



## **EASTERN REGIONAL INTERSTATE CHILD SUPPORT ASSOCIATION**

### **Officers**

Patrick Quinn, President  
Michael McGuire, President-Elect  
Nick Palos, VP Conference Operations  
Laura Bernacki Stafford, VP Exhibitors & Sponsors  
Tommy Howard, VP Policy & Legislation  
Loretta Everett, Secretary  
Rob Velcoff, Treasurer  
Tom Horan, Immediate Past President

### **Board of Directors**

Raymond Civitella	Tammy Pearson
Robbie Endris	Sharon Pizzuti
Amy Gober	Diane Potts
Tangler Gray	Melissa Rossow
Cristol Jones	Lisa Skenandore
Amy Kownack	Zach Steed
Terry O'Halloran	Patti Wood

### **Honorary Board**

Margot Bean  
Elaine Poole  
Patterson Poulson  
Pam Sala  
Carla West

August 4, 2020

The Honorable Steven T. Mnuchin  
Secretary of the Treasury  
1500 Pennsylvania Avenue NW  
Washington DC 20220

The Honorable Mark Meadows  
Special Assistant to the President and  
Chief of Staff  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

The Honorable Nancy Pelosi  
Speaker of the House of Representatives  
United States Capitol  
Washington, DC 20515

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Kevin McCarthy  
Minority Leader  
United States House of Representatives  
Washington, DC 20515

The Honorable Charles Schumer  
Minority Leader  
United States Senate  
Washington, DC 20510

Dear Speaker Pelosi, Senator McConnell, Senator Schumer, Representative McCarthy, Secretary Mnuchin, and Mr. Meadows:

The Eastern Regional Interstate Child Support Association (ERICSA) is a not-for-profit organization of child support professionals that promotes the interests of children who are owed child support. ERICSA members work for or with state, tribal, and local child support agencies as public or private-sector participants.

Founded in 1963, ERICSA historically has drawn its membership from persons working for, or doing business with, tribes, and states and their local jurisdictions that border on, or are east of, the Mississippi River. ERICSA and its members contribute to the development of child support professionals by organizing an annual training conference. We also contribute to national discussions regarding intergovernmental and federal child support issues by providing policy positions on key issues affecting child support. This includes replying to requests for public comment.

It should be stressed that the ERICSA organization represents many states, tribes, and private

entities involved in the IV-D child support program. As such, there may be a wide range of opinions across the ERICSA organization regarding the IV-D program as it relates to the members' experience in their own jurisdictions. ERICSA believes there are best practices, as well as noteworthy ideas for improvements, within the respective state, local, and tribal IV-D child support programs. Respectfully, ERICSA believes that state, tribal, or program specific comments are best left to the states, local counties, tribes, and individual private entities providing services in those jurisdictions.

The COVID-19 pandemic has provided challenges to State<sup>1</sup> and Tribal IV-D child support programs. Our offices have been forced to close and we are working remotely, which limits our ability to connect with clients and potential clients.<sup>2</sup> Court systems in many states are closed, or have opened in a virtual world with limited capacity, forcing them to triage the cases to decide which matters may have access to those limited available resources<sup>3</sup>. Our client families may have at least one parent who is unemployed. Hospitals in our locales have been dealing with the needs of seriously ill patients and dealing with the legal niceties of paternity establishment may not be a priority for their staffs, thus effecting the use of voluntary acknowledgements of paternity at the time the child is born. Given the current climate, the Board of Directors of ERICSA foresees several issues which should be addressed in any new COVID relief act.

### **Paternity Establishment Percentage ("PEP") Performance Measure**

42 U.S.C. §652(g) provides that a State IV-D program remains in substantial compliance with PEP when it maintains a 90% paternity establishment percentage. 42 U.S.C. 609(a)(8)(A)(i)(I) provides for penalties where a state fails to meet this requirement, as well as where the State IV-D program fails to "meet other performance measures that may be established by the Secretary."<sup>4</sup> Where a State program fails to meet the 90% PEP, a penalty is assessed against that state's Temporary Aid to Needy Families ("TANF") grant, reducing the amount of the block grant by a minimum of 1% up to

---

<sup>1</sup> For purposes of this discussion, states should be read to include the fifty states, the District of Columbia, Puerto Rico, the United States Virgin Islands and Guam.

<sup>2</sup> The National Council of Child Support Directors recently observed.

Starting in early March 2020, a significant portion of employees who provide child support services under Title IV-D of the Social Security Act were sent home on short notice for public health reasons. Existing business processes and computer connectivity were not well suited to sudden telework; many employees were sent home without a work computer or any way to resume delivery of services from home. Those working from home often had no access to paper case files to guide ongoing activity. Maintaining confidentiality of customer information in a telework environment raised many questions and challenges that needed to be resolved.

