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September 7, 2023

Office of Child Support Services Attention: Director of Policy and Training

The Eastern Regional Interstate Child Support Association (ERICSA) submits the following comments in support of the Notice of Proposed Rulemaking (NPRM) issued on July 13, 2023, by the Office of Child Support Services (OCSS), RIN 0970-AC95 *Modifications to Performance Standards During National Disasters and Other Calamities*. ERICSA asks OCSS to consider two changes detailed below for the final rule.

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.

Overall ERICSA supports the NPRM as a necessary regulatory change to ameliorate the program inflexibilities that surfaced during the COVID-19 pandemic. While OCSS was able to provide some flexibilities under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), current law did not allow relief from financial penalties related to performance or adverse data reliability audit findings.

Further, while OCSS was successful in obtaining regulatory relief for program performance during the pandemic (87 FR 32090) for fiscal years 2020, 2021, and 2022, the process took over 200 days. The flexibility proposed in the NPRM will

permit OCSS in the future to grant child support programs relief in an expedited manner.

ERICSA recommends two changes to further strengthen this necessary regulation. First, the proposed rule provides that “individual states and territories” must initiate the request to modify the performance requirements specified under section 452(g) of the Act (42 U.S.C. 652(g)) and 45 CFR 305.40(a)(1), under 45 CFR 305.40(a)(2), or under 45 CFR 305.40(a)(3) when a state has experienced a natural disaster or other calamity that has or will make compliance with the performance standards impracticable. The individual state or territory must demonstrate to the satisfaction of the Secretary that based on available data that a natural disaster or other calamity has directly resulted in a reduction in performance or is expected to result in a reduction in performance. The request must contain proof that the emergency has made the state’s ability to attain one or more of the performance standards impracticable including:

- A narrative statement which describes both the circumstances and justification for the request;
- Information substantiating the impracticability of compliance with the standards, including a description of the specific conditions caused by the natural disaster or other calamity, including preliminary data provided by the state, as required under 45 CFR 305.32(f), showing reduced performance;
- Information on the expected duration of the conditions that make compliance impracticable and include any other documentation or other information that the Secretary may require to make a determination regarding relief;
- A statement and other documentation that demonstrates that the state: has not or will not meet one or more existing performance requirements, such that a performance penalty would apply; has submitted preliminary data to support the statement; and has provided all required information; and
- Any additional information as soon as the adverse effect of the natural disaster or other calamity giving rise to the request is known.

ERICSA understands that this information is necessary on a state-by-state basis where the natural disaster or other calamity is area specific. However, as demonstrated by the COVID-19 pandemic, there are national and global emergencies that impact all states and territories. Other emergencies may impact specific regions of the country.

In these situations where emergencies impact more than one state, it would be beneficial for states to have the option of submitting a joint request for relief instead

of each individual state doing so. ERICSA requests that the proposed rule be amended to allow for this option and flexibility.

The second proposed change is to afford states the right to appeal an adverse decision denying relief. Currently the proposed rule provides that if the request for a performance requirement modification is denied, the denial is not subject to any administrative appeal.

ERICSA is dedicated to improving the child support program and the families the program serves. With these two minor changes, ERICSA believes the proposed rule will afford child support programs needed relief in times of crisis. ERICSA appreciates the opportunity to provide feedback and thanks OCSS for its consideration of these comments.

Sincerely,



Lisa Skenandore

ERICSA President