



EASTERN REGIONAL INTERSTATE CHILD SUPPORT ASSOCIATION

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October 3, 2020

COMMENTS OF THE EASTERN REGIONAL INTERSTATE CHILD SUPPORT ASSOCIATION IN RESPONSE TO A REQUEST FOR PUBLIC COMMENT ON PROPOSED INFORMATION COLLECTION ACTIVITY; VOLUNTARY ACKNOWLEDGMENT OF PATERNITY AND REQUIRED DATA ELEMENTS FOR PATERNITY ESTABLISHMENT AFFIDAVITS

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.

ERICSA has reviewed the Request for Public Comment (RPC) published in the August 4, 2020 Federal Register. (85 Fed. Reg. 47216), together with the "Complete List of Required and Optional Data Elements" referred to in the notice. The RPC asks that we specifically focus on four areas when commenting. In order, these are:

- 1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;
- 2) the accuracy of the agency estimate of the burden of the proposed collection of information;
- 3) the quality, utility, and clarity of the information to be collected; and
- 4) ways to minimize the burden of the collection of information on respondents.

While our comments will be guided by this outline, they also reflect concerns that the current format for the Acknowledgment of Paternity and thus the required data elements may not be sufficient to meet the goal of establishing support for **all children** in our caseloads. Thus, these comments should be viewed considering the need to recognize the changes in family formation that have occurred since the original mandate to provide a non-judicial process for the establishment of "paternity" was instituted. Both the current mandatory and optional data elements fail to reflect the changing terminology brought about by the changing way parental relations may be formed.

Section 466(a)(5)(C) of the Social Security Act (42 USC §666(a)(5)(C)) requires a State have a procedure for voluntary *Acknowledgment of paternity*, permitting a mother and a putative father to voluntarily establish the paternity of a child born out of wedlock. Section 452(a)(7) of the Act (42 U.S.C. §652(a)(7)) requires the Secretary of Health and Human Services to "specify the minimum requirements of an affidavit to be used for the voluntary acknowledgment of paternity which shall include the social security number of each parent." These provisions were adopted in order to create a non-judicial way to use *biological ties* to recognize the *legal* father of a child, who is then vested with all of the legal rights, and obligations attached to that relationship. Given the varying familial structures that have been recognized in the evolution of modern family law, the focus on biological ties reflected in the existing Acknowledgment regime may be a hinderance to the goals of the program and the responsibilities of the agencies.

1. **Is the proposed collection of information necessary for the proper performance of the functions of the (IV-D) agency?** The proposed continued collection of the data set forth in Table 1¹ is necessary for the proper performance of the functions of the IV-D agency. This data provides the agency with the information necessary to fulfill its responsibility in establishing orders of support by identifying those individuals who are responsible for the support of the child, and information to assist in locating those individuals.
2. **Is the estimate of the burden of the proposed collection of information accurate?** ERICSA takes no position on the time estimates, as we do not know how the estimate was determined.
3. **The quality, utility, and clarity of the information to be collected.** As it stands, the data is clear for those states that provide for an Acknowledgment of paternity executed between the biological mother and the biological father.
4. **Are there ways to minimize the burden of collection of information on respondents?** The collection of data is more burdensome in those states where an Acknowledgment of *parentage* is used as opposed to an acknowledgment of *paternity*. For parentage acknowledgments, the data does not translate, as one party may be designated as mother/biological mother, the other may only be designated by "parent." The data elements should be amended as explained below to minimize the burden of collection of information on child support programs using the parentage acknowledgment, in terms of requiring those programs to have to keep additional information from the form or interpolate from the data to re-categorize it to fit the reporting requirements.

5. Other concerns

There is a need to modernize the "Complete List of Required and Optional DATA elements to reflect newly sanctioned ways to create the (legal) parent-child relationship." The requirement that the States adopt a simple, non-judicial process which would permit the biological mother of a child and that child's *putative biological* father to voluntarily establish the paternity of a child born out

¹ OMB Control Number: 0970-0171.



of wedlock has been a requirement of the IV-D program since 1996. The Acknowledgment process is supposed to recognize the biological and genetic ties between the parents and the child, but increasingly, parent-child relationships are being formed in ways that do not rely on such connections.

