



Statement for the Record

from the

National Association of Counties

National Conference of State Legislatures

American Public Human Services Association

and

National Association of County Human Services Administrators

for the

Joint Ways and Means Work & Welfare and Oversight Subcommittee Hearing

on

Strengthening the Child Support Enforcement Program for States and Tribes

December 13, 2023

The National Association of Counties, National Conference of State Legislatures, American Public Human Services Association and the National Association of County Human Services Administrators welcome the opportunity to submit a joint statement for the record for the Joint Work & Welfare and Oversight Subcommittee Hearing on *Strengthening the Child Support Enforcement Program for States and Tribes* held on November 29, 2023.

Background

Together, our national associations represent elected officials and human services professionals who work to ensure that our nation's families and children receive the support they need to thrive. The child support program is among the many federal programs administered at the state and local level. Members of our associations also craft legislation, provide administrative direction to human services staff and partner with the federal government in funding programs, including child support.

The federal child support program reaches nearly one in five children in the United States. According to the federal Office of Child Support Services (OCSS), the 12.8 million children who receive support is exceeded only by Medicaid (35.2 million) and the Supplemental Nutrition Assistance Program (SNAP) (15.3 million). Unlike Medicaid and SNAP where the benefit is provided by the government, under child support the financial support comes from the earnings of the non-custodial parent. The federal government, states, localities and tribes all play a financial and/or administrative role in ensuring that those private dollars are collected and reach the family. [According to OCSS](#), in 2022, 96 percent of the \$30.5 billion in total child support collections were sent directly to families.

Tax Refund Offset Program

The tax refund offset program is a critical tool used by child support agencies to support families. Given that tax information is highly personal, securing and safeguarding financial information is a core tenet of the program. Child support agencies take significant steps to protect that sensitive information, much like they do when working with employers to initiate wage withholding from paychecks, which generates about 72 percent of the support each year.

OCSS data show that the federal tax refund offset program yielded over \$2.28 billion in collections in 2022. There were approximately 1.25 million offsets averaging more than \$1,800 each. Depending on the state, those were the only payments received during the year for as many as 25 percent of child support recipients.

The Issue

The recent Internal Revenue Service guidance to severely restrict the use of contractors in accessing data to facilitate offsets of tax refunds jeopardizes the effective and efficient operation of this bipartisan program. In at least 48 states, contractors, through the state's secure systems, may access a limited set of sensitive financial data to assist

the public agency in delivering financial support to families, including offsetting tax refunds.

Under the IRS Code, Section 6103(l)(6)(B) authorizes three (3) data elements of federal tax information (FTI) to be re-disclosed to contractors for the purposes of, and to the extent necessary for, establishing and collecting child support obligations from, and locating, individuals owing such obligations:

- 1) The taxpayer address;
- 2) The taxpayer social security account number, and
- 3) The amount of any offset against a tax refund otherwise payable to the taxpayer.

The IRS guidance states that effective October 1, 2024, contractors shall no longer have access to more than those three data elements.

To operate the program effectively and adequately support families, however, contractors working through the child support agency have in some cases been accessing additional data, such as the taxpayer's income, whether the refund comes from a joint return and the name of the joint filer. Both IRS and OCSS have acknowledged the utilization of this practice, which has never resulted in breaches of that information. This supplementary information can be critical for determining the parents' actual income and ensuring the family receives the appropriate level of support based on the non-custodial parent's ability to pay.

IRS interprets the definition of "contractor" differently depending on the state and the IRS auditor who reviews the program. According to information collected by the National Council of Child Support Directors, private and public agencies have been defined in various ways including state printing and mailing centers, local prosecutors, clerks of court, IT maintenance and operations, state disbursement units, call centers and cloud services. Depending upon the auditor reviewing a particular state, a "contractor" can even include public agency employees who are not sole employees of the child support agency. All these agreements and contracts adhere to stringent IRS privacy safeguards described below.

Security of Tax Information is Foundational to the Child Support Program

All child support programs nationwide operate in highly secure environments. The IRS regularly audits child support programs to ensure that the security of FTI is maintained. During those audits, the IRS has found that agencies were allowing contractors to access more FTI data elements than allowed under the IRS Code. Those early audit findings noted the conflict in federal law between the IRS Code and OCSS administration of the program with respect to services that can be provided by contractors, and have consistently and continually agreed that agency corrective action would be held in abeyance until there was a federal legislative remedy resolving the issue. In fact, the recent IRS guidance noted that conflict and called for legislation to address it.

However, breaches of sensitive data have never been noted in any of these audit findings. While agencies engaged in public-private partnerships with contractors have granted access to data not enumerated in the IRS Code, they have never failed to protect the information.

The employees of child support agencies and contractors assisting in program administration undergo mandatory, rigorous and frequent training on safeguarding FTI. Not only is there IRS and OCSS training and certification annually, but each individual given access to FTI is subjected to FBI fingerprinting and local law enforcement background checks. Agencies extend this commitment to confidentiality by protecting personal identifying information of parents and children alike.

The Impact of the Current IRS Guidance

If Congress does not provide a legislative remedy allowing agency contractors to access additional information as detailed above, the child support program will be severely harmed. The impacts go much further than administering the tax refund offset program. Depending on the state, agency contractors have been integral to payment processing, customer service call centers, and maintenance of electronic case management systems. Often, contractors' expertise saves taxpayer dollars since public agencies do not always have the staff knowledge or updated technology to manage cases and operate the system on their own.

The data that public agencies allow contractors to access in a highly secure environment would be difficult if not impossible to disaggregate into specific elements. Perhaps over time such comingled data could be separated, but this would come at huge public expense to federal, state, local and tribal governments and to the detriment of the families who depend upon the billions of dollars in support collected annually. Alternatively, states may need to terminate contracts and bring work "in-house" at even greater cost. Those investments to 'fix' a system that has not proven to be broken, along with the severing of many private sector relationships, would come at the immense figurative and literal cost of serving families.

Impact on Tribal Partners

The potential upheaval to state and local programs would also affect tribes within states. Separate but now tied to the IRS-FTI issue, NACo, NCSL, APHSA and NACHSA support federal legislation giving tribal governments direct access to the federal tax refund offset program, a policy consistent with the long-standing support of the National Child Support Engagement Association, the National Council of Child Support Directors and the National Tribal Child Support Association.

As with state programs, no tribe that has accessed the program through a state has been found by the IRS to have had breaches of FTI.

Without congressional action, child support agencies will be spending enormous time and expense over the coming years to undo a successful and efficient public-private system that has of resulted in collecting \$5 in support for every \$1 invested.

Earlier this year, NCSL adopted a [resolution](#) supporting direct access to FTI by tribal child support agencies and permanent access to FTI by state and tribal child support contractors at state option.

Conclusion

NACo, NCSL, APHSA and NACHSA urge you to draft and pass legislation to resolve the issues outlined above. During the November 28 hearing, we appreciated the statements on both sides of the aisle to find a solution. Our organizations stand ready to support the Ways and Means Committee in those efforts.

Thank you for the opportunity to provide a statement.