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MEDICAL SUPPORT ENFORCEMENT

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Final Draft

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MEDICAL SUPPORT ENFORCEMENT

Executive Summary

Medical support for children in single parent families is severely lacking. About 60 percent of all support orders contain no provisions for health care coverage and when coverage is included, noncustodial parents often fail to comply. The evidence suggests that the result is not only increased State and Federal Medicaid expenditures but, more importantly, less care to sick children.

Action may be necessary to ensure that the child support community plays its part in addressing the health care crises our Nation is experiencing. While Federal and State efforts have increasingly focused on the importance of medical support, significant barrier to addressing this issue will remain without further action.

This paper addresses actions which have been taken to strengthen the medical support aspect of child support and barriers which remain and options for addressing such problems.

The barriers identified include:

- o The Employee Retirement Security Act of 1974 (ERISA) effectively denies a substantial number of children in single parent families access to health insurance, which has been ordered and is available to their noncustodial parents.
- o Federal rules may be perceived as sending the message that the importance of medical support is secondary to cash support.
- o State child support agencies are not providing an adequate level of attention to medical support.

Concrete steps can be taken to address these problems. However, pursuit of these steps raise several sensitive issues which need to be carefully considered.

I. BACKGROUND

The issue of nonsupport has received heightened attention and increased awareness in recent years. However, until our Nation's health care system reached a crises stage, little attention has been given to the lack of support children receive from their parents in the form of health care coverage. Not surprisingly, the health care needs of children in single parent families are largely left unmet. About 60 percent of all support orders lack provisions regarding health care coverage and even when coverage is included, noncustodial parents often fail to comply.

In addition to the strains this places on the Federal and State Governments in terms of rising Medicaid costs, the children too pay a price. Uninsured low-income children receive 40 percent less physician care and half as much hospital care as insured children. Interviews conducted in a study by the Child Support Assurance Consortium found that in the first year following the father's departure from the home, over half of the mothers reported that their children missed regular health check-ups and a substantial number of the mothers reported that their children did not get medical care when they became ill.

This paper discusses the steps that are currently being taken to insure that children receive medical support enforcement, initiatives that are underway, and explores current barriers to effective medical support and options to address them.

However, before delving into this matter it should be noted that this paper focuses solely on those factors over which the child support agency has direct responsibility and control. A broader effort may in fact be necessary to effectively address this issue, at least with respect to Medicaid cases, since State AFDC and State Medicaid agency response to this issue largely parallels that of child support agencies, i.e., lack of attention and commitment.

II. Current Requirements

State child support enforcement agencies are required to seek and enforce medical support services on behalf of all AFDC and Medicaid-only IV-D cases and to offer such services to all other program participants. This entails exchanging employment and insurance information with the State Medicaid agency; petitioning the court or administrative authority to order health care coverage whether or not it is currently available to the noncustodial parent at reasonable cost (unless the custodial parent and child have satisfactory health insurance); providing insurance policy information to the custodial parent; taking steps to enforce health insurance coverage provisions of support orders when insurance is available at reasonable cost but has not been obtained at the time the order is entered; and, requesting employers and other groups offering health insurance coverage to notify the child support agency of lapses in coverage.

In addition, State guidelines must provide for the children's health care needs, through health insurance coverage or other means and, under the requirements for review and adjustment of support orders, the review must include a determination of the need to provide for the child's health care needs in the support order through health insurance or other means and adjustment of the order when the review determines that health care should be required based on the guidelines.

III. On-going Federal and State Initiatives

Administration's FY 1994 Legislative Proposal

The Administration's FY 1994 budget reconciliation proposal includes a number of enhancements to medical support enforcement. Under the proposal, as a condition of Child Support Enforcement State plan approval, each State must enact laws affecting insurers, employers and State child support agencies designed to provide children in single parent families improved access to health care coverage available through their noncustodial parents.

Specifically, insurers may not prohibit enrollment on grounds that the child does not reside with the insured parent or was born out-of-wedlock; must permit open enrollment based on a support order to provide health care coverage; must permit the custodial parent, the State IV-D agency or the State Medicaid agency to enroll a child in a health plan when the legally responsible parent fails to do so; and, must permit the custodial parent, or service provider, to submit claims for service and must make payment on claims directly to such parent or service provider.

Employers in turn, must permit enrollment at any time based on a legally enforceable order; must restrict disenrollment to cases where there is written evidence that the order is no longer in effect or where the employee has or will enroll the child in an alternate plan; and, must withhold from wages, the employees share of premiums for health insurance and pay such amounts to the insurer.

Finally, the State child support agency would be required to garnish wages, salary, or other employee income and to withhold from State tax refunds any amounts which have been received from an insurer but which have not been used to reimburse the custodial parent or provider to the extent necessary to reimburse the State Medicaid agency for expenditures for such costs.

The proposal additionally would provide access to health insurance information by amending the W-2 to indicate availability of employer-based group coverage and creation of a Third Party Liability Clearinghouse.

Federal Employees

The Department has drafted an Executive Order (EO) requiring the Federal Government as an employer to cooperate with State child support agencies. Included under the EO is a review of whether Federal agencies should be mandated to comply with State laws requiring employers to enroll employees' children in health insurance plans and whether the Federal Employees Health Benefits

Program insurers should be required to eliminate discriminatory practices effecting enrollment. The Uniformed Services would be required to conduct a similar study with respect to health insurance coverage under CHAMPUS.

State Initiatives

States have begun to institute innovative practices for addressing medical support. At the end of 1992, 15 States had enacted model laws for the establishment and enforcement of medical support. Topics covered under the laws include: employer responsibility, requiring courts to include medical support in child support orders; allowing signatures other than the obligor/policy holder as authorization to process medical expense claims; and, providing for collection and enforcement of medical support using remedies available for child support enforcement.

In addition, several States have enacted statutes which provide monetary sanctions for parents who fail to comply with the terms of the medical support provision of a child support order. Montana law provides for assessment of a penalty of up to \$100 per child for each and every month a person obligated to obtain and maintain health insurance fails to do so. An additional \$100 per child is also assessed for each month requested information about health insurance is not provided to the child support agency. Iowa statute provides that proof of failure to maintain medical support constitutes a showing of increased need and provides a basis for establishment of a monetary amount for medical support.

IV. Options for Improving

State IV-D agencies have been required since 1985 to take steps to ensure that non-custodial parents provide health insurance if it is available through employment. Yet, state action is so inadequate that a recent General Accounting Office (GAO) report estimates that \$122 million is spent unnecessarily by the state and Federal government each year for medical expenditures that could be covered.

While audits of State child support programs largely confirm that State child support enforcement agencies have not pursued medical support to the extent expected, there are a number of mitigating circumstances which have attributed to the lack of performance. These include barriers to accessing coverage because of ERISA provisions and, what may perceived as conflicting messages as to the priority that should be given to medical support.

ERISA

The Employee Retirement Security Act of 1974 (ERISA) preempts State regulation of employer-provided self-funded health benefit plans. As a result of this preemption employer self-funded benefit plans are covered by neither Federal nor State regulation. Employers refuse to comply with orders requiring insurance coverage for an employee's dependents or only honor the order if it is consistent with the employer's plan. In the later case, many of these plans discriminate against children in single parent families by stipulating that coverage is not available for dependents who do not reside in the home or live out of State or by providing restrictions linking eligibility to the exemption status of the dependent for Federal income tax purposes.

This poses an enormous barrier to State child support enforcement agencies especially given the rise in the number of employers who self-insure. A recent GAO study found an increase in U.S. employees covered by self-insured ERISA plans from 5 percent in 1974 to 56 percent in 1990. In Minnesota, almost 40 percent of workers are covered under ERISA plans. Self-insured companies include Pillsbury, K-Mart and Control Data. These self-insured plans are administered by groups such as Blue Cross, Blue Shield or the corporation itself.

This expansion was further confirmed by a report issued by the Department of Health and Human Services Inspector General which reported that the large majority of Fortune 500 companies are self insured and that in 1985, almost half of firms with 100 employees or more were self-insured.

Until ERISA is revised to prohibit discrimination based on the marital status of the parents and to require self-insured employers to honor court order provisions requiring the deduction of health insurance premiums, a significant number of children will continue to be uninsured.

There are two options which can be used together or separately to address this problem: an amendment to ERISA and an amendment to the tax code to eliminate tax deductions for self-insurers who fail to cooperate with terms of support orders and State laws for enforcement.

Both the Interstate Commission recommendations and the 1992 Downey/Hyde child support assurance proposal would preclude employers who discriminate in the provision of health care coverage from deducting as a business expense an amount equal to 25 percent of the cost of the business' employer-provided health insurance.

As previously indicated, many large employers self-insure and presumably receive a substantial tax write-off against the costs of providing such benefits. The potential loss of such write-offs may prove to have a deterrent effect against non-compliance with the medical support provisions of child support orders.

However, linking employer compliance with a change in the tax structure may be difficult to carry out and may be less effective than a direct change to the provisions of ERISA. Enforcement may be difficult since the IRS would not know which employers were failing to comply with the terms of support orders and State laws for enforcement. Further, without an amendment to ERISA, employers could challenge the applicability of the limitation on the tax deduction since court orders generally require the provision of health insurance coverage while ERISA self-insurers claim they do not offer health insurance per se, but rather employee welfare benefits.

An amendment to ERISA would thus appear to be the most efficient method to address this problem. However, there may be resistance to legislation which would effect or amend ERISA. Some may not

want to lose their autonomy from more stringent regulation of health coverage. In 1986, Congress amended ERISA to provide that certain State laws regulating insurance are not preempted by ERISA. These State laws prohibit employee benefit plans from including any provision which limits coverage for an individual who would otherwise be covered by the plan for reasons of Medicaid eligibility. Thus, precedent exists to address problems encountered by the ERISA preemption.

Medical Support Services to Non-Medicaid Families

As indicated above, child support cases not eligible for Medicaid are under no compulsion to receive medical support enforcement services. This is one of the few exceptions in the program that provides families the ability to select or reject services. This exception came about for two reasons. First, medical support was largely viewed as an ancillary issue to child support and second, and more importantly, there was concern that the inclusion of medical support in an order would reduce, in some cases dollar for dollar, the cash child support available to the family. Since the government had no direct interest in the health care needs of these families, it was left to the family to weigh the issue and decide if such services were desirable.

The issue of including medical support provisions, at least in new support orders, may largely be taken over by the requirement for each State to use one set of guidelines in setting support awards which provide for health insurance coverage or otherwise address the health care needs of the children. However, this still leaves unaddressed existing support orders (since non-AFDC cases only receive this service upon request) and the issue of enforcement.

It may be advantageous to reconsider the merits of this approach. The Children's Defense Fund reported in 1992, that 8.4 million children lack any form of public or private insurance. Catastrophic illness or accidental injury can strike at any time and leave even the most financially stable family in ruins. It may therefore be in the best interests of both the children and the government (in terms of cost avoidance) to ensure that these

children are provided medical protection when it is available to their parents. Further, if the Administration proceeds in the direction of universality of child support, universal rules would also seem appropriate and aid in sending the message to States and to noncustodial parents, that the support rights of children will be protected.

Incentives

Currently, State child support agencies receive financial incentives which are structured solely on the amount of cash support collected. States have long complained that this fails to recognize any efforts they take to acquire and enforce health insurance provisions of support orders. This has resulted in a disincentive for States to pursue this aspect of support orders and may be perceived as sending the message that health insurance is not as important as cash support. The Administration's position has historically been to encourage States to establish State-financed schemes for rewarding this behavior.

With few exceptions that message has not been well received. However, Minnesota has a bonus incentive program established to increase the identification and enforcement by county agencies of dependent health coverage for IV-D/Medicaid cases. Under the program, counties are eligible to receive incentive payments based on a performance measure. Payments range from \$15 to \$25 for each person for whom coverage is identified or enforced.

State Medicaid agencies also have a mechanism in place for paying incentives for third party liability enforcement equal to 15 percent of the Medicaid costs avoided. However, because of the wording of the statute, the Health Care Financing Administration has ruled that such incentives are not available to State child support agencies.

Incentives for state agencies may be beneficial in encouraging a more concerted effort in this area. Legislation could be advanced revising either the child support incentive mechanism or the Medicaid incentive mechanism to recognize these efforts. However, if the Medicaid mechanism is pursued, medical support

efforts on behalf of non-Medicaid cases will continue to receive less consideration.

Enforcement action should weigh heavily in any redesign of the incentive structure to address medical support, since an order without compliance is meaningless.

State Investment

Incentive payments alone will not address the expanded State attention which would be required to address the lack of commitment child support agencies provide to medical support enforcement. While improvements have been made, Office of Child Support Enforcement audit reports find that States remain reluctant to pursue all medical support cases because of the fear that the support obligation will be reduced and the child will suffer, though establishment of medical support is improving.

With respect to enforcement, similar attitudinal problems exist. The historical mind set of workers is that they are not interested in recovering Medicaid costs since this is not their mission. While they make efforts to enforce medical support they will not pursue it with much enthusiasm. Largely these problems exist according to audits, because front line workers get little training and are not receiving the message that medical support enforcement is important.

State child support agencies report that they are over burdened and that effective medical support actions can become a full time endeavor. One state reports that it takes as much staff time to comply with medical service requirements as it does to accomplish traditional child support functions. States should be encouraged to provide adequate resources to staff medical support enforcement efforts or to establish procedures which firmly integrate medical support actions in their routine procedures for support order establishment and enforcement. Training should be provided to ensure that staff understand that this aspect of child support is fundamental to program success.

IV. ISSUES

Political

Caution should be exercised in going forward with further changes in the area of medical support until the efforts of the Health Care Reform Task force are realized. We will continue to monitor their activities to insure that options suggested under welfare reform do not conflict with their proposal. However, as evidenced by the attached matrix, Congressional interest in this area has been keen and the Administration should be prepared to respond and counter these proposals. While the current proposal would have a substantial impact in improving access to medical support for children in single parent families, significant barriers will remain without further change.

In addition, efforts to reform child support depend on the support of the employer community. This community has a strong political presence with a very effective lobbying component to ensure that the protection they are afforded by ERISA remains intact and unchanged. They have stated their opposition to any attempt to open the ERISA issue for fear that it would have a snowball effect. Any proposal to revise the ERISA preemption should probably be crafted in the most narrow terms possible.

Impact on Families

The possibility of reduced cash support cannot be ignored when considering proposals to require health insurance and enforcement in all child support cases. The Administration should give this careful consideration when considering any changes to child support guidelines. As indicated in a separate effort on State support guidelines, several States do in fact follow this practice.

Six States reduce cash support on a dollar-for-dollar basis and an additional fourteen States deduct premium costs before arriving at the base to apply guidelines.

A related issue concerns the priority of support when the Consumer Credit Protection Act (CCPA) limit, applicable to the

percentage of an employee's pay which is subject to legal action, has been reached prior to withholding the combined amount necessary for cash support and payment of the employee's share of the health insurance premium. There are currently no Federal requirements which address the priority of support in this situation. Of those States most recently publicized by the Office of Child Support Enforcement as having model medical support legislation, none mention the CCPA, though Arkansas's statute provides that income withholding for health care coverage has priority over all other legal processes under State law...except an order of income withholding for child support.

The Federal government could address this potential problem in Federal statute or, because of the competing interests involved, continue to allow State flexibility unless this proves to be a significant problem which requires Federal intervention.

Impact of Other Programs

The lack of attention given to recovering Medicaid spending through noncustodial parents' private health insurance seriously transcends State child support enforcement agencies. It appears to be pervasive from beginning to end, i.e., from AFDC gathering information at in-take through child support agency response, to lack of follow-up on the part of Medicaid agencies.

Clearly, the child support component alone will not solve the problem. The best hope may lie in the Administration's proposal for a Third-Party Liability Clearinghouse, with possibly private contractor responsibility for the collection function. In tandem with this, as well as the options suggested above, child support agencies may be motivated--or pushed, if still necessary--to do a better job on their aspect of the overall issue.

Cost/Savings

Refocusing the child support enforcement community's commitment to medical support will entail increased administrative costs. These costs will increase to the extent that the Federal government increases its investment in State incentives to

address medical support efforts of child support agencies. However, elimination of the ERISA barrier to accessing noncustodial parent insurance coverage is expected to result in significant savings to the Federal government.

V. REFERENCES

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8. Trends in Health Care, Robert Woods Johnson Foundation report, 1991.
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10. Medicaid: Legislation Needed to Improve Collection from Private Insurers" GAO/HRD-91-25.

PROPOSALS TO STRENGTHEN MEDICAL SUPPORT

MAJOR PROVISIONS	RECON. HR 2141	BRADLEY S 689	MOYNIHAN [last sess.]	INTERSTATE COMMISSION
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Insurers:

Non-discriminatory practice	X			X
Provide open enrollment	X			
State or cp enrollment	X			
State or cp submit claims and receive payment	X	X		X
Coverage available where child resides				X

Employers:

Open enrollment	X			
State or cp enrollment	X	X		X
Conditioned disenrollment	X	X		X
Withhold premium	X			
Report health info. to Fed. Gov.	X			X

State IV-D Agency:

Wage withhold premium	X			
Garnish/tax offset when AP withholds reimbursement in Medicaid cases	X			
Cp Right to choose coverage		X		
Premium and noncovered cost apportioned between ap/cp		X		
Written proof of insurance		X		X

Other

Remove ERISA preemption	X
Addresses Federal employees	X

Note: Congresswoman Kennelly's Interstate Child Support Act (HR 1961), does not specifically address medical support reform except in the context that the cost of health insurance must be considered in the support guidelines.

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INTERSTATE ENFORCEMENT

July 1, 1993

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INTERSTATE ENFORCEMENT

EXECUTIVE SUMMARY

Establishing and enforcing child support obligations can be particularly complex when the parents reside in different States. Because a State's jurisdiction is limited, it may have to rely on another State to take action. However, interstate actions often take too long, produce undesired results, involve burdensome paperwork requirements, and are characterized by a lack of communication and cooperation between States. This paper examines options for improving the interstate process.

Uniform Interstate Family Support Act (UIFSA)

The Uniform Interstate Family Support Act (UIFSA), a model State law governing interstate processing, was recently developed and has been adopted by several States. UIFSA allows only one support order to be controlling; includes a broad long-arm provision; allows a wage withholding order to be sent directly to an out-of-state employer; and contains detailed provisions governing a two-state process. A Federal mandate resulting in the widespread enactment of UIFSA would reduce the size of the interstate caseload, and improve processing in remaining interstate cases.

Maximizing One-State Actions

Interstate cases can be avoided by allowing one State to take action by itself in cases where the obligor is a nonresident. Ways of enhancing one-state processing include:

Ensuring the Use of Long-Arm Jurisdiction. To increase the use of long-arm, the Federal government could: (1) establish financial incentives, or (2) require States to attempt long-arm before referring a case to another State, with only limited and specified exceptions.

Child-State Jurisdiction. The U.S. Supreme Court has held that the mere presence of a non-resident obligor's child in a State does not in itself allow that State to assume jurisdiction over

the obligor. However, such "child-state" jurisdiction could possibly still be established, though its constitutionality is uncertain. In many cases, it would allow the State where the child lives to take action without relying on a second State. Direct Income Withholding. Direct withholding would allow a IV-D agency to send an income withholding order directly to an out-of-state employer, without going through the IV-D agency in the employer's State.

National Subpoena. The development of a national subpoena would allow States to reach income information outside of a State's boundaries.

Service of Process. Two reforms could help a State working a case through long-arm jurisdiction serve process on an out-of-state obligor: (1) a Federal statute directing States to accept out-of-state methods and proof of service, and (2) use of methods other than hand-delivered service.

