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CHILD SUPPORT ENFORCEMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON
SOCIAL SECURITY AND FAMILY POLICY

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

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CHILD SUPPORT ENFORCEMENT

MONDAY, SEPTEMBER 16, 1991

U.S. SENATE,
SUBCOMMITTEE ON SOCIAL SECURITY AND
FAMILY POLICY,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:03 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Daniel Patrick Moynihan (chairman of the subcommittee) presiding.

Also present: Senators Bradley and Breaux.

[The press release announcing the hearing follows:]

[Press Release No. H-38, Sept. 12, 1991]

HEARING PLANNED ON CHILD SUPPORT ENFORCEMENT; MOYNIHAN WANTS TO MONITOR CHANGES MADE BY 1988 LAW

WASHINGTON, DC—Senator Daniel Patrick Moynihan, Chairman of the Finance Subcommittee on Social Security and Family Policy, announced Thursday the Subcommittee will hold a hearing next week on implementation of provisions of the Family Support Act of 1988 that were designed to strengthen the child support enforcement program.

The hearing will be at *10 a.m. Monday, September 16, 1991* in Room SD-215 of the Dirksen Senate Office Building.

"The first goal of welfare reform is to convince parents that they must support their children. To that end, the Congress three years ago greatly strengthened our system of child support enforcement as part of the Family Support Act," said Moynihan (D., New York).

"The goal of our hearing is to determine how those changes are faring and whether additional reforms are needed," Moynihan said.

The Family Support Act included major amendments to the child support enforcement program. Under these amendments, judges and other officials making child support awards were required to use state-developed guidelines in setting amounts. Also, states were required to establish a mechanism to update awards on a regular basis, implement mandatory wage withholding procedures, implement statewide automated tracking and monitoring systems, inform AFDC families monthly (instead of annually) of the amount of support collected on their behalf, and meet minimum paternity establishment standards.

OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, A U.S. SENATOR FROM NEW YORK, CHAIRMAN OF THE SUBCOMMITTEE

Senator MOYNIHAN. A very good morning to our guests, our distinguished witnesses and my colleague, Senator Breaux.

This is the second of a series of oversight hearings which we will have on the Family Support Act of 1988 here in the Subcommittee on Social Security and Family Policy. Those of you who are not aware that this is a hearing that has to do with the welfare of children can confirm the fact by the absence of any lobbyists and even

of anybody else. If you can shoot deer in the hallway we are talking about children. Upon the other hand, if you look up and it is Guchi Gulch, we are talking about tax exemptions.

I have been in this room now 15 years and this rule never changes. What does change is the condition of children in this country getting indescribably worse. When I say indescribably I mean that we do not have words to describe what is going on. Because as far as I can tell, as far as I know, and our distinguished Secretary will want to talk about it perhaps, as far as I know we do not have any comparable experience in the species.

The illegitimacy ratio in our country went from 5 percent in 1960 to 26 percent today. That is a five fold increase within one generation. I do not know if there is a demographer who can tell me that that has ever happened. I think not.

Something comparable has happened in Canada, something comparable in Britain. Our rate, 26 percent, contrasts with the Japanese rate of 1.0 and the Panamanian rate of 72 percent. But we have subgroups in the population with an illegitimacy ratio of over 60 percent. In my city of New York it is not uncommon for a health district to have an 80 percent rate. Then we wonder why the schools do not work.

The causal relations are pretty presumptive. Whatever brings about illegitimacy in turn independently brings about dependency. We now have numbers for the first time ever, thanks to Jo Anne Barnhart and the Department of Health and Human Services. No thanks to this committee which cannot get anything done. We have been trying to get a report on this but we cannot do it. We just cannot bring ourselves to deal with things like this.

But we now know the experience over time of children with respect to welfare dependency. Of the children born in the cohort 1967 to 1969, almost one-quarter were on welfare before they reached age 18; 72.1 percent of black children.

Now we have taken the cohort and advanced it and tried to make an estimate for those born in 1918. We find that you can make a fair judgment that 31 percent of all children will be on welfare. And 83 percent of black children.

That is catastrophic and that is why no one is here. No one is here because we have not yet found a vocabulary in which to talk about this subject. But you are here, Madame Secretary, and we are very pleased indeed.

Now we begin our discussion of child support, which is the support going from absent parents to the children who are left dependent. These children are left as paupers. It is not a pretty word, but it is not a pretty condition. For every such child there is an absent parent. Sometimes a dead parent, of course. But we make an estimate that a third of the children born today will be entitled to receive child support, of whom a very small portion will actually get it. That is what we are here to discuss.

While the subcommittee would be greatly interested in any thoughts you may have concerning the problems and challenges facing the child support program, we are particularly interested in your comments on four topics: (1) periodic updates of child support awards; (2) immediate wage with-holding of child support payments; (3) implementation of the new provision on medical support

orders; and (4) the need to change from our current accountability system which relies almost exclusively on process measures to a system that focuses more on outcome measures.

Senator Breaux, it is very typical of you to be here; and we welcome you, sir. We look forward to any statement you might wish to make.

OPENING STATEMENT OF HON. JOHN BREAUX, A U.S. SENATOR FROM LOUISIANA

Senator BREAUX. Thank you very much, Mr. Chairman. Thank you for having this additional hearing on the Family Support Act, which of course is a major, major legislative initiative for which this Congress and this country largely has you to thank. We also have him to thank for the initiative and pushing this legislation and the ultimate result which we are now starting to see throughout this country.

I am very pleased to be able to participate. I think that so much of the attention of the Family Support Act has been aimed at the AFDC Reforms and they are extremely important because to require work and training and education in return for assistance from the Government is a major initiative. It is the way to go. I think it is starting to work. We have largely you to thank as a result of that.

But there are other provisions of it that are equally important that are also starting to show results. We are very pleased to look at these today. The automatic withholding of an absent parent's wages is one of the most effective tools that the States now have that is provided under the new law.

My own State of Louisiana, Mr. Chairman, has had good results. Louisiana has increased their total child support collections since 1988, when this law was passed, annually by 15 percent, by 12 percent, and by 18 percent. So it really is starting to make a difference. We are seeing some real tangible results.

I know that some States seem to appear less satisfied with the program than others, operating with the requirements under the new Family Support Act. But my reports from Louisiana indicate to me that it has been very favorable and they look forward to making continued improvements. I am anxious to hear the Secretary and her comments and our other witnesses.

Thank you very much.

Senator MOYNIHAN. Thank you, sir.

Secretary Barnhart, once again we welcome you as the founding Executive Officer of this program. You are now the Assistant Secretary of the Administration for Children and Families. That is a new organization. We congratulate you.

Secretary BARNHART. Thank you.

Senator MOYNIHAN. We have your testimony which we will place in the record and you proceed exactly as you want. You have already pointed out on page 2 where you say that children born into a single parent household are twice as likely to live in poverty as children of a family with both parents present. That twice should be six.

Secretary BARNHART. That is correct.

Senator MOYNIHAN. That tells it all.
Good morning.

STATEMENT OF HON. JO ANNE BARNHART, ASSISTANT SECRETARY, ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Secretary BARNHART. Thank you, Mr. Chairman. I appreciate your entering my longer statement in the record. In the interest of time, I have a much shorter oral statement to give this morning.

I appreciate the opportunity to be here for this second hearing concerning implementation of the Family Support Act of 1988. As you know, I have made implementation of the Family Support Act a priority of the Administration for Children and Families—to take the mandates contained in the Act and to convert those ideas and requirements into programs that support America's needy families and help them move towards self-sufficiency.

At the July 8 hearing, I addressed our progress in implementing the Job Opportunities and Basic Skills Training program. I welcome the opportunity today to focus on provisions and activities related to child support enforcement. The Family Support Act made a number of powerful new tools available to help States in their efforts to keep children out of poverty by ensuring that absent parents remain responsible parents.

Mr. Chairman, I wish I could tell you today that conditions are fast improving for our Nation's children. But the sad truth is that by and large they are not. In spite of our legislative and program efforts, children remain the poorest segment of our society.

As you well know, nearly 65 percent of all poor families with children are headed by a single parent and most often that parent is the mother. Single parents generally have fewer resources to meet the demands of a family, especially when the single parent is a woman. Family instability and the lack of family formation certainly affect the economic circumstances of our Nation's children. That is why stabilizing families through child support enforcement is a central component of our efforts to reduce poverty among children.

Through landmark legislation in 1975, amendments in 1984, and the Family Support Act in 1988, we have made a clear statement of intent regarding certain rights and responsibilities within families.

First, children have the right to support from their parents. Second, both parents have a responsibility, an obligation, to support their children to the best of their abilities. And third, the government has both the right and the responsibility to enforce the payment of child support obligations.

Unfortunately, translating legislative intent into programmatic success has been difficult. It was necessary for the Federal Government to provide States with tools for enforcing child support, as well as guidance on the use of those tools. Still, it is the States who must shoulder the burden of implementing and running programs to bring about timely payment of child support obligations.

To encourage States to implement effective child support enforcement programs, Federal direction has taken a two-pronged approach. First, we offer policy guidance, technical assistance and fi-

nancial inducement to the States. The Federal Government pays the lion's share of State and local administrative costs related to child support enforcement and fully funds performance-related incentive payments. Support enforcement is a highly profitable activity for our State and local partners. The direct financial return to States this year is estimated at some $400 million over and above their share of program costs.

Senator MOYNIHAN. We will put that sign on the wall, you know. It is $400 million the States got out of this effort and it is just a beginning one.

Secretary BARNHART. Yes. It is significant, particularly considering the fact that the Federal Government loses money, this year around $596 million. So there is quite a difference.

Senator MOYNIHAN. Do not put that on the wall. [Laughter.]

Secretary BARNHART. Second, Mr. Chairman, we audit and otherwise monitor State performance. When States are not in substantial compliance with Federal requirements, they are penalized. Since passage of the 1984 amendments we have conducted 112 audits of State child support enforcement programs. Of the 99 final audit reports issued to date, almost two-thirds have found substantial noncompliance with Federal requirements. The sorts of operational deficiencies we have found are not mere technicalities. They are serious inadequacies in the core program functions of locating absent parents, establishing paternity, and obtaining and enforcing support orders.

With respect to the other specific issues identified in your letter of invitation, I would like to make some comments as well. First, to date our review and adjustment demonstrations have shown the following: The non-AFDC workload has been much less than originally anticipated and where there has been an adjustment made in an award, it has been a sizable upward increase, averaging 127 percent in three States.

Senator MOYNIHAN. When you say non-AFDC you are describing the normal child support condition.

Secretary BARNHART. They are IV-D households. In other words, they have sought assistance from the child support agency.

Senator MOYNIHAN. Right.

Secretary BARNHART. However, they are not receiving AFDC.

Senator MOYNIHAN. They are not welfare families?

Secretary BARNHART. Correct.

So there has not been nearly as much of a workload in that area as was originally anticipated.

Senator MOYNIHAN. Let's help us here. Senator Breaux, you just take the liberty, too, because we are friends here.

The majority of children eligible for child support are in self-supporting family units. They are not in welfare units. Isn't that right?

Secretary BARNHART. That is correct.

Senator MOYNIHAN. What is the ratio?

Secretary BARNHART. In terms of the IV-D caseload percentage, if you look over there, Senator, at that first chart on the right.

Senator MOYNIHAN. Right.

Secretary BARNHART. Look at total case load. The green area represents the AFDC cases and the yellow represents the non-AFDC cases.

Senator MOYNIHAN. Right.

Secretary BARNHART. However, that does not address who is eligible.

Senator MOYNIHAN. But that has changed. Yes.

But most children living apart from one parent are not receiving public support.

Secretary BARNHART. True. I believe there are 15 million children, Senator. I can double check that for the record.

Senator MOYNIHAN. Yes, let's have those figures so we can get the feeling of our universe.

Secretary BARNHART. I believe it is almost 10 million households and 15 million children, total in the entire universe, that have no father present.

Senator MOYNIHAN. In the entire universe.

Secretary BARNHART. In the entire universe.

Senator MOYNIHAN. And some of those will have come to ask for child support, assistance, but not by any means the majority who are not on welfare. Those yellow lines.

Secretary BARNHART. The yellow area represents the non-AFDC IV-D caseload.

Senator MOYNIHAN. Yes. I guess my point is, we get these sort of negative definitions, what you are not. You are not AFDC, but are just the normal divorced couple.

Secretary BARNHART. That is correct. That is absolutely correct.

Senator MOYNIHAN. Yes.

Secretary BARNHART. Yes.

If you look at it this way, Senator, there are roughly 10 million households that do not have a father present. Most of those households are headed by women and represent 15 million children. If you look at it from the standpoint of how many AFDC cases are receiving services under IV-D, you can see that it is just under 8 million.

Senator MOYNIHAN. Yes.

Why don't you work up a table for us, sorting these things out when you get a moment?

Secretary BARNHART. Yes. I would be happy to do that and submit it for the record.

[The information appears in the appendix.]

Secretary BARNHART. I agree that it is confusing when we are looking at all people who do not receive child support, all families who should be, and the non-AFDC versus the AFDC part of the IV-D case load. It does get confusing.

Moving back to review and adjustment for just a moment, we also have seen that where an adjustment has taken place the increase has been sizable. It has been an average of 127 percent in three of our demonstration States. This is a sizable increase and suggests that review and adjustment is clearly worth doing.

Senator MOYNIHAN. Which are your demonstration States.

Secretary BARNHART. The demonstration States are Colorado, Delaware, Florida, and Illinois.

Finally, on review and adjustment, as requested by the State comments that we received in response to our MPRN, we are holding publication of the final regulation for the provisions that take effect in 1993, until we have the final results from our demonstration projects. We expect to have those available at the end of this year and have a report done by early next spring.

Regarding immediate wage withholding, which Senator Breaux referenced in his opening comments, it is difficult to sort out which collections in wage withholding are due to immediate wage withholding versus the normal wage withholding. But as the Senator pointed out, it is correct that wage withholding accounts for 44 percent of all collections that are received. It is proving to be a simpler and an administratively efficient collection method.

Finally, with respect to medical support enforcement, States are generally successful in their efforts for petitioning the court to include medical support and child support awards. However, where they are experiencing difficulty is in enforcing the medical support orders.

In other words, if a State petitions to have medical support included in the child support order, we are finding that most judges are putting it in the order. However, when it is time to collect the medical support States are running into difficulties, in terms of making it a reality.

In summary, Mr. Chairman, child support enforcement has come a long way since the inception of the program. Each year new records are set in the number of absent parents located, paternities established, support orders put in place and dollars collected.

In fiscal year 1990 child support collected through the program authorized by Title IV-D was just over $6 billion. This represents a 15-percent improvement over the prior year; and 2½ times the amount that was collected when the 1984 amendments were enacted.

But as you know, we are still far from the day when the child support program is fully effective—when States are able to work together to solve the seemingly intractable difficulties of interstate cases, when processes are streamlined to speed the delivery of support to needy families, when millions of children who are morally and legally entitled can look forward to regularly receiving fair and full child support payments. We are engaged in a challenging task, a retooling of a program that cuts across the Federal, State and local levels of government and involves the executive, legislative, and judicial branches.

We can and will continue to annunciate policies and demonstrate better ways of collecting child support while States adopt their own rules in enabling legislation. But it is of little value unless the available tools and techniques are widely known and used on a day-to-day basis.

As I mentioned, our audits show that progress in this regard is painfully slow. We have a long way to go, but I do believe the momentum is in the right direction. Bringing the promise of the Family Support Act to fruition and increasing family stability to keep children from growing up in poverty requires action—sustained, vigorous, informed action on our part and on the part of our partners in State and local government.

By working together, I believe that we can continue to make a difference for children. I would be happy to try and answer any questions that you or other members of the committee have at this time.

[The prepared statement of Secretary Barnhart appears in the appendix.]

Senator MOYNIHAN. As always it is good to have you here. You come full of information and commitment and a necessary component of unwarranted optimism.

I have those numbers now so we will be clear what we are talking about. Again, thanks to the Michigan Panel Study of Income Dynamics which we set up in OEO that we have these numbers.

Of children born in 1967–1969, 15.7 percent of white and 72.3 percent of black children were on welfare before age 18. We now project that would be 22.2 percent and 82.9 percent respectively. So that is a social catastrophe right in front of our eyes and we do not have words for it.

But one of the things we can do is to try to get something about—you know, child support is a statement that, you know, this is not going to be normal behavior. You cannot just do this. You cannot disappear from parental obligations. But mostly you can.

The question begins with paternity. Back in the early 1980s when we were trying to start this program up, the officials in New York City would tell me they did not ask about paternity because it was a violation of privacy. Well a society that thinks the establishing of paternity of a child is an invasion of privacy is a society that is committing suicide. I mean, biological suicide. It will not survive that. No society in recorded history does it, excepting New York City and we have a lot to show for it in New York City; don't we?

But last week the New York Times, just a week ago today, had an article on the front page about how the Family Assistance Program was doing. They chose a recipient, a 28-year-old mother of four in Oklahoma, who has been in and out of programs. People are already writing this program off. This is the pattern of these things. States are not, but commentators are.

They had another mother of six, a 30-year-old mother of six. We have been desperately trying not to make policy by anecdote. But here it was right in front of us. From Oklahoma where a U.S. Senator came out from retirement to be the head of the Department of Human Services. We are not going to do much for mothers of four illegitimate children. We can talk about it, but we are not. We are going to do less for mothers of six.

But I did ask about that family. No paternity had been established. Now what proportion of children on AFDC have some paternity established?

Secretary BARNHART. As required by the Family Support Act, Senator, we developed baseline data. These data indicate the national weighted average is around 43 percent.

Senator MOYNIHAN. About 45 percent?

Secretary BARNHART. Yes.

Senator MOYNIHAN. Now are you working at that? Do States have some proportions they have to meet?

Secretary BARNHART. Yes, they do. The Family Support Act requires that States meet Federal standards for paternity establishment.

Senator MOYNIHAN. That is what we are getting to, yes.

Secretary BARNHART. In 1992, States paternity establishment percentage must be at least equal the national average, which we have determined to be 43 percent, be at least 50 percent, or must have increased by six points more than they were in December 1988.

As far as paternity establishment goes, we are seeing a much larger increase for 1991 than we saw for 1990. In prior years, we saw increases of around 27,000 to 35,000 paternity establishments a year. We are anticipating this year, however, a paternity establishment increase of 60,000 or 70,000 cases. I may be understating it, if anything. It is one area we are seeing an increase.

Senator MOYNIHAN. Are you gaining?

Secretary BARNHART. We are definitely gaining.

Mr. Rolston has just taken down the first chart so that you can see our case load activity chart.

Senator MOYNIHAN. Yes.

Secretary BARNHART. These are three of the major activities that are involved in any case. Looking over time from 1976, just after passage of the 1975 law, to 1990, the blue line is for locating the absent parent. The green line is for establishing a support obligation. The red line is for establishing paternities.

You can see that there has been a sharp increase in terms of our ability to locate absent parents. We are extremely pleased.

In terms of establishing support obligations, we have seen a steady increase over time. We are seeing the same thing in paternity. What does not show up because of the spread on this graph is that paternity actually is taking a sharp swing up in 1991.

I brought with me a chart that shows where we are in the third quarter versus the third quarter of 1990, so we do not have to deal with projections.

In 1990 through the third quarter, we had 286,273 paternities established. In 1991, 352,331 paternities were established for the same time period. That is an increase of almost 70,000 in just the first three quarters. So we are very pleased.

Senator MOYNIHAN. And that is gaining on your universe of unidentified——

Secretary BARNHART. Relating that to the absent parents that continue to be——

Senator MOYNIHAN. Of the AFDC children who do not have parental establishment, you are gaining on them?

I see three nods.

Secretary BARNHART. Yes.

Senator MOYNIHAN. Four.

Secretary BARNHART. It must be right, Senator.

I think it is particularly important to keep in mind as we look at all these statistics that the universe of women with children who have an absent father in the household's is increasing.

Senator MOYNIHAN. Yes.

Secretary BARNHART. What you see is that over time the number has gone up fairly dramatically from 1979 through 1990.

Senator MOYNIHAN. Forty-five.

Secretary BARNHART. A 32 to 40-percent increase.

What I think is even more impressive is the chart underneath, which I would like to leave up for the remainder of our discussion, that reflects the difficulties and the complexity of the caseload. The green line is women below poverty and you see an increase of 62 percent over time. The black line is never married women who have children with an absent father. You see an increase of 115 percent over time. The red line is never married women with children below poverty with an absent father; up 139 percent.

Obviously, it is more difficult to establish paternity if the two individuals, the mother and the father, have not been married. We are seeing gains in paternity establishment despite a more complex and difficult caseload.

Senator MOYNIHAN. Thank you.

Senator Breaux?

Senator BREAUX. Well very interesting statistics indeed. I would like to maybe pursue the collection scheme in order to collect child support, particularly from an absentee parent. The mandatory wage withholding scheme that is being utilized I guess was just put into effect in 1990? It is relatively new?

Secretary BARNHART. Yes, sir. It went into effect this past November, actually.

Senator BREAUX. How is that working? Can you elaborate on that a little bit?

Secretary BARNHART. We know that roughly 44 percent of collections are due to mandatory wage withholding or to wage withholding.

What we cannot do is sort out exactly what portion is attributable to the immediate wage withholding provision. As you know, the Family Support Act made a change in the wage withholding provision. Previously there was a trigger that had to be met in terms of an arrearage on the part of the absent parent. With the passage of the Family Support Act, wage withholding became an immediate process that occurs at the point the order is awarded by the judge regardless of whether or not the father has an arrearage unless certain exemption criteria are met.

Senator BREAUX. Now there is a recommendation from one of our other witnesses, Margaret Campbell Haynes, recommends revising the current W-4 income tax forms and requiring workers at each new job to indicate on it whether they have been ordered to pay child support, and if so, where and how much. Is that something that would be helpful?

Senator MOYNIHAN. That is an interesting idea.

Secretary BARNHART. I have heard of that recommendation. I know a number of the preliminary recommendations of the Interstate Commission were included in a couple of newspaper articles that appeared over the last few weeks.

At this point, Senator, we are looking at the information we have that we think the interstate commission is going to recommend, but waiting until their final recommendations come out before drafting a position. I will be testifying on September 30 before the Interstate Commission to answer questions related to their proposals.

Senator BREAUX. What has to be shown to an employer? Say there is an absent father who is thousands of miles away, you locate him so you know where he is and where he is working, what has to be presented to his employer in order to have them start to withhold the wages and send them directly to the mother of the child? Do you have to have a court order establishing an amount?

Secretary BARNHART. Yes. You would need a court order presented indicating exactly how much child support should be deducted from the wages. Beyond that, in terms of specific paperwork and so forth, I do not have that information at my disposal this morning. But I would be happy to have my staff write up for you the precise steps that need to occur and the materials that are necessary to begin immediate wage withholding by employers.

Senator BREAUX. Well, I am not really in that detailed business of enforcement at that level. But I am wondering, is it pretty clear to the members of the Bar Associations that a new law is in effect and how they go about enforcing this?

Secretary BARNHART. I believe so. We have had a contract with the American Bar Association to provide information, to develop monographs, and to help us provide training and information to members of the Bar.

Let me say that as far as immediate wage withholding goes, one of the difficulties is that while it works well for someone who works for an employer that is easy to identify, for people who are self-employed or for people who are unemployed, it is virtually impossible at this point to accomplish.

Senator BREAUX. Well we have come a long way. I remember when I was practicing law, if there was an absent parent, you know, there was nothing you could really do. The child and generally the mother did not have enough money to hire detectives and enforce it. It was just a disaster and no one really was ever able to take care of the children. So we have come a long way.

One of the concerns that our State agency in Louisiana has raised is that single mothers often do not cooperate in identifying the absent parent and that the sanctions that are available are really not very practical and that there is really very little sanction that can be applied.

I understand the parent's welfare assistance could be reduced, but it is usually restored on appeal according to the State office in my State of Louisiana. I am wondering, is this a problem in other States? What is the situation with uncooperative parents who do not want to identify the absent parent?

Secretary BARNHART. Assignment of support is an eligibility requirement for the AFDC program. However, we are aware that cooperation with the letter of the law and cooperation with the spirit of the law are not necessarily always the same thing. One of the initiatives that I started this past year was to have a couple States come in and talk about IV-A, IV-D, IV-F interface.

Essentially, we brought in people from the JOBS program, the AFDC program and the Child Support Enforcement program to talk to one another and us about things we could do to promote better cooperation on the part of the custodial parent.

One of the things, quite frankly, that this gets into that I think is so much at the heart of the Family Support Act and is one of the

things that makes it a significant piece of legislation is the fact that we are trying to impress upon the State counterparts, you know, the AFDC, the child support and the JOBS program people, that it is going to be the combination of child support and the job that is gained through the JOBS program that is probably going to be necessary in order to help a family attain self-sufficiency to begin with to leave the welfare rolls, but certainly in order to maintain self-sufficiency, and trying to help them.

We are trying to help them develop ways to basically have the IV-D folks, the child support people, sell to the JOBS people and the AFDC workers, as well as the clients, that it is good for the client to cooperate in child support enforcement.

Senator MOYNIHAN. Yes.

Secretary BARNHART. And looking at ways that we can accomplish that. So we have a work group that we have put together to move ahead in that area. In fact, I have been in touch with the American Public Welfare Association in a number of States asking for States who were interested in conducting demonstrations for that kind of cooperation and coordination between the programs to take place.

Senator BREAUX. Well, it seems like, Mr. Chairman, there is an awful lot of government involved in this, but it is really government aimed at stating very clearly that the responsibility for raising children is the parents' responsibility. Government does not raise children, parents do. Sometimes it is necessary for government to be involved to in fact get parents to in fact raise children.

So I am delighted to see that we are making some progress.

Thank you.

Senator MOYNIHAN. I think we are. But just one general point. One of our tactical thoughts was to get the States looking at one another and comparing their performances. Our dream is that one day a man or woman will run for Governor saying, "Re-elect me. Look at what a good job I did on this subject." You know, I think about children in ways that produce these numbers.

Can you give us some State rankings pretty soon? Because coming in 1993, well starting in 1992, they are going to have to perform and there are going to be some that are going to be above average and below average, right?

Secretary BARNHART. Well in terms of State rankings I can certainly give you collections, you know, in terms of the percentage increases and those kinds of things which States have the greatest percentage increase. That kind of information we have available. It is just a matter of looking at it a slightly different way and reformatting it to be able to show you where States are.

Senator MOYNIHAN. Right.

Secretary BARNHART. Is that the kind of information you are interested in, Senator?

Senator MOYNIHAN. Start doing it. Do it until you feel good about it. Because you know you might find States that did nothing, had a 300-percent increase, and is now doing just above nothing where some States have been working hard. You know, work within the normal range of statistical analysis and do not be afraid to get a complex.

We have Dr. Paul Offner here who loves regression equations. And, Margaret, you do not mind. Margaret does not mind.

Thank you very much and thank your very able staff who come with you.

Secretary BARNHART. Thank you. Thank you, Senator.

Senator MOYNIHAN. I will place the America article in the record at this point, too, if I may.

[The information appears in the appendix.]

Senator MOYNIHAN. Now we have a panel representing two of our good friends in this area, the National Governor's Association and the National Council of State Human Service Administrators.

Would Alicia Pelrine come forward? Have I got that right, Pelrine?

Ms. PELRINE. Yes, you do, sir.

Senator MOYNIHAN. Yes, I thought I did.

And Larry Jackson. There is Mr. Jackson.

Ms. Pelrine and Mr. Jackson, you have both been here listening to our Secretary. So we welcome you. Of course, we have your statements. We will put them in the record. Proceed exactly as you wish. Ms. Pelrine, you are first, as indicated by the witness list.

STATEMENT OF ALICIA PELRINE, NATIONAL GOVERNORS' ASSOCIATION, WASHINGTON, DC,

Ms. PELRINE. Thank you, Senator. It is a pleasure to be here today to speak to you briefly about——

Senator MOYNIHAN. Do not be brief if you have more to say.

Ms. PELRINE. I will start being brief and then perhaps we can have some dialogue. But I appreciate my statement being included in the record. I will summarize the remarks.

I would like to start by conveying to you the Governors' continued appreciation for your wonderful work and continued support of State efforts, not only in child support enforcement but in the Family Support Act. The Governors have maintained fond memories of our work with you on that piece of legislation.

I do want to address today specifically some thoughts about the child support enforcement system and begin by reiterating something I think Senator Breaux just said very nicely. That is that this is a public policy, a program and a system that was conceived to reflect our historical belief that when two people bring a child into the world they owe that child both financial and emotional support.

That belief is being sorely tested with the medioric and unfortunate rise in divorces and in out-of-wedlock births and obviously substantially responsible for the fact that we now have one in four children in this country living in poverty which is unacceptable.

The reasons for nonpayment of support are varied. I think it is important when we are talking about policy and program design to focus on the varied reasons that people do not pay support. Many times absent parents cannot be located. We are obviously making strides in that regard. Frequently and unfortunately the absent parent is sometimes not working. It is difficult to collect support payments if the parent is not working. Sometimes the absent parent refuses to provide support because they do not have visita-

tion, they are arguing with the mother and there are all kinds of issues there. Sometimes the custodial parent wants to avoid contact with the absent parent and sometimes the custodial parent does not know who the father of the child might be.

The dilemma that we all face as policy makers and program implementors is how to develop a program that promotes parental responsibility without harming the child who is the ultimate person that we care about in this child support enforcement system.

One of the things that I think has been implied here this morning that the Governors feel very strongly about is the children need to be the primary focus of the system; and children have the right to know who they are, where they come from, who their parents are, as well as to receive the necessary support.

The Family Support Act made a number of important changes to the child support enforcement law and I think it is interesting to note that at our most recent Governors' meeting in Seattle last month the Governors adopted a comprehensive child support enforcement policy, unanimously adopted that policy.

Our policy had not been changed since the 1984 amendments. The Governors, having now had several years of experience with the Family Support Act, have incorporated many of their both positive issues and concerns in a new policy which I would like to briefly touch on with you today.

Senator MOYNIHAN. Good.

Ms. PELRINE. The original intent of child support enforcement, I think it is safe to say, was to reduce the AFDC burden. We now, however, are extending Title IV-D services to both AFDC and non-AFDC families. I think with respect to the incentive payments, while they are fully extended to AFDC cases there is a cap on incentives for States to pursue the non-AFDC cases.

One of the suggestions that the Governors have as you look at possible tinkering with the child support enforcement system is that we might want to, rather than grouping cases as AFDC or non-AFDC group them as mandated cases versus non-mandated cases.

Senator MOYNIHAN. Meaning?

Ms. PELRINE. In other words, some of the non-AFDC cases are mandated. The States must process and handle those cases even though the person is not receiving aid to families with dependent children.

Senator MOYNIHAN. Just help us so we understand. Why are they mandated? By what process?

Ms. PELRINE. By the process of the States, of individuals coming forward and requesting assistance.

Senator MOYNIHAN. Oh, a person having said I want it and the State has to do it.

Ms. PELRINE. Right.

Senator MOYNIHAN. Gotcha.

Ms. PELRINE. All we are saying is it might be helpful in terms of incentives. I mean, we may want to increase that yellow section that was on Secretary Barnhart's chart and, in fact, work a little harder to help the non-AFDC cases as well as the AFDC cases. On the theory that sometimes if you work with the non-AFDC cases

you may prevent those people from ever having to go on the welfare system.

We think that that is all part——

Senator MOYNIHAN. It would be a nice number to have. We have so few numbers. We have been trying to get an annual report on this field and we are not able to. Nobody wants to know about this. It is too painful.

Ms. PELRINE. Yes.

Senator MOYNIHAN. But what proportion of families start out in this mandated class, it does not work out, and you drop into AFDC, into welfare? There is a number. We can find that number.

Ms. PELRINE. I think that would be a very interesting number.

Senator MOYNIHAN. Yes. Well, there is just a whole—we know nothing of this subject and that is no accident, comrade. We cannot bear the facts.

Ms. PELRINE. We certainly agree with your comment earlier, Senator, that it is good to do public policy with facts and not by anecdote if we can.

Another concern that the Governors have is about the audit process. Secretary Barnhart said that their findings in the Office of Child Support were that many of the audits were showing substantial problems and not just process problems. However, the States still feel that the audits tend to look at process over performance. It is a little easier to look at process over performance. The audits also need to recognize the equal importance of all three major functions of the system, that is establishing paternity, establishing the awards, as well as collecting payments. All three of those are very time and labor intensive.

One idea that the Governors have about the audit process that we wanted to suggest was that rather than HHS penalizing the States and taking money away from the States when there is an audit exception, that the government escrow the funds, escrow the penalty, allow the States the opportunity to work out a plan to bring the program into compliance with HHS regulations and then the money that has been reserved in escrow could be used by the States to implement the corrections to the system that they have agreed to make in conjunction with HHS.

There is no new money involved in that, but it would provide a fund of money that would be specifically used to address some of the concerns that are raised in the audit process. So we would like to put that suggestion on the table.

Another issue that was not mentioned, in the earlier testimony, that we wanted to speak briefly to is the requirement that all States have automated data processing systems up and running. States have been experiencing some difficulties in getting those systems up and running.

Part of it has been that some of the regulations that guide the implementation of the Family Support Act have been late or not yet out. There have been incomplete demonstration projects that might pave the way for States in their data processing systems and there is a lack of certified State systems that could serve as a model for States to look at.

The States are concerned that if they guess at what some of the regulations are going to say and attempt to develop data processing

systems around those guesses they are going to be wrong. And when the regulations come out they may have to make changes to their systems and as someone who once ran a system at the State level I can tell you that when you are dealing with contractors and making systems changes, any small change is not only time consuming and expensive but could overturn the whole system that you have in place. You may have to go back and start from the beginning.

So it is important as we develop these data systems to have all of the regulations in place so that States know everything that has to be addressed in their data systems.

For that reason one of the suggestions that the Governors would make is an extension of the date of compliance to 5 years after the approval of a State's data processing plan or 1997, whichever date is later; and that the 90-percent match rate that States now receive for the development of their systems be extended to correspond to the date once again 5 years after the approval of ADP or 1997, whichever is later; and further that that 90-percent development match rate be extended for any cost to the system that are above normal maintenance.

In other words, every time there is a legislative or regulatory change and States have to go back and change their systems they believe that the 90-percent match should be available to them.

Senator MOYNIHAN. Yes.

Ms. PELRINE. The other suggestion, and I think the Office of Child Support Enforcement has done an admirable job of beginning this process, and we believe in Secretary Barnhart's commitment to the process, but that we need to encourage the Office of Child Support Enforcement to continue to act as a clearinghouse and particularly in regard to these data systems where States are really kind of floundering and looking for good models and an exchange of information and ideas.

A couple of other issues I would like to touch on briefly. One is the immediate wage withholding question that has been raised. States, I think Governors by in large, have been very pleased and have found that collections have increased dramatically with the development of immediate wage withholding.

However, by 1994 that immediate wage withholding under the law will be extended to cases that the State agencies do not normally handle, the private attorney collection proceedings. The States are concerned that without some additional administrative support to support their efforts for those cases they are going to be swamped and that it is going to be difficult.

The review and modification that was part of the Family Support Act. Once again States are beginning to implement the review and modification within 36 months of the award and are finding it to be a good process, experiencing a fair amount of success with it, but concerned that since so much of the review and modification will depend on having a fully operating information system that no penalties accrue to States for review and modification until their systems are fully up and running.

Another maybe seems like minor but annoying issue from the States' perspective is the requirement for monthly notification of recipients of the amount of money that has been collected on their

behalf. There is provision in the laws for States to get a waiver, so that they only to report quarterly to HHS.

The Governors would suggests that that waiver authority be made permanent. There does not seem to be a value that equals the cost and the administrative expense of providing those monthly notices.

On the establishment of paternity, as has been pointed out this morning, the States are making pretty dramatic strides in paternity establishment. Because right now the States are required to improve at least 3 percent annually our only suggestion is that somewhere around 1995 we might want to review that 3-percent goal and see if that is still attainable.

At some point we are hopefully going to get to the point where 3 percent is not attainable because States are at 97 percent, 98 percent establishment.

Senator MOYNIHAN. Where are we now?

Ms. PELRINE. Well, I believe that Secretary Barnhart said about 45 percent as a national average right now.

Senator MOYNIHAN. Forty-5 percent is about where we—that is where we are and you either have to be above the median or above 50 percent, isn't that right? Yes, 45 percent of AFDC or of all children out of wedlock, which? Speak up. We are friendly. Nobody gets ejected for answering questions.

Mr. HARRIS. All cases under Title IV of the Social Security Act.

Ms. PELRINE. That would be AFDC and non-AFDC.

Senator MOYNIHAN. Yes. Half.

Ms. PELRINE. Right.

Senator MOYNIHAN. That is terrible.

Half the children? A million children a year, 500,000 coming into the world with no known parentage. You know, it does not happen in New Guinea. They would not dream of it. It is the first principal of anthropology, right? The principal of legitimacy, that all children have two established parents. Are we beginning to be an exception to that rule? That is the big question here. All the rest is bookkeeping.

Ms. PELRINE. One last comment, Senator, and that is about the assurance concept. There are a number of assurance concept proposals floating around. The Governors are very intrigued by the notion of an assurance concept. Once again, we have that difficult policy construct about how we go about developing a way to not reward irresponsible behavior on the part of the parents, but in fact ensure the children have the financial support that they need.

Governors would suggest that we develop a number of different assurance models and let the States demonstrate them and see what it is that we might learn about how best to construct that on a national basis from some State experimentation.

I wanted to note one other issue that the Governors raised in their policy. That is a call that the Federal, State, local governments, and the military, kind of lead the way in this by acting as model employers.

Towards that end Governor Voinovich, who is our lead Governor on child support at NGA, has instituted a program in Ohio. They have begun with an assessment for every State worker, asking them about the status of their children, their child support, are

they in arrears. The State plans to use that information to then develop a consistent way for the State to ensure that its employees are in fact providing the child support that is owed to their children if there are absent parents.

So the Governors are reminding each other that they have a responsibility to lead the way in this very important effort.

I would just say in conclusion that the Governors continue to feel that this is a very critical policy and program area and look forward to our continuing relationship with you, Mr. Chairman, and with the Federal Government, with the Office of Child Support Enforcement, and might suggest in conclusion that we have just begun to really work with the new tools that were provided in the Family Support Act; and would encourage that we not do major tinkering with the program until we have had some more experience and allowed the program to work, and if it is not working then be able to come back with explicit and clear examples of what is not working, as opposed to proceeding anecdotally.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Pelrine appears in the appendix.]

Senator MOYNIHAN. If you will excuse me, I have been summoned to testify at a hearing in the Dirksen Building and will be away for about 15 minutes. There is just no way—this was to have started at 9:00. It did not.

So the committee is going to stand in recess until I get back. But it will not be that long and I do hope you will be—we sometimes have to be two places at once as well.

[The hearing recessed at 11:03 and resumed at 11:34.]

Senator MOYNIHAN. My great apologies to our panel and our witnesses. There are three hearings going on at once today. Some of us have to be at least two. But there is plenty of time now.

Let us proceed next with Larry Jackson of the National Council of State Human Service Administrators.

Mr. Jackson, we welcome you, sir.

STATEMENT OF LARRY D. JACKSON, NATIONAL COUNCIL OF STATE HUMAN SERVICE ADMINISTRATORS, WASHINGTON, DC

Mr. JACKSON. Thank you, Mr. Chairman. Good afternoon. I am Larry Jackson, Commissioner of the Virginia Department of Social Services and Chair of the American Public Welfare Association's Child Support Enforcement Subcommittee. As you know, APWA is a non-profit, bipartisan organization representing all the State human service departments, local public welfare departments, and individuals concerned with social welfare policy and practice.

Mr. Chairman, I sincerely welcome the opportunity to speak to you today, representing the views of State and local human service administrators on our progress in implementing the child support enforcement provisions of the Family Support Act of 1988 and to present an update of the States' efforts to increase the collection of child support owed.

In brief, States have successfully improved their performance in areas such as collections, paternity establishment, and order establishment. The implementation of immediate wage withholding, State and Federal income tax, intercept, and other methods to col-

lect child support, paired with increased efforts to locate absent parents and to establish paternity. These efforts have returned more money to absent parents and children.

Since 1985 total child support collections have increased by 93 percent, bringing in a total of $6 billion in child support in fiscal year 1990. Also since 1985 paternities have increased by 68 percent, location of absent parents by 134 percent, and the number of families removed from AFDC has increased by 602 percent.

These improvements can be attributed to commitment of the States and the Federal Government and the work of this committee to strengthen the financial and emotional responsibility of both parents to provide for their children. It is also attributable to the efforts of the Family Support Act that has strengthened the laws underlying these efforts.

While State child support have improved performance in key areas there are still approximately 9.4 million women with children under the age of 21, 41 percent of whom never were awarded child support rights and thus are dependent for income on sources other than the father.

Mr. Chairman, there is still much room for improvement in the collection of past due and current child support. I am here today to provide an overview of the child support provisions in the Family Support Act, where we are with implementing some of those provisions, pointing out some of the difficulties in implementation of some of those provisions and to give some recommendations that we think would strengthen and improve the program.

The child support program has been expanded through requirements in the Family Support Act that mandated services to non-aid to families with dependent children families and through the establishment of performance standards and time frames in which activities such as intake and parent location must be completed.

These requirements, plus requirements to establish a statewide child support automated system for all the States by 1995, are strongly supported by States as ways to improve the current system. State human service administrators and child support directors alike are committed to meeting the performance standards established in the Family Support Act.

States have acted within the statutory time frame to implement mandatory presumptive guidelines for determining support awards and immediate wage withholding. These and other program requirements enacted in the Family Support Act are new, however, and it is imperative that the requirements be given a chance to be fully implemented before additional requirements are added or changes made.

States are working to implement these requirements during a period of fiscal retrenchment and rising caseloads. At least 38 States are experiencing budget deficits and cutbacks. AFDC caseloads have increased to 4.5 million families during the last 12 months and the caseload——

Senator MOYNIHAN. I think you say "by" 4.5 million, don't you, sir, on page 5?

Mr. JACKSON. It is to 4.5 million, Mr. Chairman.

Senator MOYNIHAN. Oh, I see.

Mr. JACKSON. During the last 12 months. This case load has steadily increased every month for 23 consecutive months. As a condition of eligibility for AFDC as you well know, women with children for whom support is due and not collected must cooperate with child support for the pursuit of the child support payments from the absent parent. Thus, as the number of AFDC families increases so does the IV-D caseload.

States must be given adequate time and resources to implement the new procedures, performance standards, and time frames that have already been enacted. This is of particular importance in the area of automated systems. States are spending millions of State and Federal dollars to develop automated systems that will facilitate the processing, tracking and reporting for all child support cases.

Any changes in policy will have an effect on the development of an automated system and would be likely to add significantly——

Senator MOYNIHAN. We have heard that before, didn't we.

Mr. JACKSON. Redundancy is in order here, Mr. Chairman, perhaps.

Senator MOYNIHAN. Oh, sure. If you say it 54 more times we might just hear it. [Laughter.]

Mr. JACKSON. I will see if I can weave that in to the next 10 pages. Thank you, Sir. [Laughter.]

Mr. Chairman, if we want the program to be effective, once requirements are established we need to give them a chance to work as I have said before.

Another issue in the area of automated systems is the expensing of cost over a 5-year period. The Federal Government now requires that the depreciation of cost be stretched over a period of 5 years. Under this policy, any cost for the design, development and implementation of an automated system are eligible for the enhanced Federal matching rate of 90 percent only until the sunset date of October 13, 1993.

Costs incurred in the design, development and implementation of the mandated system that are depreciated past the October 13, 1995 deadline will not be eligible for the enhanced matching rate. I believe that it was the intent of Congress to provide 9010 funding for the entire cost of planning, design and development of systems that are implemented by October 13, 1995.

I might add parenthetically, Mr. Chairman, that this particular funding situation for enhanced situations is unique to child support enforcement and does not apply to the Family Assistance Management Information System (FAMIS) systems that we find in the AFDC program or the food stamp program.

Senator MOYNIHAN. Right.

Mr. JACKSON. Mr. Chairman, I would like to raise some questions with the current audits process which has already been discussed this morning in the child support enforcement system. The American Public Welfare Association and the States support program accountability and have long recommended that reasonable and adequate measures be established to that end.

While States are required by the Family Support Act to meet certain time frames, merely meeting these time frames does not

provide any information about whether, for example, the absent parent was located or if any support order was established.

The audit procedure measures 136 criteria, few if any of which speak to case outcomes. For a State to be in compliance each employee would have to take 41,000 case actions each year. Is it little wonder that 36 States are currently failing their OCSE audits?

Senator MOYNIHAN. Forty-one thousand?

Mr. JACKSON. Forty-one thousand actions per worker in the child support enforcement business in order for the States to be in compliance would be our calculation, Mr. Chairman.

Senator MOYNIHAN. That will not work, will it?

Mr. JACKSON. We do not believe it will, sir. It would be very difficult to do.

Senator MOYNIHAN. Well if it is not going to work we are going to have to do something about it because, you know, we just cannot wander in and say that will not work, that will not work, and then the next thing you know, crash.

Mr. JACKSON. We have some suggestions.

Senator MOYNIHAN. Okay.

Mr. JACKSON. The child support program should be measured in two key areas, effectiveness and efficiency. Performance measures should assess the desired program outcomes, such as how many paternities were established compared to the number of cases needing paternity. And how many absent parents were located compared with the number of cases in which the absent parent should have been located.

The existing audit process does not measure outcomes and I believe these factors need to be added. Performance measures will provide Congress, the administration, and the States with accurate and clear guidance on how well a State is doing in each area.

Mr. Chairman, APWA and the state child support directors are concerned with the promulgation of regulations currently in "proposed status" or already issued as final rules that have created tremendous difficulties for States because the Federal Office of Child Support Enforcement failed to issue them in a timely fashion and because of inconsistency with provisions of the Family Support Act.

In short, some rules are detrimental to the overall goals of the child support enforcement program. As you know, the Family Support Act was signed into law in 1988. The Federal Office of Child Support Enforcement, however, failed to publish final regulations on most child support provisions of the Family Support Act until after the effective date of such provisions.

The final regulations for these critical provisions have still not been published today. Yet the effective date of the law has long passed. The fact that regulations are published long after the implementation date of certain provisions creates problems of accountability with our State legislators, increases program costs, and adds to the probability of failing program audits.

In addition to regulations being released near or after the implementation dates, States have specific concerns with proposed rules that exceed Family Support Act requirements provided for the four most significant provisions of the Family Support Act, namely periodic review and modification, immediate income withholding, the

$50 pass through, and requirements for automated tracking and monitoring systems.

The implementation date for the onset of review and modification in the Family Support Act provides "Beginning 5 years after the date of the enactment of this paragraph, the State must implement a process for the periodic review and adjustment of child support orders."

We believe that the language requires that each State begin modification of all AFDC cases and non-AFDC cases where review is requested after October 13, 1993.

Senator MOYNIHAN. Sir, say that once more so I am sure I heard you.

Mr. JACKSON. We believe——

Senator MOYNIHAN. I am not entirely following you because I am not very good at these things, but I am getting an important sense. Will you say that last thing once again?

Mr. JACKSON. We believe that the language requires that each State begin modification of all AFDC cases and non-AFDC cases where a review is requested after October 13, 1993.

If Congress had intended that all reviews and modifications of all cases older than 3 years be completed by October 13, 1993 Congress would not have used the word "beginning and implemented" cited above.

However, the Office of Child Support Enforcement maintains that the review and modification process must be completed for all cases older than 3 years on October 13, 1993. While there is obviously a discrepancy in the interpretation of the law regulations have not provided the guidance States need to begin the modification and review so that they may be in compliance by October 13, 1993.

If it is decided that States must have reviewed cases by that time, many States will be out of compliance simply because the regulations were not published providing the requirements and procedures.

The second area in which a delay in regulations has caused problems for State Child Support Enforcement Agencies is the distribution of the $50 disregard. The regulation promulgated by OCSE on October 4, 1989 required States to issue pass through payments without 15 calendar days of receiving the child support payment. An American Public Welfare Association Survey found that the majority of States would not be able to meet this deadline due to the difficulty in determining the dates of payment and withholding in cases of wage withholding, the amount of time needed to process these cases between several agencies and the lack of automated capability.

The regulation was revised and rereleased on October 28, 1991, approximately 1 year after the effective date of the Family Support Act provisions concerning the $50 pass through establishing two different time frames for distribution, depending on whether payment is made from the IV-D or the IV-A—for example the Aid to Families with Dependent Children agency.

Whether this provision meets the needs of the State Offices of Child Support Enforcement is still under review. But the way in which this regulation has been promulgated and the amount of

time the process has taken have already had serious negative consequences for the States.

In New York and several other States the Human Service Departments are under threat of lawsuits for failing to implement the earlier published regulations in spite of the fact that Federal OCSE set in writing in May 1990 that they would reconsider and republish the $50 pass through regulation.

The last area in which a delay in the regulations will have a fiscal impact on States is the development of automated systems. The Family Support Act requires States without a statewide data processing information retrieval system, in effect on October 13, 1988, to automate all functional requirements of the Title IV-D program and to submit an advance planning document for such a system to the Secretary by October 1, 1991 and have an operational system in effect by October 1, 1995; whereupon, enhanced funding for development of such systems will be eliminated.

The fact that only proposed regulations have been issued 1 month before the due date for submitting APD's is another example of the lack of timely guidance from OCSE for States implementing the Family Support Act.

Mr. Chairman, I would now like to address some of the findings of the four demonstration projects enacted in the Family Support Act, to study the review and modification of court orders.

The modification demonstration project enacted in the Family Support Act have proven to be extremely helpful in determining the ways in which review and modification should be conducted. The experience of the demonstration projects have established that the review and modification process is a lengthy one, requiring an average of 6 months from the time of case selection to order modification.

A primary factor lengthening the time it takes to process cases has been the notice requirements contained in the Family Support Act. We would recommend that the notice provisions of the Family Support Act requiring 30 days advance notice of the review to each parent, with a 30 day challenge period be deleted as an unnecessary delay case process and duplicate and conflict with existing State law that assures due process protection to all parties in a modification action.

Senator MOYNIHAN. Do you want to help me? What is this a notice of typically?

Mr. JACKSON. It is a notice that in fact the case is under review and some action is contemplated.

Senator MOYNIHAN. Yes.

Mr. JACKSON. A preliminary notice.

The four demonstrations have shown that the review and modification function is extremely labor intensive and requires States to add significant staff and automation resources in order to meet the increased workload driven by the Family Support Act requirements.

The findings, although preliminary at this time, are providing useful information to other States as they plan to implement the Family Support Act and to the Office of Child Support Enforcement in assisting with the development of final regulations to implement these provisions.

We recommend that the projects be extended for an additional year through September 1992 in order for the four project States to complete the review and modification process for eligible cases.

Senator MOYNIHAN. Now just a second there. Is that within Ms. Barnhart's option? Can she just do that? Do you happen to know? The four States are? I knew them, but I do not now.

Mr. JACKSON. Delaware, Colorado——

Senator MOYNIHAN. Illinois.

Mr. JACKSON. Illinois and Florida.

Senator MOYNIHAN. Can that be done in the Office of the Secretary or does that require a statute?

Mr. JACKSON. I cannot answer that question, Mr. Chairman.

Senator MOYNIHAN. I see some "No's" back here.

Mr. HARRIS. It requires legislation, Mr. Chairman.

Senator MOYNIHAN. It requires legislation?

Mr. HARRIS. Yes.

Senator MOYNIHAN. Write that down. [Laughter.]

You know, we want to help, but we can sit around and go home and not hear it.

Mr. JACKSON. Mr. Chairman, this delay we think would provide more complete results regarding the impact of the modification on payment compliance rates for evaluation purposes.

In addition to raising these issues with you today, I would like to share some innovations developed to strengthen the child support enforcement program. States have already taken the initiative and moving beyond the requirements of the Family Support Act and have implemented innovative and unique methods to improve their program effectiveness.

As previously indicated States have made remarkable improvements in their child support enforcement programs. In Virginia, for example, since 1987 collections have increased by 285 percent and paternity determinations have increased by 589 percent, going from 2,200 paternities established in 1987 to 16,000 paternities established this past fiscal year.

Senator MOYNIHAN. Sir, I am going to ask you in the skeptical mode that is appropriate and I hope it is meant in a friendly way that when you say 285 percent collections did you go from $10 to $28? I mean you can increase by 589 percent from having one determination to having 589.

Mr. JACKSON. I am saying that in 1987 we collected in the neighborhood of $19 million statewide. In the fiscal year just ended we collected $131 million in child support.

Senator MOYNIHAN. Wow! Okay.

So I mean that shows. It shows in that $50 and it shows you made some money.

Mr. JACKSON. Yes, sir.

Senator MOYNIHAN. You made some money for Governor Wilder.

Mr. JACKSON. We made some money for the children and families of Virginia, Mr. Chairman.

Senator MOYNIHAN. Yes, sir. But some of that is actually administrative money.

Mr. JACKSON. We are going to talk about that in a moment, too.

Senator MOYNIHAN. All right. Good.

I mean he likes to save money and I do not blame him.

Mr. JACKSON. We all need to.

Senator MOYNIHAN. I mean, I want Governors to like this program and so do you.

Mr. JACKSON. These increases are the result of a lot of hard work by staff, but were made possible by innovative legislation passed by the Virginia General Assembly, which gave the program broad authority to administratively establish and enforce child support.

These two innovations have resulted in increased performance in the areas of paternity establishment and medical support enforcement. Additionally, the General Assembly will be considering a proposal to improve success in locating parents who are not paying child support.

If I might, I would like to take just a few minutes to explain each of these.

Senator MOYNIHAN. Take all the time you want.

Mr. JACKSON. Thank you, sir.

In response to Congress' 1988 revision to the Social Security Act, which encouraged States to adopt a simple civil process for voluntarily acknowledging paternity, Virginia General Assembly decided that there was no need to go through the lengthy and costly process of having a court determination of paternity if both the mother and the father of a child born out of wedlock wanted to voluntarily acknowledge the paternity of the child.

If paternity is contested a court hearing is a necessity. If an alleged father wants a court determination of paternity he has the right to a court hearing. But if a father wants to voluntarily acknowledge paternity there should be a method of doing so without court action.

I might add parenthetically, Mr. Chairman, that that was one of the items on which Virginia nearly failed the OCSE audit last year.

Senator MOYNIHAN. Oh, really. I mean the last thing you want to do is make paternity a subject of legal, you know—I mean you should not have to go to court.

Mr. JACKSON. We would agree with that.

Senator MOYNIHAN. Yes. That is not the idea.

Mr. JACKSON. Thank you.

Senator MOYNIHAN. Everybody knows who their mother is.

Mr. JACKSON. We would hope so.

Senator MOYNIHAN. The other half of the biological equation remains and never has been—it is somewhat in doubt.

Mr. JACKSON. Virginia's Paternity Establishment Project or PEP is a hospital based program in which unmarried couples have the opportunity to voluntarily acknowledge the paternity of the child shortly after the child's birth. I need to acknowledge that we got this idea from a study completed in the State of Washington by the Governor's efficiency commission where they concluded that the probability of establishing paternity is greatly increased if the opportunity exists or the process is started immediately upon the child's birth.

The Paternity Establishing Project is a cooperative project between private and public hospitals and the Virginia Department of Social Services. Hospital staff provide the new parents with a

packet of information explaining their rights to voluntarily acknowledge paternity and other related information.

Hospitals make a notary public available at no cost to the parents and they assist the new parents in completing the paternity forms. The Department of Social Service provides the PEP packets and pays the hospital a minimal fee of $10 to $20 for each paternity established. We also provide training and the payment is just partial compensation.

Senator MOYNIHAN. Wait. What was that? The hospital gets a little fee?

Mr. JACKSON. $10 to $20. Giving hospital costs, I would suggest that is probably a minimal part of their overall costs, Mr. Chairman. But they have been extremely cooperative with us and we have moved in or will have moved in all of the large hospitals in Virginia by the end of this calendar year.

Senator MOYNIHAN. Are you the first or did you say Washington had a lead?

Mr. JACKSON. Washington had a study that indicated this might be a direction in which to go and we have stolen that idea, if you will, and implemented it.

Senator MOYNIHAN. Used that idea.

Mr. JACKSON. Thank you.

Where else it has been done, I am not aware. But we can get that information for you.

Senator MOYNIHAN. Let's do. I was happy to acknowledge paternity in the hospital, but by the time those kids got to be age 13 I would not want to be hard pressed on the subject.

Mr. JACKSON. Correct.

Virginia State law also gives the Division of Child Support Enforcement the authority to order an employer to enroll in absent parents, children and spouse in health care coverage offered through the absent parent's employment. Many absent parents have access to family health care coverage through their employment, but for various reasons do not enroll their dependent children.

