

To: Alabama Advisory Committee on Child Support Guidelines and Enforcement

From: Jane Venohr, CPR

Date: February 1, 2021

RE: Comparison of Federal Requirements of State Guidelines and Guidelines Reviews and Alabama Provisions

Purpose and Background

The purpose of this memorandum is to “unpack” the federal requirements of state guidelines and guidelines reviews to determine what Alabama has completed and Alabama has yet to complete. This document shows that Alabama has met all new requirements of state guidelines and most of the new requirements of state guidelines reviews. The new requirements refer to expanded federal requirements that were published December 2016.¹ States have essentially till the year after the review commencing a year after federal publication to fulfill the expanded requirements. Adhering to that timeline, Alabama should try to meet all the requirements this review. With that said, due to the interruptions caused on the COVID-19 pandemic, the federal Office of Child Support Enforcement is offering states the opportunity to request flexibility on federally-imposed timelines, including timelines pertaining to state guidelines and guidelines reviews.²

The matrix comparing federal requirements to Alabama provisions and review activities is shown at the end of the document.

- Rows 1-6 of the matrix are requirements of state guidelines; and
- Rows 7 – 15 of the matrix are requirements of guidelines reviews and documentation.

For convenience to the reader, the entire federal rule relevant to guidelines appears before the matrix.

45 C.F.R.

§302.56 Guidelines for setting child support orders

- (a) Within 1 year after completion of the State’s next quadrennial review of its child support guidelines, that commences more than 1 year after publication of the final rule, in accordance with § 302.56(e), as a condition of approval of its State plan, the State must establish one set of child support guidelines by law or by judicial or administrative action for setting and modifying child support order amounts within the State that meet the requirements in this section.
- (b) The State must have procedures for making the guidelines available to all persons in the State.
- (c) The child support guidelines established under paragraph (a) of this section must at a minimum:
 - (1) Provide that the child support order is based on the noncustodial parent’s earnings, income, and other evidence of ability to pay that:
 - (i) Takes into consideration all earnings and income of the noncustodial parent (and at the State’s discretion, the custodial parent);
 - (ii) Takes into consideration the basic subsistence needs of the noncustodial parent (and at the State’s discretion, the custodial parent and children) who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve or some other method determined by the State; and
 - (iii) If imputation of income is authorized, takes into consideration the specific circumstances of the noncustodial parent (and at the State’s discretion, the custodial parent) to the extent known, including such factors as the noncustodial parent’s assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.
 - (2) Address how the parents will provide for the child’s health care needs through private or public health care coverage and/or through cash medical support;
 - (3) Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders; and
 - (4) Be based on specific descriptive and numeric criteria and result in a computation of the child support obligation.

¹ U.S. Department of Health and Human Services. (Dec. 20, 2016). “Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs.” *Federal Register*, Vol. 81, No. 244, p. 93562. <https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-29598.pdf>.

² Lekan, Scott (Commissioner). (May 28, 2020). *Flexibilities for State and Tribal Child Support Agencies during COVID-19 Pandemic*. Dear Colleague Letter (DCL) 20-04. Federal Office of Child Support Enforcement. <https://www.hhs.gov/guidance/document/flexibilities-state-and-tribal-child-support-agencies-during-covid-19-pandemic>.

- (d) The State must include a copy of the child support guidelines in its State plan.
- (e) The State must review, and revise, if appropriate, the child support guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support order amounts. The State shall publish on the internet and make accessible to the public all reports of the guidelines reviewing body, the membership of the reviewing body, the effective date of the guidelines, and the date of the next quadrennial review.
- (f) The State must provide that there will be a rebuttable presumption, in any judicial or administrative proceeding for the establishment and modification of a child support order, that the amount of the order which would result from the application of the child support guidelines established under paragraph (a) of this section is the correct amount of child support to be ordered.
- (g) A written finding or specific finding on the record of a judicial or administrative proceeding for the establishment or modification of a child support order that the application of the child support guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case will be sufficient to rebut the presumption in that case, as determined under criteria established by the State. Such criteria must take into consideration the best interests of the child. Findings that rebut the child support guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.
- (h) As part of the review of a State's child support guidelines required under paragraph (e) of this section, a State must:
 - (1) Consider economic data on the cost of raising children, labor market data (such as unemployment rates, employment rates, hours worked, and earnings) by occupation and skill-level for the State and local job markets, the impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the Federal poverty level, and factors that influence employment rates among noncustodial parents and compliance with child support orders;
 - (2) Analyze case data, gathered through sampling or other methods, on the application of and deviations from the child support guidelines, as well as the rates of default and imputed child support orders and orders determined using the low-income adjustment required under paragraph (c)(1)(ii) of this section. The analysis must also include a comparison of payments on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment required under paragraph (c)(1)(ii). The analysis of the data must be used in the State's review of the child support guidelines to ensure that deviations from the guidelines are limited and guideline amounts are appropriate based on criteria established by the State under paragraph (g); and
 - (3) Provide a meaningful opportunity for public input, including input from low-income custodial and noncustodial parents and their representatives. The State must also obtain the views and advice of the State child support agency funded under title IV–D of the Act.