Discovery of Evidence. A Federal statute requiring States to act on discovery orders issued by other States would assure greater access to evidence by a State using long-arm jurisdiction.

Admissibility of Evidence. The Federal government could: (1) establish uniform and simple requirements regarding evidence admissibility, and (2) lower barriers, resulting from hearsay rules, that impede the use of apparently legitimate information.

Improving Two-State Actions

Even if one-state processing is maximized, there will still be cases that require an interstate referral; therefore, the two-state process also needs improvement. Options include:

Full Faith and Credit. Federal statutes could require: (1) that a State's order for prospective child support payments be given full faith and credit by another State; (2) States to give full faith and credit to administrative process orders, and (3) require uniform terms in support orders or use of a standard order or order abstract.

Interstate Compacts. Interstate compacts between States that share a high volume of interstate activity could provide that certain practices used by one State would be acceptable in the other State.

Administrative Enforcement Techniques. Federal statute could require that States adopt administrative enforcement techniques under which States would simply enforce an incoming interstate case as if it were its own case, without the need for registration.

Other Reforms

This paper also discusses reforms for improving interstate locate; staff effectiveness; and international, tribal, and military enforcement.

INTRODUCTION

Establishing and enforcing child support obligations can be a challenging undertaking. The complexity of the task can escalate significantly when the parents reside in different States. Because a State's jurisdiction is limited, its ability to take action against an out-of-state obligor¹ is limited; therefore, a State may have to rely on another State to take action. However, the responding State's motivation for working another State's case may be low, and two-state processing increases costs and paperwork and creates delays.

Background

Interstate enforcement of child support had a quarter-century head-start on the 1975 advent of the Federal child support enforcement (IV-D) program with the promulgation of the Uniform Reciprocal Enforcement of Support Act (URESA), a model State statute governing interstate child support actions, in 1950. Amendments and revisions followed in 1952, 1958, and 1968. By the early 1970s, all States had adopted some form of URESA or a similar uniform law.

Federal efforts to improve child support enforcement across State lines in IV-D cases have included mandatory extension of income withholding to orders issued in other States, issuance of interstate case processing standards and timeframes, required use of standardized forms, establishment of State central registries as conduits for receiving incoming interstate cases, and Federal training initiatives. Despite early recognition of interstate obstacles and efforts to address them, the interstate system remains plagued with problems. While an estimated three out of every ten child support cases are "interstate," less than \$1 of every \$10 currently collected is from an interstate case.²

Establishment of paternity or support using long-arm jurisdiction, local enforcement based on the principle of continuing jurisdiction, State and Federal income tax refund offset procedures, full collection services of the IRS, registration of a sister State's order through the Uniform

Enforcement of Foreign Judgments Act, and withholding from wages derived in another State are among the varied remedies States have available to handle child support actions involving non-resident obligors.³ None of these options requires a URESA proceeding and its attendant paperwork and delay. Yet, States continue to rely heavily on URESA, and it is the mechanism most often used to obtain jurisdiction to establish and/or enforce child support orders across State lines.

Problems with "Full" URESA Proceedings

Under current State reciprocal support laws, actions seeking support under URESA are considered "new" proceedings, even if a valid, enforceable support order already exists. Nothing in URESA precludes a second State from entering a new order, wholly independent of any existing order. As a result, multiple, yet valid, orders in varying amounts in different States have been established for the same children. There is no requirement for identifying or reconciling these various orders. To illustrate, many States send a full URESA package (petition, testimony, and other pleadings) to another State when they simply want enforcement of an existing order. In such a case, the responding State may enter an independent support order, using its own guidelines to set the award amount. All too often, the new award is set at a lower amount and arrearages due are ignored. Unless the court in the responding State specifically states that its order modifies the other State's order (a very rare occurrence), entry of the second order does not supersede or reduce the first obligation. Arrearages accrue under the prior order, to the extent the full amount due is not paid. However, from the family's perspective, even though the underlying order is not legally changed, they may receive less support as a result, and the action of the responding State is perceived as--and has the financial consequence of--a reduction.

Drawbacks of URESA Registration

In addition to the procedures for entering an independent order, some versions of URESA permit a support recipient to "register" the existent support order in a State where the obligor may live

or own property. Registration is a form of filing or recording an out-of-state order and is simpler and less time-consuming than the "full URESA" described previously. Once an order is registered, it is treated by the second State as if it were originally established in that State. This means that it may be subject to prospective modification. Unlike a "full URESA" which does not nullify a previous order unless it specifies so, a modified registered order may be considered a modification of the original order. Because of the potential risk of a reduction of the order, State IV-D agencies and support recipients often hesitate to use URESA registration, even though it is considerably less cumbersome than the "full URESA" route.

Other Problems with URESA

- URESA has not been revised since 1968. Therefore, URESA predates and does not take into account the establishment of the IV-D child support program and subsequent changes such as guidelines and wage withholding.
- Although every State has adopted a version of URESA, States have adopted different versions and therefore do not have uniform interstate practices.
- IV-D agencies and parents complain that URESA actions take too long, allow the obligor to take advantage of the forum being near him/her, produce undesired results, involve burdensome paperwork requirements, and are characterized by a lack of communication and cooperation between States.

Interstate Commission

In an attempt to address some of these problems, Congress, as part of the Family Support Act of 1988, created the U.S. Commission on Interstate Child Support, charging it to submit a report containing recommendations for improving the interstate establishment and enforcement of support awards. In 1992, the Commission issued its comprehensive final report which contained numerous recommendations. In both the last and current sessions of Congress, Senator Bill Bradley and Representative Marge Roukema introduced legislation that, if enacted, would implement many of the Commission's recommendations.

UNIFORM INTERSTATE FAMILY SUPPORT ACT (UIFSA)

At the same time that the Commission was studying the interstate problem, the National Conference of Commissioners on Uniform State Laws (NCCUSL) was developing the Uniform Interstate Family Support Act (UIFSA), a model State law governing interstate processing that substantially revises and expands URESA. UIFSA has already been adopted by at least seven States--Arkansas, Arizona, Colorado, Montana, Nebraska, Texas, and Washington. Arkansas's UIFSA statute was effective immediately and contained only minor changes to the model version of UIFSA.

Provisions of UIFSA

The provisions of UIFSA include:

- One Controlling Order. UIFSA allows only one support order between parties to be controlling at a point in time. UIFSA provides that only one tribunal at a time has "continuing, exclusive jurisdiction" to establish or modify a support order.
- Long-Arm Jurisdiction. UIFSA includes a broad long-arm provision which allows States to assert jurisdiction over nonresidents in child support matters.
- Direct Withholding. UIFSA allows a wage withholding order to be sent directly to an out-of-state employer.
- Two-State Jurisdiction. For cases where two-state processing is necessary, UIFSA contains detailed provisions governing paternity establishment; establishment and modification of support orders; and enforcement of orders without the possibility of modification.
- Choice of Law Rules. UIFSA provides clear direction regarding which jurisdiction's laws apply in transactions involving more than one State.
- Evidentiary Provisions. UIFSA authorizes innovative methods for transmission of evidence between States (e.g., via telephone), communication with other States, and assistance with discovery requests of other States.
- Accessibility to Both Parents in Both IV-D and Non-IV-D Cases. UIFSA remedies would be available to both obligees

and obligors upon request, without regard to the IV-D status of the case.

Strengths of UIFSA

Enactment of UIFSA would have two major benefits. First, UIFSA would reduce the number of interstate cases. Due to its one controlling order, long-arm, and direct withholding provisions, UIFSA should substantially reduce the size of the interstate caseload by limiting the need for the involvement of more than one State in many cases.

Second, UIFSA would improve processing in the remaining interstate cases that require action by more than one State by:

- Eliminating multiple support orders governing the same parents and child, and the resulting confusion.⁴
- Providing standardized, uniform laws and procedures that will replace the current assortment of diverse State practices.
- Providing for enforcement of orders without the possibility of modification or the establishment of an unwanted new order, in contrast to URESA.
- Reducing the burdensome paperwork requirements and lack of communication and cooperation between States, by providing for improved transmission of evidence, assistance with discovery, and communication between States.

Drawbacks of UIFSA

While widespread enactment of UIFSA would vastly improve interstate processing, it has some drawbacks. Under UIFSA, routine, periodic updating of child support orders may be difficult. UIFSA provides that an issuing tribunal can adjust its order as long as it maintains continuing, exclusive jurisdiction. But if all parties move out of the issuing State, order modifications will have to be made by another State. However, a tribunal can modify an existing order issued by another State only if certain very specific conditions are met.⁵ A party seeking modification may have trouble determining which responding State it should send the case to in order to meet

these conditions. Adjusting orders on a widespread and routine basis may be difficult given the limited number of forums which would be eligible to adjust an existing order.⁶

In addition, the transition from URESA to UIFSA may be difficult. UIFSA contains provisions designed to ease this transition.⁷ Despite these provisions, full implementation of UIFSA will require extensive changes in procedures, technical assistance, training of child support staff and the legal community, and a redesign of standard interstate forms. In cases which have multiple orders, the task of identifying the one controlling order may be time-consuming and require communication and cooperation between States.

Should the Federal Government Encourage or Mandate UIFSA?

The Federal government could avoid taking a position on UIFSA and allow States, if they chose, to continue adopting UIFSA on an ad hoc basis. Unfortunately, since some States might chose to continue using URESA rather than adopt UIFSA, this approach could result in an even greater assortment of State laws and practices than currently exists.

Alternatively, the Federal government could encourage States to adopt UIFSA. Encouragement could take the form of technical assistance, training, written materials that explain the benefits of UIFSA, and contacts with State legislators. The Federal government could even offer financial incentives in order to encourage adoption of UIFSA. However, such encouragement would not guarantee that every State would adopt UIFSA.

Another alternative is enactment of a Federal statute mandating State adoption of UIFSA. Possible mandates include:

Verbatim adoption of UIFSA. This approach, recommended by the Interstate Commission, would potentially result in uniform laws and procedures in every State.

Adoption of UIFSA "Without Material Change". This mandate, included in the Bradley/Roukema bill, would allow each State to

make minor changes to UIFSA, but would not allow major substantive changes.

Adoption of "Some Form of UIFSA". This would require each State to adopt UIFSA, but would allow changes, including major substantive changes.

Adoption of Certain Core Elements of UIFSA. This approach would require each State to adopt only the most important elements of UIFSA, such as the long-arm and "one controlling order" provisions. With this approach, the Federal government could choose only those elements of UIFSA that complement a restructured (perhaps partially federalized) program, while avoiding weaker provisions, such as the limited availability of review and adjustment (described above). However, extracting provisions of UIFSA and combining them with existing State law may lead to a disjointed mixture of unrelated provisions.

These four alternative mandates would allow States varying degrees of flexibility to make changes to UIFSA. States may be more willing to adopt UIFSA if they are given flexibility to make changes. For example, some Governors and State legislators may resist a verbatim mandate; there is no precedent for a Federal mandate requiring States to adopt a uniform law verbatim.⁸ On the other hand, if States make significant changes to UIFSA, the interstate process will lack uniformity, and there will continue to be an assortment of diverse State practices.

Any mandate could include a mechanism for ensuring State compliance by providing for Federal action against States that do not comply with the mandate.⁹ The mandate could also include a deadline for making UIFSA effective, as recommended by the Interstate Commission. The Bradley/Roukema bill would require all States to make UIFSA effective by January 1, 1996.

Alternatively, instead of requiring States to adopt UIFSA, the Federal government could enact a statute that mandates the content of UIFSA without requiring adoption by States. This approach would result in a uniform Federal law that would override State law. Unfortunately, Congress would likely make

specifying universal exceptions to a long-arm rule, as required by the second approach mentioned above, would be difficult. Financial incentives, on the other hand, would provide genuine motivation for using long-arm while allowing States the flexibility to refer some cases to other States when it determines that long-arm is not appropriate.

Child-State Jurisdiction

Even if long-arm jurisdiction provisions are widely enacted and used, the reach of such provisions is limited. As mentioned above, a non-resident obligor must have had "minimum contacts" with the forum State before that State can apply long-arm jurisdiction. The U.S. Supreme Court has held that the mere presence of a non-resident obligor's child in a State does not in itself establish sufficient contact to allow that State to assume jurisdiction over the obligor."

Despite the Supreme Court's ruling, establishing such "child-state" jurisdiction may still be possible. However, the courts would have to revisit and uphold "child-state" jurisdiction before its constitutionality could be assured. Options for establishing "child-state" jurisdiction include:

Congressional Finding. A Congressional finding, the option recommended by the Interstate Commission, would establish the concept of "child-state" jurisdiction and allow its constitutionality to be tested.

Congressional Finding Plus Statute. A Congressional finding plus a statute would establish the concept of "child-state" jurisdiction and codify it in law. This approach risks establishing a law which may later be declared unconstitutional.

Require States to Establish Laws. A Federal statute requiring States to establish "child-state" jurisdiction laws would allow State law to continue to govern such jurisdictional issues, as has historically been the case. However, State laws could not include an expedited appeal to the Supreme Court.

Court Review Without Legislative Action. This approach attempts to raise the issue before the courts without requiring any Congressional or State legislative action. At least one State with a broad long-arm provision¹² would have to assert "child-state" jurisdiction in a case under its existing statute. This option may involve protracted judicial deliberations and appeals before the constitutional issue is resolved, and it relies on multiple factors over which the Administration has no control (e.g. State action, appeals through the court system). In addition, after courts have ruled on the issue, this approach requires Federal or State legislative action to codify "child-state" jurisdiction.

Any of the first three options could include a provision for expedited appeal to the U.S. Supreme Court.¹³ The "flag burning" amendment, which contained an appeal clause, serves as a precedent.¹⁴ An expedited appeal may help to settle the constitutionality question early¹⁵, thereby preventing large numbers of orders from being established on the basis of "child-state" jurisdiction before its constitutionality is confirmed. If the courts find such jurisdiction to be unconstitutional, those orders could be invalidated.

No matter how the attempt to establish "child-state" jurisdiction is made, it is unclear whether such jurisdiction will be upheld as constitutional. The courts may be willing to reconsider this issue in light of recent laws and case decisions, changes in the child support system, and problems with the URESA process.¹⁶ According to some legal scholars, Federal attempts to establish "child-state" jurisdiction using Congressional action, such as in the first two options listed above, are more likely to be upheld as constitutional than State attempts, such as the second two options.¹⁷

Despite the uncertainty involved with establishing "child-state" jurisdiction, such efforts, if successful, could have substantial benefits. "Child-state" jurisdiction would allow most cases to be handled by a single State--the State where the child lives--without relying on a second State to take action. If "child-state" jurisdiction is adopted and used by all States, it could

changes to the content of UIFSA, and there is no precedent for direct Federal micromanagement of areas that have been historically been governed by State law.

MAXIMIZING ONE-STATE ACTIONS

As mentioned above, UIFSA contains a broad long-arm provision that would allow one State to take action by itself in cases where the obligor is a nonresident. Such one-state processing may require additional work to establish the basis for jurisdiction over an out-of-state obligor. Service of process over a nonresident, for example, may be difficult. However, the advantages of proceeding in the State where the mother and child reside generally outweigh the disadvantages of two-state processing. States have found that the motivation for successful establishment and prosecution of a child support case is greater when States work their own cases. By working a case locally, States are able to avoid the need to complete and transmit cumbersome forms and extensive documentation required in interstate cases; eliminate duplication of effort by more than one court system or IV-D office staff; prevent the creation of multiple files on the same family; force the obligor to resolve the issues in the original court or administrative forum, where case history is maintained; avoid the costs and complications of sending witnesses to testify in another State; and rely upon their own familiar procedures and practices in working the case.

Ensuring the Use of Long-Arm Jurisdiction

By allowing a State to exercise jurisdiction over non-residents, long-arm jurisdiction laws provide a basic means for one-state processing. In order for a State to use long-arm in a case, the obligor must have had "minimum contacts" with the State, as specified by State law. For example, many States' laws allow the use of long-arm in a paternity case if the non-resident obligor engaged in sexual intercourse, which may have resulted in the child's conception, in the State. Most States have long-arm authority in paternity cases, and about half of the States have long-arm provisions for the establishment of child support.¹⁰

UIFSA includes a broad long-arm provision that can be used to establish, enforce, or modify an order or establish paternity.

However, even if every State adopts UIFSA and its broad long-arm provision, States may not actually use the long-arm authority. As previously mentioned, even though many States already have long-arm authority, they continue to rely heavily on URESA actions. Since some additional work is required to establish a basis for long-arm jurisdiction in a case, it may be easier for a State to simply send the case to another State, particularly since the initiating State is eligible for Federal financial incentives based on collections made by the responding State.

To address this situation, Federal policy has encouraged the use of long-arm jurisdiction. In paternity cases, Federal regulations require States to use their long-arm statute, if they have such a statute, where appropriate. The Federal Office of Child Support Enforcement (OCSE) has also encouraged States to use long-arm statutes in non-paternity cases, such as support order establishment. Despite these efforts, long-arm jurisdiction is still not widely used by most States.

There are two basic approaches that the Federal government could use to increase the use of long-arm jurisdiction:

1. Establish financial incentives for using long-arm. The incentives could be based on the State's percentage of interstate cases worked through long-arm jurisdiction, for example.
2. Require States to attempt long-arm jurisdiction before referring a case to another State, with only limited and specified exceptions.

The second approach would establish a coherent national policy that articulates when use of long-arm is and is not appropriate. However, determining whether long-arm is appropriate may depend largely on the particular circumstances of a case. Reasons for not using long-arm (e.g., if service of process cannot be accomplished or needed witnesses live in another State) may be legitimate in one case but a "loop-hole" in another. Therefore,

drastically reduce the need for two-state case processing and eliminate many interstate problems.¹⁸

In addition to the overall benefits of one-state case processing, there are also specific benefits of having that one State be the State where the child lives. In most IV-D cases worked using "child-state" jurisdiction, the custodial parent would reside near the IV-D agency working the case, allowing for improved communication and cooperation between the agency and the parent. It may be fairer for the State of the child to control the terms and amount of the support order, and for the obligor to be the party who is inconvenienced since he is more likely than the custodial parent to have means available for travel and legal representation. In addition, when using guidelines for determining support amounts, many States allow for deviations based on the child's needs (e.g., healthcare, childcare, education); the child's State may be the best location for determining facts and details regarding the child's needs.¹⁹

Direct Income Withholding

Direct income withholding is another one-state processing method recommended by the Interstate Commission. The Commission recommends a Federal statute mandating that States adopt laws that require employers and other income sources, as a condition of doing business in the State, to honor income withholding orders/notices sent directly to them from other States. As a result, a IV-D agency could send an income withholding order/notice directly to an out-of-state employer, without going through the IV-D agency in the employer's State. According to a recent General Accounting Office (GAO) study²⁰, direct withholding is already widely used and successful, even in cases where States do not actually have jurisdiction over out-of-state employers. Federal legislation would legitimate the use of direct withholding and presumably increase its use by States.

UIFSA includes a direct withholding provision that requires employers to honor income withholding orders issued by other States. However, this provision only applies to cases where the obligor and obligee live in different States. Therefore, even if

every State adopts UIFSA, there will still be the need for Federal legislation for cases where the obligor and obligee live in the same State, but the employer is in a different State.

