceed such median marginal cost by more than 20%.” One commenter specifically indicated that they recommended that child support orders be based on the marginal cost to raise a child rather than parental income. Many other commenters suggested more detailed revisions related to the marginal cost to raise children. Some commenters suggested that, as part of the review of a State’s guidelines, a State must consider economic data on the marginal cost of raising children, and the child support orders resulting from the guidelines must approximate the obligor’s specified share of such marginal costs. These commenters believed that the objective is to establish child support orders that approximate the true cost of supporting children, over and above what it costs the parents to support themselves. They noted that if the amount of support ordered is too low, the child suffers. However, they noted, child support orders that constitute a windfall to the receiving parent are a potent cause of bitter custody battles, resentment, and hostility that can last throughout the years of childhood. Moreover, according to the commenters, if the child support order is too high, there is a built-in incentive for the parent who expects to win custody to resist shared parenting.

*Response:* We do not agree with this suggestion. **State child support guidelines are required to be based on the noncustodial parent’s income, earnings, and other evidence of ability to pay.** However, States have discretion and flexibility in defining the specific descriptive and numeric criteria used to compute the amount of the child support obligation. Once a parent’s income is ascertained, the rule does not limit States’ flexibility in defining the percentage or amount of income ordered to be paid as child support, so long as the resulting order takes into consideration the noncustodial parent’s ability to pay it. **State guidelines should not be based on the marginal cost of raising the child without taking into consideration the noncustodial parent’s ability to pay.** This rule only establishes minimum components for State child support guidelines consistent with Federal law, and does not impose more specific requirements, that are not inconsistent with Federal law and regulations. *See* Final Rule, page 93528 at the link.