Child support agencies are mandated by the Social Security Act to order the absent parents to provide medical support and to enforce such orders. Until this law was passed Virginia could administratively order the absent parent to provide medical support to his or her dependent children. But if the absent parent did not comply with the administrative order no benefits would be forthcoming. This was time consuming and costly; and because of the other requirements on staff time often meant, quite frankly, that medical support was not enforced.

Many Federal and State dollars spent for Medicaid could be saved if child support agencies are able to detect and pursue available dependent health insurance. The Health and Human Services Office of the Inspector General reported that in 1989 that in excess of $32 million annually could be saved through such efforts.

In Virginia we ran into a major obstacle, however, after the legislation was passed, which has prevented Virginia from realizing the full potential of this innovative approach to provide medical support services.

The Employment Retirement Income Security Act of 1974 or ERISA provides employers who want to be self-insured the option of having their employee insurance benefits governed by this Federal law rather than by State statute. Self-insured medical plans operated under ERISA exempt the employer from State regulation in the area of health insurance benefits.

An estimated 70 percent of Virginia's employers are covered by ERISA. These employers can refuse to honor an order from my Agency to enroll the absent parent's dependents in his or her health care coverage plan. It would be my hope that Congress will amend ERISA.

Senator MOYNIHAN. This is another statute.

Mr. JACKSON. Yes, sir.

It was never the intent, we believe, of ERISA to deny children medical coverage that could be provided by their parents.

A final innovation I would like to mention is one the Virginia General Assembly will consider this winter. It deals with legislation to require employers to report all new hires and rehires within 35 days to the Virginia Division of Child Support Enforcement.

In Virginia only 56 percent of the current support ordered is paid. Nationally less than 50 percent of current support ordered is paid. We in Virginia are determined to increase this percentage. As you may know, the major obstacle child support agencies face in establishing and enforcing child support orders is finding the absent parent.

Senator MOYNIHAN. Right.

Mr. JACKSON. Employers are an important resource in both locating the absent parents and identifying income, assets and health care information.

The Commission on Interstate Child Support, as you heard earlier today, will be making a proposal to this regard and I am sure you will be hearing more about that later from Ms. Haynes.

My last point, Mr. Chairman. This morning we heard from Assistant Secretary Barnhart that the Federal Government loses $500 million each year in the child support program. This would lead, we believe, the subcommittee to believe that States are actually profiting from this program. I think it is important to note that program appropriations such as those to the AFDC program, the JOBS program, and I might even add the Food Stamp program are not distinguished as losses to the Federal Government and profits for the States.

It has been the goal of this subcommittee through the 1984 amendments and the Family Support Act to strengthen the program and increase the number of paternities established and the dollars collected. This expansion of the program would not be possible, would not be possible, without a significant investment of both the State and Federal Government.

The State's share of expenditures to administer the Child Support program have increased by 75 percent since 1985 while the Federal share of administration has increased by only 64 percent. States have also increased their staff commitment to the child support effort by 52 percent in the past 5 years.

Mr. Chairman, I want to thank you for this opportunity to testify on behalf of the National Council of State Human Service Adminis-

trators and I know that I speak for my colleagues when I say that child support enforcement plays a significant role in our efforts to increase family self-sufficiency and that we deeply appreciate the contribution you and this committee have made to that cause. Consistent and timely child support payments can lead to a reduction in dependency on AFDC and strengthen the role of both parents in providing for the emotional and financial well being of children.

Again, I thank you and I would be happy to answer any questions.

Senator MOYNIHAN. Well, we thank you, sir. We thank the American Public Welfare Association (APWA) so emphatically. It was your support that in my mind really made the difference as we were putting together the legislation. All of the so-called advocacy agencies were against us as you know. Right?

Mr. JACKSON. Right. Yes, sir.

Senator MOYNIHAN. Because we were trying to do something about a problem that is so painful to discuss that there is a vast denial going on. But the APWA is a professional organization. You said you thought you might be able to make it work and you are trying your damndest.

Now I do not know where to move here. You have some legislating that needs doing. You should get around a table with Ms. Barnhart, someone from the Governors' Association and so forth saying, now what is it that we need. Bring us a package. I mean we are not in a position right now to tell you what we think you should do. We are asking you to tell us what you want us to do. How do we do that? Do you have any thoughts?

We do not have to decide today. Obviously, you have some things coming up. Are we going to have a bill out of this committee on anything this year?

The committee is not very active this Congress. We have not done much. We will be. There will be a tax bill coming along. Any bill will do. We can add these things. We have to—no, not any bill will do because, you see, these are tax measures. If we pass them here and they go over to the House on their own, the House will say we do not recognize them because they come from the Senate and they are tax measures.

Do you know how these became tax measures?

Mr. JACKSON. No, I do not, sir.

Senator MOYNIHAN. Well, it should be part of your lore. In 1935 Francis Perkins was at a garden party in Georgetown, somewhere like that. Mr. Justice Harlan came up to her and said, "How are you doing, little lady?" And she said, "Oh, I am so sad. We have this wonderful legislation that would provide pensions for widows and children and unemployment insurance and disability." All those things. "Yet every time we pass it it goes to the Supreme Court and you great men who know so much about these things, you always say it is against the Constitution. So we will never be able to help the widows, and the children and the unemployed." And he said, "Tell me more."

And she told him a little more and he just leaned over and whispered to her and said, "The taxing power, my dear, all you need is the taxing power."

So we remember the Social Security Act as having been introduced by Robert Wagner and all that. The author of the Social Security Act is an obscure, not to him, I am sure, but to history, a little known representative from North Carolina who happened to be Chairman of the Committee on Ways and Means. They said this is a tax. It is a payroll tax.

In due time it came through the Finance Committee here and got to the Supreme Court. What is it, and they said it is a tax to do these various things and the court looked at it and it says here, "The Congress shall have the power to lay and collect taxes." It looks all right to us." And that is why we have Social Security today.

But we have to have a measure which the House will recognize as something coming back to them. It has to originate in the House. So we have to find a way to do that.

Now do you want to go and talk to Jo Anne Barnhart on behalf of the APWA?

Mr. JACKSON. Yes, that dialogue is ongoing and we receive a great deal of cooperation and we are more than happy to work with them and with NGA.

Senator MOYNIHAN. And NGA. The three of you have to get together, don't you?

Mr. JACKSON. Yes.

Senator MOYNIHAN. You are from Ms. Barnhart's office, aren't you, sir?

Mr. HARRIS. Yes.

Senator MOYNIHAN. What is your name, sir? I am sorry, I should know.

Mr. HARRIS. Robert Harris.

Senator MOYNIHAN. Mr. Harris, why don't you and Mr. Jackson talk after this. All right? Because we just need to hear from you and we will not really be able to adjudicate things you cannot agree on. You will know and we will not. We may not get this done this fall but we will start up in January. There will be a bill next year that moves through this committee and we will do this for you.

We thank you very much.

Mr. JACKSON. Thank you.

Senator MOYNIHAN. Thank Governor Wilder. This was meant to tell him when he goes out to campaign for the Presidential nomination, we hope he will say, vote for me, look at how well I did on child support. I mean, until somebody does we are not going to get much out of it, you know.

Thank you all for your dedication and your professionalism. We are very much in your debt, sir.

Mr. JACKSON. Thank you, sir.

Senator MOYNIHAN. You know, grab Harris as you go by.

Mr. JACKSON. I will get him.

[The prepared statement of Mr. Jackson appears in the appendix.]

Senator MOYNIHAN. We are now going to have a panel of persons who are very close, indeed, to these matters. Sabra Burdick of Augusta, ME; Cecelia Burke of Austin, TX; David Hogan of Olympia, WA, of which we have been hearing such pleasant things; Robert

Williams, the president of Policy Studies at Denver—I guess I am not familiar with that; and Ulysses Hammond, representing the National Child Support Association and the National Center for State Courts. Ms. Burdick, Ms. Burke and Mr. Hogan represent their respective State Bureaus.

Now we will do this in our usual reasonably orderly way. We will start over here with Ms. Burdick. It is nice to see you again. Will you proceed?

Everybody's statement will be put in the record. But take your time. We have had to keep you. I am aware of that. We did not intend it. We cannot help it. We are happy to have you here.

Ms. Burdick?

STATEMENT OF SABRA C. BURDICK, DIRECTOR, BUREAU OF INCOME MAINTENANCE, MAINE DEPARTMENT OF HUMAN SERVICES, AUGUSTA, ME

Ms. BURDICK. Thank you, Senator Moynihan, and good afternoon.

Senator MOYNIHAN. Good afternoon, I am afraid, yes.

Ms. BURDICK. Several weeks ago, as you know, I testified regarding the JOBS portion of the Family Support Act.

Senator MOYNIHAN. You did indeed and very well.

Ms. BURDICK. Thank you.

At that time I indicated Maine's support for the overall mission. But I also expressed our concern about the effects of the economic downturn on our ability to comply with all of the Act's requirements. Those same concerns apply to the child support enforcement components of the Act.

When I was here in July, as you might remember, Maine Government had just reopened after——

Senator MOYNIHAN. Yes, you told us that, I believe.

Ms. BURDICK. Yes. I was happy about that.

Senator MOYNIHAN. Yes.

Ms. BURDICK. We are still open. It was caused by budget problems. Although we are open it is not business as usual. We are trying to cope with a flat economy and certainly to learn to live within our means.

Unfortunately, some of the child support enforcement requirements included in the Family Support Act make this goal impossible and it is within that context that I would like to testify today.

Before I speak to the particular items you asked us to address I would like to give you a brief picture of our current program. We are currently handling in excess of 34,000 cases with current support orders. We are in the process of establishing orders in 7,500 more and trying to establish paternity and support in 8,000 more.

In most, if not all, years since 1975 Maine has been second or third in the Nation in AFDC related cost effectiveness. Until 1991 we consistently generated significant annual increases in our collections, which rose from a little over 900,000 in 1975 to more than 38 million in 1990. I believe we have an attached chart, which will give you a picture of those increases.

Also in recent years we have been among the top States in the recovery of AFDC funds. Because of these and other accomplishments Maine has long been recognized as a leader in child support

enforcement. We believe, in addition, that it is not a coincidence that many of the mandated practices contained in the child support amendments of 1984 closely resemble practices——

Senator MOYNIHAN. Came out of your pocket?

Ms. BURDICK. Yes, that is right.

Even now in a time of restricted budgets, we have attempted to meet the new requirements. At a time when the rest of State Government is facing layoffs we were successful in advocating for 28 new positions. But this is far below the 100 new positions we think are necessary to begin to meet the requirements of the amendments and to deal with the backlogs which have been previously mentioned, which have primarily resulted from the increases in the AFDC caseload over the past 18 months.

Now I would like to speak to your specific concerns. Representatives of our Division of Support Enforcement and the State Attorney General's Office are currently working with the Judicial Branch to develop an expedited process which will better enable the State to carry out the tri-annual review and modification requirements.

We are optimistic that that proposal will be ready for our January legislative session. But still, even with an expedited process, we have concerns in this area. According to the Federal officials, by October of 1993 most of the 26,000 support orders we serve which are more than 3 years old will have to have been reviewed. That is the issue that you just addressed with Mr. Jackson.

Senator MOYNIHAN. Yes.

Ms. BURDICK. So it would be quite helpful if that could be modified in the law.

To handle the review requirements will mean reallocating a significant portion of our resources from other essential work, including the establishment and the enforcement of the orders themselves. We presently do not have the staff to handle this additional workload.

Immediate income withholding with regard to IV-D cases has not yet caused the program any significant problems. However, if we are required to become involved in immediate income withholding with the nonwelfare cases then we would hope that the Congress would help us with some of the administrative costs in that area.

We have already taken many of the steps which will be necessary to put our Agency in a position to carry out the mandates for increased medical support enforcement. However, like many of the requirements that the Congress has enacted in recent years, this is a worthwhile cause which will be time consuming, labor intensive and costly.

Senator MOYNIHAN. What you are saying is it will be costly to you?

Ms. BURDICK. Correct.

Senator MOYNIHAN. And not to us?

Ms. BURDICK. Correct. At this point.

Senator MOYNIHAN. That was the plan.

Ms. BURDICK. Yes, sir.

Senator MOYNIHAN. I mean it is getting to be a pattern.

Ms. BURDICK. We have no complaints about the Federal auditors or the procedures they currently use. We found them to be fair minded, well-informed and most helpful in the development of our programs. We do believe and agree with both NGA and APWA that IV-D evaluations should be based on outcome measures, but not to a total exclusion of the process involved.

What may appear to be a simple, uncomplicated performance indicator may be misleading unless it is interpreted in light of the underlying process.

In evaluating a State's performance there are a few basics that we believe must never be overlooked. I think this just reiterates how Mr. Jackson testified. Again, redundancy probably will serve a good purpose. We believe that the weighted factor should be what percentage of the total case count have obligations established, what percentage of the obligated cases are paying and how regularly do they pay, and how many cases have had paternity established, what percentage is this of all the cases that need this service.

If a State is shown to be weak in any of these categories then perhaps a closer audit could reveal what some of the problems are in the process and then specifications could be made as to what needs to be done to correct those areas.

Another area which causes us much concern is the new Federal requirement that paternities will have to be established or the alleged father excluded, usually within 1 year. As I stated earlier, we already have a backlog of approximately 8,000 paternity cases and new paternity cases are coming in at an average rate of 400 a month.

We think a new expedited paternity statute will enable us to move cases along more swiftly. However, the new statute will not totally replace the need for additional professional staff. We also quickly wrote down Mr. Jackson's idea that originally came from Washington.

Senator MOYNIHAN. That PEP?

Ms. BURDICK. Yes.

Senator MOYNIHAN. Yes.

Ms. BURDICK. I want to make it clear that Maine believes the new child support enforcement requirements are essential and will when fully implemented greatly improve the quality of life for thousands of single parent families, as well as help alleviate some of the financial burden for public assistance which now falls squarely upon the Nation's taxpayers.

In our view, the issue is not whether or not these mandates should be carried out, but whether or not the new requirements can be accomplished within the limitations of available resources. We have reviewed the matter carefully and have concluded that the new requirements cannot be successfully carried out in Maine without an infusion of additional funds, funds that are not available to us at the State level.

This next part, Senator, obviously does not come as a surprise. Since 1984 the Federal Government has drastically increased the scope and complexity of the work that States must do while progressively reducing the amount of Federal child support available.

We have no doubt that given the resources to implement the new mandates in a timely fashion our program could produce dramatic increases in child support collections which would translate into significant savings for both the Federal and State Government.

We believe this to be true because since 1975 we have generated substantial Federal savings. Unfortunately in 1988 and 1989 we generated none. We strongly believe that the reduction in Federal funding has been one of the main causes for these lost savings, the reduction meaning being able to hire less staff at a time when increased staff could have meant a continued progression upward.

A substantial increase in Federal funding, we believe, is essential if congressional expectations are going to be met. A moratorium on Federal legislation or delays in imposing audit penalties could alleviate the problem in the short term.

Senator MOYNIHAN. What do you mean by a moratorium on Federal legislation? Do you mean you want to hold off?

Ms. BURDICK. Primarily delaying some of the implementation dates.

Senator MOYNIHAN. Yes. Because you want some Federal legislation.

Ms. BURDICK. Yes.

Senator MOYNIHAN. In order to do these things.

Ms. BURDICK. Correct.

A better solution or a solution we would also like to see would be to help the States achieve the new standards of performance through a restoration of the previous 75 percent funding level.

We would even like to see some selective funding at the 90-percent level for more than implementation of hardware costs, perhaps through some demonstration projects in the States, especially for the most difficult and critical aspects of the program that I mentioned earlier.

We believe that this type of demonstration would help us look at States like Virginia and Washington that have developed effective laws and procedures that would help us move forward and eliminate our backlogs.

I would also like to point out, and this is a very specific problem to Maine, that Maine is only one of four States that continues to pay out child support to AFDC clients, in what is known as a GAP payment.

Last year the GAP payment to AFDC recipients totalled more than $6 million. That is on top of the $50 pass through that totaled $3.5 million. Had this money been retained we would have returned over $4 million to the Federal Government. Although we would like to change this policy we are prohibited by Federal law from doing so because the Federal law requires that if you are a GAP State it has to look the same as it looked in 1975.

We believe this is not equal among the States. It does provide some inequity; and certainly limits our flexibility in being able to manage our program.

I want to thank you again for this opportunity and I would be happy to answer any questions.

Senator MOYNIHAN. Thank you, Ms. Burdick. I guess I do not fully understand GAP but you will tell me later. Okay?

[The prepared statement of Ms. Burdick appears in the appendix.]

Senator MOYNIHAN. We will move on. Ms. Burke, we welcome you from the other end.

STATEMENT OF CECELIA BURKE, DIRECTOR, CHILD SUPPORT ENFORCEMENT, OFFICE OF THE ATTORNEY GENERAL, AUSTIN, TX

Ms. BURKE. Thank you, Mr. Chairman. I am Cecelia Burke and I am the assistant attorney general and the director of Child Support Enforcement in the State of Texas.

Senator MOYNIHAN. Oh, I apologize for not noticing that it is in the office of the attorney general that this is done in Austin.

Ms. BURKE. That is correct. Our Attorney General is elected in the State of Texas.

Senator MOYNIHAN. So he can run around and say that Burke really collected all that money for those young people.

Ms. BURKE. Absolutely. I assure you he will be able to do that.

Senator MOYNIHAN. Good.

Ms. BURKE. On behalf of our Attorney General, Dan Morales, I want to thank you for your invitation to Texas to give our testimony and express my regret that our Attorney General Morales could not be personally be present. However, he has prepared written testimony.

Senator MOYNIHAN. Which will be included in the record, of course.

Ms. BURKE. Absolutely. Thank you, Senator.

[The prepared statement of Mr. Morales appears in the appendix.]

Ms. BURKE. In his written remarks Attorney General Morales expressed a number of concerns which we in Texas have about the present condition and the future direction of the Title IV-D Child Support Enforcement Program. I think as you have already heard that these concerns are just not concerns that we have in Texas, but they are widely shared by all of the IV-D programs across the United States.

We are concerned about the pace and the magnitude of changes in the Federal IV-D statute and regulations and especially since the passage of the 1984 amendments which really have nearly outstripped the ability of the IV-D programs to implement these new requirements fully and effectively.

It has put a real strain on the available resources of our IV-D programs to keep up. Primarily there have been four areas where we are experiencing these problems. One is in the development of automated systems.

Senator MOYNIHAN. We have heard that several times now, have we not?

Ms. BURKE. Yes, sir. You have heard all four of these and I am going to say them again.

Senator MOYNIHAN. Good. That tells you we are getting a pattern here we can respond to.

Ms. BURKE. Two is the requirement for review and adjustment of all IV-D support orders, in other words modification. Three is the

automatic provision of IV-D services to non-AFDC Medicaid applicants and recipients. And four, the implementation of the triennial audit on the IV-D programs.

This program originally established for the purpose of enforcing support obligations, locating absent parents, establishing child and spousal support, providing assistance in obtaining support and, of course, providing support for our children, had as its goal two things; to remove families from AFDC, to keep other families off of AFDC, and to establish paternity and get support for our children.

So we have two tasks here. One is cost recovery and one is cost avoidance. So we look at this as there has been good news and there has been bad news. One, we have seen a terrific increase in performance in terms of the number of paternities established and the number of dollars collected.

Senator MOYNIHAN. You sure have. You went from 833 in 1985 to 17,650 in 1991?

Ms. BURKE. Yes, sir.

Senator MOYNIHAN. I mean, you know, that is performance. Texas was not doing anything, neither was New York.

Ms. BURKE. And in terms of dollars we have gone from $17 million to $250 million in collections. Next year we expect to collect $290 million.

Senator MOYNIHAN. We were up against a cultural judgment that was coming into place that you did not do this. I do not know whether we will have changed it, but something has happened in Texas.

Ms. BURKE. Well, I think the bulk of that has been the fact that the Texas Legislature has become very supportive of this program and has kicked in with their own matching funding. That has enabled us to expand and provide and deliver more services to people in Texas.

Senator MOYNIHAN. Good.

Ms. BURKE. Which is what our goal is to do. That is what we are supposed to do.

Senator MOYNIHAN. Yes.

Ms. BURKE. In the 1974 enabling legislation the Senate Finance Committee had commented, and I would like to requote that to you, that "The Committee believes that the States should be able to construct programs to meet their particular needs within a predetermined amount of Federal funding, without regulatory impediments which often have made planning and program development an impossibility. It is the Committee's belief that the mutual objective of the States and the Federal Government in reducing dependency upon welfare will be met most effectively by this approach."

We have seen a lot of these regulations that have been promulgated by the OCSE over the years that have served to help the States realize our goals and establish an effective support program. But there are others that have succeeded less well and have become regulatory impediments to our programs.

What we have seen since the 1984 statutory requirements for the IV-D program is some inherent flaws in the process by which law is actually translated into regulation.

Senator MOYNIHAN. Yes.

Ms. BURKE. But it is not only the pace of change in Federal law and regulations which has brought us to what we view as a crisis in the operation of this program nationwide and the dispirited condition of the IV-D agencies, but it is the fact that these State IV-D programs facing enormous and ever growing caseloads and strained resources in trying to meet the primary purposes of Title IV-D are called upon to take on more and more mandated tasks and to satisfy more and more ministerial requirements.

The issue for the overburdened State IV-D Agency is not whether or not a particular Federal mandate is a sound matter of public policy. That is not the issue. But whether, do we have the resources and the time to enact that mandate while we are striving, and I might add mostly uphill, to continue the primary task of locating absent parents, establishing paternity, establishing and enforcing support orders and collecting and distributing support payments.

What we have seen is Congress being frustrated with the OCSE and the State IV-D agencies for their apparently failure to perform well in the areas that you have legislated. As a consequence, Congress has insisted on great accountability and to that end has ordained more demanding audits of State programs and more severe audit penalties.

For its part the OCSE has attempted to give you more accountability by adopting minutely detailed and tough audit requirements that most States have failed in this tri-ennial audit process. That has been despite impressive gains in the collection of support and the establishment of paternity.

We see this as a vicious cycle and what we are asking Congress is, and I will repeat this again——

Senator MOYNIHAN. Say it again.

Ms. BURKE. We would like for you to delay the mandatory implementation for the review and adjustment of support orders, modification as it is commonly referred to. We would like to see a delay in your request that we provide full IV-D services for non-AFDC Medicaid recipients and delay for the mandatory case processing time frames and program standards that came out of the 1988 Family Support Act. We would like to see this delayed until we have fully operational and certified automated systems.

We would also ask that Congress not legislate any new mandates, such as requiring the IV-D agencies to automatically provide full IV-D services to food stamp recipients. We also would like for Congress to review the current IV-D audit process and to impose a moratorium on its further use and on the levying of penalties until such time as a new audit process can be evaluated and we would like for that audit program to evaluate productivity and growth and not mere compliance with technical and ministerial procedures.

Finally, we are asking Congress to establish or consider establishing the creation of a permanent child support enforcement commission. We would like to see this commission made up of child support professionals, child support clients, judges, members of Congress and others that are familiar with the IV-D program. We envision this commission to be charged with the responsibility to provide ongoing review of the operation of the IV-D program, to

report to Congress on a regular basis, and to offer, as needed recommendations for legislative ways to strengthen the program.

Primarily, we see this permanent commission as a way that Congress could ask for long-term and strategic planning for the IV-D program. We believe that the Title IV-D child support enforcement program is at a critical juncture in its history. We think that steps must be taken boldly and immediately to save the whole child support enforcement program from collapsing under the weight of demands arising from expectations which have failed to take into consideration the ability of State and local programs to effectively implement and administer those demands.

I think that this collapse would be tragic for the many millions of custodial parents and their dependent children who currently receive or are in need of basic child support enforcement services.

Thank you, Senator.

Senator MOYNIHAN. All right.

[The prepared statement of Ms. Burke appears in the appendix.]

Senator MOYNIHAN. Just a little detail. Is it not true General Burke that in Texas the earnings, if you want to put it that way, from the child support go right back into the program?

Ms. BURKE. Yes, sir, a portion of them do.

Senator MOYNIHAN. Is that common? Does it happen in Maine?

Ms. BURDICK. Yes.

Senator MOYNIHAN. I mean that is——

Ms. BURKE. Our legislature has been increasingly generous with us in our ability to retain those earnings to run our program.

Senator MOYNIHAN. Congratulations. But we are going to have to get these specifics. We will.

Mr. Hogan, clear it all up. What is it you want now? You all have a hearing. You are all living in the same world, I think. I get that feeling. You know, from Austin to Augusta is a long way, but you seem to be saying the same thing.

Now let's see how well they do it in Olympia, WA.

STATEMENT OF DAVID A. HOGAN, DIRECTOR, WASHINGTON STATE OFFICE OF SUPPORT ENFORCEMENT, OLYMPIA, WA

Mr. HOGAN. Thank you, Mr. Chairman. My name is Dave Hogan. I am the child support director for the State of Washington. I am also the president-elect of the National Council of State Child Support Enforcement Administrators.

Senator MOYNIHAN. Congratulations.

Mr. HOGAN. Thank you, I guess. I assume office October 1st. So I am looking forward to that opportunity.

I would like to mention that the council has had a joint task force with APWA for the last year, under the able leadership of Commissioner Jackson.

Senator MOYNIHAN. Yes.

Mr. HOGAN. We would like to strongly support Commissioner Jackson's testimony before you today. The items that he has discussed with you are consistent with the council's view of appropriate actions within the program.

I would like to focus my comments today, Senator, on the medical support enforcement area. As Commissioner Jackson——

Senator MOYNIHAN. Go ahead. I mean we have heard about that today. Haven't we?

Mr. HOGAN. Yes, Senator.

This is an area as Secretary Barnhart indicated earlier today that the States have been very active in obtaining orders for child support which include medical insurance coverage where available for the absent parent.

However, there are difficulties under the current Federal legislative scheme and enforcing of those orders. I would like to spend a few minutes describing that.

One item has already been touched on by Commissioner Jackson. In the last few years many States have adopted a legal process to carry out congressional mandates in the medical support enforcement area. A number of States have laws which require parents to provide medical insurance when it is available through employment; and many of the States have a process very similar to wage withholding that allows a State through formal notice to the employer to enroll the child for medical insurance when the absent parent fails to do so.

So it is very similar to wage assignment and it is a process that the States have adopted to basically have an enforcement remedy to enroll the child.

However, many of the employers are responding that they are exempt or not permitted to comply under Federal statute. The first category of employers has already been mentioned in previous testimony, are those employers who are self-funded in part or in whole by the Federal Employee Retirement Income Security Act. We believe there are two sections of that Act that should be modified to reflect congressional intent to enroll children where there is an absent parent involved who has medical coverage available. Again, we have been working with APAA and NGA and other groups to bring those Sections to your view and consideration.

This is an important issue in that more than half of the employers in our State and we believe in other States we have talked with are in fact insured or operate under this Federal Act. So this is a large number of employers nationwide that are currently not able at the State level to enforce medical orders.

Senator MOYNIHAN. Yes.

Mr. HOGAN. So this would be an important area, we believe, for your review.

The second area has to do with Federal civil employees. When legal process is served on Federal agencies for enforcement of a child support order requiring a parent or civilian employee to provide dependent health insurance Federal agencies often respond that they are prohibited by Federal statute and regulation from complying with this legal process. The statutes they cite are 5 U.S. Code 8905 and 42 U.S. Code 662.

Under the first section a Federal employee is allowed to enroll a family member in a health benefit plan and it allows a former spouse to enroll the dependent within 60 days after dissolution. But there is no provision in this statute for enrollment by a State child support agency of a child at a later date.

Senator MOYNIHAN. Do I see any recognition, that is where this problem comes in, where the State says that should be part of this arrangement and ERISA does not accommodate that?

Mr. HOGAN. Right.

Senator MOYNIHAN. Sinking in slowly.

Mr. HOGAN. Federal agencies are also responding in a similar fashion because of the current statutory scheme. It is in addition to the self-insured employers.

Senator MOYNIHAN. Yes.

Mr. HOGAN. The last area I would call to your attention has to do with the military. This is perhaps the most cumbersome process we currently have for enrollment. In large part it is due to the military identification or ID process which requires a fairly detailed review of identification and military dependents. But we believe also that this is an area that would benefit from some congressional action, primarily in clarifying that military dependents where the active duty member has not enrolled the child in medical coverage that the State agency or county agency involved in the child support program could work more effectively with the Defense Department in having that child enrolled for medical coverage under the benefits provided military employees.

Senator MOYNIHAN. That sort of surprises me. You would think the military would be pretty routine about things like that.

Mr. HOGAN. For wage withholds, our experience is they are very cooperative and pursue that very vigorously in their response. We have a number of military bases in our State. When the absent parent is unwilling to enroll their dependent it is a very difficult process for us and the custodial parent. You basically have to go to the base or installation of that branch in service, attempt to obtain the ID and then subsequently enroll the child.

So, again, I think an area that is in need of additional clarification from Congress.

Senator MOYNIHAN. All right.

Mr. HOGAN. We believe with these changes that the States would have greater opportunity to in fact carry out your intentions and desires in the medical insurance area and we will work closely with Commissioner Jackson and others to bring those items to your attention.

Senator MOYNIHAN. Okay. You are going to be around that table, too.

Mr. HOGAN. I hope so, Senator.

Senator MOYNIHAN. Okay.

And you are going to be President, so fine.

Mr. HOGAN. Thank you.

Senator MOYNIHAN. Thank you.

[The prepared statement of Mr. Hogan appears in the appendix.]

Senator MOYNIHAN. Mr. Williams?

STATEMENT OF ROBERT G. WILLIAMS, PRESIDENT, POLICY STUDIES, INC., DENVER, CO

Mr. WILLIAMS. Thank you, Mr. Chairman.

Senator MOYNIHAN. Would you tell us, sir, forgiving my ignorance, Policy Studies, Inc?

Mr. WILLIAMS. Incorporated, that is correct.

Senator MOYNIHAN. Is a study?

Mr. WILLIAMS. A research and consulting firm based in Denver.

Senator MOYNIHAN. Right.

Mr. WILLIAMS. We specialize primarily in the area of child support.

Senator MOYNIHAN. Oh, you do?

Mr. WILLIAMS. Yes.

Senator MOYNIHAN. Then welcome. Doubly welcome.

Mr. WILLIAMS. Thank you.

My testimony concerns the review and modification requirements of the Family Support Act. I think as we have heard today these provisions are among the most challenging and far reaching of the Act with respect to child support.

We believe it is useful and timely for the committee to assess initial experience in testing these provisions. Congress wisely mandated that four demonstration projects be funded to test these modification provisions which have been conducted as you have heard in Colorado, Delaware, Florida, and Illinois.

In addition, what has not been mentioned is that the Department of Health and Human Services funded a demonstration project in Oregon to begin testing these provisions a year in advance of funding these other four projects. In fact, that project was funded 13 days prior to enactment of the Family Support Act.

So it is primarily with respect to the Oregon——

Senator MOYNIHAN. You got some data——

Mr. WILLIAMS. Pardon me?

Senator MOYNIHAN. You were beginning to get some data you mean.

Mr. WILLIAMS. That is correct.

We issued a final report. My company is the evaluator of the Oregon child support updating project and we also participate as technical assistance contractor in the Colorado and Delaware child support modification projects.

We issued a final report on the Oregon project several months ago. So it is primarily with respect to the Oregon project that I am testifying today, but also with respect to some of the preliminary results that have been published concerning the other four projects. We think that these results are illuminating for public policy in this particular area.

I think a key objective of the review and modification provisions was to ensure that child support orders are periodically updated to reflect the costs of child rearing. In all of the demonstration projects to date orders that have been modified have on average dramatically increased in average value.

For cases that were modified under the Oregon project, and if you have my prepared testimony and you want to look at figure 1, page 3——

Senator MOYNIHAN. I do.

Mr. WILLIAMS. The average child support order increased from $133 to $212 per month, a net increase of 59 percent. This is the average of both upward and downward modifications.

Preliminary results from demonstration projects in Colorado, Delaware, Florida and Illinois show average increases in child sup-

port orders ranging from 78 to 187 percent for AFDC child support cases and from 56 to 135 percent for non-AFDC child support orders. I believe Ms. Barnhart gave a summary statistic on that earlier today in this hearing.

Now as with Oregon these increases apply only to those fraction of cases that were actually modified in all States. Also, however, a large proportion——

Senator MOYNIHAN. What is that fraction in round terms?

Mr. WILLIAMS. Okay. It depends on how you look at it.

Senator MOYNIHAN. Is there a lot of churning going on here?

Mr. WILLIAMS. I'm sorry?

Senator MOYNIHAN. Is there a lot of churning as they say?

Mr. WILLIAMS. Not churning. There is a lot of activity that is required to determine which kinds of cases are appropriate for review and then of the cases that are appropriate which ones should actually be subject to modification.

If you look at Table 1 that is in my prepared testimony—

Senator MOYNIHAN. Table 1, page——

Mr. WILLIAMS. I am looking myself.

Senator MOYNIHAN. Oh, here it is, page 8.

Mr. WILLIAMS. Page 8. You are faster than I am.

There is a big difference between AFDC cases and non-AFDC cases. Roughly speaking, about 40 percent of the AFDC cases are not even reviewed. They are selected and looked at but they are screened out. Why? Because they are inappropriate for review. A good reason for that would be that the youngest child is within 6 months of attaining the age of majority. So that order is not going to last much longer. You do not want to bother to go through the review process. You are unable to locate or some other factors.

Then if you get down to the last three rows and you see that of the cases that are reviewed about half actually got modified or were in process at the end of the project, the other half either had no change or there was actually a downward modification indicated by the data and the agency did not proceed because the obligor was not cooperating.

So that is an example of how the process has worked on the AFDC side in Oregon. On the non-AFDC side I would say a very surprising finding has been that a relatively small fraction of the custodial parents have requested a review of their case, or for that matter custodial or noncustodial parents, have requested reviews of their cases.

In Oregon that fraction was only 16 percent of all cases. Now there is some early indications from Delaware and Colorado that at least in those two States those proportions are going to be substantially higher, but still well less than 50 percent, at the highest more like a third.

Senator MOYNIHAN. What are you telling the subcommittee? Are you saying that people are satisfied?

Mr. WILLIAMS. No, they are not satisfied by any means. I think there are two explanations, and these are consistent across the projects, that are given by custodial parents. One is if the obligor is paying they do not want to rock the boat. They do not want to jeopardize child support coming in no matter how poultry it may be. If the obligor is not paying they think that it is futile to go in and

modify the order because zero percent of $200 is still nothing, even if the order is only $100 now.

So those were consistent responses that were given. I think in addition that there is a public notion of child support order is that they are like fixed rate mortgages. This is a public perception that has to be altered. That is not the legal theory of child support orders. But that is a public expectation that is being fought.

Senator MOYNIHAN. We will alter that public perception once we get the expectation that there can be such a thing as a child support to begin with.

Mr. WILLIAMS. Right.

Well, I believe that is true. I believe that as you go through this process in part what you are doing is educating parents on the need to keep child support orders updated as their circumstances change.

Senator MOYNIHAN. Yes. We are never going to learn much in this committee, but the idea that child support is a legal obligation much less an ethical imperative and so forth has got pretty fuzzy. As I say, in my dear State of New York they say you cannot do that, that is an invasion of privacy. The rights of the child is against the privacy of the adult, you know. There is a culture out there that said, do not do it.

The AFDC culture said do not do it. If I am wrong, tell me. Ms. Burdick?

Ms. BURDICK. You are absolutely right. We have tried to use a new form at the time of AFDC application for acknowledging the paternity and our advocacy groups are outraged at moving so quickly.

Senator MOYNIHAN. It breaks your heart. But, you know, there it is. That will teach you.

Mr. Williams, I am sorry.

Mr. WILLIAMS. Thank you.

I would like to point out also that in all States having these demonstration projects a large proportion of modified orders have included a first-time provision requiring health insurance coverage on behalf of the children. So we are not just talking about a financial update in the order; we are also talking about updating the order with respect to health insurance coverage. So these increases have been fairly sharp in all States.

Now another objective of review and modification provisions is to improve the equity of child support orders and this is a very interesting and somewhat controversial provision of the Family Support Act.

States are required to adjust child support orders in relation to their child support guidelines, even if that adjustment is downward. Now in Oregon 19 percent of all modifications were downward and agency staff came to perceive the modification process as being more fair than if the State only pursued upward modifications.

However, initial data from the other four project States show that these States are proceeding with a much smaller fraction of downward modifications than Oregon has. Moreover, States which unlike Oregon have laws or traditions establishing a legal attorney/client relationship with custodial parents will have difficulty

complying with this requirement for downward modifications as well as upward modifications.

From all the demonstration projects there are findings that many more cases must be screened and reviewed and ultimately modified and we have gone through those figures.

Now another issue that I just wanted to touch on very quickly is that modifications are taking a substantial amount of elapsed time to complete as we have heard several times—6 months on average and I have a chart on that on Figure 2, page 6, which shows the elapsed times in Oregon. These are obviously shorter if the parties consent to a modification and longer if it has to go to a full hearing.

We concur with the earlier testimony that certain of the Family Support Act notice provisions contributed to this lengthy processing time. These notices were explained earlier. Basically, there is a notice that says you have to give 30 days advance notice before—and this is the troublesome language—commencement of a review for a State.

What they want to be able to do is select a case, start the review, give parties maybe 30 days to provide information for the review. But they want to go ahead and start it. There are a lot of economies you can gain by doing that.

There is another notice requirement that says that after you complete the review and presumably before you start legal action you have to give parties 30 days to challenge this administrative finding that is going to have no legal force. That has also been very troublesome and confusing. By the way, we view these as being fine tuning kinds of efforts rather than some kind of basic rewrite of the whole provision.

Finally, based on steady-state observations that we observed, operations observed in the Oregon demonstration project, it does appear that the review and modification provisions have the potential to be highly cost effective.

As shown in Figure 3, page 10 of my written testimony we estimated that the steady-state benefit cost ratio of this whole process to be more than four to one in Oregon overall, more than six to one for the State, and more than two to one for the Federal Government, which we think is particularly significant given the discussion today about the Federal Government being in deficit on this program or having outlays that are greater than the income.

In part these results were achieved paradoxically because of the low volume of requests for reviews in non-AFDC cases, which enabled the State then to focus its efforts on AFDC cases which obviously returns money directly to the government. In other words, the fact that few non-AFDC cases requested a review meant that most of the Agency attention went to reviewing and modifying AFDC cases.

Senator MOYNIHAN. Right.

Mr. WILLIAMS. As yet, there are no cost effectiveness data, no cost effectiveness data available from the demonstration projects in Colorado, Delaware, Florida and Illinois. But we believe that the results from the Oregon project are encouraging. They suggest that a systematic review of child support orders can make these orders

more fair and more equitable, at least for those orders that are actually reviewed by the State.

The Oregon results also suggest that the Family Support Act's review and adjustment provisions can be implemented in a way that is cost effective for taxpayers at both the State and Federal levels.

Senator MOYNIHAN. Well we thank you very much. You are engaged also for the other four. You are evaluating the other four.

Mr. WILLIAMS. We are involved in the technical assistance for the Colorado and Delaware projects. There is another firm, Caliber Associates, which is the evaluation contractor on behalf for all four of those projects.

Senator MOYNIHAN. So I suppose it is going to be coming in. That is the way you learn things, one step at a time.

[The prepared statement of Mr. Williams appears in the appendix.]

Senator MOYNIHAN. Mr. Hammond, you are the anchor man here, the anchor person. What have I said?

Mr. HAMMOND. I am.

STATEMENT OF ULYSSES HAMMOND, REPRESENTING THE NATIONAL CHILD SUPPORT ENFORCEMENT ASSOCIATION AND THE NATIONAL CENTER FOR STATE COURTS, WASHINGTON, DC

Mr. HAMMOND. Good morning, Mr. Chairman.

Senator MOYNIHAN. No, no, it is afternoon.

Mr. HAMMOND. Good afternoon, Mr. Chairman. The time is getting away from us here.

I am Ulysses Hammond, executive officer of the Courts of the District of Columbia. I, too, would like to ask that my more lengthy remarks become a part of the record.

Senator MOYNIHAN. Of course. They will be in the record as if read.

Mr. HAMMOND. On behalf of the Conference of State Court Administrators, the National Center for State Courts, and the 1500 members of the National Child Support Enforcement Association and its board of directors, I would like to thank the Senate Finance Subcommittee on Social Security and Family Policy for the opportunity to provide our perspective on the implementation of the Family Support Act of 1988, along with our concerns and recommendations.

Senator MOYNIHAN. Do let me interrupt you.

Mr. HAMMOND. Sure.

Senator MOYNIHAN. Just long enough to say Ms. Burdick has to leave. We want to thank her for coming all the way. We are running far behind. You are closer to home, of course.

Ms. BURDICK. I am sorry to have to leave.

Senator MOYNIHAN. Thank you.

Mr. HAMMOND. Child support enforcement agencies and the Nation's courts have exhibited substantial progress with a three-fold increase since 1978 in the location of absent parents, the adjudication of paternity and establishment of child support obligations. We are pleased to report that in fiscal year 1989 a total of $5.2 billion

in child support was collected and over 1.6 million absent parents were located.

Despite these advances we are aware that there are large numbers of children for whom child support has not been obtained. We fully embrace the goal of providing the children of our Nation with appropriate financial support from their parents.

COSCA and NCSEA support the public policy objectives reflected in the Family Support Act. We agree with these requirements for immediate income withholding, mandatory use of guidelines, program performance standards, review and modification of support orders and the mandated development and implementation of statewide comprehensive automated systems. We look forward to improving program performance as these requirements are fully implemented.

This subcommittee is particularly interested in feedback regarding immediate income withholding, review and modification of support orders, medical support enforcement and program performance standards. My remarks, Mr. Chairman, will focus on these areas.

Mr. Chairman, as you know, last fall child support enforcement agencies and courts were required to implement immediate income withholding for all orders established or modified on IV-D cases. We believe this requirement has increased the efficiency of the collection process on routine cases and has done much to ensure that children receive regular financial support.

While it is too early to report hard data, the anecdotal evidence is very positive. There is less consensus regarding the extension of immediate income withholding to all cases on January 1, 1994. Non-IV-D cases are handled by private attorneys and by parties themselves, pro se.

The processes States implement to ensure that income withholding is initiated in non-IV-D cases will either have to rely on the parties to prepare and submit the appropriate documents or the courts will have to assist them in their preparation.

Moreover, in many States once the income withholding order has been issued, payments will be routed through the courts and distributed to the custodial parents. This will have a dramatic increase on the workload of already burdened courts.

Since these are non-IV-D cases there will be no Federal funding available to assist the courts in expanding their resources in order to meet the increasing demands of the workload. We are concerned that without the availability of Federal funding additional resources will not be forthcoming and the full benefits of expanding immediate income withholding to non-IV-D cases will not be realized.

Senator MOYNIHAN. Ms. Burke, does that resonate with you?

Ms. BURKE. Yes.

Senator MOYNIHAN. You are the lawyers here for us.

Mr. HAMMOND. Furthermore, Mr. Chairman, the level of service courts are able to provide for IV-D cases may suffer. We question the need for two separate child support systems—that is, IV-D versus non-IV-D, and ask the subcommittee to consider allowing States to merge these cases.

Senator MOYNIHAN. Now that is an interesting idea.

Mr. Hogan?

Mr. HOGAN. I'm sorry, sir?

Senator MOYNIHAN. What do you think about the notion of merging the two child support modes?

Mr. HOGAN. I do not have an immediate reaction, Senator. It is something I need to think about.

Senator MOYNIHAN. Take it away with you.

Mr. HOGAN. Major resources, I think, for the non-IV-D cases on how many they are and what impact that would be on the court systems in the States.

Senator MOYNIHAN. Well take the question home with you.

Sir?

Mr. HAMMOND. Lastly, in the area of income withholding, States are reporting a disturbing high rate of employer noncompliance. Employers often ignore income withholding orders or fail to remit the support payments to the court or IV-D agency on a timely and regular basis.

We suggest that the subcommittee ask the Federal Office of Child Support Enforcement to commission a study to determine the extent of this problem and recommend effective solutions.

With respect to review and modification of support orders, let me first state that COSCA and NCSEA support the basic premise that support orders should be periodically updated to ensure that the amount of required support is appropriate to the needs of the child and the parents' current circumstances. We further support the addition of periodic updates to the array of services offered by the IV-D program.

We have some significant concerns, however, Mr. Chairman, with regard to the way in which the requirement is being interpreted by the Federal Office of Child Support Enforcement.

The OCSE has concluded that the Family Support Act requires States to initiate reviews on all AFDC cases without the request of a parent or another IV-D agency and to complete such reviews prior to October 1, 1993. We do not believe that OCSE has correctly construed the statutory requirement and we believe that Congress intended all States to have the benefit of the final reports of the four demonstration projects authorized by the Act prior to the date on which all States would be required to implement these massive projects.

We also hasten to point out that OCSE's construction of the statute requires the States to go forward without the benefit of final regulations. Timely regulations are extremely important to States, especially when States must pass legislation to implement the mandates.

We request that Congress provide direction to OCSE regarding the intent of the statute in this area. I have attached to my testimony NCSEA's comments to the proposed regulations which offer further detailed discussion of our concerns.

Secondly in this area the OCSE's position is that State IV-D agency and court personnel should have no difficulty advocating for either parent in downward modification cases. While we agree that downward modifications should be available to non-custodial parents, we do not believe that IV-D agencies, IV-D attorneys, and court personnel should be required to act as their advocates in

modification proceedings. Neither are we convinced that Congress intended such a result.

A fair reading of the Family Support Act would allow States to comply by conducting a review of an order at the request of an absent parent, notifying the absent parent of the outcome of that review and advising the parent as to how one might initiate a modification proceeding pro se or through an attorney. Therefore, again, we ask Congress to provide further direction to OCSE as to the intent of the Act.

Thirdly, we believe that the Act provides an over abundance of notice provisions needlessly lengthening the review and modification process. The notice and response provisions of the Act we estimate will lengthen the time it takes to get an order modified to over 6 months in most jurisdictions, even when the matter is uncontested.

We believe that the standard notice response and appeal provisions of State law and local court rules will adequately protect the parties. We thus ask the subcommittee to consider removing or streamlining the notice provisions contained in the Act.

Fourth, we strongly oppose the extension of the review and modification requirements to non-IV-D cases as contemplated by Section 103(D) of the Family Support Act. Courts lack the resources and automation to even identify these cases, many of which would involve orders entered over a decade ago, much less the resources and automation capabilities to conduct reviews, generate notices and conduct hearings.

Again, we do not understand the need to have parallel systems for non-IV-D and IV-D cases to conduct these activities. Individuals involved in these cases have the option to apply for IV-D services at nominal costs when seeking services that include a review and possible modification. This option, perhaps combined with strengthening public awareness and outreach requirements imposed on the State IV-D agencies should address the needs of the non-IV-D case load.

With respect to medical support enforcement, we support the goal of ensuring that each child receives the benefit of health insurance coverage available to the non-custodial parent at reasonable cost. Nevertheless, we reluctantly admit that, to date, most State and local IV-D agencies have not successfully complied with their statutory and regulatory responsibilities in this area.

One reason for non-compliance is simply the lack of resources. Once a parent is ordered to obtain and maintain coverage, most States lack all effective or efficient enforcement remedy. A few States, such as Minnesota, Iowa and Illinois, have enacted statutes that allow the court or IV-D agency to issue orders to a parent's employer, directing the employer to add the parent's children to the group insurance plan and to deduct the parent's contributions from wages.

This is much more effective than the contempt of court remedy available in other courts and in other States. The subcommittee may want to study the effectiveness of the Minnesota model as a possible national model. The more serious problem is that States are often unable to regulate group insurance plans which often

prohibit the coverage of children who do not reside with the insured.

We encourage the subcommittee to study this problem and to propose Federal legislation to prohibit such exclusionary clauses.

Finally, a short word about program performance standards. Both COSCA and NCSEA agree that States should be held accountable for meeting appropriate standards and that the Federal Government has a critical role in setting these standards and in auditing State programs.

In response to Section 121(A) of the Family Support Act, the Federal Office of Child Support Enforcement established a comprehensive set of performance standards effective October 1, 1989. As required by the Act, OCSE appointed an advisory committee to provide input from various perspectives. We complement OCSE for the process they employed in establishing these standards.

Nevertheless, we have some concerns with the detailed approach of the performance standard mandate contained in the Family Support Act, as well as the timing of its implementation. We prefer outcome oriented standards, such as the paternity establishment standards contained in Section 111 of the Act to the detailed time frame standards established by OCSE in response to Section 121 of the Act.

Outcome oriented standards are directly related to the goals of the program and are much easier for States to monitor. Detailed time frames will require courts and IV-D agencies to develop and implement complex monitoring and reporting mechanisms.

Moreover, we are convinced that a few States will be able to comply with the performance standards prior to full implementation of statewide comprehensive automated systems, again which must be operational by October 1, 1995.

Attached to my testimony also, Mr. Chairman, this afternoon is a resolution that was adopted by NCSEA's Board of Directors at its recent conference in Milwaukee. In the resolution NCSEA asks Congress to direct OCSE to defer sanctions or penalties against State IV-D agencies for failure to meet the Section 121 performance standards until such time as all States have implemented certified automated systems.

We believe that unless such relief is granted virtually every State will suffer a loss in Federal funding during a time when such finding is critically needed to implement the provisions of the Family Support Act.

Senator MOYNIHAN. Thank you, Mr. Hammond.

[The prepared statement of Mr. Hammond appears in the appendix.]

Senator MOYNIHAN. Again, I hear echoes of things we have heard all morning. We are going to have to have that meeting. Mr. Hogan, you are going to invite yourself.

Mr. HOGAN. Yes, sir.

Senator MOYNIHAN. You, Mr. Jackson. I think Mr. Hammond ought to be there, too. And if not, Cecelia Burke, get a posse together. Is that not what they do down in Texas?

Mr. Williams, we very much appreciate your analysis, very careful, very thoughtful, and we want to hear from you if you have something you think we should know about.

Senator Bradley has arrived and we want to get on now. So I am going to thank the panel and thank the absent Ms. Burdick. We very much appreciate this. We are hearing. We are beginning to hear.

Mr. HAMMOND. Thank you, Mr. Chairman.

Senator MOYNIHAN. The last witness is the Chair of the U.S. Commission on Interstate Child Support, Margaret Haynes; and our Committee on Finance has the distinction of having a member of that very Commission. Indeed it was an amendment by Senator Bradley that established the Commission. So, Senator Bradley, why don't you introduce Ms. Haynes.

Senator BRADLEY. Thank you very much, Mr. Chairman. I would like to welcome Meg Haynes to the Finance Committee. She is the Chairperson of the U.S. Commission on Interstate Child Support. As you pointed out, Mr. Chairman, I served on that Commission. I have had the great pleasure of participated with Meg in a hearing in New Jersey and I have been very pleased with the thoroughness with which she has addressed the issues.

As you know, Mr. Chairman, the interstate child support problem is very significant. In the 1988 Act, we tackled some of the problems such as making sure that we have paternity enforcement, ensuring uniform guidelines, and instituted immediate wage withholding. But the problem has persisted where people have been able to skip across the State line to avoid paying child support.

I remember at our hearing in New Jersey there were several witnesses who told their stories in great detail. They were very touching stories on one level and on another level they made me angry. They made me angry for two reasons. First, because a parent ought to support his child; and second they revealed the extent to which some parents will go to avoid supporting a child, even if the court has ordered it.

So I look forward very much to Meg's testimony. I know that she has several recommendations. As you know, 24-25 percent of all the child support enforcement cases are interstate and a surprisingly large number of those are never collected. I think that she will come forward today with some very interesting suggestions, not the least of which is a computer network that would allow us to begin to track and locate those delinquent parents.

So on the behalf of the committee I would like to welcome her.

Senator MOYNIHAN. That number, 24, keeps coming up in a sort of resident way—24 percent of the children born in New Jersey are illegitimate; 24 percent of the cases across the boundary; 24 percent of the children are poor. I mean we have a number here, and rising; 30 percent of the children born in New York State are illegitimate, 62 percent of those born in the District of Columbia.

Madame Chair, we welcome you.

STATEMENT OF MARGARET C. HAYNES, CHAIR, U.S. COMMISSION ON INTERSTATE CHILD SUPPORT, WASHINGTON, DC

Ms. HAYNES. Good afternoon, Mr. Chairman. I appreciate the opportunity to discuss with you the Commission's activities and its forthcoming recommendations, especially in those areas that impact on the four areas you have identified.

As you know, Congress created this Commission within the Family Support Act of 1988, largely at the urging of Senator Bradley. He is among the three congressional members on the Commission. The other two congressional members are Congresswoman Rockema and Congresswoman Canelli.

The Commission members represent all the players in the child support community—Federal and State legislators, lawyers, judges, parents, administrators and advocates. During our first year we have been going around the country collecting a wealth of information from people and organizations and we are now in the midst of the challenging process of taking that information and developing recommendations for our final report.

We met this past Thursday through Saturday here in Washington. I have recovered and gave tentative approval to a long list of specific recommendations. These recommendations will be the subject of testimony at a hearing we will be holding here on Capitol Hill on September 30.

On the basis of that testimony from parents and representatives of national organizations we will further refine our recommendations and hope to present to you and your colleagues a national blue print of reform in early 1992.

Senator MOYNIHAN. Very good.

Ms. HAYNES. I will be happy after my remarks to discuss any of these tentatives recommendations we have developed. What I wanted to do now is to go immediately to the topics which you have identified for today's hearing.

I am pleased to tell you that the Commission last week approved or took under advisement recommended changes in all four areas that you have identified. In the area of review and modification, it is the view of the Commission that States need additional tools to assist them in the review of orders for possible modification.

One problem that has arisen in the States is how to marry traditional case law on modification with guidelines. Most States have a standard that says you cannot modify child support orders unless there has been a substantial unanticipated change of circumstances. It is an uncertain area among the States whether the enactment of guidelines constitutes one of those changes.

So one of our recommendations that we are considering is that States have laws providing that variance from the guideline amount does constitute a sufficient basis for review, that the guideline alone is a sufficient basis.

Another consideration before the Commission is a recommendation that States provide that IV-D non-welfare custodial parents be able to opt out of the proposed modification process. That is what Bob Williams was talking about earlier.

Senator MOYNIHAN. Yes.

Ms. HAYNES. We feel that that approach would both protect the rights of custodial parents who do not want to be involved in the process as well as ensure the most effective use of Agency funds.

I should also mention, as Senator Bradley noted, that we have tentatively recommended the creation of a national computer network. Now this network would make available for modification of orders as well as establishment and enforcement—the fullest, most current address and income information available.

What we envision is a network that would allow States access to information on record with other States as well as with the Federal Government, so that you could broadcast requests for both income and locate information. You could direct it to a specific State or broadcast it to all the States. We are recommending specific turnaround times, no more than 48 hours.

In the area of income withholding, we have commissioned at the request of our congressional members at GAO study on interstate income withholding because one of the problems in this area is the lack of data that is available. We are also, to improve the tracking of parents ordered to pay support, have tentatively agreed to recommend revising the W-4 form. This has also come up in earlier testimony.

Senator MOYNIHAN. Yes. Yes, it did.

Ms. HAYNES. That has been piloted in the State of Washington. So David Hogan is very familiar with it. What we would be recommending is that the W-4 form be modified so that there be a place that an employee could indicate whether or not he or she is under a support obligation. If so, the amount of that obligation and to whom it is owed.

Employers would then be required to send this information to a State or Federal Agency to be added to the national computer network. Employers would also be required to immediately begin withholding based on the information on that W-4 form. So instead of always being one step behind as people move from job to job we would have withholding begin with the first pay check.

Now obviously there needs to be a way to verify that information. So through this computer network the information that the employee notes on the W-4 form would be broadcast to the States so that there could be verification as to whether or not the employee was giving accurate information.

States would be required to confirm the information by sending a federally designed income withholding notice to the employer.

We have several other recommendations in the withholding area. One problem now with interstate income withholding is that it involves two States. One of our recommendations is a Federal statute that would require States to have laws saying as a condition of doing business in that State an employer has to honor withholding orders issued by other States.

We also believe there needs to be more uniformity, so we are recommending a Federal definition of income that would be subject to withholding. Right now some States limit withholding to wages, others to all sources of income. We are suggesting a definition that would include any earnings or other periodic entitlement to money without regard to source. We believe this also would be an effective way to reach self-employed individuals.

In the medical support area we have heard a great deal of testimony regarding the problems parents have in securing health insurance for their children. We have also heard from States about the problems in enforcing medical support obligations.

We believe that support should include medical support. We have a number of specific recommendations. They include removing the Federal preemption of State regulations regarding the

availability of medical insurance. That has come up in previous testimony about the problems ERISA has posed.

Senator MOYNIHAN. Yes. We heard it again. Senator Bradley might want to know that. We have heard it over and over and over.