Direct withholding would be faster, cut costs, and allow one State to maintain control of a case. However, there are potential problems with direct withholding. For example, if an employer receives multiple withholding orders from several different States for the same obligor and is unable to comply with all of the orders within the limits of the Consumer Credit Protection Act (which specifies maximum percentages of income that can be withheld), that employer will have difficulty determining how to implement withholding. State law will not provide guidance since divergent laws of several States will apply, and there will be no single entity for the employer to contact since the orders will have been sent directly to the employer instead of being routed through the IV-D agency of the employer's State. Employers or obligors may contact their local IV-D agency about withholding, But that agency will be unaware of the withholding if it was sent directly by another State.

To make the withholding process more efficient, OCSE has begun to develop a standard income withholding order/transmittal. If direct withholding is implemented, employers will only have to deal with one form, no matter which State sends the order. Use of the form could be mandated by Federal statute or regulation.

In order to make withholding less burdensome for large employers, the Interstate Commission recommended that a multistate employer who receives a withholding order in one State be allowed to forward the order to the employer's central payroll in another State. (See the issue paper on withholding for more details).

National Subpoena

The development of a national subpoena duces tecum, a type of subpoena used to request records, would also enhance one-state processing by allowing States to reach income information outside of a State's boundaries. Currently, a State's subpoena is only valid within that State. Federal legislation mandating a

national subpoena could require the subpoena to be honored nationwide. As a result, a national subpoena would provide access to up-to-date income evidence received directly from an out-of-state income source. Such income information is essential for income withholding and other enforcement purposes, establishment of initial orders, and review and adjustment of existing orders.²¹

Service of Process

Service of process, under which notice is delivered to the obligor, is a necessary part of obtaining jurisdiction over an obligor in a paternity or support proceeding. However, the inability to serve process, e.g., because the obligor is purposely evasive or is frequently not home, is a major reason for failed child support enforcement. Many States require hand-delivered personal service, by a sheriff or private process server for example, for the initial contact in a proceeding. Subsequent notification, after the initial contact, is less difficult since first class mail can be used in most States.²²

A State working a case through long-arm jurisdiction may have difficulty accomplishing hand-delivered service against an out-of-state obligor when the State must rely on the process server of another State. The process server may give priority to instate cases and be unfamiliar with the requesting State's proof of service requirements. Additionally, the requesting State may be unacquainted with service practices and fees in the State where service is needed.

Two reforms could address this problem. First, the Interstate Commission recommended a Federal statute that would direct States to adopt laws requiring that out-of-state service of process methods and proof of service in child support cases be accepted in the same manner as in-state service of process methods and proof of service. This would make use of long-arm jurisdiction easier by allowing a State to use the methods and proof of service provided by an out-of-state process server even if the methods and proof differ from what is required for instate cases.

Second, the Federal government could encourage or mandate the acceptance of service methods other than hand-delivered service. Some States already authorize first-class or certified mail service even for the initial service of process. Other possibilities include facsimile transmission and overnight mail delivery. Such techniques allow a State using long-arm to serve process directly without relying on an out-of-state process server. However, there are drawbacks to using such techniques for initial service. These methods provide little or no proof that the obligor actually received service. Such proof is important in order to protect the rights of the obligor. In addition, lack of proof may impede progress in a case. For example, the decision-maker may be reluctant or unable to enter a default order if there is not sufficient proof of initial service. In addition, if the obligor is not served, he may challenge and overturn the order.²³ Therefore, techniques such as first-class mail may be more appropriate for subsequent service rather than initial service.²⁴

Discovery of Evidence

Discovery is the device that can be used by one party in a proceeding to obtain facts and information about a case from the other party. UIFSA allows a tribunal to request an out-of-state tribunal to assist in obtaining discovery. The second tribunal, upon receiving the request, may compel a person over whom it has jurisdiction to respond to a discovery order issued by the first tribunal. Therefore, under UIFSA, a State using long-arm jurisdiction may send a discovery order to the obligor's State and have that State, which has more direct access to the obligor, conduct discovery. However, UIFSA simply allows a State to act on another State's discovery order and does not require it to do so. A Federal statute requiring such action would assure greater access to evidence by a State using long-arm jurisdiction.

Interstate Transmission of Evidence

In cases where the obligor's State or some other State is willing to provide evidence to a State working a case by long-arm jurisdiction, the simple task of transmitting the evidence from

one State to another can create problems. Traditionally, evidence transmitted by telephone, fax, computer, videotape, or audiotape has not been admissible as evidence, often simply because of the method by which the evidence was transmitted rather than a consideration of the reliability of the evidence itself. UIFSA addresses this problem by providing that documentary evidence transmitted by telephone, telecopier, or other means that do not provide an original writing may not be excluded from evidence on an objection based on the means of transmission. The evidence may still be excluded from the record or discounted if the authenticity of the evidence is questionable, for reasons other than the method of transmission.

In working a long-arm case, a State may also need to obtain testimony from an out-of-state witness. UIFSA provides for obtaining this testimony with the least amount of inconvenience. Under UIFSA, a tribunal may permit a party or witness residing in another State to be deposed or testify by telephone, audiovisual means, or other electronic means. The Interstate Commission recommended going a step further by enacting a Federal statute to require the use of procedures that would allow participation by phone of out-of-state parties.

Admissibility of Evidence

Once out-of-state evidence is transmitted from the other State, it must be admitted to the record in order to have an impact. In the area of evidence admissibility, the Interstate Commission recommended enactment of Federal statutes that:

- Establish a simplified certification process and admissibility procedure for out-of-state documents in child support cases.
- Direct States to use laws requiring that any certified copy of an out-of-state order, decree, or judgment related to paternity or child support, be admitted if regular on its face.
- Direct States to use laws that require out-of-state written, audiotaped or videotaped depositions, interrogatories, admissions of fact, and other discovery documents to be

admitted in paternity or child support hearings, if the documents are regular on their face and comply with the appropriate discovery rule/law of the State where discovery was conducted.

These reforms would have two benefits. First they would establish uniform and simple requirements regarding evidence admissibility that all States would be familiar with. Currently, States have differing and sometimes cumbersome requirements for authenticating orders and public records. A IV-D agency collecting evidence for use by another State's IV-D agency, that is working the case through long-arm jurisdiction, is often unfamiliar with the specific requirements for admitting evidence in the other State.

Second, these reforms would lower barriers, resulting from hearsay rules, that impede the use of apparently legitimate information. Strict adherence to the hearsay principle requires the producer of evidence to be present to face cross examination. However, in long-arm cases where evidence is obtained from out-of-state, testimony by the producer of evidence can be particularly hard to arrange. In recent years, evidentiary rules have relaxed strict adherence to the hearsay principle. These reforms would continue that trend, while maintaining safeguards in order to help ensure that evidence is accurate and legitimate. They would require that, in order to be admissible, a copy of an order be certified, a discovery document comply with local rule or law, and any document be regular on its face. Though a document would be admissible and therefore considered by the decision-maker if it met these criteria, if the document's reliability were subsequently questioned, the decision-maker could discount its weight.

IMPROVING THE TWO-STATE PROCESS

If all the above reforms were enacted, the number of interstate cases requiring two-state action would be reduced substantially. Particularly if "child-state" jurisdiction were established and used extensively, the need for two State-processing would be virtually eliminated. However, there would likely still be some

cases where it would be difficult or inappropriate for a State to work a case locally against an out-of-state obligor. Therefore, even if the system is reformed to maximize one-state processing, there is still a need to improve the two-state process as well. UIFSA, as discussed above, would enhance two-state processing, but additional Federal mandates, which build upon UIFSA, could provide further improvement.

Evidentiary Improvements

All of the options regarding discovery, transmission, and admissibility of evidence, discussed earlier in the context of improving long-arm cases, would also improve two-state case processing. For example, under the discovery provision in UIFSA, a responding State could enforce a discovery order issued by the initiating State. These options would also enhance the ability of a responding State to receive and use evidence from the initiating State.

Full Faith and Credit

Under the U.S. Constitution and Federal law, a State's order is entitled to full faith and credit in other States if it is a final order. Full faith and credit is the principle that an out-of-state order should be given the same force and effect in all other States as it would be given in the State of origin. When a State gives full faith and credit to another State's order, it honors the terms of that order.

Three reforms regarding full faith and credit would improve two-state interstate processing:

A Federal statute requiring that a State's order for prospective child support payments be given full faith and credit by another State. Paternity orders are usually considered final judgments and are therefore entitled to full faith and credit in other States.²⁵ Likewise, past due support or arrearages are considered final judgments.²⁶ However, orders for prospective support payments are modifiable and not considered final; therefore, they are not entitled to full faith and credit. To

address this problem, the Interstate Commission recommended a Federal statute requiring that orders for prospectively-owed support be given "final judgment" status for purposes of full faith and credit, but still be modifiable. Such a statute would make an order for prospective support enforceable, on its own terms, by other States.

A Federal statute requiring States to give full faith and credit to another State's order, whether the order was issued by a court or through administrative process. Some States do not give full faith and credit to administrative orders, and therefore refuse to honor or enforce such orders issued by other States.²⁷ The Administration has proposed legislation that would require a State to give full faith and credit to determinations of paternity made by another State. This provision would apply whether the determination was made through administrative or judicial processes. However, this proposal is limited to paternity establishment. The Interstate Commission recommended Federal legislation requiring that any support order, whether issued by a court or through administrative process, be given full faith and credit by another State.

A Federal statute requiring uniform terms in support orders or use of a standard order or order abstract. Development of standard support order language would facilitate full faith and credit. Such standard language would allow a responding State to understand an existing order's terms easily and quickly so that it could recognize and enforce the order.²⁸ There are three options which could be mandated by Federal legislation:

1. Uniform terms in orders. The Interstate Commission identified fourteen terms that it recommended be included in every support order.²⁹
2. Standard abstracts. The Interstate Commission also recommended use of a standard abstract that would summarize the contents of the order. A Federal mandate could require that the abstract be attached to all orders.
3. Standard orders. Another possibility is to go beyond the Interstate Commission recommendations and mandate the use of a standard order so that all orders would look alike. This

option is more likely to be opposed by courts and would require some States to change their statutes and customs.

Interstate Compacts

The Interstate Commission recommended that the Federal government encourage interstate compacts between States that share a high volume of interstate activity.³⁰ Compacts are based on the idea that, particularly in cases where the parties live near each other but in different States, State boundaries and differing State practices should not be an impediment. Under a compact, certain practices used by one State would be acceptable in the other State. Interstate compacts could govern areas such as: reciprocal recognition of method and proof of service of process; honoring out-of-state warrants; reciprocal acceptance of evidentiary standards and discovery methods; and administrative recognition of out-of-state orders.

Compacts could either be informal agreements or formal agreements ratified by State legislatures and approved by Congress. OCSE could encourage compacts by promoting them through written materials and training, or even providing funding. The Interstate Commission recommends 90 percent Federal Financial Participation (FFP) for planning and implementation of compacts.

Administrative Enforcement Techniques

Under Federal law, a responding State is required to enforce an out-of-state income withholding request as it would in an in-state case, without the need for a URESA packet, other documentation, or registration of the order.³¹ UIFSA envisions a greater role for enforcement techniques like interstate wage withholding, which it calls "administrative enforcement". Under UIFSA, a responding tribunal must attempt enforcement through administrative procedures, that do not require registration, prior to registering an order.³² Such administrative interstate enforcement techniques would reduce burdensome paperwork and documentation requirements and expedite the process. However, most States have few administrative enforcement techniques beyond interstate wage withholding.

Federal legislation could build on UIFSA by requiring that States adopt additional administrative enforcement techniques under which States would simply enforce an incoming interstate case as if it were its own case, without the need for registration. For example, a Federal statute could require States to enforce other States' contempt orders and to honor other States' requests for the imposition of liens against the obligor.

INTERSTATE LOCATE

In either a two-state or long-arm case, child support cannot be established or enforced unless the obligor, his assets, and/or his employer are located. However, when an obligor resides or works out-of-state, locate information may be particularly difficult to obtain.

The Interstate Commission recommended a national locate network linking State's automated child support systems. The Administration for Children and Families is already implementing a network that would largely meet the Commission's recommendation. The Child Support Enforcement Network (CSENet) is a nationwide communications network which will, as recommended by the Commission, link State's automated child support systems. It will allow locate inquiries and information to be sent electronically from State-to-State, reducing the paperwork and staff-time required. The CSENet contract has been awarded and the network is currently being tested by selected States. CSENet may help to facilitate the use of long-arm jurisdiction since it will allow easy access to out-of-state information without requiring the initiation of an interstate case.

However, CSENet does not completely conform with the Interstate Commission's recommendation for a national locate network. In one way, it actually goes beyond the Commission's recommendation: CSENet will allow interstate cases, and not just locate data, to be referred from State-to-State electronically. But in other ways, the Commission's recommendation is more expansive than CSENet:

- The Commission recommended that States have direct electronic access to the records of other State IV-D

- agencies. CSENet does not provide direct access but only allows requests for information to be sent electronically.
- The Commission recommended that the network be connected to the Federal Parent Locator Service (FPLS). The FPLS provides access to locate data from federal agencies and State Employment Security Agencies. CSENet is not linked to the FPLS.

Therefore, the Interstate Commission's recommendations provide ideas for how CSENet might be expanded in the future. In addition, other reforms, such as the reporting of new hires (discussed in another issue paper) should improve interstate locate.

STAFF AND TRAINING

No matter how many Federal mandates are imposed with the goal of improving interstate processing, having staff to work interstate cases is still essential. First, staff must have knowledge of the interstate process and procedures. Some IV-D agencies have established staff units that exclusively handle interstate cases. This specialization allows staff to develop expertise in the area of interstate processing. Training on interstate issues is also needed, particularly on new laws and procedures such as UIFSA.

In addition, a IV-D agency must have an adequate number of staff to work interstate cases. IV-D agencies contacted for a recent GAO study³³ reported an median overall caseload of 1000 per worker compared to a median caseload of 850 for workers who handle interstate cases. These numbers suggest that States have given additional staff resources to interstate cases in recognition of the difficulty and complexity of processing such cases. However, the caseload per worker, even for interstate cases, is high.

INTERNATIONAL ENFORCEMENT

While interstate enforcement is complicated, cases where the obligor lives abroad can be even more complex. In the absence of Federal action in this area, States have developed agreements

providing for reciprocal enforcement with other countries. Most States have agreements with Germany, Great Britain, and at least one Canadian province.³⁴ Despite State efforts, many countries are not covered, and even where agreements exist they sometimes do not work well, due to problems with the translation of foreign languages in orders and petitions for example.

To address this problem, the Interstate Commission recommended that the U.S. sign and ratify the United Nations Convention on the Recovery Abroad of Maintenance of 1956, which would provide a means to enforce a support obligation overseas. Under the treaty, the U.S. would designate a central authority, perhaps a Federal agency, to handle incoming and outgoing international requests for enforcement. About 40 countries have ratified this convention, including all Western European countries. The Federal government could also encourage States to continue developing agreements with countries that have not ratified, and therefore would not be covered by, the U.N. Convention.

ENFORCEMENT IN CASES INVOLVING INDIAN TRIBES

When at least one parent or child in a paternity or child support matter is a member of an Indian tribe or lives on a reservation, tribal courts may have concurrent or exclusive jurisdiction. Jurisdictional issues frequently create confusion, legal challenges to both tribal and State action, a lack of reciprocity between States and tribes, and ultimately a lack of enforcement.

UIFSA partly addresses this problem by including Indian tribes in the definition of "State", and as a result tribes will be treated similarly to States under UIFSA. To further improve the situation, the Interstate Commission recommended that Federal government encourage tribes and States to enter into Intergovernmental Agreements to resolve jurisdictional issues, encourage reciprocity and recognition of both State and tribal orders, and facilitate child support collections. The Commission also recommended enactment of Federal legislation clarifying that full faith and credit be given to both tribal and State orders so that tribes and States will recognize each other's orders.

There is also debate as to whether tribes should be eligible to receive Federal funding to operate their own IV-D programs. The Interstate Commission recommended demonstration projects to test various models for providing child support services to Indian children. For the long-run, the Commission recommends tribal IV-D programs with 100 percent Federal funding.

MILITARY ENFORCEMENT

Enforcement against obligors who are military personnel also warrants special attention. In particular, service of process against U.S. Government employees stationed abroad or on military facilities within the U.S. can be difficult. To address these problems, the Interstate Commission recommended that every branch of the military and every other Federal agency designate an agent for receiving service of process in paternity and child support actions for employees stationed overseas. Service on the agent would have the same effect as service on the employee. The Commission also recommended a Federal statute requiring that all Federal employees be available for civilian service of process. Currently, some military bases are off limits to civilian process servers. In addition, the Interstate Commission recommended a Federal statute establishing uniform leave granting procedures for military personnel to allow attendance at hearings on paternity and child support matters.

A draft Executive Order, currently in clearance, would enact some of the Commission's recommendations regarding military and Federal employees if signed by the President. In addition, the Executive Order would mandate a full review of current policies and practices within the military to ensure that children of military personnel are provided financial and medical support in the same manner and within the same timeframes as is mandated for all other children due support.

WHAT IF ENFORCEMENT IS FEDERALIZED?

If, as a result of welfare reform, enforcement were completely federalized, interstate improvement in the areas of order establishment and modification and paternity would still be

needed. Therefore, all of the reforms discussed above, with the exception of direct withholding and administrative enforcement techniques, would still be appropriate. Some sections of UIFSA would no longer be applicable and could either be deleted or revised to reflect Federal enforcement. However, if enforcement were not completely federalized, and there was still a role for State enforcement, UIFSA could remain as currently written.

WHAT IF THE PROGRAM BECOMES UNIVERSAL?

If the government child support program were expanded to cover all cases, reform of the interstate process would still be needed, and most of the reforms discussed in this paper would still be applicable. UIFSA could easily apply to a universal program since it does not mention the IV-D program and applies to all cases regardless of IV-D status.

CONCLUSION

The reforms discussed in this paper could dramatically improve interstate processing, particularly when combined with other changes such as central registries, reporting of new hires, and financial incentives (all issues being examined by other workgroups). In addition, as States continue to implement automated systems and CSENet, the interstate process is likely to improve. However, if too many Federal mandates are imposed on States at one time, there is a danger of overwhelming the IV-D programs which are still implementing Family Support Act requirements. As a result, there is a need to prioritize and phase in the reforms.

Of the interstate reforms, UIFSA and "child-state" jurisdiction are the most far-reaching and would substantially reduce the interstate caseload by allowing one-state processing. Other reforms designed to facilitate one-state action, such as service of process reform and incentives to use long-arm, are also needed. To the extent that two-state action can be avoided, the interstate problem can be avoided.

ENDNOTES

1. This paper uses the term "obligor" to include obligors who owe support under an order, fathers with paternity established but no support order, and alleged fathers who have not had paternity established.

2. Child Support Enforcement: Sixteenth Annual Report to Congress (for the period ending September 30, 1991), Office of Child Support Enforcement.

3. Under Federal law, a IV-D agency may also apply to the Secretary for Health and Human Services for special permission to use a U.S. district court to enforce a court order for support against an out-of-State obligor if the IV-D agency can demonstrate: (1) the obligor's State has not undertaken to enforce the order within 60 days of the receipt of a request, and (2) use of the U.S. district court is the only reasonable method of enforcing the order. However, this provision is rarely if ever used, partly because States may be unwilling to single-out other States for failure to work an interstate case when the interstate problem is so pervasive. The Federal Office of Child Support Enforcement (OCSE) may want to want to publicize the availability of this remedy in order to encourage its use.

4. Note that national or State directories of child support orders, discussed in papers by the Central Registries and Reporting of New Hires Team, would be beneficial in identifying existing orders in a case, and therefore would be helpful in preventing multiple orders under UIFSA.

