



EASTERN REGIONAL INTERSTATE CHILD SUPPORT ASSOCIATION

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Attention: OCSE Report – Sheila Drake

RESPONSE TO THE US DHHS ACF OCSE REQUEST FOR PUBLIC COMMENTS
FOR CONSIDERATION OF THE OCSE REPORT TO CONGRESS
REQUIRED BY Public Law 113-183
THE PREVENTING SEX TRAFFICKING AND STRENGTHENING FAMILIES ACT
Drafted by
EASTERN REGIONAL INTERSTATE CHILD SUPPORT ASSOCIATION (ERICSA)

I. Introduction

The Preventing Sex Trafficking and Strengthening Families Act (Act) was passed by Congress and signed by the President on September 29, 2014. The Act requires that the Department of Health and Human Services submit a Report to Congress by June 30, 2015, in consultation with stakeholders including state, tribal, and county child support directors, judges who preside over family courts and organizations that represent them, custodial and noncustodial parents and organizations that represents parents, and fiduciaries such as financial institutions and employers. The Act also requires that OCSE solicit public comment.

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 and 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.

The following outlines ERICSA's comments to OCSE for consideration as it prepares its required report to Congress on the IV-D program.

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 or program specific comments are best left to the states, local counties, tribes and individual private entities providing services in those jurisdictions.

For the purpose of this response, ERICSA will focus its comments regarding only interstate and intergovernmental cases and scenarios.

II. ERICSA Comments on Specific Subject Areas

A. *Review of the effectiveness of state child support programs*

With enhanced technology, effectiveness of the state child support programs is ever increasing. States have steadily improved support collections, particularly from noncustodial parents who have traditional employment and therefore are within the State and National New Hire Directories. Technological advances, such as the federally-sponsored initiatives QUICK and CSENet, have improved intergovernmental communication. The automation of enforcement actions such as direct income withholding, passport denial, IRS refund intercepts, and Social Security withholding along with the development of federal forms, have enhanced interstate collections. Technology also helps those support collections to more quickly reach the families, because of electronic disbursement from a state's disbursement unit to other states, the use of direct deposit into bank accounts, and the use of debit cards for the disbursement of child support.

Although intergovernmental case collections continue to improve with enhanced technology and purposeful communications, intergovernmental support

obligations remain, as a subset of IV-D cases, more difficult to establish, to enforce and to modify.

B. *Recommendations for methods to enhance the effectiveness of child support programs and collection practices*

In addition to the other general comments and concerns throughout the body of this document, ERICSA respectfully and specifically recommends that the federal IV-D program adopt the following as strategic goals:

1. **Develop enhanced or new communication tools** for states to use, including but not limited to: expanding or enhancing the use of CSENet, QUICK, and mandated uniform federal forms; sharing state and local workers' contact phone numbers; facilitating the electronic exchange of UIFSA documents; and offering other tools for the front line to use that would reduce the response time between exchanges;

2. **Improve service to families.** ERICSA would like to offer a specific and common scenario with intergovernmental cases that demonstrates the need for improved UIFSA processes for better customer service to families in the IV-D program. State and local IV-D programs receive a bulk of complaints from custodial parents who are frustrated by delays that have impacted the ability or effectiveness to establish, enforce, or modify a child support order in a UIFSA case. As an example, when the responding state rejects the initiating state's forms upon a technicality, or worse, upon a misunderstanding of the law, it is a great inconvenience for the custodial parent (or applicant) to come back into the office and fill the forms out again or even just re-sign the forms. There is also a negative impact on the IV-D professionals in those states. The apparent unwillingness of workers to assist workers in other states strains relations between staff and between the different IV-D programs. Two reasons for returned forms is the wide variance between states, and oftentimes between counties in the same state, regarding what is an acceptable UIFSA referral packet and then how a deficiency is handled. A more uniform approach to accepting and rejecting referrals with a clear path to correct deficiencies would allow not only for faster UIFSA processing, but also for a more honest communication to the custodial parent (or applicant) regarding the timeline for an outcome. As always, an efficient and respectful treatment of these cases is of utmost importance to accomplish great customer service. ERICSA also recommends that the

state and local IV-D programs have a voice in the creation of the mandatory uniform intergovernmental processes;