Ms. HAYNES. Another problem that we have heard about is discrimination in insurance policies where an employee cannot get coverage for a dependent unless the dependent resides in the same household as the employee. Obviously, that impacts on interstate cases but it impacts on intrastate cases as well.

So we are recommending that States be required to pass and use laws mandating the availability of health insurance coverage for dependents without regard to whether the dependent resides with the employee. Also requiring employers to notify custodial parents of employee health insurance coverage and of any changes.

In the area of outcome or performance measures, the Commission has under consideration a recommendation on developing incentive formulas for the States. We believe that these incentive criteria should be tied to performance and not to the amount of AFDC collections.

Presently in the incentive structure there is a cap based on the amount of AFDC collections. We have a tentative recommendation to eliminate that AFDC cap.

We also have a recommendation under advisement that would require the reinvestment of incentives and to the child support program. In some States that money goes back into the general State coffers to pave roads, build prisons. We believe the money should be rechanneled into the child support program.

Mr. Chairman, that concludes my report on the four topics that you specifically requested comment. I have attached to my statement a document that we previously issued which summarizes some general areas of reform that we are examining and I will provide the subcommittee a list of the decisions we made at our meeting this past week as soon as possible.

If you do not mind, I would like to just spend a few moments to explain why child support reform in the interstate area is so crucial.

Senator MOYNIHAN. Please do.

Ms. HAYNES. As Senator Bradley pointed out, the interstate cases are especially problematic. We have a nightmarish maze of different State laws, policies and procedures. The statistics on enforcement showed that while three out of 10 cases are interstate support collected is only about $1 in $10. So there is a huge enforcement discrepancy in the interstate cases which is much worse than in the local cases.

Our report to Congress will be very comprehensive. I think you will find it both practical and visionary. And I thank you for this opportunity to outline some of the recommendations in the areas that you have identified.

Senator MOYNIHAN. We thank you.

[The prepared statement of Ms. Haynes appears in the appendix.]

Senator MOYNIHAN. Obviously this was another one of Senator Bradley's good ideas. We have a real Federal problem here as well as a social problem.

Just in passing I am going to want to hear what your proposals are about eliminating archaic legal barriers and the remnants of the stigma of bastardy from parental establishment. There is a prize for that. I do not know what kind of prize.

As some of our earlier witnesses were saying, we were in the mid-1980's trying to act as if parenthood was an optional phenomenon. You could be a parent or you could not, depending on whether you wanted to say so or not. It is up to you. Whereas, biologically it is an irreversible reality.

My city of New York thought it was beastly to ask people to identify themselves as the parents of a born child lest their privacy be invaded, you know. The child does not get much consideration in these moments.

Commissioner Burdick in Maine is trying to do something about birth certificates. People say, no, no, you dare not ask who the father of that child is. Well who the hell says you cannot?

Ms. HAYNES. Well we have a number of recommendations in the area. The Family Support Act encouraged States to have civil acknowledgement procedures for paternity. We are going a step further now and asking Congress to require States to have such a process.

Senator MOYNIHAN. Good.

Ms. HAYNES. We also are encouraging outreach at hospitals, prenatal programs, so that parents will realize the benefits of child support establishment early on. We are recommending nonadversarial proceedings, recommending adding a line to birth certificates for the signature of the father.

Senator MOYNIHAN. Good.

Ms. HAYNES. So that the father's signature would be a rebuttal presumption of paternity. We have a number of recommendations that are specifically targeting teen parents. Because teen pregnancy is an increasing problem in this country.

Senator MOYNIHAN. Boy do we look forward to that. The culture is at issue here. There are health districts all over New York City where 80 percent of the children born are illegitimate. So, I mean, we used to have, there used to be one absolute rule. I am sure you, Ms. Haynes, know that. The first rule the anthropologists ever deployed, was the universal law of legitimacy. Every child has a male parent. I mean every Eskimo child, every Persian child, every Panagonian child, every child in Patterson, NJ.

That is something they thought they would figure out, the first thing they found out about everybody in the species. And somehow it started disappearing in the United States. That suggested, you know, maybe a prelude to something. I think it is central.

But thank you.

Senator Bradley?

Senator BRADLEY. Thank you, Mr. Chairman.

Meg, if you were going to say, as you see it now having worked on the Commission and running it and coming up with a report, what are the two or three things that we really should try to fix?

Ms. HAYNES. I think locate problems have come up again and again in these interstate cases, the lack of uniformity, especially in the interstate areas. It is a maze that parents have to go through

and that attorneys and caseworkers go through, and then the whole enforcement area.

Senator BRADLEY. You mean to be eligible? How would we get at uniformity if there are State laws?

Ms. HAYNES. Well a number of our recommendations are asking Congress to mandate that States have certain laws, through Federal mandate. You have gone a far way in doing that with the 1984 and the 1988 Act.

Senator BRADLEY. How would the computer system work? In other words, how would that facilitate enforcement? You would track a person by Social Security number?

Ms. HAYNES. Well it would help in a number of ways. With regards to locate all IV-D orders, all State child support orders, would be on this central registry as well as any other cases that opted in. We would have a computer link so States could share asset information as well as address information so that you could go directly to New Jersey's Department of Motor Vehicles to find information through this computer network.

With the enforcement, it would allow the W-4 information to be plugged into this so that again you could track someone as soon as they move from job to job.

Senator BRADLEY. What are the time lags that are now involved?

Ms. HAYNES. Well there is no good data. In the enforcement area we know that there is a big difference in the enforcement in intrastate and interstate, 58 percent of local cases get some type of regular payment as compared to 48 percent of the interstate.

We have heard just anecdotal information that income withholding right now, although it is supposed to take 45 days from start to finish, often takes 3 months or longer. On the ERISA process it has been called a black hole.

Senator MOYNIHAN. Yes.

Ms. HAYNES. Parents send the cases in and they do not—I mean it really varies among the States as to when you get any result. So there is no hard and fast data, but it is obviously a big problem.

Senator BRADLEY. Thank you very much for your testimony and your chairpersonship.

Senator MOYNIHAN. We are going to have to have a hearing when these results come out.

Ms. HAYNES. Yes, I hope so.

Senator MOYNIHAN. I look forward to that. We thank you for coming, Madame Chair.

We thank all of our very patient witnesses and guests. You would not know this is about children. Usually we only have about five people here at this hour. But as I say, at 10:00 you could shoot deer in the hallways, so we were not talking tax exemptions.

Thank you very much.

Ms. HAYNES. Thank you.

Senator BRADLEY. Thank you.

Senator MOYNIHAN. Thanks to Margaret, thanks to Paul Offner. Thank you.

[Whereupon, the hearing was adjourned at 1:55 p.m.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED

PREPARED STATEMENT OF JO ANNE B. BARNHART

Mr. Chairman, members of the committee, I am pleased to be here today in this second hearing concerning implementation of the Family Support Act of 1988. In April of last year, with your support, I accepted the President's challenge to coordinate Federal welfare programs and implement the Family Support Act of 1988. At that time, and in these very chambers, I emphasized my belief in the reforms contained in the Act and my determination to bring about timely implementation. My enthusiasm and my determination remain sound. In fact, they have grown.

I have made it my primary priority, and the priority of the Administration for Children and Families, to take the mandates contained in the Family Support Act and to convert those ideas and requirements into programs that support America's needy families and help them move toward self-sufficiency.

At the July 8th hearing, I addressed our progress in implementing the Job Opportunities and Basic Skills Training Program. In this hearing, I intend to focus on provisions and activities related to Child Support Enforcement. The Family Support Act made a number of powerful new tools available to the Child Support Enforcement program. These tools are designed to help States in their efforts to keep children out of poverty by ensuring that absent parents remain responsible parents.

I understand your interest and concern with specific provisions, including periodic review and modification, immediate wage withholding, medical support enforcement, and audit. I am prepared to address any questions you may have concerning these important components of the Child Support Enforcement Program.

I wish that I could tell you today that conditions are fast improving for our nation's children. But, the sad truth is that by and large they are not. In spite of our legislative and program efforts, children remain the poorest segment of our society.

As you well know, Mr. Chairman, nearly 65 percent of all poor families with children are headed by a single parent, and most often this parent is the mother. Furthermore, the percentage of children in the U.S. that are raised by a single parent has grown to over 25 percent. These statistics have clear implications. Our society is producing more and more single parent families. And the children of such a household are twice as likely to live in poverty as the children of a family with both parents present.

This is not surprising. Single parents generally have fewer resources to meet the demands of a family, especially when that single parent is a woman. Family instability and the lack of family formation certainly affect the economic circumstances of our nation's children. That is why stabilizing families through child support enforcement is a central component of our efforts to reduce poverty among children.

Through landmark legislation in 1975, amendments in 1984, and then the Family Support Act of 1988, we have made a clear statement of intent regarding certain rights and responsibilities within families.

- First, children have the right to support from their parents.
- Second, both parents have a responsibility, an obligation, to support their children to the best of their abilities.
- And third, the government has both the right and the responsibility to enforce the payment of child support obligations.

Unfortunately, translating legislative intent into programmatic success has been difficult. It was necessary for the Federal Government to provide States with tools for enforcing child support as well as guidance on the use of those tools. Still, it is

the States who must shoulder the burden of implementing and running programs that take advantage of those tools to bring about timely payment of child support obligations.

To encourage States to implement effective Child Support Enforcement programs, Federal direction has taken a two-pronged approach.

First, we offer policy guidance, technical assistance, and generous financial inducement to States. The Federal government pays the lion's share of State and local administrative costs related to Child Support Enforcement and fully funds performance related incentive payments. Support enforcement is a highly profitable activity for our State and local partners. The direct financial return to States this year is estimated at some $400 million over and above their share of program costs.

Second, we audit and otherwise monitor State performance. den States are not in substantial compliance with federal requirements they are penalized.

Since passage of the 1984 amendments, we have conducted 112 audits of State Child Support Enforcement programs. Of the 99 final audit reports issued to date, almost two-thirds have found substantial noncompliance with Federal requirements. The sorts of operational deficiencies we have found are not mere technicalities; they are serious inadequacies in the core program functions of locating absent parents, establishing paternity, and obtaining and enforcing support orders.

Under the law, such a finding triggers a statutory audit penalty assessed against the Federal share of grants to the States for Aid to Families with Dependent Children unless the deficiencies are remedied in a corrective action period. Most States have reacted in a positive way to this financial threat; three-fourths of those failing audits initially were able to meet Federal requirements when audited at the end of their corrective action period. Others continue to fall short and, as required by law, we have assessed audit penalties totaling over $10 million.

A number of challenges remain before us in Child Support Enforcement. Still, Child Support Enforcement has come a long way since the inception of the program. Each year new records are set in the number of absent parents located, paternities established, support orders put in place, and dollars collected. In fiscal year 1990, child support collected through the program authorized by title IV-D of the Social Security Act was just over $6 billion, a 15 percent improvement over the prior year and two and a half times the amount collected when the 1984 Amendments were enacted.

Yet, as you know, we are still far from the day when the Child Support program is fully effective:

- when States are able to work together to solve the seemingly intractable difficulties of Interstate cases;
- when processes are streamlined to speed the delivery of support to needy families;
- when the millions of children, who are morally and legally entitled, can look forward to regularly receiving fair and full child support payments.

We are engaged in a challenging task: retooling a program that cuts across the federal, state, and local levels of government and involves the executive, legislative, and judicial branches. We can, and will continue to enunciate policies, and demonstrate better ways of collecting child support while States adopt their own rules and enabling legislation. But, it is of little value unless the available tools and techniques are widely known and used on a day-to-day basis. And as I mentioned, our audits show that progress in this regard is painfully slow. We have a long way to go, but the momentum is in the right direction.

Through your passage of the Family Support Act in 1988 you built upon a foundation established in 1975 and significantly strengthened in 1984. From its inception, the Child Support Program has been a partnership between the Federal government and the States to establish paternity, when necessary, and to collect support from parents who are legally and morally obligated to support their children. The federal role in this process is to help States develop, manage, and operate their programs effectively and according to the rules of Federal law.

Title IV-D of the Social Security Act as enacted in 1975 created a framework within which support enforcement programs vary from State to State. Typically, the program is administered through State and County Social Service Departments. Many States have cooperative arrangements with prosecuting attorneys, other law enforcement agencies, and officials of the family or domestic relations courts to carry out program functions at the local level.

Through the Child Support Amendments of 1984, the Administration and the Congress, working in bipartisan unity, sought to close the enormous gap between the dollars owed the children of America, and the dollars paid by financially respon-

sible parents. Among many other changes, the 1984 legislation required all States to use proven enforcement methods and to make their services available to all parents who need them.

By 1988, it was clear that too many needy children were still going without support and that the standards and mechanisms for providing support were incomplete. States were progressing but that progress was slow. New, more sophisticated tools were needed to provide consistency in support orders and to ensure prompt, equitable payment. The Family Support Act of 1988 filled the gap by including:

- mandatory wage withholding
  to ensure that support is paid on time *every time;*
- mandatory guidelines
  that establish, as a rebuttable presumption, a uniform method for determining the amount of support to be paid;
- periodic review and modification
  to guarantee that support orders will change over time to reflect changing circumstances and the child's needs;
- program standards
  that provide clear guidance for effective operation of State programs; and
- Statewide automation
  giving States the ability to process the mass of data involved in support enforcement quickly and accurately.

One of our primary responsibilities has been to ensure that all of the enforcement tools required by Federal law are actually in place. This means elaborating, through Federal regulations and other policy issuances, the provisions of the Family Support Act so that States can adopt the necessary enabling legislation, policies, and procedures.

In addition to the regulations and procedures, we have undertaken a number of studies and demonstration projects mandated by the Act. These include:

- projects to examine how to best carry out periodic review and modification of child support orders;
- a study on the cost of raising children;
- the Parent's Fair Share Demonstration, which targets employment and training services to non-custodial parents who are unemployed or otherwise unable to meet their child support obligations;
- a study on making income withholding mandatory in all cases; and
- demonstrations intended to increase compliance with the child access or visitation provisions of court orders.

We are working hard to expand our capability to provide training and other forms of assistance to States who need help in strengthening their support enforcement programs. This assistance can take a variety of forms, and will focus on basic areas such as automation and resource allocation as well as implementation of the Family Support Act. We are interacting with State and local program personnel to ensure that we stay in touch with program needs and concerns. And, we have established a judicial advisory committee, with a number of eminent jurists, as a means of facilitating a continuing, productive dialogue with the State and local judiciary.

We realize, Mr. Chairman, that the tools of the Family Support Act are a means to an end and not the end itself. The goal of the Child Support Enforcement program, and the purpose of the tools provided to that program, is to reduce poverty among the poorest segment of our society, children. Yet the regulations, demonstration projects, and technical assistance efforts represent a necessary first step, a reference point from which States can take action.

Bringing the promise of the Family Support Act to fruition and increasing family stability to keep children from growing up in poverty will require action—sustained, vigorous, informed action on our part and on the part of our partners in State and local government. Working together, I believe we can make a difference, for children.

I would be happy to answer any questions you may have at this time.

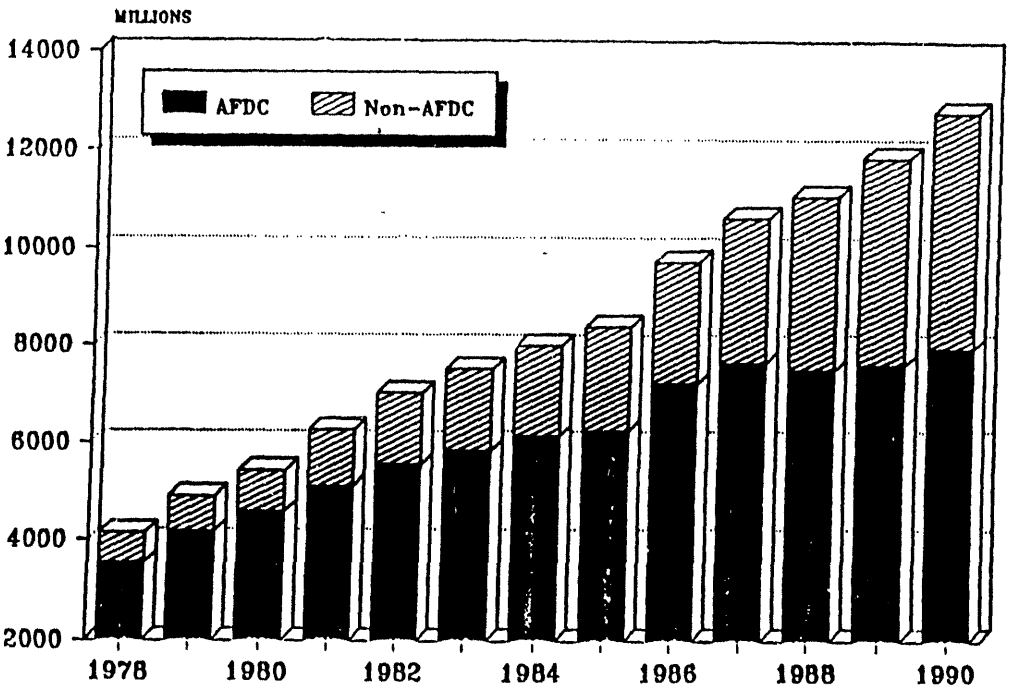
UNPUBLISHED 1988 CENSUS DATA

Total women with children from an absent father	9.6 million
Total women with awards	5.6 million

UNPUBLISHED 1988 CENSUS DATA—Continued

Percent with awards	58
Average amount of award	$2838
AFDC women with children from an absent father	2.4 million
AFDC women with awards	.99 million
Percent with awards	41
Average amount of award	$1914
AGE OF AWARDS for Total women with awards	
award 3 years old or less	49%
award 4 to 6 years old	26%
award 7 to 9 years old	12%
award 10 years old or older	14%

OFFICE OF CHILD SUPPORT ENFORCEMENT
TOTAL CASELOAD *

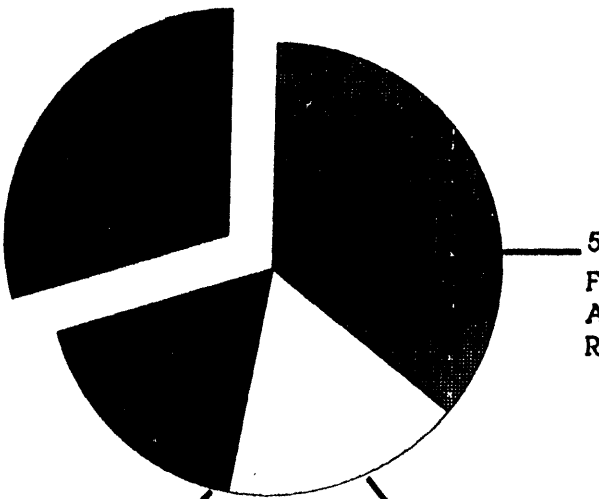


* DATA NOT RELIABLE

10.0 Million Women in 1989 with Children Under 21 Where the Father Was Not Present

42% No Support Awarded

58% Support Awarded



51% Full Amount Received

24% Less than Full Amount Received

25% Nothing Received

Note: Census Bureau Survey.

PREPARED STATEMENT OF SENATOR BILL BRADLEY

The amount of delinquent child support payments is a national disgrace. Annually, more than 11 million children are awarded or voluntarily promised nearly $15 billion in support. However, it is estimated that these children do not receive a full one-third or $5 billion of that money due to non-payment and problems in the system. A similar number of children have not even been ordered child support because of problems they encounter locating absent parents and establishing paternity.

Children whose non-custodial parent resides in a different state encounter additional problems which only aggravate their situation. It is estimated that 24% of all child support cases are interstate. Of these 2.3 million cases, almost half have not been awarded child support. Those with awards do not receive support regularly, 28% report that they never receive support; 13% report that they seldom receive support; and 11% report that they occasionally receive support.

A 10-year study of divorce in California concluded that, on average, divorced women and their children experience a 73% decline in their standard of living after divorce, while their former husbands experience a 42% rise.

These problems affect us all. As taxpayers, we have to fill the void left by non-support. As citizens, we suffer directly from the detrimental effects which have been shown to result from non-payment of support. We need only look at our inner cities and talk with single, working mothers across this country to learn of the pressures they face in raising these children.

In 1988, I introduced legislation which established the U.S. Commission on Interstate Child Support. Since that time, the Commission, of which I am a member, has been seeking ways to improve the situation of millions of children who depend on child support in this country.

The Commission will be presenting recommendations to this Committee in February, and I will submit legislation next year based on these recommendations. It is important to point out that the Commission has already agreed on a number of preliminary conclusions. These suggest that there is a great need for obtaining faster determinations of paternity; an up-to-date computer network would improve the child support system; certain revisions to the W-4 income tax form could improve child support payments and collections; and in interstate situations, more opportunities for adjudication should exist in the state where the child resides.

These are only a few of the conclusions which will be delineated in more detail as the date of the Commission's report approaches. I look forward to working with the Committee and the Commission to strengthen child support enforcement.

PREPARED STATEMENT OF SABRA C. BURDICK

Senator Moynihan, members of the sub-committee, I am Sabra Burdick, Director of the Bureau of Income Maintenance, Maine Department of Human Services. With me today is Colburn Jackson, Director of the Division of Support Enforcement and Recovery. Thank you for this opportunity.

Several weeks ago I appeared before this sub-committee in regard to the JOBS' portion of the Family Support Act of 1988. At the time I indicated Maine's support for the overall mission of the Act—to change the direction of Welfare in this Country—but I also expressed our concern about the effects of the economic downturn on our ability to comply with all of the Act's requirements. Those same concerns apply to the child support enforcement components.

When I was here in early July, Maine state government had just re-opened after a shutdown period caused by budget problems. Government is now open, but "business as usual" is not, a common phrase.

We are trying to cope with a flat economy and we are trying to learn to live within our means.

Some of the child support enforcement requirements included in the Family Support Act make this goal impossible. And it is within this context that I testify today.

You asked us to respond to 4 specific areas:

(1) Periodic updates of child support awards:
(2) Immediate wage withholding
(3) Implementation of the new provisions on medical support orders; and
(4) The need to change the system of accountability.

Before I do that, I would like to give you a brief picture of our current program.

Our IV-D program is currently handling in excess of 34,000 cases with current support orders; is in the process of establishing orders in another 7,500 cases (not

counting paternity cases) and trying to establish paternity and support orders in 8,000 additional cases.

In most—if not all—years since 1975 Maine has been 2nd or 3rd in the nation in AFDC related cost effectiveness. Until 1991 we consistently generated significant annual increases in our child support collections which rose from a little over 900,000 in 1975 to more than $38 million in 1990. (See attachment A) Also in recent years we have been among the top states in recovery of AFDC funds. Because of these and other accomplishments Maine has long been recognized as a leader in child support enforcement. Over the years innovative practices which have been developed and implemented in Maine have been highlighted by the Federal Office Child Support Enforcement and shared with other states to improve their child support enforcement programs. We believe that it is not a coincidence that many of the mandated practices contained in the child support enforcement amendments of 1984 closely resemble practices which were developed and utilized in Maine as early as 1975. Therefore we think our track record clearly shows that the state of Maine has always been diligent in meeting our responsibilities and has never been reluctant to implement any practice that would improve child support enforcement.

Our responses to your specific concerns and our recommendations, are not taken lightly. We are very much aware of our responsibility and believe that we have substantially achieved our goals over the years.

Even now in a time of restricted budgets we have attempted to meet the new requirements of the Family Support Act. At a time when the rest of State government is facing lay-offs, we were successful in advocating for 28 new positions. But this is far below the 100 new positions we think are necessary to begin to meet the requirements of the 1988 amendments and to deal with backlogs which have primarily resulted from the increases in the AFDC caseload over the past 18 months.

Now to comment in specific issues.

Periodic updates of child support awards require the cooperation and expertise of many state government entities.

Representatives of our Division of Support Enforcement and Recovery and the State Attorney General are currently working with the Judicial Branch to develop an expedited process which would better enable the state to carry out the federal requirement for triennial review and modification of child support orders. We are optimistic that this legislative proposal will be ready for the upcoming session of the Maine Legislature which convenes in January 1992.

Some of our biggest concerns lie with the triennial review and modification of support order which is required under the Family Support Act. According to federal officials, by October 1953 most of the 26,000 child support orders served by the Maine IV-D Agency which are more than 3 years old will have to have been reviewed and brought up to date in accordance with the State's child support guidelines. Anyone who requests a review of their support order would be entitled to it and some cases might be reviewed several times during the three year period. To handle the review requirement will mean reallocating a significant portion of the IV-D agency's resources from other essential work including establishing and enforcing child support orders. We presently don't have the staff to handle this huge additional workload.

Given the existing level of federal funding for child support enforcement and the state of Maine's limited finances we see little hope that state funds will be sufficient to meet the additional financial burden this requirement alone will impose.

Immediate income withholding with respect to Title IV-D cases has not yet caused the Maine Support Enforcement Program any significant problem. However, if state Title IV-D Agencies are to be required to become involved in immediate income withholding transactions in the so-called non-title IV-D cases in 1994 as is currently provided by law we would hope that the Congress would enact some mechanism whereby the states would be entitled to receive some federal funding to help defray the costs involved.

We have already taken many of the steps which will be necessary to put our title IV-D Agency in a position in which it will be able to carry out the mandates for increased medical support enforcement. We think this is a worthwhile undertaking and our Division of Support Enforcement and Recovery and our Third Party Recovery staff meet to see how they will be able to best assist one another in this endeavor. However, I would again reiterate that, like all other requirements the congress has enacted in recent years, this is a very worthwhile cause which will be time consuming, labor intensive and costly.

We have no complaints about the federal auditors or the procedures they use. We have always found them to be fair minded, well informed and most helpful in the development of our program.

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We believe that State IV-D evaluations should be based on outcome measures but not to the total exclusion of the processes involved. What may appear to be a simple uncomplicated performance indicator may be misleading unless it is interpreted in light of the underlying processes. [See attachment B—Our critique of the Downey Report Card especially on the use of Accounts Receivable in evaluating performance.] In evaluating a states performance there are a few basics than must never be overlooked and that should be given the most weight in any evaluation. These are:

(1) What percentage of the total case count have obligations established?

(2) What percentage of the obligated case count pay? How regularly do they pay.

(3) How many cases have had paternity established? What percentage is this of all the cases that need this service?

If a state is shown to be weak in any of these categories, then perhaps a closer audit would be required to analyze the problem and specify what needs to be done as a corrective measure.

An area you did not ask for comments on, but which causes us much concern is the new federal requirement that provides that paternity will have to be established (or the alleged father excluded) usually within one year. We already have a backlog of approximately 8,000 paternity cases, while new paternity cases are coming in at an average rate of 400 per month. The rate of paternity establishment has been controlled to a great extent by the number of attorney hours allocated to this function which under the existing budget is limited. We think a new expedited paternity statute which has been enacted will reduce some of the need for lawyers and will enable us to move cases along more swiftly. However, the new expedited paternity statute will not totally replace the need for additional professional staff.

I want to make it clear that the State of Maine supports the objectives of the Family Support Act; and believes the new child support requirements are essential and will, when fully implemented, greatly improve the quality of life for thousands of single parent families as well as help alleviate some of the financial burden for public assistance which now falls squarely upon the nation's taxpayers. In our view the issue is not whether or not these mandates should be carried out; but whether or not the new requirements can be accomplished within the limitations of available resources. We have reviewed the matter carefully and have concluded that the new requirements cannot be successfully carried out in Maine without an infusion of additional funds. Those funds are not available at the state level.

In reviewing the history of federal funding for child support enforcement we noted that in 1984 this committee (report 98-387, 98 Congress.: 2D session. Washington, U.S. Govt. Print. Off., 1984 pg. 23) stated: " . . . that in a program which assures states of open-end funding on an entitlement basis, it is particularly appropriate for both the federal and state governments to bear a substantial share of the financing requirements. By increasing the state matching share, the Committee expects that state responsibility for and interest in the effectiveness of child support enforcement and paternity establishment services will also be increased."

In 1984, when this Committee issued its report that assertion had validity. However, at that time, the Committee couldn't foresee two occurrences which have had a significant impact upon child support enforcement. One was the enactment of the Family Support Act of 1988 with its numerous and far reaching mandates for child support enforcement. The other is the current recession which is having a devastating effect upon many state budgets. If one or the other of the aforementioned occurrences had not happened the state of Maine might be able to hold its own. As things are we are facing a very difficult time indeed.

Since 1984 the federal government has drastically increased the scope and complexity of the work states must do while progressively reducing the amount of federal child support funding available. Consequently, although the reason for providing the states with a high level of federal funding in child support enforcement may have changed, an urgent need for the additional funding does exist.

The magnitude of work to be done in child support enforcement has served to place Maine's child support enforcement program in a position which is very similar to that of an undercapitalized business enterprise. We have no doubts that, given the resources to implement the new federal mandates in a timely fashion, Maine's child support enforcement program will produce dramatic increases in child support collections which would translate into significant savings for both the federal and state government. We believe this to be true because since 1975 the state of Maine has generated substantial federal savings. Between 1980 and 1987 the State of Maine generated net federal savings totaling in excess of 13.6 million dollars for an average net annual savings in excess of 1.7 million. Unfortunately, in 1988 and 1989

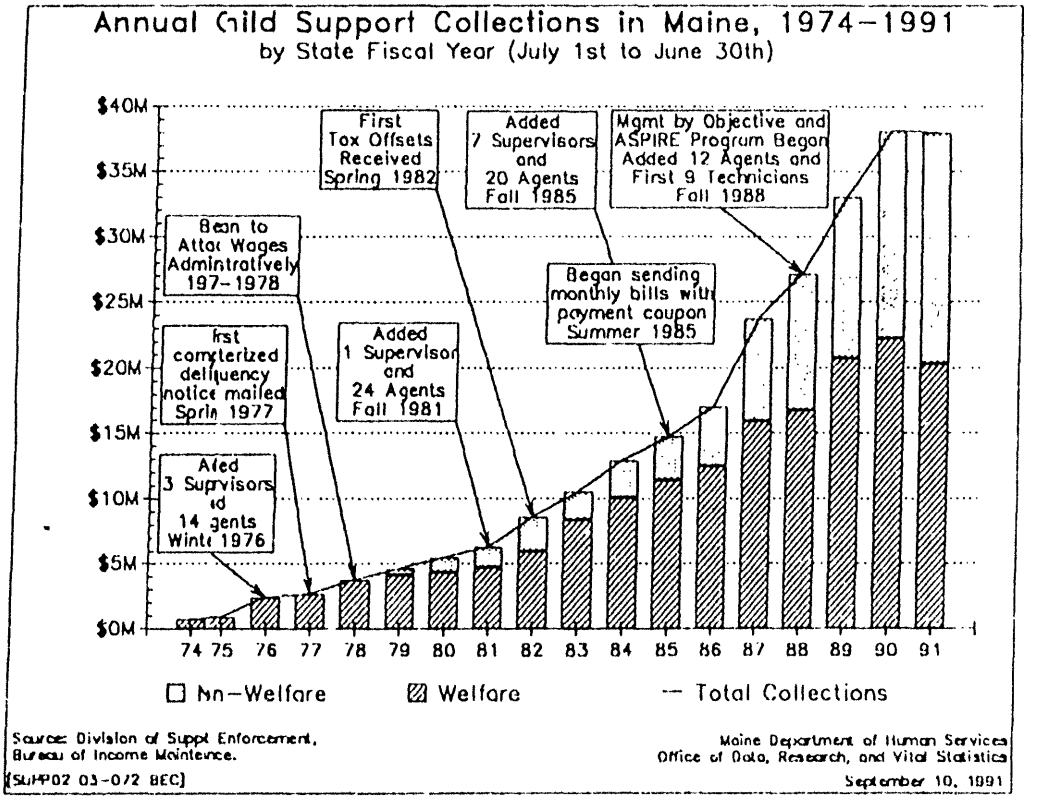
we generated no federal savings. We strongly believe that the reduction in federal funding has been one of the main causes for these lost savings.

A substantial increase in federal funding is absolutely essential if congressional expectations are going to be met. A moratorium on federal legislation or delays in imposing audit penalties could alleviate the problems in the short term but will only postpone the day of reckoning. A better solution would be to help the states achieve the new standards of performance.

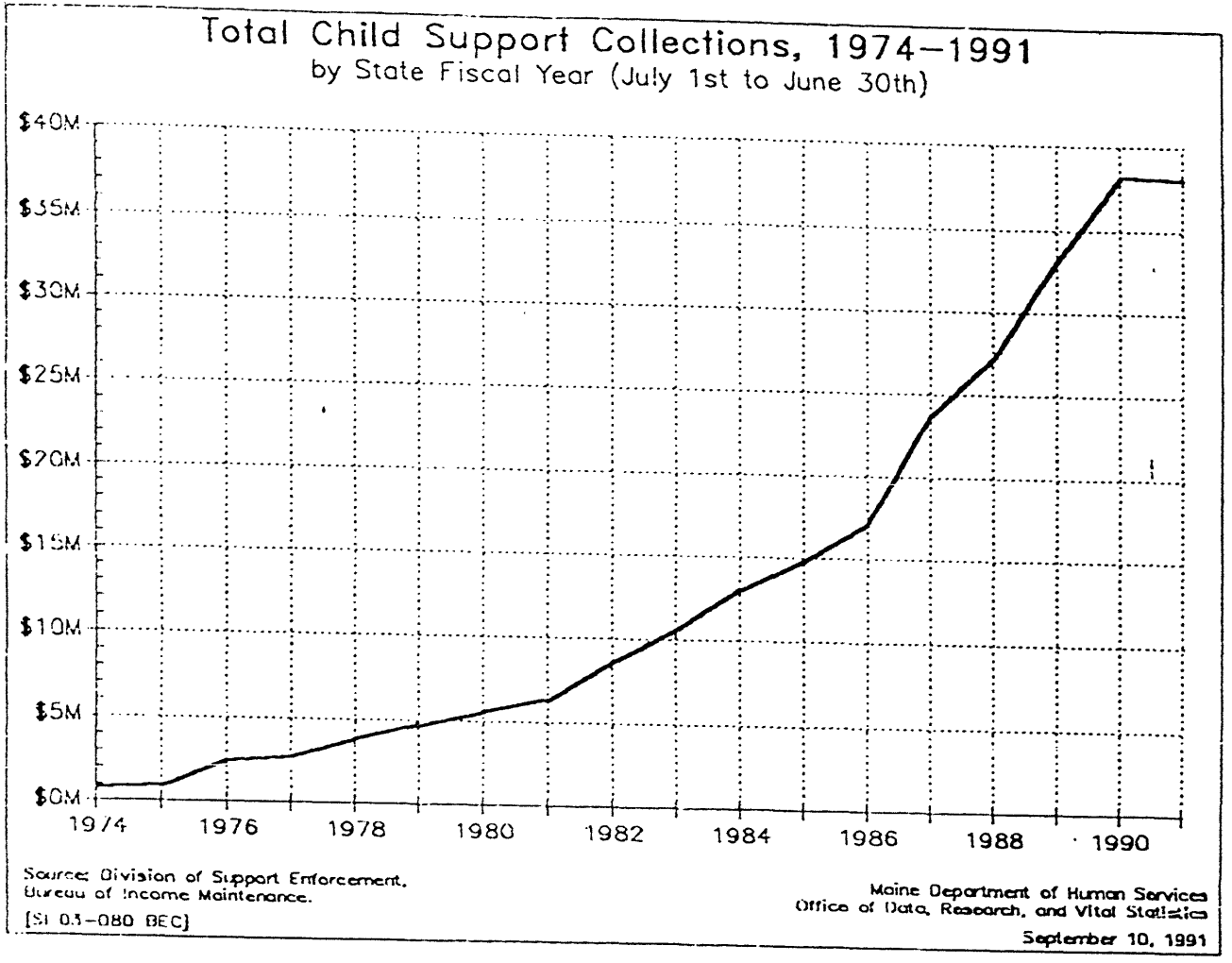
A restoration of the original 75% federal funding or selectively increasing federal funding to the 90% or even 100% level—for a limited period of time—for the most difficult and critical aspects of the program, such as: Establishment of new child support orders, triennial review and modification of support orders, paternity establishment, and interstate enforcement until the states have developed effective laws and procedures and have eliminated existing back logs would provide the impetus necessary to get the job done. We believe that three to five years of increased federal funding may be all that would be needed to allow states to be in a position to become fully responsive to the child support needs of single parent families.

Thank you again for this opportunity.

Attachment.



ATTACHMENT A



Attachment B

STATE OF MAINE
DIVISION OF CHILD SUPPORT ENFORCEMENT AND RECOVERY
CRITIQUE OF THE DOWNEY REPORT CARD 1990

Accounts Receivable: Collections as a percentage of the total obligation would appear at first sight to be a good indicator of a state's performance but if states establish obligations in different ways and at different rates, accounts receivable may be misleading as an indicator of performance. Consider two states each with a caseload of 100,000. State A establishes obligation in 45,000 cases and 24,000 are paying, 53.3% of the obligated cases are paying. State B has a truly expedited process for establishing obligation and has 80,000 obligated and 35,000 of these are paying, 43.7% of obligated cases are paying. Which state is doing the better job of collecting child support? Using accounts receivable as the criteria of success you would have to conclude that State A was doing a superior job when in fact they were collecting for 11,000 fewer families than State B. When it comes to collecting child support, accounts receivable only have validity to the extent they are tied to the percentage obligated.

Another weakness of using accounts receivable as a criterion of performance is the way states deal with "uncollectible accounts". Some states close cases after a few years if they have not been able to collect any child support from the absent parent while other states continue to keep these cases open in hopes of collecting sooner or later.

In general, the use of accounts receivable favors those states that selectively establish obligations, that avoid default hearings, that do not seek judgments for retroactive medical and AFDC when paternity is established.

The continued use of accounts receivable in the assessment process will result in statistical manipulation and policy changes that will reduce the number of cases being obligated and the total amount of the obligation to that which is readily collectible.

AFDC/Non-AFDC

Federal mandates govern the collection of child support in AFDC cases to the extent that all states start on an even footing and comparisons of performance in this category may be legitimate.

But the situation is different with non-welfare collections. The custodial parent has the choice of using the IV-D Agency or not unless they live in a state where all child support has to be paid through the court system in which case the IV-D agency gets a windfall of voluntarily paying non-welfare cases. In states where choice is possible, the only ones applying for services are difficult cases requiring considerable amounts of IV-D resources.

Attachment B

STATE OF MAINE
DIVISION OF CHILD SUPPORT ENFORCEMENT AND RECOVERY
CRITIQUE OF THE DOWNEY REPORT CARD 1990

This is one of the reasons the federal government has put a cap on incentives for non-welfare collections which in turn causes further inequities.

States with almost equal numbers of AFDC and non-welfare cases fair best in the report card.

Reducing AFDC costs

(a) The ratio of a state's AFDC collection to its AFDC payments. Obviously states with the lowest rates of AFDC grants tend to fair best in this category. (Alabama received an A in this category; I believe its AFDC grant for mother and 1 child is $88 per month.)

(b) AFDC cost avoidance. This must be the weakest leg of the whole assignment structure. "Research suggests for every dollar of ... collections for families not on AFDC, about twenty cents is saved in AFDC benefit payments".

In Maine a significantly large number of divorced fathers visit their children and pay their child support to their former spouses at that time. They are responsible parents and they would resent the state interfering in their domestic arrangements. The result is that Maine's AFDC caseload is approximately six times larger than its non-welfare caseload. Maine received an F in this category because it did not have sufficiently large non-welfare collections. In the summary of states performance they point out "...in the reducing AFDC costs segment; Maine earned a 27.4 ratio, twice the mean among the States, thus scoring a high B. However, the above mentioned score of F for Cost Avoidance in this same category illustrates the inconsistency... an A for cost effectiveness in AFDC cases and a D in non-AFDC cases". The inconsistency is in the instrument of measurement - not the performance.

If there has to be a report card then perhaps the least damage would be done by returning to the basics:

(1) What is the total unduplicated count of cases?

(2) What percentage of these have obligations established?

(3) What percentage of the obligated cases pay? How regularly?

(4) In how many cases has paternity been established? What percentage is this of all IV-D cases needing this service?

PREPARED STATEMENT OF CECELIA BURKE

Mr. Chairman and members of the Subcommittee, I am Cecelia Burke, Director of the Child Support Enforcement Division of the Office of the Texas Attorney General, which is the designated Title IV-D agency for the State of Texas. On behalf of Attorney General Dan Morales, I want to thank you for your invitation to Texas to give testimony at these oversight hearings on the child support enforcement program and to express Attorney General Morales' regret that he personally could not be present. He has, however, prepared written testimony which I would respectfully ask be entered into the record of these hearings.

In his written remarks, the Attorney General expressed a number of concerns which we in Texas have about the present condition and future directions of the Title IV-D child support enforcement program. These concerns are not, however, just those of Texas but are widely shared by the 54 individual Title IV-D programs comprising the national child support enforcement program. They include concern about the pace and magnitude of changes in federal IV-D statutes and regulations which, especially since the passage of the 1984 Amendments, have nearly outstripped the ability of state IV-D programs to implement the new requirements fully and effectively. Related to this are concerns about the strain upon the available resources of state IV-D programs, including not yet fully developed automatic systems, imposed by the new requirements of periodic review and adjustment of all IV-D support orders and of the mandatory and automatic provision of full IV-D services to non-AFDC Medicaid applicants and recipients. Finally, there are the daunting difficulties experienced by state IV-D programs in trying to satisfy the myriad requirements of the triennial audit conducted by the federal Office of Child Support Enforcement. I want briefly to remark on these interrelated matters.

As described in the Social Security Act, the Title IV-D child support enforcement program - or simply "IV-D," as it is commonly known - was created primarily "for the purpose of enforcing the support obligations owed by absent parents to their children . . . locating absent parents, obtaining child and spousal support, and assuring that assistance in obtaining support will be available . . . to all children for whom such assistance is requested." The goal, then, was to reduce public assistance expenditures by (1) obtaining support from noncustodial parents on a continuing basis in order, if possible, to remove families from AFDC and to help nonwelfare families stay off AFDC, and (2) by establishing paternity for children born out of wedlock so that child support could obtained for them. Since its inception, the task of the IV-D program has been defined as twofold: "cost-recovery" and "cost-avoidance"--that is, recovering public assistance funds spent in support of dependent children and avoiding further and additional expenditures. The drafters of the enabling legislation, however, clearly understood that they were pursuing more than just "cost-recovery" and "cost-avoidance." A fundamental objective of the new program was to be the improvement of the quality of life for all children needing the financial support due them from their parents.

Over the past decade and a half, the IV-D program has grown dramatically in scope of activity, productivity, and administrative complexity. Nationwide, the program has had an impressive history of accomplishment in realizing its fundamental purposes. It has, however, also experienced the ever-increasing burden of new statutory and regulatory requirements. The Child Support Enforcement Amendments of 1984 introduced a number of major changes in the IV-D program and led to the promulgation of dozens of new regulations. Scarcely had state programs implemented the 1984 requirements, when the Family Support Act of 1988 brought a flood of yet more demands. From the 1984 Amendments to the Family Support Act of 1988, together with sundry other acts in between, there have issued some three dozen changes in federal IV-D statute, resulting in over five dozen changes in federal regulations. (Attached to my testimony is an annotated chronology of these statutory and regulatory changes, as of last May, which was prepared by my staff.)

What the pace and magnitude of statutory and regulatory change over the past few years has meant for most of the 54 states IV-D programs is that the added demands have

simply exceeded their ability to implement all the changes sufficiently well so that they will not be found out of compliance by the triennial audit conducted by the federal Office of Child Support Enforcement (OCSE). It has also meant that their creative energies to fashion and operate effective -and innovative - state programs in order to realize the essential purposes for which Title IV-D was created, have been too greatly exhausted in efforts simply to try to keep up with the flow of new statutory and regulatory demands and to void the punishing effects of the audit.

A decade and a half ago what was envisioned was a child support program which, although nationwide in structure, would look to the states for the exercise not only of full diligence in pursuing the goals of the program but also of imagination and creative energies in designing effective strategies. To this point, the Senate Finance Committee in reporting on the proposed 1974 enabling legislation commented generally on the new provisions for social services with respect to the regulatory activities of the, then, Department of Health Education and Welfare:

> The Committee believes that the States should . . . be able to construct programs to meet their particular needs within a predetermined amount of Federal funding without regulatory impediments which often have made planning and program development an impossibility. It is the Committee's belief that the mutual objective of the States and the Federal Government in reducing dependency upon welfare will be met most effectively by this approach.

While many of regulations promulgated by OCSE over the years, certainly, have served to help states realize the goals of an effective support program, others have succeeded less well and have even become "regulatory impediments" of the sort which concerned the Senate committee in 1974. In large measure, the ineffectual and impeding character of certain regulations promulgated by OCSE has resulted from the rapid increase since 1984 of statutory requirements for the IV-D program, as well as from inherent flaws in the process by which law is translated into regulation. It has also resulted from the fact that, while its motives may have been well intended, Congress has not always clearly understood what the impact of these many new statutory provisions would be upon the day-to-day operations of the 54 individual state IV-D programs. Likewise, in implementing these acts of Congress, OCSE has shown the same failure to understand the practical problems which its regulations - often written with the same impenetrable complexity and overwhelming detail as the laws they translate - can create for those on the state level charged with administrating the regulations. The sheer volume of regulations emanating from OCSE in response to congressional mandates in recent years would keep any state IV-D agency busy full-time just trying to institute the regulations and to comply with the procedural formalities and reciprocal requirements.

It is not just the pace of change in federal law and regulations which has led to the present crisis in the operation of the program nationwide and the dispirited condition of state IV-D agencies. It is the fact that state IV-D programs, already facing enormous and ever-growing caseloads and severely strained resources in trying to meet the primary purposes of Title IV-D, are called upon to take on more and more mandated tasks and to satisfy more and more ministerial requirements. We on the state level of the program are left wondering, for example, whether anyone on the federal level really thought out the costs in time and resources of requiring IV-D agencies to provide full child support services to all non-AFDC Medicaid recipients. Or, we ask ourselves, did anyone think through all the complex legal and procedural aspects of the requirement to review, and possibly adjust, the support amount in every case in a state's IV-D caseload? The issue for the overburdened state IV-D agency is not whether or not a particular federal mandate is sound as a matter of public policy, but whether there are the resources and the time to enact that mandate while striving - mostly uphill - to complete the primary tasks of locating absent parents, establishing paternity, establishing and enforcing support orders, and collecting and distributing support payments.

In reviewing the IV-D program from time to time, Congress has been frustrated with OCSE and the state IV-D agencies for their apparent failure to perform well in all the areas Congress has legislated. As a consequence, Congress has insisted on greater

"accountability" and to that end has ordained more demanding audits of state programs and more severe audit penalties. For its part, OCSE, attempting to placate Congress, has adopted such minutely detailed and tough audit requirements that most states have failed the triennial audit, despite impressive gains in the collection of support and the establishment of paternities and support obligations.

It has become a vicious cycle, and one which state IV-D programs are now seeking to break. We are, therefore, asking Congress to delay the mandatory implementation of the onerous statutory and regulatory requirements for the review and adjustment of support orders, for providing full IV-D services for non-AFDC Medicaid recipients, and for the mandatory case processing time frames and program standards issuing from the 1988 Family Support Act - until we all have fully operational and certified automatic systems which would enable us to implement these requirements in a way which would be cost-effective and not totally disrupt our current operations. We are asking Congress not to legislate any new mandates - such as requiring IV-D agencies automatically to provide full IV-D services to food stamp recipients - mandates which not only add to the great list of tasks required of the state IV-D agencies but also vastly increase the already overwhelming numbers of constituents they must serve. We are asking Congress to review the current IV-D audit process and to impose a moratorium on its further use and on the levying of penalties upon the states until such time as a new audit process can be devised which will equitably evaluate program productivity and growth, and not, as the current process does, mere compliance with technical and ministerial procedures. Finally, we are asking Congress to consider the creation of a permanent Child Support Enforcement Commission made up of child support professionals, clients, judges, members of Congress, and others familiar with the IV-D program, which would be charged with responsibility to provide on-going review of the operation of the IV-D program and to report to Congress on a regular basis and to offer, as needed, recommendations for legislative ways to strengthen the program. Such a permanent commission could provide greatly needed, but now nearly totally absent, long-term and strategic planning for the IV-D program.

The Title IV-D child support enforcement program is at a critical juncture in its history. Steps must be taken, boldly and immediately, to save the whole child support enforcement program from collapsing under the weight of demands arising from overzealous expectations which have failed to take into consideration the ability of state and local programs to effectively implement and administer those demands. This collapse would be tragic for the many millions of custodial parents and their dependent children who currently receive or are in need of basic child support enforcement services.

ATTACHMENT A

Major Federal Legislation Affecting the IV-D Program.

(Listed below are the major pieces of federal legislation affecting the IV-D program which have been enacted since 1984. There are other matters currently being considered which could have a signifcant impact upon the character and operation of the IV-D program: the federal funding formula (FFP and incentive payments), the extension of IV-D services to food stamp recipients, and the creation of some sort of "child support assurance.")

1984:

Deficit Reduction Act of 1984 (P.L.98-369, July 18, 1984)

- $50 "Disregard" of collected child support in AFDC cases.

Child Support Enforcement Amendments of 1984 (P.L. 98-378, August 16, 1984)

- mandatory wage withholding upon delinquency.

- liens for overdue support.
- state income tax intercept.
- bond or other security for repeated delinquency.
- expedited processes.
- notification at least once annually to AFDC recipients of amount of support collected on their behalf.
- reporting to consumer credit bureaus.
- paternity establishment until child's 18th birthday.
- support to be paid through IV-D or other income withholding agency.
- changes in federal funding structure
- fees for services to non-AFDC families.
- continuation of IV-D services for former AFDC recipients.
- triennial audits of state programs and audit penalties.
- IV-D services for foster care children.
- collection of spousal support.
- publicizing availability of IV-D services.
- mandatory medical support.
- discretionary child support guidelines.
- federal income tax intercept in non-AFDC cases.

1985:

Department of Defense Authorization Act, 1985 (P.L. 98-525, October 19, 1984)

- deduction of child support from military pensions.

1986:

Omnibus Budget Reconciliation Act of 1986 (P.L. 99-509, October 21, 1986)

- prohibition of retroactive modification of arrearage.

Tax Reform Act of 1986 (P.L. 99-514, October 22, 1986)

- treatment of interstate collections for determining incentive payments.

1987:

Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203, December 22, 1987)

- provision of IV-D services to former AFDC recipients without requirement of application.
- provision of IV-D services to Medicaid-only recipients.

1988:

Family Support Act of 1988 (P.L. 100-485, October 13, 1988)

- immediate income withholding.
- mandatory guidelines for establishing child support amounts.
- periodic review and adjustment of child support amounts.
- performance standards for paternity establishment.
- mandatory genetic testing in contested paternity cases.
- time limits for case processing and support distribution.
- mandatory use of social security number to establish identity of parents.
- Commission on Interstate Child Support.

IV-D Regulations Promulgated Since 1984.

(N.B.: Not every OCSE Action Transmittal since 1984 is cited here. Besides regulations in the CFR sense, there have been a great number of other "official issuances" from OCSE in the form of program memoranda, regional letters, and manuals of mandatory procedures and guidelines for data collection and reporting, the use of federal services - such as IRS offset - and the development of automated systems.)

1984:

"Withholding of Unemployment Benefits for Support Purposes" [45 CFR 302.65; Section 2335 of P.L. 97-35, the Omnibus Budget Reconciliation Act of 1981; FR 49:48, 3/9/84, 8924; OCSE-AT-84-02]

Final regulations requiring IV-D agencies to determine on a periodic basis whether individuals receiving unemployment compensation owe support obligations that are not being met, and to enforce current unmet support obligations or arrearages by obtaining a voluntary agreement or using legal process to withhold unemployment compensation.

Effective date: March 9, 1984

"Elimination of Double Support Payments" [45 CFR 302.32; Section 173 of P.L. 97-248, the Tax Equity and Fiscal Responsibility Act of 1982; FR 49:104, 5/29/84; OCSE-AT-84-3]

Final regulations requiring a State to pay directly to a family any child support payments for any month following the first month in which the amount collected is sufficient to cause ineligibility for AFDC.
Effective date: May 29, 1984, except where the Secretary determines that state legislation is required in order to conform with state plan requirements, in accordance with Section 176, P.L. 97-248.

"Fee Waiver Policy for Providing Customer Addresses to Government Agency Requesters" [39 CFR Part 265; FR 49:99, 5/21/84; OCSE-AT-84-4]

Final regulations issued by the U.S. Postal Service which implement, with certain limited exceptions, a $1.00 fee

for providing information about a postal customer's address to federal, state, or local government agency requesters. The fee is applicable to state and local child support enforcement agencies.

Effective date: January 1, 1985; however, by subsequent notice - FR 49:231, 11/29/84 - the effective date was postponed indefinitely.

"Collection of Child Support by the IRS Through Offsetting Federal Income Tax Refunds" [45 CFR 303.72; Section 402(a)(26), Social Security Act; OCSE-AT-84-05, 6/21/84]

Instructions defining the procedures states must use for the preparation, submission, and processing of cases for collection by offsetting past due child support obligations with federal income tax refunds.

Effective date: beginning with the 1985 processing year.

"Full Collection Services from the IRS" [45 CFR 303.71; Section 452(b) of the Social Security Act and Section 6305 of the Internal Revenue Code of 1954; OCSE-AT-84-6, 8/30/84]

Instructions for the completion of revised form OCSE-20, used for requesting full collection of delinquent child support payments by the Internal Revenue Service.

Effective date: August 30, 1984

"Computerized Support Enforcement Systems" [45 CFR 302, 303, 304, and 307; Section 405 of P.L. 96-265, Social Security Disability Amendments of 1980, June 9, 1980; FR 49:164, 8/22/84; OCSE-AT-84-7]

Final regulations implementing the computerized child support enforcement system provisions in P.L. 96-265, Social Security Disability Amendments of 1980. These regulations made changes to final interim rules issued on September 30, 1981, and most of the earlier regulations are here reorganized and redesignated as a new 45 CFR Part 307. Specifically these regulations govern the availability of federal financial participation (FFP) for automated data processing systems. Effective October 1, 1984, P.L. 98-378, the Child Support Amendments of 1984 (amending Section 455(a)(1) of the Social Security Act) provided 90 percent FFP for the full cost of hardware components.
Effective date: August 22, 1984

"Disregard of Child Support Payments In AFDC Cases" [45 CFR Parts 205, 206, 232, 238, 239, 240, and 302; Section 2640 of P.L. 98-369, the Deficit Reduction Act of 1984; FR 49:176, 9/10/84; OCSE-AT-84-9]

Interim final rules with a comment period implementing Section 2640 of P.L. 98-369, the Deficit Reduction Act of 1984. This provision requires states to pay the first $50 collected on a monthly support obligation directly to the AFDC family. Such payment does not affect the family's AFDC eligibility or the amount of assistance to which they are entitled.

Effective: October 1, 1984

"Procedures for Cases Assessment and Prioritization," "Application Fee for IV-D Services for Non-AFDC Families," and "Reduction of Program Expenditures by Fees and Other Income."

[45 CFR Parts 302 - 304; Section 171(a)(3) of P.L. 97-248, the Tax Equity and Fiscal Responsibility Acto of 1981; Section 2333(c) of P.L. 97-35, the Omnibus Budget Reconciliation Act of 1981; Section 3(c) of P.L. 98-378, the Child Support Enforcement Amendments of 1984; FR 49:185, 9/19/84; OCSE-AT-84-10]

Final regulations which add 45 CFR 303.10 to state IV-D agencies to implement case assessment and prioritization procedures that provide for the review and management of cases and which establish basic requirements that states prioritization systems must meet.

Also, final regulations amending 45 CFR Parts 302 and 304 which: require states to charge an application fee (up to $25) for furnishing IV-D services to non-AFDC families; permit states to allow the jurisdiction that collects support for the state to retain any application fee collected; permit states to recover actual or standardized costs of providing services under the Title IV-D state plan; and require states to reduce the total expenditures they report for a quarter by the total amount of any fees collected and any other income.

Effective date: September 19, 1984, except for 45 CFR 302.33(c)(2) (the mandatory application fee for non-AFDC services) which was effective on October 1, 1985.

1985:

"Former Spouse Payments From Retired Pay" [32 CFR Part 63; Section 1002 of P.L. 97-252, the Uniformed Services Former Spouses' Protection Act and Section 643 of P.L. 98-525, the Department of Defense Authorization Acto for FY 1985; FR 50:13, 1/18/85; OCSE-AT-85-2]

Final regulations issued by the Office of the Secretary, Department of Defense which provide guidance on direct payments to a former spouse from the retired pay of members of the Uniformed Services in response to court-ordered alimony, child support or division of property. The regulation applies to former spouses of members who request direct payments from the Uniformed Services (i.e., the Army, Navy. Air Force, Marine Corps, Coast Guard, and the commissioned corps of the Public Health Service and National Oceanic and Atmospheric Administration). Under 10 USC 1408(c)(2), a spouse or former spouse of an individual in the uniformed services may not assign, transfer, or otherwise dispose of any right to direct payments under these regulations. Therefore, the IV-D agency may not be the recipient of payments for the former spouse from the retired pay of members of the Uniformed Services.