5. According to Section 611 of UIFSA, in order for a responding tribunal to modify an existing support order issued in another State, the responding tribunal must register the existing support order and, after notice and hearing, find that: (1) the child, the individual obligee, and the obligor do not reside in the State that issued the existing order; the petitioner who seeks modification is a nonresident of the responding State; and the respondent (the non-petitioning party) is subject to the personal jurisdiction of the responding tribunal; or (2) an individual party or the child is subject to the personal jurisdiction of the tribunal and all of the individual parties have filed a written consent in the issuing tribunal providing that a tribunal of this State may modify the support order and assume continuing, exclusive jurisdiction over the order.

6. Such modification of support orders is essential to ensuring that award amounts reflect the current needs of the child and circumstances of the parents, and remain consistent with guidelines for determining support awards. On the other hand, limiting States' ability to modify other States' existing orders

has some benefits. It helps prevent unwanted modifications and multiple orders.

7. For example, UIFSA provides that a State using UIFSA can initiate or respond to interstate cases where the other State does not use UIFSA. Furthermore, to accommodate the provision for one controlling order, UIFSA contains a priority scheme for determining which order is controlling when multiple orders already exist in a case.

8. Even a verbatim mandate would still allow some State flexibility since many terms in UIFSA are not defined or enclosed in brackets, meaning the State is free to replace that term with a similar one.

9. The IV-D State plan approval process, under which each State is required to submit a plan providing for mandated requirements in order to receive Federal funding, could be used as a compliance mechanism. A plan can be disapproved if it does not contain all mandated elements, resulting in the loss of all IV-D funding. A less drastic compliance mechanism, e.g. a reduction in funding rather than the termination of all funding, may be more appropriate.

10. "Supporting Our Children: A Blueprint for Reform", The U.S. Commission on Interstate Child Support's Report to Congress, p. 79.

11. In 1978, the U.S. Supreme Court issued this opinion in the case of Kulko v. Superior Court, based on an interpretation of the Due Process Clause of the Fourteenth Amendment.

12. Some States' laws allow for long-arm jurisdiction on "any basis consistent with the constitutions of this State and the United States". Such a State may be able to attempt use of "child-state" jurisdiction under its existing statute.

13. Under the third option, the Federal law requiring States to establish child-State jurisdiction would have to expand or tinker with the Federal court system's jurisdiction in order to include provision for an expedited appeal to the Supreme Court.

14. "Supporting Our Children: A Blueprint for Reform", The U.S. Commission on Interstate Child Support's Report to Congress, p. 86.

15. However, it is not clear that the Supreme Court would choose to hear the case.

16. "Supporting Our Children: A Blueprint for Reform", The U.S. Commission on Interstate Child Support's Report to Congress, p. 86.

17. State action would be subject to the same Fourteenth Amendment analysis that served as the basis for the Kulko decision, which found that a State's jurisdictional reach was limited. Some legal scholars, however, believe that "child-state" jurisdiction could still be upheld as constitutional based on a Fourteenth Amendment analysis. On the other hand, a Congressional finding or statute would circumvent the Fourteenth Amendment issue and allow the matter to be analyzed from a Fifth Amendment perspective. Several law professors contacted by the Interstate Commission asserted that Congress has the power under the Fifth Amendment to regulate State jurisdiction.

18. The benefits of "child-state" jurisdiction may be greatest in the areas of paternity and support order establishment, rather than enforcement. Under current law, most enforcement techniques, except for wage withholding, require two-State action and cannot be implemented by long-arm across State lines. Even if these laws were changed (see section in paper on administrative enforcement techniques) States using "child-state" jurisdiction will still likely have to rely on the obligor's State to take certain actions, such as assistance with discovery, in enforcement proceedings. If "child-state" jurisdiction is successfully established, a Federal mandate or financial incentives, similar to the options discussed in the long-arm section of the paper, may be required to encourage its use.

19. "Supporting Our Children: A Blueprint for Reform", The U.S. Commission on Interstate Child Support's Report to Congress, pp. 83-84.

20. General Accounting Office, Interstate Child Support: Wage Withholding Not Fulfilling Expectations, February 1992.

21. The Interstate Commission, which endorsed establishment of a national subpoena, recommended that: (1) the subpoena must be honored by Federal, State, and local governments, private employers, and any person or entity that owes periodic income; (2) the scope of the subpoena be limited to 12 months of income, allowing for adequate information without being overly burdensome; (3) hearings, with limited defenses, be held in the employer's State if the subpoena is not honored; and (4) information obtained via the subpoena shall be admitted as evidence.

22. "Supporting Our Children: A Blueprint for Reform", The U.S. Commission on Interstate Child Support's Report to Congress, p. 92.

23. "Supporting Our Children: A Blueprint for Reform", The U.S. Commission on Interstate Child Support's Report to Congress, p. 92.

24. If an obligor has already received initial service, he is aware of the proceedings, and he may inform the tribunal of address changes if he moves so that the tribunal will be able to deliver subsequent service.

25. To ensure this is the case universally, the Administration's paternity proposal, contained in the President's FY1994 budget, proposes a Federal statute that would require each State to give full faith and credit to a determination of paternity made by another State.

26. The "Bradley Amendment", enacted in 1986, is a Federal statute which requires that past due support installments be treated as final judgments by operation of law.

27. "Supporting Our Children: A Blueprint for Reform", The U.S. Commission on Interstate Child Support's Report to Congress, p. 90.

28. If national or State directories of child support orders are developed (see papers by the Central Registries and Reporting of New Hires Team), standard order language would make the operations of such directories more expeditious and efficient since the contents of orders could be more easily extracted for filing with a directory.

29. Terms identified by the Interstate Commission are: the date that support payments are to commence; the circumstances upon which support payments are to terminate; the amount of current child support expressed as a sum certain, arrearages expressed as a sum certain as of a certain date, and any payback schedule for the arrearages; whether the support obligation is in a lump sum (nonallocated) or per child; if the obligation is lump sum, the event causing a change in the support obligation and the amount of any change; other expenses, such as those for childcare and healthcare; names of the parents; social security numbers (SSNs) of the parents; names of all children covered by the order; dates of birth and SSNs of children covered by the order; court identification (FIPS code, name and address) of the court issuing the order; method of payment; healthcare support information; and the party to contact when additional information is obtained.

30. Likely candidates for compacts include: States which share a metropolitan area (such as Washington, D.C. and its suburbs in Virginia and Maryland); States in the same region; States that share borders; or States whose residents frequently migrate back and forth.

31. Unless registration: is for the sole purpose of obtaining jurisdiction for enforcement of the order; does not confer jurisdiction on the court or agency for any other purpose (such as modification of the underlying or original support order); and does not delay implementation of withholding beyond timeframes.

32. Note that even if a State ends up registering the order, registration under UIFSA, unlike URESA registration, is limited to enforcement purposes and does not open the underlying order to modification.

33. General Accounting Office, Interstate Child Support: Wage Withholding Not Fulfilling Expectations, February 1992.

34. "Supporting Our Children: A Blueprint for Reform", The U.S. Commission on Interstate Child Support's Report to Congress, p. 209.

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CHILD SUPPORT GUIDELINES: A REEXAMINATION

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June, 1993
Final Draft

EXECUTIVE SUMMARY

There has been an explosion of information on child support guidelines since 1988 when Congress first mandated that states use guidelines to establish and modify child support awards in all child support cases. Since then, states have developed guidelines in various incarnations of the income shares, percentage of income, and Melson formulae. While guidelines have led to more uniform treatment of similarly-situated parties within a state, there is still much debate concerning the merits of specific guideline formulae. For example, commentators have opined that the income shares formula is based upon inaccurate assumptions, the Melson formula is overly complex, and the percentage of income formula overly simple.

The adequacy of child support awards resulting from application of guidelines has been placed in question, in part because we lack adequate information on the true "costs" (monetary and nonmonetary) of raising a child by two parents in separate households; and in part because disagreements abound over what costs (e.g., medical care, child care, post-secondary education, non-minor and/or multiple family support) should be included in guidelines.

States consider different factors as deviations from the guidelines depending upon the state, and it is unclear whether deviations are the norm or the rule in some areas.

The Family Support Act mandated that states review guidelines every four years to ensure their accuracy, and states must also conduct reviews and adjustments of their cases every three years or upon request. Some states have deemed the enactment of guidelines to constitute a change in circumstances warranting a review and adjustment, a fact to consider in our discussion of instituting a national guidelines structure, or amending the current guidelines. Should we choose to alter the current guidelines structure, we should balance concerns about the effect of complicated guidelines as a disincentive for states to conduct review and adjustments of cases, and the possibility that more "simple" guidelines do not necessarily yield the best result for either the parties or the child support system.

The U.S. Commission on Interstate Child Support has recommended that a national guidelines commission be formed to study the feasibility and development of a national guideline. If such a group is convened, we believe that it would be helpful to expand its focus to include a study of the strengths and weaknesses of existing guidelines, a determination whether we should replace the current guidelines structure with a national guideline, institute national minimum standards, or retain the status quo.

National guidelines have both proponents and opponents, the proponents claim that such guidelines will reduce forum shopping, and reduce confusion in their interstate application, while opponents argue that it will be difficult for such guidelines to

take into account regional differences in the cost of living. To some extent, our decision whether to use them may be dictated by the implementation of child support insurance, or Federalizing the child support system. If we desire to implement national guidelines or national minimum standards to improve the current system, we must weigh many issues (including the treatment of medical and child care, multiple families, and administration) to make it a success. We should also keep in mind that an assumption upon which the discussion concerning national guidelines is based is that their use would improve the current structure. We may want to test this hypothesis.

It is our goal that this reexamination of state child support guidelines will eventually lead to awards which more accurately reflect parties' circumstances, and prove beneficial to the families we serve.

BACKGROUND

Before the passage of the Child Support Enforcement Amendments of 1984, state judges had considerable discretion in formulating child support awards, and generally developed awards on a case-by-case basis. This led both to great variations in the amount of awards, even in cases with comparable factual scenarios, and an inequitable treatment of similarly-situated parties. Child support awards were also viewed as inadequate to meet the true costs of raising children as measured by economic studies.¹

These problems provided Congressional impetus for the Child Support Enforcement Amendments of 1984, P.L. 98-378, 42 U.S.C. 667, which required states to formulate guidelines for determining appropriate child support obligation amounts and to distribute them to judges and other individuals with authority to establish obligation amounts by October, 1987. However, the 1984 amendments did not compel use of guidelines.² It was not until 1988 that real teeth were added to guidelines with the enactment of the Family Support Act, P.L. 100-485, which mandated establishment and use of guidelines for child support award amounts within a state. The legislation provides that guidelines are to be established by law, judicial or administrative action, and requires them to be reviewed at least once every four years to ensure that their application results in the determination of

appropriate child support award amounts. The Family Support Act required the guidelines to be made available to all judges and other officials who had the power to determine child support awards within a state, and established a rebuttable presumption that the amount of the award resulting from application of the guidelines is the correct amount. As a result of the Family Support Act, all child support awards set or modified after October 13, 1989, whether established through a judicial proceeding, or through an administrative process, must be based upon presumptive guidelines, unless application of the guidelines would work an unjust or inappropriate result.³ If the decisionmaker does not apply the guidelines, she must make a written finding on the record that application of the guidelines would be unjust or inappropriate in a particular case.⁴

Developing child support guidelines is a difficult task. Many studies examine the different approaches to child support guidelines. Three approaches to child support guidelines that have been adopted by the States are: incomes shares, percentage of income, and the Melson formula. These approaches serve as models for states to establish guidelines in a uniform and equitable fashion.

. The Income Shares Formula .

The Income Shares model is based on the concept that the child should receive the same proportion of parental income that she would have received if the parents lived together.⁵ The

calculation considers the incomes of both parents. This model is implemented in approximately thirty states, Guam, and the Virgin Islands. It also provides states with optional versions in calculating child support awards; using net or gross income base of both parents, treatment of child care, and extraordinary medical expenses (see North Carolina's worksheets in appendix).

Washington uses a variation of the income shares formula which applies net incomes in setting child support awards. The guideline allocates a percent of combined net incomes based on the level of income, number of children, and the ages of each child. It employs different payment schedules depending on the age of the child(ren). Noncustodial parents with net incomes below \$500 have orders set on a case-by-case basis. Child care expenses are separated from the support obligation, and there are no provisions for medical expenses.

One advantage in using this model is that it helps ensure that the child support award reflects the relative incomes of each parent, producing what many consider to be a more fair allocation of cash support from one parent to another.

Disadvantages in using this model are that, despite the philosophy that the child support award be based on both parents' incomes, the child will almost certainly have a substantially reduced standard of living unless she is in the custody of the wealthier parent.⁶

In her critique of Robert Williams' formulation of the income shares formula, Nancy Polikoff noted several problems

inherent to it: 1) Williams relied on data from the (CES) 1972-73, which was not the most recent data at the time he developed the income shares formula. A subsequent CES in 1982-83 amended the definition of "consumption" to include pensions and personal insurance, which were left out of the 1972-73 study; 2) the model is based upon a faulty premise--that allocation of a child's share of consumption in one household, two-parent unit carries over to two-parent, two-household units; 3) the formula is based upon "current consumption" estimates, which do not take into account repayment on principal (e.g., mortgage) or savings.^{7,8}

Percentage of Income

The basic principle of the percentage formula is that the noncustodial parent should pay a flat percentage of his/her gross income in child support. This formula often includes an adjustment for pre-existing support orders, and it takes into account the number of dependents to be supported. But unlike the other formulae, it does not take the custodial parent's income into account (assuming the custodial parent spends an appropriate portion of income directly on the child(ren)).

Currently, approximately eight states use a percentage of the obligor's net income to calculate child support awards, and seven states calculate the obligation based upon the obligor's gross income. (See Mississippi's worksheet in appendix). Most of the states that employ this approach calculate a sum certain

support obligation, while Wisconsin expresses the obligation as a percentage.

There are advantages in using this approach. The formula is easier to use, generally requiring discovery of the noncustodial parent's income only. An advantage to Wisconsin's version is that it allows the amount of child support to fluctuate automatically as the obligor's income fluctuates without a need to return to a court or an administrative agency for adjustment of the award.

Disadvantages of using the percentage of income version are that it may be unfair both because it does not consider the custodial parent's income, and because the same percentage of income is taken for both poor and wealthy obligors. In Wisconsin's case, it may be administratively burdensome to keep track of such orders by using a lengthy annual reconciliation process. Furthermore, Wisconsin's flat percentage of income approach can create problems with interstate cases. Missouri and Kansas do not accept percentage expressed orders until they are converted to a dollar amount.

Melson and Cassetty Formulae

The three basic principles of the Melson Formula are: 1) parents keep sufficient income for their basic needs and to encourage continued employment; 2) parents should not retain any excess income until the basic needs of the dependents are met;

and (3) when income is sufficient to provide the basic needs of the parents and all dependents, the dependents are entitled to share any additional income so that they can benefit from the noncustodial parent's higher standard of living.

The Melson formula incorporates two theories; cost-sharing and income-sharing. The formula first determines the primary support need or self support for the parents, then the support needs of the children (including child care costs and extraordinary medical expenses), and allocates each parent's share in proportion to their net income. This is the cost-sharing aspect. The next steps to the formula provide income-sharing, which is a percentage of the parents' net income available for the standard of living adjustment (SOLA). Once the total obligation from both parents' incomes is determined, the custodial parent retains his/her portion for the household while the noncustodial parent pays the child support.

Delaware, Hawaii, and West Virginia use the Melson formula, and Montana uses a variation of it. (See Delaware's attached computation worksheet). The formula is comprehensive and allows application in situations where split custody and multiple families are involved. But its comprehensiveness may be one of its disadvantages because so many factors are considered in the calculation, that it is complex to use and apply.

The Cassetty Model is another approach to develop guidelines. This model is an income equalization standard which is intended to ensure that the children of divorced parents

experience the least possible economic hardship and continue to enjoy the pre-divorce standard of living. Currently, this model is not implemented in any jurisdiction.

While guidelines have provided greater standardization and equity to child support awards, problems still remain with their use. In interstate cases, confusion abounds on the application of different State laws and guidelines, and Wisconsin is still developing procedures to implement a percentage ordered system. Debates continue over the adequacy (or inadequacy) of guidelines, and which guideline form establishes the result that is most consistent with the "reality" of the parties' circumstances.

ISSUES/POTENTIAL SOLUTIONS

Are guidelines adequate?

Title IV-D of Social Security Act (the Act) (§ 451 et seq.) (42 U.S.C. 651 et seq.) establishes Federal requirements for the child support program and for guidelines.¹ The Act calls for states to establish guidelines which are 'appropriate' but does little to define appropriateness and omits mention of 'adequacy'. The regulations which implement the statutory language on guidelines at 45 CFR 302.56, are more explicit. Guidelines must be based on specific descriptive and numeric criteria and result in a computation of the support obligation, provide for the

¹This title provides a shorthand way of referring to child support agencies as "IV-D agencies" and the child support program as the "IV-D program".

child(ren)'s health care needs, through health insurance or other means, and, as part of the state's mandatory quadrennial review process, states must consider economic data on the cost of raising children, and they must analyze case data, gathered through sampling or other methods, on the application of, and deviation from, the guidelines.⁹ Although there may be many other ways of examining the adequacy of child support guidelines, data on the cost of raising children has been used as the basis for most guidelines.¹⁰

In his seminal work on guidelines for the Office of Child Support Enforcement: Development of Guidelines for Child Support Orders, Bob Williams used estimates of the cost of raising children by Thomas Espenshade of the Urban Institute in developing guideline prototypes.¹¹ The latest estimates of the cost of raising children have been done by David Betson of Notre Dame University.¹² Lewin/ICF used this data to measure the adequacy of State guidelines in a report to Congress as directed by staff at the Office of the Assistant Secretary for Policy and Evaluation and the Office of Child Support Enforcement (OCSE) entitled: Estimates of Expenditures on Children and Child Support Guidelines.¹³

The Betson report used the Consumer Expenditure Survey from 1980-6 to estimate the cost of raising children; formulae were then applied from the economic literature to derive costs from the family data available in the Consumer Expenditure Survey. The study applied various formulae and derived cost figures for

the high and low ends of the spectrum using the Engle Formula based upon food consumption costs and the Rothbart Formula based upon the consumption of adult goods. Lewin/ICF next applied state guidelines to three assumed income levels for a typical two child family. They found that most states' guidelines in effect at the date of the study fell within two extremes of child cost estimates (see Tables). However, seven states' guidelines were below the lowest level of acceptable costs of raising children. These States were: Alaska, Arkansas, Illinois, Iowa, Montana, Oregon, Texas, and Wyoming.

In October 1989, Jessica Pearson of the Center for Policy Research, performed a study for the State Justice Institute on guideline adequacy in three States: Illinois, Hawaii, and Colorado. She surveyed attorneys and judges on the adequacy of awards produced by the guidelines¹⁴ and found that a majority of judges and attorneys felt that the orders were inadequate for low income cases, and adequate for middle income and high income families.