3. **Offer additional training for and/or financial support for the existing training conferences for intergovernmental child support professionals.** ERICSA believes that additional and advanced UIFSA training for child support front-line workers, managers, and attorneys would improve the use of UIFSA processes for IV-D families;

4. **Take a more active role in the resolution of issues between IV-D programs when working intergovernmental cases.** Please see a more developed discussion in paragraph J below; and

5. **Facilitate communication and coordination between state and tribal IV-D programs for common IV-D issues,** including but not limited to, jurisdiction and automated systems.

C. *Establishing and operating state and multi-state lien registries*

ERICSA acknowledges that in-state lien registries have proven to be an effective collection tool within the states that have chosen to implement them. However, absent a federal law, there are inherent obstacles to overcome before creating a successful multi-state lien registry, such as:

1. Keeping the case and arrearage amount information current in the system;
2. Responding to inquiries and/or requests to satisfy the lien in whole or in part in a timely manner; and
3. Overcoming the inconsistent purpose and scope of state lien registries (differing state laws).

ERICSA recommends that the first step be to mandate in-state lien registries with sufficient guidelines to foster coherent structures of the registries. After implementing an in-state registry and working through the kinks on a smaller scale, the states should be equipped for a multi-state or national lien registry. At that point, a multi-state or a national registry should have a quicker and greater success rate, because it is built on solid ground.

D. State Recovery and Distribution Policies

Current federal laws and regulations permit states to choose between two methods of current support disbursement: “member-based” (based on individual obligor) or “case-based” (based on a specific case). The fact that two states could choose different methods is particularly problematic in intergovernmental cases. A collection is often made and posted on only one case in a responding state, pursuant to the enforcement action taken by the responding state on that case. However, when the collection is sent to the custodial parent’s state disbursement unit, it could be split (either equally or pro-rata) among the noncustodial parent’s multiple *intrastate* cases. The end result is continued enforcement requests against the noncustodial parent in the responding state, despite the beliefs of the responding state and of the noncustodial parent that the noncustodial parent has fully complied with the Order. This results in consequent irreconcilable arrears determinations.

For Example: The NCP, Bob, resides in Texas (TX) and has two IV-D cases, both of which involve a CP who lives in Pennsylvania (PA). PA sends referrals to TX to enforce both cases. One CP in PA, Mary, has a PA order. The other CP in PA, Jane, has a TX order. TX proceeds with collection efforts, and on Jane’s case only, TX collects a lump sum, \$10,000.00, to satisfy in full the arrearage indicated by the TX IV-D payment records. When the single collection is sent to PA, \$5,000.00 is applied to Jane’s case and \$5,000.00 is applied to Mary’s case (member-based). PA communicates with TX and still wants TX to collect \$5,000.00 for Jane’s case, despite the fact that the TX IV-D payment records show Jane’s case is paid in full.

As illustrated in the case example above, there are confusion problems and legal complications when the initiating state’s State Disbursement Unit (SDU) divides a support payment while the responding state’s SDU does not. Moreover, the consequences of that difference in posting wreak havoc on relations with the custodial and noncustodial parents. Especially in the above example with CP Jane—she has expectations of receiving the full amount of the Court’s Order. Imagine her frustration, anger and confusion when she receives only half of the payment and is told by the PA IV-D program that there is no more right now. The NCP, Bob, is also frustrated, angry and confused when he has the expectation that the TX order has been resolved and that PA will close the case. Perhaps the NCP was in court and heard the Judge say that as long as he pays \$10,000.00, then the case is over. (There is always a possibility that the Courts will express their frustration and disdain for the IV-D program when the Court’s Order is not followed, and the Court may frustrate the IV-D prosecutors and thwart future IV-D cases.) Furthermore, in this example, the Court might find that indeed the NCP did comply by making the payment for \$10,000.00, and now the CP Jane has no other recourse to collect the debt amount that remains only on PA’s IV-D payment record and in Jane’s personal balance sheet.