Effective date: January 2, 1985.

"Financial Reporting by State IV-D Agencies" [45 CFR 302.15;P.L. 98-378, the Child Support Enforcement Amendments of 1984 and P.L. 98-369, the Deficit Reduction Act of 1984; OCSE-AT-85-4, 4/5/85]

Detailed instructions on the use of revised financial reporting forms, reflecting changes in the federal funding structure resulting from the Child Support Enforcement Amendments of 1984 and the Deficit Reduction Act of 1984. The forms are: OCSE-41, Quarterly Report of Expenditures; OCSE-41, Supplement: Prior Quarter

Expenditure Adjustments; OCSE-34, Quarterly Report of Collections; and OCSE-25, Quarterly Budget Estimates.

"Availability of Services," "Enforcement Techniques," and "Program Administration and Financing" [45 CFR Parts 301 - 305 and 307; P.L. 98-378, the Child Support Enforcement Amendments of 1984; FR 50:90, 5/9/85; OCSE-AT-85-6]

Final regulations implementing the majority of the requirements of the Child Support Enforcement Amendments of 1984.

Effective dates:

September 1, 1984 - State plan amendment for the imposition of optional late payment fees on obligated parents who owe overdue support (302.75). October 1, 1984 - Collection and distribution of support in foster care maintenance cases (302.52). Continuing IV-D services for families which lose AFDC eligibility (302.510). Computerized support enforcement systems (Part 307).

December 1, 1984 - State commissions on child support (304.95).

October 1, 1983 - Mandatory state procedures for wage withholding, expedited processes, state income tax intercept, imposition of liens for overdue child support, the establishment of paternity for any child at least to the child's 18th birthday; the giving of security or posting of bond to secure payment of child support; reporting amounts of overdue support to consumer credit agencies (Sections 302.70 and 303.100 - 303.105).

October 1, 1985 - Incentive payments to states and political subdivisions (Sections 302.55 and 303.52).

October 1, 1985 - Annual notice to current and certain former AFDC recipients of the amount of supported collected during the year (302.54). October 1, 1985 - Publicizing the availability of support enforcement services (302.30).

October 1, 1985 - Mandatory collection of spousal support in certain cases (302.17 and 302.31).

October 1, 1985 - Payment of support through the IV-D agency (or agency designated to administer the state's withholding system) upon the request of either parent (302.57).

October 1, 1985 - Collection of past-due support from federal income tax refunds in non-AFDC cases, until January 1, 1991 (303.72).

October 1, 1987 - State guidelines for child support awards (302.56).

October 1, 1987 and thereafter - Reductions in the FFP (Parts 301, 304, 305, and 307).

"Collection of Child Support by the IRS Through Income Tax Offset" [45 CFR 303.72; P.L. 98-378, the Child Support Enforcement Amendments of 1984; OCSE-AT-85-7, 5/6/85]

Detailed instructions defining procedures states must use for the preparation, submission, and processing of cases for collection by offsetting past due child support obligations with federal income tax refunds.

Effective date: 1986 processing year.

"Treatment of Assigned Support Payments Received Directly and Retained by AFDC Applicants or Recipients" [45 CFR Parts 232, 233, 302, and 303; Sections 402(a)(26)(A), 454(4), 454 (5) and 457 of the Social Security Act and Section 173 of P.L. 97-248, the Tax Equity and Fiscal Responsibility Act of 1982; FR 50:166, 8/27/85; OCSE-AT-85-13]

Final regulations stating procedures for handling assigned support payments that are received directly and retained by AFDC applicants and recipients.

Effective date: August 27, 1985.

"Child Support Enforcement Program Audit Regulations" [45 CFR 205.146(d) and Part 305; Section 9 of P.L. 98-378, the Child Support Enforcement Amendments of 1984; FR 50:190, 10/1/85; OCSE-AT-85-15]

Final regulations amending Office of Family Assistance and OCSE audit regulations. The regulations set forth new state plan-related audit criteria and performance-related criteria and identified a "substantial compliance" standard to be met in a triennial audit of state programs. They also specify a "notice and corrective action period" and the process for the imposition of audit penalties consisting of reductions in the federal funding of the state's IV-A program in amounts ranging from one to five percent.

Effective date: October 1, 1984.

"Medical Support Enforcement" [45 CFR 302.80, 304.20, 304.23, 305.20, 305.56, 306.50, and 306.51; Section 16 of P.L. 98-378, the Child Support Enforcement Amendments of 1984; FR 50:200, 10/16/85; OCSE-AT-85-16]

Final regulations specifying state plan requirements and procedures for medical support enforcement by the IV-D agency. They also identify those activities in medical support enforcement eligible for FFP, as well as the audit criteria for medical support enforcement.

Effective date: December 2, 1985, except for 45 CFR 305.20(c) and 305.56 which were effective October 16, 1985.

"Child Support and Military Personnel" [32 CFR 54.6(d)(5)' Section 172 of P.L. 97-248, the Tax Equity and Fiscal Responsibility Act of 1982; FR 50:235, 49927, 12/6/85; OCSE-AT-86-1]

Interim regulations - made final June 3, 1986 - issued by the Department of Defense (DOD) on processing allotments for child and spousal support from the pay of active duty military personnel, when direct payment is requested by an authorized person. The DOD must be notified if there are any modifications i the court order or of any other event affecting an individual's eligibility to receive the allotment.

Effective date December 6, 1985; June 3, 1986.

"Family Support, Child Custody, and Paternity with Respect to Members of the U.S. Army" [32 CFR Part 584; Army Regulation 608-99; FR 50:247, 52447, 12/24/85; OCSE-AT-86-2]

Final regulations issued by the U.S. Army Community and Family Support Enter, Department of Defense, containing the Department of the Army's support, custody and paternity policies and information on garnishment and involuntary allotments for payments of support under a court order. These regulations apply to the Regular Army, the U.S. Army Reserve on active duty, individuals on active duty for training (30 days or more duration), and the Army national Guard of the United States on active duty or active duty for training under Title 10, USC (30 days or more duration).

Effective date: December 24, 1985.

1986:

"Federal Financial Participation for Automatic Data Processing Equipment and Services" [45 CFR Parts 95 - Subpart F, 206, and 307; FR 51:17, 3337, 1/27/86; OCSE-AT-86-03]

Interim final regulations - made final December 18, 1986 - issued by Department of Health and Human Services establishing the conditions and procedures for federal funding in emergency and certain other circumstances for the acquisition of automatic data processing equipment or services in various programs, including Title IV-D.

Effective Date: January 27, 1986; final rule, January 20, 1987 [FR 51:243, 12/18/86]

"Quarterly Reporting of Child Support Collections by States" [45 CFR 201.5; Section 407(c) of P.L. 96-265, the Social Security Disability Amendments of 1980; FR 51:76, 13511, 4/21/86; OCSE-AT-86-10]

Final regulations implementing 1980 provision requiring states to report on their quarterly statement of expenditures the appropriate federal share of child support collections made by the state. If states do not fully or properly report the federal share of child support collections, the federal government will adjust its share accordingly.

Effective date: April 21, 1986, with compliance retroactive to the statutory implementation date of January 1, 1981.

1987:

"Prohibition of Federal Funding for Costs of Incarcerating and Providing Legal Counsel for Indigents" [45 CFR 304.23; Sections 454(13) and 1102 of the Social Security Act; FR 52:165, 8/18/87; OCSE-AT-87-9]

Final rules specifying that federal funding under Title IV-D for costs of incarceration of absent parents in child support enforcement cases and costs of counsel for indigents in IV-D actions is not available.

Effective date: August 26, 1987.

1988:

"IV-D Interstate Enforcement" [45 CFR 301.1, 302.36, 303.7, 305.20 and 305.32; FR 53:34, 5245, 2/22/88; OCSE-AT-88-2]

Revisions of regulations governing the enforcement of interstate IV-D cases, including the establishment of a "central registry" for interstate cases, the requirement of the state plan, and required procedures for responding and initiating states in processing interstate cases with conforming changes to audit criteria.

Effective date: February 22, 1988, except for regulations affecting central registries which were effective August 22, 1988.

"$50 Disregard Payment to AFDC Families" [45 CFR Part 302 and 303; Section 2640 of P.L. 98-369, the Deficit Reduction Act of 1984; FR 53:111, 6/9/88; OCSE-AT-88-11]

Final regulations revising rules on the payment of the first $50 in collected child support to an AFDC family.

Effective date: October 1, 1984.

"Medical Support Enforcement" [45 CFR 306; Section 16 of P.L. 98-378, Child Support Enforcement Amendments of 1984; FR 53:180, 9/16/88; OCSE-AT-88-15]

Final regulations expanding the range of activities of the IV-D agency in securing medical support in child support orders, including modification of existing cases which show a high potential for obtaining medical support and providing the custodial parent with information pertaining to the health insurance coverage.

Effective date: September 16, 1988.

"Federal Income Tax Refund Offset" [45 CFR 303; Section 464(a)(3)(A) of the Social Security Act; FR 53:227, 9/25/88; OCSE-AT-88-18]

Final regulation amending prior regulations governing g federal income tax refund offsets. This regulation provides that the OCSE will recover its costs from the states for certain services provided in the federal tax refund offset process. Also, the regulation makes necessary changes to conform OCSE regulations with the revised method used by the IRS, beginning with the 1988 processing year, to recover costs of the offset process.

Effective date: November 25, 1988.

1989:

"Financial Reporting Requirements" [Section 9141, P.L. 100-203, Omnibus Budget Reconciliation Act of 1987, and Sections 112 and 127 of P.L. 100-485, Family Support Act of 1988; OCSE-AT-89-01]

Financial reporting requirements as revised by both the Omnibus Budget Reconciliation Act of 1987 and the Family Support Act of 1988. The revisions affect the treatment of collections for former AFDC recipients still receiving IV-D services. They also provide federal financial participation for laboratory costs incurred in determining paternity and require new calculations of the estimate of State incentive payments .

"Measurement and Reporting of State Paternity Establishment Percentages" [Section 111 of P.L. 100-485, Family Support Act of 1988; OCSE-AT-89-03, 3/6/89 and OCSE-AT-80-02, 3/6/89]

Instructions for using mandatory methods for establishing the percent of children in the state IV-D agency's caseload born out of wedlock and for whom paternity has been established, and those for whom paternity needs to be established, as of December 31, 1988, as required by the Family Support Act of 1988.

"Retroactive Modification of Child Support Arrearages" [45 CFR 302, 303, and 305; Section 9103 of P.L. 99-509; FR 54:74, 15758, 4/19/89; OCSE-AT-89-06]

Final regulations requiring that as a condition of IV-D state plan approval, states have in effect laws requiring the use of procedures prohibiting the retroactive modification of child support arrearages. However, such procedures may permit modification with respect to any period during t=which there is pending a petition for modification, but only from the date that notice has been given, either directly or through the appropriate agent, to the obligee or (where the petitioner is the obligor) to the obligor. Specifically, state IV-D agencies must have in effect and use procedures whereby any payment of child support is, on and after the date it is due, a judgment by operation of law with the full force, effect, and attributes of a judgment of the state and is entitled, as such, to full faith and credit in such state and in any other state.

Effective date: April 19, 1989.

"Cooperative Agreements" [45 CFR 302.34, 303.107, 304.21, and 305.34; Section 1102 of the Social Security Act; FR 54:137, 30216, 7/19/89; OCSE-AT-89-14]

Final regulations defining the criteria for establishing cooperative arrangements between IV-D agencies and courts and law enforcement officials. The six provisions contained in the regulations must be satisfied in order for the agreement to be eligible for federal financial participation.
Effective date: October 1, 1989, for all new cooperative agreements, and October 1, 1990, for cooperative agreements that are in effect before October 1, 1989.

"Standards for Program Operations" [45 CFR 301 through 304, 306, and 307; Sections 121 - 122 of P.L. 100-485, the Family Support Act of 1988; FR 54:149, 32284, 8/4/89; OCSE-AT-89-15;

Final regulations prescribing standards for program operations which the state IV-D agency must meet, including minimal organizational and staffing requirements, and requirements governing: maintenance of case records; location of absent parents; establishment of support obligations; establishment of paternity; service of process; enforcement of support obligations; conditions under which cases may be closed; distribution of support payments; and incentive payments. In addition, the regulations make changes with respect to excluding the costs of interstate grants when computing incentives and changes with respect to excluding costs of demonstration projects on model procedures for reviewing child support awards.

Effective date: October 1, 1990.

1990:

"Child Support Enforcement Program Audit" [45 CFR 305; Sections 1102, 402(a)(27), 452(a)(4) and 403(h) of the Social Security Act; FR 55:46, 3/8/90; OCSE-AT-90-03]

Final regulations revising OCSE regulations governing the audit of state IV-D programs and the imposition of financial penalties for failure to comply substantially with federal requirements for the IV-D program. In a Notice of Proposed Rule Making published in the Federal Register on January 31, 1989, regulations were proposed for new criteria and procedures for the OCSE audit. This final regulation addresses only the period to be audited, which is a period of any 12 consecutive months instead of October 1 to September 30 of each fiscal year. In addition, the regulations require that a follow-up review conducted in states operating under corrective action plans with respect to state plan criteria cover the first full quarter after the corrective action period with a requirement that such audits cover the first three-month period beginning after the corrective action period. For states operating under corrective action plans with respect to the performance indicators, the follow-up review is to cover the first full four quarters following the corrective action period.

Effective date:March 8, 1990.

1991:

"Extension of IV-D Child Support Enforcement Services to Non-AFDC Medicaid Recipients and to Former AFDC, Medicaid and Title IV-E Foster Care Recipients" [45 CFR 301-304; Sections 9141 and 9142 of P.L. 100-203, the Omnibus Budget Reconciliation Act of 1987; FR 56:38, 7988, 2/26/91; OCSE-AT-91-01]

Final regulations requiring state IV-D agencies to provide appropriate notice (within five working days of a former AFDC recipient's ineligibility) and to continue to provide IV-D services to a former AFDC recipient. The IV-D agency must provide the services and pay any amount of collected support to the family on the same basis and under the same conditions as pertain to other non-AFDC families, except that no application fee for services may be required. In addition, the regulations require state IV-D agencies to provide services to families who receive Medicaid and have assigned to the state their rights to medical support and to payment of medical care from any third party and to provide for distribution by the state of medical support collections.

Effective date: February 26, 1991

"$50 Pass-through; Presumptive Support Guidelines; Mandatory Genetic Testing; Paternity Establishment; Laboratory Testing" [45 CFR Parts 302, 303, and 304; Sections 102, 103, and 111 of P.L.100-485, the Family Support Act of 1988; FR 56:94, 23335, May 15, 1991]

Final regulations implementing provisions of the Family Support Act of 1988 specifying (1) payment to the family, and disregard, for purposes of eligibility for AFDC, of the first $50 of child support payments for each month which were made in the month when due; (2) the use of State guidelines as a rebuttable presumption of support levels; (3) the child and all other parties in a contested paternity case to submit to genetic testing upon the request of one of the parties; (4) State law to permit paternity establishment to permit paternity establishment for any child for whom a paternity action was previously dismissed under a statute of limitations of less than 18 years; and (5) the availability of 90 percent federal matching funds for laboratory costs incurred in determining paternity.

Effective date: May 15, 1991, although the statutory provisions are effective on the dates stated in the law

PREPARED STATEMENT OF ULYSSES HAMMOND

Good morning, Chairman Moynihan, and members of the subcommittee. I am Ulysses Hammond, Chief Executive Officer of the Courts of the District of Columbia. I am speaking on behalf of the Conference of State Court Administrators (COSCA) and the National Child Support Enforcement Association (NCSEA).

On behalf of Conference of State Court Administrators, the 1500 members of NCSEA and its Board of Directors, I thank the Finance Committee and the Subcommittee on Social Security and Family Policy for the opportunity to provide our perspective on the implementation of the Family Support Act of 1988, along with our concerns and recommendations for possible action in the area of child support enforcement. The federal Office of Child Support Enforcement's *13th Annual Report to Congress* tells us that in 1989 there were over 11 million child support cases in the United States. State child support enforcement programs have recovered over $1.5 billion in federal and state public assistance expenditures. Collections for non-welfare cases have realized further cost-avoidance savings exceeding $4.2 billion, measured using the formula developed by the federal Office of Child Support Enforcement (OCSE). We have provided the public and the nation with tremendous tax dollar savings. Child support enforcement agencies and our nation's courts have exhibited substantial progress with a three-fold increase since 1978 in the location of absent parents, the adjudication of paternity and establishment of child support obligations. We are pleased to report that in Fiscal Year 1989 a total of $5.2 billion in child support was collected. Over 1.6 million absent parents were located.

Despite these great advances, we are aware that there are large numbers of children for whom child support has not been obtained. We fully embrace the goal of providing the children of our nation with appropriate financial support from their parents. COSCA and NCSEA support the public policy objectives reflected in the Family Support Act of 1988. We agree with its requirements for immediate income withholding, mandatory use of guidelines, program performance standards, review and modification of supports orders, and the mandated development and implementation of statewide and comprehensive automated systems. We look forward to improving program performance as these requirements are fully implemented nationally. With the support of the federal government, state governments and state judiciaries, we can vastly improve the national child support collection picture.

We know that this Subcommittee is particularly interested in feedback regarding immediate income withholding, review and modification of support orders, medical support enforcement, and program performance standards. My remarks will address these topics.

Mr. Chairman, as you know, last fall child support enforcement agencies and courts were required to implement **immediate income withholding** for all orders established or modified on IV-D cases. This requirement will be extended to all cases effective January 1, 1994. State IV-D agencies and courts reported little difficulty in meeting last fall's requirement. Existing procedures were simply amended so as to require the issuance of an income withholding notice to the parent's employer at the time an order is established or modified rather than waiting for the parent to accrue an arrearage that exceeds one-month's current support. We believe this requirement has increased the efficiency of the collection process on routine cases, and has done much to ensure that children receive regular financial support. While it is too early to report hard data, the anecdotal evidence is very positive.

There is less consensus regarding the extension of immediate income withholding to all cases on January 1, 1994. Non-IV-D cases are handled by private attorneys or by the parties themselves, *pro se*. The processes states implement to ensure that income withholding is initiated in non-IV-D cases will either have to rely on the parties to prepare and submit the appropriate documents, or the courts will have to assist them in their preparation. Either way, the workload of the courts will increase. Moreover, in many states, once the income withholding order has been issued, payments will be routed through the courts and distributed

to the custodial parents. This will have a *dramatic* increase on the workload of the courts - currently in most states there is marginal court involvement in non-IV-D cases after the judgment is obtained. Since these are non-IV-D cases, there will be no federal funding available to assist the courts in expanding their resources in order to meet the increasing demands of the workload. We are concerned that without the availability of federal funding, additional resources will not be forthcoming, and the full benefits of expanding immediate income withholding to non-IV-D cases will not be realized. Furthermore, the level of service courts are able to provide for IV-D cases may suffer. We question the need for two separate child support enforcement systems -- IV-D and non-IV-D -- and ask the Subcommittee to consider allowing states to merge all cases into the IV-D system.

Lastly in the area of income withholding, states are reporting a disturbingly high rate of employer non-compliance. Employers often ignore income withholding orders or fail to remit the support payments to the court or IV-D agency on a timely and regular basis. We are aware of no hard data regarding the exact rate of employer non-compliance, but are convinced that a problem exists. State and local IV-D agencies are challenged enough trying to ensure that absent parents pay their support. It is difficult for them to set aside resources to police the employer community, but that is the current reality. We suggest that the Subcommittee ask the federal Office of Child Support Enforcement to commission a study to determine the extent of the problem, and to recommend an effective solution.

With respect to **review and modification of support orders,** let me first state that both COSCA and NCSEA support the basic premise that support orders should be periodically updated to ensure that the amount of required support is appropriate to the needs of the child and the parents' current circumstances. We further support the addition of periodic updates to the array of services offered by the IV-D program. We have some significant concerns, however, with regard to the way in which the requirement is being interpreted by the federal Office of Child Support Enforcement.

Our first concern deals with what is required of the states during the period October 1, 1990 through September 30, 1993. We agree that the Family Support Act requires states to implement, on or before October 1, 1990, a plan to review and update, if appropriate, support orders -- but only upon "the request of either parent subject to the order, or of a state child support enforcement agency." The OCSE has concluded that the Family Support Act requires states to initiate such reviews on AFDC cases *without the request of a parent or another IV-D agency,* and to complete such reviews for all AFDC cases prior to October 1, 1993. We do not believe that OCSE has correctly construed the statutory requirement and, more importantly, we believe that Congress intended all states to have the benefit of the final reports of the four demonstration projects authorized by the Act prior to the date on which all states would be required to implement these massive projects. We also hasten to point out that OCSE's construction of the statute requires states to go forward without the benefit of final regulations. Timely regulations are extremely important to states, especially when states must pass legislation to implement the mandate. We request that Congress provide direction to OCSE regarding the intent of the statute. (See NCSEA's attached *Comments to Proposed Regulations* for a detailed discussion of our concerns.)

Second, we are uncomfortable with OCSE's conclusions regarding the role of IV-D agencies and the courts regarding downward modifications. The OCSE's position is that state IV-D agencies have no special client affiliation with the custodial parent, and that state staff should have no difficulty advocating for either parent in a case. The reality is quite different. While we agree that downward modifications should be available to non-custodial parents, we do not believe that IV-D agencies, IV-D attorneys, and court personnel should be required to act as their advocates in modification proceedings. Neither are we convinced that Congress intended such a result. A fair reading of the Family Support Act would allow states to comply by conducting a review of an order at the request of an absent parent, notifying the absent parent of the outcome of that review, and advising the parent as to how one might initiate a modification proceeding *pro se,* or through an attorney of his or her choosing. Again, we ask Congress to provide further direction to OCSE as to the intent of the Act.

Third, we believe that the Act provides an over-abundance of notice provisions, needlessly lengthening the review and modification process. The Act requires a 30-day prior notice to both parents that the agency intends to conduct a review of the order and a 30-day period after the review is completed to allow either parent to contest the agency's decision as to whether a modification will be sought from the court or administrative tribunal. The review itself will take a minimum of 30 days, because of the need to gather information about the current financial circumstances of the parties and any special needs of the child. In addition, the notice and response periods allowed under state law during the formal modification process will add at least another 60 days, not including any delays encountered as a result of court scheduling backlogs. The extra notice and response provisions of the Act will thus lengthen the time it takes to get an order modified to over six months in most jurisdictions, even when the matter is uncontested.

We believe that the standard notice, response, and appeal provisions of state law and local court rules will adequately protect the parties. We thus ask the Subcommittee to consider removing, or streamlining, the notice provisions contained in the Act.

Fourth, we strongly oppose the extension of the review and modification requirements to non-IV-D cases, as contemplated by section 103(d) of the Family Support Act of 1988. Courts lack the resources and automation to even identify these cases -- many of which would involve orders entered over a decade ago -- much less the resources and automation capabilities to conduct reviews, generate notices and conduct hearings. Again, we do not understand the need to have parallel systems for non-IV-D and IV-D cases to conduct these activities. Individuals involved in these cases have the option to apply for IV-D services, at nominal cost, when seeking services that include a review and possible modification. This option, perhaps combined with strengthened public awareness and outreach requirements imposed on the state IV-D agencies, should address the needs of the non-IV-D caseload.

With respect to **medical support enforcement,** we support the goal of ensuring that each child receives the benefit of health insurance coverage available to the non-custodial parent at reasonable cost. Nevertheless, we reluctantly admit that, to date, most state and local IV-D agencies have not successfully complied with their statutory and regulatory responsibilities in this area of the program.

One reason for non-compliance is simply the lack of resources. In most state and local child support enforcement agencies, caseloads are unmanageable -- often exceeding 1000 per caseworker. Agencies find it very difficult to perform the routine functions of locating absent parents, establishing paternity, establishing support orders, monitoring for compliance and taking enforcement actions when appropriate. The addition of program responsibilities in the area of medical support enforcement -- particularly when it became mandatory to provide these services for non-AFDC families receiving Medicaid -- stretched these limited resources beyond their capability to respond. Furthermore, as discussed below, states are finding it very difficult to enforce medical support obligations once they are established. As a result, the return on the investment of those resources devoted to medical support enforcement is quite low. States are understandably reluctant to devote precious resources to activities that do not produce a positive return.

Once a parent is ordered to obtain and maintain coverage, most states lack an effective or efficient enforcement remedy. A few states, such as Minnesota, Iowa and Illinois, have enacted statutes that allow the court or IV-D agency to issue orders to a parent's employer, directing the employer to add the parent's children to the group insurance plan and to deduct the parent's contributions from wages. This is much more effective and efficient than the contempt of court remedy available in other states. The Subcommittee may want to study the effectiveness of the "Minnesota model" as a possible national model.

The more serious problem is that states are often unable to regulate group insurance plans, which often prohibit the coverage of children who do not reside with the insured. Some

states have passed statutes prohibiting such discriminatory exclusion clauses, but often find their statutes impotent either because the group plan was written in another state, or more often because the plan is covered by the Employee Retirement Income Security Act of 1974 (ERISA), which preempts state law. We encourage the Subcommittee to study this problem and propose federal legislation to prohibit these exclusionary clauses.

Finally, a short word about **program performance standards.** Both COSCA and NCSEA agree that states should be held accountable for meeting appropriate standards and that the Federal Government has a critical role in setting these standards and in auditing state programs. In response to section 121(a) of the Family Support Act of 1988, the federal Office of Child Support Enforcement established a comprehensive set of performance standards, effective October 1, 1989. We compliment OCSE for the process they employed in establishing these standards. As required by the Act, OCSE appointed an Advisory Committee to provide input from various perspectives. The resulting standards establish reasonably tight time frames for each step in the case-processing sequence.

Nevertheless, we have some concerns with the detailed approach of the performance standard mandate contained in the Family Support Act, as well as the timing of its implementation. We prefer outcome-oriented standards, such as the paternity establishment standards contained in section 111 of the Act, to the detailed time-frame standards established by OCSE in response to section 121 of the Act. Outcome-oriented standards are directly related to the goals of the program and are much easier for states to monitor. Detailed time frames will require courts and IV-D agencies to develop and implement complex monitoring and reporting mechanisms so that program managers can track current compliance and take corrective action when necessary. Unfortunately, few states currently have automated systems that are up to the task of tracking the time frames. Manual monitoring and reporting will take precious time away from program staff, who will be hard-pressed to meet the time frames.

Moreover, we are convinced that few states will be able to comply with the performance standards prior to full implementation of statewide comprehensive automated systems, set to occur in all states by October 1, 1995. Attached to my testimony this morning is a resolution that was adopted by the Board of Directors of the National Child Support Enforcement Association at its recent conference in Milwaukee. In the resolution NCSEA asks Congress to direct OCSE to defer sanctions or penalties against state IV-D agencies for failure to meet the section 121 performance standards until such time as all states have implemented certified automated systems. We believe that unless such relief is granted, virtually every state will suffer a loss in federal funding during a time when such funding is critically needed to implement the provisions of the Family Support Act of 1988.

Mr. Chairman and members of the Subcommittee, I want to thank you for this opportunity to testify on behalf of the Conference of State Court Administrators and the National Child Support Enforcement Association. I assure you of both groups' continued cooperation in your efforts and the efforts of the Office of Child Support Enforcement to improve the financial security of all of America's children. Thank you again. I will be happy to answer any questions you might have.

COMMENTS TO PROPOSED REGULATIONS
(Federal Register, August 15, 1990)

by the

NATIONAL CHILD SUPPORT ENFORCEMENT ASSOCIATION

On August 15, 1990, the Office of Child Support Enforcement proposed regulations to implement three provisions of the Family Support Act of 1988 (P.L. 100-485). These regulations implement the statutory requirements that States:

-- send to individuals who have assigned their support rights to the State a monthly notice of collections received; (P.L. 100-485, Sec. 104)

-- have procedures for periodic review of support orders and adjustment, if appropriate, in accordance with the State's child support guidelines; (P.L. 100-485, Sec. 103) and

-- have immediate wage withholding for support orders issued on or after November 1, 1990 (P.L. 100-485, Sec. 101).

NCSEA generally supports the basic provisions of the proposed regulations, and commends the Secretary for his clear effort in light of the considerable diversity of child support enforcement programs throughout the country, to provide reasonable flexibility to States to meet the requirements of the Family Support Act. While we support providing States with ample flexibility to fashion programs that are consistent with existing structures and procedures, we recommend that there be sufficient clarity that States are not left vulnerable to audit sanctions because they misread an ambiguous regulation that is reasonably subject to conflicting interpretations.

Consequently, we make suggestions throughout these comments for ways in which the Secretary might add clarity to the proposed regulations. Specifically, we recommend that the Secretary extend the deadline for granting quarterly notice waivers and encourage States to explore automated voice response systems. We also recommend that the definitions of review and modification, as well as the time standard for modification be clarified to ensure that the final rules provide States with adequate guidance to establish and implement modification plans that meet federal requirements.

In addition, some suggestions are made to strengthen the impact of the regulations. In particular, we urge the Secretary to require States to adopt a quantitative modification standard and to obtain administrative subpoena power for the IV-D agency. We further recommend that the Secretary establish specific regulations to govern the adjustment process in interstate cases. Such revisions will provide States with a federal mandate that is strong enough to assist them in obtaining legislation needed for smooth implementation and operation of a comprehensive periodic review and adjustment program. Finally, we recommend that the Secretary continue to analyze the effect of these rules over the next three years as the results of the demonstration projects become known and the States have had some experience with the modification process.

In this spirit, NCSEA offers the following specific comments:

I. NOTICE OF SUPPORT COLLECTED

Proposed Section 302.54
Notice of Assigned Support Collected

Summary: The proposed regulation requires the IV-D agency to notify individuals who have assigned their support rights to the State that a monthly notice will be provided; provide a monthly notice of the amount of support collected for each month, unless no collection is made or the assignment of rights is no longer in effect; separately list payments collected from each absent parent if more than one absent parent is making payments to the family; and indicate the amount of current support collected and the amount of arrears collected, as well as the amount paid to the family. The proposed regulation also provides that waivers permitting States to send quarterly notices after a showing of an unreasonable administrative burden will not be available after September 30, 1995.

Discussion:

A. Provision of Monthly Notices: Mail and Voice Response

In general, we support the monthly notice requirement as a valuable means of keeping recipients of public assistance involved with and aware of child support enforcement efforts being made on their behalf. By providing monthly notices of collections, the IV-D agency enables custodial parents to make informed decisions about whether they can become

self-sufficient. Providing monthly notice also helps the parties and the IV-D agency resolve questions about payment in a timely manner and correct any errors in distribution promptly.

We also support the proposed regulation's flexibility in allowing States to explore alternative methods of providing parents with collection information. Specifically, we believe that the automated voice response system, discussed in the preamble to the proposed regulations, is an innovative proposal which States should be encouraged to consider.

An automated voice response system has distinct advantages for both parent and IV-D agency. Parents benefit by having ongoing and instantaneous access to the information they need. The IV-D agency benefits by mitigating the impact of the labor-intensive, costly process of conducting regular mass-mailings to thousands of parents.

The experience of IV-D agencies in providing an annual notice suggests that such mailings are not only expensive, but that they also trigger a high volume of telephone calls from parents with general questions about why the notice was sent and what it means. Responding to these calls consumes valuable staff time and drains agency resources from the important tasks of establishing and enforcing orders for support. An automated voice response system would be more effective than a written notice, in many instances, provided that it was simple to access and "user-friendly." Admittedly, the system would require a significant short-term investment, but it would produce long-term savings in scarce agency resources.

B. Provision of Quarterly Notice

We also support the proposed waiver permitting States to issue quarterly notices upon a showing of unreasonable administrative burden. However, we recommend that there be no cut-off date for granting these waivers. The availability of waivers authorizing quarterly notices is not subject to any calendar limitation in the Family Support Act. Moreover, as State programs make the shift from the annual notice requirement, sound reasons may emerge as to why a quarterly notice is a more accurate indicator of payment activity than a monthly notice. Because a quarterly notice outlines payments made over a period of months, it may be a better barometer of a noncustodial parent's ability to make sustained contributions.

Indeed, the quarterly notice may prove to be more meaningful for parents than the monthly notice in light of recent changes to the timing and distribution of $50 pass-through payments. Pursuant to Section 102 of the Family Support Act, a $50 pass-through payment must now be made in any case where

payments were made by the absent parent in the month when due, even where the payment is received by the agency in a later month or months. This means that in many cases, pass-through payments will be issued for collections received long after the particular month in question has passed. In such cases, if the custodial parent has already received a monthly notice stating that no collections were received for that month, he or she will be understandably confused upon the subsequent receipt of a $50 check for that same period. A quarterly notice, in contrast, will document the late receipt of payments that were otherwise timely and will save the parent and agency needless questions and concern. Accordingly, we submit that it would be premature at this early stage to phase out the quarterly notice option before its advantages have been fully explored.

Recommendation: Encourage States to implement an automated voice response system as a means of providing collections information in satisfaction of statutory requirements.

Eliminate or extend the proposed expiration date for waivers permitting States to provide quarterly notices upon the showing of an unreasonable administrative burden.

II. PERIODIC REVIEW AND MODIFICATION

Introduction: Section 103(c) of the Family Support Act requires each State to periodically review and adjust child support orders being enforced by the State's IV-D program, as appropriate, in accordance with the State's guidelines. By October 13, 1990, the State must develop a plan indicating how and when child support orders in effect are to be periodically reviewed and adjusted, at the request of either parent subject to the order, or of a State child support enforcement agency. By October 13, 1993, the State must have procedures for periodic review and adjustment of all AFDC orders unless not in the best interest of the child, and of all non-AFDC orders at the request of either parent, at least every 36 months.

The statute raises many questions, the answers to which will and should vary according to local conditions, variations in State child support programs, statutes, case law, local legal culture, court structure, availability and scope of administrative or quasi-judicial process, and the size of the AFDC and non-AFDC caseload. Regulations promulgated under this statute can perform a critical function in clarifying many of these questions, by giving States guidance in how to implement these provisions most effectively, and by providing a strong federal mandate to compel the necessary statutory, administrative, and procedural changes to implement such a comprehensive program. These provisions of the Family Support Act will set in motion some of the most far-reaching

changes in family law practice and in the administration of a high volume child support caseload since the inception of the IV-D program. It is therefore critically important that the process be carefully analyzed, and that regulations be crafted to facilitate implementation.

Proposed Section 302.70(10)
Required State Laws

Summary: Section 302.70(10) would require States to have by October 13, 1990, or by October 13, 1993, as appropriate, procedures for the review and modification of child support orders, in accordance with the requirements of proposed 45 CFR 303.8.

Discussion: This proposed rule is unnecessarily vague. State agencies need a strong federal mandate to support their efforts to obtain new legislation that will facilitate a comprehensive periodic review and adjustment program. In particular, we suggest that the Secretary require States to adopt laws that provide for:

- a quantitative standard for adjustment (See Comments to Proposed Subsection 303.8(b));
- agency subpoena power that may be enforced administratively (See Comments to Proposed Subsection 303.8(c)(2)); and
- a clear statement that binding contracts settling child support obligations are against public policy (See Comments to Proposed Subsections 303.8(a), 303.8(c)(3)).

Recommendation: This section should be strengthened and clarified to require States to adopt, by October 13, 1993, specific laws that will facilitate effective implementation and operation of the periodic review and modification program.

Proposed Section 303.4
Establishment of Support Obligations

Summary: The proposed regulation requires the IV-D agency within 90 calendar days of locating an absent parent or of establishing paternity, to establish or modify an order for support or to complete service of process necessary to commence proceedings to establish or modify a support order.

Discussion: We support making IV-D agencies subject to prompt case processing requirements in modification cases. However, for reasons outlined below, we recommend that the proposed performance standard for processing modification cases be set forth separately, either as a separate new regulation or as a separate paragraph in the existing regulation. The Secretary should also carefully consider the impact that the modification performance standard will have on the existing expedited process timeframes as set forth in 45 CFR 303.101.

Including the modification performance standard within the same regulation that sets timeframes for establishment of orders may be misleading for IV-D agency personnel and for federal auditors alike. Confusion could arise because the same event, i.e. "location", is used to trigger the 90 day timeframe for both establishment or modification cases. However, the information that constitutes sufficient location for an establishment case may not constitute sufficient location information for a modification case.

To commence proceedings to establish an order, location must focus on confirming the physical whereabouts of the absent parent. Only a minority of establishment cases are filed with the IV-D agency having complete information about assets, income, and employment of the absent parent. Such information usually comes to light only after the filing of a complaint or the initiation of proceedings before an administrative or judicial tribunal.

In modification cases, however, it is the confirmed location of the obligor's assets, income, and earnings, as well as the obligor's physical whereabouts, that constitutes sufficient information for location. Modification cases, therefore, require more extensive location efforts than establishment cases. The need for more comprehensive information in modification cases is buttressed in proposed 45 CFR 303.8 which mandates that a "review" consist of "an objective evaluation of complete, accurate, up-to-date information necessary for the application of the State's guidelines for support." (This requirement is discussed in more detail below.)

Including a separate performance standard for modification cases will also clarify when the requirements for advance notice are to be applied. For example, proposed 45 CFR 303.8(d) provides that States must notify each parent of any review at least 30 days in advance of initiating the review. The purpose of the advance notice is clearly intended to enable parents to obtain and submit necessary financial information so that the review will be an accurate evaluation based upon the best information available. It should be clarified that the 90 day timeframe for modification does not begin until complete and accurate financial information has

been provided, i.e until there has been "location" for purposes of review and modification. Any other interpretation would unfairly penalize IV-D agencies that would be forced to consume 30 of their allotted 90 days waiting for the advance notice period to expire.

The Secretary should also consider the impact this 90 day performance standard will have upon the expedited process requirements which mandate the timely disposition of cases from the date of filing. In States which conduct the review after the formal filing of a proceeding to modify, prolonged discovery may impede their ability to comply with the expedited process requirements. Conversely, States which have administrative subpoena power or which otherwise conduct pre-filing review and information gathering will have 90 days from location to complete service and an additional 90 days after filing to complete modification.

Recommendation: Promulgate the 90 day performance standard for processing modification cases in a separate regulation or in a separate paragraph of 303.4 in recognition of the fact that the location information necessary to initiate a modification is more comprehensive than the location information which is sufficient to initiate a proceeding to establish an order.

Provide that the 90 day timeframe for modification cases is triggered only after sufficient information on the assets, income and earnings of the obligor has been obtained to enable the State to conduct a review within the meaning of 45 CFR 303.8(c).

Consider the impact of modification performance standards on the existing requirements for expedited process and develop revised regulations which permit the two timeframes to co-exist.

Proposed Subsection 303.8(a)
Review and Modification of Child Support Obligations

Summary: Section 303.8(a) would require the State to implement procedures for the periodic review and modification of child support orders enforced by the IV-D agency, with "modification" deemed to apply only to the support provisions of the order, and "parent" defined to include any custodial beneficiary of the support order."

Discussion: The Family Support Act refers not to "periodic review and modification," but to "periodic review and adjustment" of child support orders. P.L. 100-485, Sec. 103(c) (emphasis added). The Secretary should carefully consider the decision to substitute terms. "Modification" is a legal term of art defined by individual State statutes and

case law, and has many diverse definitions and applications, usually requiring a showing of a continuing and substantial (or material) change of circumstances as a condition of modifying the child support order. Factors other than changes in income are often considered by the court, such as needs of the child, custody and visitation arrangements, after-acquired assets and liabilities of both parents, other terms of the court order or separation agreement, and whether a separation agreement survived or merged in the court's judgment.

On the other hand, "adjustment" is a term that is relatively undefined elsewhere in family law, and does not come with the generations of interpretive baggage that is associated with the term "modification." "Adjustment" has the added advantage of connoting a correction in the amount of the support order, as opposed to a change in other provisions of the order or judgment. If, however, it is the Secretary's specific intent to use the provisions of the Family Support Act to change this body of law relating to modification of child support obligations, he is strongly urged to define "modification" in the regulations, and to require States to adopt such a definition by statute. In our view, the statement in the proposed regulation that "'modification' applies only to support provisions" is not sufficient to protect this important program from the vagaries of various legal interpretations that may attempt to weaken its impact.

Whether the term "adjustment" or "modification" is ultimately used, however, a clearer definition is needed, particularly with respect to separation agreements. We urge the Secretary to require States to implement legislation prohibiting parents, as a matter of public policy, from entering into binding agreements for child support that are immune from modification or adjustment. See Comments to Proposed Subsection 303.8(c)(3), infra. Moreover, "support" under State law would also include provisions relating to alimony. The alimony component of a support order must be addressed.

Recommendation: A clearer definition of "modification" or "adjustment" should be incorporated into the final regulations. In particular, this definition should address the problem posed by separation agreements that survive a court's judgment and establish the obligations of the parties, including obligations for child support. We urge the Secretary to further address this issue by promulgating a regulation requiring States to adopt laws that make binding agreements purporting to establish child support obligations against public policy. Finally, the relationship of the alimony component of a combined alimony/support order should also be addressed.

Proposed Subsection 303.8(b)
Requirement for Review and Modification: 10/13/90

Summary: Subsection 303.8(b) requires the State to develop by October 13, 1990, a plan for the periodic review and modification of IV-D orders. The plan must target for review -- and modification, if appropriate, -- orders where there has been an assignment of support rights to the State. The plan must also show the commitment of resources necessary to review orders in all IV-D cases at the request of either parent or of a State child support enforcement agency. Upon such a request, the State must then initiate a review. The review and modification, if appropriate, must be accomplished in accordance with the State's child support guidelines.

Discussion:

A. Regulations Provide States with Needed Flexibility

There is considerable diversity among the States in the ways in which IV-D programs are implemented, including differing allocation of functions between the administrative agency and the courts, and varying availability of administrative, quasi-judicial, and judicial processes. The Secretary is to be commended for not attempting to prescribe one method or system for the performance of these quite diverse functions, which include investigation, negotiation, mediation, prosecution, and adjudication, currently performed in most States by several different entities.

The results of the demonstration grants are not yet known, and in addition, much will be learned over the next three years as States develop plans that apportion functions differently among the administrative and adjudicatory agencies. By virtue of their varied administrative and judicial structures, States will allocate differently the target, review, and modification functions, with some States conducting much of the review process in the administrative agency, while others place more of the review process in the adjudicatory body, whether it be administrative, quasi-judicial, or judicial process, or a combination. We urge the Secretary to retain this flexibility in the final regulations. To require all States to implement this complex program according to the same formula would wreak unnecessary havoc in existing, well-functioning systems having historical roots in a particular State.

B. Distinguishing Between State and Agency

We also commend the Secretary for preserving the distinction that the Family Support Act makes between what the State must provide, and what the State child support enforcement agency must provide. On occasion, OCSE staff and others have interpreted this provision of the Family Support Act to

require that all of the functions associated with periodic modification be performed by the State child support enforcement agency, implying that the agency must be investigator, prosecutor, mediator, and judge of the entire process. Although the proposed regulations follow the language of the statute, as will be discussed more fully below, this interpretation of the comprehensive role of the IV-D agency continues to pervade the preamble to the proposed regulations, particularly in the apparent unwillingness to recognize serious conflict of interest problems for the IV-D agency in initiating (as opposed to acquiescing in) downward modifications. See Comments to Proposed Subsection 303.8(c)(4), infra.

C. Requiring a Quantitative Modification Standard

With respect to targeting cases for review, we urge the Secretary to include a provision enforceable under 45 CFR 302.70 requiring States to identify cases with modification potential by use of a quantitative formula. Just as 45 CFR 302.56 implemented the guidelines requirement of the Child Support Enforcement Amendments of 1984 by requiring that States' guidelines be "based on specific descriptive and numeric criteria and result in a computation of the support obligation," so should the modification regulations require a quantitative threshold change in the order to target the case for review under the guidelines.

Most States that have begun implementing this requirement, including those conducting the demonstration grants (see, e.g., Michigan, Vermont, Florida, Colorado, Illinois, and Oregon), have adopted such a standard, whether it be a 10%, 15%, or even 20% variation in the order, to trigger the review. A federal regulation requiring such a quantitative standard would greatly assist State IV-D programs in acquiring the legislation necessary to implement this program, and would provide a major counterweight to the "substantial change in circumstances" standard described above. For example, Vermont adopted such a statute providing that a child support order which varies more than 15% from the amounts required under the guidelines "shall be considered a real, substantial and unanticipated change of circumstances," while leaving intact the traditional standard for modification based on other criteria. 15 V.S.A. c. 11, s. 660.

While it is not advisable for the regulations to impose a specific percentage number, the preamble should encourage States not to aim too high or too low. The former would foreclose cases otherwise appropriate for modification, while the latter would literally bury the system with cases requesting upward or downward modification where there are minor fluctuations in either party's income. Domestic relations cases notoriously involve parties who use the legal

system as a forum to continue the emotional battle. Keeping child support orders up to date is important for both parties, but should not provide an opportunity for perpetuation of struggles from another domain.

Additionally, any percentage threshold adopted should be based upon a percentage change in the order after application of the guidelines, rather than a percentage change in income, since most guidelines require both parents' income in the formula. An increase in one parent's income may be more than offset by an increase in the other parent's income. Other non-financial factors may determine the outcome as well.

Finally, the quantitative threshold should be the starting point to assist States in determining which cases might be appropriate for review and modification. Once cases are evaluated with complete data, additional factors may apply to clarify that certain cases are, in fact, not ripe for modification. Thus, even with a quantitative standard, States must have latitude to apply additional criteria to decide whether modification is warranted in each case.

Recommendation: We recommend that the Secretary maintain the flexibility provided in these proposed regulations to ensure that States are able to fashion modification plans that will be effective within their respective IV-D programs. We also recommend that the Secretary maintain the distinction between the State and the child support enforcement agency in the final regulations. Not only does such a distinction mirror the language of the Family Support Act, it also provides States with necessary flexibility to allocate functions among different government entities to accomplish the review and adjustment requirements. Further, we urge the Secretary to require States to adopt a quantitative modification standard that can be used to target cases for review, including the flexibility to apply non-quantitative criteria to determine the appropriateness of modification.

Proposed Subsection 303.8(c)(1)
Requirement for Review and Modification: 10/13/93

Summary: Subsection 303.8(c)(1) provides that by October 13, 1993, the State must review at least every 36 months cases where support rights have been assigned to the State. In other IV-D cases, the review must take place at least every 36 months at the request of the parent. The State must establish procedures specifying circumstances under which orders will be reviewed more frequently than every 36 months. All such cases must be modified in accordance with the guidelines.

Discussion:

A. Reviewing Cases More Often than Every Three Years

We agree with the Secretary that some cases may necessitate adjustment more often than every three years. In addition, we support the intent of the Secretary, stated in the preamble, to protect States from frivolous requests for review prior to the elapsing of the requisite 36 months. Clearly, procedures are necessary to provide for review and adjustment, when appropriate, during the interim period. However, the regulation should dictate the need for States to draft such procedures carefully, ensuring that there is one uniform standard applicable to all cases.

Consequently, we suggest revision or clarification of this section because it implies that there must be two standards for reviewing cases for possible modification, one for the periodic review every 36 months, and the other where circumstances justify modification during the interim period. In the interest of administrative and judicial economy, and to promote clear standards easily understood by the parties, we recommend one standard for review and modification of orders based on the percentage change in the order described above. Otherwise, it is likely that the review every 36 months will have a de minimus standard, while the interim review will use a strict standard to discourage "churning" and frivolous requests. A dual standard will also feed the temptation for parties to deliberately decrease income around the time of the periodic review, requiring the IV-D agency to monitor interim changes in income to bring the case back for review, where it would then confront a stricter standard.

The necessary clarification might be accomplished by inclusion of a statement requiring States to establish procedures specifying the threshold showing a parent must make to obtain review upon request more frequently than every thirty six months. With this type of requirement, the State could merely require the requesting parent to provide sufficient evidence to demonstrate that adjustment is appropriate under the standard applied in other modification cases before accepting the case for review. This type of procedure would not only discourage frivolous requests for review by putting the initial burden on the requesting parent, but also prevent States from having to undertake a review unless the requesting parent could show that the circumstances of the case support modification. In addition, under such a procedure, all cases would be subject to modification on the basis of the same standard.

B. Application of the Guidelines

The requirement that all cases are to be modified, if appropriate, in accordance with the State's guidelines is, of course, essential to the effective operation of such a broad-scale modification program. The application of child support guidelines is nevertheless a more complicated process than the proposed regulations and the remarks in the preamble infer.

There is no doubt that the advent of child support guidelines applied as a rebuttable presumption has had a significant impact in simplifying and streamlining the process for setting child support awards, bringing consistency and predictability to a formerly erratic process. However, setting a child support order under guidelines is still not a mechanistic exercise that requires only a few income figures and a calculator, with no intervening analysis or discretion. It is well known that States' guidelines vary considerably in complexity and in the kinds and numbers of factors that must be taken into account in addition to both parties' income and the number of children. Second families, income from a subsequent spouse, day care expenses, medical insurance costs, custody and visitation arrangements are but a few of the types of additional factors that frequently determine the final guidelines amount. Simplified procedures and automated computer assistance have contributed enormously to streamlining the process; child support nevertheless continues to be a labor-intensive business requiring some human intervention within the IV-D agency to bring genuine fairness to the outcome. We merely offer this cautionary word so that case processing expectations are kept at a realistic level, and refer back to the comments offered above for proposed section 303.4.

Recommendation: Revise the requirement that States establish procedures specifying circumstances under which orders will be modified more often than every three years. In particular, clarify that there should be one uniform standard applied in all cases to detemine whether a modification is appropriate. Further, we urge the Secretary to recognize that while non-adversarial proceedings may be an ideal for which States should strive, the vast majority of child support activity occurs within an adversarial process and thus, mitigates against use of purely mechanical application of formulae, such as Child Support Guidelines to adjust obligations.

Proposed Subsection 303.8(c)(2)
Definition of Review

Summary: Subsection 303.8(c)(2) defines review as an "objective evaluation of complete, accurate, up-to-date information necessary for application of the State's guidelines for support," and directs the State to require a parent to provide any necessary information otherwise unavailable to the State.

Discussion:

A. Defining Review

The definition of "review" focuses on the heart of the modification process, yet not only is it ambiguous in not clearly indicating where in the process it occurs, it also assumes an unrealistically nonadversarial process. Is the review to take place at the administrative level, before a complaint for modification is filed? Or, is it an adjudicatory review, whether it be administrative, quasi-judicial, or judicial? The reference in paragraph (3) to "petitioning for modification" suggests that the review is administrative, as does the reference to a "proposed modification" in subsection (d)(3), while the mention of the "right to initiate proceedings to challenge the modification" later in subsection (d)(3) implies that the review occurs at the adjudication stage.

Throughout the regulations the use of the term "review" provokes questions and uncertainty. The definition should be strengthened to provide States with adequate guidance to fashion modification plans that comply with the regulations and meet clear audit criteria. In particular, the definition should explicitly grant States flexibility to design a review process that will be effective within their respective child support programs. Additionally, the definition should clarify whether the review may occur solely at the administrative level prior to adjudication, or solely within the adjudicatory process, or as a process that includes both administrative and adjudicatory procedures. See Comments to Proposed Section 303.8(d), infra.

B. Components of Review

As the Secretary has aptly recognized, the strength of the review depends upon the State's ability to acquire "complete, accurate, up-to-date information. To ensure that such information is obtained, the regulations should specifically require State IV-D agencies to acquire administrative subpoena power. No matter how simple or complex child support guidelines are, they are only as good as the income

information fed into the formula is complete for both parties. Proof of income, therefore, remains the heart of every child support case, and it continues in a substantial number of cases to be an adversarial process.

While much income information may be available to the agency through wage reporting systems, many obligors (probably as many as 40%) do not have assignable income. The source of their income is not likely to appear on the wage reporting system. Moreover, wage reporting systems are frequently several months out of date, and do not pick up sources of income from second jobs, investments, and the like. Finally, some States do not have an income tax, and federal income tax information is not readily available, and when it is available, it is often out of date; its use (albeit an important one) is primarily for verifying income history and income producing assets.

C. Administrative Agency Subpoena Power

Power for the administrative agency to subpoena a wide range of financial information from the parties and from possible sources of their income, including checking accounts and credit card records, is essential for the effective operation of a modification program of the scope contemplated by the Family Support Act. This information can be essential in cases involving attribution of income -- a high lifestyle, yet no identifiable source of income to back it up.

Additionally, this power must be supported by adequate sanctions for noncompliance, either through the court's contempt power or by imposition of penalties, or both. Without such a power, the review process (or initial targeting for review) will be limited to information that is available to the agency from automated sources or from known employers. Further, in the absence of strong administrative powers that are enforceable at the administrative level, agencies will be forced to file complaints for modification in all cases where computerized income information is not available, even those where modification is ultimately determined not to be warranted, merely to obtain the discovery powers that accompany formal litigation, whether it be through the judicial or administrative process. The judicial or administrative process will be unnecessarily burdened with complaints to docket, process to serve, discovery motions to schedule, hear, and rule on -- all just to find out whether there are grounds to modify an order.

At the time an order is initially established, parents often have had fairly recent contact with each other, know their respective employment and financial circumstances, and are able to reasonably assess the accuracy of financial information submitted by the other. As the child support obligation can stretch over a period as long as 21 years,

this knowledge of mutual circumstances fades, and other sources of income verification become necessary. The parties should be compelled to submit recent federal income tax returns, in addition to other documents that may be appropriate in a particular case, depending upon the source of income.

This power will be particularly necessary in non-AFDC cases where the sources of income are more likely the result of self-employment. These cases are the most difficult to handle in the system, whether it be at the establishment, enforcement, or modification stage, a difficulty compounded in interstate cases. Additional federally mandated subpoena powers for the IV-D agency would be of enormous benefit to the entire child support process, including establishment and enforcement of orders, and we urge the Secretary to require it.

Another way to accomplish this end is to require (rather than suggest) that all new orders contain a provision requiring parties to submit up-to-date financial information every three years so that it may be assessed for modification potential. The problem with this approach -- if used alone without agency subpoena power -- is that it relies upon voluntary compliance, and does not give the agency authority to compel submission of additional documentation when appropriate.

D. Cases with Insufficient Available Information

One area that should be analyzed during the next three years, and in particular from the demonstration projects, is what to do about cases where the obligor cannot be located or where one of the parties fails or refuses to comply with discovery orders. Should an arbitrary change in income be attributed, and the order modified accordingly? Collections will result only in those cases where there is assignable or other located income, but at least the order will be kept somewhat up-to-date, a factor that is particularly important in light of the prohibition against retroactive modification prior to the date of notice to the other party. Without some such provision, the obligor who disappears will reap the benefits of an unreasonably low order.

The Secretary might begin to address this issue by qualifying the requirement that the review consist of an evaluation of "complete, accurate and up-to-date information" so that the option of attribution of income will not be foreclosed in cases where obligors are obfuscating the agency's efforts to obtain accurate, timely data.

Recommendation: We recommend that the regulation clarify and strengthen the definition of review to provide States both with flexibility to design effective review procedures and with sufficient guidance to assist States in designing plans that will meet federal regulatory requirements and audit criteria. Specifically, the regulation should include a statement granting States latitude to create review procedures and a provision clarifying when in the overall process the State may conduct the review (e.g. pre-adjudication, during adjudication or over a period combining both).

Further, we strongly urge the Secretary to require each State to obtain administrative subpoena power including authority to enforce subpoenas issued by the administrative agency. Such authority will be of enormous benefit to IV-D agencies, not only for accomplishing review and adjustment of orders, but also for other aspects of child support enforcement.

The Secretary should also consider the way in which States should handle those cases for which information necessary to complete the review and adjustment (if appropriate) cannot be found or acquired. We recommend that the Secretary qualify the requirement for accurate, up-to-date information in the review by incorporating an exception for cases in which attribution of income may be warranted. Further, we urge the Secretary to conduct an analysis examining experiences of States, particularly those conducting demonstration projects, to determine whether additional regulation will be needed to address this issue.

Proposed Subsection 303.8(c)(3)
Modification Premised upon Inconsistency with Guidelines

Summary: Subsection 303.8(c)(3) requires that inconsistency with the State's guidelines be adequate grounds for petitioning for modification, regardless of whether the order was established under the guidelines, unless the inconsistency is considered negligible under the State's procedures. In addition, the availability of reasonably priced health insurance must also be adequate grounds for modification.

Discussion:

A. Modification Pursuant to the Guidelines

We commend the Secretary in requiring pre-guidelines orders to be reviewed and updated in accordance with the guidelines. To avoid an overwhelming influx of cases seeking modification when guidelines went into effect, many States stated in their guidelines that the adoption of the guidelines did not in and

of itself constitute a material change in circumstances (see, e.g., the Massachusetts guidelines). However, once the threshold substantial change in circumstances standard is met, the guidelines are applied.

