

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES

P.O. Box 419064, Rancho Cordova, CA 95741-9064



December 11, 2025

CSSP LETTER: 25-01

ALL IV-D DIRECTORS
 ALL COUNTY ADMINISTRATIVE OFFICERS
 ALL BOARDS OF SUPERVISORS

SUBJECT: FEM FINAL RULE: FLEXIBILITY, EFFICIENCY AND MODERNIZATION IN
 CHILD SUPPORT ENFORCEMENT PROGRAMS, UNIFORM EARNING
 CAPACITY PRACTICES

REFERENCE: [Chapter 213, Statutes of 2023 \[Senate Bill \(SB\) 343\]](#); [Chapter 573, Statutes of 2022 \[Assembly Bill \(AB\) 207\]](#) [California Family Code \(FAM\) Section \(§\) 4055](#); [FAM § 4057](#); [FAM § 4058](#); [FAM § 4061](#); [FAM § 4062](#); [FAM § 4063](#); [The Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Final Rule published December 20, 2016, in the Federal Register, page 93492, Volume 81, Number 244](#); CSSI 25-07 Final Rule: FEM in Child Support Enforcement Programs, Establishment Forms and CSSI 25-08 Final Rule: FEM in Child Support Enforcement Programs, Order Setting Practices

PURPOSE: This child support services policy (CSSP) letter informs the local child support agencies (LCSAs) of changes to the child support guidelines related to the federal “Final Rule: Flexibility, Efficiency and Modernization in Child Support Enforcement Programs” (FEM Final Rule). This CSSP letter also provides guidance regarding the implementation of earning capacity.

POLICY: Beginning January 1, 2026, presumed income may no longer be pled. An LCSA must plead actual income, unless one of the statutory conditions exists for pleading earning capacity instead. When a Parent Ordered to Pay Support’s (PPS) actual income is unknown, the LCSA must plead earning capacity. The LCSA may plead earning capacity for the PPS, even though actual income is known, if the LCSA has sufficient information and evidence that earning capacity is greater than actual income.

BACKGROUND: The FEM Final Rule was issued in 2016 by the Office of Child Support Services within the U.S. Department of Health and Human Services.

The FEM Final Rule aims to enhance the child support program by empowering states to implement innovative approaches, leverage technology, and prioritize the well-being of families. Its provisions aim to improve program efficiency, effectiveness, and outcomes for children and families involved in the child support system.

Reason for this Transmittal

- State Law, Regulation and/or Change
 Federal Law, Regulation Change
 Court Order or Settlement Change
 Clarification requested by One or More Counties
 Initiated by DCSS

The California Legislature enacted a series of statutory amendments to ensure compliance with the FEM Final Rule, starting with AB 207, which amended Family Code (FAM) Section (§) 4058 requiring a court to consider specific circumstances of the parent, including, but not limited to, assets, educational attainment, health, and other factors when determining earning capacity of a parent when the parent's income is unknown at the initial establishment stage. SB 343 made additional changes to be in compliance with the regulatory provisions in the FEM Final Rule which require child support guidelines that are based on the PPS's ability to pay and take into consideration the subsistence level needs of low-income PPSs. The intent of FEM Final Rule is to plead child support based on available earnings income information of the parties, and other evidence of ability to pay rather than establish support at a pre-determined ability to pay when there is other information available. The Child Support Enforcement System (CSE) and the guideline calculator have been updated to implement [FAM § 17400](#), [FAM § 17404.1](#), [FAM § 17430](#), and [FAM § 17432](#). Phase II of the SB 343 changes will take effect January 1, 2026.

Effective January 1, 2026, changes to the order establishment process, as outlined in the FEM Final Rule, will be implemented. This includes removing the option for LCSAs to use presumed income. LCSAs must plead actual income at establishment when income is known. A local court may consider presumed income orders if the Summons and Complaint (S&C) and Proposed Judgment were filed prior to January 1, 2026.

ACTION: Beginning January 1, 2026, LCSAs shall no longer use presumed income when establishing a child support order. An LCSA must use actual income when known, or if income is unknown, an LCSA shall use a PPS's earning capacity using the factors outlined below. Earning capacity may be used in place of actual income if there is sufficient information and evidence available to the LCSA that earning capacity is greater than actual income.

FAM § 17400(d)(2)(A) outlines how an LCSA shall use specific methods to determine a PPS's income. These methods include when to use actual income and when to use earning capacity as the basis of the support obligation.

1. **Actual Income:** FAM § 17400(d)(2)(A)(i) specifies that if an LCSA determines there is sufficient information and evidence available to determine actual income, pursuant to subdivision [\(a\) of § 4058](#) and [§ 4060](#), then actual income shall be used as the basis of the proposed support obligation.

FAM § 4058(a) defines annual gross income of each parent as follows:
"The annual gross income of each parent means income from whatever source derived, except as specified in subdivision (c) and includes, but is not limited to, the following: (1) Income such as commissions, salaries, royalties, wages, bonuses, rents, dividends, pensions, interest, trust income, annuities, workers' compensation benefits, unemployment insurance benefits,

disability insurance benefits, social security benefits, severance pay, veterans benefits that are not based on need, military allowances for housing and food, and spousal support actually received from a person not a party to the proceeding to establish a child support order pursuant to this article.” [FAM § 4058\(c\)](#) outlines exceptions to annual gross income which does not include income derived from child support received or any needs based public assistance.

