EASTERN REGIONAL INTERSTATE CHILD SUPPORT ASSOCIATION

Comments Submitted by the Eastern Regional Interstate Child Support Association in Support of the November 29th Legislative Testimony on Tribal and Contractor access to FTI and the income tax offset program

The Eastern Regional Interstate Child Support Association (ERICSA) is a not-for-profit organization whose mission is to build a stronger child support community to enhance the well-being of families. ERICSA membership is comprised of child support professionals from government agencies at the federal, state, tribal and local levels; private sector organizations; attorneys; and members of the judiciary. ERICSA's advocacy includes recommending and responding to changes in federal child support laws and regulations; reporting differences in child support policy and procedure among jurisdictions; and delivering innovative professional training to front-line child support staff and managers with particular emphasis on intergovernmental case processing.

ERICSA is pleased to submit these comments in response to the testimony offered at the House Ways and Means/Work and Welfare oversight joint subcommittee hearing held on November 29, 2023, regarding child support program and the recent guidance from the Internal Revenue Service (IRS) blocking tribal and contractor participation in the tax refund offset program. ERICSA continues to support the legislative fix required to allow tribal access to the tax refund offset program and contractor access to federal tax information. While these two issues appear to be separate, they are interconnected through the IRS regulations and ERICSA strongly advocates the passage of legislation that supports both.

The purpose of the Federal Tax Refund Offset Program is to intercept federal tax refunds of child support obligors who owe past due child support. The intercepted federal tax refunds are applied to satisfy the delinquent support obligations. This program has been administered in cooperation and coordination among the state child support programs, the federal Office of Child Support Services (OCSS), and the U.S. Department of Treasury. Congress authorized the Federal Tax Refund Offset Program with passage of the Omnibus Budget Reconciliation Act of 1981 and expanded with the Child

Support Enforcement Amendments of 1984, and then again with passage of the Omnibus Budget Reconciliation Act of 1990. This program has proven to be very effective. It has been in place for many years with major benefits to families and without any data breach incidents.

Access to Federal Tax Information (FTI)

To put the issue of FTI in context, the Internal Revenue Code lists the pieces of FTI that can be shared with child support contractors: the name, address, and Social Security number of the taxpayer and the amount of federal tax offset. It is worth noting that the list of additional data elements protected as FTI is not extensive. For example, this list does not include 1) income 2) whether the refund comes from a joint return and 3) the name of the joint filer. The additional data elements are essential to the child support program for locate purposes, for establishing and enforcing a child support order, and for recouping delinquent child support payments.

Tribal Access

Tribes were never mentioned in the original statutory authority for tax offset, even though they have operated effective community-based child support programs for more than 25 years and have developed strong collaborative relationships with states and consortia. In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) authorized funding for Tribes to operate their own Title IV-D Child Support programs, with access to the many tools OCSS provides to state child support programs, such as new hire information, locate, and wage data; however, the Internal Revenue Code was not updated to give Tribal child support programs the same access to Federal Tax Information (FTI) and the tax offset program that is permitted for state and local child support agencies. There are now more than 60 direct-funded Tribal child support programs. We support full parity for tribes. There is no reason that the families served by these programs should be denied the benefit of FTI and collections from federal tax offsets.

Contractor Access

Federal, state and tribal child support agencies rely heavily on inter-agency agreements and contracts for child support services, with both state partners and with private vendor companies. Contractors perform a variety of functions, including providing legal representation and operating child support offices, call centers, systems development, and child support payment processing through state disbursement units. Many of these agreements and contracts have been in place since PRWORA implementation. The IRS has allowed the practices to take place with "held in abeyance" findings since 2009, resulting in child support agencies developing practices and systems around independent contractors having appropriate and safeguarded access to FTI only when absolutely necessary.

Existing Security Measures

The delivery of child support services is highly dependent on personal information obtained under authority mandated in PRWORA, including banking and federal tax information. This information is highly confidential. Under the guidance and scrutiny of the federal Office of Child Support Services in the Department of Health and Human Services (OCSS), states have developed and maintained strong security programs based on industry standards and federal compliance requirements. State and tribal child support agencies sign a security agreement with OCSS, providing the requirements for any sharing or disclosure of information, including FTI, and requiring compliance with the standards and requirements. Accordingly, interagency cooperative agreements and service contracts with private vendors contain strong privacy provisions to ensure that program data is used only for establishment and enforcement of child support and medical support, or other federally allowed purposes. These agreements and contracts meet all the requirements of IRS Publication 1075, which guides government agencies on the protection of FTI. For the existence of the program, there have not been any unlawful disclosures of FTI in any child support program.

Mitigation

Due to the majority of states' reliance on child support vendors for information technology (IT) and operational expertise, the notion of removing vendor access to FTI would have devastating consequences to these agencies and, therefore, to families who rely on child support payments as a means to self-sufficiency.

The effects of expecting states to take over the systems functions now done by contractors is astronomical in terms of the costs to hire staff who have the expertise to host, build, and maintain the state computer system and the requisite interfaces. This level of expertise is not commonly found among state employees due to the difference in pay offered by state governments and the private sector. The mitigation will require thousands of new public employees and hundreds of millions of dollars each year in new funds.

For states to effectively replace the current reliance on contractors could take years to complete. The current IRS deadline of October 1, 2024 to come into compliance is still far too short to terminate long-standing contracts and obtain legislative approval for the personnel and expense to bring such services in-house. Abandoning these successful and economical public and private partnerships will not be easy or popular among many state legislatures.

Effect of Ending the Tax Offset Program due to non-compliance

Due to the reliance of the child support tax offset payment, more families would likely fall into poverty and become more dependent on other government programs if this program were halted. Tribal families in particular will feel the impact of this loss of income.

Conclusion

ERICSA urges Congress to pass legislation that remedies the issues outlined above to avoid upheaval of the program. Federal tax offsets are a source of significant collections for families. Of the $27.4 billion collected in child support in Federal Year (FY) 2022, federal tax offset collections totaled $2.284 billion or 8.3% of total collections. In FY 2022, there were 1,257,954 federal tax offsets for an average of $1,815 per offset.

With encouragement from Congress, states and Tribes have formed unique, effective partnerships with public and private agencies to collect reliable child support for families. FTI and the federal offset process are critical components of this success. If action is not taken, states will be forced to either abandon these partnerships and assume hundreds of millions of dollars per year in additional expense, of which the federal government will be responsible for 66%, or lose substantial collections for the families they serve.

ERICSA thanks the subcommittee for their time and attention to this important issue and for their interest in strengthening state and Tribal child support programs.