Other Provisions of the New Federal Rule that Indirectly affect Low-Income Provisions of State Guidelines

§303.4 Establishment of support obligations.

(b) Use appropriate State statutes, procedures, and legal processes in establishing and modifying support obligations in accordance with §302.56 of this chapter, which must include, at a minimum: (1) Taking reasonable steps to develop a sufficient factual basis for the support obligation, through such means as investigations, case conferencing, interviews with both parties, appear and disclose procedures, parent questionnaires, testimony, and electronic data sources; (2) Gathering information regarding the earnings and income of the noncustodial parent and, when earnings and income information is unavailable or insufficient in a case gathering available information about the specific circumstances of the noncustodial parent, including such factors as those listed under §302.56(c)(1)(iii) of this chapter; (3) Basing the support obligation or recommended support obligation amount on the earnings and income of the noncustodial parent whenever available. If evidence of earnings and income is unavailable or insufficient to use as the measure of the noncustodial parent's ability to pay, then the support obligation or recommended support obligation amount should be based on available information about the specific circumstances of the noncustodial parent, including such factors as those listed in §302.56(c)(1)(iii) of this chapter. (4) Documenting the factual basis for the support obligation or the recommended support obligation in the case record.

§303.8 Review and adjustment of child support orders.

* * * * (b)

* * * (2) The State may elect in its State plan to initiate review of an order, after learning that a noncustodial parent will be incarcerated for more than 180 calendar days, without the need for a specific request and, upon notice to both parents, review, and if appropriate, adjust the order, in accordance with paragraph (b)(1)(i) of this section. * * * (7) The State must provide notice— (i) Not less than once every 3 years to both parents subject to an order informing the parents of their right to request the State to review and, if appropriate, adjust the order consistent with this section. The notice must specify the place and manner in which the request should be made. The initial notice may be included in the order. (ii) If the State has not elected paragraph (b)(2) of this section, within 15 business days of when the IV–D agency learns that a noncustodial parent will be incarcerated for more than 180 calendar days, to both parents informing them of the right to request the State to review and, if appropriate, adjust the order, consistent with this section. The notice must specify, at a minimum, the place and manner in which the request should be made. Neither the notice nor a review is required under this paragraph if the State has a comparable law or rule that modifies a child support obligation upon incarceration by operation of State law. (c) * * * Such reasonable quantitative 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 a result of a review is adequate grounds for petitioning for adjustment of the order.

| Short Description | New Fed. Requirement | Relevant Federal Provision (45 C.F.R. 302.56) | AL Provision/Consideration | Meets Federal requirement? | Relevant Documents | To do/consider: |
|--|-------------------------------------|--|---|---------------------------------------|---|--|
| Row 1: Ability to pay provision | <input checked="" type="checkbox"/> | (c) The child support guidelines established under paragraph (a) of this section must at a minimum: (1) Provide that the child support order is based on the noncustodial parent's earnings, income, and other evidence of ability to pay that... | (B) Definitions. (1) INCOME. For purposes of the guidelines established by this rule, "income" means actual gross income of a parent, if the parent is employed to full capacity, or the actual gross income the parent has the ability to earn if the parent is unemployed or underemployed. (2) GROSS INCOME. (a) "Gross income" includes income from any source, and includes, but is not limited to, salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, Social Security benefits, veteran's benefits, workers' compensation benefits, unemployment-insurance benefits, disability insurance benefits, gifts, prizes, and preexisting periodic alimony. | <input checked="" type="checkbox"/> ? | The intent this federal requirement is to allow for alternative evidence of ability to pay such as verbal testimony and income information obtained from automated sources available to the child support agency. ³ Some states provide for what is evidence (e.g., tax recent W-2 forms and two pay stubs, or tax return or 1099 if self-employed) | Does the Alabama guidelines need any additional tweaks to better meet the federal requirement? |
| Row 2: Take into consideration the basic subsistence needs | <input checked="" type="checkbox"/> | (c)(1)(ii) Takes into consideration the basic subsistence needs of the noncustodial parent (and at the State's discretion, the custodial parent and children) who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve or some other method determined by the State | Addressed in 2 places <ul style="list-style-type: none"> Shaded area of schedule Comment to Amendments Effective January 1, 2009 Other assumptions incorporated in the revised schedule of basic child support obligations include: (4) Self-support reserve. The schedule of basic child-support obligations incorporates a self-support reserve of \$851 per month. It is based on the 2007 federal poverty guidelines for one person but is also realigned to consider Alabama incomes in the same manner as the revised schedule. The adjustment is incorporated into the schedule for combined gross incomes below: \$1,100 for one child; \$1,350 for two children; \$1,550 for three children; \$1,700 for four children; \$1,900 for five children; and \$2,100 for six children. The evidence on child-rearing expenditures indicates a higher amount is expended on children below these income levels than what is shown in the schedule of basic child-support obligations. | <input checked="" type="checkbox"/> | 12/31/2020 CPR Memorandum: Providing a Self Support Reserve Also see pages 20-23 of 9/29/2020 CPR report | See questions in 12/31 memorandum on whether adjustment should be updated or revised |

