



Oregon Department of Justice

# Oregon Child Support Program

*Supporting Parents to Support Children*

Issue title: Guidelines Review Policy Paper on Income

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## ISSUES IN BRIEF:

Federal law requires states to regularly review their guidelines for setting child support orders ([45 CFR 302.56](#)). For Oregon's present review, several issues related to assessing parents' income are being considered.

**#1 (Income Imputation):** As used in this paper, income imputation means alleging that a parent has the ability to earn income when there is no proof that they currently earn it. Presently, [OAR 137-050-0715\(7\)](#) permits imputing the lowest, full-time minimum wage in the state where a parent resides when there is insufficient information to determine their actual or potential income. In addition, section (10) of the same rule **requires** the imputation of the lowest minimum wage in the state where a parent resides when they are receiving public assistance. These provisions may conflict with the intentions behind 45 CFR 302.56(c)(1)(iii), which requires the consideration of a parent's specific circumstances when imputing income. Regardless of potential conflict, Oregonians have remained too reliant on the imputation of minimum wage when calculating support, and, at the very least, better guidance is needed for determining income when information is scarce.

**#2 (Self-Support Reserve):** Oregon's child support guidelines include a self-support reserve ([OAR 137-050-0745](#)) that is intended to leave parents who pay support with enough income to meet their own basic needs. Oregon's self-support reserve is tied to the federal poverty guideline and is adjusted annually. As of July 2024, the self-support reserve is \$1,465 in monthly income. It is questionable whether this self-support reserve is sufficient for a parent to meet their own needs. In addition, as noted in issue #1, Oregonians routinely impute the lowest state minimum wage (\$2,374.67 per month as of July 2024), which is considerably higher than the self-support reserve. When minimum wage is imputed for a parent who does not actually earn that much, the self-support reserve is, in effect, circumvented. In addition, the minimum order requirement found in [OAR 137-050-0755](#) overrides the self-support reserve; if a parent only has \$15 available after the self-support reserve is applied, they will still be ordered to pay \$100. To ensure it serves its intended purpose, Oregon's self-support reserve should be examined with particular attention to its interactions with minimum order and income imputation provisions.

**#3 (Minimum Orders):** Currently, [OAR 137-050-0755](#) states that obligated parents are rebuttably presumed to be able to pay at least \$100 per month in child support, even if their guideline support calculation is for less. There are exceptions when parents share exactly equal parenting time, when the paying parent is incarcerated or receiving public assistance as defined in [ORS 25.245](#), or their sole source of income is from disability benefits. The federal Office of Child Support Services (OCSS) discourages minimum orders to the extent that they conflict with the federal requirement to base support obligations on the paying parent's specific circumstances. The necessity and effectiveness of Oregon's present minimum order requirement should be assessed. Even if

Oregon's child support guidelines continue to require a minimum order, is \$100 per month the proper amount and are the right exceptions identified?

## REFERENCES:

[PIQ 00-03](#)  
[Flexibility, Efficiency, and Modernization in Child Support](#)  
[IM-22-03](#)  
[45 CFR 302.56](#)  
[OAR 137-050-0715](#)  
[OAR 137-050-0745](#)  
[OAR 137-050-0755](#)

## ANALYSIS:

### #1 (Income Imputation):

Generally, income imputation can be used to fill evidentiary gaps when calculating support. Oregon's guidelines permit assessing actual or potential income. Potential income is a form of income imputation where a parent's *ability* to earn income is used to augment the parent's actual earnings. For example, if a parent is currently unemployed (earning \$0 income) but has regularly worked in construction earning \$5,000 per month and expects to be rehired soon, they could reasonably be assessed with potential income of \$5,000 per month, based on their work history and available job opportunities.

For the most part, Oregon's definition for potential income found in OAR 137-050-0715(3) comfortably meets the requirements for income imputation found in 45 CFR 302.56(c)(1)(iii). The determination of potential income in Oregon's guidelines relies on specific facts about the parent. However, income imputation pursuant to OAR 137-050-0715(7) may not. This provision serves as a safety mechanism to permit the calculation of support when there is insufficient evidence to identify actual or potential income. This provision permits imputing income without consideration of a parent's specific circumstances.