Irwin Garfinkel has indicated that he believes guidelines will lead to large increases in child support award levels over time if they are: (1) actually implemented and not "undermined" by judicial discretion; (2) used to update, as well as set, initial awards; (3) used for setting initial awards and updating for the nonwelfare, as well as the welfare, population; and (4) not eviscerated by reversals in public commitment to enforce the parental child support obligation.¹⁵

Under the Downey/Hyde Child Support Enforcement and Assurance Proposal, states would establish child support orders, and send them to the Federal government to be registered for collections purposes. The Federal government would review all initial orders and could rescind and reestablish any order that falls outside the Federal guidelines that is not adequately justified by the state.¹⁶

A recent Government Accounting Office (GAO) study opined that there is "[n]o single estimate of expenditures on children recognized as the best measure of the cost of raising a child."¹⁷ While estimates of expenditures on children are used to approximate what it costs to raise a child, they do not include the nonmonetary costs of raising children such as the opportunity costs, lost leisure time, and changes in family savings as a result of having a child (e.g., savings for college education).¹⁸ For child support guidelines to be "accurate", it would be helpful if we could gain a better estimate of the costs, both monetary and non-monetary, of raising a child for two households.

What is the range of child support guidelines?

There is a considerable range in child support award amounts resulting from the application of state guidelines. The following table uses figures developed by Lewin/ICF to demonstrate the percent of gross income to be ordered for the support of children by various state guidelines. It also shows

the amount which would be paid under the guidelines for all states at assumed income levels.¹⁹ Finally, it demonstrates the percentages of income spent for a comparable number of children in an intact family.

Table 1

**RANGE IN AMOUNT OF CHILD SUPPORT ORDERS UNDER GUIDELINES
IN EFFECT AS OF FEBRUARY 1990**

Gross Income:	\$15,000 ncp \$10,000 cp	\$30,000 ncp \$15,000 cp	\$35,000 ncp \$25,000 cp
% of income ordered	15%-35%	17%-33%	16%-31%
Monthly amt.	\$185-\$434	\$436-\$819	\$470-\$895
Exp. in intact Families	21%-39%	19%-34%	18-33%

Note: Gross income levels assumed, percent of income ordered for two children, monthly amount of child support ordered under guideline for same two children, expenditure for two children in intact families applying Rothbart and Engel formulae to the Consumer Expenditure Survey.

cp= custodial parent, ncp=non-custodial parent.

(Source: Lewin/ICF Estimates of Expenditures on Children and Child Support Guideline, [A Report to Congress] October 1990)

Multiple, Second, or Step Families

With the exception of the payment of an existing child support order and payment or receipt of spousal support, few States regularly take into account multiple families (e.g., one father with several children by different women, or one mother with children by different men), second or step-families or new spousal income. Karen Fox and colleagues from the University of Chicago conducted a recent study which shows that twelve years after a divorce, two-thirds of white women with dependent children from an absent parent are remarried.²⁰

Most sources report that fathers remarry more frequently than mothers. The current trend is for remarriage following divorce to occur with greater frequency, at earlier ages, and with less time between marriages. ²¹

Because these cases are becoming more frequent with the changes occurring in our society, and because they pose special concerns, we must examine how to treat them. For example, in a case where a couple divorces after having two children, and the man remarries and has two more children with a new spouse, who already has one child of her own, how should that obligor's income be divided among the five children? Should the child who is not his biological child receive nothing? Should all of the children receive the same percentage or given amount? (Which is unlikely to be a large sum unless the obligor is wealthy). Should his first family receive more? His second? Should he provide health care coverage for his first family?

One way states are handling multiple family situations is to deviate from the guidelines, because their application would leave the obligor with little upon which to live.

Table 2²²

NUMERIC PROVISIONS IN GUIDELINES FOR STEP OR SECOND FAMILIES
(For Guidelines as of March 31, 1990)

Provision	No. of States
Pre-existing Child Support Order deductible from Payor's Income	42
Spousal Support Received Included In Recipients Income	38
Spousal Support Paid Deductible from Payor's Income	31
Needs of Subsequent Biological or Adoptive Children Reflected in Formula	11
Income of a Subsequent Spouse or Partner or Reduced Expenses Reflected in Formula	2
Needs of Step-Children Reflected in Formula	2
Child Support Received Reflected in Recipient's Income	1
Needs of Dependent Subsequent Partner Reflected in Formula	0

The U.S. Commission on Interstate Child Support recommends that states formulate a policy regarding: (1) whether a remarried parent's spouse's income affects a support obligation; and (2) the costs of multiple family child raising obligations, other than those children for whom the action was brought. The Commission recommends that the policy be declared explicitly in the State's guidelines or in an adjacent section of the State's code and that, if the support orders should be altered because of these factors, the formula for calculating the alteration under the guidelines should be explicitly stated.²³

The Downey-Hyde proposal would require guidelines to take into account such circumstances as joint physical custody, split custody or extraordinary visitation expenses.²⁴ In a Nevada case, it was found that the statutory scheme provides that 25 percent of gross monthly income must be allocated to support two children from a first marriage. No provision for support of subsequent children in a second marriage allows diminished support to others.²⁵

Treatment of Medical Coverage Under State Guidelines

The implementing regulations of the FSA, 45 CFR 302.56(c)(3), require states to include provisions for children's health care needs, through health insurance coverage, or other means. Federal regulations also require IV-D agencies to petition for health coverage to be included in a cash child support award. (See 45 CFR 303.31(b)(2)). Unfortunately, these requirements do not necessarily mean that decisionmakers order health coverage for children, nor that children receive appropriate coverage. A recent Census Bureau Study found that health insurance coverage was included in only 39 percent of existing child support awards.²⁶

A recent telephone survey of state IV-D directors which OCSE conducted, revealed that states have chosen to treat health care coverage in diverse ways under their guidelines. Some Judges or administrative decisionmakers are refusing to order medical

support if the actual out-of-pocket cost of medical insurance to an obligor is not "reasonable" even if it is available through an employer. For example, Connecticut courts will not order medical support if premiums exceed \$25 to \$35 per month. Nebraska judges will not order medical support if premiums exceed one-third of the cash amount. In eight States, (Delaware, Georgia, Illinois, Louisiana, Nevada, North Dakota, Rhode Island, and Tennessee), it is a matter of judicial discretion whether to order medical insurance if the cost is too high in relation to the cash child support award amount or the child support order or the employee's wages.

Other states address the matter by deducting an amount from the cash support award for the cost of the medical support premium. For example, six states (Alaska, Massachusetts, Oregon, Pennsylvania, South Carolina, and Utah) reduce cash child support on a dollar-for-dollar basis against health premiums ordered. Fourteen states (Alabama, Arkansas, Colorado, Florida, Indiana, Iowa, Kentucky, Maine, Maryland, Minnesota, Nebraska, New Jersey, North Carolina, and Vermont), deduct the total amount of medical premiums paid by the employer's obligor from gross income before arriving at a base to which guidelines are applied.²⁷

One way to treat all types of medical, dental, and related care, would be to include them in child support guidelines. Otherwise, noncustodial parents may try to avoid paying for any of the expenses for orthodonture, psychiatric or psychological care, optical care, physical therapy, etc.²⁸ Senator Bradley's

bill (S. 689), which he recently introduced, requires in section 208, the state child support guidelines "take into account work-related or job-training related . . . health insurance and related uninsured health care expenses." Demonstrating its concern that current guidelines were not adequately meeting children's health care coverage needs, the Interstate Commission also recommended that states have and use laws providing that State child support guidelines take into account health insurance, related uninsured healthcare expenses, and extraordinary school expenses incurred on behalf of the child of the parents for whom the order is sought.²⁹

In a paper she prepared for the Women's Legal Defense Fund's National Conference on the Development of Child Support Guidelines, Sally Goldfarb argued that, "[i]f unnecessary or unreasonable medical expenses are to be excluded, there should be a heavy burden of proof on any noncustodial parent who wants to demonstrate that a given expense was unnecessary or unreasonable."³⁰ We should perhaps define however, what is meant by "unnecessary" or "unreasonable." Further, Goldfarb does not favor allowing reductions in cash support payments in exchange for providing medical insurance, but rather that medical insurance should be viewed as a separate obligation in addition to cash support awards.³¹ For example, California's child support guidelines include in its definition of "gross income" the deductions for health insurance premiums for the parent and for any children the parent has an obligation to support and

state disability insurance premiums.³² California also defines "health insurance coverage" to include vision care, dental coverage, (whether a part of existing health insurance coverage or as issued as a separate policy or plan), and the provision of health care services regardless of whether the provided by a fee for service, health maintenance organization, preferred provider organization, or any other type of health care delivery system under which medical services could be provided to the dependent child or children of an absent parent.³³

Another way to treat the costs of medical insurance may be to allow the custodial parent to provide the child with coverage, as the noncustodial parent often cannot provide include former spouses in health insurance coverage.³⁴ The cost of providing for the dependent's coverage could then be allocated evenly between the parents. This would provide the custodial parent with information regarding the type or quality of health insurance coverage, and may prevent lapses in coverage from occurring under the noncustodial parent's health care plan.

Child Care Costs

States treat the costs of child care differently. Some include child care in their guidelines, (e.g., Delaware), and take into account the costs of child care as part of the costs of raising a child. Other States may ignore child care costs.³⁵ Because the costs of child care are an important component in

allowing parents to work, the Interstate Commission recommended that State guidelines take into account current or projected work related or job training related childcare expenses of either parent for the care of children of either parent.³⁶

Deviations from child support guidelines

Although recent surveys of judges and administrative personnel in Michigan, Connecticut, and Kentucky indicate that guidelines are followed in at least 90% of cases, earlier more scientific case-based surveys on mandatory guidelines in Washington, Virginia, Colorado, Hawaii, and Illinois indicate that deviations from guidelines occurred in 20% to 50% of the cases. However, in those earlier surveys, while guidelines were mandatory, they were new to the child support system. As of 1993, there were almost 50 different reasons for deviations among the States, the most important being: 1) joint custody or visitation, 2) support for other children, 3) second jobs or income, 4) stipulated agreements, 5) health care costs, 6) low income, and 7) debt or assumption of debt.³⁷

Deviations: issues related to variations in the age of majority

If child and medical support are ordered, the obligor must pay such costs on behalf of the child until the general age of majority or termination as state law requires. In most states

the age of emancipation is eighteen, but in ten, it is nineteen or twenty-one. Most states will extend the age of majority beyond the age set forth in its statutes if a child is still in high school. Many states provide for extending the age of majority indefinitely if a child is physically or mentally disabled and unable to attain self-supporting status. A few allow extension of the age of majority if a child is attending post-secondary school. Alternatively, some will cut off the duty to provide child support for children before the age of majority if they are emancipated by reason of marriage, self-sufficiency or they enter the military. Because of the differing treatment on this issue, we may want to address whether child support should be extended to post secondary students and disabled children in all states. ³⁸

Deviations: issues related to income extremes

The application of guidelines to cases with high and low incomes causes decisionmakers dilemmas. In high income cases, application of the guidelines may result in such a high monthly award amount, that some question whether it becomes spousal support in the guise of child support. (This may not necessarily be a bad thing, particularly considering that women tend to earn less than men³⁹, and nonmonetary costs of raising children are rarely, if ever, taken into account in the calculation of child support, and the custodial parent is usually a women, so that the

living standard of a child decreases after divorce or separation).⁴⁰ In such cases, award amounts resulting from application of the guidelines may be termed "windfalls," and state decisionmakers may deviate from the guidelines to award a lesser amount. Such cases may pose problems in interstate cases as well.⁴¹

In low income cases the obligor may simply lack adequate income to meet the needs of the child or come close to meeting welfare reimbursement needs.⁴² Alternatively, in the interest of welfare recoupment or in order to set a minimum, states may set an amount too high to be paid comfortably by a low income father.

Deviations: second families

Another deviation issue is the treatment of second families. According to a 1993 OCSE study, only a few states specifically allowed deviations from child support guidelines for second families.⁴³

Table 3

DEVIATIONS SPECIFIED FOR STEP AND SECOND FAMILIES (for Guidelines as of February 1993)

Deviation	No. of States
Other/subsequent children	16
Step-children	2
Other adult in household that contributes financially or subsequent spouse	2
Expenses of second family	1

Source: OCSE

This is especially important because when additional adults enter a household, the custodial parent's burden of the entire household expenditures may be reduced. (It should be noted that this is not always the case. In some circumstances, an additional adult simply puts a greater drain on the custodial parent's resources). Lewin/ICF in the Congressional Report to Congress on Expenditures on Children and Child Support Guidelines, estimated that under one formula (Engel), the expenditures for two children in a one parent home was 78% of expenditures compared to 49% for 2 adults. Under another formula (Rothbart), comparable figures ranged from 53% to 35%. "

Review and Adjustment

The use of guidelines in establishing an initial child support award does not ensure that orders, over time, continue to meet the support standards set by the guidelines. To address this problem, the FSA set forth requirements for the periodic adjustment of support orders, in accordance with State guidelines. Effective October 13, 1990, states were required to develop and implement procedures for review and adjustment of orders, consistent with a plan indicating how and when child support orders are to be reviewed and adjusted. Review may take place at the request of either parent subject to the order or at a IV-D agency's request. Any adjustment to the award must follow state guidelines. Effective October 13, 1993, (or earlier at

state option), states must have implemented a process to review orders already in the IV-D system no later than 36 months after either its establishment, or its most recent review, and if appropriate, adjusted in accordance with state guidelines. states must review all cases in which support rights have been assigned to the state, unless it has determined that review would not be in the child's best interests, and neither parent has requested a review. This encompasses child support orders in cases in which benefits under the AFDC, Title IV-E foster care, or Medicaid programs are currently being provided. It does not include orders in former AFDC, Title IV-E foster care, or Medicaid cases, even if a state retains an assignment of support rights to the extent of any unpaid support that accrued under the assignment remaining due after assistance terminates. In IV-D cases in which there is no current assignment of support rights to the state, including former recipients of AFDC, Title IV-E foster care, or Medicaid benefits receiving continued IV-D services, review is required at least once every 36 months upon parental requests. In all IV-D cases, if such a review indicates that adjustment of the support amount is appropriate, the state must proceed to adjust the award accordingly.⁴⁵

An "adjustment" has been interpreted to mean an upward or downward change in the amount of child support based upon an application of the State guidelines for setting and adjusting child support. It also includes the provision of health care needs of the child, through health insurance or other means.⁴⁶

As stated supra, the Family Support Act amended 42 U.S.C. 667(a) to require states to review their guidelines at least once every four years to ensure that their application results in the determination of appropriate child support amounts. While a review of the guidelines must occur every four years, a review of at least a segment of the IV-D agency's caseload will be occurring periodically, or at least every three years. This fact may have a significant impact upon the child support award amounts in any given state, particularly if we consider that some courts have held that the mere enactment of child support guidelines constitutes a change in circumstances substantial enough to warrant a modification of a child support award. (See for example Charlesworth v. Alaska*Child Support Enforcement Div., 779 P.2d 792 (Alaska 1989)). We can ask then, whether states would require child support awards to be adjusted every time they amend their child support guidelines, or might they instead require, as some do already, that a numerical threshold be met before a review and adjustment would be warranted? (See Rohrback v. Rohrback, 531 N.E. 2d 773 (Ohio App. 1988)).

The Interstate Commission recommends that guideline passage should be considered equivalent to a change in circumstances sufficient for modification of a child support obligation. A majority of the Commission believes that all pre-guideline orders, IV-D and non-IV-D, should be measured against the same yardstick.⁴⁷

Furthermore, because of the interdependence of the review and adjustment process and guidelines, the structure of the guidelines may have an impact on the likelihood that states will actually conduct reviews and adjustments of cases. For example, if states use a complex guideline such as the Melson formula, they may be less willing to conduct reviews and adjustments because of the difficulty of calculating awards under the formula. On the other hand, if they apply a formula such as the income shares model, which may be administered more easily but which arguably may not be comprehensive enough, the results achieved through the review and adjustment process may not be as accurate, and therefore, may not provide the child with sufficient resources. In other words, a balance needs to be struck between the ease of applying guidelines for review and adjustment purposes, and the comprehensiveness of the guideline itself. We offer that the guideline which is the "easiest" to administer may not, necessarily, provide the most desirable or "best" result in terms of either the interests of the parties involved, or those of the state.

If national guidelines are adopted, should awards be indexed to inflation or some other rate so that cost of living increases are automatic, and only material changes in circumstances would necessitate a review? ⁴⁸

Comparison of AFDC Payment and Child Support Guidelines

Although it is difficult to compare the AFDC payment with the guidelines because of lack of knowledge on fathers' incomes, it is desirable to compare levels to assess the potential for welfare recoupment. An analysis by OCSE using the low level estimates of guidelines by Lewin/ICF compared with the AFDC typical payment for the same sized family indicates that in about half the States the comparable typical AFDC amount is higher than the ordered guideline amount and in the other States it is lower. In about 14 States this variance is over \$200 per month.⁴⁹ The following table demonstrates that it is difficult to establish causality between the magnitude of guidelines and AFDC amounts and child support welfare recoupment rates.

Table 4

COMPARISON OF AFDC TYPICAL PAYMENT AND LOW INCOME CHILD SUPPORT GUIDELINE ORDER AMOUNT, 1990*⁵⁰

Situation	No. of States
AFDC - CS = < -\$200	5
AFDC - CS = < -\$100	8
AFDC - CS = -\$99 - 0	11
AFDC - CS = +\$1 - \$99	11
AFDC - CS = < \$100	7
AFDC - CS = < \$200	9

* AFDC = AFDC Typical Payment for a family of 3;
CS = Size of Order when guidelines for two children are followed when a non-custodial parent earns \$15,000/year.
Sources: OCSE/OFA/ACF, Lewin/ICF.

National Guidelines Commission

In its recent report, the Interstate Commission recommended that Congress create and appoint a national guidelines commission no later than January 15, 1995, to study the desirability of national child support guidelines. If the commission determined that a national guideline is advisable, the Interstate Commission recommended that it should develop a national child support guideline for congressional consideration, based upon its study of various guideline models, their disadvantages, and needed improvements.⁵¹

There is precedent for such a commission to study guidelines. At the request of the House Ways and Means Committee, the Federal Office of Child Support Enforcement appointed a national Advisory Panel on Child Support Guidelines, which reported to Congress that "guidelines can materially improve the adequacy of orders, enhance consistent and equitable treatment of litigants, and facilitate more efficient adjudication of cases."⁵² There are other examples of groups of experts performing this type of task, such as the National Commission for Commissioners on Uniform State Laws (NCCUSL), and the American Law Institute (ALI).

If a national commission were convened, it would not necessarily have to limit the scope of its inquiry to determining whether the development and implementation of national guidelines is appropriate. A national guidelines commission could study the

whole gamut of issues concerning guidelines including: current guidelines and whether they meet children's needs adequately, the use of minimum national standards (e.g., child care costs), which states could supplement at their option, or the desirability of maintaining the current system. This type of commission, studying a wide range of topics, is analogous to the Interstate Commission, which studied a wide range of interstate child support enforcement issues instead of maintaining a narrow focus.

Alternatively, the Federal government could examine the need and desirability of national guidelines. If we chose this route we may want to consider whether the government would have the credibility required to accomplish this task, how we would handle updating and oversight of awards, and whether we could ensure that all appropriate interests are represented in the development of the guidelines.

If a guidelines commission is formed, it might follow California's example and be composed of professionals from diverse fields, such as case workers, judges, economists, family law attorneys, and academicians, so that any discussion on guidelines could take into account as many perspectives as possible.⁵³ The commission could be convened for a set period of time with a definite termination date (or extended indefinitely), and could consider the use of pilots should it decide to test a potential national guideline, or minimum national standards for a guideline. Perhaps the Congressional Budget Office (CBO) could provide an estimate of the costs of both the development of such

a commission, monies it would need to operate, and the costs of any demonstration projects the commission may suggest.