³ See U.S. Department of Health and Human Services. (Nov. 17, 2014). "Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs." Federal Register, vol. 79, no. 221. p. 68555. Retrieved from <https://www.gpo.gov/fdsys/pkg/FR-2014-11-17/pdf/2014-26822.pdf>.

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| Row 3: Take into consideration individual factors when imputing income | <input checked="" type="checkbox"/> | <i>(c)(1)(iii) If imputation of income is authorized, takes into consideration the specific circumstances of the noncustodial parent (and at the State's discretion, the custodial parent) to the extent known, including such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.</i> | (B) Definitions. (5) UNEMPLOYMENT; UNDEREMPLOYMENT. <i>If the court finds that either parent is voluntarily unemployed or underemployed, it shall estimate the income that parent would otherwise have and shall impute to that parent that income; the court shall calculate child support based on that parent's imputed income. In determining the amount of income to be imputed to a parent who is unemployed or underemployed, the court should take into consideration the specific circumstances of the parent to the extent known, including such factors as the parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the parent, prevailing earnings level in the local community, and other relevant background factors in the case. The court may take into account the presence of a young or physically or mentally disabled child necessitating the parent's need to stay in the home and therefore the inability to work. Incarceration may not be treated as voluntary unemployment in establishing or modifying a child-support order.</i> | <input checked="" type="checkbox"/> | See 10/30/2020 zero order language for when income imputation is not authorized | 10/30/2020 proposed language takes it a step further by providing a zero order when income imputation is not authorized |
| Row 4: Incarceration is not voluntary Unemployment | <input checked="" type="checkbox"/> | <i>c)(3) Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders</i> | (B) Definitions. (5) UNEMPLOYMENT; UNDEREMPLOYMENT. <i>...Incarceration may not be treated as voluntary unemployment in establishing or modifying a child-support order.</i> | <input checked="" type="checkbox"/> | Ditto | 10/30/2020 proposed language takes it a step further by providing a zero order when incarcerated |
| Row 5: Substituted "insurance" with "care" and etc... | <input checked="" type="checkbox"/> | Shown in strike-out/insert format to capture the subtle language change (3) (2) Address how the parents will provide for the child(ren)'s child's health care needs through <u>private or public health insurance care</u> coverage and/or through cash medical support in accordance with § 303.31 of this chapter. ; | SEE Committee Comments to the Amendment to Rule 32 Effective July 1, 2019. <i>There were several word changes</i> (7) HEALTH-INSURANCE COVERAGE/CASH MEDICAL SUPPORT. (a) <i>Medical support in the form of health-care coverage and/or cash medical support shall be ordered provided that health-care coverage is available to either parent at a reasonable cost and/or cash medical support is considered reasonable in cost.</i> | <input checked="" type="checkbox"/> | None | Doublecheck with committee that no changes are necessary |