The imputation of minimum wage for parents receiving Temporary Assistance for Needy Families (TANF), found in OAR 137-050-0715(10), serves a slightly different purpose. It is arguably a holdover from prior guidelines where income was rarely assessed below minimum wage without a rebuttal. Imputing minimum wage for parents receiving TANF, rather than their actual income or benefits, was thought to create more balanced support obligations and somewhat higher amounts payable to low-income parents entitled to receive support. However, if a parent who (should) receive support is imputed with minimum wage because they are receiving TANF while a parent who (should) pay support is assessed with a low amount of actual income, it can cause further imbalance rather than correcting it. There may also have been an assumption that alleging minimum wage would be more consistent with the parent's expected earnings once they stopped receiving TANF. However, this assumption is outdated; many parents may be unable to earn minimum wage based on their actual circumstances.

Income imputation has been a hot topic in child support circles in recent years because states have continued to impute income to paying parents when there is no evidence they can earn it. In turn, orders based on this imaginary income have led to large amounts of uncollected debt. Orders based on imputed income, absent specific facts about a parent's actual circumstances, may not result in children receiving support they need and can create additional friction between parents.

There is growing evidence that imputing income when there is no evidence that the parent can earn it is counterproductive.<sup>1</sup>

In a March 2023 survey of program participants, just under half of the respondents (1,700 people) did not agree with imputing full-time minimum wage when there was a lack of information or when a parent receives public assistance. A little over one third (1,255 people) felt it was appropriate to impute full-time minimum wage, and 15% (513 people) did not have an opinion. However, among program staff and legal partners, the results were very different. For both program staff and legal partner survey respondents, approximately 60% felt that income imputation works well, and a little over one third felt income imputation needs changes. This suggests that income imputation may be meeting the needs of program staff and legal partners but less so those of program participants.

Child support professionals, court staff, and the public in Oregon all routinely impute minimum wage in the absence of concrete information about actual earnings. In a sampling of calculations entered by the Oregon Child Support Program over a four-year period (April 2018 to March 2022), approximately 40% of paying parents were assessed with the lowest, full-time minimum wage without reference to their specific circumstances. Of the remaining calculations that were based on actual or potential earnings, the majority (more than 80%) were assessed with income above the lowest, full-time minimum wage at the time of the calculation. Is it reasonable to believe that program staff are unable to obtain information about parents' ability to earn income in 40% of cases? Or, in some cases, are program staff interpreting a parent's lack of work history, income, or assets as a lack of evidence? Could the absence of documented work history or income instead be evidence of the parent's inability to earn minimum wage?

Some argue that failure to impute income when there is little or no evidence of a parent's earning ability reinforces negative social behaviors. If a parent can get a lower order by refusing to cooperate or hiding information, doesn't this motivate the parent to avoid engaging with the child support process? How else can child support professionals and courts issue fair, enforceable orders when they don't have clear evidence of the parents' ability to earn income? Further, the guidelines are used by a variety of stakeholders. While child support professionals, attorneys, and judges may be able to gather personal information about individuals on which to base a child support obligation, this can be more difficult for unrepresented litigants. Would the elimination of income imputation enable paying parents to evade their obligation to support their children?

Options to consider:

1. Update sections (7) and (10) from OAR 137-050-0715 to provide nuanced guidance on determining actual and potential income when a parent is receiving public assistance or information is unavailable.
  - a. May include imputation at fewer hours when information is unavailable.
  - b. May include using actual benefit amount or no income for parents receiving public assistance.
2. Remove sections (7) and (10) from OAR 137-050-0715 altogether and rely on "actual" and "potential" income definitions.
3. Maintain status quo (with expanded commentary, continued training, outreach).

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<sup>1</sup> See OCSS' information memorandum, IM-22-03, and commentary in the 2016 federal final rule, *Flexibility, Efficiency, and Modernization in Child Support Programs*.