In light of the foregoing example, ERICSA recommends that all distribution on interstate cases should be case-based and that additional federal funds should be made available for any system enhancements needed by the state and tribal programs to accomplish this mandate.

There is a second issue regarding distribution that ERICSA asks to be resolved. The federal government is silent on distribution as it relates to competing TANF arrearages. ERICSA recommends that OCSE initiate a conversation between the states and IV-D tribal programs that would resolve the inconsistent hierarchy of the distribution of TANF arrearage payments when there are multiple states and/or tribes with an assigned arrearage.

E. *Options, with analysis, for methods to engage noncustodial parents in the lives of their children through consideration of parental time and visitation with children*

ERICSA believes this issue is outside our intergovernmental focus, and therefore we defer to the state and local programs for comment. However, we would offer that there is a difference between intragovernmental and intergovernmental cases *vis-a-vis* this issue. If OCSE believes that it is in the best interests of the program to develop and implement policies to address this issue, then we would respectfully request that OCSE consider those differences and whether or not they could or should also be applicable to intergovernmental cases.

F. *An analysis of the role of alternative dispute resolution in making child support determinations*

ERICSA supports incorporation of consent processes for parents, whether through negotiation, mediation, or the more formal arbitration process. Parties are more likely to be happy about the results and comply with them when they have participated in forming the resolution. However, such processes always have to be sensitive to unequal bargaining positions such as cases where there is a risk of domestic violence. Another consideration for the use of ADR in making child support determinations is the application of existing time frame requirements. Without understanding what the IV-D ADR process would look like for making child support determinations, ERICSA would request that the federal time frames for establishing service of process be reviewed to ensure that they allow sufficient time for a IV-D program to reasonably attempt an ADR process without penalty.

Such consent processes are also harder to incorporate in intergovernmental cases because of the physical separation of the parties. For alternative dispute resolution processes to work in intergovernmental cases, child support agencies will need to be able to communicate directly with the parties, which means they

likely will need telephone numbers. In order to ensure parties make informed decisions, it will also be important for there to be sufficient time for them to learn about the forum jurisdiction's laws. That means there may need to be more advance preparation of cases than often happens in UIFSA proceedings. Finally, although we think there is a place for alternative dispute resolution processes in intergovernmental child support cases -- in the right circumstances -- we think it is more problematic to negotiate either child support determinations or parenting time plans in intergovernmental cases.

G. *Identification of best practices for determining which services and support programs available to custodial and noncustodial parents are non-duplicative, evidence-based, produce quality outcomes, and connect parents to those services and support programs. Provide employment support, job training, and job placement for custodial and noncustodial parents and establish child support tracking, services and supports with options for preventing and resolving uncollectible arrears*

ERICSA believes that there are best practices being implemented by our member states and would defer to the states to share these best practices. ERICSA fully supports federal funding, at the state's option, for employment support, job training and job placement for custodial and non-custodial parents.

With respect to options for resolving "uncollectible arrears," ERICSA notes that the definition of "uncollectible arrears" varies widely from state to state, including its impact on case closure. This lack of a consistent definition has resulted in significant confusion in the management of arrears balances in intergovernmental cases. ERICSA would welcome a federal definition of "uncollectible arrears" and federal guidance on the handling of intergovernmental cases with those arrears. Otherwise, there is the potential for inequitable treatment of these intergovernmental cases. ERICSA also notes a difference in family arrears as opposed to TANF arrears, and would like to stress that it would be illegal to write off "family arrears" in a judicial state or in a judicial proceeding.