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| | | | <p><i>The health-care coverage must be "accessible" to the children, as that term is defined in subsection (B(7)(c)(4).</i></p> <p><i>(b) Cash medical support may be ordered in addition to health-care coverage. Cash medical support does not have to be a stand-alone amount. Cash medical support for uninsured medical expenses can be allocated between the parents.</i></p> <p><i>(c) Definitions.</i></p> <p><i>(1) Cash Medical Support. Cash medical support is an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another parent through employment or otherwise, or for other medical costs not covered by insurance.</i></p> <p><i>(2) Health-care coverage. Health-care coverage includes fee for service, health maintenance organization, preferred provider organization, and other types of private health insurance and public health-care coverage under which medical services could be provided to the dependent child or children.</i></p> <p><i>(3) Reasonable Cost. Cash medical support or the cost of health insurance is considered reasonable in cost if the cost to the parent responsible for providing medical support does not exceed 10% of his or her gross income.</i></p> <p><i>(4) Accessible. Health-care coverage shall be deemed "accessible" if ordinary medical care is available to the children within a 100-mile radius of their residence.</i></p> <p><i>(d) The actual cost to provide health-care coverage for the child or children shall be added to the "basic child-support obligation" and shall be divided between the parents in proportion to their adjusted gross income in the percentages indicated on the Child-Support Guidelines form (Form CS-42).</i></p> <p><i>(e) The amount to be added to the "basic child-support obligation" and inserted in Line 6 ("Health-Care-Coverage Costs") of the Child-Support Guidelines form (Form CS-42) shall be the pro rata portion of the healthcare-coverage cost attributable to the child or children who are the subject of the support order, which shall be calculated by dividing the total healthcare-coverage cost actually paid by, or on behalf of, the parent ordered to provide the coverage by the total number of persons (adult and/or children) covered and then multiplying the result by the number of children who are the subject of the support order.</i></p> | | | |

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| | | | <p>(f) After the "total child-support obligation" is calculated and divided between the parents in proportion to their "monthly adjusted gross income," the amount added pursuant to subsection (B)(7)(e) shall be deducted from the obligor's share of the total child-support obligation, provided the obligor actually pays the health-care-coverage cost. If the obligee is actually paying the cost, no further adjustment is necessary.</p> <p>(g) If, at any time while a child-support order providing for a health-care coverage adjustment is in effect, the health-care coverage is allowed to lapse, is terminated, or otherwise no longer covers the child or children for whose benefit the order was issued, the court</p> <p>(i) may find the amount deducted from the obligor's child-support obligation therefor to be an arrearage in the obligor's total child-support obligation;</p> <p>(ii) may find the obligor liable for medical expenses that would otherwise have been covered under the health-care coverage; and/or</p> <p>(iii) may enter such other order as it shall deem appropriate.</p> | | | |
| Row 6: Provide deviation criteria | | 302.56 (g)... [Deviation criteria], as determined under criteria established by the State. | <p>(1) REASONS FOR DEVIATING FROM THE GUIDELINES. Reasons for deviating from the guidelines may include, but are not limited to, the following:</p> <p>(a) Shared physical custody or visitation rights providing for periods of physical custody or care of children by the obligor parent substantially in excess of those customarily approved or ordered by the court;</p> <p>(b) Extraordinary costs of transportation for purposes of visitation borne substantially by one parent;</p> <p>(c) Expenses of college education incurred prior to a child's reaching the age of majority;</p> <p>(d) Assets of, or unearned income received by or on behalf of, a child or children;</p> <p>(e) The assumption under the Schedule of Basic Child-Support Obligations that the custodial parent will claim the federal and state income-tax exemptions for the children in his or her custody will not be followed in the case;</p> <p>(f) The actual child-care costs incurred on behalf of the children because of the employment or job search of either parent exceeds the costs allowed under subsection (B)(8) of this rule by twenty percent (20%) or more; and</p> | <input checked="" type="checkbox"/> | None | Doublecheck with committee that no changes are necessary |

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| | | | <p>(g) A parent incurs child-care costs associated with the parent's training or education necessary to obtain a job or to enhance that parent's earning potential, not to exceed a reasonable time as determined by the court. To justify deviating from the guidelines on this basis, the parent must prove by a preponderance of the evidence that the job training or education will benefit the child or children being supported, and child-care costs associated with such training or education shall not exceed the amount required to provide care from a licensed source for the child or children, based on a schedule of guidelines developed by the Alabama Department of Human Resources; and</p> <p>(h) Other facts or circumstances that the court finds contribute to the best interest of the child or children for whom child support is being determined. The existence of one or more of the reasons enumerated in this section does not require the court to deviate from the guidelines, but the reason or reasons may be considered in deciding whether to deviate from the guidelines. The court may deviate from the guidelines even if no reason enumerated in this section exists, if evidence of other reasons justifying deviation is presented.</p> <p>(2) STIPULATIONS. Stipulations presented to the court shall be reviewed by the court before approval. No hearing shall be required; however, the court shall use the guidelines in reviewing the adequacy of child-support orders negotiated by the parties and shall review <i>income statements that fully disclose the financial status of the parties. The court, however, may accept from the parties and/or their attorneys of record a Child-Support Guidelines Notice of Compliance (Form CS-43) that indicates compliance with this rule or, in the event the guidelines have not been followed, the reason for the deviation therefrom and the amount of support that would have been required under the guidelines.</i></p> | | | |
| Row 7: Alabama Dept. of Human Resources submits guidelines in its IV-D plan | <input checked="" type="checkbox"/> | (d) The State must include a copy of the child support guidelines in its State plan. | | <input checked="" type="checkbox"/> | | Agency will update |