## #2 (Self-Support Reserve):

45 CFR 302.56(c)(1)(ii) requires states to take into consideration the basic subsistence needs of paying parents, and the regulation identifies a self-support reserve as a method to meet this requirement. The present structure of Oregon's self-support reserve has existed for at least two decades. The dollar amount is adjusted annually in relation to the federal poverty guideline for a single person, multiplied by 1.167 to account for estimated taxes. Parents' gross income, actual or potential, is adjusted to reflect specific factors (presently including spousal support paid or received, union dues paid, the cost to enroll the parent themselves in health care coverage, and a credit for non-joint children). The self-support reserve is then subtracted from the adjusted income to identify the amount of income available for support. However, after all subsequent costs and credits are calculated and the support obligation has been determined, the protection of the self-support reserve is overridden by the minimum order requirement unless an exception applies.

This means that parents with income below the self-support reserve will be ordered to pay \$100 per month, regardless of their ability to meet their own basic needs. There is no exception for parents experiencing houselessness, addiction, or mental health crises. Separately, as already discussed, there is a tendency to impute the lowest minimum wage in Oregon for parents who do not have a clear work history or who do not provide documentation of their earnings. The lowest minimum wage is considerably higher than the self-support reserve. If the parent has no income and does not have a history of earning minimum wage but is imputed with minimum wage, the self-support reserve has no effect. The parent can be alleged to have more than \$800 per month available to pay support when they may have no income at all.

In March 2023, Oregon Child Support Program participants were sent a survey asking whether they believed the self-support reserve was set at the right amount. More than half of the respondents (54%) indicated that it needed changes. Program staff and legal partners were also surveyed; 71% of program staff and 61% of legal partners suggested Oregon's self-support reserve model should be changed. Those who provided comments suggested that the self-support reserve is too low and does not adequately consider the high cost of housing in Oregon.

Oregon's 2023 economic study, produced by the Center for Policy Research (CPR), recommended increasing the self-support reserve to 130% of the federal poverty guideline, consistent with the Supplemental Nutrition Assistance Program (SNAP). As of today, that would place Oregon's self-support reserve at \$1,632 ( $\$1,255 \times 1.3$ ) rather than \$1,465 ( $\$1,255 \times 1.167$ ). Alternative suggestions include tying the self-support reserve to minimum wage imputation (e.g., the lowest full-time minimum wage or minimum wage at the average hours worked in Oregon, or by profession, or by region). However, depending on related decisions regarding income imputation and minimum orders, this could result in a large influx of minimum orders.

If the self-support reserve continues to be counteracted by routine income imputation or overridden by the minimum order requirement, raising the amount will have a minimal benefit for low-income paying parents. Those parents who have actual earnings more than \$100 higher than the current self-support reserve could see a small benefit from increasing the self-support reserve to 130% of the federal poverty guideline. However, this alone would not have a wide-ranging impact on families because, currently, most paying parents are assessed with income at or above full-time minimum wage.

Eliminating the practice of imputing full-time minimum wage in the absence of work history or reprioritizing the present self-support reserve to override the minimum order may have a broader effect on families. As mentioned previously, in a sampling of calculations entered by program staff,

approximately 40% were based on imputed, full-time minimum wage. Of these, only 4% of the calculations were impacted by the self-support reserve. In the remaining cases, where the parent's income was determined using their actual or potential income based on specific circumstances, the self-support reserve impacted 10% of the calculations. If parents were consistently assessed with actual earnings, including \$0 when there was no evidence of income or work history, the current self-support reserve would likely serve its intended purpose for more low-income paying parents.

Reprioritizing the self-support reserve in relation to the minimum order is potentially more controversial. The minimum order generally comes into play when the paying parent has significant (but not equal) parenting time, when the parent who receives support has substantially higher income than the paying parent, and when the paying parent has low income, particularly below the self-support reserve. If the self-support reserve were reprioritized to override the minimum order (or if the invocation of the self-support reserve becomes an exception to the minimum order), one of the reasons for the minimum order would be eliminated. If the minimum order no longer applies to low-income parents, is the minimum order still beneficial?