H. *Options, with analysis, for methods for states to use to collect child support payments from individuals who owe excessive arrearages*

One recommendation for addressing the collection of excessive arrearages is the pursuit of life insurance proceeds passed to a noncustodial parent. When a noncustodial parent is the beneficiary of a contract (i.e. life insurance proceeds, bank accounts, deeds of real property, vehicle titles, etc.) or of an estate, there are ultimately funds to intercept or garnish in order to pay and reduce excessive arrears. ERICSA would recommend that the federal program lend insight to these and any other collection opportunities that are corollary to the aging population of noncustodial parents.

Related to this discussion of excessive arrearages, ERICSA would invite OCSE to ponder the concept of interest accruing on principal support arrears. ERICSA would offer that a contributing factor to “excessive arrearage” is the automatic calculation and inclusion of interest on child support and spousal support arrearages and the on-going accumulation of interest on an IV-D case’s arrearage balance. There is no uniformity in amount, duration or legal effect of interest or even the forgiveness of interest among the states. Many states that do not automatically charge interest in their automated system refuse to collect interest for other states, or require a periodic updating of the arrears and interest via a Judgment by the original state, even though UIFSA includes interest as a term of the Order that is governed by the law of the issuing state. ERICSA requests federal leadership in developing a nationwide approach to managing interest on child support and spousal support arrearages as part of the discussion of excessive arrearages.

I. A review of state practices used to determine which individuals are excluded from the requirement to be reported to the Passport Denial program, including the extent to which individuals are able to successfully contest or appeal decisions

ERICSA recommends that the current law which permits the denial of initial or renewed passports be implemented and enforced. There also is persuasive argument from our neighbors to the north, Canada, to expand the tool to revoking valid passports as well.

From an intergovernmental perspective on this enforcement tool of passport denial, there is some controversy. Some states have a zero tolerance policy for releasing the stay. Other states are much more lenient and permit a partial payment or even no payment to release the stay and allow the issuance or renewal of a passport. This causes problems when multiple states have reported the same person for passport denial, but the states have different criteria for releasing the stay of the passport. Which state’s criteria should be applied and adhered to?

ERICSA recommends federal leadership create a uniform and systemic approach to releasing a stay on the passport issuance or renewal.

J. Options with analysis, for such legislative and administrative actions as are determined to be appropriate for improvement in child support enforcement

ERICSA recommends federal support in enforcing intergovernmental laws that are currently in place. Currently there is no mechanism to resolve discrepancies between states on the issues that plague UIFSA cases: how to interpret UIFSA;

the application of full faith and credit across state lines; getting certified copies of orders; service of process issues; obtaining copies of vital records; and access to national databases to obtain certified arrears. ERICSA further recommends OCSE pursue legislation that allows electronically filed pleadings and documents and eventually mandate their use.

ERICSA would also support some type of national panel to resolve intergovernmental disagreements and to promote compliance with existing laws and regulations. For example, if State A and State B had a disagreement about the interpretation or application of UIFSA law to a set of cases, and cases between the States were not being worked, then the issue could be sent to a panel of OCSE regional representatives for resolution. This would be an informal process. ERICSA believes there should be state and local program representation when creating the rules for this process.

ERICSA supports the following intergovernmental tools, and furthermore recommends that their implementation be mandated in all 54 state and territorial jurisdictions and Washington, D.C., with adequate funding:

1. QUICK;
2. Electronic filing and document exchange; and
3. CSENet.

III. Conclusion

ERICSA would like to thank OCSE for this opportunity to provide comments and recommendations for the federal IV-D program. It is with much enthusiasm and passion that we come together as child support professionals from across the region to share our visions and dreams for the continued and heightened success of the IV-D program. We wish OCSE the best of success with your report and look forward to its positive results.

Approved by the ERICSA Board on this 27th day of February, 2015.

Carla West

Carla West, ERICSA President