The problem with the substantial change in circumstances standard has been more in its subjective, non-quantifiable, unpredictable, and inconsistent application than in the standard itself. Further, many IV-D agencies and practitioners have found it more difficult to persuade the adjudicator to apply guidelines in pre-guidelines modification cases than in cases where the order is first being established, on grounds that the absent parent has been accustomed to paying a lower amount for such a long period of time that it is unfair to order a substantial increase on relatively short notice, where other financial liabilities may have been incurred.

While this resistance will no doubt diminish over time, it is important for the Secretary to firmly state the application of this standard. In fact, ideally, the regulation should require States to adopt a quantitative modification standard. While the specific numeric standard should be left for the States to determine, such an objective standard, based upon application of the Child Support Guidelines, will facilitate the modification process. See Comments to Proposed Subsection 303.8(b), supra.

We offer one cautionary note here, however, because in the attempt to bring pre-guidelines orders under the guidelines for modification purposes, the regulations may also be including separation agreements where child support was reasonably and fairly awarded outside the guidelines as part of a comprehensive alimony and property division settlement. Because of the tax advantages that alimony payments offer the obligor, in many cases initially handled by the private bar but later enforced by the IV-D agency, these settlement agreements may be in effect. They will be very difficult for the IV-D agency to handle in the type of high volume case processing environment this program requires, and virtually impossible to handle under the proposed timeframes, as they will require judicial interpretation.

The preamble suggests that circumstances that originally took a case outside the guidelines may still be applicable at the modification stage. However, the fact that the regulations do not specifically mention separation agreements will certainly cause much confusion and litigation until the place of agreements in the overall child support program is resolved. Perhaps agreements will be addressed in the final regulations on guidelines, proposed in the Federal Register of September 13, 1989. While the Secretary may justifiably decide not to address the issue of separation agreements at

this stage of the development of the modification program, it is an issue that will become increasingly significant as the non-AFDC caseload expands, since the vast majority of divorce cases settle by agreement.

Finally, although it will not resolve all issues relating to separation agreements, we support the promulgation of a regulation requiring States to prohibit contractual establishment of child support obligations that are immune from modification in the future. To accomplish this, States would have to enact provisions mandating that the rights of children to support cannot be bargained away by parents and clarifying that contracts setting binding, unmodifiable child support obligations are against public policy. See Comments to Proposed Subsection 303.8(a), supra.

B. "Negligible" Inconsistency with Guidelines

With respect to the provision permitting States to exclude from modification cases in which the inconsistency with the Guidelines is "negligible," we strongly urge the Secretary not to use this term at all, but instead to instruct States to set a percentage deviation in the order to justify a rebuttable presumption that a modification is appropriate. We further suggest that the choice of the word "negligible" is inapposite, as its operational application in the State's modification plan will undoubtedly yield conflict and perhaps litigation.

As noted under the comments for section 303.8(c)(1) above, the standard for modification should be more than "negligible," more than de minimus. If not, programs already overwhelmed with dramatic increases in paternity and non-AFDC caseloads, increasing unemployment resulting in more enforcement actions, and the impact of strict case processing time standards will simply not be able to function. The dollar return to the parties from a "negligible" standard will not justify the significant allocation of program resources at all stages of the process -- scarce resources that could be used effectively elsewhere. Under such a standard, minor fluctuations in income from either party -- such as occasional availability of overtime, a seasonal second job, a temporary layoff, a shortened work week for a variety of reasons -- will result in request for a modification. It was just such "churning" that led courts over time to develop the substantial change in circumstances standard, so that only cases with reasonable justification for modification were brought back to court.

C. Health Insurance

The inclusion of availability of health insurance as a grounds for modification is commendable, as rising costs of health care make insurance an increasingly important component of a child support order for both the State and for the non-AFDC custodial parent. However, the regulation should provide States with flexibility to determine whether obtaining an order for health care coverage is in the child's best interests. For example, there may be situations in which the custodial parent is providing or has the option to provide insurance coverage at a lower cost than is available to the noncustodial parent, or the insurance benefit available to the noncustodial parent may be of no benefit to the child because it is a health maintenance organization that has geographical limits, or the inclusion of health care coverage in the order may have significant impact on the amount of support awarded to the detriment of the child.

The Secretary should encourage (and perhaps require) States to include the health insurance component of the order on the wage assignment form, so that it can be transferred administratively to a new employer along with the underlying support order. This practice has been successfully implemented in Massachusetts, for example, and has eliminated the necessity for returning to court when health insurance was the only issue to be addressed.

Under such a requirement, the initial order would contain a provision requiring the obligor to provide health insurance when available through a group plan or other employment-related policy, even if such a plan was not available at the time the original order was set. If the obligor subsequently changed employers and health insurance became available, it would not be necessary to return to court for a modification. Instead the IV-D agency would transfer the wage assignment which included the provision governing health insurance.

Recommendation: We recommend that the Secretary require States to adopt a quantitative modification standard and to enact laws that prohibit parents from bargaining away the rights of their children to support by declaring binding agreements for child support against public policy. We strongly urge the Secretary not to use the term "negligible" in the final rules. Rather, we recommend that States be permitted to establish a threshold for modification by adoption of a quantitative modification standard applicable in all cases. We commend the Secretary on the provision mandating that provision of health insurance coverage be sufficient grounds to modify an order for for support and we recommend that this provision be maintained in the final rules. However, we recommend that the Secretary incorporate a provision in the final rules to permit States to determine

that acquisition of health care coverage may not be in the best interest of the child. In addition, we urge the Secretary to encourage States to incorporate provision for health care coverage onto wage assignment orders to minimize the need to return to court if health insurance becomes available after a support order is entered.

Proposed Subsection 303.8(c)(4)
Exception to the Review Requirement

Summary: Subsection 303.8(c)(4) provides that where support rights are assigned to the State, the State need not conduct a review if neither parent has requested a review and the State has determined that a review would not be in the best interests of the child. An increase in support and the availability of health insurance must be considered to be in the best interests of the child, unless either parent demonstrates to the contrary after a hearing in accordance with paragraph (d).

Discussion:

A. Role of IV-D Agency in Modifying Orders Downward

This proposed regulation provides a very important exception to the modification process and avoids one major source of controversy surrounding the implementation of the provisions of the Family Support Act in the area of downward modifications where the support rights are assigned to the State.

All IV-D programs are driven to a great extent by AFDC collections. Incentive payments are based on the ratio of AFDC collections to the cost of the program; many State legislatures set collection goals to measure the effectiveness of the program. In Massachusetts, for example, the budget of the Department of Public Welfare is underfunded by the amount that the IV-D agency is expected to collect to reimburse AFDC expenditures. As it is, to the extent that modifications increase the child support amount sufficiently to close the AFDC case, the IV-D agency in a direct sense is hurting its AFDC collections. To then require the agency to initiate downward modifications in AFDC cases by actively notifying the obligor of a possible downward modification would create an untenable conflict of interest.

Inasmuch as the IV-D agency performs roles of investigator, negotiator, and prosecutor, the IV-D agency cannot initiate proceedings on behalf of obligors seeking downward modifications. While the agency can surely be required to disclose financial information in its possession to both

parties,[1] it cannot negotiate or advocate a downward modification on behalf of an obligor whose order the agency is also charged with enforcing. The goals of every IV-D agency, since the inception of the program, have been to maximize AFDC collections, to close AFDC cases, and to keep non-AFDC families from going on public assistance. It is inconceivable to expect a IV-D attorney or child support worker to be in court one week on a contempt action against an obligor alleging attribution of income and hidden assets and seeking jail time, and then back again a few weeks later on behalf of the same obligor seeking a downward modification of the same order before the same judge or hearing officer, extolling the virtues of the obligor as a hard-working soul having a streak of bad luck.

This issue cannot be resolved by simply declaring that the IV-D attorney represents the State, and is therefore neutral in the process. That is tantamount to stating that the prosecutor in a criminal case represents the State, and therefore can provide legal assistance to a criminal defendant. Both the prosecutor in a criminal case and a IV-D attorney in a child support case represent the State. But the relationship between the prosecutor and the victim is profoundly different from the relationship between the prosecutor and the criminal defendant. To the latter is clearly owed a duty to prosecute the case fairly, not to hide or distort evidence favorable to the defendant, and to ensure that the defendant's due process rights are protected. The same duty of fairness and full disclosure of information is owed to a child support obligor by a IV-D attorney or other employee of the IV-D agency.

While we commend the Secretary for recognizing the ethical complexities of IV-D practice, we urge him to consider additional issues which must be addressed if it is assumed that the IV-D agency acts on behalf of its client, the State. Attorneys are regulated by the supreme courts of their jurisdictions, not by their legislatures. Passing legislation declaring that the State is the client of the IV-D agency or of IV-D attorneys is certainly a good idea, to obtain an official statement of the legislature's preference in the matter. However, the legislature's viewpoint is not determinative of that issue. Constitutional principles of separation of powers in most, if not all, States squarely place with the judicial branch the definition of conflict of interest and the scope of duty owed an attorney to his or her client or other participants in a judicial or quasi-judicial process.

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1. Some States may have confidentiality laws preventing such disclosure; these laws should be examined and revised in this context.

Thus, even though regulations may provide that no attorney/client relationship arises from the provision of IV-D services, IV-D attorneys are obligated to conform their practice to rules adopted by the State's supreme court and standards set under the Model Code of Professional Responsibility. These rules require attorneys to perform all of their responsiblities to avoid even the appearance of impropriety. Model Code of Professional Responsibility, Canon 9. The statement in the preamble recognizing that there may be concern because of "the perception that there is a conflict of interests" articulates the point. It is this very perception that gives rise to a violation of the Code of Professional Responsibility. Even though a IV-D attorney may appreciate the distinction that he or she represents the State, the parties may not understand this ethical subtlety. Custodial and noncustodial parents have interests which can be antagonistic to one another, and in performing IV-D services, a IV-D attorney can easily be perceived as an advocate for either party.

The final regulations must clarify that the IV-D agency has an impermissable conflict of interest in being the entity which initiates a downward modification on behalf of a noncustodial parent. While the IV-D agency can provide the parties with information obtained during review, and assist unrepresented parties in gaining access to the court or administrative tribunal, the IV-D agency cannot be the moving party. The agency may choose not to contest facts as offered, but it may not, consistent with ethical constraints and federal mandates, advocate in favor of reducing the amount of support payable.

Resolution of this problem is more complicated than is recognized by the Secretary in the preamble. There is no clear evidence to show that States really are "mov[ing] away from an adversarial method of establishing, reviewing and modifying orders...." The application of child support guidelines is not a mechanistic, ministerial function, having no place for discretion or advocacy. There are factual disputes over the factors to plug into the guidelines formula. Whether the system has administrative or judicial process, someone has to present the nature of those factual disputes to the fact-finder -- the judge or hearing officer. This is an adversarial process, as each side attempts to present the facts in the light most favorable to his or her case. Guidelines do not eliminate the adversary process; they merely provide a structure for defining the decision process and limiting the issues and the scope of discretion so that the advocacy is more focused and the outcome is more consistent.

Under the existing system, it is already only the contested cases that typically appear before a judge or hearing officer. The others settle by agreement, because there is no dispute over the facts required for the application of the guidelines. In fact, the cases that are most likely to require an adjudicatory hearing will also be the cases in which the information available to the IV-D agency is the most incomplete. Unlike wage earners and salaried employees, self-employed and professional obligors have many ways of shielding income that can only be brought to light in the context of an adversarial proceeding.

At the heart of the American jurisprudential and constitutional system is the concept that the adversary process, although far from perfect, is the best way of getting at the facts in contested cases. Stressing, as does the preamble, "the need for income verification to determine that the information presented is accurate before any modification takes place" (55 FR 33418, August 15, 1990) merely begs the question. Similarly, elsewhere the preamble refers to the intent of certain proposed regulations "to make clear that the State must make every effort to obtain and use in its determination as much information as is available consistent with the requirements of the State's own guidelines." (55 FR 33416, August 15, 1990 [emphasis supplied].) This "effort" is also manifested through the adversary process, not just through a passive collection of information from whatever wage information is readily available, and a mechanistic application of guidelines.

Because there has been such controversy and misunderstanding about the process, the regulations and the preamble should address these ambiguities by clearly stating that, under the Family Support Act, it is permissible for the State to continue to divide the various functions in the modification process between the IV-D agency and the courts.

Rather than implying that the IV-D agency is investigator, prosecutor, mediator, and judge, the regulations should require the IV-D agency and the courts to focus their energies on identifying clear criteria for modification, clarifying the burden of proof, facilitating discovery, simplifying procedures, making courts more accessible, making available form pleadings, providing simple instruction on how to obtain a pro se modification in simple non-AFDC cases. (AFDC cases must be presented by IV-D staff, since the recipient has assigned all child support rights to the State.) However, in some non-AFDC cases, there will be cases requiring sophisticated proof of income that will not be appropriate for pro se representation. In those cases, the IV-D agency should provide appropriate assistance -- while

continuing to represent the State -- to ensure that the child's best interests are met through a fair application of the guidelines based on full disclosure of financial information.

With regard to the role of the IV-D agency in downward modifications, we believe the preamble to the proposed regulations seriously misstates the provisions of the Family Support Act. The preamble states:

> . . . States may have questions regarding the significant provision that they respond to requests by absent parents for review and modification of support orders. While the statute clearly requires the IV-D agency to respond to such requests, one concern may be the perception that there is a conflict of interests in providing "services" to both absent and custodial parents. (55 FR 33418, August 15, 1990 [emphasis supplied].)

First, the Family Support Act clearly requires the State, not the IV-D agency to respond to requests for modification by either parent, or by the State child support enforcement agency -- a service that every State currently provides -- with greater or lesser degree of facility. The statute states:

> The State must, at the request of either parent subject to the order, or of a State child support enforcement agency, initiate a review of such order, and adjust such order, as appropriate, in accordance with the guidelines . . . . (P.L. 100-485, Sec. 103, 42 USC 466(a)(10(A) [emphasis supplied].)

The statute makes a clear distinction between the "State" and the "State child support enforcement [or IV-D] agency," a distinction that is recognized elsewhere throughout the regulations, most particularly in the definition section 45 CFR 301.1. There, "State" is defined as "the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam," while "IV-D agency" (the State child support enforcement agency referred to in the Family Support Act) is defined as "the single and separate organizational unit in the State that has the responsibility for administering or supervising the administration of the State plan under title IV-D of the Act." To interpret the statute any other way would require the IV-D agency to respond to a request for modification from itself, a function not within its power to provide, and by its terms contradictory.

The same conflict of interest exists in non-AFDC cases and the same exception should apply. If the IV-D agency actively solicits and assists the non-AFDC obligor in obtaining a downward modification that results in the custodial parent and child going on public assistance, then the IV-D agency has violated its clear Congressional and legislative mandate to reduce the AFDC caseload.

Moreover, federal regulations prohibit disparate treatment by the IV-D agency between AFDC and non-AFDC cases. As for the children of non-AFDC parents, how is it acceptable for the Secretary of Health and Human Services to take a position that an increase in support or the availability of health insurance is in the best interests of AFDC children, but not for non-AFDC children? Even when a non-AFDC obligor requests a downward modification, the position of the agency must always be to oppose it if it results in an order after full disclosure of income that is not consistent with the guidelines. To do otherwise would be to treat children of non-AFDC families differently from children of AFDC families, a possible violation of equal protection.

B. Defining the Hearing Requirement

As has been noted previously throughout the proposed regulations, there is ambiguity and confusion among the stages of the modification process. In some contexts, the "review" appears to be appropriately held before the filing of a complaint for modification, in an attempt to resolve the case by stipulation (see, e.g., 303.8(c)(1), and 303.8(c)(3)). In this section, it appears that the review constitutes a "'hearing' in accordance with paragraph (d)," which implies an adjudicatory hearing, although there is no explicit reference to a hearing within paragraph (d).

The word "hearing" in the context of administrative proceedings is a legal term of art that must be clarified with specificity or deleted from this section altogether. Use of the term in this regulation raises a number of questions, the resolutions of which are crucial to the fashioning of a modification plan that meets regulatory requirements. Is this "hearing" an administrative hearing, with the attributes and the requirements of Goldberg vs. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970)? Is it a desk review, part of an administrative review process? Or does it take place in the same forum as all contested modifications, whether they be heard by administrative, quasi-judicial or administrative process? Wherever it occurs, will it be a forum for the obligor to rebut the presumption of the guidelines, a forum which by necessity already exists? Or is it another opportunity to raise a "good cause" claim based on possible harm or injury to the child or based on possible harm or injury to the child or custodial parent, pursuant to 45 CFR 232.40?

We believe that States must provide a forum for parents to "demonstrate [that modification] would not be in the child's interests." However, the configuration of specific processes and procedures available to parents to make such a showing should be left to the States to determine.

Recommendation: Clarify that it is permissible, in accordance with the Family Support Act, for States to allocate functions within the modification process between IV-D agencies and courts. In addition, explicitly recognize that inherent conflicts of interest arise if the IV-D agency is required to initiate downward modifications, even when it is well established that the IV-D agency represents the State rather than any individual.

Delete, at the end of subsection 303.8(c)(4), the words "after a hearing in accordance with paragraph (d) of this section." This will ensure that States will develop procedures for parents to demonstrate that modification would not be in their child's best interest, while permitting States flexibility to design these procedures in a manner that will be most effective within their respective child support programs.

Proposed Subsection 303.8(d)
Notifying Parents of Review

Summary: Subsection 303.8(d) requires the State to notify each parent in a IV-D case of the right to request a review; of any review of the order at least 30 days before commencement of the review; and of a proposed modification (or determination that there should be no change) in the order, and of the right to initiate proceedings to challenge the modification or determination within 30 days after notification.

Discussion: Nowhere are the ambiguities in the meaning of the term "review" more evident than in this subsection. Because the review is the very core of the modification process, the definition of review is critical for appropriate interpretation of this regulation by the States. Since the regulation leaves States to speculate about when and/or where the review occurs, development of a modification plan that meets federal requirements becomes a matter of guesswork and thus subjects States to the possibility of audit sanctions even after they have committed substantial time and resources to develop and implement effective modification systems that meet federal requirements. Consideration of various possible interpretations of the review requirement underscore this dilemma.

A. Review Within the Adjudication Process

Every State currently has procedures permitting modification of child support orders. Under those procedures one party files a complaint for modification, alleging a substantial change in circumstances. (We are not aware of State courts or administrative hearing bodies that actually prevent the filing of a complaint.) Court or administrative process procedures then typically require that the complaint be served upon the other party, either by in-hand service, service at the last and usual place of abode, service by mail, or a combination. The service of process would appear to constitute notice under the regulation that the order was going to be reviewed and possibly modified. As long as State procedures allowed at least 30 days after service of the complaint before holding the hearing on the modification complaint, this requirement will be satisfied.

Under this interpretation, the "review" contemplated by the regulations would take place at the adjudicatory hearing, the forum for presenting evidence to attain the substantial change in circumstances standard justifying a modification. Whether or not the order is modified, both parties would have the right to appeal the decision through the appropriate appellate channel. If the parties have at least 30 days to file such an appeal, this process would conform to the proposed regulation. (Most States already allow at least 30 days to file an appeal to the appropriate appellate court.)

The problem with this interpretation of the regulation is that every AFDC case, regardless of its actual potential for modification would have to go through the adjudicatory process. See Comments to Proposed Subsection 303.8(c), supra. This would undoubtedly clog the adjudicatory system with cases inappropriate for modification, causing an inefficient waste of resources within the adjudication process.

B. Review Within Pre-adjudicatory Administrative Process

The subsection could also be interpreted to establish that the "review" is a pre-adjudicatory function taking place at the administrative agency level. This scenario plays out differently with respect to the timeframes for providing notice. The agency would target cases for review. It would then notify the parties that the case had been identified for review and would require the submission of necessary financial and other relevant information for the application of the guidelines. At least 30 days after this notice, an administrative review of the available information would be conducted, with the IV-D agency making a recommendation to the parties as to whether or not a modification was appropriate.

If the agency determination was to seek modification of the obligation and the parties agreed with this determination, a stipulation could be signed by the parties and submitted to the court to be entered as a modified order. If the parties could not reach agreement, the IV-D agency could proceed to file a complaint for modification with the adjudicatory body. On the other hand, if the agency determined modification not to be appropriate and one party disagreed, he or she could (depending upon the State's procedures) either seek further administrative review within the appropriate channels of the administrative agency or file a complaint for modification (pro se or with private counsel) before the appropriate adjudicatory body to "initiate proceedings." The separate timeframes for notice and hearing associated with that judicial or administrative process would then begin, and would be at least as long as the two 30-day notice provisions specified in the proposed regulation.

This second interpretation, placing the review at the pre-adjudicatory administrative level, adds another layer of process to a system that is already too cumbersome. However, it solves the problem, posed in the first scenario, of requiring every case (even those inappropriate for modification) to be reviewed through the adjudicatory system. An interpretation of the regulation that places the review within the administrative agency rather than in the adjudicatory body ensures that the administrative agency can screen out cases with no modification potential, and make efforts to negotiate with parties to persuade them to agree to a stipulation consistent with the guidelines. This interpretation, therefore, results in more effective, efficient case processing through the adjudication system despite the added adminisrative steps needed to complete modification. However, it takes significantly longer to complete the process because of the dual notice requirements.

C. Recommended Review Process

Consideration of the steps needed to modify cases reveals that each State should be able to determine the time and place of the review in accordance with the unique structure of the State's chid support program. The regulations could, however, identify generally the steps in the modification process, leaving the details of how and when and where to be defined by the State. One recommended scenario would be as follows:

-- the agency targets cases for review, using a variety of criteria, automated sources of income information and administrative subpoena power to obtain the necessary financial and other information from the parties;

-- the agency screens these cases to identify those with modification potential, already having most if not all of the relevant information for application of the guidelines;

-- the agency contacts the parties and attempts to resolve the modification by negotiation and stipulation. If successful, the stipulation is filed with the court (or administrative process body) and becomes a new modified order;

-- if settlement is not reached, the agency initiates a complaint for modification, giving each parent at least 30 days notice before the hearing on the complaint for modification;

-- the hearing is held by the judicial or administrative process, and an order is entered after the presentation of evidence, including any facts which might rebut the application of the guidelines;

-- either at that time, or preferably at the beginning of the process, the parents are notified of their right, within 30 days, to appeal the order granting or denying the complaint for modification through the appropriate appellate process.

Under this recommended scenario, the "review" could be found to occur administratively prior to the adjudication, during the adjudication or during a series of steps that include both administrative and adjucatory processes. Conducting the review at any of these stages should be sufficient, provided that the other requirements, such as submission of all AFDC cases for review, are met. Each State should be permitted to define when the review is appropriate given the particular details of the State's IV-D system. Further, the regulations must clarify that States have this flexibility to ensure they are protect from ill-defined audit criteria.

The scenario described above is also sensible in that it preserves the clear distinction between the "State" and "the State child support enforcement agency." The "State" includes the judicial or administrative process and recognizes that body as the entity vested with authority to modify a child support order, whereas the role of the administrative agency is one of investigation, negotiation, and prosecution. This distinction is critical to preserve the flexibility needed to accommodate the country's diverse child support enforcement programs as efforts are undertaken to develop and implement modification plans consistent with the federal mandate.

Recommendation: Clarify the requirements of the review process by explicitly granting authority for each State to define and conduct the review as it deems appropriate given the structure of its particular child support enforcement program.

Review and modification in interstate cases

Summary: The proposed regulations contain no express provisions for conducting review and modification of orders in interstate cases. Interstate cases are briefly addressed in the preamble to the regulations. However, the preamble leaves many questions unanswered. We believe that the process for conducting review and modification in interstate cases will be sufficiently unique to require separate regulations on the subject.

Discussion: In the preamble, the Secretary outlines a basic case ownership model for interstate reviews whereby the "State with the order" takes responsibility for conducting the review at the behest of the "State enforcing the order." The model presumes that, in all interstate cases, an order is first obtained in the initiating State, and is thereafter sent out for enforcement to the State where the absent parent lives. Under this model, if the absent parent requests review, the State enforcing the order" obtains necessary information and provides it to the State with the order, which then applies its own guidelines in conducting the review, and modifying the order, if appropriate.

The fundamental problem with the model is its assumption that only two States may have an interest in the enforcement and modification of the order. Interstate cases often involve three and sometimes more States. Frequently, a divorce or other order is obtained in one jurisdiction and the parties thereafter each relocate to other States. In this scenario, the "initiating State" requests the "responding State," to enforce an order which was entered in the "rendering State."[2] In so doing, the responding State will enter an order of its own, which may or may not track the terms and conditions of the rendering State's order.[3]

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2. We strongly recommend that the Secretary use these standard terms instead of the more ambiguous and less well known "State with the order" and "State enforcing the order."

3. In an interstate income withholding or a registration cases, the responding State's order will parallel the rendering State's order; in a URESA case, the responding State's order may differ markedly from the first order.

The preamble is sound to the extent it seeks to maintain control over the order within the rendering State. However, it must be recognized that the rendering State may decline jurisdiction over a modification in cases where neither party to the divorce or other order continues to reside within the State.

The final regulations should also take into account cases where the responding State has entered the only order relative to the parties. In URESA paternity cases for example, when the responding State adjudicates paternity and enters an order for support, the initiating State has no order and therefore, no jurisdiction over any subsequent review and modification.

Finally, the regulations for conducting interstate review and modification must provide additional timeframes for providing advance notice to the parties and for obtaining financial information. When parties live in different States, additional time is necessary for coordinating the notification process and the retrieval and shipment of the relevant documentation. If insufficient time is allowed, States will be forced to dismiss, for want of adequate information, cases that otherwise have excellent modification potential.

Recommendation: Draft final regulations which specifically address the process for conducting review and modification in interstate cases.

Incorporate case ownership rules which recognize that the rendering State may not always have an interest in modifying an order, and which permit the responding State to conduct a review in circumstances where the rendering State has declined jurisdiction.

Expand timeframes for providing advance notice and for receiving financial information from the parties in interstate cases.

III. IMMEDIATE INCOME WITHHOLDING

Proposed section 303.100
Procedures for wage or income withholding

Summary: The proposed regulation requires immediate withholding in IV-D cases without regard to arrears, unless a finding of good cause is made. In cases in which wages are not subject to immediate withholding, including cases where there has been a finding of good cause, the wages of the noncustodial parent must become subject to withholding on the date the arrears are at least equal to the support payable for one month.

Comments of NCSEA
33.

Discussion: We believe the proposed regulations for income withholding are a comprehensive approach to implementing the withholding requirements of the Family Support Act. The proposed provisions will greatly assist in the development of uniform withholding requirements from State to State and will assist all States to use income withholding as the primary means of ensuring the payment of support.

We are particularly pleased with requirements proposed in 303.100(b) for immediate withholding and the proposed criteria which must exist before the court or administrative agency can find good cause not to withhold. Mandating the court or administrative body to document why implementing immediate withholding would not be in the child's best interest and requiring proof of timely payment of previously ordered support and an agreement to keep the IV-D agency informed of employment changes will make the alternative of direct payment an option which is used sparingly, rather than a convenient loophole for obligors and their attorneys who wish to avoid wage assignment.

In cases where alternative arrangements for written agreements are permitted under 303.100(b)(2), we believe that the IV-D agency should be made a required party in any case involving an assignment of support rights to the State. Requiring the IV-D agency's consent to alternative arrangements in such cases will ensure that written agreements authorizing direct payment do not jeopardize the State's interest in ensuring timely payments toward current support where the family receives public assistance or toward arrears where the family no longer receives public assistance but an AFDC arrearage remains outstanding.

Recommendation: Maintain the proposed requirements for income withholding. Further, require the IV-D agency to be a party to any written agreements providing for alternative arrangements under proposed 303.100(b)(2).

National Child Support Enforcement Association

RESOLUTION

WHEREAS, the National Child Support Enforcement Association (NCSEA) is the organization which represents the nationwide child support community, including state and local IV-D administrators, case workers, judges, hearing officers, court administrators, legislators, prosecutors, private attorneys, profit and non-profit private sector corporations, state family support councils, and advocates, all joined by a common interest to improve the lives of children through the equitable, efficient, and effective enforcement of parental responsibility for support; and

WHEREAS, since the beginning of the child support enforcement program through FY 1989, state child support enforcement agencies have collected nearly $33 billion in support for dependent children in this country; and

WHEREAS, state child support enforcement programs have recovered well over $12 billion in federal and state public assistance paid to families with dependent children and through non-public assistance collections have realized further "cost-avoidance" savings of $4.2 billion, as measured by the federal formula, thereby providing the taxpayers of the states and the nation with great savings in tax dollars; and

WHEREAS, in addition to dramatically improving the rate of support collection, the state child support enforcement programs have thus far shown substantial progress in meeting other essential purposes of the child support enforcement program, which a three-fold increase since 1978 in locating absent parents, in adjudicating paternity and in establishing child support obligations; and

WHEREAS, NCSEA agrees with and supports the desired public policy objectives reflected in the Family Support Act requirements for case processing time frames, review and adjustment of support orders, and the mandated referral for the provision of child support enforcement services to non-AFDC medicaid cases; and

WHEREAS, the number of new requirements and tasks mandated by federal law and regulations for the child support enforcement program since 1984 has increased at a rate beyond the ability of state child support programs to implement them fully and effectively and the cost of undertaking these new tasks and requirements has imposed severe strain upon the available financial resources of these programs; and

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WHEREAS, the ability of state child support enforcement agencies to sustain their ongoing efforts to improve performance in meeting the fundamental goals of the program (including paternity establishment and enforcing and collecting child support) will be greatly diminished if their limited resources must be dedicated to meeting all of the statutory and regulatory requirements provided for in the Family Support Act of 1988 under the current regulatory time frames; and

WHEREAS, many state child support enforcement programs are currently engaged in the development of new automated systems which are required by federal law to be fully operational by October 1, 1995, and which, when operational, will facilitate the implementation in a more cost-effective and manageable manner of such major mandated tasks as review and adjustment of support orders, case processing time frames, and the mandated referral for the provision of services to non-AFDC Medicaid cases; and

WHEREAS, requiring significant enhancements to existing automated systems in order to accommodate such major mandated tasks at this time would waste public monies since these enhanced systems will become obsolete once new automated systems are operational; and

WHEREAS, most state child support enforcement programs have already been found by federal audit to be out of full compliance because of their inability to implement all of the many requirements and tasks mandated since 1984, causing state child support enforcement programs to shift resources from the essential tasks of collection child support to efforts to satisfy audit requirements unrelated to collecting support for the children,

NOW, THEREFORE, BE IT RESOLVED, this 29th day of August 1991, that the Board of Directors of NCSEA respectfully requests the Congress to enact legislation that would direct Office of Child Support Enforcement to defer any sanctions or penalties against state IV-D child support enforcement programs for failure to meet the requirements of the Family Support Act for case processing time frames, review and adjustment of support orders, and enforcement of referred non-AFDC Medicaid cases, until automated systems required by federal law are fully operational and certified.

PREPARED STATEMENT OF MARGARET CAMPBELL HAYNES

Good morning, Mr. Chairman and members of the Subcommittee.

I appreciate the opportunity to discuss with you the Commission's activities and its forthcoming recommendations for improving child support enforcement--especially those recommendations impacting on your four focus areas.

As you well know, the Commission was created in the 1988 Family Support Act--largely at the urging of Sen. Bradley. And he is among the Commission members appointed by the leadership of Congress. I am pleased to report to you, Mr. Chairman, that the Commission is on a fast track, with a timetable that calls for it to make its report to Congress as early as next February, some four months ahead of what is required by the law.

The Commission met this past Thursday through Saturday, Sept. 12 through 14, here in Washington, and gave tentative approval to a long list of specific recommendations. An outline of these will be the subject of testimony at a hearing by the Commission on Capitol Hill Sept. 30, at which time we will hear from individual parents and representatives of major national organizations.

On the basis of the testimony Sept. 30, and further discussion, the tentative recommendations will be refined. We will vote on the final report in January. Shortly thereafter, we will present to you and your colleagues the first comprehensive national blueprint for reform of interstate child support.

Mr. Chairman, I would be happy to discuss any of the tentative Commission recommendations, and why we believe they are needed. But I will first go immediately to the topics on which you specifically requested comment. I am pleased to tell you that the Commission at its meetings last week approved or took under advisement for future action recommendations by its committees for change in all four areas.

1. It is the view of the Commission that states should be given additional tools to assist them in the review of support orders for possible modification. We are considering recommending to the Congress that states have laws providing that variance from a guideline amount constitutes a basis for such review.

Another consideration before the Commission is a recommendation that states should provide that non-AFDC custodial parents who initially request a review be given the opportunity to "opt out" of a proposed modification. This would protect their rights and ensure the most effective use of agency funds.

I should also mention that the Commission tentatively has recommended the creation of a national computer network. It would make available for modification--as well as for establishment and enforcement--of support orders the fullest, most current address and income information available on the parent ordered to pay support. This and another recommendation for action at the national level also relate to your second topic for discussion today.

2. To improve the tracking of parents ordered to pay support, the Commission tentatively has agreed to recommend revising the current W-4 income-tax form and require workers at each new job to indicate on it whether they have been ordered to pay child support...and, if so, where and how much. Employers would be required to send this information to a state or federal agency, to be added to the national computer network. The agency would use the network to advise all States of the employee information.

Moreover, employers would be required, under our tentative recommendations, to withhold immediately from the employee's

paycheck any amount indicated for child support, and forward it to the appropriate entity. States would be required to confirm the accuracy of the employee's statement by forwarding a federally-designed notice of withholding to the employer. Employers would be required to honor foreign withholding orders, without regard to whether the employer does business in the rendering state.

3. We have heard testimony regarding the problems parents have in securing health insurance and medical services for their children. States have also given us much information on the problems they have in enforcing medical support obligations. We believe that support should include medical support. And we have under review a recommendation for more than a dozen specific actions to either clear away barriers to medical support or assure its inclusion in support. These actions would include removing federal preemption of State regulations regarding the availability of medical insurance...requiring States to pass and use laws mandating the availability of health-insurance coverage for dependents without regard to whether the dependent resides with the employee...and requiring employers to notify custodial parents of employee health-insurance coverage and any changes.

4. With regard to outcome or performance measures of agency effectiveness--as opposed to process measures--the Commission has under consideration a recommendation on developing incentive formulas for States. We believe these should tie incentive amounts to performance criteria and not to the amount of AFDC collections made by the State.

Mr. Chairman, that concludes my report to you on the Commission's thinking vis-a-vis the four topics on which you specifically requested comment. There has not been enough time since the end of our meetings last week to compile a detailed list of the tentative recommendations we adopted at that time. However, I have attached to my statement today a document we issued Sept. 6 which summarizes the general kinds of reforms on which the Commission already had reached consensus. It also describes what we believe could be expected from a reformed state system. And I will provide the Subcommittee a list of last week's tentative decisions as soon as possible.

Mr. Chairman, you on this Subcommittee know very well why comprehensive reform of child support is necessary. But if time permits, for the benefit of others, I hope you will permit me a few moments to explain why child support reform should be important to all Americans.

In an increasingly competitive 21st Century world, America will need more than ever a strong human infrastructure--citizens who are healthy, well-educated and productive. Yet many of those on whom the nation will have to rely, today's children, are being deprived of what it takes to meet the challenge. A growing number, now one in five, live an impoverished life, significantly lacking the sustenance, care and guidance necessary for healthy, productive development. And the well-being of many so-called middle-class children is eroding as well.

A major reason for this is a growing shortfall of adequate financial support by parents. It is estimated that on an annual basis more than 11 million children have been awarded or voluntarily promised nearly $15 billion in support but are not getting a third of that, about $5 billion. For a similar number of children support has not been ordered (or sought) because of problems of locating absent parents, establishing paternity and other complications. And the number of children living in single-parent homes has been growing steadily: 20 years ago it was one in 10; today it is one in four.

Of those children for whom support has been ordered but is uncollected, the worst off are those in interstate cases, in which the parent ordered to pay support lives in a different state. About three out of ten cases are interstate, yet of all support money paid only about one dollar in ten is collected across state lines.

All taxpayers are affected by the failure of parents to pay support. This failure undermines the development of strong, productive citizens for the 21st century. A more immediate reason is that many children lacking such support turn to welfare and other government assistance, putting additional stress on already tight state and federal budgets.

As you know, Mr. Chairman, Congress took an historic action in 1988 to deal with those concerns by creating this unprecedented Commission. Over the past year or so, the Commission has taken testimony at more than a dozen grassroots hearings and forums around the country. It held last April, as mandated by Congress, a national conference, with some 200 top state and federal executives participating, as well as representatives of parent advocacy groups. We have had countless consultations with experts and advocates and practitioners. Our report therefore will be very comprehensive. I think you will find it both practical and visionary.

I would be happy to answer any questions you might have.

PREPARED STATEMENT OF DAVID A. HOGAN

In the last few years, many states adopted a legal process to carry out both the mandates and the intent of the federal requirements on medical support enforcement. The state laws require parents to provide health insurance when it is available through employment. Many child support agencies have a process, like wage withholding, through which an employer can be ordered to enroll the children on the health insurance policy and deduct the premium from the parent's pay. However, many of the employers are responding that they are exempt or are not permitted to comply under federal statutes. These employers fall into three distinct groups.

I. PRIVATE EMPLOYERS REGULATED BY ERISA

Private employers whose insurance plans are self-funded in whole or in part are regulated by the federal Employee Retirement Income Security Act (ERISA). 29 U.S.C. 1144(a) states in part that the ERISA statute " . . . *shall supersede any and all State laws insofar as they may now or hereafter relate to any benefit plan* . . . " that is regulated by this Act. The recent U.S. Supreme Court decision in *FMC Corporation* v. *Holliday*, 111 Sup.Ct. 408(1990) clearly states that the phrase "relate to" is to be read as broadly as possible to insure that these plan providers and administrators only deal with a single set of federal regulations. This decision appears to be the culmination of a series of decisions which move in this direction and, therefore, the Court is not likely to back off without an amendment to the ERISA statute.

The other provision that hinders enforcement is 29 U.S.C. 514 (b)(2)(B). It states that self-funded plans shall not be considered insurance for state law purposes. Amendments to these two sections are necessary to allow the state agencies to enforce orders for insurance and even necessary to enroll the children who are already eligible.

In many states, it is estimated that more than half of the employer group health insurance plans are protected by ERISA. With these employers, the IV-D agency is unable to enforce the enrollment of dependents when the parent is unwilling.

II. FEDERAL CIVILIAN EMPLOYEES

When legal process is served on federal agencies for the enforcement of a child support order requiring a parent/civilian employee to provide dependent health insurance, the federal agencies are responding that they are prohibited by federal statutes and regulations from complying with the legal process. The statutes they cite are 5 U.S.C. 8905 and 42 U.S.C. 662.

Under 5 U.S.C. 8905(a) an employee is allowed to enroll a family member in a health benefits plan. Subsection (c) allows a former spouse to enroll a dependent within 60 days after dissolution of marriage. There is no provision allowing for enrollment by legal process. The addition of a subsection requiring enrollment upon service of process from a court or administrative agency would remedy this problem. There should be no time constraints, so that enrollment can be accomplished any time a support order is modified or whenever a custodian applies for public assistance or non-assistance support enforcement services.

Eligibility should not be limited to dependents who were born of a marriage, but rather include those for whom the relationship was determined by a court order or paternity acknowledgment and stepchildren if the law of the state in which the support order was issued requires the employee to support stepchildren. it should also include a requirement that the agency must withhold from the employee's pay the amount necessary to pay any required premium.

While 42 U.S.C. 662 already provides for withholding from any moneys due the employee for child support, at 42 U.S.C. 662(g)(4) it excludes from "moneys due" amounts deducted for health insurance premiums. The agencies interpret this to mean that these premiums are protected from legal process for child support. An exception within this subsection may cure this internal Inconsistency.in addition, a clarification in subsection (b) including insurance premiums in the definition of child support might help prevent further confusion.

III. THE MILITARY

The most cumbersome process for enrollment by legal process is in the military system. Without the cooperation of the military member, it is slow and sometimes impossible to enroll a child. The necessity of obtaining an ID card probably cannot be avoided. However, the military could be made subject to legal process for enrollments just as they now are for wage withholding. After all, if the military member was willing, this enforcement action by the child support agency would not be necessary.

In summary, if the medical enforcement program is to reduce the cost of health care to both the government and parents, it must be allowed to work. These changes in federal law will eliminate some of the current barriers to effectiveness.

Prepared Statement of Larry D. Jackson

Good morning Senator Moynihan and members of the Subcommittee on Social Security and Family Policy. I am Larry Jackson, commissioner of the Virginia Department of Social Services and chair of the American Public Welfare Associations's Child Support Enforcement Subcommittee. APWA is a nonprofit bipartisan organization representing all the state human service departments, local public welfare agencies, and individuals concerned with social welfare policy and practice.

Mr. Chairman, I welcome the opportunity to speak to you today representing the views of state and local human service administrators on our progress in implementing the child support enforcement provisions of the Family Support Act of 1988 and to present an update of the state efforts to increase the collection of child support owed.

In brief, states have successfully improved their performance in areas such as collections, paternity establishment, and order establishment. The implementation of immediate wage withholding, state and federal income tax intercept and other methods to collect child support, paired with increased efforts to locate absent parents and establish paternity, have returned more money to absent parents and children.

Since 1985 total child support collections have increased by 93 percent, bringing in a total of $6.0 billion in child support in FY 90. Also, since 1985, paternities have increased by 68 percent, location of absent parents by 134 percent, and the number of families removed from AFDC has increased by 602 percent. These improvements can be attributed to the commitment of the states and the federal government to strengthen the financial and emotional responsibility of both parents to provide for their children. It is also attributable to the efforts of this subcommittee and the enactment of the Family Support Act of 1988 that strengthened the laws underlying our efforts to bring absent parents into compliance.

While state child support has improved performance in key areas, there are still approximately 9.4 million women with children under the age of 21 from an absent parent, of whom 41 percent never were awarded child support rights, and thus were dependent for income on sources other than the father. Mr. Chairman, there is still

much room for improvement in the collection of past due and current child support. I am here today to provide an overview of the child support provisions in the Family Support Act and to recommend changes to strengthen and improve the program.

ADEQUATE TIME TO IMPLEMENT FAMILY SUPPORT ACT PROVISIONS

The child support program has been expanded through requirements in the Family Support Act that mandated services to non-AFDC families and through the establishment of performance standards and time frames in which activities such as intake, and parent location, must be completed. These plus requirements to establish a state-wide child support automated system by 1995, are strongly supported by states as ways to improve the current system.

State human service administrators and child support (IV-D) directors alike are committed to meeting the performance standards established in the Family Support Act. States have acted within the statutory time frame to implement mandatory presumptive guidelines for determining support awards and immediate wage withholding. These and other program requirements enacted in the Family Support Act are new, however, and it is imperative that the requirements be given a chance to be fully implemented before additional requirements are added or changes made. The Family Support Act required states to implement the following new procedures in order to continue to receive federal funding:

- All IV-D orders entered or modified on or after November 1, 1990 must be enforced by immediate income withholding without regard to arrears;
- All non-IV-D child support orders entered on or after January 1, 1994 must also be enforced by immediate income withholding;
- States were required by October 1989 to provide that guidelines serve as a rebuttable presumption of the correct amount of support to be awarded and that the guidelines be reviewed every four years;
- By October 13, 1990, states were required to have a written plan for review and modification of support orders under the guidelines;
- Beginning October 13, 1993, each state must implement a process for the review and appropriate adjustment of IV-D orders at least once every three years;
- By January 1, 1993 states will have to send monthly notices to every client for whom an AFDC assignment of support rights is in effect in any month in which there is a collection of support; and
- On October 13, 1995 enhanced federal funding for the planning, design and development of statewide automated child support enforcement systems terminates. In order to be eligible to draw down the enhanced match rate states must submit an Advance Planning Document by October 1, 1991.

I believe these requirements will strengthen the child support program and bring more money to the children and families owed that support. It must be noted, however, that states are working to implement these requirements during a period of fiscal retrenchment and rising caseloads. Currently 38 states are experiencing budget deficits and cutbacks. AFDC caseloads have increased to *4.5 million families* during the last 12 months, and the caseload has been steadily increasing every month for 23 consecutive months. As a condition of eligibility for AFDC, women with children for whom support is due and not collected must cooperate with IV-D for the pursuit of child support payments. Thus as the number of AFDC families increases so does the IV-D caseload.

States must be given adequate time and resources to implement the new procedures, performance standards, and time frames that have already been enacted. This applies with particular importance in the area of automated systems. States are spending millions of state and federal dollars to develop automated systems that will facilitate the processing, tracking, and reporting for all child support cases. Changes in policy will have an effect on the development of an automated system and would be likely to add significantly to the cost of automation.

Mr. Chairman, if we want the program to be effective, once requirements are established we need to give them a chance to work. Surely it would be a waste of state and federal dollars to require states to submit APDs when the systems and program regulations have not been released. States will certainly have to update their APDs to conform to the regulations. Furthermore, any new program requirements will also require changes to an APD and system design resulting in additional federal resources. The costs for even small changes can be in the millions of dollars. On behalf of the states I would like to urge Congress to delay any changes in the child support enforcement program until states have developed and implemented their automated systems.

One other issue in the area of automated systems is the expensing of costs over a five year period. The federal government now requires that the depreciation of costs be stretched over a period of five years. Under this policy, any costs for the design, development, and implementation of an automated system are eligible for the enhanced federal matching rate of 90 percent until the sunset date of October 13, 1993. Costs incurred in the design, development and implementation of the mandated system that are depreciated past the October 13, 1995 deadline will not be eligible for the enhanced matching rate. This means that states must have developed and purchased their system by October 1990 in order to have the entire system (costs depreciated over 5 years) funded at the 90/10 matching rate. I believe that Congress intended to provide 90/10 funding for the *entire* cost of planning, design and development of systems that are implemented by October 13, 1995.

PROGRAM AUDIT

APWA and states support program accountability and have long recommended that reasonable and adequate measures be established to that end. While states are required by the Family Support Act to open cases within 20 days of submittal of an application, submit cases for locate within 75 calendar days of determining that the absent parent needs to be located, establish paternity within 90 days of locating the absent parent, establish a support obligation within 90 days of establishing paternity or locating the absent parent, and take action to initiate wage withholding within 30 days of identifying that a delinquency occurs—merely meeting these time frames does not provide any information about whether the absent parent was located or if a support order was established.

The child support program should be measured in two key areas: (1) effectiveness; that is, do programs do what they are supposed to do and, (2) efficiency; how well do they do what they are supposed to do. Performance measures should assess the desired program outcomes such as how many paternities were established compared to the number of cases needing paternity, and how many absent parents were located compared with the number of cases in which the absent parent should have been located. We believe these measures will reflect whether state programs first of all are doing what they are supposed to do and, second, will indicate the degree of success and improvement. The existing audit process does not measure outcomes, and I believe these factors need to be added. Performance measures will provide Congress, the administration, and the states with accurate and clear guidance on how well a state is doing in each area.

Mr. Chairman, I support the idea that there is room for measuring *process*, and that such measures can actually indicate program *effectiveness*. The audit process, however, should not focus disproportionately on process and should be more balanced in measuring outcomes.

UNTIMELY REGULATIONS AND REGULATIONS THAT EXCEED THE REQUIREMENTS UNDER LAW

Mr. Chairman, APWA and state IV-D directors are concerned with the promulgation of regulations, currently in "proposed" status or already issued as final rules, that have created tremendous difficulties for states because the federal OCSE failed to issue them in a timely fashion and because of inconsistency with provisions of the Family Support Act to the extent that rules are detrimental to the overall goals of the child support enforcement program.

As you know, the Family Support Act was signed into law in October, 1988. The federal Office of Child Support Enforcement (OCSE), however, failed to publish final regulations on most child support provisions of the Family Support Act, and—in particular,—failed to issue a notice of proposed rulemaking on immediate income withholding (Section 101(a)) and review and modification of support awards (Section 103(c)) until August 15, 1990. (See the chart referencing the Family Support Act provisions, attached). The final regulations for these two critical provisions have still not been published today, yet the effective date of the law pertaining to both—November 1, 1990—has long past.

The general effects of the dilatory practices of the federal OCSE are these:

- (1) All significant sections of the Family Support Act require states to obtain legislation prior to implementation. Further, most state legislatures are showing an ever increasing reluctance to continue to expand the powers of state offices of child support enforcement. When states are successful in obtaining legislation in a controversial area based on federal statute, and then are forced to return to their legislatures for additional compliance legislation months or years later because a federal rule expanding, reinterpreting, or conflicting with

the original federal statute has been issued, states encounter increased resistance, lessened credibility, greater costs, lesser efficiencies, and the sure likelihood of a federal penalty for non-compliance.

- (2) As more and more states comply with the Family Support Act requirement to have statewide automated tracking and monitoring systems, the need to have sufficient lead-time to modify those systems in response to federal and state compliance legislation becomes increasingly critical. Such modifications are costly and time-consuming to accomplish; when automated states are then forced to do additional system modifications in response to federal regulations issued well after the implementation dates of the original statutes, valuable resources are wasted and, again, there is the issue of federal non-compliance and the related paperwork and penalty threats.
- (3) The procurement of statewide automated tracking and monitoring systems, as required by the Family Support Act, is an extraordinarily difficult task under the best of circumstances. In order to ensure that the resulting system meets a myriad of federal processing, timeframe, and legal requirements, extensive research and investigation is critical, including the federally mandated consideration of existing, already certified systems from other states. In this area, again, dates for required actions are imminent, and no final regulations have been issued by federal OCSE, thereby making a difficult job impossible.

Specific concerns with proposed rules that exceed Family Support Act requirements are provided for the four most significant provisions of the Family Support Act: periodic review and modification, immediate income withholding, $50 pass-through, and requirements for automated tracking and monitoring systems.

Review and Modification of Support Orders. The implementation date for the onset of review and modification is another example of regulations not issued in a timely fashion. Section 103(c) of the Family Support Act of 1988 requires periodic review of support orders and modification, if appropriate, in accordance with state guidelines for support award amounts, effective October 13, 1990. Effective October 13, 1993 the requirements for review become more specific. We note the commentary from the *Federal Register*, August 15, 1990, "Between now and 1993, states must address and target for review their existing backlog of IV-D cases in which support is assigned to the state in anticipation of the proposed requirement that, effective October 13, 1993, the state must review in accordance with the new requirements, and modify if appropriate, most orders in IV-D cases in which support is assigned to the state and which have not been reviewed or modified in 36 months."

We are concerned that the proposed regulation exceeds Congressional authority and intent. Specifically, P.L. 100-485, Section 103(c) which amends Section 466(a) to add (10)(B) provides that "beginning five years after the date of the enactment of this paragraph . . . the state must implement a process for the periodic review and adjustment" of child support orders. We believe that the language requires that each state begin modification of all AFDC cases and non-AFDC cases where a review is requested after October 13, 1993. If Congress had intended that all reviews and modifications of all cases older than three years be completed by October 13, 1993, Congress would not have used the word "beginning" and "implemented," cited above.

Additionally, the four demonstration projects funded by Congress are to provide guidance to the remaining states on implementation of the review and modification process. The final report from these projects is not due until January 1992.

The Office of Child Support Enforcement maintains that the review and modification process must be completed for all cases older than three years on October 13, 1993. While there is obviously a discrepancy in the interpretation of the law, regulations have not provided the guidance states need to begin the modification and review so that they may be in compliance by October 13, 1993. The federal Office of Child Support Enforcement appears to be reviewing the matter, but if it is decided that states must have reviewed cases by that time, many states will be out of compliance simply because the regulations were not published providing the requirements and procedures.

Immediate Wage Withholding. The Family Support Act clearly established that wage withholding will be used in all circumstances. When OCSE drafted regulations, however, they included provisions for exceptions that have created many loopholes and rendered the law ineffective.

Section 101 of Family Support Act requires states to have procedures for immediate income withholding (with certain exceptions) for support orders issued or modified on or after November 1, 1990. Proposed regulation 303.100(a)(7)(ii) would require states to have procedures with which they can terminate withholding promptly

upon the absent parent's request. We believe that the proposed regulation which would allow parents to enter into an agreement for direct payment at the time the order is entered is sufficient to comply with the statutory requirements. There is no justification for the proposed additional option.

The proposed rule states that "The purpose of the support order and withholding is to provide for the best interests of the children and "all child support orders (IV-D and non IV-D) will eventually be subject to this automatic provision (income withholding)," and "a demonstration by the absent parent that he or she has established a good credit rating would not qualify for good cause, since the imposition of immediate withholding contains no assumption that the absent parent would default on support payments."

Mr. Chairman, APWA and the states believe that any regulation that permits termination of withholding is clearly a retreat from the intent of the Family Support Act and belies the underlying justification for withholding without default. The states and the Department of Health and Human Services have, over the past several years, recognized the importance of wage withholding to ensure prompt and regular child support payments. The proposed rule seriously vitiates the effect and importance of wage withholding. Termination of wage withholding prior to the termination of the order is, in our view, never in the best interests of the child and is counterproductive to the articulated goals of the child support program, especially when you consider that, in New York, over 65% of the program collections are a result of wage withholding and over 75% of child support obligers in the program are delinquent in making their payments.

In addition, the implementation of this provision would place a significant burden on IV-D agencies to review each case where a termination is proposed to determine whether there had been a previous termination of a wage withholding or if default in making support payments had occurred which would make the case otherwise eligible for wage withholding. To terminate wage withholding after implementation would also require additional court hearings and would most certainly place an additional burden on employers who would have to institute, terminate and, when default occurs, reinstitute the wage withholding.

In summary, we fail to see why a statute that views immediate wage withholding as a desirable alternative to direct payment would be interpreted, in regulation, to allow secession of wage withholding after a court has determined that it is appropriate.

$50 Disregard. In December 1989 APWA conducted a survey to determine the ability of states to meet the distribution time frames established in regulation. The regulation promulgated by OCSE on August 4, 1989 required states to issue pass-through payments within 15 calendar days of receiving the child support payment. APWA's survey found that the majority of states would not be able to meet this deadline due to (1) difficulty in determining the dates of payment and withholding in cases of wage withholding, (2) the amount of time needed to process these cases between several agencies, and (3) the lack of automated capabilities. The regulation was revised and re-released on August 28, 1991, approximately one year after the effective date of the Family Support Act provisions concerning the $50 pass-through, establishing two different time frames for distribution depending on whether payment is made from the IV-D or IV-A agency. Whether this revision meets the needs of the state offices of child support enforcement is still under review, but the way in which this regulation has been promulgated and the amount of time the process has taken have already had serious negative consequences for the states. In New York and several other states the human service departments are under threat of law suits for failing to implement the earlier published regulations, in spite of the fact that federal OCSE said in writing in May 1990 that they would reconsider and republish the $50 pass-through regulation.

Automated Systems

Proposed regulations issued in the May 14, 1991 Federal Register would seek to implement Section 123 of the Act pertaining to automated tracking and monitoring systems made mandatory. Section 123 requires states without a statewide data processing and information retrieval system in effect on October 13, 1988, that automate all functional requirements of the Title IV-D program, to submit an Advance Planning Document (APD) for such a system to the Secretary by October 1, 1991, and have an operational system in effect by October 1, 1995 whereupon enhanced funding for development of such systems will be eliminated. The fact that only proposed regulations have been issued one month before the due date for submitting APDs is another example of the lack of timely guidance from OCSE for states implementing the Family Support Act.

States are currently preparing Advance Planning Documents (APD) for submission by October 1, 1991. An APD describes exactly what type of system will be developed and how that will be accomplished. At this late date, states are far along in the planning in the absence of regulations. The regulations that are expected to be released this fall will surely require adjustments to the APDs and plans already underway, potentially adding to the state and federal costs.

Proposed Section 307.30 would provide that FFP at 90% would be available only until September 30, 1995. While this proposed regulation is consistent with Section 123(c) of the Act calling for the repeal of enhanced funding, the delay in publishing regulations pertaining to APDs and the additional mandates for systems (i.e. the data exchange with Medicaid noted above) place states in an untenable position in implementing the provisions of Family Support Act. Based on its own peculiar interpretation of the Family Support Act, federal OCSE is compelling states to undertake systems development activities that will not be funded at the enhanced rate.

REVIEW MODIFICATION DEMONSTRATION PROJECTS

One way to raise the amounts collected is through periodic review and modification of orders. The modification demonstration projects enacted in the Family Support Act have proven to be very helpful in determining the ways in which review and modification should be conducted.

The experience of the demonstration projects has established that the review and modification process is a lengthy one requiring an average of six months from the time of case selection to order modification. A primary factor lengthening the time it takes to process cases has been the "notice" requirements contained in the Family Support Act. We recommend that the notice provisions of the Family Support Act requiring 30 days advance notice of the review to each parent, with a 30 day "challenge" period, be deleted as they unnecessarily delay case processing and duplicate and conflict with existing state laws that assure due process protection to all parties in a modification action.