Options to consider:

1. Increase the self-support reserve (or tie it to a different indicator).
2. Re-prioritize the self-support reserve within the calculation.
3. Consider a combination of options 1 and 2.
4. Maintain status quo (continue to tie the self-support reserve to the federal poverty guideline).

### #3 (Minimum Orders):

Oregon has a long history of requiring minimum orders; records confirm their existence back to at least 1989. However, minimum orders were temporarily retired starting in 2003 before being restored in 2009. Prior to retirement in 2003, the minimum order was \$50 per month. When it came back in 2009, it was set at \$100 per month. The basic premise of minimum orders is that parents have a duty to support their children ([ORS 109.010](#)), and, unless an exception applies, every parent can pay at least \$100 per month. In addition, minimum orders can be used to set the expectation of regular payments and establish a pattern of engagement and compliance with the program. Essentially, unless there are unique circumstances, parents should not be excused from their duty to support their children by ordering zero support.

Unlike income imputation and the self-support reserve, 45 CFR 302.56 does not directly address the appropriateness of minimum orders. However, [42 USC 667\(b\)\(2\)](#) requires all guideline support orders, including minimum orders, to be rebuttable. As early as 2000, OCSS discouraged states from setting minimum orders for parents with limited or no ability to pay because these orders had lower compliance rates (PIQ 00-03). In the 2016 federal final rule, *Flexibility, Efficiency and Modernization in Child Support Programs*, this policy was reinforced with commentary clearly stating that "high minimum orders that are issued across-the-board without regard to the noncustodial parent's ability pay the amount do not comply with these regulations."<sup>2</sup>

Arguments in favor of minimum orders are related to arguments in favor of imputing income in the absence of concrete evidence that a parent has income with which to pay support. If a parent has no income, the guideline support calculator will find that they cannot pay support. Entering an order for no support because a parent has no identifiable earnings can be perceived as a reward for not working or not cooperating with the child support process. A minimum order ensures that all parents are accountable to help support their children. It can establish a pattern of involvement and may

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<sup>2</sup> Federal Register / Vol. 81, No. 244 / Tuesday, December 20, 2016 / pg. 93525

lead to more engagement in the future. Setting a support order at \$0 to preserve the paying parent's ability to meet their own basic needs could be construed as prioritizing the needs of the parent over the needs of the child.

Oregon's recent survey of program participants, staff, and legal partners did not inquire about minimum orders. However, CPR's economic study did explore trends in minimum orders among other states. At \$100 per month, Oregon has a relatively high minimum order when compared with other states. The more common minimum order amount is \$50 per month. Colorado and New York have elected to have two types of minimum orders: a lower amount for low-income parents and a higher amount for parents with higher incomes. Maine and Michigan set minimum orders based on a percentage of income; this permits setting support at \$0 when the parent has no earnings (because 10% of \$0 is still \$0). These more nuanced minimum orders may be more in keeping with federal regulations requiring states to consider each parent's specific circumstances.

Based on comparisons with other states, CPR's economic study included a recommendation to reduce the minimum order or perhaps convert it into a percentage of income. There has also been discussion of creating a per-child minimum order. For example, if Oregon maintained the minimum order requirement but reduced the amount to \$20 per child, most minimum orders would be for \$20 or \$40 per month because less than 22% of Oregon orders include more than two children. The study also suggests setting minimum orders at a percentage of income (e.g., 10% or 20% of income). Some academic studies referenced in CPR's economic study suggest that compliance drops when support obligations exceed 20% of the paying parent's income. However, it should be noted that a percentage of income for a parent with actual earnings of \$1,418 per month (the present self-support reserve) would be \$284 per month (at 20%) or \$142 per month (at 10%), which are both higher than the present minimum order.

Options to consider:

1. Expand the exceptions to the minimum order.
  2. Re-prioritize the minimum order within the calculation.
  3. Reduce the minimum order.
    - a. Per child
    - b. Flat rate
    - c. Percentage
  4. Eliminate the minimum order.
  5. Maintain status quo (\$100 per month minimum with limited exceptions).
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