FAM § 4060 provides how LCSAs derive monthly net disposable income by stating: “The monthly net disposable income shall be computed by dividing the annual net disposable income by 12. If the monthly net disposable income figure does not accurately reflect the actual or prospective earnings of the parties at the time the determination of support is made, the court may adjust the amount appropriately.”

2. **Earning Capacity is Greater than Actual Income:** FAM § 17400(d)(2)(A)(ii) specifies if an LCSA has sufficient information that earning capacity is greater than the actual income, and sufficient evidence is available to establish earning capacity pursuant to subdivision (b) of § 4058, the LCSA may use earning capacity as the basis of the proposed support obligation.

[FAM § 4058\(b\)\(1\)\(B\)](#) states, “In a case when a parent’s annual gross income is known, the court may, in its discretion, consider the earning capacity of a parent in lieu of the parent’s income, consistent with the best interests of the children, taking into consideration the overall welfare and developmental needs of the children, and the time that parent spends with the children.”

3. **Actual Income Unknown:** FAM § 17400(d)(2)(A)(iii) specifies if the actual income is unknown to the LCSA, and there is sufficient information and evidence to establish earning capacity, the LCSA shall use earning capacity as the basis of the proposed support obligation. LCSAs shall base a PPS’s income on the factor/barrier circumstances that are listed in FAM § 4058(b)(2).

FAM § 4058(b)(2) specifies the circumstances of the parent that can be considered when informing the court, which are as follows: “When determining the earning capacity of the parent pursuant to this subdivision, the court shall consider the specific circumstances of the parent, to the extent known. Those circumstances include, but are not limited to, evidence of 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 levels in the local community, and other relevant background factors affecting the parent’s ability to earn.”

An example of a relevant factor for consideration is lack of transportation, as it may affect the PPS's ability to obtain employment.

FAM § 17400(d)(2)(A)(iii) outlines the steps LCSAs shall take to establish actual income prior to considering earning capacity. This must include, but is not limited to:

- Attempting to contact the PPS through telephonic, electronic, and postal means, to the extent contact information is known or can be discovered through reasonably available means. At least three attempts to contact the PPS shall be made.
- Seeking information about the PPS's expenses and work history from the Person Ordered to Receive Support (PRS).
- Searching in available databases for information relating to the PPS's employment, income, or both.

When making three attempts to contact the PPS, the attempts are recommended to be made on different days using different methods for contact including telephone or mobile device, e-mail, or mail. LCSAs may also consider these best practices when contacting the PRS. LCSAs are encouraged to use the relevant information obtained during the establishment process to determine earning capacity.

Finally, LCSAs will document within CSE all attempts made, three at minimum, to contact the PPS and any information gathered through available databases or the PRS.

Establishment

As of January 1, 2026, the establishment process for determining a PPS's income and their ability to pay child support will change.

All S&Cs based on earning capacity must proceed to a court hearing, and judgments may be entered only after the hearing.

Per FAM § 17400(d)(2)(D), if the Proposed Judgment is based on earning capacity, the LCSA shall file a Motion for Judgment, as provided in subdivision (b) of FAM § 17404.

Note: When income is unknown or earning capacity is greater than actual income, and the LCSAs are preparing to establish an order based on earning capacity, LCSAs can utilize the optional Earning Capacity Estimator to aid in quantifying the amount of earning capacity to plead, and the optional FL-302 Earning Capacity Factor form that is found in CSE.

Enforcement

Beginning January 1, 2026, FAM § 17430(e)(1)(A) specifies new post judgment requirements. LCSAs shall review judgments entered by default that are based on earning capacity if actual income is unknown, within one year after entry of a judgment, and then annually thereafter, until the support order is modified. As a note, CSE functionality will be updated to reflect this requirement.

If sufficient information and evidence is identified to modify the child support order, LCSAs must file a motion within 60 days per FAM § 17430(e)(1)(B). Per FAM § 17432(g)(1), for earning capacity default judgments, LCSAs and/or parties have two years from the first Income Withholding Order collection to request a set aside. In addition, under FAM § 17432(h), within three months of receiving the first collection (not limited to Income Withholding Orders), LCSAs must “check all appropriate sources for income information, and if income information exists, the [LCSA] shall determine whether the order qualifies for set aside under this section.” If the order qualifies for set aside, LCSAs must file a Notice of Motion to Set Aside.

RELEVANT MATERIAL: Statewide Training titled, “Flexibility, Efficiency, and Modernization in Child Support Programs (FEM) Final Rule Senate Bill (SB) 343 Phase II Training: Part 1 Changes to Order Setting Practices” and “A Guide to Estimating Earning Capacity” training found on Blackboard LMS. The Statewide Procedures Manual will be updated in December 2025 to coincide with the CSE release.

ADDITIONAL INFORMATION: LCSAs should familiarize themselves with the Earning Capacity Estimator [[Earning-Capacity-Estimator](#)] found on California Central and the Earning Capacity Estimator e-Communication [[e-Communication - Action - Earning Capacity Estimator](#)].

CONTACT: If you have any questions or concerns regarding this matter, please contact your Policy Coordinator about contacting the [Policy Branch](#).

Sincerely,

o/s

TRACI NAGASAWA
Deputy Director
Child Support Services Division