National Guidelines

Before we implement national guidelines, we may want to know more about the adequacy/inadequacy of State guidelines in setting support award amounts and any problems associated with their use. We may also want to weigh whether to eliminate the current guidelines entirely, and replace them with national guidelines, or whether it is feasible to make changes to the state systems to correct their deficiencies. An assumption upon which replacing State guidelines with minimum national standards or a national guideline is based, is that their use would lead to a "better" result. We should evaluate the validity of that assumption before implementing national guidelines.

A majority of the U.S. Commission on Interstate Child Support believes that it is premature to select a particular guideline model for national applicability, and not all the Commissioners are convinced that there is a need for a national guideline.⁵⁴ However, if a national guideline commission is convened, it may very well decide that a national guideline is appropriate. Further, our decision whether to implement national guidelines/minimum standards may very well be dictated by other welfare reform proposals such as child support insurance.

If we decide to reform or replace the existing guidelines

scheme, and implement national guidelines, such guidelines could take at least one of two forms: a prescribed universally-applied support guideline that all States would adopt and use (which could be a completely new formula, one of the preexisting forms, or some combination of existing forms), or national minimum support standards that states would be required take into account and meet while retaining their own guidelines. One problem that may arise with national minimum standards is that they may become the "ceiling" rather than the "floor" for decisionmakers. Further, the distinction between the two options above blurs somewhat as one considers how individual states might handle deviations from a universally-applied national guideline, and how state processes and philosophies might, over time, lead to varied interpretations and applications of a national guideline.

Elements of national guidelines

The costs which often prove contentious in disputes over child support awards are for medical care, child care, and post-secondary educational support, as well as support for non-minors. As noted supra, states treat these costs differently, sometimes including them in guidelines, sometimes ignoring them, and sometimes treating them as deviations from the guidelines. In its report, the Interstate Commission noted that pending resolution of the national guideline issue, a majority of the Commission believes that health coverage and child care costs

should be universally included in guidelines.⁵⁵ To avoid possible forum shopping for the jurisdiction with the most beneficial age of emancipation, the Commission also recommended that a uniform cut-off of support be set at the latest of either high-school graduation, or age 18, or upon marriage, joining the military, or other emancipation by a court of competent jurisdiction. It further recommends that decisionmakers have discretion to order child support payable to age 22 for a child enrolled in an accredited post-secondary or vocational school or college and who is a student in good standing, and that support be continued beyond the age of majority for a child who is disabled and unable to support himself or herself and the disability arose during the child's minority.⁵⁶

Other Issues Pertaining to National Guidelines

There are a myriad of other issues we might consider regarding the development and implementation of national guidelines. We will mention a few here: 1) How will we define "income" for the purposes of national guidelines? 2) How should multiple family situations, or joint or split custody arrangements be treated? 3) Should we revise tax treatment of child support? 4) What criteria will be used to measure compliance? If a state does not comply, will a penalty be imposed, and what would it be? 5) How will we treat deviations under a national guidelines? Will a national guideline that is

rebuttable lose its universality if states deviate from it in a substantial number of cases? 6) Could an effective pro se process be developed? 7) What are the implications for the AFDC program and other income-based entitlements if guidelines are nationalized?⁵⁷

CONCLUSION

The use of national guidelines has both advantages and disadvantages. Advocates of national guidelines claim that they would reduce forum shopping, provide greater ease of administration in interstate cases, and would demonstrate the commitment of the government to enforcing child support and providing for its youngest citizens. Opponents counter that devising and implementing national guidelines is a monumental task, that it would be difficult to take into account differences in the cost of living and salary levels around the country, and one that should not be our highest priority. They add that forum shopping is not as great a problem as was once thought, and that the implementation of national guidelines may intrude into an area over which the states have traditionally had jurisdiction.⁵⁸

We may very well be moving toward a child support system which is premised upon a national guideline, particularly if child support insurance is implemented on a wide scale. However, before doing so, it may be helpful for us to study other issues pertaining to guidelines, such as more recent cost estimates of

raising a child for two households (including nonmonetary costs of raising a child if a sum can be applied to them), the adequacy or inadequacy of current State guideline formulae, and any inaccurate assumptions upon which they are based. We hope that eventually, a reexamination of guidelines will lead to improved support establishment, enforcement, and collections for children.

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APPENDIX

INCOME SHARES

STATE OF NORTH CAROLINA

File No.

IV-D Case No.

Case Type (Code)

URES A Case No.

County

In The General Court Of Justice
☐ District ☐ Superior Court Division

☐ Civil: Plaintiff

☐ Criminal: STATE

VERSUS

Defendant

WORKSHEET A
CHILD SUPPORT OBLIGATION
SOLE CUSTODY

G.S. 50-13.4(c)

Children	Date Of Birth	Children	Date Of Birth

	Plaintiff	Defendant	Combined
1. MONTHLY GROSS INCOME	\$	\$	
a. Minus pre-existing child support payment	-	-	
b. Minus health insurance premium (if child included)	-	-	
c. Minus responsibility for other children	-	-	
2. MONTHLY ADJUSTED GROSS INCOME	\$	\$	\$
3. PERCENTAGE SHARE OF INCOME (line 2 for each parent's income divided by Combined Income)	%	%	
4. BASIC CHILD SUPPORT OBLIGATION (apply line 2 Combined to Child Support Schedule, see AOC-A-162, Rev. 7/90)			\$
a. Add work-related child care costs (75% of actual cost)			+
5. TOTAL CHILD SUPPORT OBLIGATION (add lines 4 and 4a)			\$
6. EACH PARENT'S CHILD SUPPORT OBLIGATION (multiply line 3 x line 5 for each parent)	\$	\$	
7. RECOMMENDED CHILD SUPPORT ORDER (Enter amount from line 6 for the non-custodial parent only. Leave custodial parent column blank.)	\$	\$	
8. ADJUSTMENTS FOR EXTRAORDINARY EXPENSES (Some extraordinary expenses are time-limited, e.g. orthodontic work. Note duration in last column if time for adjustment differs from duration of child support obligation.)	\$	\$	

Date

Prepared By (Type Or Print)

AOC- CV-627
 New 7/90

(NOTE: This form may be used in both civil and criminal cases.)

STATE OF NORTH CAROLINA

_____ County

File No.

IV-D Case No.

Case Type (Code)

URES Case No.

In The General Court Of Justice
☐ District ☐ Superior Court Division

☐ Civil: Plaintiff _____

☐ Criminal: STATE

VERSUS

Defendant

WORKSHEET B CHILD SUPPORT OBLIGATION JOINT OR SHARED PHYSICAL CUSTODY

G.S. 50-13.4(c)

Children	Date Of Birth	Children	Date Of Birth

STOP STOP HERE IF the number of overnights with either parent is less than 123, shared physical custody does not apply (see Worksheet A)	Plaintiff	Defendant	Combined
1. MONTHLY GROSS INCOME	\$	\$	
a. Minus pre-existing child support payment	-	-	
b. Minus health insurance premium (if child included)	-	-	
c. Minus responsibility for other children	-	-	
2. MONTHLY ADJUSTED GROSS INCOME	\$	\$	\$
3. PERCENTAGE SHARE OF INCOME (line 2 for each parent's income divided by Combined Income)	%	%	
4. BASIC CHILD SUPPORT OBLIGATION (apply line 2 Combined to Child Support Schedule, see AOC-A-162, Rev. 7/90)			\$
5. SHARED CUSTODY BASIC OBLIGATION (multiply line 4 x 1.5)			\$
a. Add work-related child care costs (75% of actual cost)			+
6. TOTAL CHILD SUPPORT OBLIGATION (add lines 5 and 5a)			\$
7. OVERNIGHTS with each parent (must total 365)			365
8. PERCENTAGE with each parent (line 7 divided by 365)	%	%	
9. EACH PARENT'S THEORETICAL CHILD SUPPORT OBLIGATION (multiply line 3 x line 6 for each parent)	\$	\$	
10. PLAINTIFF'S CHILD SUPPORT OBLIGATION FOR CHILD'S TIME WITH DEFENDANT (multiply plaintiff's line 9 x defendant's line 8)	\$		
11. DEFENDANT'S CHILD SUPPORT OBLIGATION FOR CHILD'S TIME WITH PLAINTIFF (multiply defendant's line 9 x plaintiff's line 8)		\$	
12. RECOMMENDED CHILD SUPPORT ORDER (Subtract lesser amount from greater amount in lines 10 and 11 and place result under greater amount.)	\$	\$	
13. ADJUSTMENTS FOR EXTRAORDINARY EXPENSES (Some extraordinary expenses are time-limited, e.g. orthodontic work. Note duration in last column if time for adjustment differs from duration of child support obligation.)	\$	\$	

Date

Prepared By (Type Or Print)

AOC-CV-628

New 7/90

(NOTE: This form may be used in both civil and criminal cases.)

PERCENTAGE OF INCOME

§ 43-19-101. Child support award guidelines.

(1) The following child support award guidelines shall be a rebuttable presumption in all judicial or administrative proceedings regarding the awarding or modifying of child support awards in this state:

Number Of Children Due Support	Percentage Of Adjusted Gross Income That Should Be Awarded For Support
1	14%
2	20%
3	22%
4	24%
5 or more	26%

(2) The guidelines provided for in subsection (1) of this section apply unless the judicial or administrative body awarding or modifying the child support award makes a written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case as determined under the criteria specified in Section 43-19-103.

(3) The amount of "adjusted gross income" as that term is used in subsection (1) of this section shall be calculated as follows:

- (a) Determine gross income from all potential sources that may reasonably be expected to be available to the absent parent including, but not limited to, the following: wages and salary income; income from self employment; income from commissions; income from investments, including dividends, interest income and income on any trust account or property; absent parent's portion of any joint income of both parents; workers' compensation, disability, unemployment, annuity and retirement benefits, including an individual retirement account (IRA); any other payments made by any person, private entity, federal or state government or any unit of local government; alimony; any income earned from an interest in or from inherited property; any other form of earned income; and gross income shall exclude any monetary benefits derived from a second household, such as income of the absent parent's current spouse;
- (b) Subtract the following legally mandated deductions:
 - (i) Federal, state and local taxes. Contributions to the payment of taxes over and beyond the actual liability for the taxable year shall not be considered a mandatory deduction;

MELSON FORMULA

The Family Court of the State of Delaware


 Case Name: _____
 File Number: _____

Period Covered: _____

CHILD SUPPORT CALCULATION

	Father _____ (filing status)	Mother _____ (filing status)	Tota
Net Income Derived From () Tax Return () Tax Table			
1 A-Monthly Gross Earned Income	\$ _____	\$ _____	
B-Monthly Gross Other Income (type) _____	+ _____	+ _____	
C-Total Monthly Gross Income (Line 1A + Line 1B)	= \$ _____	= \$ _____	
2 Total Tax Fed + FICA + State + City + Other =			
-Father _____	- _____	- _____	
-Mother _____	- _____	- _____	
3 Allowable Insurance: _____	- _____	- _____	
4 Allowable Deductions			
Support Order + Req. Pension + Union Dues + Other =			
-Father _____	- _____	- _____	
-Mother _____	- _____	- _____	
5 Monthly Net Income (Line 1C - Lines (2+3+4))	= \$ _____	= \$ _____	
Net Income Available for Primary Support			
6 Parent's Self Support Allowance	- \$ 550	- \$ 550	
7 Net Income Available for Primary Support (Line 5 - Line 6)	= \$ _____	= \$ _____	\$ _____
8 Share of Total Available Net Income (Line 7 + Line 7 Total)	_____ %	_____ %	
Child(ren's) Primary Support Need			
9 Number of Children Due Support in this Support Action			
10 Primary Support Allowance (from table below)	\$ _____	\$ _____	\$ _____
11 A-Monthly Child Care Expenses of Working Custodial Parent	_____	_____	+
B-Other _____	_____	_____	+
12 Total Primary Need (Line 10 + Line 11A + Line 11B)			= \$ _____
13 A-Primary Support Obligation (Line 8 x Line 12 Total)	\$ _____	\$ _____	
B-Primary Support for Other Dependents (fr. Suppl. Worksheet) +	_____	_____	
C-Total Primary Support Obligation (Line 13A + Line 13B)	= \$ _____	= \$ _____	
Standard of Living Adjustment (SOLA)			
14 Amount Available for SOLA (Line 7 - Line 13C)	\$ _____	\$ _____	
15 SOLA Percentage (from table below)	_____ %	_____ %	
16 A-SOLA Amount (Line 14 x Line 15)	\$ _____	+ \$ _____	= \$ _____
B-SOLA Amount Per Child (Line 16A + Line 9)			\$ _____ (per child)
Total Monthly Support Amount			
17 Total Monthly Child Support Obligation (Line 13A + Line 16)	\$ _____	\$ _____	
18 Amount Retained by Custodial Parent	- _____	- _____	
19 Total Monthly Ordered Child Support (Line 17 - Line 18)	= \$ _____	= \$ _____	
20 Pay Period Amount: Weekly _____ Bi-Weekly _____ Semi-Monthly _____	= \$ _____	= \$ _____	

Number of Children	Primary Support Allowance	SOLA %
1st	\$220	18%
2nd	\$385	27%
3rd	\$550	35%
each additional child	+\$110	+5%

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Divider Title: _____

**ESTABLISHMENT OF CHILD SUPPORT ORDERS:
DURATION OF PARENTAL RESPONSIBILITY**

July 1, 1993

Final Draft

Marianne Clifford Upton

ESTABLISHMENT OF CHILD SUPPORT ORDERS: DURATION OF PARENTAL RESPONSIBILITY

EXECUTIVE SUMMARY

This paper focuses on the extent of a parent's legal duty to provide financial support for a child. It examines the variations among State law treatment of general parental responsibility and incorporates a chart reflecting the age at which support liability generally ceases in the State. In the vast majority [80 percent] of the States, the "cutoff" is 18, although many allow extension of this through completion of high school but no later than age 19. The minority of States extend support to age 19 or 21. The impact of a change in the statutory age (increasing or decreasing) on a preexistent obligation of unspecified ("attainment of majority") duration is discussed, as are the generally unresolved "conflict of laws" dilemmas presented when interstate enforcement of an order is sought in a jurisdiction with a different termination age.

The paper also addresses the extent to which State child support laws permit courts or decisionmakers to extend, on a case-by-case discretionary basis, parental support to include financial support while a post-minority child is enrolled in post-secondary education, or to underwrite or share in the costs of such education. The authority of a court to reinstate an obligation after it has terminated due to the child's attainment of majority is explored. Pending Federal legislative initiatives in this arena, which emanate from the recommendations of the U.S. Commission on Interstate Child Support, are also explained.

Five alternative approaches to responding to issues regarding the need for uniformity or improved direction to resolve discrepancies in "duration of support responsibility" laws as a consequence of State variation are described. Advantages and disadvantages of each as a solution to the concerns are cited. These options range from maintaining the status quo by making no revision to the current situation to requiring all States to extend the support obligation to age 21 or other "national" age. The middle-tier approach incorporates the recommendations of the Interstate Commission on duration, linked to the pertinent choice of law provisions of the Uniform Interstate Family Support Act promulgated by the National Conference of Commissioners on Uniform State Laws to establish a framework for deciding which State's law controls.

ESTABLISHMENT OF CHILD SUPPORT ORDERS: DURATION OF PARENTAL RESPONSIBILITY

INTRODUCTION

This paper will explore issues concerning the duration of parental financial responsibility and describe alternative approaches for addressing conflicts that presently arise due to State variance.

BACKGROUND

The duration of a parental support obligation is typically measured in terms of the child's minority status, usually based on a specific age. The occurrence of an event, such as marriage, adoption by a third party, or entry into military service, before a minor child attains the statutory age, can presumptively signify attainment of financial "independence" and serve as a basis for ending the parental financial duty. Currently State law sets the age at which child support is generally terminated for a child. This may be superseded or extended by discretionary judicial action, by alternative specifications in the order, or by explicit statutory exceptions.

Attachment A is a State-by-State compilation, listing the statutory age upon which child support ordinarily ceases and briefly describing available exceptions. Drawn chiefly from information supplied by States to the Federal Office of Child Support Enforcement in Spring 1993 as part of the updating of the *Interstate Roster and Referral Guide* and augmented with some statutory references, this tabulation reflects that 44 States specify support termination at age 18; four at age 19; five at age 21, and that one State, New Jersey, designates no specific cutoff age, leaving the decision to court determination on a case-by-case basis. Of the 44 States that specify age 18, all but five provide for some exceptions to support automatically ceasing at age 18.

CURRENT ENVIRONMENT & ISSUES

Continuation through High School

Of the 44 States which generally specify 18 as the age of majority, most also have either statutes or case law which permit the extension of the parental support responsibility during the period the child is enrolled in high school until graduation or attainment of age 19. For example, South Dakota' statute [§25-2-18.1] provides for a legal duty until the child attains the age of eighteen, or until the child attains the age of nineteen, but by case law explains the limitation of the provision noting that the statute gives no authority or discretion to the court to extend support beyond nineteen: if the Legislature had intended support to continue until any adult child completes high school it would have so stated. [*Birchfield v. Birchfield*, 417 N.W.2d 891 (1988)].

Until Florida recently changed its statute, its court of appeals consistently specified that continuation of support after eighteen while a child is still enrolled in high school requires a

"finding of dependency." [Earnhardt v. Earnhardt, 533 So. 2d 328 (Fla. Dist. Ct. App. 1988)] Under the revised Florida law, support is authorized for a child beyond age 18 where the child is still in high school and is reasonably expected to graduate before age 18. A March 1993 Florida appellate decision interpreted this statute as precluding the court from ordering support after 18 on the grounds that the child would be 19 years and 7 months at the time of high school graduation [See Walworth v. Klauder, 19 FLR 1252].

Contractual Arrangements or Agreements

Some States recognize agreements entered into by the parents to undertake a support duty beyond that otherwise mandated by law. Frequently such agreements are incorporated in the terms of a decree or separation document.

For example, Michigan's statute [§25.244(3a)(4)] indicates that notwithstanding the age 18 cutoff or other requirements to extend support beyond age 18, a provision in an order or judgment that extends support beyond 18 is valid and enforceable if one or more of four specific criteria are met: if the provision is in the order/judgment by agreement of the parties as stated in the order; if the provision is in the order/judgment by agreement as evidenced by the approval of the substance of the order/judgment by the parties or their attorneys; if the provision is in the order/judgment by written agreement signed by the parties; or the provision is in the order/judgment by oral agreement of the parties as stated on the record by the parties or their attorneys.

Differences in the actual wording of the orders can cause interpretation problems--if the order clearly specifies age 21 a different age or change in the age may not have a significant impact; if however, the order is less specific--"until the child attains majority" the majority age may be different at the time the age is actually reached than the age when the event was contemplated years before when the decree was drafted and issued.

Disability

The importance of providing for continuing support if the child is incapable of independent self-support due to physical or psychological disability is generally recognized. In situations in which an adult child is incapacitated, whether mentally or physically, several States have explicit statutes or case law interpretations requiring parents to continue to support the dependent individual indefinitely, or for so long as the child is unable to care for himself. For example, the District of Columbia Court of Appeals found that there is, under common law, a duty of parental support for physically or mentally disabled children beyond the age of majority, although it has been long-established in the District that the age of emancipation for purposes of child support is twenty-one years. The court also specified that there should be a reassessment of parental support obligations when a disabled child reaches the age of majority. An issue that some courts have entertained is whether a parent's legal obligation to support a child, once extinguished by a nondisabled child's reaching the age of majority, can be reimposed due to the child's subsequently becoming disabled.