The four demonstrations have shown that the review and modification function is extremely labor intensive and will require states to add significant staff and automation resources in order to meet the increased work load driven by the Family Support Act requirements. The findings although preliminary at this time, are providing useful information to other states as they plan to implement the Family Support Act, and to OCSE in assisting with the development of final regulations to implement these provisions. We recommend that the projects be extended for an additional year through September 1992 in order for the four project states to complete the review and modification process for all eligible cases, assess steady state operations, and provide more complete results regarding the impact of modification on payment compliance rates for evaluation purposes.

STATE INNOVATIONS

States have already taken the initiative in moving beyond the requirements of the Family Support Act and have implemented innovative and unique methods to improve their program effectiveness. As previously indicated, states have made remarkable improvements in their child support enforcement programs. In Virginia for example, since 1987 collections have increased by 285 percent and paternity determinations have increased by 589 percent. These increases are the result of a lot of hard work by staff, but were made possible by innovative legislation passed by the Virginia General Assembly which gave the program broad authority to administratively establish and enforce child support. These two innovations have resulted in increased performance in the areas of paternity establishment and medical support enforcement. Additionally, the General Assembly will be considering a proposal to improve success in locating parents who are not paying child support.

Administrative Paternity Establishment

In response to Congress's 1988 revision to the Social Security Act which encouraged states to adopt a simple civil process for voluntarily acknowledging paternity, the Virginia General Assembly decided that there was no need to go through the lengthy and costly process of having a court determination of paternity if both the mother and the father of a child born out of wedlock wanted to voluntarily acknowledge the paternity of the child.

If paternity is contested, a court hearing is a necessity. If an alleged father wants a court determination of paternity, he has the right to a court hearing. But if a father wants to voluntarily acknowledge paternity, there should be a method of doing so without court action.

Paternity Establishment Project (PEP)

Virginia's Paternity Establishment Project, or PEP, is a hospital-based program in which unmarried couples have the opportunity to voluntarily acknowledge the paternity of the child shortly after the child's birth. Studies completed in the state of Washington by the Governor's Efficiency Commission concluded that the probability of establishing paternity is greatly increased if the opportunity exists or the process is started immediately upon the child's birth.

The benefits to the child are:

- The father's name can be added to the birth certificate.
- The child may be eligible to receive Social Security benefits.
- The child may be eligible for veteran/armed services benefits through the father's family coverage.
- The child may be eligible for worker's compensation.
- Child support enforcement, if it should be needed in the future, is more easily provided when paternity is established and the Social Security number of the father is known.

The Paternity Establishment Project is a cooperative project between private and public hospitals and the Virginia Department of Social Services. Hospital staff provide the new parents with a packet of information explaining their rights to voluntarily acknowledge paternity and other related information. Hospitals make a Notary Public available at no cost to the parents and they assist the new Parents in completing the paternity forms. The Department of Social Services provides the PEP packets and pays the hospital a minimal fee of $10 to $20 for each paternity established. This payment is a partial compensation for staff time and effort spent on this project.

Ordering Absent Parents' Employers to Enroll Dependent Children in Health Care Coverage Offered by the Employer

This state law also gives the Division of Child Support Enforcement the authority to order an employer to enroll an absent parent's children and spouse in health care coverage offered through the absent parent's employment. Many absent parents have access to family health care coverage through their employment, but, for various reasons, do not enroll their dependent children.

Child support agencies are mandated by the Social Security Act to order the absent parent to provide medical support and to enforce such orders. Until this law was passed, Virginia could administratively order the absent parent to provide medical support to his or her dependent children, but if the absent parent did not comply with the administrative order no benefits were forthcoming. This was time consuming and costly, and, because of the other requirements on staff time, often meant that medical support was not enforced.

Many federal and state dollars spent for Medicaid could be saved if child support agencies are able to detect and pursue available dependent health insurance. The HHS Office of the Inspector General reported in 1989 that in excess of $32 million annually could be saved through such efforts.

In Virginia we ran into a major obstacle after the legislation was passed which has prevented Virginia from realizing the positive results of this innovative approach to provide medical support services. The Employee Retirement Income Security Act of 1974, or ERISA, provides employers who want to be self-insured the option of having their employee insurance benefits governed by this federal law rather than by state statute. self-insured medical plans operated under ERISA exempt the employer from state regulation in the area of health insurance benefits. An estimated 70% of Virginia's employers are covered by ERISA. These employers can refuse to honor an order from my agency to enroll the absent parent's dependents in his or her health care coverage plan. It is my hope that Congress will amend ERISA to require ERISA employers to provide medical coverage for the dependents of employees. It was never the intent of ERISA to deny children medical coverage that could be provided by their parents.

Proposed Legislation to Require Employers to Report All New Hires and Rehires to the Division of Child Support Enforcement

A final innovation I would like to mention is one the Virginia General Assembly will consider this winter. It deals with legislation to require employers to report all new hires and rehires within 35 days to the Virginia Division of Child Support Enforcement.

In Virginia, only 56% of the absent parents who have been ordered to pay child support are paying that support. We in Virginia are determined to increase that

percentage. As you may know, the major obstacle child support agencies face in establishing and enforcing child support orders is finding the absent parent. Employers are an important resource in both locating the absent parents and in identifying income, assets, and health care information.

The Commission on Interstate Child Support—mandated by the Family Support Act to make recommendations to Congress to improve the interstate establishment and enforcement of child support awards—is tentatively planning to recommend similar federal legislation. The Commission has concluded that a major problem faced by state child support agencies, courts and private attorneys is tracking persons who change employment so that income withholding can be continued. Currently child support agencies rely on the absent parent or his or her former employer to notify the agency of the new employer's address. The Commission is considering recommending a new national system to report new employees by requiring employers to provide a copy of a modified W-4 form that would be revised to include information on child support obligations.

Virginia's proposed legislation does not currently identify the method by which the employer would report this information. My agency has met and will continue to meet with major employers to identify a method of collecting this information that will be least burdensome for everyone. Washington state law requires all employers doing business in the state to report to a state support registry the hiring of any person who resides or works in the state to whom the employer anticipates paying earnings. In the first year of operation, Washington state matched 6% of open cases with these new hire reports, resulting in a significant increase in collections. Washington has also found that it obtains employment information up to six months earlier than would be possible through data sharing with employment security agencies.

Mr. Chairman and members of the Subcommittee on Social Security and Family Policy, I want to thank you for this opportunity to testify on behalf of the National Council of State Human Service Administrators. I know that I speak for my colleagues when I say that child support enforcement plays a significant role in our efforts to increase family self-sufficiency. Consistent and timely child support payments can lead to a reduction in dependency on AFDC and strengthen the role of both parents in providing for the emotional and financial well-being of children.

Attachment.

Section of P.L.	Description of Section	Effective Date of Provision	Proposed Regulation	Final Rule	Effective Date of Rule
101(a)	Immediate income withholding in IV-D cases	11/1/90	8/15/90	overdue	
101(b)	Immediate income withholding in non-IV-D cases	11/1/94	8/15/90		
101(c)	Study by DHHS of immediate income withholding in non-IV-D cases	10/13/88 10/13/91 (Report to Congress)			
102(a)&(b)	$50 disregard for timely child support payments	1/1/89	9/13/89	late 5/15/91	5/15/91
103(a)	Guidelines for child support awards as rebuttable presumption	10/13/89	9/13/89	late 5/15/91	5/15/91
103(b)	Review of guidelines every four years	10/13/89	9/13/89	5/15/91	5/15/91
103(c)	Review and modification of individual child support awards	10/31/90 (Procedures for Review Upon Request) 10/13/93 (Procedures for Automatic State Review)	8/15/90	overdue	
103(d)	Study by DHHS on impact of periodic review of child support awards in non-IV-D cases	10/13/88 10/13/90 (Report to Congress)			
103(e)	DHHS 2-year demonstration projects with 4 states to evaulate model procedures for review of child support awards - 90% funding available	4/1/89 (DHHS enters agreements) 9/30/89 (Demonstration projects begin) 4/1/92 (Report to Congress)	4/19/89	8/4/89	10/1/89
104	Monthly notice of support collections to AFDC recipients	1/1/93	8/15/90		

ection f Pub.L.	Description of Section	Effective Date of Provision	Proposed Regulation	Final Rule	Effective Date of Rule
11(a)	Performance standard for paternity - establishment in OCSE Audits - use of Paternity Establishment Percentage	10/1/91			
11(b)	Use of genetic tests in contested paternity cases	11/1/89	9/13/89	late 5/15/91	5/15/91
11(c)	Option to charge fees in non-AFDC cases for costs of genetic tests	11/1/89			
11(d)	Encourage states to adopt civil procedures for paternity establishment and voluntary acknowledgment	10/13/88			
11(e)	Paternity establishment for child under age 18 as of August 16, 1984	8/16/84	9/13/89	late 5/15/91	5/15/91
11(f)	DHHS to collect data from states regarding the Paternity Establishment Percentage	10/13/88			
12(a)	Enhanced FFP (90%) for lab costs in paternity etablishment	10/1/88	9/13/89	late 5/15/91	5/15/91
21	DHHS to set standards for states' responses to requests for assistance in establishing and enforcing support orders	12/12/88 (Advisory Group) 4/14/89 (Proposed Regulations) 8/1/89 (Final Regulation)	4/19/89	8/4/89	10/1/89
22	DHHS to set standards for prompt distribution of child support collections	8/1/89	4/19/89 reissued 8/28/91	8/4/89	10/1/89
23(a)&(b)	Statewide automated tracking and monitoring system	10/1/91 (due date for AP) 10/1/9[illegible] (due date for implementation)	5/14/91	overdue	

Section of P.L.	Description of Section	Effective Date of Provision	Proposed Regulation	Final Rule	Effective Date of Rule
123(c)	Repeal of 90% FFP for automated systems	9/30/95	5/15/91		
124(a)	DHHS and DOL to enter agreement for access to Internet	1/11/89			
124(b)	State Employment Security agencies to provide Internet access to DHHS	1/1/90			
125	Social security numbers at birth	11/1/90			
126	Establishment of the Commission on Interstate Child Support	7/1/89 (Appointments to Commission) 5/1/91 (Report to Congress)			
127	Cost of interstate demonstration projects excluded from calculation of state incentive payments	1/1/90	4/19/89	8/4/89	10/1/89
128	DHHS study of child-rearing costs	10/13/90 (Report to Congress)			
129	Collection and reporting of child support data	Subject to OMB Approval			
201	Work and training demonstration projects for non-custodial parents in 5 states	10/1/90			
504	DHHS grants to states for demonstration projects to address child access	10/13/88 7/1/92 (Report to Congress)			

PREPARED STATEMENT OF SENATOR GEORGE J. MITCHELL

Mr. Chairman: I would like to thank and commend you for holding today's hearing on the Child Support Enforcement Program. Your work on this issue and welfare issues generally is surpassed by none.

I was pleased to be able to work with you on the Family Support Act of 1988, which contained a number of changes and improvements in the Child Support Enforcement Program. Now, three years after enactment of this important legislation, it is necessary to review the goals we set out in P.L. 100-485 to determine whether these goals are realistic and whether they should be revised.

The Family Support Act of 1988 was significant in that it attracted supporters spanning the political spectrum. This wide ranging support was made possible because the goals embodied in the legislation represent values all Americans support: Children should receive the financial support necessary to meet their basic needs and the financial responsibility belongs, first and foremost, to the family.

Unfortunately, in recent years, the number of children growing up in single parent households has skyrocketed and far too many of these children are receiving little, or no, financial assistance from their absent parents.

The Family Support Act established a number of requirements for states to meet to ensure that paternity cases are resolved, and child support is awarded and collected. While these requirements were established with the best interests of children in mind, I am concerned to learn that the timetable for meeting some of these requirements may not be realistic.

Earlier this year, I was contacted by Governor McKernan, of the State of Maine, and informed that the state would either have to dramatically increase child support enforcement funding to meet the federal requirements or would face losing over $8 million in federal funds for failing to comply with the deadlines established in the Family Support Act. This news was especially disturbing because the state of Maine has an impressive history of child support enforcement.

I am pleased that Sabra Burdick, Director of the Maine Bureau of Income Maintenance, and Colburn Jackson, Director of the Maine Division of Support Enforcement and Recovery, were able to come to this hearing today to advise this Committee of the difficulties facing our state. For the record, I would like to have a copy of the letter I received from Governor McKernan detailing the state's problems in complying with the Act included with the State's hearing testimony.

I hope this hearing will provide the opportunity to determine whether Maine's experience is unique or whether other states have found the federal timetable to be unrealistic. I again commend the Chairman for calling this hearing and I look forward to learning what Congress can do to ensure that America's children receive adequate and efficient child support payments from absent parents.

Attachment.

STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE
04333

JOHN R. McKERNAN, JR.
GOVERNOR

July 16, 1991

Hon. George J. Mitchell
United States Senator
176 Russell Senate Office Building
Washington, D.C. 20510-1902

Dear Senator ~~Mitchell~~ George

I am writing to make you aware of serious concerns I have about certain aspects of the child support enforcement mandates of the Family Support Act of 1988. Although I strongly support the objectives of the Family Support Act, I am apprehensive that some of its requirements will, if the proposed time frames for implementation remains, either require the state to expend a significant amount of money -- which given Maine's current financial crisis is simply not available -- or cost the state of Maine millions of dollars in the form of federal financial penalties which would likely be imposed for our failure to comply with federal requirements.

As I understand it, failure to meet federal requirements would result in an annual loss of approximately $8 million in federal child support enforcement funding and hundreds of thousands of dollars per year in federal funding for the AFDC Program. Not only would this create an undue hardship upon many Maine citizens, but in our opinion it would also be grossly unfair. Because of its accomplishments, the State of Maine has long been recognized as a leader in child support enforcement. Over the years innovative practices which have been developed and implemented in Maine have been highlighted by the Federal Office of Child Support Enforcement and shared with other states to improve their child support enforcement programs. We believe it is not a coincidence that many of the mandated practices contained in the child support enforcement amendments of 1984 closely resemble practices which were developed and utilized in Maine as early as 1975. Therefore, we think our track record clearly shows that the State of Maine has always been diligent in meeting responsibilities and has never been reluctant to implement any practice which would improve child support enforcement. We believe the child support enforcement related mandates of the Family Support Act of 1988 are laudable goals which every jurisdiction in the nation should try to achieve as quickly as possible. However, we also believe that the time frames within which these mandated tasks must be accomplished are unrealistic.

In recent years the federal government has imposed increasingly stringent child support requirements upon the states while progressively reducing the amount of federal child support funding available. As stated above, we think the new federal initiatives are worthwhile and will improve child support enforcement. However, the increased volume of work, the tight time frames within which the increased workload must be completed, together with reduced federal spending for child support enforcement and the severe shortfall in state revenues create an almost insurmountable obstacle to meaningful progress in the enforcement of child support in the state of Maine.

Some of our biggest concerns lie with the Triennial Review and Modification of Support Orders required under the Family Support Act. According to federal officials, by October 1993 most of the 25,000 child support orders serviced by the IV-D Agency (Maine Department of Human Services) more than three years old

will have to have been reviewed and brought up to date in accordance with the child support guidelines. DHS is currently handling 25,000 cases with current support orders; is in the process of establishing orders in another 7,500 cases (not counting paternity cases) and trying to establish paternity and support orders in 8,000 more cases. Anyone who requests a review of their support order would be entitled to it and some cases might be reviewed several times during the three year period. To handle the review requirement will mean reallocating a significant portion of the IV-D Agency's resources from the essential work of establishing and enforcing orders.

Additionally, it should be noted that the fulfillment of this mandate within established time frames will also have a significant impact upon our Judicial System. Chief Justice Vincent L. McKusick advises that from now until October of 1993, it is estimated that 9,200 cases requiring 2,875 hours of hearings will result from these triennial reviews, and thereafter 3,000 cases requiring 1,875 hours of hearings per year will result. The impact of the reviews is not confined to additional judge time. This program will have an impact on the entire Judicial Department and will result in a need for additional clerks, mediators, judges, and other court personnel, as well as increasing the burden on all court facilities, particularly those in the more heavily populated areas of the state. Furthermore, these estimates assume statutory and rule changes can be enacted which will mitigate the effect on the Judicial Department. The estimates are also premised upon the assumption that the Judicial Department is provided with the resources by October 1991 and that statutory and rule changes can be implemented by that date.

Given the existing level of federal funding for child support enforcement and the state of Maine's limited finances we see little hope of being able to provide the Department of Human Services and the Judicial Department with the resources they will need to do the job within existing time limits.

The federal regulations also require that paternity would have to be established (or the alleged father excluded) usually within one year. As noted above, we have a backlog of approximately 8,000 paternity cases, while new paternity cases are coming in at an average rate of 400 per month. The rate of establishment is controlled to a great extent by the number of attorney hours allocated to this function, which under our existing budget is limited. Due largely to this limitation, a huge backlog of cases remains unresolved.

Regulations now require appropriate enforcement action to be taken within 30 days of identifying the delinquency. In any given month we can expect approximately 20,000 cases to be delinquent. Approximately two-thirds of these would not be reporting wages to the Department of Labor, and their assets, if any, will be difficult to identify. Experience shows that, even under the best of conditions, an inordinate amount of staff time will be required to deal with these cases within the time limits envisioned by the Family Support Act.

The President's budget proposes expanding the IV-D Program to include food stamp recipients and to take more stringent actions to ensure that a child is provided health insurance by the absent parent. Time frames have been established for every facet of IV-D work; from answering requests for service to distributing the support collected.

Finally, there is no evidence that the federal government is prepared to finance these new mandates; on the contrary, they are proposing decreases in the incentive payments and suggesting that application fees and user fees be imposed on non-welfare recipients of our services.

As you can see, the magnitude of the work to be accomplished under the Family Support Act of 1988 is enormous. We have every intention of complying with the regulations to the best of our ability. However, we believe we need to have sufficient time to accomplish the mandated tasks with existing resources before being faced with penalties for non-compliance; or be given adequate

federal funding to accomplish these tasks within the existing time limits.

We have already taken action to put us in a positive position with respect to the accomplishments of these federal mandates. Beginning with the last legislative session (114th Maine Legislature) the Department of Human Services drafted, and I submitted to the Legislature, proposals for new statutes to facilitate the State of Maine's ability to:

(1) implement the requirement for immediate income withholding;

(2) require disclosure of information essential to enforcement of child support orders, establishment of child support orders, establishment of paternity, and triennial review and modification;

(3) conduct review and modification of child support awards; and

(4) expedite the initiation of action to establish paternity of children born out of wedlock.

Items #1, #2 and #4 have been enacted and signed into law. The proposal for triennial review and modification of child support awards was submitted to the 2nd session of the 114th Legislature but was not acted upon due to time constraints. This proposal is now being reviewed and revised by Representatives of the Department of Human Services and the Maine Judiciary. I plan to ask DHS to submit the product of their work to this session of the Legislature if the revision is completed in time. If this is not possible, I will submit their proposal into the Second Session which will convene in January 1992.

From the above, I think it is plain to see that the State of Maine has been working diligently to be in the best possible position to maximize its efforts to comply with the child support related provisions of the Family Support Act of 1988. However, we sincerely believe that, our best efforts notwithstanding, it will take more than the time allotted by the Family Support Act if we are to comply fully with its mandates. Any meaningful effort to meet all of the new federal requirements within the prescribed time frames will impose significant new costs upon the State of Maine during a time of severe economic hardship. On the other hand, failure to comply will almost surely result in the loss of millions of dollars of federal funding for child support enforcement and AFDC.

Consequently, I would request any help you could provide us in mitigating the adverse financial impact these requirements are bound to have upon the State of Maine, and probably upon a significant number of other states. One possible way to accomplish this would be to extend the time frames within which the mandates of the Family Support Act must be implemented; another would be for the Congress to restore the 75% federal funding for child support enforcement or even increase it to a higher level.

Any assistance you can render with respect to this very serious matter will be very much appreciated. If you have any questions concerning this please feel free to contact me, or have your staff call Commissioner Rollin Ives at (207) 289-2736.

Sincerely,

John R. McKernan, Jr.
Governor

PREPARED STATEMENT OF DAN MORALES

Mr. Chairman and members of the Subcommittee, thank you for this opportunity to share with you some of my thoughts about the present condition and possible future directions for the child support enforcement program.

Over the past decade and a half, the Title IV-D program has grown dramatically in scope of activity, productivity, and administrative complexity. Nationwide, the program has had an impressive history of accomplishment in realizing its fundamental purposes. In Texas, the child support enforcement program became an integral part of the state's Attorney General's Office in 1985 when the Texas Legislature designated the Attorney General's Office as the official Title IV-D agency for the state. At that time, Texas became the second state in the nation that vested responsibility for the child support enforcement program with an attorney general's office; today, it is still only one of three states in which an attorney general has responsibility for the operation of the Title IV-D program, and is the only state IV-D program administered by an elected official. I am, therefore, obviously very interested in, and concerned about, the future of the Title IV-D program.

Since becoming part of the state's Attorney General's Office, the Texas child support enforcement program has flourished, twice winning recognition as the "Most Improved Program" in the nation - in 1989, from the National Child Support Enforcement Association, and, in 1991, from the Subcommittee on Human Resources of the U.S. House Ways and Means Committee, which publishes a biennial Child Support Enforcement Report Card on the achievements of the national and state IV-D programs.

From 1985 to the present, the Texas IV-D program has seen its total caseload more than triple, with a monthly average caseload currently around 563,000 cases, and growing monthly to a projected 786,000 cases within the next two years. Child support collections have increased nearly seven-fold since 1985, amounting to about $216 million for the current fiscal year. Paternity establishments have gone from a total of 833 established in FY 1985 to an estimated 17,650 new establishments in FY 1991, and an estimated nearly 21,000 new establishments during FY 1992. What, in 1985, was a still fledgling program working largely through contracts with local county entities, is today a network of over 80 field offices, with a growing staff of about 1,500, including 400 child support investigators and 125 field attorneys.

I am very pleased that the Texas program is part of my office, for I see child support enforcement as being, in the first instance, a law enforcement activity, and not merely an extension of a welfare and social services enterprise. The Title IV-D program was created by Congress to enforce the clearly perceived, although not always clearly codified, duty of support owed by a parent to the minor child and to the public. The Title IV-D program necessarily looks to the law, both federal and state, for instruction in the appropriate means to enforce the parental obligation of support. That is why the acts of Congress in creating and, over the years, in strengthening the child support enforcement program are of fundamental importance; for the success of the program lies not simply with the dedicated efforts of state IV-D agencies to execute federal mandates but, first of all, with the soundness and farsightedness of the laws passed by Congress. Hence, the on-going oversight by Congress of the child support enforcement program created by federal statute and implemented by federal regulations is essential to the program's well-being. I commend you, Mr. Chairman, and the members of your subcommittee for conducting these oversight hearings and for according representatives of state IV-D programs the opportunity to share with you their perspectives on a program of such critical importance, as is the Title IV-D program, to the welfare of the children of this country.

I want to comment in particular on four requirements for the Title IV-D program founded in federal law: the periodic review and adjustment of child support awards; immediate wage withholding of child support payments; child support enforcement services for non-AFDC Medicaid recipients; and the current federal audit of state IV-D programs. I want to preface my comments, however, with an observation about the historical development of the IV-D program with respect to the amount of federal

legislation - and, from it, federal regulations - which has grown up around the child support enforcement program since its inception.

The creation of Title IV-D of the Social Security Act in 1975 marked the beginning of a revolution in family law in this country. Because historically family law had been exclusively the province of the states, the federal judiciary shied away from hearing any claims which dealt with matters of domestic relations, including the support of dependent children by their parents. So, when the Title IV-D program came into existence, each state had its own family law system - statutes and judicial processes - and its own legal culture and legislative traditions in which its family law system functioned. As for child support specifically, few states had statutes which asserted the support obligation directly, and most had only the most rudimentary enforcement mechanisms. Public Law 93-647, establishing "Part D of the Title IV: Child Support and Establishment of Paternity," began a federal legislative process of introducing uniformity into the diversity and divergence of child support enforcement and of evolving a single, nationwide system of child support.

For the first nearly ten years of the existence of the Title IV-D program, states thrashed about trying to conform their respective family law codes to the mandates of the new federal legislation. Some states succeeded more quickly and more fully than others, but by 1983, it was apparent to Congress, among others, that few states had really taken hold of the IV-D program. Part of the problem was that the state IV-D agency had sometimes been relegated to an obscure position in the organizational complexity of state welfare bureaucracies, receiving scant attention from their administrators and almost always the smallest piece of the budget pie. In this regard, states may simply have been following the model provided by the federal government. There, the administration of the Title IV-D program was placed in a complex, welfare and social services organization, with no truly distinct and separate identity - a situation which still persists today. Moreover, in many states, county entities carried on IV-D activities under contract with, but not always under the closest scrutiny of, the state's central IV-D office. Finally, there was the historical lag of habitual attitudes and practices. State legislatures, courts, judges, and bar associations were all wedded to their distinctive ways of handling family law matters, with little disposition to change.

In 1983, prodded by the Administration for a financial "restructuring" of the IV-D program in order to reduce federal expenditures, the 98th Congress conducted a review of the program. The outcome was the enactment of the "Child Support Amendments of 1984," the most far-reaching transformation of child support enforcement in this country since the 1975 act. In fact, it has been said - correctly, I believe - that the 1984 legislation ushered in the federalization of family law in this country, the last chapters of which have yet to be written in the halls of Congress. The 1975 law establishing the program envisioned Title IV-D as a kind of marriage of state family law and federal public policy in addressing the difficult and worsening problem of non-support and welfare-dependency. In this new venture of "co-operative federalism," Congress assigned to the states, out of deference to their traditional claim to preeminence in domestic relations, the primary responsibility for child support and paternity establishment, while leaving to the federal government the responsibility for providing the funding and general oversight necessary to achieve a coherent, nationwide program. The 1984 Amendments significantly changed this assignment of responsibilities. The dramatic changes in the IV-D program which the 1984 Amendments brought, represented not merely improvements in an existing system of support enforcement, but a conceptual reworking of that system.

The many provisions of the 1984 Amendments brought a rash of new tasks and requirements to the state programs. States were suddenly confronted with a flood of federal requirement with which their organizational infrastructures and legislatures were, in many instances, nearly unable to cope. The resulting rate of failure by the state programs to meet the new regulations and demands was predictable. In 1984, 45 percent of the states audited that year received notices of non-compliance. In 1985, the failure rate jumped to 83 percent. Since the enactment of the 1984 Amendments, only eight out of 54 states and territories have escaped being cited for non-compliance.

The inability of the majority of state programs to satisfy federal IV-D requirements - with the resulting rates of audit failure - reflects in large measure the frequency and magnitude of changes legislated by Congress since 1984. It also reflects major defects in the audit process by which the performance of state programs is evaluated - a matter to which I will return presently. The 1984 Amendments contained more than a dozen major changes in the IV-D program, affecting all 54 state programs. The majority of these statutory mandates had scarcely been implemented by new regulations and incorporated into the activities of state programs when the next major overhaul of the child support enforcement program, the Family Support Act of 1988, presented yet more demands. Altogether there have been nearly three dozen changes in federal IV-D statutes since 1984, with more than six dozen changes in federal IV-D regulations. The pace and the amount of change made by Congress and by the federal Office of Child Support Enforcement (OCSE) have nearly outstripped the ability of states to implement new mandates fully and satisfactorily. Despite increased funding, many states simply cannot effectively enlarge their IV-D programs quickly and efficiently enough to comply with all the new federal requirements.

The rapidity with which regulations have been promulgated, together with deficiencies in the regulatory process, has had a damaging effect upon the state IV-D programs. So much of the time, as well as of the financial and human resources, of the state agencies which should be dedicated to the primary purposes of the IV-D program must, instead, be directed to efforts to comply with the myriad technical requirements of regulations in order to avoid the punishing effects of being found out of compliance in the triennial federal audit. This burden is worsened by the fact that it is so often left to the states to decipher the intention of federal statute absent the timely publication of final rules, as well as absent clear, consistent, or convincing interpretations from OCSE. The fault, however, does not lie entirely with OCSE. In responding to one or another concern about, or criticism of, the operation of the IV-D program expressed by individuals or groups outside the program itself and in an effort to achieve greater "accountability" or "cost-effectiveness," Congress has from time to time written legislative provisions which themselves have lacked clarity or clear purpose or, worse, which have led to onerous ministerial requirements and tasks burdening the state IV-D programs without furthering the achievement of the goals of the IV-D program.

The process of creating and implementing federal IV-D law, especially since 1984, has been flawed, then, by a lack of knowledge or understanding by Congress and OCSE - and even by those groups which represent constitutents served by the child support enforcement program - of the distinctive character and everyday realities of 54 quite different IV-D programs across the nation. Too often, Congress has created mandates and OCSE has created regulations as if in a vacuum and without effective consultation with the states. Although the major pieces of legislation have been accompanied by hearings and the admission of documentary evidence, the provisions of the laws themselves have, on occasion, been written without serious consideration of the concerns of the state IV-D programs. Understandably it is not easy - if possible at all - to reconcile the diverse and discordant points of views expressed at hearings on proposed legislation. Some voices may be more clearly heard above others, with the result that simple answers are provided for complex questions.

There is more to the problem than just that legislation and regulations are not always drafted with clear reference to the everyday reality in which state IV-D programs exist and operate. There is also the time-lag in the movement from the preparation of legislation, to the enactment of law, to the promulgation of regulations, and finally to the implementation of requirements on the state level. This lag, of course, is not unique to the process by which IV-D requirements come into existence. It is common to nearly all federal regulatory processes. Laws are often written in opaque and ambiguous language and with nearly impenetrable complexity and overwhelming detail. The regulatory agency - e.g., OCSE - has then to translate statutory provisions into usable rules. This process may - and usually does - require more time than Congress allows by the effective dates of the provisions. Meanwhile, in the absence of regulatory guidance, those affected by the law - e.g., state IV-D programs - are supposed to have taken necessary steps to implement the requirements of the provisions.

When the IV-D regulations are finally published in proposed form, years may have passed since the enactment of the law and the effective dates of the provisions for which the state programs are already held responsible. The proposed regulations usually not only reflect the complexity of the statutes they are to implement, but also compound that complexity by a mass of detail and, often, internal contradictions. In the attempt to address a number of situations to which the new statute might apply, the proposed regulations invariably do not address all possible situations. The very specificity of the regulations tends to make them unduly restrictive, practically unmanageable, and nearly inapplicable. When final regulations are published - which may be a year or more after the proposed regulations - they usually reflect very little of the concerns expressed by state agencies in their written comments on the proposed rules. This leaves the states with unanswerable, and sometimes immobilizing, questions of policy and practice, and lacking clarity of instruction and effective guidance, the state IV-D agencies must muddle their way to implementation.

While on the federal level the process by which IV-D regulations come into existence could be characterized as an often clogged pipeline, on the state level the process by which regulations are actually implemented is, to use a different image, a total logjam. Scarcely has the state IV-D program begun efforts to implement one new program requirement, when another one appears. Lacking adequate time to establish the necessary legal and administrative (including automated) processes, as well as human and financial resources in order to carry out a new requirement on a statewide basis by a specified time, the state IV-D agency makes itself liable for audit failure. Or if the agency decides to dedicate existing resources to a new task, then almost inevitably other parts of the program will suffer, and, again, the state program may be faulted for failing to meet regulatory standards.

It should not surprise anyone that most of the 54 state IV-D programs making up the nationwide child support enforcement network feel so dispirited today. They have been called upon by the federal government to do ever more, with ever less resources, while trying with utmost dedication to be responsive to the needs and demands of a huge and ever growing constituency of public assistance and non-public assistance families.

Let me turn, now, to the four specific requirements of review and adjustment of support orders, mandatory wage withholding for child support payments, automatic child support enforcement services for non-AFDC Medicaid cases, and the federal audit of the state IV-D programs. These requirements all illustrate the complex and difficult situation I have been describing.

Review and Adjustment of Support Orders

The public policy purpose of the periodic review of support orders for possible adjustment is desirable, and I don't know of a single state IV-D director who would dispute the importance of such periodic review. But I also do not know of a single state IV-D program which is not experiencing some degree of difficulty in implementing the statutory requirement contained in the Family Support Act of 1988.

As provided for in the Act, there is to be a review - beginning October 13, 1993, and at least once every 36 months after its establishment or most recent review - of each support order in a state's IV-D caseload for possible adjustment of the support amount. In AFDC cases such review would occur unless "the State" (presumably the state IV-D agency) has determined that it would not be in the child's best interests and neither parent has requested such review. In non-AFDC cases, a review must be conducted at the request of either parent. By October 13, 1990, however, and prior to October 13, 1993, states were to have devised acceptable procedures for review and adjustment of support amounts, and if by those procedures the state had determined that a review should take place in any particular case, it had to conduct a review in that case upon the request of either parent or of the IV-D agency.

The purpose of this review and adjustment provision is to ensure that an ordered support amount (1) conforms with the, now, mandatory state guidelines for child support and (2) reflects as accurately as possible any changes in the circumstances of either the

parents or the dependent child. As commendable as its intention may be, the requirement brings unprecedented demands to state IV-D programs at a time when they are struggling to implement other demanding requirements, such as the extension of IV-D services to non-AFDC Medicaid cases and the implementation of new case processing and program standards. It brings, as well, several issues and questions which must be addressed before most states can fully implement the requirement.

There is, for example, the question of just whom the state IV-D agency represents in the review and adjustment process. The 1988 statute provides that either parent may request a review of the support order. This means that potentially the state IV-D agency may find itself having to recommend a downward modification of an order previously obtained for an obligee, the IV-D "client" -an action which would clearly violate legal ethics. The federal Office of Child Support Enforcement, in comments accompanying proposed regulations published on August 15, 1990, stated that "the IV-D agency does not provide a legal service per se" and that "the traditional attorney-client type of relationship does not exist." [Federal Register, Vol. 55, No. 158, p. 33418] This may be the position of the federal government; it most certainly is not universally the position of the states. There may be great and compelling merit in having the state IV-D agency adopt the "prosecutorial mode" in pursuing child support enforcement, but an interpretation of legal representation offered in comments on proposed regulations provides an insufficient basis for what would be a radical revision of the legal and public policy of many states.

The provisions in the Family Support Act for review and adjustment of support orders clearly distance the IV-D program from the traditional attorney-client relationship, but a redefinition of the relationship of the state IV-D agency with the custodial parent - and with the non-custodial parent - needs to be given in a substantive regulation, not simply in comments accompanying proposed rules. Absent a substantive regulation, many state IV-D agencies will find it extremely difficult to obtain any necessary state legislation explicitly authorizing the IV-D agency to represent the state's interest. Furthermore, there would likely be significant problems regarding confidentiality of communications and case records and conflict of interest. However, even in a substantive regulation, any redefinition which is to have universal application among the states requires a searching analysis of the complex issues attending the role of state IV-D agencies in providing support services to both AFDC and non-AFDC families, including the degree to which - if at all - it is permissible for a state IV-D agency to negotiate, even advocate, a downward modification on behalf of an obligor whose order the agency is also charged with enforcing. There is also the irony that in successfully undertaking downward modifications of support orders, the state program will be reducing the amount of collections it makes, which currently is the basis for judging the program's performance and for awarding federal incentive payments.

In addition to a number of legal and procedural issues, there are practical matters to be dealt with before states can fully implement the review and adjustment requirement. Happily, in the Family Support Act, Congress provided for the funding of demonstration projects in four states (selected upon application to the Secretary of Health and Human Services) in order "to test and evaluate model procedures for reviewing child support award amounts." Colorado, Delaware, Florida, and Illinois were selected, and in each of these states, two-year demonstration projects have been underway since October, 1989. Interim reports on these projects have yielded some valuable information about the most effective methods of selecting cases, conducting reviews, and updating support orders. A third year would greatly increase the value of these projects in identifying legal and logistical issues and in testing ways for the most effective implementation of the complex process of review and adjustment. In recognition of this fact, both the National Council of State Child Support Administrators - otherwise known as the "IV-D Directors' Council" - and the Child Support Task Force of the American Public Welfare Association have passed resolutions supporting the extension of the demonstration projects for an additional year. I strongly urge that Congress grant a year's extension to the operation of these important projects.

Because the purpose of the projects is "to test and evaluate model procedures," it is prudent to wait until the projects have been completed and their results carefully analyzed before promulgating final regulations and requiring states to implement the

review and adjustment process. It would be wasteful of state and federal resources not to wait until the results of the projects are known, and states and the federal Office of Child Support Enforcement can learn from them. Otherwise, states may find themselves repeating lessons learned from the projects and committing avoidable errors which might not only retard effective implementation of the process but also subject the states to audit failures. There are many legal and procedural issues needing clarification before final regulations are issued and before states embark on their own in an activity which could have far-reaching effects on the practice of family law.

Finally, preliminary reports from the demonstration projects underscore the importance of automation to the adjustment and review process. The Family Support Act of 1988 requires each state to "have in effect by October 1, 1995, an operational automated data processing information retrieval system . . ." In view of that requirement, and the likelihood that automated systems will be of enormous value for the review and adjustment of support orders, it would also seem sensible to delay the requirement that states implement the review and adjustment process until they all have installed automated systems.

The review and adjustment provisions of the Family Support Act of 1988 will surely introduce significant changes in the practice of family law and in the administration of the highest volume of child support cases since the inception of the IV-D program in 1975. Apart from these major changes, the new requirement imposes a task of great magnitude upon state IV-D agencies in reviewing, perhaps, each and every support order in caseloads which are at their historical, highest level - and growing by the month. If a state agency like the Texas IV-D program - with a caseload currently well in excess of half a million cases and growing monthly - were to do nothing but review and adjust support orders, as required by the statute, it would have little time or resources to do anything else. It is, therefore, critically important that the process be carefully analyzed and tested and that final regulations be drafted only after searching consultation with the states and after the conclusion of the pilot projects and after the time by which all states have their automated systems fully operational. While it is uncertain what magnitude of impact the requirement will have upon the financial costs of the IV-D program, it is certain that any failure of states to comply with whatever final rules OCSE promulgates will bring significant audit penalties.

Wage Withholding

Texas' experience with wage withholding for child support payments goes back to 1983 when a state constitutional amendment was voted into existence permitting the garnishment of wages for the payment of child support. Prior to that time, state law had permitted wage withholding only through a voluntary agreement with the non-custodial parent. After passage of the amendment, the Child Support Enforcement Division of the Attorney General's Office, in IV-D cases, could use wage garnishment in conjunction with court orders, although a new court order was required every time the obligated parent changed employment. In 1986, the Attorney General's Child Support Enforcement Division drafted standard withholding language to be included in all child support orders, not just IV-D cases. The same year, the Texas Legislature passed a wage withholding law that permitted a withholding order if the non-custodial parent was past due in making payments. The Legislature also created an administrative wage withholding process for the Attorney General's Office for use in IV-D cases and made wage withholding automatic in all new and modified support orders rendered in the state and retroactive in all existing orders. This year, the Legislature extended the use of the administrative wage withholding process to include county domestic relations offices, friends of the court, and private attorneys representing custodial parents. This bold step puts Texas at the forefront in making IV-D enforcement tools available to the private bar for child support enforcement.

As a result of these several steps, collections through wage withholding have grown steadily from $5.3 million in 1986 to $76.5 million in 1990 - an increase of 1300 percent since the remedy first became available to the Child Support Enforcement Division. A further indicator of the effectiveness of this legal tool is the proportion of total child support collections that the Child Support Enforcement Division brings in through

wage withholding. In 1986, only 11 percent of total collections were made through income withholding. By 1990, wage withholding accounted for 52 percent of the Division's collections.

Evidence of Texas' success with wage withholding can also be seen in national statistics. In FY 1989, the most recent year with comparative information available, Texas ranked fifth among states in the proportion of collections obtained through the wage withholding process. The national average for collections made through wage withholding was 41 percent, while Texas' wage withholding collections accounted for 52 percent of all collections.

Wage withholding has been one of the most successful and efficient enforcement tools for the child support enforcement program, not only in Texas but also nationwide. While income withholding does not work well with self-employed non-custodial parents or with parents whose income is adequate but irregular, it is highly effective in providing many families with reliable child support payments. The importance placed in the Family Support Act upon the use of immediate income withholding for child support payments is well deserved, and clearly wage withholding ought to be, as it has been in Texas for the past five years, mandatory in all child support orders.

Child Support Enforcement in Non-AFDC Medicaid Cases

The recently implemented requirement that state IV-D agencies provide full child support enforcement services to non-AFDC Medicaid applicants/recipients provides an instructive example of the "clogged pipeline" and the "logjam" in the regulatory process, to which I referred earlier in my remarks. This requirement issued from a provision of the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203, December 22, 1987), amending Title IV-D of the Social Security Act. Prior to this amendment, the state IV-D agency was required to provide services only to those who, as a condition of eligibility for AFDC, had assigned to the state their child support rights or to those who, not otherwise eligible for IV-D services, expressly requested them by filing an application and paying an application fee. The 1987 amendment made mandatory the automatic provision of full IV-D services to individuals who, as a condition of eligibility for medical assistance under Title XIX of the Social Security Act, had assigned to the state their rights to medical support, regardless of whether or not they were receiving AFDC.

The intention of this new provision of full IV-D services to non-AFDC Medicaid recipients accorded with a fundamental purpose of the IV-D program: reducing the costs of public assistance by shifting the burden of support to those parents obligated to bear it. The provision, however, was written into the bill without sufficient regard for the possible impact it would have upon state IV-D programs, including an increase in program administrative expenditures and already unmanageable caseloads, major modifications of procedures and automated systems, and a diversion of resources from pre-existing and more pressing enforcement needs. Moreover, the legislation as written and enacted failed to provide the IV-D program with clear statutory authority to provide IV-D services to non-AFDC individuals - in this case Medicaid recipients - without the requirement of a voluntary, written application and payment of application fee, in the absence of an express assignment of child support rights, as specified in Title IV-D law and regulations. Also, the new provision carried with it no requirement that the Medicaid applicant/recipient cooperate with the IV-D agency in any but those activities to enforce a medical support obligation or, indeed, to accept any more than those limited activities.

The legislation was enacted on December 22, 1987, and the effective date of the provision regarding IV-D services for Medicaid applicants/recipients was made July 1, 1988. This six-month period afforded insufficient time, first, for OCSE to draft and publish even proposed rules and, second, for the 54 IV-D and XIX agencies nationwide to make all the procedural and programmatic changes necessary to accommodate the new requirement. When proposed regulations were published, it was nearly one year after the statute's effective date. Although OCSE said that it "recognize[d] the less than ideal position that States are placed in by having to implement the requirements directly from law," the fact remained that

> By statute, the provision for providing child support services to Medicaid-only recipients was made effective July 1, 1988. Although regulations implementing these provisions have not yet been published, States are nevertheless expected to proceed with implementation. [Regional Medical Services Letter No. 88-30, received by the Texas IV-D agency, July 12, 1988]

When the proposed regulations finally appeared nearly one year after the effective date of the statute, they were poorly thought out, without any cross-reference to the existing Medicaid statute and Title XIX regulations. As a result, the proposed regulations did nothing to facilitate the referral of non-AFDC cases from the Title XIX agency to the IV-D agency or the acceptance of these cases as IV-D cases. Furthermore, in an effort to provide IV-D services without either an assignment of child support rights or a voluntary, written application, the proposed rules created an anomalous class of cases - "non-AFDC Medicaid" - which for some purposes were to be treated as AFDC cases and for other purposes were to be treated as non-AFDC cases. This "neither fish nor fowl" character of the new kind of case conveyed confusion about the collection and distribution of medical support obligations and the respective responsibilities of the IV-D and Medicaid agencies.

The final regulations, published over two and a half years after the effective date of the statute, responded to virtually none of the serious concerns expressed by state IV-D agencies in their comments on the proposed rules. Besides being held responsible for implementing the new statutory requirement without any guidance from OCSE during this lengthy period, state IV-D agencies found themselves having to undertake a task still lacking clear regulatory underpinnings and one which will have an unknown, but likely very significant, impact upon their programs. The disclaimer attached to the final rules that the new requirement would have "insignificant impact" upon state and federal expenditures and "will not significantly increase the IV-D caseloads in the States" was made - as it has been in the publication of other rules - without any true assessment of the cost or difficulty states will actually experience in implementing additional, mandated tasks. For Texas, at least, the financial impact will be far from insignificant: current estimates range between $15 and $17 million for implementation of the requirement. As for the impact upon caseload, with 70,000 non-AFDC cases in the Medicaid caseload, some 7,000 to 10,000 non-AFDC Medicaid cases are expected to be referred to the IV-D agency each month, along with the current average of 15,000 new AFDC cases. Even with adequate resources, it would be, in and of itself, a virtual impossibility to manage a program requiring overnight the addition of hundreds of new staff.

The new "non-AFDC Medicaid" requirement highlights another flaw in the process by which regulations are created: the absence of effective communication among federal agencies potentially or actually affected by a new regulation. In this case, the Health Care Financing Agency (HCFA), the federal agency responsible for the Title XIX Medicaid program, is directly affected by the rules established by OCSE for the referral of non-AFDC Medicaid cases to the state IV-D agencies. However, the OCSE rules for the new requirement reveal an absence of the kind of cross-agency consultation one would have expected. For example, no regulatory mechanism had been provided for the actual referral of non-AFDC cases from the Medicaid agency to the state IV-D agency. While OCSE indicated its agreement with one comment (in response to the proposed non-AFDC Medicaid rules) that the IV-D agency should provide services for only those cases actually referred to it, it allowed that there needed to be regulations from HCFA to have cases referred from the state Title XIX agency to the Title IV-D agency. Two and a half years after the effective date of the provision, OCSE and HCFA still had not addressed so basic a matter, and when its attention had been directed to the omission, OCSE could only report that HCFA "is considering proposals to develop a Notice of Proposed Rulemaking to require referral" of non-AFDC cases. Yet such referral is supposed to be taking place in the absence of a regulatory procedures. Furthermore, it is not apparent that HCFA and OCSE agree about just which cases are to be referred. HCFA evidently understands the law to require the referral "of all families with an absent parent" (which was the intention, although not the wording, of the new statute). OCSE, however, believes that IV-D services must be provided in all non-AFDC Medicaid cases "whether or not there is an 'absent parent'." [Federal Register, Vol 56. No.38, Feb. 26, 1992] Consequently, we in Texas are faced with having to make major programmatic decisions, the wrong

ones of which could subject the state to audit penalties, even though there are no clear resolutions of the issues on the federal level. Nonetheless, we have decided to do several small pilot projects around the state in order to determine on our own the most effective way to implement this far-reaching requirement.

The Federal Audit of State IV-D Programs

The failure of states to meet the proliferating demands of OCSE regulations is displayed in findings of the OCSE audit, which is itself a failure. A fundamental component of the federal role in the cooperative program has been the assessment of the effectiveness of state programs through periodic audits. Over the years new legislation and regulations have expanded the scope of the program and strengthened its activities and have introduced a great measure of uniformity in state laws and legal processes. With these developments, however, the audit process has become increasingly complex. What was at first a fairly simple review of a few selected aspects of state program operations has grown to an undertaking of nearly unmanageable proportions, imposing an onerous burden upon both the states and the federal office. As OCSE itself has acknowledged, "a more efficient and more expeditious approach to the audit of State IV-D programs is necessary." [Federal Register, Vol.54, No. 19, Jan. 31, 1989, 4841] OCSE is clearly concerned about this unacceptable situation, just as the states are dissatisfied not only with the length of time and expenditure of resources the audit process demands but also with the measures by which their programs are evaluated. Simply replacing, as OCSE has proposed doing, the current audit process with another process nearly as complex and just as faulty provides no remedy. What is needed is a new audit methodology to accomplish a purpose more fully complying with the legislative intent of Congress than the one served by the current audit.

The current OCSE audit came into existence as a response to congressional directives incorporated in the "Child Support Enforcement Amendments" enacted in 1984. Before that time a much simpler audit process was in place. In reviewing the OCSE audit processes in 1983, Congress found that OCSE had failed to provide the kind of leadership and guidance the 1974 legislation had envisaged for the federal agency in helping states develop the most effective IV-D programs possible. In 1974, Congress had seen the original annual audit as an occasion when an objective set of criteria would be used to evaluate the actual productivity of state programs in their efforts to enforce support obligations and to establish paternity. Ten years later the Senate Finance Committee found that instead of establishing clear and useful performance standards against which the productivity of state programs could be measured, OCSE was measuring instead "technical compliance with the specific requirements of Federal law." [Report 98-387, P.L. 98-378 Legislative History at 2428] Accordingly, OCSE was asked to develop and use appropriate standards for assessing the effectiveness of state programs and their success in meeting the fundamental objectives of the IV-D program.

These standards were, however, to incorporate "a reasonable degree of flexibility" which the Committee deemed "essential," thereby allowing for the differences both in program organizational structure and operation among the states and in the range of actions available for establishing and enforcing support obligations. Moreover, the standards were not simply to measure "short term cost-effectiveness" but were to take into account efforts by the state programs in addressing "difficult and costly problems," including paternity establishment which entailed "high initial costs." While the 1983 Senate Finance Committee did not affirmatively define "substantial compliance," it clearly intended a far more flexible standard than that which the earlier audit process had imposed. Rather than, as before, requiring compliance with every administrative and procedural detail of the State Plan, the new audit standard of "substantial compliance" would be applied to overall program performance, discounting any technical (i.e., procedural) non-compliance which had no significant impact on program effectiveness.

What the 1984 Senate Finance Committee strongly communicated, then, was the need for clearly stated and flexibly applied performance standards which would measure product, not process. A similar perspective was also articulated by the then Secretary of Health and Human Services, Margaret M. Heckler. In testimony on September 15, 1983, before the Senate Finance Committee's Subcommittee on Social Security and

Income Maintenance, the Secretary asserted that the proposed new audit "would focus more on program effectiveness rather on simple compliance with the process." [98th Congress, S. Hrg. 98-608, 38] A few months later, testifying before the full committee, the Secretary spoke of the need to permit states the greatest degree of flexibility in operating their IV-D programs; for, as she correctly asserted, "giving the States flexibility is important because the States differ." [98th Congress, S. Hrg. 98-673, 50]

The enactment of the 1984 amendments required OCSE to develop new audit measures in order to satisfy the directives of Congress and to reflect the new statutory requirements of the program. The new triennial audit was to be an overall assessment of program performance and not, as it had been, merely a check list audit of process compliance on the basis of State Plan requirements. Clearly what Congress intended to happen at least once in every three years was an examination of state programs which would require more of OCSE in carefulness of preparation and in thoroughness and thoughtfulness of on-site study.

Unfortunately, the audit regulations promulgated by OCSE in response to the 1984 amendments were antithetical to the clearly stated legislative intent of Congress. OCSE established a "new" audit process exactly of the kind Congress asked it not to create and the Secretary said would not continue. Instead of focusing on program effectiveness, the multiplicity of new audit criteria tended to measure only simple compliance with processes, using inflexible, quantitative measures. Overall the "new" audit perpetuated, in fundamental design and purpose, the old audit it superseded.

It is not surprising, then, that OCSE's response to the Family Support Act of 1988 should not reach beyond the limited perspectives expressed four years earlier. During the congressional hearings on the 1988 legislation, the criticisms of the audit process were several and severe, including a General Accounting Office report faulting OCSE for not having yet established true performance standards and for failing to provide effective leadership for the program. Reacting to these criticisms, OCSE said that it had been working on new audit criteria. On January 31, 1989, OCSE published revamped "operational" (i.e., "plan-related") and "functional" (i.e., "performance-related") criteria and an expanded set of "performance indicators," together with a change in the audit period, all designed, according to OCSE, "to streamline and expedite the audit process, consistent with reliability and audit integrity."

The comments from state programs which followed the publication of the proposed regulations indicated just how far removed OCSE was from the reality of the operations and functions of the state IV-D programs. While state agencies clearly desired relief from the taxing complexity of the current audit, many saw that instead of simplifying and expediting the audit process, the proposed rules would more greatly complicate the audit process, impose an increased administrative burden upon state programs, and further detract from the real business of the state IV-D program which is to secure for dependent children the support they need.

Not only the states complained about the proposed audit regulations, the Inspector General of the Department of Health and Human Services registered serious concerns about the adequacy of the audit process OCSE sought to install. Moreover, the Inspector General expressed his belief that OCSE ought not to introduce major changes in the audit until all the provisions of the Family Support Act of 1988 had been implemented and OCSE had an opportunity to assess the full impact of the Act upon the operations of state programs. Heeding such expressions of concern, OCSE prudently decided not to go ahead with the interim proposals but instead to invest time in developing audit standards which would be more comprehensive in scope and more responsive to the difficulties experienced by state IV-D agencies in implementing the requirements of the new law. Accordingly, the proposed audit standards were withdrawn, and new ones are expected in the very near future, according to OCSE.

The flaws in the current OCSE audit process are many and have been repeatedly addressed by the states in their responses to Action Transmittals, proposed regulations, and audit findings. Some of the major areas of state concerns are these: that the "performance indicators" do not truly measure program effectiveness; that the quantitative

standard by which program services criteria are applied is arbitrary; that "substantial compliance" as interpreted by OCSE makes no allowance for technical non-compliance; that the audit practices significantly fail to comply with GAO standards; that the audit is not transacted in full compliance with statute; and that the proliferation of criteria and procedures has made the audit unwieldy and wasteful of federal and state resources. Perhaps the most troubling assessment of the OCSE audit is that, with the proliferation of audit criteria and the employment of "secret" - or, at least, non-public - auditing standards - the audit is intentionally punitive in character. This is a widely shared perspective among state IV-D programs and was embodied in one state program's comment quoted in the Child Support Enforcement Report Card, published last January 3rd by the Subcommittee on Human Resources of the House Committee on Ways and Means:

> The audit seems to not be geared to assisting us in improving our program but geared instead to helping the Feds cut their losses and reduce the financial aid to the States. The audit criteria are unreasonable and therefore designed for failure.

The current audit quantitatively measures state IV-D program performance against a checklist of several dozen criteria and subcriteria. Failure in any one of these criteria or sub-criteria can result in a finding of substantial non-compliance, no matter how successfully a state agency is meeting the primary objectives of the IV-D program in locating absent parents, establishing paternity, and establishing and enforcing support obligations.

Applied as a template for measuring program effectiveness, the quantitative standard ignores important and distinctive differences among categories of enforcement activity, including degrees of difficulty and the varying allocations of time and resources required. The express purpose of the quantitative measurement is to determine the extent to which actions are taken on cases, not the extent to which the actions taken have been productive or the ones not taken have had a negative impact on the program's effectiveness. Again, the checklist approach to "effectiveness" requires only that something be done, whether or not doing it really matters to the outcome of a case. The concern once more is with process, not product--with quantity of action, not quality of effect. The application of this measure presupposes that there are no differences among state programs in types of caseload and in program structure and operation, that every case of a type (e.g., paternity establishment) requires the same actions and all of those actions in a particular sequence, with no variation. It assumes that if all cases of a type are worked using the same techniques, identical results will follow, regardless of degrees of difficulty or differences in circumstances or available data or staff or any one of numerous variables. Mechanistic inflexibility is the mode of measurement.

The quantitative application of the "plan-related" and "performance-related" criteria defines what OCSE understands as "substantial compliance" for the purpose of the audit. The 1984 legislation recognized that a state could be found in substantial compliance if there were any non-compliance of a technical nature (i.e., administrative and procedural) not adversely affecting the performance of the program. The standard of "substantial compliance," then, was to be applied to a program's productivity, and overall performance in meeting the objectives of the child support program was to be the determinative factor for assessing penalties. Procedural failures, to the extent they did not adversely affect performance, were to be regarded as matters of technical non-compliance and not in themselves the basis for penalties. Because, however, OCSE does not audit for performance--i.e., outcomes (including long-term cost-effectiveness)--but only process, every procedural step is judged to be a matter of substantial compliance whether or not it is of ultimate significance to the actual outcome of a case or to the on-going effective administration and productivity of a state program. By turning administrative procedural matters into matters of substantial compliance, violation of which could bring financial penalty, OCSE has sought to establish a level of program control never authorized by Congress.