"Impact of the COVID-19 Pandemic on Delivery of Child Support Services" July 23, 2020

<sup>3</sup> As an example, the New York State court system closed in March and moved to virtual court appearances for "essential" court proceedings. When defining the essential court proceedings for the Family Court, cases to establish paternity, and establish, modify, or enforce child support obligations were not deemed essential matters. As a result, child support cases were not heard in any form until the court system began its phased re-opening. Even within the phased re-opening, new matters are not being accepted for filing.

<sup>4</sup> 45 C.F.R. 305.2 sets forth five performance measures upon which each IV-D program will be judged: paternity establishment, support order establishment, current collections, arrearage collections and cost-effectiveness.



a maximum of 2%. The mandated penalty increases if a state fails to meet the 90% threshold in successive years, up to a maximum of 5%.<sup>5</sup> Although Congress has authorized the Secretary to reduce a penalty which is assessed to a State TANF program's failure to satisfy minimum participation rates "if the non-compliance is due to extraordinary circumstances such as a natural disaster or regional recession,"<sup>6</sup> and to rescind penalties assessed to the TANF program based upon late filing of certain mandatory reports,<sup>7</sup> there is no language granting the Secretary similar authority in relation to the penalty for failing to meet the PEP requirement.

Given the current circumstances, several state programs are in danger of falling below the 90% PEP requirement for the current fiscal year and may also miss that mark in the next fiscal year. To reduce these states' TANF block grant during a time of pandemic and high unemployment would do more harm than good. Simply put, a program in a judicial state cannot commence legal proceedings to establish paternity when the courts themselves are not yet taking any new filings. Court proceedings often result in requests for DNA paternity testing. Such testing requires court orders, and those orders must be forwarded to all parties concerned as well as to the testing lab. Courts are short-staffed, agencies may not yet have functioning offices and the testing labs may not have opened testing centers in all jurisdictions.

Based on the current pandemic, the officers, board of directors and members of ERICSA request that any new pandemic relief legislation include, at a minimum, a provision giving the Secretary of Health and Human Services the authority to reduce or waive any penalties assessed on the State's TANF grant due to a failure to meet the 90% PEP standard, or any of the other performance measures to which this penalty may attach. Such a provision protects necessary funds for the poorest members of society who may, over the next few years, need the funds available from the TANF program.

### **Family Friendly Distributions and the Economic Impact Payments ("EIP")**

The CARES Act provided for direct payments to individuals. These payments have been characterized as federal income tax refund payments, and thus, are subject to the federal income tax offset program to meet child support obligations. These payments are distributed by a majority of the States to pay down permanently assigned arrears before paying the individual household.<sup>8</sup> This situation often disadvantages both the non-custodial parent, who has no access to the funds, and the children's household, who also do not receive the benefit of these funds.

ERICSA takes no position as to whether the EIP should be subject to the federal income tax offset.<sup>9</sup> However, ERICSA is concerned that the funds collected by the offset would remain in the coffers of state government, rather than go from the support paying party to the children's household. Effectively, both the non-custodial paying parent and the children's household are unable to derive

---

<sup>5</sup> 42 U.S.C. §609(a)(8)(B)

<sup>6</sup> 42 U.S.C. §609(a)(3)(C). Secretary refers to the Secretary of Health and Human Services.

<sup>7</sup> See, 42 U.S.C. §§609(a)(2)(A)(ii) and 609(a)(2)(B)(ii).

<sup>8</sup> See, Resolution of the National Child Support Enforcement Association dated April 21, 2020 "Resolution to Exclude Offset of Past-Due Child Support from Individual COVID-19 Payments"

<sup>9</sup> We do, however, note that the HEROES ACT (HR 6800) provides that the EIP will not subject to the federal income tax refund offset.



the intended benefit of these funds. We therefore urge Congress to ensure that a "Family First" distribution model is mandated when a support obligor's EIP is subject to the offset program. Rather than treat these payments as offsets, we ask that they effectively be treated as payments made by the individual to the agency.<sup>10</sup> If it is Congress's intention to get these funds to families to help meet their needs in this time of pandemic, mandating a "Family First" distribution of these funds is the only way to meet that goal.

ERICSA thanks you for your consideration of these concerns in your negotiations over the next COVID-19 relief legislation.

Yours truly,



Patrick Quinn  
President

---

<sup>10</sup> If these payments reached the individual obligor and he pays the funds to the IV-D agency himself, the funds would first be used to meet his current support obligation and then any arrears due to his family. Only after his obligation to his family is fulfilled would the funds be paid to the government. Under the current treatment of funds obtained through the offset program, the reverse is true, meaning the family only receives the funds which exceed the "state assigned debt."