The generally-accepted common law rule is that once a child of sound mind and body reaches the age of majority the parents' legal duty is normally absolved and will not be revived for any reason. However, as explained in "Anno.: "Post-Majority Disability as Reviving Parental Duty to Support Child," 48 A.L.R.4th 919, although the common law did not impose a legal duty on parents to support their children who became disabled after reaching majority, many courts have noted that parents have a moral obligation, along with the recognized public policy that society ought not be financially responsible for individuals who have relatives able to support them, are the theoretical underpinnings of the various statutes holding parents liable for the support of disabled adult children.

Divorce statutes have generally followed the common law, thus terminating any liability for support once the child reaches majority unless the child suffers from a disability at the time of reaching majority which renders him incapable of self-support. A contract for the support of an adult disabled child will be recognized and upheld by the court.

Post-Minority Educational Expenses

Numerous States, as evidenced by a rapidly-expanding body of case law, and several States, by statute, address the extension of financial responsibility beyond high school to include periods during which the child is pursuing post-secondary educational or vocational training. Underwriting the cost of a child's higher education is the most commonly-recognized continuing obligation. [See Anno., "Postsecondary Education as Within Non-divorced Parent's Child Support Obligation," 42 A.L.R.4th 819].

By way of illustration, Washington State has developed statutory descriptive "Postsecondary Education Standards" which enumerate several conditions governing postsecondary educational support:

1. The child support schedule shall be advisory and not mandatory for postsecondary educational support.
2. When considering whether to order support for postsecondary educational expenses, the court shall determine whether the child is in fact dependent and is relying upon the parents for the reasonable necessities of life. The court shall exercise its discretion when determining whether and for how long to award postsecondary educational support based upon consideration of factors that include, but are not limited to, the following: age of the child, child's needs; the expectation of the parties for their children when the parents were together; the child's prospects, desires, aptitudes, abilities, or disabilities; the nature of the postsecondary education sought and the parent's level of education, standard of living and current and future resources. Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together.
3. The child must enroll in an accredited academic or vocational school, must be actively pursuing a course of study commensurate with the child's vocational goals and must

be in good academic standing as defined by the institution. The court-ordered post secondary educational support shall be automatically suspended during the period or periods the child fails to comply with these conditions.

4. The child shall also make available all academic records and grades to both parents as a condition of receiving postsecondary educational support. Each parent shall have full and equal access to the postsecondary education records as provided by statute.

5. The court shall not order the payment of postsecondary educational expenses beyond the child's twenty-third birthday except for exceptional circumstances, such as mental, physical, or emotional disabilities.

6. The court shall direct that either or both parents' payments for postsecondary educational expenses be made directly to the educational institution if feasible. If direct payments are not feasible, then the court in its discretion may order that either or both parents' payments be made directly to the child if the child does not reside with either parent. If the child resides with one of the parents the court may direct that the parent making the transfer payments make the payments to the child or to the parent who has been receiving the support transfer payments.

At least one court has held that a child support obligor who was ordered to make post-majority support payments while his child is enrolled in college until she reaches age 22 should be credited for amounts paid while child was not attending school. The Iowa Court of Appeals examined the State statute that post-majority support is to be paid by a divorced parent only when the child is in good faith a full-time student and upheld the finding that the duty should be on the child to show actual intent of being a full-time student. *In re Voyek*, 18 FLR 1562 (1993). The phrase "beyond the high school level" was found to be unclear and ambiguous by one court, which determined that a father's obligation to pay 75 percent of his son's education 'beyond the high school level' to not encompass post-graduate studies for a 27-year-old married child. [*delCastillo v. delCastillo*, 19 FLR 1094 (Pa.Super.Ct. 1992)].

What is the Nature of the Obligation?

Another issue is whether the "amount" to be contributed to or on behalf of a post-minority student/child is to be ongoing incremental support as determined by application of presumptive guidelines, or rather, is the amount to be paid in the form of tuition payments, room and board, clothing, and other essentials in lieu of continuation of the periodic obligation during the span of the child's enrollment in postsecondary educational pursuits. Many of the existing laws refer to the obligation in terms of educational expenses or costs rather than as a continuation of the guideline-determined financial support.

Further exploration of how State guidelines for setting and modifying support award amounts treat postsecondary or other extraordinary aspects of support responsibility may be of utility here. For example, enforcement aspects may be more complex depending upon the nature of

the obligation. Remedial action to enforce noncompliance with the order is intrinsically more complicated if an unfixed, non-specific amount is involved. Similar problems have ensued with respect to ensuring payment of medical expenses for children which are expressed in an indeterminate form such as "one-half of the amounts not covered by insurance."

What if the Age Itself Changes?

One area that States have had to address is the effect of a change in the statutory age of majority on pre-existing status or rights. An annotation, "Statutory Change of Age of Majority as Affecting Pre-existing Status or Rights," 75 A.L.R.3d 228 collects and analyzes court decisions which discuss what effect, if any, the enactment of a statute raising or lowering the age of majority has on a person's pre-existing status or rights. As noted in the article, decisions have turned on small factual differences such as the exact language of a decree or dates on which the pertinent event occurred. A significant factor in cases involving a change to a higher age is whether the child reached the former age of majority before or after the new statute's effective date.

Within the court decisions involving the impact of a lowered age of majority on a pre-existing child support obligation, most of the cases involved a pre-statute order or agreement either specifying a numerical age (e.g., 21) at which the duty would end, or expressing the duration in terms of "minority," "infancy," "or" "majority." The difference in phraseology has sometimes been critical. Where an explicit age is indicated, courts generally hold that the duty continues until that age. Where the order or agreement language is unspecific, such as "upon emancipation," some courts have held that the duty extends to the prior age in a preexisting order, although a few courts have held otherwise deeming "emancipation" to occur at age 18 by virtue of the revised statute. Courts in Virginia and Minnesota have responded to a lowering of the majority age as it affected pre-existent duties. [See Fry v. Schwarting, 355 S.E.2d 342 (Va.Ct.App. 1987)(age at time of agreement, not lowered age, controls) and Anderson v. Anderson, 410 N.W.2d 370 (Minn.Ct.App. 1987)(a 1974 amendment of the duration clause of a 1972 decree substituting "age 21" for "age of majority" was not affected by 1973 lowering of statute to age 18)].

It has been suggested that if a change in the majority age is anticipated to occur at any point in the life of an order, that the terms of an order or agreement for support should specify numerically the age at which the obligation is to cease rather than leaving open to interpretation or construction the meaning of terms such as "minority" or "majority."

Health Care Needs

It is not clear when the duty to provide for the health care needs of children ceases. If the employment-related or other group coverage plan covers the child only until an age earlier than emancipation then the duty would end at this date. However, if the coverage extended on behalf of the child more extensively than the underlying support duty the absent parent may or may not have to continue to provide for the child as a beneficiary.

If medical support is available after the age of majority or emancipation, in the absence of other order language it is unclear whether the absent spouse is still liable for coverage. [See Angle v. Angle, 506 So. 2d 16 (Fla.Ct.App.2dDist. 1987)(requiring a father to provide medical insurance while child in college was error--no obligation absent finding of dependency)].

Unilateral Reductions of Aggregate Orders

A question frequently arises as to whether an obligor may make a unilateral pro rata reduction of a support obligation upon emancipation or majority attainment of each child, when the terms of the order require an aggregate, unallocated sum for all children rather than a specific sum to be paid "per child." Courts generally frown on such alterations without court approval and courts of most States require the continuation of the entire monthly support payment until the youngest child attains majority or emancipates. For example, one court held that an indivisible award of child support payable until the youngest child reached age 18 and which did not provide reductions as the older children reached majority did not exceed the court's jurisdiction by improperly requiring the father to support the children after majority. Gillespie v. Gillespie, 518 A.2d 238 (Conn.App. 1986). Unless the decree specifies the amount "per child," one amount continues for all until the youngest child attains majority.

Generally, guidelines for setting awards, whether by application of a percentage to income or reference to a precalculated table, tie the amount to the number of children for whom support is being determined. A pro rata reduction [e.g., one-half, one-third, one-fourth] of the total as each child attains majority may not necessarily be the "presumably correct" amount that results when guidelines for "one less child" are applied. Courts or administrative authorities which routinely specify one amount for all at the time the order is established conceivably may be approached more frequently with adjustment requests on the basis that one of the children is no longer dependent upon that obligor, than would be the case if "per child" orders are adopted.

Reinstating "Minority" Status

Courts have also addressed the questions of whether emancipation can be reversed and "dependency" status reinstated. For example, a few courts have ruled that if a married minor's marriage [an emancipating event] is annulled before the child attains majority, the parental obligation may have to be ordered resumed. [See In re Marriage of Fetters, 585 P/2d 104 (Colo.Ct.App. 1978) and Eyerman (Thias) v. Thias, 760 S.W.2d 187 (Mo.App. 1988)].

Authority of Court to Reinstate Obligation

Dissolution courts generally have the power to prospectively modify child support provisions. The question has arisen in a few jurisdictions as to whether a dissolution court has continuing authority to modify a child support provision where the noncustodial parent has fulfilled his or her obligation under the original decree. One group of courts that have considered this issue have taken the position that the trial court has the authority to reinstate a child support decree after the obligation has been fulfilled only if the action to extend is commenced while the child is still a minor. A few others have reinstated orders to cover college expenses even after the obligation has been fulfilled and the child has already attained majority.

Michigan addressed the issue of the timing of a request for support extension. Michigan's statute at §25.244(3a)(2) specifies that the court may order support for the time a child is regularly attending high school on a full-time basis with a reasonable expectation of completing sufficient credits to graduate from high school while residing on a full-time basis with the payee of support or at an institution, but in no case after the child reaches 19 years and 6 months of age. A complaint or motion requesting support as provided in this section may be filed at any time before the child reaches 19 years and 6 months of age.

One of the most interesting examples is the case of In re Marriage of Pieper, 369 N.W.2d 439 (Iowa 1985) which is the leading case in an annotation on this issue ["Child Support: Court's Authority to Reinstitute Parent's Support Obligation After Terms of Prior Decree Have Been Fulfilled," 48 A.L.R.4th 945]. The court in this case held that neither the fact that the original support decree had expired before the action to modify had been sought or the fact that the child had reached the age of majority deprived the court of authority to modify the award, noting the State statute permitting awards of support in behalf of a child between the ages of 18 and 22 if the child were a student in an educational program meeting statutory conditions. The significance of this ruling and similar ones in other States as they relate to the responsibilities for periodic review and adjustment of orders in IV-D cases cannot be underestimated. As States begin to update awards, they may encounter the real possibility of requests to extend orders beyond majority. The question of the State's role and level of involvement in these situations merits further discussion.

When Ages Conflict

One of the consequences stemming from State variance is the need to assign priority or control when inconsistent ages interlock. This perplexing problem occurs predominantly--and proliferates--in the interstate child support enforcement arena. Even the ultimate outcome depends upon the interstate method selected--regular URESA, registration of the underlying order, or a wage withholding request. Other variables such as an obligor moving to a stricter State, the child moving to a more liberal State, changes in the law of the rendering State which either raise or lower the applicable age, and the terminology used in the underlying support instrument influence the results.

The practical challenges States frequently face in either seeking, or responding to, interstate requests for child support assistance are the product of different termination requirements. These surface when enforcement of an order issued in a State with a more extensive minority statute or an order that explicitly requires support until a specified age is sought in a sister State that strictly terminates the obligation at an earlier point. Although several court decisions have been generated on this issue of conflicting duration laws, there is no clear definitive guidance. This is unfortunately a problem caused by the creation of intervening independent, yet concurrently valid orders, in different amounts and of varying duration, under URESA proceedings, despite the existence of an otherwise enforceable order.

As explained in "The Interstate Child," Chapter 1 of *Interstate Child Support Remedies* (ABA, September 1989), there are a number of common choice of law questions concerning child support including the age of emancipation. As specified in section 7 of URESA, the applicable law is that of the jurisdiction where the obligor was present during the period for which enforcement is sought. The obligor is presumed to have been present in the State in which enforcement is sought (the responding State). In a civil, "straight" URESA proceeding, the responding State actually enters an independent order for support, regardless of the existence of a prior order in the initiating or other State. This order is set pursuant to the guidelines of the responding State and its duration is governed by the responding State.

The fact that a responding State's age of majority is lower than that of another State with an order has no effect on the other order, but the ability to enforce the higher amount or extended period of responsibility is diminished or not available. Although the responding State has authority--and a duty--to enforce its own order, the support recipient must resort to other remedial devices to collect the extra year(s) of support due under the longer order, the obligor may mistakenly assume that the subsequent order is effectively a modification which supersedes the prior obligation, and the whole notion of reciprocity is compromised!

Different consequences may result if the responding State "registers" the underlying order. In this context, the order once confirmed is treated as if originally entered in the responding State. If the terms of the order specify a numeric age upon which support is to cease, a lower age of majority in the registering State will not necessarily defeat that, and the order is enforceable according to its terms. Although the type of action that may be initiated to enforce a registered foreign order is governed by the registering State's laws concerning enforcement of local support orders, case law holds that the duration of the obligor's support obligation is governed by the law of the State that originally entered it.

For example, if an obligee registers an order entered in a State where the age of emancipation is 21 in a State in which the age of emancipation is 18, the mere fact that the father has moved to a jurisdiction with a lower age will not defeat his obligation required under the law of the rendering State.

What about the converse? Can more time be obtained if the obligor moves to a State with a more extensive age than that of the rendering State? It has been held that even though the

underlying foreign order became an order of the State which registered it, that State could not modify it absent a change in circumstances by the simple expedient of applying the registering State's age of emancipation. Just the opposite was the result in Napolitano v. Napolitano, 732 P.2d 245 (Colo.Ct.App. 1986)(obligation under decree rendered in England requiring support for children "whilst under the age of 17 years" extended by Colorado URESA court to age 21 based on Colorado duration statute). [See also Washington ex rel. Gibson v. Gibson, 17 FLR 1067 (Hawaii Inter.Ct.App. 1990)(Hawaii age of 21 applicable in URESA to extend duty under Washington (age 18 State) decree) and Pieper v. Pieper, 19 FLR 1172 (NC Ct.App. 1993)(Iowa judgment for arrearages under order for post-majority support enforceable in North Carolina even though North Carolina does not authorize post majority support)(Note: This cases involves the same parties involved in the 1985 Iowa case described earlier in this section)].

A different set of "rules" on controlling age has emerge when courts address circumstances in which none of the parties remain in the State that originally rendered the order. [Elkins v. James, 19 FLR 1065 (Ark.Ct.App. 1992)(Arkansas age of 19 applied to registered Missouri decree (age 21) upon consideration of lack of ties to the original State and full faith and credit in case where custodian and children lived in Arkansas and obligor resided in Oklahoma)].

When enforcement of another State's order through interstate wage withholding is pursued, the law of the State which is enforcing the order (where the obligor is employed) controls. 45 C.F.R. §303.100(h)(7). Section 11(b)(1) of the Model Interstate Income Withholding Act, adopted in 11 States, provides that the "local law of the jurisdiction which issued the support order shall govern the interpretation of the support order, including . . .the duration of support." The "Comments" to this section explain that the law of the State issuing the order would determine the meaning of the term "minor child" as used in an order, whether support may continue beyond the age of majority for a college student or whether in-kind payments would be credited against the support obligation.

The obvious inconsistency in this area underscores the importance of developing workable rules and priorities to handle discrepancies from State to State whether resulting from different ages, new residence, conflicting language in the order, or a lowering of the statutory age. The bottom line is that an obligor should not be permitted to defeat an obligation by virtue of residing in a State which imposes a lesser obligation on him than the State where his dependents live.

Pending Federal Initiatives

In its report to the Congress, "Supporting Our Children: A Blueprint for Reform," the U.S. Commission on Interstate Child Support explained the evolution of the age of emancipation debate. Under common law, a child was entitled to support until the child reached the age of emancipation, once universally considered to be 21. The report described two legislative

trends among the States: (1) that the child is not automatically an independent adult upon the passing of a birthday and (2) that support is discretionary throughout the period of a child's enrollment in postsecondary educational pursuits.

Focusing on the first trend, the Commission observed that events dictate independence more than chronology does. This trend is evidenced in the recognition by several States that the high school graduation event is a better indicator and resultant legislation extending support liability to the high school graduation or eighteenth birthday, whichever is later. Others mandate support thorough the nineteenth birthday or high school completion whichever occurs first.

The Commission recommended that every State should be required to continue the duty of support until a child's high school graduation date, or if a child graduates at 17, until the child is 18. The Commission explained that it is not recommending abandonment of traditional early emancipation guideposts such as marriage, entry into military service, or employment.

On the second trend, the commission posited two approaches: (1) rebuttably continue support through a certain date with the burden on the obligor to show that the child is not enrolled in any form of full-time post-secondary education and is otherwise able to support himself or (2) put the responsibility on the child to prove enrollment as a full-time student in a post-secondary or vocational school and for the trier of fact to determine if support is appropriate.

The Commission recommends that States be required to give courts or other support determiners the discretion to order support up to age 22 if the child is enrolled in a post-secondary or vocational school. If a State wants to provide support for all children until the age of 21 or create a rebuttable presumption that the child is entitled to support until a later age, the State should be free to set higher limits. The objective of the Commission is to establish a minimum expectation that post-high school students receive support when a tribunal believes that it is appropriate.

On April 1, 1993, legislation was introduced in both houses of Congress by Senator Bill Bradley (S. 689) and Representative Marge Roukema (HR 1600) to implement a significant bulk of the recommendations of the Interstate Commission. Both bills contain identical sections addressing duration of support obligations.

Section 209 of these bills would require States, as a condition of their State IV-D plan approval [key to Federal financial participation in the program] to have in effect laws requiring the use of procedures under which the State:

- Requires a continuing support obligation by one or both parents until at least the latter of when a child reaches the age of eighteen, or graduates from or is no longer enrolled in secondary school or its equivalent, unless a child marries, or is otherwise emancipated by a court of competent jurisdiction;

- Provides that courts with child support jurisdiction have the discretionary power, pursuant to criteria established by the State, to order child support, payable to an adult child, at least up to the age of 22 for a child enrolled in an accredited postsecondary or vocational school or college and who is a student in good standing;
- Provides that courts with child support jurisdiction have the discretionary power, pursuant to criteria established by the State, to order either or both parents to pay for postsecondary school support based on each parent's financial ability to pay;
- Provides for child support to continue beyond the child's age of majority provided the child is disabled, unable to be self-supportive, and the disability arose during the child's minority;
- Provides that courts should consider the effect of child support received on means-tested governmental benefits and whether to credit governmental benefits against a support award amount.

On May 5, 1993, Representative Barbara B. Kennelly introduced H.R. 1961, the "Interstate Child Support Act of 1993." This bill contains similar language to the Bradley/Roukema proposal, but adds a "sense of Congress" clause which specifies that ". . . if children receive child support while obtaining postsecondary education, they will attain higher levels of education affording them a greater chance to break the welfare cycle."

Section 604(a) of the Uniform Interstate Family Support Act (UIFSA) promulgated by the National Conference of Commissioners on Uniform State Laws to replace the Uniform Reciprocal Enforcement of Support Act governs choice of law as applied to an order registered in another State. It specifies that the law of the issuing State governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages of a registered order. The section identifies situations in which local law is inapplicable. For example, an order for the support of a child until age 21 must be recognized and enforced in that manner in a State in which the duty to support ends at age 18.

ALTERNATIVE APPROACHES

Option #1: Maintain status quo, leaving current determination to State discretion.

Advantages: Least disruptive on States
Gives States maximum authority to determine termination point based on different circumstances

Disadvantages: Without rules for handling conflicts between/among States with varying majority ages and/or laws allowing extension for post-minority periods while child is a post-secondary student, confusion will persist as the applicable law.