The Acknowledgment process currently permits biological parents to establish legal ties to a child born out of wedlock to protect both the parents and the child. Except in a handful of states, the non-judicial acknowledgment process focuses on *biological* ties to the child, probably to prevent non-judicial “adoptions” of children born out of wedlock by requiring both parents be “biological” parents of the child. In practice, however, this has not always been the case; there are anecdotal reports that the “father” who signs the Acknowledgment is occasionally not the biological father of the child and both signatories knew it at the time the acknowledgment was executed. In the context of marriage, parent-child relationships may be established by one parent without a genetic tie to the child upon the marital presumption, so long as the spouse has that genetic linkage . One must wonder when the constitutional prohibition on disparate treatment of children born out of wedlock would compel the ability of the unmarried same-sex couple to use the same non-judicial process to recognize parentage.

Section 301 of the 2017 version of the Uniform Parentage Act (UPA) extends the use of the acknowledgment process to

A woman who gave birth to a child and an alleged genetic father of the child, intended parent under [Article] 7, or presumed parent may sign an acknowledgment of parentage to establish the parentage of the child.

(Emphasis added)² An intended parent is defined as “an individual, married or unmarried, who *manifests an intent to be legally bound as a parent* of a child conceived by assisted reproduction. Sec. 102(13). (Emphasis added) The UPA makes it clear that parentage can be established either by genetic ties to the child or by the intent of an individual, who may not genetically related to the child but actively participated in conceiving the child through assisted reproductive technology. The UPA allows both sets of parents to legally established parentage without participating in a court proceeding. In extending the acknowledgment process, the UPA uses intent to parent as a substitute for biology in determining who may establish their parentage of a child.

At present, California, Massachusetts, Nevada, Vermont, Maryland, and Washington permit certain same-sex parents to use a voluntary Acknowledgment of parentage process to establish a legal tie for the parent who does not have a biological tie to the child. In January 2021, Rhode Island also will permit same sex parents to use a voluntary acknowledgment of parentage process to legally establish parentage. In February 2021, New York will change its form and terminology from Acknowledgment of Paternity to Acknowledgment of Parentage as part of the newly adopted “Child-Parent Security Act”,³ joining the seven states listed above in offering an out of court option to same-sex parents to establish their legal tie to a child. We anticipate more states will follow, inasmuch as

² On April 18, 2018, ERICSA formally endorsed the 2017 version of the Uniform Parentage Act and formally recommended to the States that the act be adopted by their legislatures. See, “Uniform Parentage Act (2017) AN ERICSA RESOLUTION.” <http://ericsa.org/sites/default/files/Board%20Documents/P%20and%20L%20Committee/ERICSA%20P%26L%20PROPOSED%20RESOLUTION%20UPA%202017%204-19-18%20T%20C%20ACCEPTED.pdf> (last accessed 9/17/20). The UPA has been adopted in Massachusetts, Vermont, California, Washington, and Rhode Island.

³The Child-Parent Security Act was adopted as part of the State Budget Act, Chapter 56 of the Laws of 2020.



legislation to adopt the UPA was introduced in six states.⁴ History has shown that the law in this area, while slow moving, has been moving along an arc that expands the ability of individuals to form legally binding familial relationships without the need to use the civil court system.

ERICSA believes it is time that OCSE revise the "Complete List of Required and Optional Data Elements" to reflect this development. A non-judicial process to determine who is legally the parent of a child should not be limited to those children born "out of wedlock" to a biological mother and a biological father. If two individuals, one of whom gave birth to the child, wish to establish a legal relationship to that child taking on *all* legal indicia of parenthood, the same opportunity to do so through a simple, out of court process should be available.⁵

ERICSA urges OCSE to produce a more inclusive list of mandatory data that would reflect the changes that have occurred since the original list was developed. Among other things, this will allow states to use of the voluntary acknowledgment of parentage as opposed to the voluntary acknowledgment of paternity to maintain a single data set.

Sincerely,



Patrick Quinn
President

⁴ Per the website of the Uniform Laws Commission, Colorado, Connecticut, Kentucky, Maine, Massachusetts, and Pennsylvania are pondering the adoption of the UPA. See, <https://www.uniformlaws.org/committees/community-home?CommunityKey=c4f37d2d-4d20-4be0-8256-22dd73af068f> (last accessed 10/1/20).

⁵ However, in order to avoid using a voluntary acknowledgment of parentage based upon intent to parent form being used to circumvent State adoption laws, use of such acknowledgments should be limited to a reasonable period of time after the birth of the specific child