In addition to the checklist of numerous criteria and subcriteria, quantitatively applied, the OCSE audit employs "performance indicators" which, as OCSE has itself acknowledged, do not comprehensively address the objectives of the program, but deal

only - and very narrowly - with collections. The use of these ratios as primary measures of effectiveness bespeaks a limited view of, and vision for, the IV-D program held by OCSE. Clearly, these "performance indicators" are inimical to what Congress sought in mandating a new sort of audit in the 1984 Amendments. As the Senate Finance Committee's Report on the legislation unequivocally stated:

> The Committee does not intend that its endorsement of performance standards should be seen as sanctioning a simple short-term cost-effectiveness approach.
>
> The Committee believes that the Department should be developing performance measures which will enable the auditors of the federal Office of Child Support to determine whether States are effectively attaining each of the important objectives of the program. These objectives are clearly set forth in the law and include locating absent parents, establishing paternity, obtaining and collecting on support orders, cooperating with interstate support and paternity actions, and providing services for both welfare and non-welfare families. [Senate Report No. 98-387, 33]

While legislative changes made by Congress have increasingly broadened the scope of the program, OCSE has increasingly emphasized collections in its audit criteria, with now seven cost-effectiveness measures based on collections. The expanded range of services the state programs are now expected to deliver has significantly increased program expenditures without necessarily commensurately increasing collections. Using these "performance indicators" as OCSE does, it is possible for a state program to have stellar performance as measured by the plan- and program-related criteria and still be found not to have an "effective" program because of receiving what OCSE deems an failing score on the performance indicators.

What is particularly troubling about the "passing score" in the performance indicators is that it is derived from the use of incomparable and largely faulty data. Collections made within one fiscal year do not necessarily reflect the expenditures recorded in that year because expenditures incurred in one period typically result in collections in a subsequent period. To state any degree of reality or to have any usefulness, the ratios of collections to expenditures would have to extend over several years in a statistical time-line. Moreover, the ratios are skewed by the fact that the denominator includes all program expenditures, so that the cost-effectiveness ratio of AFDC collections to expenditures includes non-AFDC expenditures, and vice versa, and none of the ratios segregate out the exceptional costs of paternity establishment and of start-up capital expenditures. Finally, the data on "support due" (accounts receivable) are, by OCSE's admission, often "incomplete" and "inaccurate." [Federal Register/ Vol 54, No. 19/ January 31, 1989/ 4853] As in other areas of data collection and reporting, there is no definitional or methodological uniformity among the states, simply because OCSE has not provided clear directions. Lacking integrity, the data on accounts receivable reported to OCSE exhibits every sort of vagary and is meaningless as a "factor" in determining cost effectiveness.

The fundamental flaw in these performance indicators, then, is that they are only short term cost-effectiveness measures of a faulty sort. They do not really capture the quality of a state's program, nor do they communicate the full significance of a program's expenditures. Despite the resultant costs, states must do all required activities within mandated time frames in order to be found to have an effective program. As increasing demands are imposed upon state programs, costs will go up, and while the quantity - and perhaps even the quality of services - might rise significantly, collections might not, at least not in a magnitude to achieve a passing score using the current cost-effectiveness ratios. No allowance is made for the distinctiveness of the state programs, one from the other, or for the particularities of different economies in any given year or the same state's economy in different years with respect to such changing factors as rate of unemployment, rural versus urban economic base, per capita income, wage assignment potential, etc. As measures of cost effectiveness, the performance indicators are of questionable value; as measures of program productivity, they are useless.

The IV-D program would greatly benefit from a total reform of the OCSE audit system. The audit process has become the victim of regulatory technology, and in its

cumbersome complexity it does not serve the IV-D program by providing the kind of thoughtful monitoring and correcting direction needed for the program's continuing growth. A total reform of the audit process, however, means more than just fixing the more glaring faults; it requires abandoning all existing audit regulations and totally reconceiving the purposes of the audit along the lines indicated by legislative intent and creating a methodology which serves those purposes. At the least, reforming the audit process means establishing performance standards which truly measure product, not process, applying those standards equitably, and judging substantial compliance by how fully those standards are met. Procedural deficiencies, when identified, ought not to be the basis for assessing penalties but, instead, be used as opportunities for improving processes for the purpose of achieving optimal program functioning and productivity.

Unfortunately, in the current OCSE audit, state IV-D programs are judged, not by their actual productivity and growth over a triennial period, but by their ability to jump through procedural hoops, regardless of whether or not all the time and resources spent on meeting the dozens of audit criteria really pays off in increased productivity and program effectiveness. The curious notion informing the use of the current audit seems to be that if a state program performs all the prescribed procedural steps and adheres rigorously to all the many details of a uniform process, success is sure to follow. More than that, if all state programs faithfully follow all the prescribed procedures, all will enjoy equal success, no matter the distinctive differences among the programs. But inasmuch as success in terms of real growth and real productivity is never measured in the audit, it cannot be known whether or not the rigidly applied procedural requirements lead anywhere or are merely ends in themselves - a process which produces nothing but itself. The only success the current audit measures is success in passing the audit, and I would urge Congress to legislate a moratorium on the use of the current audit and on the levying of penalties based upon its use in recent years until such time as a new audit process can be created. In urging this temporary moratorium, I have in mind the ten year moratorium Congress legislated for the very faulty Quality Control process used in the Title IV-A program until a new, sounder and more equitable process could be devised. Evidently a reform of the audit process for the Title XIX Medicaid process, also, has now become part of Congress' legislative agenda because of a bill recently introduced by Senator John Chafee, with broad bipartisan support, resulting from years of dissatisfaction among state Title XIX programs with the current audit process.

The Texas IV-D program would like to propose a new IV-D audit process which we believe would more fully comport with the legislative intent of Congress than the current OCSE audit does - one which would be responsive to the sorts of concerns and issues I have raised. I have asked my staff to prepare a paper detailing the deficiencies in the way state IV-D programs are currently evaluated both for the purpose of the audit and for the payment of federal incentives, and if you, Mr. Chairman, and members of the subcommittee find it acceptable to do so, I would ask that this report be sent to the subcommittee and be made part of my testimony. Today, however, I want to lay out the basic elements of the new audit process we wish to propose.

Proposal for a New Federal Audit of State Title IV-D Programs

First of all, the kind of audit process we are proposing would do away with not only the current audit criteria and performance standards, but also the current structure of incentive payments for states. Incentives are currently paid to states on the basis of a set of ratios of AFDC support collections and non-AFDC support collections to total administrative expenditures. These ratios are indequate measures of program performance, both because they do not evaluate the full range of IV-D program services performed by a state program and because they rely upon seriously flawed data, inasmuch as there are no universal definitions and standardized methodologies used by the 54 state programs in identifying and reporting these data. In other words, there is no nationwide IV-D data base of a kind which you, Mr. Chairman, urged Undersecretary Constance Horner to think about when she testified before this subcommittee on May 15, 1989, in hearings on the implementation of the Family Support Act of 1988.

Second of all, we propose that all of federal funding for the national IV-D program be in the form of "federal financial participation" (FFP) - that is, that the funds which

currently might have been paid to the states in the form of incentives be invested, instead, entirely in FFP. Even a totally new incentive structure - one which included other performance measures beyond just "cost-effectiveness" and which would more accurately, comprehensively, and fairly evaluate program productivity and effectiveness than the current structure does - would still be susceptible, to some degree, to problems of data integrity - and data manipulation - and the lack of the universal employment of standardized methodologies among the states. Beyond that concern, there is the doubtful usefulness of a bifurcated funding structure. Although intended in part to ensure that AFDC and non-AFDC constituents receive equitable treatment in the provision of IV-D services, the current incentive structure has not served that purpose at all well because of the "cap" imposed on the incentive payments for non-AFDC collections. Altogether, the use of incentive payments to reward (or punish) state IV-D programs for their performance in providing services has proved to be of dubious value in stimulating the growth of the IV-D program. (For the first five years of the IV-D program there was only FFP at a rate of 75 percent, except for incentives paid for interstate collections or collections made by political subdivisions of the state on behalf of that state. The current incentive structure came into existence with the 1984 Amendments.)

If incentive payments were eliminated and the federal government were to invest in "federal financial participation" (FFP) the whole of the amount it pays out in incentives, it could, by FFY 1989 data in OCSE's Fourteenth Annual Report to Congress, provide an FFP of at least 86 percent nationwide. This would be an above-the-board payment to ate programs for authorized administrative expenditures, without any differentiation of the activities for which the expenditures were made. It would be "honest" money, meted out solely for program costs, without any reliance upon untrustworthy - and possibly manipulated - data or flawed processes of data identification and reporting.

This more generous rate of FFP - although a no greater amount of actual federal funding for the program - should not, however, be provided without any accountability for effective and efficient performance on the part of the state IV-D programs. Here is where a triennial review of state program performance - entirely different from the current audit - would provide the needed accountability.

Triennial Review of State Program Goals - Each state would set production goals for itself to be met over a triennium. These goals, covering all of the essential service areas - locate, paternity establishment, obligation establishment and enforcement, collections, interstate enforcement, and medical support - would result from a conference with the regional IV-D representative and would be "certified" by the OCSE director. The goals would reflect realistic assessments of potential for growth and productivity, analyses of areas needing particular attention and improvement, and factors peculiar to the state (e.g., economic and demographic features, structural organization of the state's IV-D program, and matters of state statute and legislative process) influencing performance. The federal office would certify that the stated goals were acceptable - that is, were not too low or at too great a deviation from national norms and/or trends.

Once agreed upon by the state IV-D agency, the regional office, and the federal office, the state would be held accountable for realizing the performance goals over the period of the triennium. At the end of the three-year period, a review and assessment would be undertaken by the state agency and the regional office together. OCSE auditors would validate program data and confer with state auditors. Regional IV-D staff would confer with state agency staff and together visit selected sites. The outcome of the review would be a report to the federal office in which an assessment of accomplishment would be made, with any divergences in the assessment between the regional office and the state agency identified and justified. The federal office would then have responsibility to determine on the basis of the report the degree to which the state program had met or exceeded its goals and, correspondingly, the amount of FFP to be allowed for the triennium just reviewed.

All states would begin the triennium at an FFP rate of, say, 80 percent. If the state had substantially met its goals, that 80 percent FFP already paid over the three-year period would remain unaffected. If the state exceeded one or more of its goals, it would be entitled to an "enhanced" FFP (that is, supplemental FFP) for the period - to a

maximum of, perhaps, 90 percent. (Presumably not all states would in any given triennium exceed program performance goals to the same degree. Therefore, even with "enhanced" FFP paid to many states, the federal costs nationwide would not exceed 86 percent of administrative expenses for the program - roughly the level of costs actually paid out in FFY 1989, adding together FFP and incentive payments.) If, however, it substantially failed to meet its productivity targets, it would suffer some percentage disallowance of the 80 percent FFP already paid, except that the disallowance would be suspended until a follow-up review one year later showed whether or not improved productivity and efficiency were of sufficient magnitude to "correct" the earlier deficiencies. The state agency would have the opportunity both after the triennial review and after the follow-up review to appeal any adverse judgments to the Department Grants Appeal Board.

To illustrate this scheme, by the end of FFY 1989 and for that fiscal year, state X had made total support collections year of $110 million ($75 million in non-AFDC cases), from about 20 percent of a caseload of some 400,000 cases. It had sent payments to other states on 28,000 cases and had processed 8,000 requests for assistance from other states. It had established 7,000 paternities during the year and 14,000 new obligations and had successfully located 117,000 absent parents. It had proposed state legislation to improve administrative processes, medical support, and the use of liens for child support - all of which would enhance enforcement efforts but much of which would likely face heavy political opposition. It had a backlog of 200,000 paternity establishment cases but was putting in place special paternity projects across the state, the existence of which, however, would be dependent upon special funding by the state legislature. The real estate market in the state had collapsed, unemployment was at an all time high, successive years of drought had crippled agriculture, and the state government seemed destined for monumental operating deficits.

Weighing all factors, the state agency drew up a three-year plan, incorporating productivity goals, which it presented to the regional office at the beginning of FFY 1989. At the end of some negotiation of the targets the state agency had set for itself, the regional office and the agency signed off on the plan and forwarded it to the federal office for certification. The federal office certified the plan (before the end of the first quarter of FFY 1989) only after challenging as too low a projected 10 percent per anum improvement in AFDC collections but agreeing to that level after understanding the particular economic problems of the state. At the end of the triennium (during the fourth quarter of the third year), the review disclosed that the state had significantly exceeded its goals for paternity establishment (even though the legislature did not fund the special paternity projects) and had substantially (that is, within an acceptable range of deviation) met all other targets, except for interstate enforcement, where it showed little improvement in performance. The federal office determined that because of the impressive improvement in paternity establishment, the state would not be penalized for the poor showing in interstate, although it would have to make that area one for special efforts during the next triennium. The state, however, successfully appealed to the Department Grants Appeal Board that historically unprecedented levels of requests from other states, coupled with a dramatic increase in the AFDC caseload and a freeze on state government hiring, had made it impossible for the agency's staff to respond effectively to the increased demand. The outcome was "enhanced" FFP for the triennium at 82 percent.

The illustration is far simpler than any actual situation would ever be; it is only intended as an outline of the sort of process of planning and review a state would experience in three year cycles. The advantages of such a scheme of program funding and evaluation would be these:

1. There would be on-going strategic planning for the IV-D program at both the state and federal levels, with the state and federal programs in a partnership relationship identifying goals and assessing results. This sort of cyclical planning and assessment should enable state programs to make sounder judgments about the deployment of resources in meeting specific targets over the long-term, as well as provide a sharper, historical focus on the areas of strength and need in the continuing development of the programs.

2. State programs would be evaluated against their own respective historical performances, although their individual and collective experiences in striving to meet the purposes of the IV-D program would inform and help shape program development and policy at the federal level, including the creation of new laws and regulations.

3. Provision for a disallowance of FFP upon an unjustified failure to meet three-year goals would ensure that state programs did not simply spend federal funds without being accountable for the results of those expenditures. This would counter the sort of situation, often cited by the federal government as an instance of states' making a "profit" on the program, where a state runs an inefficient, unproductive program and still collects the full measure of FFP and at least the minimum percentage for incentive payments. This scheme introduces a higher level of accountability and a greater sense of stewardship of federal funds.

4. This scheme of program planning, assessment, and funding moves state-federal government interaction from a nearly adversarial relationship in which state IV-D agencies feel the "feds" are out to get them and the federal government feels that state agencies are out to cheat it, to one of shared responsibility for the overall success of the IV-D program. Instead of the current audit which functions as a system of negative sanctions to motivate positive behavior and as a punishment for imputed laziness and negative intentions, there would be cooperative planning and assessment of program activities by state agencies and the federal government. Currently state programs divert time and resources from planning for productivity to planning for passing an audit which addresses only procedures and not product. It is a three-year long effort to avoid losing funding, rather than a three-year long effort to realize productive goals, mutually agreed to by state agency and federal government.

5. A periodic technical review would enable state agencies to identify particular procedural problems and enable OCSE to offer assistance in resolving these problems, without disrupting the on-going work of the state program, as the current audit does, and without imposing crippling wholesale penalties, as the current audit does, for procedural deficiencies which do not affect the overall performance of the state IV-D program and its true "substantial compliance" with the fundamental purposes of Title IV-D.

Conclusion

The creation of the IV-D program represented one of the most significant experiments in "cooperative federalism" this country has known. Over the fifteen years of its existence, the program has grown into a major force for the well-being of the nation's children, and it needs to continue to develop in order to serve more fully the high minded purposes for which it was established. Continuing development, however, presupposes flexibility of operation for state programs and their freedom from regulatory impediments and the punitive effects of an audit which measures procedural performance instead of program productivity. Instead of being a punitive activity, the audit could be a constructive way by which OCSE assists state programs in achieving maximum productivity and effectiveness in their efforts to provide dependent children with the financial support they deserve and need.

There is no gainsaying that everyone with an interest in the growing crisis of child support in this country - and the concomitant feminization of poverty - wants the IV-D child support enforcement program to succeed. Congress, advocacy groups, OCSE, state IV-D agencies - all share a commitment to the program's success. No one believes that OCSE deliberately seeks to cripple state programs with audit criteria which divert the time and resources of state programs from achieving long-term goals of improved productivity, any more than that the high rate of failure among state programs in satisfying those

criteria is an expression of willfulness on the part of the states. But the real success which everyone seeks - the federal government, Congress, the states -will not be achieved by piling on more mandated IV-D tasks, more IV-D regulations, more constraints on flexibility and creativity among the states in how they pursue the fundamental purposes of the IV-D program.

The crisis in child support is worsening, and the need for new directions for the IV-D program and a new vision for its future is becoming increasingly imperative. The old, habitual ways of thinking about support enforcement and, indeed, about ensuring -or assuring - support for the nation's millions of dependent children have proved inadequate. Congress, in concert with the states and the federal Administration, must work to liberate the IV-D program from the regulatory impediments which limit the program's possibilities and burden its progress. In conclusion, then, I would respectfully recommend, as a beginning point and a prerequisite to achieving for the IV-D program new vitality, that Congress undertake the following:

1. Declare a moratorium on the use of the current OCSE audit and on the levying of penalties against states found out of compliance by the current audit, just as Congress declared a moratorium on the use of the Title IV-A Quality Control system, until a new, more meaningful system can be devised.

2. Extend the duration of the demonstration projects for review and adjustment of child support orders by an additional year.

3. Enact legislation delaying the required implementation of the requirements for case processing time frames, review and adjustment of support orders, and the automatic provision of child support enforcement services to non-AFDC Medicaid recipients, at least until such time as automated systems required by federal law are fully operational and certified.

4. Create a permanent Child Support Enforcement Commission charged with the responsibility to study all components of the Title IV-D program and to make, as needed, recommendations to Congress for legislative ways in which the program can be strengthened and, on a continuing basis, to provide Congress with a long-term vision and planning strategy to move this critically important program into the twenty-first century.

[SUBMITTED BY SENATOR DANIEL PATRICK MOYNIHAN]

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Social Justice in the *Next* Century

By DANIEL PATRICK MOYNIHAN

The responsibilities of government are to provide the means for parents to become self-sufficient—such as employment services and supports—and to provide income when their best efforts fall short.

CENTESIMUS ANNUS, Pope John Paul II's encyclical on social justice was proclaimed May 1, 1991, the feast of St. Joseph the Worker and the 100th anniversary of *Rerum Novarum*. This encyclical of Pope Leo XIII first set forth the doctrine of the Roman Catholic Church on the subject of the rights of workers.

Looking back at Leo's work it becomes clear how great a distance Western, and not just Western, society has moved in the period. At the close of the 19th century there was a seemingly unreconcilable conflict in Europe and the United States between the doctrines of laissez-faire capitalism on the one hand, and state socialism or some mode of collectivism on the other. Economics was the *only* issue. (War, for example, had evidently become obsolescent.)

In this atmosphere the church set forth what can be seen as a sensible middle ground where most industrial democracies would eventually settle. By middle ground I do not mean splitting the difference. Rather, Leo XIII, asserting the rights of private property, even so set forth a radical doctrine of workers' rights that extended to a "just wage," and most especially, the "natural human right" to form private associations, including trade unions. Many proposed measures, the limitation of working hours, special treatment for children and women, Sunday rest, and such, seem routine at this remove. But they were hardly such at the time. Still, the important event was the extension of the concept of rights to the marketplace. Labor, it was decreed, was not a commodity.

As John Paul II puts it, *Rerum Novarum* pointed the way to reforms under which "society and the State... both assume responsibility, especially for protecting the worker from the nightmare of unemployment." Responsibility, that is, for a general level of well-being that we have learned to call the welfare state. It is notable, then, that the present Pope goes on to a sharp exchange with this "so-called Welfare State."

DANIEL PATRICK MOYNIHAN is the Democratic Senator from New York. This article is adapted from a paper presented at an April 29 conference sponsored by the Graduate School of Social Service of Fordham University to mark the University's sesquicentennial year and the 500th anniversary of the birth of St. Ignatius Loyola. The author acknowledges with gratitude the able assistance of Paul Offner.

"In recent years the range of such intervention has vastly expanded, to the point of creating a new type of State, the so-called 'Welfare State.' This has happened in some countries in order to respond better to many needs and demands, by remedying forms of poverty and deprivation unworthy of the human person. However, excesses and abuses, especially in recent years, have provoked *very hard criticisms of the Welfare State*, dubbed the '*Social Assistance State*.' Malfunctions and defects in the Social Assistance State are the result of an inadequate understanding of the tasks proper to the State. Here again *the principle of subsidiarity* must be respected: a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to coordinate its activity with the activities of the rest of society, always with a view to the common good."

"By intervening directly and depriving society of its responsibility, the *Social Assistance State leads to a loss of human energies* and an inordinate increase of public agencies, which are dominated more by bureaucratic ways of thinking than by concern for serving their clients, and which are accompanied by an enormous increase in spending" (emphasis in original).

Michael Novak, who holds the George Frederick Jewett Chair in Religion and Public Policy at the American Enterprise Institute, has responded with great enthusiasm. In an article in The Washington Post (5 ? 91), "Wisdom from the Pope," he writes that John Paul "... offers the papacy's strongest language ever about limitations on state power. It includes a trenchant but fair criticism of the human losses involved in the 'welfare state' and even more in the 'social assistance state.' No neo-liberal or neo-conservative ever made the case more profoundly and with so resounding a ring of truth. The pope emphasizes the human side—or better, the anti-human side—of bureaucratic 'social assistance.' He all but uses the phrase 'the little platoons' of society."

HOW'S THAT? The Pope a conservative in the Burkean mode? This suggestion did not escape the notice of Harvey Cox of the Harvard Divinity School. Indeed, it provoked him to something like anger, which is not at all like him. Writing in New York Newsday shortly after, Professor Cox is dismissive equally of the "triumphalist" commentary by "the American Enterprise Institute's resident theologian" and of the encyclical itself. "Unfortunately, his years in Rome have not sharpened Karol Wojtyla's pen. He succeeds in being pretentious, provincial and pedestrian at the same time. He credits his predecessor Leo XIII with exerting 'far-reaching influence' on the birth of Social Security, pensions and health insurance. But don't the labor unions and citizens' movements that, like Al Smith, could probably not even pronounce the word 'encyclical' properly get a little credit too? Did Franklin Delano Roosevelt read *Rerum Novarum*?... Do we need someone who is carried around on a palanquin by Swiss Guards to tell us this? The conservative theologians who complain that liberals too often borrow their ideas from the secular realm must be wincing in embarrassment about the derivative quality of this ho-hum document.

"But let us be more generous. What is exhausted is not the Pope but the social encyclical genre itself, with its improbable claims to universal validity and its consequent temptation to resort to bland truisms.

Children now make up the largest proportion of poor persons in the United States. There is no equivalent in our history to such a number or such a proportion.

"My hope is that *Centesimus Annus* marks not only the 100th anniversary of papal social teaching but the end of that chapter in Christian history."

Professor Cox has a point about the medium. Encyclicals have the quality of an imperial decree. Americans do not instantly take to such modes of address, although he should be careful about patronizing Al Smith. There is not the least evidence that the Governor had difficulty *pronouncing* the word. We have it on the authority of a not inconsiderable theologian, Reinhold Niebuhr, that when this subject arose during the 1928 Presidential campaign, Smith simply asked "Will someone tell me what the hell a Papal Encyclical is?"

Format apart, there continues to be a real problem of English translation. Thus the new encyclical observes: "*Rerum Novarum* criticizes two social and economic systems: socialism and liberalism." Three decades ago, in *Beyond the Melting Pot*, referring to *Rerum Novarum* and the message of Catholic social teaching, Nathan Glazer and I wrote, "Catholic spokesmen have used the term 'liberal' to refer to *laissez-faire* economics of the Manchester School, and have generously denounced same." The result, we continued, had been total confusion among the Catholic laity who had to assume that in denouncing "liberalism" Rome was anathematizing the New Deal. And here again we have the same usage. Misusage. No wonder Harvey Cox got mad. The term "liberalism" means something altogether different in American English today, and has done so for generations. A correction is in order. If not a correction, then surely an explanation.

II.

That being said, *Centesimus Annus* could turn out to

be as seminal a statement as its predecessor. *Rerum Novarum* concentrated on issues of the workplace, as did social policy in the United States in the years that followed. Labor, declared the Clayton Antitrust Act of 1914, is not a "commodity." Workers, declared the Fair Labor Standards Act of 1938, must be paid a minimum wage. Minorities, declared the Civil Rights Act of 1964, could not be discriminated against in employment.

AGAIN, these may seem routine matters today. They were anything but when the issues first arose. The dislocations associated with industrialization were absolutely baffling when they first appeared. What *was* unemployment? Why did it happen? Who was responsible? An era of fierce doctrinal argument preceded the era in which a consensus of sorts was reached. Note particularly that along the way we began to learn to *measure* the things we were arguing about. Two events were of particular note. First came the establishment in 1920 of the National Bureau of Economic Research that began the systematic, quantitative analysis of the business cycle. Next, the Employment Act of 1946 established the Council of Economic Advisors and the annual Economic Report of the President to the Congress with the quantitative analysis of employment. There is no sense in which unemployment is a problem of the past. But we know how to measure it, and within limits we know what to do about it. It is not *the* problem of our age.

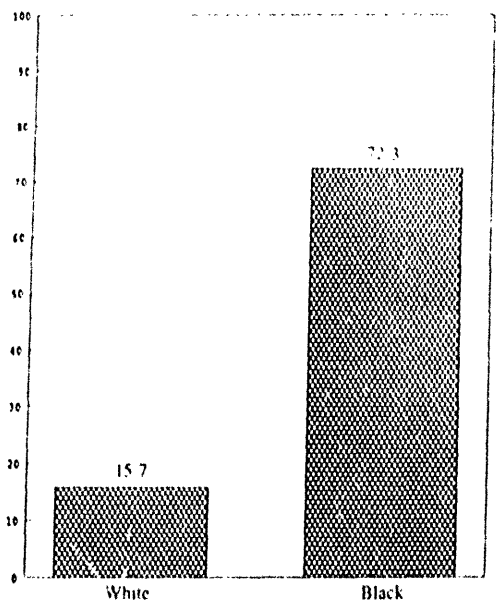

FIGURE 1 Welfare Dependency Rates of Children by Race Proportion of Children Receiving A.F.D.C. Prior to Age 18 1967-69 (Actual)

But now a new issue has arisen. The issue of dependency, the growing number of children born to single parents and dependent during childhood on, well, "the Social Assistance State." In 1965 in AMERICA, I published the first data that suggested that we might be moving into such an era, one in which destitution in childhood, relatively independent of economic forces, would be our principal social problem ("A Family Policy for the Nation," AMERICA, 9/18/65). This was, I believe, a new proposition. I think it important that it arose in the context of research on the "earlier" problems of unemployment, wages and hours, and suchlike matters. In brief, the policy planning staff of the U.S. Department of Labor came upon indications that the connection between child welfare and the workplace was breaking up. Earlier, when unemployment had dropped, new welfare cases dropped. No longer. Seemingly, dependency was an independent variable, possibly out of control.

This seemed especially so among minorities, a proposition I took to President Lyndon B. Johnson, who said as much in an address at Howard University in 1965. The President's analysis, however, was rejected. People said it wasn't so, and we could not prove otherwise. In truth, nothing much had yet happened. We had these indicators, but no more. And so we had to wait for the answer, or at least an approximate answer. We now have it. We were right.

SPECIFICALLY, we now know that of children born in the years 1967-69, some 22.1 percent were dependent on welfare (Aid to Families With Dependent Children) [A.F.D.C.] before reaching age 18. This breaks down to 15.7 percent for white children, 72.3 percent for black children. In his 1965 address at Howard, President Johnson had stated: "Probably a majority of all Negro children receive federally-aided public assistance sometime during their childhood." This was from my first draft of his address. So much for the charge that we were being alarmist. (See Figure One.)

This is as far as our longitudinal data take us. We *know* about the life experience of that cohort in its first 18 years, those years having now passed. What about the cohorts that followed? We don't finally know, but we can make an educated guess. The data tell us that children under the age of 8 were, on average, 36.8 percent more likely to have been on A.F.D.C. in the 1970's than their predecessors in the 1960's. If we assume that this same increase will show up for the whole of the 18 years (0-17), then we can project rates for children born as late as 1980. This gives us a white rate of 22.2 percent, and a black rate of 82.9 percent. (The latter would seem too high, and is of course only a projection. Still, we face the daunting possibility that five in six minority children are destitute and on welfare by age 18. See Figure Two.)

This surely raises the issue of social justice; if, that is,

it can be shown that such destitution in childhood is, in the main, a debilitating event. Not for each individual, but generally speaking for a class of individuals. Lawrence M. Mead of New York University believes this to be so. In *The New Dependency Politics* he writes: "The inequalities that stem from the workplace are now trivial in comparison to those stemming from family structure. What matters for success is not whether your father was rich or poor but whether you had a father at all."

III.

Now this would appear to be a new social condition. Nearly one third—30.2 percent—of all children are paupers before attaining their majority. Not a pretty word; but not a pretty condition. That is in fact what it means to be on "welfare." No income of your own and virtually no possessions. This rise in dependency has been paralleled, preceded may be the better term, with a rise in out-of-wedlock births. For 1988 the overall ratio was 25.7 percent, which breaks down into 17.8 percent for white births and 63.5 percent for nonwhite. There are now health districts in New York City where more than 80 percent of live births are out of wedlock.

There has also been a rise in asocial behavior. By the 1980's it was common to hear of "children having children." In the 1990's we begin to hear of children murdering children, as firearms have moved into urban neighborhoods and down the age scale. This, too, was forecast. In the 1965 article in AMERICA I wrote: "From the wild Irish slums of the 19th-century Eastern seaboard, to the riot-torn suburbs of Los Angeles, there is one unmistakable lesson in American history: A community that allows a large number of young men to grow up in broken families, dominated by women, never acquiring any stable relationship to male authority, never acquiring any rational expectations about the future—that community asks for and gets chaos. Crime, violence, unrest, disorder—most particularly the furious, unrestrained lashing out at the whole social structure—that is not only to be expected; it is very near to inevitable. And it is richly deserved."

THIS YEAR, in a superb preface to *Beyond Rhetoric: A New American Agenda for Children and Families*, the Final Report of the National Commission on Children, its distinguished chairman Senator John D. Rockefeller IV wrote: "Too many of today's children and adolescents will reach adulthood unhealthy, illiterate, unemployable, lacking moral direction and a vision of a secure future. This is a personal tragedy for the young people involved and a staggering loss for the nation as a whole. We must begin today to place children and their families at the top of the national agenda.... Many young people believe they have little to lose by dropping out of school, having a baby as an unmarried teenager, using and selling dangerous drugs, and committing crimes. When they lack a sense of hope and the opportunity to get a good job, support a family and become a part of mainstream adult society, teenagers are frequently not motivated to avoid dangerous or self-destructive behaviors. These youth can see few compelling reasons to avoid or delay activities that provide immediate gratification. Unfortunately, their actions often make their expectations a self-fulfilling prophecy."

Note the shift in terms. We are not talking about unemployment here. We are talking of children who come of age "unemployable." We are not talking of the blameless victims of impersonal market forces. We are talking of adolescents "lacking moral direction." We are not talking of the need for social security programs; we are talking of the youth who have no "vision of a secure future."

It would be fair to say that our analysis of 1965 has finally been accepted. But it would be equally fair to ask whether it is as yet agreed that we are dealing with something *new*. The National Commission Report is long—519 pages—on prescriptions for expanded government programs, but short on analysis. Warily, the report does tell us that matters are worsening. "In 1960 only 5 percent of all births in the United States were to unmarried mothers; in 1988 more than 25 percent were." But it does not tell us whether in the view of the Commission a fivefold increase represents a qualitative change. Rather,

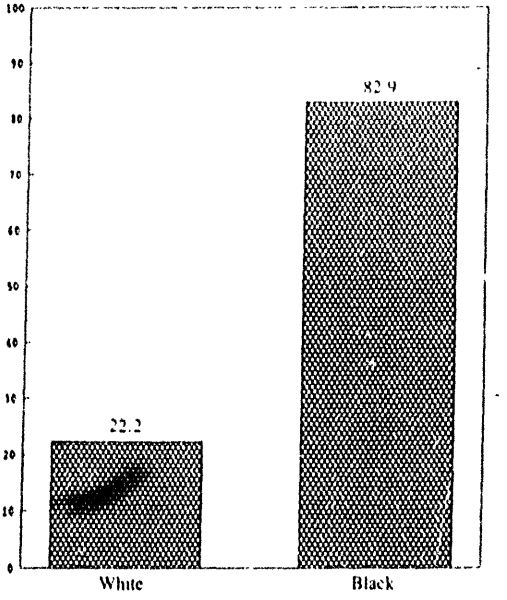

FIGURE 2: Welfare Dependency Rates of Children by Race
Proportion of Children Receiving A.F.D.C. Prior to Age 18
1980 Projected

it is as if we are being told that unemployment in the coal fields, in the textile towns, is worse than ever. *But*, the same subject as of old. The question whether a new social condition has appeared is simply not addressed.

THIS IS in no wise intended to fault the Commission's work. It is simply to assert that this question has to be addressed. *Has* a new social condition appeared? Is something new going on? Are we missing something large? As an example, in February 1991, some months before the National Commission report appeared, the Senate Democratic Caucus had approved a legislative program entitled, "Strengthening America: The Democratic Agenda." A section on children included this passage: "There are some 64 million children in the United States. At current dependency rates, 16 million or one-quarter, will be on welfare before they have reached the age of 18.... Children now make up the largest proportion of poor persons in the United States. There is no equivalent in our history to such a number or such a proportion.

"All this is new. This circumstance did not exist during the era of the New Deal, a half century ago. It did not exist during the era of the Great Society, a quarter century ago. It marks the emergence of a new issue in social policy. The issue of dependency."

However, before the document was sent to the printer, the "error" was spotted by the Committee staff. The text that read: "This circumstance did not exist during the era of the New Deal, a half century ago. It did not exist during the era of the Great Society, a quarter century ago," was changed to read: "This circumstance was *not as recognized* during the era of the New Deal, a half century ago, nor during the era of the Great Society, a quarter century ago" (emphasis added).

As I had written that passage, I asked about the change. It became transparently clear that those responsible had simply thought they were correcting a mistake. This is becoming the liberal orthodoxy: that there *is* nothing new. It is not, come to think, so very different from the views of those in the 19th century who, on observing an industrial society all around them, could not conceive that society had changed to the extent that institutions needed to change as well. Thorstein Veblen called it "culture lag."

If Veblen has a successor today, in stature as in style, it is James S. Coleman, also at the University of Chicago. Mr. Coleman traces our present situation back to the emergence of the corporation in medieval Europe and its gradual displacement of kinship structures. "The central fact about the modern corporation...is that it is not an outgrowth of the family, but constitutes an alternative institutional structure, independent of the family and little by little drawing power and strength away from it." He notes that only about 20 percent of 19th century American households were without children under 18; this proportion is now something like 65 percent. Thus, raising children is now carried out with the incomes of a minority of adults. Child welfare becomes a minority interest. Before the transformation of society represented by the rise of the corporation—in this respect think City of Detroit no less than General Motors—"the family was the central institution of society on which all others were built, and children were part of that center, both an immediate economic asset and an investment for the future. Now that the transformation is largely complete, the family is a peripheral institution and children an economic burden on that periphery. An economist might describe the change as one in which children have become a public good—and, as with all public goods, this one presents a problem of who will pay the cost of supplying it. Children are not, I should note, an economic burden, a public good, for all segments of society. By a perverse twist of incentives, children are an economic asset at the lowest economic levels, through the welfare support they make possible."

Let us return one last time to those hapless young staffers on the Democratic Policy Committee. Had they been checking a text that proposed that the problem of AIDS "did not exist during the New Deal," they would not for a moment have been disposed to change this to "not as recognized." AIDS appears in the 1980's. (It was first recorded by the Centers for Disease Control in 1981.) Had the text read that the problem of "crack" cocaine "did not exist during the era of the Great Society," there would have been no disposition to correct that either. (The "crack" epidemic first broke out in the Bahamas in 1983.) What, then, is the problem with recognizing that our present plague of illegitimacy, welfare dependency, child disorders and youthful violence is also discontinuous? Part of the difficulty is that it isn't exactly. In his introduction to *Recent Social Trends* (1933), an early and still unequalled Federal social survey, C. Wesley Mitchell wrote: "Society has three problems which have existed throughout all history—poverty, disease and crime." Fair enough. But what I argued in 1965 was that we were about to ascend a giant S curve, to the point that what had been familiar and quiescent would soon be something altogether new. Like a cobra, springing up, prepared to strike.

It seemed to me then that there would be a more or less coherent response. The AMERICA article began: "The United States is very possibly on the verge of adopting a national policy directed to the quality and stability of American family life." In this I was quite wrong. We did nothing of the sort. The evidence was rejected as inconclusive or worse. It is still rejected in the sense that orthodox opinion rejects the notion that there is anything qualitatively different about the present, insisting instead that the Federal Government simply do more of what we have been doing.

ENTER John Paul II asserting that what we have been doing is precisely the problem. We have been creating the "Social Assistance State" which has led to "a loss

There are some 64 million children in the United States. At current dependency rates, 16 million or one-quarter, will be on welfare before they have reached the age of 18.

of human energies and an inordinate increase of public agencies." Not to mention "an enormous increase in spending." Well, now.

WHAT we have here is a considerable role reversal. A century ago, addressing the social question of that time—it was called The Social Question—the church called for more intervention by the state. Now it appears to be saying that state intervention has to some extent created or at least worsened the social problems of the present age. This is high irony. For most of those 100 years, certainly the first 50 or so, liberal opinion in the United States simply *assumed* the hostility of Catholic social teaching to, well, "liberalism." (We have to assume that President Roosevelt did not in fact read *Rerum Novarum*.) But all of a sudden it may be that the Catholic teaching in this area is *in fact* opposed to liberal opinion.

The intriguing part of all this, of course, is that the papal pronouncement has American fingerprints all over it. It would be well for those involved to come forward, and it would help if Rome let it be understood that to do so is not only acceptable but necessary. How so? Because the argument must proceed from evidence. There are natural law elements in the encyclical. We are told to distinguish between the society and the state; fair enough. We are reminded again of subsidiarity, which again has doctrinal sources. (Not least the ecclesial sanction of Edmund Burke!) But this is a matter for social science as well, and we have a right to hear the complete argument.

Further, we need to learn from these American Catholics whether *they* think something new is going on. This may just be a fixation of mine, but I cannot puzzle my way out of it. If there is a new social circumstance, then, for example, there is no "contradiction" at all between the two encyclicals. The industrial economy that *Rerum Novarum* describes continues, but the enormous dislocations of the past have been quite overcome. Is it possible that some general theory will come along that will tease out the sources of welfare dependency and get this problem back down to an acceptable level as Keynes did with unemployment? A reassuring thought, actually.

So much for the long run. For purposes of the short run it may be useful to note that in 1988 Congress enacted the Family Support Act, the first change in the welfare system since it was established as a Federal program in the midst of that Great Depression. In recent Senate testimony Judith Gueron, president of the Manpower Demonstration Research Corporation, described the legislation: "The vision of welfare reform that we see reflected in the F.S.A. [Family Support Act] is of a 'social contract' between poor parents and government, in which each party has responsibilities. Parents—both mothers and fathers—have the responsibility to contribute to the support of their children to the best of their abilities and to engage in activities designed to improve their self-sufficiency. The responsibilities of government are to provide the means for poor parents to become self-sufficient—such as employment services and supports—and to provide income when their best efforts fall short."

It remains to be seen whether the Family Support Act will be made to work. It is, in any event, only one of many measures that will be called for if, as is at the very least likely, the issue of dependency becomes the central issue of social justice in the next century. Come to think, millennium!

Statistical Note

Regarding the charts, in 1968, the Office of Economic Opportunity provided funds for the Panel Study of Income Dynamics (P.S.I.D.) at the University of Michigan. Under the direction of Dr. Greg Duncan, this longitudinal study that began with 5,000 families and has since been expanded, makes possible a statistically sound measurement of welfare dependency over time. At the joint request of the Subcommittee on Social Security and Family Policy of the Senate Committee on Finance and the Administration for Children and Families of the Department of Health and Human Services, the P.S.I.D. researchers developed the figures reported on pages 134 and 135 and reflected in Charts 1 and 2. The data are contained in a memorandum from Greg Duncan, Terry Adams and Deborah Laren, Institute for Social Research, University of Michigan, to Bill Prosser, Department of Health and Human Services, Aug. 24, 1990. The information had been requested by Senator Moynihan in a letter of Sept. 18, 1990, to Jo Anne Barnhart, assistant secretary for Children and Families. ■

PREPARED STATEMENT OF ALICIA S. PELRINE

Good morning, Mr. Chairman, members of the committee. I am Alicia Pelrine, group director for the Committee on Human Resources at the National Governors Association. I appreciate the opportunity to talk with you today, on behalf of the nation's Governors, about child support enforcement. Child support enforcement is an issue that affects everyone in some form.

All too often children are not receiving their owed child support because the absent parent is not paying. There are many reasons for this: the absent parent cannot be located, the absent parent is not working, the absent parent refuses to pay because of lack of visitation rights, the custodial parent wants to avoid contact with the absent parent, or the custodial parent does not know who the absent father is. In all of these situations, the person who suffers is the child. Nearly $5 billion in child support payments are in arrears on an annual basis. Children need their owed financial support, but just as important, these children need to know who they are and who their parents are. Often, establishing paternity not only facilitates collections, but also starts communication between the absent parent and child.

Divorces have risen more than 200 percent from 1960 to 1988 and almost 1 million babies were born to unmarried mothers in 1987, according to the Office of Child Support Enforcement. This increase in divorce and out-of-wedlock births frequently puts children in a position where their living standard dramatically changes and their financial stability is continually threatened due to the absence of a parent in the home. While children who live in a home where one parent is absent often face financial instability, the absent parent is often experiencing a higher standard of living than if he or she was living in the home with the child.

The Child Support Enforcement Program is an essential element in increasing the stability of today's children. Although billions of child support dollars are in arrears, the increasing annual collections of child support payments has allowed families who receive support to achieve self-sufficiency by leaving welfare or by avoiding welfare. In addition, children with established birth rights and financial support are more stable and better prepared to achieve success in school and in life than children who lack established birth rights and the owed financial support.

The Governors are deeply concerned about the children who are owed but do not receive child support payments. As a result of this concern, the Governors developed a comprehensive policy on child support enforcement that expresses the commitment of the states to develop the most efficient and effective ways of establishing paternity, obtaining awards, and collecting support payments, and maintaining a federal-state partnership in this critical area.

While the child support enforcement program is growing rapidly, the changing conditions of today's families are creating an increased need for child support services. The initial intent of the Child Support Enforcement Program was to improve collection efforts among Aid to Families with Dependent Children (AFDC) recipients. The Child Support Enforcement Amendments of 1984 expanded the scope of services to include non-AFDC cases. As a result, states are handling an increasing number of non-AFDC cases. Unfortunately, the current federal funding for child support enforcement does not recognize this increase. Therefore, the Governors recommend maintaining, at a minimum, the current level of federal funding for the CSE program, but encourage restructuring the incentive system to group mandated and nonmandated cases, rather than AFDC and non-AFDC cases, and to provide these incentives based on performance measures. The current incentive system emphasizes collections. Recognizing that establishing paternity, locating absent parents, and establishing support orders are also labor-intensive efforts, vital to successful collections, each of these efforts should also be rewarded.

With states operating at full capacity and numerous mandates placed on state CSE agencies, the federal funding and federal commitment has become vital. States are continuously mandated to provide new services or provide services to new categories of clients. Therefore, it becomes more and more important to continue the federal-state partnership to operate successful programs.

An important element of the CSE program is the audit process. The states are required to adhere to an audit process. The Governors recognize the need for a system of assessing the performance of state programs. The current audit process addresses procedures performance, therefore, we recommend that the audit process be refocused to address outcome-oriented performance measures.

There are three major components to the CSE program: establishing paternity, establishing awards, and collecting payments. The Governors realize that collections are the key to the success of the program, but due to a variety of factors not all

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cases will ultimately generate collections. Therefore, the Governors would like to see the audit process changed to reflect each separate component individually.

Currently, if a state fails an audit and is not able to correct the area of noncompliance to the satisfaction of the Department of Health and Human Services, the state will be subject to a financial penalty. The Governors believe it is not in the best interest of the children being served by CSE agencies to take much-needed dollars away from the states. Rather the penalty could be placed in escrow while the state developed a plan to address the problem. Once HHS approves the plan, the state could use the escrowed penalty to implement the plan. This program would not only benefit the children who require CSE services, but it would also provide states the opportunity to develop more effective state programs. This proposal does not require additional federal funds but provides the opportunity to use already allocated money to address the specific areas that need improvement.

The Family Support Act of 1988 made much needed changes to strengthen the nation's child support enforcement system. Unfortunately, states are experiencing difficulty in implementing a number of the provisions. One such area is the requirement to have an operational statewide automated data processing system. Currently, the states must have an advance planning document approved by October 1, 1991, and have the system operational by October 1, 1995.

Unfortunately, the initial phase for implementing statewide automated data processing systems did not go as rapidly as planned due to late regulations, incomplete demonstration projects, lack of certified systems from which states could adopt a model, and a slow approval process. Although 1995 sounds like plenty of time, without the final regulations this becomes impossible. When creating an automated data processing system, even very small changes could result in an almost complete overhaul of the system. Therefore, each time a new requirement is added, the state is required to revamp its system to meet that requirement.

The Governors believe that an automated system is going to benefit the child support enforcement system if it is developed correctly. Developing systems piece-by-piece is not going to result in the best possible systems. The states need to have the federal regulations in order to develop systems that meet the regulations, at the same time meeting individual state needs. Therefore, the Governors are calling for an extension on the date of compliance to five years after the approval of each individual advance planning document or 1997, whichever comes later. This will allow time for the final regulations to be made available to the states and for the states to incorporate them into their systems. In addition, the Governors should be given adequate lead time for any additional mandates or changes that states would be required to implement.

Currently, there is an enhanced 90 percent federal matching rate for the design and implementation of the automated systems. The Governors want to have this 90 percent match maintained for the initial implementation and to have it extend beyond the initial implementation for any costs above and beyond the normal maintenance of the system. This includes new federal regulations or legislative changes, such as the Family Support Act provisions that require collection of Social Security numbers and modification of support orders.

Statewide automated systems should prove successful in locating parents and collecting payments. States need guidance from the Office of Child Support Enforcement in developing systems that best meet their individual needs. Often, states experience difficulties that another state has already encountered and resolved. Therefore, the Department of Health and Human Services should act as a clearinghouse of information for states as they are developing their systems. The end result of states implementing statewide automated data processing systems should be enhanced collections as well as better intra- and inter-state communication. This can only happen if the task is tackled in the right way and in the right order.

There are many different components to the Child Support Enforcement program; however, I will use the remainder of my time to discuss a few areas addressed by the Governors' policy. First, I think it is important to acknowledge that the immediate income withholding works well in collecting child support payments. The success experienced in income withholding is the result of cooperative efforts from the states, businesses, and noncustodial parents. Immediate income withholding should continue to be the primary method used for collecting child support. A provision of the Family Support Act requires immediate income withholding to be extended to cases that state agencies do not handle. In developing the most effective methods of implementing and operating this service, the states should have continued flexibility to meet their unique state needs. In addition, the federal government should fund the provision of services to non-IV-D cases, including administrative costs, enforcement, tracking, and data collection.

The second area I would like to discuss is review and modification of support orders. Review and modification is essential to ensure that payment levels reflect the noncustodial parent's financial circumstances. Financial circumstances continuously change throughout life, for better or for worse. Therefore, for all parties involved this becomes critical to successful collections—an absent parent should pay what they can afford *but* cannot pay what they don't have. If the amount of support owed is consistent with what the absent parent can afford, the child will be more likely to receive owed child support. On the other hand, if the amount owed is much more than the absent parent can afford, the child will mostly likely receive *none* of the owed support. Reviewing and modifying orders will ensure fair orders for children that the absent parent can pay.

The Family Support Act requires states to review and modify all child support orders no later than 36 months after establishing an order or the order's most recent review; however, reviewing and modifying orders will be closely linked to the state's automated data processing systems. The Governors therefore request that the date for compliance for review and modification be directly linked to the date a state's automated systems is operational. Again, the Governors request that date to be five years after the approval of their individual advance planning documents or 1997, whichever comes later. Again, the Governors support reviewing and modifying support orders on a regular basis, but need to have the time to build this provision into their individual automated systems.

Another provision in the Family Support Act is the requirement to provide monthly notices (or quarterly by waiver from HHS) to custodial parents on the amount of collections obtained on their behalf. The Governors believe that quarterly notices provide adequate information and are more cost-effective for state and federal governments. To provide monthly notices to parents proves no real benefit over quarterly notices and is an unnecessary and costly administrative burden. The Governors are encouraging HHS to be flexible in granting permanent waivers to states enabling them to provide quarterly rather than monthly notices. The key to remember in all child support provisions is to provide services that help the child. The funds that would otherwise be used in providing monthly notices could go to other areas that provide a direct benefit to the child.

Obviously, establishing paternity is directly linked to success in collecting child support payments. Before any order can be established or any collections can be made, paternity must be established. Recognizing the importance of paternity establishment, the Governors support the Family Support Act's concept of meeting goals. However, as states perfect their paternity establishment record, it will become increasingly difficult to sustain the required level of annual improvement. For example, if a state continues to improve their paternity establishment by 3 percent every year, eventually they will reach a point of no growth. If a state has a paternity establishment percentage of 98 percent, it is impossible to improve by 3 percent and as a result the goal will no longer be feasible. Therefore, the Governors' policy recommends reviewing the goals in 1995 to ensure that they are still reasonable and feasible.

In addition, the Governors encourage states to develop streamlined systems for establishing paternity and to develop methods for sharing effective paternity establishment systems with other states. Also, the Governors want to maintain the enhanced 90 percent federal matching rate for laboratory costs in paternity establishment as well as maintaining their flexibility in the methods used to establish paternity.

One result of divorce and out-of-wedlock child births is the lack of adequate medical support for our nation's children due to the absence of a parent from the home. Medical support is vital to our children's well-being. Every effort should be made to include medical support in all child support orders. In addition to including medical support in child support orders, the Governors encourage cooperative efforts between the state's IV-D office and the Medicaid office to ensure adequate medical care and private coverage if it is available at a reasonable cost. Access to health care is a major issue facing our nation. Many children would have adequate access to health care if it were included in their support orders.

Another issue being discussed widely is the assurance concept. A number of different models and ideas are being discussed for a method of an assured child support payment. The most important thing to consider in developing a system for a guaranteed child support payment is to not unintentionally create disincentives to preserving family unity. The Governors are very interested in obtaining more information about the different assurance proposals being discussed that may enhance the well-being of our children.

The Governors' policy supports the authorization of fully federally funded demonstration projects to pilot guaranteed child support payments.

It has been said many times that the children of today are tomorrow's leaders. We have to act now to ensure that our future leaders are being taken care of. Parents have the primary responsibility for taking care of their children, but when they are failing in their duties, it is our responsibility to see to it that they live up to their responsibilities and their children are receiving the necessary support.

In addition, federal, state, and local governments and the military should act as model employers by ensuring that employees who owe child support meet their obligations.

In conclusion, for any program to continuously meet its intended goals, it should be periodically reviewed to ensure that those goals are being fulfilled. The changing conditions of today's families are creating an increasing need for child support services. Therefore it becomes more and more important to continue the federal-state partnership and to develop the most effective and efficient methods for establishing paternity, obtaining awards, and collecting payments.

The states are continuing to make strides in child support enforcement and are committed to working with Congress and the administration to ensure that the program continues to improve and more importantly, to help our children.

Thank you for the opportunity to speak today.

PREPARED STATEMENT OF ROBERT G. WILLIAMS

Summary. This testimony addresses the review and modification provisions of the Family Support Act [P.L. 100-485, §103]. Most of the testimony discusses findings from the Oregon Child Support Updating Project, which was the first demonstration of the review and adjustment provisions of the Family Support Act. Included in this testimony are references to preliminary results from four other modification projects, where available, to point out evolving similarities and differences in outcomes.

The review and adjustment requirements of the Family Support Act are intended to reverse the erosion in value and equity of child support orders that occurs as parental circumstances change over time. Evidence from the Oregon Child Support Updating Project indicates that implementation of these requirements can realize these goals, at least for a portion of the IV-D caseload. For cases that were modified under the Oregon project, the average child support order increased from $133 to $212 per month, a net increase of 59 percent. A significant fraction of child support orders — 19 percent — were modified downward. For those orders that were modified, substantial increases were obtained in the proportion of child support orders with provisions for medical support: AFDC child support orders with medical support increased to 96 percent of cases, from a previous level of 33 percent; non-AFDC child support orders with medical support increased to 96 percent from a previous level of 22 percent.

Contrary to initial expectations in Oregon, the review and modification process was highly labor intensive. Modifications required a substantial amount of elapsed time to complete, more than six months on average. This experience has been mirrored in the other project states. Contributing to this lengthy processing time are specific requirements of the Family Support Act which do not mesh well with States' due process procedures. We recommend that these notice requirements be amended to reduce confusion and shorten the review and adjustment process.

Obligees not receiving AFDC demonstrated surprisingly little interest in requesting reviews of their orders, even when confronted with specific estimates of potential increases. In Oregon, only 16 percent of all non-AFDC cases authorized the State to initiate a review. Paradoxically, the reluctance of non-AFDC obligees to authorize a review resulted in the agency's focusing its efforts on AFDC cases. This made the entire process more cost-effective than it would have been otherwise. Despite the low proportion of orders that were modified in Oregon, the review and adjustment process was very cost-effective once it reached steady-state. It appeared to return $4 to the taxpayers for every $1 invested. For the State of Oregon, the estimated ratio was over $6 returned for every state dollar spent and the federal return was just under $2.25 for every dollar spent.

Background. This testimony summarizes findings from the Oregon Child Support Updating Project, which was the first test of the review and adjustment provisions of the Family Support Act of 1988 [P.L. 100-485, §103]. The project was initially funded for a two year period and was operational from February 1989 through September 1990. Under a "no-cost" extension, research has continued for an additional year to collect data concerning (1) disposition of modifications pending as of September 1990, (2) the impact of modification on compliance, and (3) the effects of modification on welfare dependency.

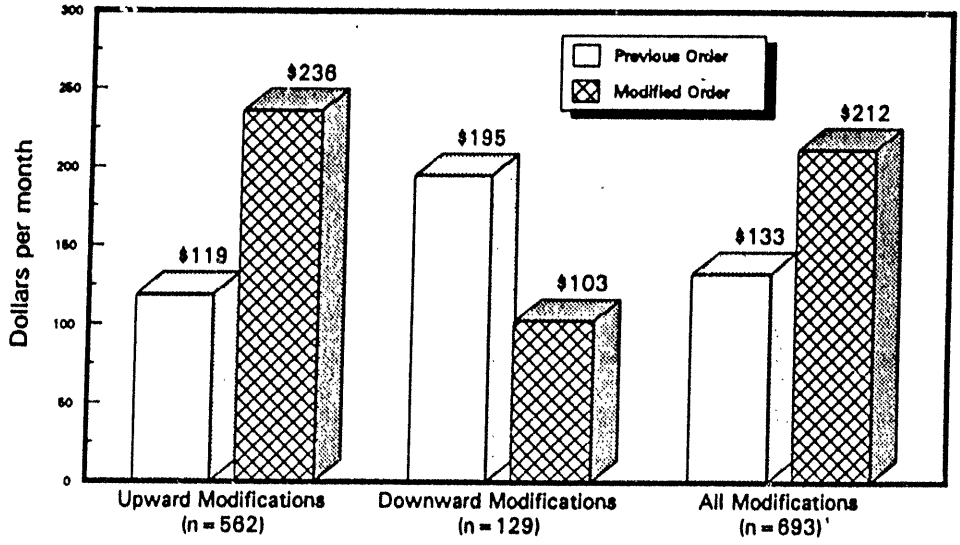
Four other projects specifically mandated by the Family Support Act to test the same review and adjustment provisions have been conducted by Colorado, Delaware, Florida, and Illinois and are just now completing operations. Included in this testimony are references to preliminary results from these projects, where available, to point out evolving similarities and differences in outcomes. Policy Studies Inc. serves as the evaluator for the Oregon Child Support Updating Project, and is the technical assistance contractor for the Colorado Child Support Modification Project and the Delaware Child Support Modification Project.

Modification Results. Previous research had suggested that periodic modifications would substantially increase average levels of child support. Findings from Oregon support this expectation for the subset of orders that were successfully reviewed and modified. Of all modifications, 81 percent were upward and 19 percent were downward (see Figure 1). For upward modifications, the average child support order virtually doubled, from $119 to $236 per month. For downward modifications, the decreases were almost as dramatic, from an average of $195 down to $103 per month. Because there were far more upward than downward modifications, order levels of modified cases increased from an average of $133 to $212 per month, a net increase of 59 percent.

Preliminary results from the demonstration projects in Colorado, Delaware, Florida, and Illinois all show large increases in average support orders following modifications. As with Oregon, these increases apply only to the fraction of cases selected for review that were actually reviewed and successfully modified. These increases range from 78 to 187 percent for AFDC child support cases, and from 56 to 135 percent for non-AFDC child support cases. In contrast to the Oregon results, however, there have been very few downward modifications in these states — only 4 percent of all modifications. Consequently, the preliminary data indicate average increases in modified child support orders that have been considerably higher than observed in Oregon.