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| Row 8: Review and revise guidelines if appropriate | <input checked="" type="checkbox"/> | <i>(e) The State must review, and revise, if appropriate, the child support guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support order amounts...</i> | | <input checked="" type="checkbox"/> | All documents on Court website | Complete review |
| Row 9: Publish reports, committee roster, and dates | <input checked="" type="checkbox"/> | <i>(e).... The State shall publish on the internet and make accessible to the public all reports of the guidelines reviewing body, the membership of the reviewing body, the effective date of the guidelines, and the date of the next quadrennial review</i> | | <input checked="" type="checkbox"/> | Committee roster and all reports posted on Court website | Completion of review and submission of final recommendations |
| Row 10: Consider economic data on the cost of raising children | | <i>(h) ... a State must: (1) Consider economic data on the cost of raising children...</i> | | <input checked="" type="checkbox"/> | 12/31/2020 CPR Memorandum: Adjusting for Alabama Prices/Income 9/29/2020 CPR economic report | Finalize recommendation to update schedule after determining self-support reserve changes. CPR document data and steps of realigned income schedule. |

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| Row 11: Consider labor market data | <input checked="" type="checkbox"/> | <i>(h)... a State must: (1)labor market data (such as unemployment rates, employment rates, hours worked, and earnings) by occupation and skill-level for the State and local job markets,and factors that influence employment rates among noncustodial parents and compliance with child support orders;....</i> | | <input checked="" type="checkbox"/> on first part, influencing factors could be explicit | See 9/14/2020 CPR infographic on the preliminary findings from the analysis of case file data and labor market data | Could be included in any final report (see below), analysis |
| Row 12: Consider impact on low-income families | <input checked="" type="checkbox"/> | <i>(h) ... a State must: (1)..... the impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the Federal poverty level,</i> | | <input checked="" type="checkbox"/> | See pps 24-37 of 9/29/2020 CPR economic report Also see 12/31/2020 CPR Memorandum on SSR | CPR to prepare final report of economic data, schedule, SSR, and findings from case file data |
| Row 13: Analyze deviations and keep deviations to minimum | | <i>(h) ... a State must: (2)Analyze case data, gathered through sampling or other methods, on the application of and deviations from the child support guidelines,.... The analysis of the data must be used in the State's review of the child support guidelines to ensure that deviations from the guidelines are limited and guideline amounts are appropriate based on criteria established by the State under paragraph (g); and....</i> | | <input checked="" type="checkbox"/> | See 9/14/2020 CPR infographic on the preliminary findings from the analysis of case file data and labor market data Deviation rate is 9% | Could also be included in final report |

| Short Description | New Fed. Requirement | Relevant Federal Provision (45 C.F.R. 302.56) | AL Provision/Consideration | Meets Federal requirement? | Relevant Documents | To do/consider: |
|---|-------------------------------------|---|----------------------------|-------------------------------------|--|--|
| Row 14: Analyze defaults, imputation, application of low-income adjustment and payment patterns | <input checked="" type="checkbox"/> | <i>(h) ... a State must: (2)as well as the rates of default and imputed child support orders and orders determined using the low-income adjustment required under paragraph (c)(1)(ii) of this section. The analysis must also include a comparison of payments on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment required under paragraph (c)(1)(ii).</i> | | <input checked="" type="checkbox"/> | See 9/14/2020 CPR infographic on the preliminary findings from the analysis of case file data and labor market data And See pps 30-37 of 9/29/2020 CPR economic report | Could also be included in final report |
| Row 15: Provide opportunity for public comment particularly low-income and IV-D agency | <input checked="" type="checkbox"/> | <i>(h) ... a State must: (3) Provide a meaningful opportunity for public input, including input from low-income custodial and noncustodial parents and their representatives. The State must also obtain the views and advice of the State child support agency funded under title IV–D of the Act.</i> | | <input checked="" type="checkbox"/> | See meeting notes for public comment period. See committee roster for IV-D representation and representatives of low-income parents. | Could also be included in final report |