Figure 1

Average Monthly Value of Previous and Modified Orders



' Includes two cases where the values of the previous and modified orders were the same, but fewer children were covered by the modified order.

In addition to increasing the monetary level of child support orders, the Oregon project resulted in dramatic increases in the proportion of child support cases with medical support provisions — at least among the orders that were successfully modified. Following modification, 96 percent of both AFDC and non-AFDC cases had provisions requiring the obligor to provide health insurance coverage for the children. Prior to modification, only 33 percent of AFDC orders and 22 percent of non-AFDC orders required the obligor to carry health insurance. Early data from modification projects in the other four states show similar trends. These figures do not necessarily imply that there will be a commensurate increase in medical benefits actually paid by obligors' insurance providers. No data have been developed yet which would provide an estimate of the increase in actual medical benefits paid. However, the modification process has apparently been successful in increasing the proportion of orders with a legal requirement for obligor-provided medical coverage on behalf of the children due child support.

These sizable increases in amounts of child support orders, and in the proportion of orders requiring health insurance coverage, suggest that the review and adjustment provisions of the Family Support Act will improve the adequacy of child support orders that subject to the process. With states adjusting (modifying) orders in accordance with child support guidelines, the obligations being modified obviously fell far short of appropriate levels of support as defined by each of the states in their guidelines. Moreover, the increases in orders which required health insurance will improve the adequacy of medical coverage for children as a significant ancillary benefit from the modification process.

Interestingly, the age of the previous child support order (prior to modification) bore little relation to whether a modification was obtained. Younger orders, less than 4 years old, were just as likely to be modified as older orders, over 4 years old. There was no evidence from the project that the three year modification cycle in the Family Support Act could be lengthened without missing many changes in circumstances that would require adjustments if guidelines were applied.

Modification activities were substantially more successful among cases where obligor earnings information was available from employment security records. This is not surprising since income data from this source supplied the financial information necessary to conduct a review if the obligor refused to provide it in response to the agency request. Employment security data also provided a known location for service of process on the obligor when legal action was initiated. On the other hand, obligor earnings data from this source were not initially available in 19 percent of cases for which modified orders were ultimately obtained. Prior to enactment of the Family Support Act, Oregon had proposed to modify only those cases for which employment security wage data were available. Had Oregon followed this approach, the review and modification process would have been performed much more efficiently, but 19 percent of the cases for which successful modifications could be obtained would not have been addressed.

Requests for Review. As required by the Family Support Act after 1993, Oregon sent a notice to all non-AFDC parents (on randomly selected cases) informing them of their right to request a review of their child support orders. Perhaps the most unexpected finding from the Oregon demonstration was the low rate of review requests: in only 16 percent of such cases did a parent authorize the agency to conduct a review. This result was especially puzzling since many of the non-AFDC obligees had been presented with evidence that their orders were likely to increase significantly if the review were conducted. In querying obligees about their unwillingness to proceed, the most common responses fell into two categories. If obligors were paying

child support, obligees were unwilling to "rock the boat" and jeopardize the flow of support by asking for an increase. If obligors were not paying child support, obligees did not see the point of proceeding with a modification action.

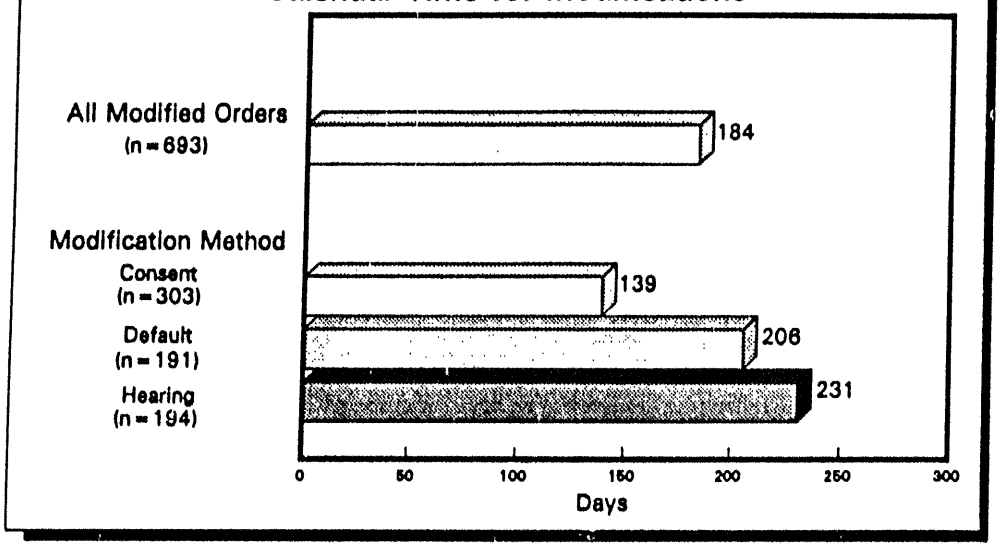
Initial evidence from the Colorado and Delaware projects suggests that their non-AFDC review authorization rates may be as much as twice as high as Oregon's. We believe that there are two explanations for this likely difference. First, Colorado and Delaware invested more effort in educating obligees about the process (having been aware of the Oregon experience). Second, the Support Enforcement Division of the Oregon Justice Department, operator of the demonstration project, is responsible only for AFDC IV-D cases and former AFDC IV-D cases in which arrearages are still owed to the State. Non-AFDC obligees who apply for IV-D services are handled by District Attorneys in Oregon. The former AFDC orientation of Oregon's non-AFDC caseload may have affected obligee attitudes toward cooperating with the IV-D agency in an unknown and potentially risky process (since the modification could be downward as well as upward). On the other hand, the levels of effort expended by Colorado and Delaware in providing opportunities to non-AFDC obligees to request a review might not be sustainable in a normal operational environment.

Even if Colorado and Delaware turn out to have a non-AFDC review authorization rate that is twice as high as Oregon's, requests for review will still be made in only about one-third of non-AFDC cases. This is a far lower proportion than would have been expected when these demonstration projects began. The low authorization rate can be considered disappointing in view of Congressional intent to improve the adequacy and equity of existing orders. Perhaps authorization rates will rise over time as the public becomes more educated about the continuing jurisdiction of courts over child support orders, and more aware of changes in public policy which encourage periodic review and modification.

Calendar Time to Obtain Modified Orders. The time required to process modifications was longer than anticipated. As shown in Figure 2, the average calendar time to obtain a modified order was 184 days (slightly more than 6 months). This period encompassed the time required to begin work on the case following selection, the time required to conduct the review, and the time required to obtain a legally adjudicated modification. Modification actions requiring a full court hearing took even longer, 231 days (almost 8 months). Orders obtained by consent required 139 days and those obtained by default took 206 days. Less than half of modified orders (44 percent) were obtained by consent, while 28 percent were obtained by default and another 28 percent required contested hearings.

Figure 2

Calendar Time for Modifications



It appears that the Family Support Act notice requirements may have impeded efficient and timely processing of cases in Oregon, and thereby contributed to these long timeframes. The 30-day notice of impending review that is required by the Family Support Act is troublesome if a jurisdiction wishes to automate part of its review process. The Act requires notification of each parent "...of any review of such order, at least 30 days before the commencement of such review...." (emphasis added). Experience from the Oregon project, reinforced by the other demonstrations, shows that it is more efficient for states to initiate data collection for the review at the same time as the case is selected. This is particularly true for states with substantial automation. Moreover, states must perform a limited screening, or "pre-review" of each case to determine whether it is even appropriate for review.

For all cases, the 30-day delay built into the notice of impending review raises questions about whether states can legitimately perform a screening function. For AFDC cases, the requirement only serves to preclude the state from beginning to assemble information needed for the review, such as employment status and wage data

from employment security records. For non-AFDC cases, the 30-day delay serves the purpose of giving parents that much time to decide whether to request a review. But states should still not be prevented from performing activities necessary to screen out cases not appropriate for review (e.g. youngest child is within six months of attaining the age of majority), and states should not be precluded from starting to assemble data for the review, if the review is in fact conducted.

An additional problem stems from the requirement that each parent be afforded "...not less than 30 days after such notification to initiate proceedings to challenge such adjustment (or determination)." Oregon interpreted this provision to mean that parents had to be given at least 30 days to challenge an administrative computation of a modified order before initiating legal action to adjudicate the modification. If parents did not consent to a proposed order prior to the State's initiating legal action, the modification was adjudicated under Oregon's normal administrative or judicial procedures, with full protection of each parent's due process rights. Consequently, the statutory notice requirement had the effect of building 30 days of dead time into the modification process without adding any practical due process protections. Oregon staff felt that there is generally sufficient time between the filing of a legal action and the court hearing to resolve disputes which otherwise might be brought out during the 30-day "challenge" period.

This particular notice requirement also conflicts with existing appeal periods in certain states. In Delaware, where the review is conducted through a court mediation process, a master's hearing is automatically scheduled if the parties cannot reach agreement in a mediation session. Each party then has 10 days to request a de novo review before a Family Court judge if dissatisfied with the results of the master's hearing. To comply with the Family Support Act requirements for this particular notice, the Family Court would have to treat modifications differently than any other legal action. In Minnesota, a state not involved in the demonstration projects, a new expedited modification process has been enacted in which the IV-D agency will conduct a review with information available through automated sources and legally serve the obligor with the results. The obligor then has 20 days to contest the proposed order by requesting a court hearing. The 20-day time period was chosen in Minnesota because it corresponds to the generic time period used for appeal requests in the State's rules of civil procedure. If the State has to change the appeal request period to 30 days to conform to the Family Support Act, it will be treating child support modifications differently than other civil legal proceedings.

Disposition of Cases Selected for Review. As shown in Table 1, only a minority of child support orders selected for review were ultimately modified. For AFDC cases,

21 percent were screened out as inappropriate. These included cases in which the youngest child was within six months of attaining the age of majority, cases for which a modification action had already been initiated by non-project staff, foster care cases, and non-parent caretaker cases. Another 10 percent were not processed due to inability to locate one of the parents, and 9 percent were not reviewed because the IV-D case was closed after selection, there was a good cause exclusion, or the parents failed to authorize a review after the obligee left the AFDC rolls. Of the remaining 60 percent of AFDC cases actually subject to review, half were not modified because there was no change, or a downward modification was indicated and the obligor failed to approve further action. The other half were either modified, or were in process at the close of project operations.

TABLE 1
DISPOSITION OF SAMPLED CASES
(Percent)

	AFDC (n = 2744)	*Non-AFDC (n = 2257)*	*Total (n = 5001)*
Inappropriate for Review	21	17	19
Unable to Locate Obligee/Obligor	10	7	9
No Authorization, Good Cause, Case Closed	9	58	32
No Change, Downward Modification Action Not Approved by Obligor	30	8	20
Modifications	20	7	14
In Process	10	3	7

For non-AFDC cases, just under one fourth (24 percent) were excluded as inappropriate, or as unlocatable. The large majority of the remaining cases eligible for review failed to request one, as discussed above. As of the end of the project, only 7 percent of all non-AFDC orders selected for review had been modified, with another 3 percent in process.

The results from the other four states conducting demonstration projects are following the same general pattern as observed in Oregon.

Downward Modifications. The provisions of the Family Support Act require states to modify orders upward or downward as determined by application of the states' child support guidelines. Pursuing downward modifications was not part of Oregon's original project design, and including that concept required making changes in staff attitudes and in review procedures. As discussed earlier, 19 percent of completed modifications in Oregon were downward. In contrast, initial data from Colorado, Delaware, Florida, and Illinois indicated that only 4 percent of modifications completed in those states were downward.

There appear to be three reasons why the rate of downward modifications is so much higher in Oregon than the other states. First, in setting initial orders when the obligor fails to appear and there is no credible information available on obligor earnings, Oregon uses a higher default standard than the other states. When actual earnings information is available in a subsequent modification hearing, it often results in a lower order in Oregon. Second, Oregon's existing statutes did not preclude the Support Enforcement Division's attorneys from filing a legal action requesting a downward modification. Third, after expressing initial resistance to the concept, Oregon moved more quickly to change procedures and staff attitudes which would have posed barriers to impartial pursuit of downward as well as upward modifications.

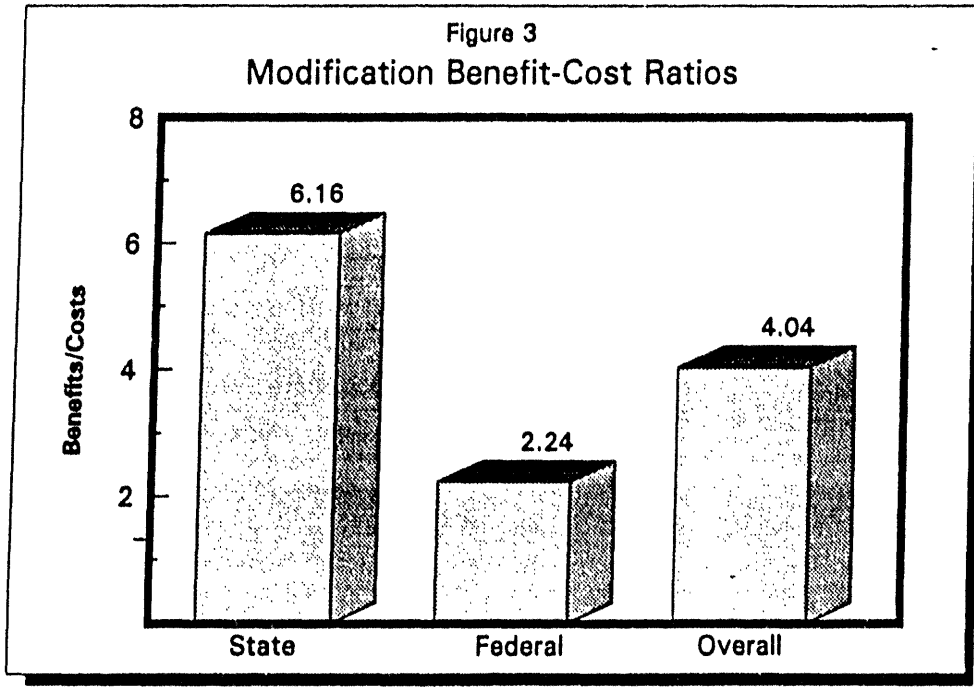
The Family Support Act requirement that states take action to modify orders downward as well as upward, in accordance with results from application of the guidelines, has been very controversial within the IV-D community. The initial views of Oregon's staff were typical in that they found it difficult to reconcile the initiating of a downward modification action with the agency's mission of increasing collections. Having lived with the requirement for two years, however, Oregon project staff eventually came to believe that it was fairer and more equitable to pursue both downward and upward modifications. Furthermore, they perceived that including downward modifications in the updating process gave the agency more credibility among parents and the courts.

Cost-effectiveness. The review and adjustment procedure has required that states process considerably more cases than are eventually modified. Moreover, although project states have been successful in developing automated support for the review and modification procedure, limitations in the quality of earnings information available from automated sources have precluded more ambitious efforts to substantially automate reviews. These factors, in conjunction with the inherent complexity of reviews and modifications, make the procedure quite labor intensive. For the first cycle of reviews, the procedure is further complicated by the need for substantial case cleanup in the form of updating information available on automated systems.

Notwithstanding these factors, evidence from the Oregon project indicates that the review and modification process can be highly cost-effective. As depicted in Figure 3, an overall "steady-state" benefit-cost ratio based on the last six months of full project operations indicated that the review and modification process could have yielded $4.04 for every $1 spent. The estimated benefit-cost ratio was 6.16 for Oregon and 2.24 for the federal government. This last figure may be particularly noteworthy in that federal outlays currently exceed income from the IV-D program.

Paradoxically, the unexpectedly low response rate of non-AFDC obligees made the review and modification process more cost-effective in Oregon. The low incidence of demand for non-AFDC case reviews enabled the State to focus its efforts on AFDC cases. In the limited benefit-cost analysis performed for this evaluation, only AFDC cases were estimated to produce direct benefits for the state and federal governments.

Figure 3



These estimates may understate the cost-effectiveness of review and modification in several respects. First, the benefits included only the value of child support which reimbursed AFDC expenditures. Excluded were any cost-avoidance benefits from non-AFDC collections, benefits from increased numbers of medical support orders, and savings to the Food Stamps program. In addition, some evidence suggested that the project staff had not yet reached a steady-state level of operations, and that benefits would have increased relative to costs if the project had continued.

It is important to note that no data are yet available on the cost-effectiveness of the demonstration projects in Colorado, Delaware, Florida, and Illinois. These four projects differed considerably in their administrative designs — relative to Oregon, and relative to each other. As a result, the benefits and the costs may differ considerably, as well as the overall cost-effectiveness.

Although the initial findings on cost-effectiveness from Oregon are quite favorable, it is important to note that states must make considerable investments in order to realize the dividends that a periodic review and modification process can bring. All of the project states have incurred significant expenditures for improved automation, procedures development, and staff training. Because of the labor-intensiveness of the process, states will have to add significant staff resources if other IV-D functions are not to be compromised. In Delaware, the only demonstration project implemented statewide, we recently estimated that the IV-D agency would have to increase its staff by 10 percent or more in order to perform all required reviews and modifications routinely. This is a level of staff increase difficult for most states to achieve, particularly in these difficult fiscal times, and will necessitate careful advance planning if states are to obtain the resources needed to perform this new programmatic function.

Policy Implications. Findings from the Oregon Child Support Updating Project appear to validate the basic premise underlying the review and adjustment provisions of the Family Support Act, that a periodic updating of child support orders will result in more adequate and equitable levels of child support. Even though a significant fraction of modifications in Oregon were downward, there were large increases in average amounts of support in modified orders even after offset by the downward modifications. For those orders successfully modified, the review and modification process has also brought about sharp increases in the proportion of orders requiring obligors to provide health insurance coverage. The large proportion of cases needing modification after having a completed review implies that a periodic review and adjustment process improves the consistency, and therefore the equity, of child support relative to state guidelines. Initial evidence from demonstration projects in Colorado,

Delaware, Florida, and Illinois corroborate the upward trend of modifications, although the proportion of downward modifications being reported is much smaller than in Oregon.

It is possible that some of the increases in child support order levels being reported result from bringing them into line with state guidelines for the first time. Thus, the increases obtained in successive modification cycles may not be as large as in the initial cycle. However, the increases for upward modifications shown in preliminary data from Delaware are almost as high as the increases found in Oregon, even though Delaware has had statewide child support guidelines since 1979 and Oregon began using guidelines in judicial proceedings only after the project started. The overall increase in order levels, after downward modifications are included, is even higher in Delaware. Findings from Oregon also indicate that orders less than four years old are just as likely to need modification as older orders. Although more evidence is needed, these early findings imply that review and modification will be needed on an ongoing basis, rather than just a one-time basis, and that the three-year cycle envisioned in the Family Support Act seems to be a reasonable time interval.

The length of time required to conduct reviews and perform modifications has been daunting in all of the project states. In part, this lengthy time requirement results from the inherent complexity of the review and modification process. Evidence from Oregon indicates that a state's legal framework, most notably the statutory standard for filing and achieving modifications, need to be simplified in order to reduce the time and costs associated with the process. Oregon enacted a guidelines-based modification standard to replace the more abstract "substantial and continuing change of circumstances" criterion used in most states.

The review and modification process could be simplified and shortened if changes were made to the Family Support Act's notice requirements. Specifically, we recommend that the 30-day time period be eliminated for the initial notice that a review will take place. We also recommend that the provision for the third notice mandated under the Act, the notice of a proposed adjustment, be eliminated. This notice requirement relates to challenging the review results, but the review does not change an order. Only the modification proceedings (the "adjustment") actually changes the child support obligation. Every state's due process procedures provide for prior notice and opportunity for a hearing before a modification can legally effected. Eliminating this notice would reduce the potential for confusion in interpretation and also avoid inadvertently lengthening the review and adjustment process more than necessary.

The requirement that states adjust orders downward as well as upward has posed a challenge to child support agencies to alter their perceived missions. Oregon's experience has been encouraging. The agency moved toward a more neutral role relative to the obligor and obligee, a change perceived positively by the staff. However, unlike Oregon, many states have a history of providing legal representation directly on behalf of the obligee. Some attorneys and administrators in such states feel that it is impossible for the agencies and attorneys to file downward modification actions. Despite contrary law in many states, an informal American Bar Association opinion (Informal Opinion 89-1528, June 5, 1989) has stated that IV-D attorneys do directly represent obligees as their clients. Oregon did not have this problem because of specific statutory provisions, and a strong administrative policy, that the child support agency represents the State, not the obligee. Additional evidence is needed on the experience of the four other demonstration project states concerning the viability and impact of agency-initiated downward modifications. It appears that the other four modification project states have pursued downward modifications in a much smaller proportion of cases than Oregon because of the difficulties encountered in defining a proper legal role for the IV-D agency in such actions.

Evidence from the Oregon project shows that the review and adjustment process has the potential to be very cost-effective, especially for the states, but for the federal government as well. These estimates are conservative in that they do not account for non-AFDC cost-avoidance, Medicaid savings, or Food Stamps savings. However, they are based on the assumption that compliance with child support orders is unaffected by the modifications. Data to test that assumption will be available in the next few weeks. A more definitive assessment of cost-effectiveness will have to await findings from the other four demonstration projects in Colorado, Delaware, Florida, and Illinois.

The review and adjustment process mandated by the Family Support Act adds a major new function to the IV-D program. As such, significant investments are required to realize the potential benefits. It is important for states to plan well in advance for increases in staff and improvements in automation, and for the federal government to understand their necessity. Some increases will be required in court resources in most states, as well as resources for the IV-D agency. It would also be valuable for the federal government to provide a carefully planned program of technical assistance to states to assist them in implementing these complex new requirements.

The review and adjustment requirements of the Family Support Act are intended to reverse the erosion in value and equity of child support orders that occurs over time. After concluding the operational phase of its Child Support Updating Project, Oregon implemented a review and modification program statewide, well in advance of the Family Support Act requirements. This voluntary act reinforces the conclusion that the state's overall experience with the Family Support Act's review and modification requirements was positive. While there is much to be cautious about, and the effort required to implement these requirements should not be underestimated, findings from the Oregon project suggest that periodic review and modification of child support orders has the potential for significantly enhancing the effectiveness of the IV-D program.

COMMUNICATIONS

STATEMENT OF THE CHILDREN'S DEFENSE FUND

Mr. Chairman and Members of the Finance Committee: The Children's Defense Fund (CDF) is pleased to have this opportunity to testify before you today regarding children and national health insurance. Our testimony will identify what we believe to be the essential elements of any national health insurance plan for children, and review S. 1227, the Senate Democratic Leadership plan.

At the outset, we wish to commend you, Senator Riegle, Majority Leader Mitchell, and Senators Kennedy and Rockefeller for your collective leadership on the issue of national health insurance. No more important domestic issue will confront the nation over the next decade than the challenge of assuring that all Americans have access to decent, affordable health care.

Through concerted, bipartisan effort and strong leadership, this Committee has over the past several years, made major strides toward improving access to health care for low income pregnant women and children through a series of vitally important reforms in the Medicaid program. While Medicaid has significant shortcomings as a source of health insurance, its achievements for women and children over the past quarter century have been enormous. In great part as a result of this Committee's work, Medicaid will, by the end of this decade, reach an additional 4 million children and a half million pregnant women annually. Improvements in the Medicaid enrollment process will assure swifter access to benefits. The improvements in the Medicaid Early and Periodic Screening Diagnosis and Treatment (EPSDT) program make Medicaid the single most comprehensive child health insurance program, public or private, ever to exist in the U.S. The improvements in Medicaid and Medicare support for community and migrant health centers and other community-based health care providers located in medically underserved areas will assure the availability of urgently needed funds to expand and improve primary health care services for literally millions of Medicaid beneficiaries and other low income persons. These improvements are the direct work of this Committee.

Some would have us believe that the Medicaid expansions have been all cost and no gain. This is simply not true. Early studies from states such as Utah, North and South Carolina and others show that when carefully tailored Medicaid reforms are actively implemented and combined with companion improvements in the organization and delivery of health services, the results are immediate and measurable improvements in infant mortality and morbidity rates and ultimately, general improvement in overall child health. Not only have the Medicaid expansions done substantial good: they have helped point the way toward the range of broader improvements which are still needed. They also have helped build public acceptance for the more direct role which government must play if the nation is ever to cure the grievous inequities which plague the American health care system.

The children's stake in the national health debate cannot be overemphasized. Children are now the poorest Americans. Today some 12 million children—one in five children, one in four children under age 6, one in three children in families headed by a young adult (under age 30) and nearly one in two black and Latino children—is poor. An equally large portion of children live in families with incomes below twice the poverty level who simply cannot meet the terrible cost of even basic health care. These poverty numbers are astonishing and have long term consequences for the nation.

Children's deep impoverishment has major health consequences. Poor children need more health services, because the health risks they face are greater. Poor children's risk of death in infancy and childhood is significantly elevated. Poor children are far more likely to be reported in fair to poor health, far less likely to be immunized, and are significantly more likely to suffer from activity-limiting impairments.

Moreover, their impoverishment places children heavily outside the health care mainstream. Depending on the national study used, between 8.5 and 11 million children are completely uninsured. Another 12 million (and growing) are completely dependent on the Medicaid program. *No* other group of Americans is so dependent on Medicaid. Data from the National Medical Expenditures Survey (NMES), a special study undertaken by the U.S. government in 1987 of U.S. health insurance patterns, show that less than two-thirds of American children (39.7 million out of 63 million) have employer-based health insurance. Other studies suggest that less than 40% of employer insured children have insurance which is fully subsidized by families' employers. In short, very few children fit the fully subsidized employer insurance mold that we tend to think of as mainstream. Millions of children are excluded from the private system by their families' poverty, employment patterns, limited educational attainment and other factors utterly unrelated to their need for health care.

Today, only about two in three American children have employer insurance. If high childhood poverty rates continue, if employers continue to reduce their contributions to family insurance coverage (a trend reported by the Pepper Commission in 1990), and if wages continue to stagnate, then in a few years, American children as a whole could easily resemble black children in working families whom, in 1986 (according to U.S. Census data) had less than one chance in two of having employer-based health insurance.

Even if legislation mandating significantly subsidized employer insurance for full-time employees is mandated, millions of children whose parents work only part-time or part-year will need public coverage. Only 73% of all children live in families in which a parent works full time. Approximately 16 million children live with adults whose nexus to employment is too attenuated to assure continuous coverage. The public insurance companion program contained in the Senate leadership bill is thus particularly important for children. My remarks today therefore will focus on the public plan.

KEY NATIONAL HEALTH REFORM PRINCIPLES FOR CHILDREN

During CDF's 18 years of health advocacy for poor children, we have gleaned several fundamental principles that we believe should guide the national health debate which is now unfolding. The first lesson is that as important as Medicaid reform is (and as essential as continued Medicaid improvements for low income children are in the absence of a national health plan for all Americans), no amount of reforms in a means tested program will ever change its essential nature. Even with improvements, Medicaid will always be Medicaid—a program whose beneficiaries are identifiable by their poverty and their disproportionate racial and minority status and whose recipients remain isolated by low reimbursement rates, but all too often, even more by stigma and prejudice. To be true reform, Medicaid must be subsumed into an overall national health programmatic scheme which leaves no American child behind. Much of the debate around the Senate leadership's plan must therefore necessarily focus on how well the public portion address Medicaid's ills.

The second lesson—and one that has been repeated time and again—is that for millions of American children and families, insurance reforms alone will not suffice. Millions of Americans (who are disproportionately women of childbearing age and children because of their extreme poverty), will continue to be excluded from comprehensive health care, whether or not insured, because of barriers created by rural or urban, inner-city isolation, and by racial, poverty, cultural and ethnic discrimination. Unless broadly tailored insurance reforms are coupled with efforts to create and sustain sources of comprehensive, community-responsive health care where they are needed, America's more than 30 million medically underserved citizens (two thirds of whom are women of childbearing age and children) will be deprived of essential, effective, and cost effective services.

Insurance reforms alone without health service delivery improvements will, in our opinion, succeed mainly in improving access to inpatient and specialty services. To be sure, these services are every bit as vital as primary care, and we remain deeply concerned about the problems that low income children far too often face in obtaining lifesaving specialized health care. But for children, it is the primary health services—prenatal care, immunizations, health exams, and ongoing, basic medical, dental, vision and hearing care—that will make a difference in their lives and health. It is these basic services which all industrialized nations but the U.S. and South Africa assure for all pregnant women and children. It is the lack of these services, combined with gross childhood poverty rates, which are primarily responsible for the nation's shameful international child health rankings. In 1989 the nation ranked 19th in infant mortality worldwide, 17th in the proportion of all infants adequately immunized, and 19th in mortality among children under age 5. A baby in

the District of Columbia, within the shadow of the Capitol where we sit today, is less likely than an infant in Honduras to be adequately immunized against preventable childhood disease.

From these two broad principles we have developed the following basic working set of health criteria:

1. The plan should guarantee health insurance for everyone

- The most basic criterion against which any proposal should be measured is that it guarantees an equal, basic level of coverage for everyone. No American should be left uncovered or covered only through a means-tested program which does not have the acceptance and recognition of health insurance. Barriers such as family composition, relationship to the family head, work status, state residence, lawful U.S. status, pre-existing conditions, waiting periods, and health status should be utterly irrelevant to coverage under a health insurance plan.

2. Enrollment must be simple

To be universal, entry into any national health plan should be eminently accessible. Enrollment access points have to be broadly available, and applications forms must be as simple as possible.

3. Coverage must be stable, continuous and portable

One of the great dilemmas in health coverage today is instability. Americans, particularly lower income families, are incredibly mobile. Frequent job and residence changes are the reality today. Longitudinal studies show that in extremely high proportion of Americans—as many as one in four—is uninsured when insurance patterns over a multi-year time period are examined. Benefits that are not stable and that depend on portable residence and employment are incompatible with the needs of families who move and change jobs frequently.

4. Benefits must be comprehensive

Essential to any health plan for children is the comprehensiveness of benefits. Many essential maternal and child health services now considered routine—maternity care, family planning and reproductive health services, and complete pediatric care for children including check-ups, immunizations, vision, dental and hearing care and primary health services for children with diagnosed mental or physical conditions requiring further treatment—are services for which third party payment assistance is required not because of their high risk nature but because of their relatively high cost in relationship to family income. The income of young families is lower today in real dollar terms than it was a generation ago. Millions of families simply cannot afford the most basic health care for their children without comprehensive coverage. Today it can cost $55.00 to get a child vaccinated against measles in a private doctor's office. At that price, it doe not take long for a family with two young children to conclude that its choice is either groceries for a week or two measles booster shots.

5. Cost sharing must be reasonable

It does little good to provide families with comprehensive benefits if cost sharing is so high that coverage is unaffordable. Keeping cost sharing low means setting premiums that are adjusted for family income, eliminating deductibles for basic services keeping copayments low, and setting relatively low stop-loss levels for families with high out-of-pocket costs.

6. Provider reimbursement must be reasonable

Perhaps Medicaid's greatest failure is its grossly low provider reimbursement rates. These low rates so severely depress provider willingness to participate in the program that many of Medicaid's most essential benefits are virtually unavailable to the children entitled to them.

Payments must be high enough to assure provider participation. Moreover, payments must be set high enough so that balance billing—the practice of charging in excess of the amount paid by the plan plus uncovered deductibles and coinsurance—can be curtailed. Families should be able to depend on their premium, deductible and coinsurance payments as the sum total of what they will need to pay in order to secure health services for their children.

7. Cost controls must be in place and must be universally applicable

A national health plan should have a mechanism for setting cost controls that apply to all payers and that set limits which are universally applicable regardless of whether insurance is derived through public or private sources. It is simply unacceptable to have national health insurance without a national budgeting mechanism

which sets coverage and reimbursement standards for all payers. Without nationally applicable limits, the tendency will be to limit the public plan, while leaving private payers financed through huge, indirect governmental supports (such as the employer exclusion cafeteria arrangement) free to cover whatever services they choose in addition to the basic minimum and to set whatever payment rates they select. The surest way to continue the inequities inherent in Medicaid is to not apply universal cost control mechanisms.

8. The plan must include funds for resource development

Because access to service cannot be assumed even when insurance is present, the plan must include a mechanism for underwriting the development and maintenance of sources of health care in medically underserved communities. The care and services underwritten in these communities should be both those for which third party financing ultimately will be available, and services which fall outside the traditional scope of health insurance. Examples include case management services, outreach, translation services, applicant assistance, health education and special therapies and services for children with developmental delays and disabilities.

THE SENATE LEADERSHIP PLAN

The Senate leadership plan goes a long way toward meeting he health needs of children. While we believe that the most cost effective and fair approach to insurance is enactment of a single payor system (much like Medicare for the elderly), the Senate plan is impressive for the benefits and protections it includes and the for the equity and access considerations it addresses.

Children and families would benefit greatly from the Senate plan. We are particularly supportive of the following aspects of the plan:

- It guarantees that, when fully phased in, virtually all Americans will be guaranteed some form of basic health insurance;
- Considerations unrelated to the need for coverage such as work status and preexisting conditions are eliminated;
- The benefit package includes many essential items for children and women of childbearing age;
- Low income persons and families are eligible for assistance to meet the out-of-pocket cost of health services;
- Application procedures are simplified;
- Poor families and individuals receive enhanced benefits, which include virtually all non-long term care benefits (including all currently available EPSDT benefits) now available through Medicaid.
- There is a strong resource development program, modeled after S. 773, introduced last spring by Senator Chafee.
- The plan includes the first steps toward universal budgeting and cost containment features, which are essential to fundamental equity and cost concerns.

We believe that there are several important issues in S. 1227 that need to be addressed. This would inevitably be expected under any effort as broad as this one. These issues include the following:

- State financial contribution: We believe that states are simply not in a position to maintain their share of the direct public financed health care load. In many states the revenue base for a commodity as expensive as health care simply does not exist. In others, the desire to invest significantly in public health insurance does not exist. So long as states remain heavily liable for the cost of health coverage, children and families will remain captives of the unique conditions of each state. Moreover, we fear that the public plan will retain the outward appearance of Medicaid and that no matter what the reforms, most Americans and employers will chose to avoid coverage through it.[1] To the extent that state contributions must. remain an essential source of funds for the program, we strongly recommend that such contributions be paid into a single national program and be combined with other nationally-based funding sources. State contributions should be kept to levels no greater than the proportion of state expenditures attributable to Medicaid prior to the explosion in costs in the mid to late 1980s.

[1] Indeed, to the extent that S. 1227's financing arrangements set high premiums for public enrollment and contain numerous tax breaks for private coverage purchase, this financial skewing toward the private market will help perpetuate the isolation of low income Americans who are covered publicly.

• If states administer the public plan, they should do so strictly as intermediaries and should not have discretion over eligibility, benefits, provider reimbursement levels or eligibility and enrollment procedures. This is one of the great lessons of Medicaid, we believe. There are aspects of health care which do vary greatly from state to state. But there are also many bottom lines. All children should be covered for certain benefits at certain amount, duration and scope levels. All providers should be assured of adequate payment levels. No medically underserved community should be deprived of a health clinic because local providers fear the possible competition for middle and upper income patients. No person should lose public coverage because he or she does not meet a state's residency test.

• Additional public benefits equal now covered through Medicaid should be available at least to all low income families, regardless of whether their basic benefits are derived through the public or private sector. The current bill provides for generous levels of coverage for children who are poor and enrolled in the public plan. We strongly urge the Committee to extend all current EPSDT benefits to all children with family incomes below 200 percent of the federal poverty level, regardless of whether the child's basic benefit package is derived through the public plan or through an employer plan. We also recommend the development of an identical "wrap around" package of EPSDT benefits for all families, regardless of income, who have children with activity limiting impairments and whose projected annual out-of-pocket costs exceed 5 percent of annual family income. The number of such children is quite small—only about 2.5 million—but their needs are great, and they should not be overlooked.

In closing, we wish to lend our support to S. 1227, and we look forward to working with you to enact the strongest possible program for children.

STATEMENT OF THE NATIONAL CHILD SUPPORT ADVOCACY COALITION

My name is Betty Murphy, Director of Governmental Affairs, for the National Child Support Advocacy Coalition (NCSAC). NCSAC representing a cross-section of independent child support organizations and individual advocates nationwide, welcomes the opportunity to present testimony on child support concerns. NCSAC is a nonprofit educational organization dedicated to improving child support enforcement. NCSAC was established in 1987 by child support advocacy organizations who wanted to retain their independent and individual status within their own States, yet present a united voice at the national level.

Many of our members testified for and helped bring about the 1984 Child Support Enforcement Amendments. By serving on State Child Support Advisory Commissions, they have played an important role in developing and implementing new support laws in their respective States. As a direct result of the independent status of member organizations, NCSAC is in a position to offer testimony from a broad perspective regarding not only concerns, but also offer recommendations.

Before we can answer Senator Moynihan's request to determine how the changes of the Family Support Act of 1988 are faring, we must first face the fact that Congressional expectations of the 1984 Child Support Enforcement Amendments have not yet materialized. We need to explore why Child Support Enforcement continues to receive low prioritization by the Department of Health and Human Services.

In 1975, the Social Security Act established the Child Support Program as "a separate organizational unit" within HHS. In 1987 and again in 1991, HHS ignored advice of their own General Counsel and merged several services into one agency.

> "... OCSE was intended to have a certain autonomy and not to be subsumed within any other governmental entity." (April 20, 1987)

Over the years, OCSE has not only merged child support personnel and budgets, but also audit criteria. This means that OCSE audits may not identify enforcement deficiencies in Non-AFDC cases because they are no longer measured separately. Every policy, procedure, incentive, etc. is developed, measured and controlled by the WELFARE yardstick. What Congress envisioned as a dual purpose program serving both AFDC and Non-AFDC cases has been structured into a single focus program - WELFARE. The OCSE message is that Child Support Enforcement and Welfare are SYNONYMOUS. Child Support Enforcement is a disadvantaged program, taking a "backseat" to Welfare.

Compounding the bureaucratic obstacles are the serious blunders by our legal society, caused by their refusal to view non-support as a serious crime against children. Until robbing children is elevated to the same criminal status as robbing a bank, there is no incentive for our legal system to join forces with child support enforcement agencies to put a stop to the epidemic of non-support.

To support our concerns and allegations, NCSAC offers the following observations and recommendations:

I. Need for improved communication, education and training at all levels: Federal, State, Judicial, and Private Bar.

The ever-increasing number of unresolved cases supports the need for improved communication, education and training at all levels.

1. During the past four years, there has been continued weakening of the Child Support Enforcement Program at the Federal level:

   a. Section 452 of the Social Security Act sets forth the responsibilities of DHHS to the Child Support Enforcement Program: eg., review of State Plans; conduct audit of State Programs; provide technical assistance; establish minimum organizational and

staffing requirements; etc. OCSE is in some degree of non-compliance in virtually every category.

b. Professional training contracts for Judges, Legislators, and State personnel have been terminated.

c. Merging AFDC and N-AFDC audit criteria has made it difficult to evaluate and assess State efforts to enforce N-AFDC cases.

d. OCSE relocated area audit offices within Regional Area Offices. DHHS Office of Inspector General (OIG) objected saying this a "direct violation of generally accepted government auditing standards...".

e. Inconsistency and confusion abounds throughout OCSE directives, procedures, and policy statements to the States. Historically, policy decisions in the form of Policy Interpretation Questions (P.I.Q.'s) have not been uniformly distributed, although the information is relevant to interstate actions in <u>all</u> States.

2. Failure or inability by States to meet Federally mandated deadlines of the 1984 and 1988 legislation is compounded by the failure of OCSE to produce Federal Regulations in a timely manner. States are subject to penalty, while OCSE is not equally accountable.

3. Our judicial sector views non-support as a domestic matter. Both the private bar and prosecuting attorneys place non-support at the bottom of the ladder of priorities. Neither are well-versed in how the IV-D system works. Serious blunders are made by rookie prosecuting attorneys, who are routinely assigned to interstate cases.

RECOMMENDATIONS:

* More publicity is needed at the Federal level. A national toll-free (800) child support information hotline manned by competent personnel is essential. OCSE should be listed in the Governmental Blue Pages in the phonebook.

* Encourage the judicial and legal sector to take advantage of workshops and seminars on Child Support Enforcement.

* Require each State to establish a Statewide Child Support Advisory Committee comprised of representatives from all facets: Court Clerks, Judges, Social Services, Private Bar, Custodial and Non-Custodial Parents, etc. They would be mandated to review proposed support legislation, advise the Child Support Enforcement Agency, hold public hearings, etc.

* Create a permanent national forum with rotating members from State advisory committees

* Develop a public service video for new IV-D applicants explaining how the system works.

II. <u>Jurisdictional and Interstate Problems</u>:

Interstate cases are further complicated due to jurisdictional problems. The mobile nature of our society has contributed to this jurisdictional maze. Interstate cases reach a further standstill, when judicial egos come into play. Unreliable and irregular application of the URESA statutes by the Courts to interstate child support cases subject them to the proverbial "can of worms". More and more, States are urging the use of URESA only as a last resort.

Even simple situations involving only two States can result in months or years of delay, while the case is ping-ponged back and forth. For example, States cannot agree on which one is responsible for IRS Intercept submission and as a result, many N-AFDC cases are never submitted. While States bicker over their responsibilities, child support goes uncollected.

There are numerous reasons for assignment of low priority:

- The interstate custodial parent is not a voter in the receiving State and presents no match for the more coveted vote of the resident non-custodial parent.
- Non-uniformity among State laws is only part of the URESA problem. The final outcome of cases depends upon individual judicial philosophy and interpretation of law.
- Stealing from one's children is not viewed as a crime by either the public or our legal system. Theft of library books and unpaid traffic tickets are afforded more gravity than non-support.
- Non-support is viewed as a domestic matter and does not present any real legal challenge and certainly does not satisfy any politician's thirst for publicity.
- The child support enforcement problem is magnified because of insufficient or ill-trained staff.
- If the interstate family is forced onto welfare because of non-support, the receiving state's welfare budget is not impacted.
- URESA does not allow imputing income to the non-custodial parent, who may be self-employed, unemployed or intentionally under-employed.
- URESA was specifically designed to address the problem of non-support across state lines. Courts that allow unrelated issues of custody and/or visitation to be introduced are sentencing the issue of non-support to a bottomless quagmire.
- Custodial parents are not consulted in the negotiations. In the case of an unacceptable decision, the appeal process is not offered or pursued as a rebuttal. The constitutional rights of the custodial parents do not receive the same protection as do the non-custodial parent's.

RECOMMENDATIONS:

- Establish Home State jurisdiction where the child resides, thereby eliminating low priority status by the receiving state. The Home State has a vested interest in the case and should control the destiny of the case. Modifications would occur in the Home State. Enforcement would be the responsibility of the receiving State. We need to further explore home state jurisdiction where more than two states are involved.
- URESA should allow imputed income to cases of the under-employed, unemployed and especially, the self-employed.
- The appeal process should be clarified to protect the custodial parent's constitutional right to appeal, especially in interstate cases.

III. Locate, Statute of Limitations and Income Withholding Problems:

Before you can enforce and collect support, you must first locate the evader. If this does not happen, you just as well throw in the towel. Locate data

through the Federal Parent Locate Service may have a turnaround of two weeks, but if the information is not current, it is useless. There has been a strong reluctance on the part of OCSE to enhance the Electronic Parent Locate Network (EPLN), which has been quite successful in providing current and up-to-date locate data to the Southeast States.

Instead, OCSE has put all their eggs in one basket -- CSENET, which apparently has developed a large hole. NCSAC understands that a GAO report (not yet released) is very critical of this proposed national network. Some critics have described this $22 million "golden egg" as a "glorified FAX machine" without locate capabilities. Needless to say, CSENET's success depends on States having working automated systems. Of less than 10 "certified" systems, not one is in full compliance with the 1984 or 1988 legislation. 90% enhanced funding for the computer systems is going to run out in 1995 and CSENET will be left "high and dry".

Many missing parents successfully escape location efforts for years through name change or use of false social security numbers. The OIG diligently prosecutes Welfare fraud cases involving custodial parents, who sometimes are forced to commit these crimes because of non-support. The OIG reports mass indictment actions that represented more than $800,000 in illegal benefits, a mother who used multiple names and SSN's to conceal assets and earned income which would have precluded her eligibility for AFDC benefits, and a mother who concealed receipt of SSA benefits for her children to receive welfare and food stamps.

Now if we can only persuade the OIG to put the same amount of effort into prosecuting non-custodial parents guilty of using multiple names and SSN's to avoid paying child support, we might begin to make a dent in the billions owed to our children.

OCSE case closing criteria and/or prioritization schemes cause many cases to end up in the inactive or dead files. Cases are not routinely retrieved and revived. A reward for the missing parent's cunning ability to deceive and cheat their children comes in the form of Statutes of Limitations. As a result, Congressional efforts to prevent loss or modification of past due support has failed in many cases.

Wage withholding is not the panacea Congress expected. Two-thirds of the States require registration of the court order. This opens the order for challenge, modification and review by the Court, which causes further delays in interstate cases. In addition to the wage withholding request, many States require unrelated court documents. Less than one-third of the States have adopted MODEL INCOME WITHHOLDING ACT developed by the ABA.

RECOMMENDATIONS:

- Encourage States to extend Statute of Limitation periods on past due support
- Wage Withholding should encompass all forms of income
- Mandate State acceptance of Interstate Wage Withholding Orders
- Establish a National Lien
- Establish a National Data Base
- Prosecute in cases of False Social Security Numbers and Name Change to avoid payment of child support

IV. REMOVE N-AFDC Incentive Cap and Reinvestment of Incentive Monies

The American Journal of Family Law,(Fall 1987) article "Update on Title IV-D" written by Michael E. Barber, former chair of the ABA Family Law Section states:

> "...the newly legislated incentive structure continues to skew the system toward keeping cases on welfare....if a jurisdiction collected no child support on welfare cases, it would get no incentives....The act assures the continuation of AFDC cases even if it were possible to close all such cases based on parental support."

NCSAC concurs with this statement.

What happens to the incentive money? Usually the States' General Fund is the beneficiary. The money is used to repair roads, hire lifeguards, purchase new library books, etc. - everything, but support enforcement tools. In speaking to State legislators, NCSAC has found that they are not aware that "new found" money in State coffers is there because of child support collections. Once this is known, they become more sensitive to the child support problem.

RECOMMENDATIONS:

- ☆ Remove the N-AFDC incentive cap
- ☆ Mandate reinvestment of incentive money (or a substantial percentage) back into the Child Support Agency as a provision for receipt of incentives.

Recycling has become a way of life for many Americans. This same principle can be applied to incentive monies to ensure a better quality of life for the victims of non-support.

V. Medical Support Enforcement

The 1984 Child Support Amendments provide that medical insurance coverage was to be included in all new or modified court orders. Even so, millions of children in divorced families still lack adequate medical/dental coverage, as a result of a loophole in the present ERISA and IRS code.

Attorney David F. Addleton of Atlanta, GA. enlightened child support advocates, including OCSE attendees, about a solution to this monumental dilemma at the National Leadership Conference sponsored by the Commission on Interstate Child Support in April, 1991. The current ERISA Disclosure Requirement does not allow payment of benefits or disclosure of information to the beneficiaries of a participant in medical plans when the children are not in the custody of the participant. Mr. Addleton's proposal to amend ERISA is attached for your consideration.

RECOMMENDATIONS:

- ☆ Revise ERISA and IRS code to allow the custodial parent of a minor beneficiary covered by the medical plan to be reimbursed for medical expenses

VI. Centralize and Relocate Child Support Enforcement Under the Internal Revenue Service or the Department of Justice

Congressional attempts to develop a more effective child support enforcement program have been thwarted by the bureaucracy. HHS continues to develop policy and procedures based on welfare-oriented criteria.

The DHHS OIG does not provide proper oversight and auditing of internal management of the Federal Office of Child Support Enforcement. There is no accountability by OCSE to Congress or the taxpayers.

This allegation is substantiated in a General Accounting Office (GAO) report titled "Child Support" dated April, 1987.

"Thus, the Child Support Enforcement Program, including the internal audit function, does not get the same OIG oversight that other HHS offices receive. In addition, the OIG is not providing assurance that the Congress and top management are regularly informed of management problems."

In a letter to Congressman Thomas J. Downey dated May 9, 1988, the OIG responded as follows:

DOWNEY: "Has your office conducted any audits of the Federal Office of Child Support Enforcement?....."

OIG: "No, we have not....."

A multi-billion dollar program has been left to its own devices and by some standards, has failed to meet the goals set by Congress. The Child Support Program has reached a decision point. "What does it want to be when it grows up?" Does it want to continue on the Welfare path treating the symptoms or does it really want to cure the cancer?

RECOMMENDATIONS:

- Several studies have shown a growing desire to relocate and centralize enforcement of child support under another Federal agency. Some researchers have suggested Internal Revenue Service or the Department of Justice. Non-support is a crime and should be treated as such. If you owe the government back taxes, there is no hesitation to collect. If you commit a crime, there is no sparing of the rod to spoil the child.

- Child support orders should automatically become IV-D unless the parties decide to opt-out.

- Request Congressional oversight hearings on:

  a. Failure of OIG to provide oversight of internal auditing function of OCSE

  b. OCSE Computer Procurement Procedures (1984 to present)

The plight of the N-AFDC children to collect support continues to snowball Congress and OCSE appear to be at odds with each other regarding collection of arrears after the N-AFDC child reaches age 18. Advocates and State Administrators recognize that this debt does not evaporate with the age of emancipation. The debt is still there and the children are still there. Neither goes away.

It has been OCSE policy to discourage States from assisting parents who are trying to do what is legally right for their emancipated children. These children were robbed of their due support, while they were babes. Is it justice to wipe the slate clean, simply because a child becomes a young adult? Is this the reward for the child who has survived economic child abuse?

We are talking about young people, who dream of a future that is better than their past. We are talking about custodial parents, who would prefer to have their case files closed with no past due support owed, rather than closed because the system failed. It is much easier for the bureaucracy to close case files than to admit their failures.

To bring about the necessary reforms and attitudinal changes will require some drastic measures by Congress. The 1984 and 1988 legislation met with philosophical resistance by the very agency responsible for implementation. It is not too late to correct this situation, but it will not be easy. Anything worth fighting for, never comes easy. Ask any custodial parent who is not receiving child support.

STATEMENT OF THE NATIONAL COUNCIL OF STATE CHILD SUPPORT ENFORCEMENT ADMINISTRATORS

I. SUMMARY

This testimony is intended to present the views of the state level administrators of the child support enforcement programs operated throughout the country regarding the Review and Modification Provisions of the Family Support Act of 1988, hereinafter referred to as "the Act," (Public Law 100-485, §103). The testimony addresses the statutory provisions contained in the Act in view of the experiences of the demonstration projects conducted in Colorado, Delaware, Florida, and Illinois, and issues relating to the interpretation of the Act by the Federal Off ice of Child Support Enforcement (OCSE), as evidenced in the initial Notice of Proposed Rule Making issued August 15, 1990, and subsequent communications with OCSE.

The experience of the four (4) projects has established that the review and modification process is a lengthy one requiring an average of six months from the time of case selection to order modification. A primary factor affecting the lengthy time for case processing has been the "notice" requirements contained in the Family Support Act. We recommend that the "notice" provisions of the Family Support Act requiring a 30-day advance notice of the review to each parent [Section 466(a)(10)(C)(i) of the Social Security Act], and a 30-day "challenge" period [Section 466(a)(10)(C)(iii) of the Social Security Act], be deleted as they unnecessarily delay case processing and duplicate and conflict with existing State law provisions which assure due process protection to all parties to a modification action.

The experiences of the four project states have demonstrated that the review and modification function is extremely labor intensive and will require states to add significant staff and automation resources in order to meet the increased workload driven by the Act's requirements. The findings from the projects, although preliminary at this time, are providing useful information to other states for purposes of planning to implement the Act's provisions and to OCSE in assisting with the development of final regulations to implement the Act's provisions. We recommend that the operational phases of the projects be extended for an additional year through September 1992, in order for the four project states to complete the review and modification process for all eligible cases in the project, assess steady state operations, and provide more complete results regarding the impact of modification on payment compliance rates for evaluation purposes.

Federal OCSE has indicated its interpretation of the Act's requirements is that Congress intended that the reviews and modifications of all AFDC orders older than three years must be completed by October 13, 1993. This position is inconsistent with the explicit language of the Act and the purpose of the four demonstration projects funded by Congress to provide guidance to the remaining states. We recommend that the language of the Act be amended to clarify that the states must have a process in place for review and modification and begin to review new orders under that process by October 13, 1993, with a reasonable period of time, not less than three years, to cycle their existing caseloads through that process. Such an approach will allow states adequate time to obtain necessary resources and legislative changes, and permit Congress to amend the Act's provisions to incorporate the recommendations from the final report evaluating the four (4) demonstration projects.

II. NOTICE PROVISIONS

The Family Support Act notice provisions have contributed to the lengthy processing times for modification experienced by all project states, averaging approximately six months from case selection through the review process to actual legal modification of the existing order.

The 30-day advance notice of intent to conduct a review, which is required by Section 466(a)(10)(C)(i) of the Social Security Act, restricts the states' ability to conduct screening and data gathering activity, which are necessary parts of the review process, until after the 30-day notice has been sent to each parent and the 30 days has lapsed. Particularly with regard to the non-AFDC cases, where one of the parent's request for a review triggers the case selection for a review, it makes no sense to send a notice of intent to conduct a review and then wait an additional 30 days to begin the review process. We recommend this notice provision be deleted from the Act.

The notice of review result with a 30 day "challenge" period [Section 466(a)(10)(C)(iii) of the Social Security Act], has proven even more problematic for the project states. This provision adds a duplicative appeal layer that, in many instances, conflicts with existing state laws which provide parties with an appeal right

after legal modification of the order by the court or administrative body. All states have existing laws which provide the full range of due process protections, including appeal rights to any legal modification of a child support order. This additional notice and "challenge" provision unnecessarily complicates existing state law protections and delays the review and modification process. We recommend this provision also be deleted from the Act's requirements.

III. EXTENSION OF THE DEMONSTRATION PROJECTS

As a result of the unanticipated lengthy processing times, the demonstration projects have not completed the review and modification process for as many cases as expected. Many cases remain in various stages of the review process with many additional cases not having even been selected for review at this time. The federal OCSE has interpreted the Act's language to prohibit even a no-cost extension of the demonstration projects without specific Congressional authority. We recommend that Congress authorize a funded extension of the operational phases of the projects through September 30, 1992, in order to allow the project states to reach steady state operations, to complete processing of all cases eligible for review and to compile complete data for evaluation purposes relating to the effect of review and modification on payment compliance rates and welfare dependency.

IV. RESOURCE REQUIREMENTS AND IMPLEMENTATION TIMEFRAMES

The project states' experiences have demonstrated that the review and modification function is extremely time consuming and labor intensive. Implementation of the Act's requirements to review all AFDC cases once every three years, and all non-AFDC cases once every three years upon either parent's request represents a tremendous workload increase to state IV-D agencies. These agencies already have their resources strained to the maximum in order to comply with time standards for processing cases and increasing caseloads. Successful implementation of the Act's requirements will require a significant increase in staffing and automation support. Additional costs must be anticipated for staff training and procedures development. States will also need time to seek legislative changes which expedite the review and modification process, such as an objective legal standard for modification and authority to gather financial information administratively. In view of these factors, we recommend the Act be amended to clarify the implementation timeframes.

Under the provisions effective October 13, 1990, states are currently required to have a plan in place to review and modify, if appropriate, existing orders upon request of either parent. Under the provisions of the Act effective October 13, 1993, the Act provides that states must have:

> "(B) Procedures to ensure that, *beginning* 5 years after the date of the enactment of this paragraph or such earlier time as the State may select, the State must *implement* a process for the periodic review and adjustment of child support orders being enforced under this part . . . " (emphasis added).

We are concerned with the federal OCSE interpretation of the 1993 provisions by which OCSE construes the Act's language to require states to have *completed* the review and modification process for all AFDC orders more than three years old by October 13, 1993. This interpretation is inconsistent with the Act's language. Implement does not mean complete. The OCSE interpretation is also inconsistent with the purpose of the four demonstration projects funded by Congress to provide guidance to other states and recommendations to Congress regarding the Act's provisions. The final report from the projects is not expected until February of 1992. Both the states and Congress will need adequate time to respond to the recommendations in the final report.

We recommend that the Act be amended to clarify that the 1993 provisions require states to have *implemented* a process for periodic review and modification by October 13, 1993, which must be applied to all new orders and that OCSE provide a reasonable time, not less than three years, to allow states to cycle their existing caseloads through this process. This approach provides the benefit of allowing states adequate time to obtain staffing and automation resources to handle the workload increase without a negative impact to other IV-D case activity. Additionally, it provides the benefit of allowing Congress to amend the Act's provisions to incorporate the recommendations of the final report evaluating the demonstration projects.