Option #2: Adopt the definition used for AFDC eligibility purposes.
Require States to enact laws which set a uniform age of termination similar to the AFDC "dependent child" (i.e., age 18, with a State option for 19 if the child is attending secondary school or a vocational/technical school").

Advantages: Requires State law to provide support responsibility at least as long as highest age child would be considered eligible for AFDC.

Disadvantages: Curtails the age of termination for some States which now specify that support responsibility extends until child attains age 21

Does not address termination due to emancipation earlier than age of majority

Does not allow for sufficient continued eligibility to accommodate post-secondary education or disabilities.

Does not consider the issue of an aggregate obligation under which the obligated parent is not relieved proportionately as each child attains majority age or otherwise emancipates.

Option #3: Endorse the approach suggested by the U.S. Commission on Interstate Child Support as set forth in proposed Bradley/Roukema/Kennelly legislation introduced in the 103rd Congress.

Advantages: Takes into account extending support to include post-secondary vocational pursuits and college education; allows for State flexibility

Addresses support responsibilities on behalf of disabled children who are incapable of self-support although past age of majority

Recognizes situations where emancipation occurs prior to attainment of majority age based on occurrence of an event which constitutes independence

Disadvantages: Fails to provide sufficient degree of uniformity needed to eliminate interstate confusion

Does not address problems where the aggregate order does not allow the absent spouse relief as children attain majority

Option #3A: Enhance Option #3 to eliminate the disadvantages by linkage of the duration language in the proposed bills (Bradley/ Roukema/Kennelly) to UIFSA specifications or alternatively, the language/intent regarding honoring orders of other States according to their terms contained in the proposed "full faith and credit for child support" bills introduced by Rep. Frank (HR 454) and Sen. Moseley-Braun (S. 922)

Option #4: Establish a standard uniform age of support termination at 21 years unless emancipated before attaining such age.

Advantages: Promotes uniformity to ease interstate case processing

Does not limit States which currently extend obligation to age 21

Allows States the option to extend for disabled

Disadvantages: Impact on existing court/administrative systems would be significant, since only five States presently require support to extend to age 21, and untold numbers would seek to take advantage of "extension"

Problems of retrospective application of a new law

Option #5: Require a uniform national age of termination at 21 years or when child graduates from post-secondary vocational or other undergraduate institution; require States to extend responsibility indefinitely for physically or mentally disabled children where the child is incapable of self-sufficiency and is principally financially dependent on the custodial parent. Recommend to States that support amounts would take into consideration non-means tested disability-related public benefits. Clarify that a child becomes ineligible before the general termination age when that child becomes economically self-sufficient either due to marriage or employment or military status; allow for reinstatement of support liability if these conditions cease prior to the statutory termination age. Specify that terms of an order take precedence over other applicable laws of emancipation only when they extend or expand support coverage or duration. Set forth as a general rule that medical support and cash support eligibility periods are identical

Advantages: Institutes uniformity

Does not disrupt policy in States with more liberal age of termination

Provides for support for long-term dependency due to physical or mental disability while allowing credit for non-means-tested public benefits

Allows means-tested benefits for persons with disabilities to count child support consistent with current policy

Clarifies earlier emancipation consistent with current State practice

Clarifies relationship between specific terms of orders and general termination rules when inconsistency arises

Disadvantages: Obligors may find liberal expansion objectionable--there is no right to college education

Extends child support responsibility beyond minimum levels and departs substantially from current State practice and AFDC eligibility rules

May be seen as Federal intrusion into area within domain/prerogative/control of the individual States

Age of Majority for Legal Termination of Parental Support Obligation

STATE	AGE	EXCEPTIONS
Alabama (§26-1-1)	19	
Alaska	18	Child support will continue if order specifically states that support is to continue while child still enrolled in school, or child is mentally or physically disabled; child support will continue for children age 19 if they are actively pursuing a high school diploma or an equivalent level of technical vocational training and living as dependents with the spouse or designee of the spouse
Arizona (§25-320)	18	If child's birthday occurs during school year, and he is attending school, in which event, support continues while the child is actually attending high school; additional exception exists for handicapped children over 18 under certain circumstances
Arkansas	18	Support may be ordered past age 18 in case of special circumstances such as physical or mental disability
California	18	If child still in high school, collection continues until child graduates or turns 19 whichever occurs first
Colorado	19	Extension of current support obligation past the age of majority is a judicial decision, based upon the evidence presented regarding dependency

Age of Majority for Legal Termination of Parental Support Obligation

STATE	AGE	EXCEPTIONS
Connecticut	18	
Delaware	18	If child over 18 still enrolled in high school, child support terminates when child receives high school diploma or reaches age 19, whichever occurs first
Dist of Columbia	21	Or earlier point if minor is self-supporting through marriage, employment, or military service
Florida	18	If children are declared legally dependent beyond that age due to mental or physical disability or unless court has otherwise ordered support to continue beyond age 18; or 19 if child will graduate from high school by that age
Georgia	18	Child support orders entered after 7/1/92 may provide for the extension of child support to age 20 if the child is still in secondary school
Guam	18	
Hawaii	18	May extend to age 23 if child enrolled full-time in accredited higher educational institution or vocational school

Age of Majority for Legal Termination of Parental Support Obligation

STATE	AGE	EXCEPTIONS
Idaho	18	If otherwise ordered by court; statutory authority exists for court to order continued support to 19 years of age if child continues a formal education
Illinois	18	Depending on individual court order
Indiana	21	
Iowa	18	Or as ordered by court
Kansas	18	Support automatically extended through 6/30 of school year during which child turned 18, unless court specifically directs otherwise; on motion, court has discretion to extend through the school year in which child turns 19 but only if both parents participate or acquiesce in decision that delayed completion of high school
Kentucky	18	19, if attending high school
Louisiana	18	If child still in high school, then age 19 or upon graduation, whichever occurs first

Age of Majority for Legal Termination of the Parental Support Obligation

STATE	AGE	EXCEPTIONS
Maine	18	If Maine court order of 1/1/90 or later so provides, support obligation will continue until age 19 or termination of secondary school whichever first occurs and support obligations established by Maine administrative decisions of 1/1/90 or later will continue until age 19 or termination of secondary school whichever occurs first
Maryland	18	
Massachusetts (§208-28)	18	Court has discretion to order support up to age 21 if child is domiciled with a parent and principally dependent on that parent for maintenance; age 23 if child is domiciled with a parent and principally dependent on that parent for maintenance due to child's enrollment in an educational program, excluding educational costs beyond an undergraduate degree
Michigan	18	May order 19.5 for completion of high school and/or agreement beyond 19.5 by parties
Minnesota	18	Extend to age 20 if individual still attending secondary school; extends also for individual who by reason of physical or mental condition is incapable of self-support
Mississippi	21	

Age of Majority for Legal Termination of Parental Support Obligation

STATE	AGE	EXCEPTIONS
Missouri	18	If in high school at 18, upon graduation from high school or 21, whichever occurs first; if child enrolls in college or vocational school by 10/1 following high school graduation, support continues until child is 22 or when education is completed, whichever is earlier. Some deviations from this standard may occur in judicial orders that specifically set ages other than 18 for termination of support
Montana	18	Sometimes through graduation but not beyond 19
Nebraska	19	
Nevada	18	19 if still in high school
New Hampshire	18	If children are declared legally dependent beyond that age due to mental or physical disability or unless court has otherwise ordered support to continue beyond age 18
New Jersey		Determined by the court
New Mexico	18	
New York	21	Emancipation issue decided on case-by-case basis

Age of Majority for Legal Termination of Parental Support Obligation

STATE	AGE	EXCEPTIONS
North Carolina	18	If support extended prior to child's 18th birthday to include support through secondary school or up to age 20 whichever comes first
North Dakota	18	If child is enrolled and attending high school full time and child resides with person to whom duty of support is owed, court can extend child support obligation until child is 19 or completes high school whichever occurs first
Ohio	18	Or graduation from high school whichever occurs first
Oklahoma §127(B)	18	Or through high school and order so provides; law has changed, but current age of majority applies even if law was different when the order was entered
Oregon (§107.108)	18	21 if in school half-time or more
Pennsylvania (§4321 & 4323)	18	Until out of high school; support can be continued beyond age 18 for children who lack mental or physical ability to support themselves; additionally support may be ordered for children continuing their education
Puerto Rico	21	Whenever minor is self-supporting through marriage

Age of Majority for Legal Termination of Parental Support Obligation

STATE	AGE	EXCEPTIONS
Rhode Island (§15-5-16.2)	18	Court may, if it deems necessary or advisable order child support and educational costs for children attending high school at time of their eighteenth birthday and for 90 days after graduation, but in no case beyond the 19th birthday
South Carolina	18	Upon request most judges will order an obligor to continue to pay ongoing support until child graduates from high school
South Dakota	18	19 if child attending secondary school
Tennessee	18	If child still in high school, graduation date or when class child is in when he turns 18 graduates
Texas	18	Court may extend until child graduates from high school or in case of mental or physical disability
Utah	18	If court orders otherwise
Vermont	18	If secondary education included in divorce order

Age of Majority for Legal Termination of Parental Support Obligation

STATE	AGE	EXCEPTIONS
Virginia	18	If child is handicapped or otherwise incapacitated from earning a living; until age 19 if child is regularly attending secondary school or equivalent level of vocational/technical training; if child is not self-supporting and living in home of parent seeking or receiving support; or when ordered otherwise by court
Virgin Islands	18	22, if fulltime student engaged in graduate studies or enrolled and next term has not begun
Washington	18	Special consideration may be given by court extending support or requiring noncustodian to provide for post-secondary education
West Virginia	18	
Wisconsin	18	Graduation from high school or 19, whichever is sooner
Wyoming	19	

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INCOME WITHHOLDING ISSUES

Final Draft

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WELFARE REFORM WORKGROUP
CENTRAL REGISTRIES AND NEW HIRE REPORTING TASKFORCE

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June 30, 1993

EXECUTIVE SUMMARY

I. INTRODUCTION

State and local child support agencies have long been aware that the ultimate success of income withholding as a child support enforcement tool depends on the accuracy of information regarding the obligor's current employment.

Currently, information about employees and their income is reported by most employers to State Employment Security Agencies (SESA) on a quarterly basis. This data has proven to be an excellent source of information for state child support agencies allowing them to implement wage withholding, locate an individual or his/her assets in order to establish paternity, establish an order to support, review and adjust old orders or to enforce an existing order. However, the employment data currently available from SESAs is approximately three to six months old (reported the month after the quarter in which employment begins).

A significant number of obligors who are delinquent in their child support obligations change jobs frequently or work in seasonal or cyclical industries. Enforcing child support orders through wage withholding or other means against these obligors is difficult, as employment often terminates before the notice to withhold income reaches the employer. In these cases, information obtained from SESA records or other sources is outdated and puts the Child Support agency several paces behind the obligor.

Establishing systems which reduce the time-gap between hiring and withholding for child support can improve the IV-D agency's effectiveness and responsiveness and reduce the frustration experienced in dealing with high turnover and job-hopping obligors.

A new hire reporting system coupled with a child support registry would be valuable in improving child support enforcement and may have other uses as well.

II. AVENUES FOR ACQUIRING EMPLOYER DATA

Employer cooperation and good-will is fundamental to the effectiveness of an Employer Reporting and Child Support Registry System. In considering the maximum benefits of such a system to the child support community, equal attention must be given to minimizing, to the extent possible, employer burden. This approach will ensure more widespread support for any proposal put forward.

Since 1988, the IRS has been considering steps to simplify and streamline employer reporting. Following is a discussion of their most recent efforts, the benefits which they expect to achieve and consideration of their draft proposal in developing an employer reporting vehicle for child support enforcement.

Paragraph B provides a brief summary of alternative vehicles for acquiring this information (explained in detail in the option papers) which would be necessary should the aforementioned system not be implemented (or if implemented, not be the chosen vehicle for child support purposes). Consideration could also be given to using one of these approaches as a transitional step prior to the implementing the first approach.

A. Simplified Tax and Wage Reporting System¹

Currently, employers report tax and wage information to a myriad of Federal and State agencies. The W-2, W-3, W-4 and 941 forms are used by various Federal Agencies. These include the Department of Labor, DHHS (Social Security Administration and the Administration for Children and Families), Treasury/IRS and State and local tax agencies for a variety of functions including tax administration, eligibility and entitlement purposes, detection of fraud, and child support enforcement.

¹ Feasibility Study for the Wage Reporting Simplification Project by the MITRE Corporation. Phase II Report Jointly Sponsored by: The Internal Revenue Service, The Social Security Administration, The Department of Labor. April 1993

The current cost to the employer community of complying with Federal and State wage reporting laws and regulations is estimated to be in excess of \$6 billion per year. The annual cost to the government for processing-related returns and payments, and providing assistance to employers is estimated to be in excess of an additional \$300 million. IRS, SSA and DOL have initiated an employer reporting feasibility study to address these costs and to reduce the burden on employers.

Most recently, as part of this study, consolidation of multiple Federal and State employer reporting requirements was analyzed. Preliminary estimates predict that over the next 15 years the results of this effort, the Wage Reporting Simplification Project (WRSP), will reduce employer burden by as much as \$13.5 billion and government costs by as much as \$1.7 billion.

The envisioned vehicle, the Simplified Tax and Wage Reporting System (STAWRS), can be viewed as a single entity providing employment, tax, and wage reporting services. Under this system, employers file returns, make payments, obtain assistance, and carry out any other interactions with just one STAWRS site or service group. Similarly, participating agencies would deal with one STAWRS entity in obtaining data and revenue submitted to STAWRS and using other STAWRS services. For purposes of producing a cost and impact analysis, three alternative concepts have been defined. Option 1, the most comprehensive, includes a component for registering fact-of-employment; the data element necessary for our purposes in collecting new hire data. As a participating agency, ACF could obtain access to this information.

We would support this approach in obtaining employer new hire data for the child support registry under discussion should STAWRS become a reality as envisioned under option 1. Under such a system, Child support requirements would place no additional burden on employers, who would be reporting the data to the STAWRS entity in any event (unless the W-4 were revised to include a child support self-disclosure element). The cost of using this information for child support enforcement purposes

would be minimized because the data would be used for various purposes by a number of components, who would share the costs.

However, it must be noted that the concepts described in the study were developed only for the purpose of assessing the feasibility of WRSP. The final scope and functionality of the system, (as well as recommendations for its implementation that arise from a later phase of the study) will be determined by the assessed impact on the major stakeholders, the willingness of Federal and state agencies to participate, and the feasible migration paths from current reporting systems to a WRSP system.

B. State or ACF Maintained Data Base

Currently W-4 information is supplied by an employee and generally maintained without further disclosure by the employer. Under a State or ACF maintained employer reporting system, employers would be required to supply this information to either a Federal or State entity. While there are a number of means of reporting which would minimize this burden, it will nonetheless mean extra employer time and resources. It will also require additional staff and resources at the agency designated to enter the new hire data into a database.

The draft employer reporting feasibility study indicates that the complexity of reporting requirements is the root cause of the employer reporting burden, and this burden is exacerbated by the number of states in which a business operates and the degree to which automation varies within those States. However, complexity of reporting requirements should not be a factor in the Employer Reporting and Child Support Registry, which utilizes existing W-4 information since only minimal data not already provided by the employee will be required.

Various mechanisms for employer reporting are explored in a separate issue paper. To the extent that employers are provided flexibility in determining the best approach, employer burden should be minimized.

III. Current Environment

The employment information of greatest use for child support enforcement is contained on the W-4 form. This includes the name, SSN, date of birth and employers name and address. Most new employees are required to fill out a W-4 form on their first day on the job. These completed forms are retained by their employers, who are required to report wage and employment information to SESAs on a quarterly basis. Access to this SESA data has proven to be an excellent location source for State Child Support Enforcement (CSE) Agencies. In addition, to facilitate the interstate location of non-custodial and alleged parents by State IV-D agencies, the Federal Parent Locator Service (FPLS) operates a SESA Cross Match Locator Service. This service broadcasts each State's locate requests to the 46 participating SESA agencies for matching purposes. The wage and employment information which is obtained is used to implement wage withholding, to locate individuals in order to establish paternity or orders, to review and adjust old orders and to enforce existing orders.

Although the W-4 form are filled out at the time a new employee is hired, employers are not currently required to report quarterly wage information until the month following the end of the quarter in which wages were earned. Thus the SESAs are not notified of newly hired employees until 3 - 4 months after hiring and consequently the SESA wage and employment data currently available is generally three to six months old. The lack of up-to-date wage and employment information frequently delays implementation of wage withholding, sometimes to the extent that the obligor moves to another job prior to implementation. The value of the SESA wage and employment data as a general locate source is also significantly diminished with time due to job turnover. More frequent reporting and processing of employment data would shorten the period between the time an obligor gets a new job and wage withholding is initiated. In addition, a database of up-to-date employment data would be an especially valuable tool for locating non-custodial or alleged parents.

Some States have recently begun to develop and implement employer reporting systems to enable child support agencies to obtain information about obligors and their income source more quickly. As of January 1993, five states were implementing employer reporting of new hires for wage withholding purposes. They are West Virginia, Minnesota, Hawaii, Alaska and Washington. Two states, California and Massachusetts, have passed new hire reporting legislation and will be implementing employer reporting soon. Sixteen additional states have introduced new hire reporting legislation. New York had intended to introduce new hire legislation but dropped its planning because of fear of resistance from the employer community. A matrix of States' new hire provisions is contained in Attachment A.

In addition to using this information strictly for wage withholding purposes, Alaska includes some medical support information in its reporting. Legislation proposed by Arkansas, Arizona and Iowa would also include medical support information. Presumably this information will be used for medical support enforcement.

In its report to Congress, the U.S. Commission on Interstate Child Support recommended that a new employee reporting system be developed that would require employers to provide a copy of every new employee's W-4 form (revised to include information on child support obligations) to the state employment security agency. It further recommended that this new hire information be broadcast to States through a Federal network and be used to match against each State's total child support caseload, to facilitate wage withholding and the location of non-custodial and alleged parents.

The workgroup on Central Registries and New Hire Reporting is currently evaluating potential system configurations in order to determine which one would provide the most benefit in improving child support. The location of this new hire information is a fundamental question that affects the design and effectiveness of a new hire reporting system. Of similar concern is the question of whether there should be a central or national registry of child support cases, or whether this child support case

information should continue to reside exclusively in each individual State's automated Child Support Enforcement Systems.

The following issue papers address 1) the location of the new hire information and central registry of child support cases, 2) the nature of reporting, including access methods, targeting of employers and use of self disclosure of child support obligations and 3) other uses of the data.

The option papers address the three basic configurations being considered by the working group. These are:

1. State - State option (State Based Child Support Registry matched with a State Based Directory of New Hires)
2. Federal-State option (National Directory of New Hires which State CSE Systems Can Use to Match Their Child Support Cases Against)
3. Federal-Federal option (National Directory of New Hires, National Child Support Case Registry)

NATIONAL VS. STATE DATABASE

This issue paper considers possible locations for both new hire and central registry databases independently, and analyzes the pros and cons associated with each. The feasibility of various configurations of these databases to form the various options have been explored as separate databases.

I. NEW HIRE DATABASE

A. STATE-BASED NEW HIRE DATABASES

With a State-based approach to the collection of new hire information, employers would be required to report information on all newly-hired employees to a designated State agency (most likely, the SESA or the CSE Agency). That designated agency would be responsible for maintaining and providing access to the State new hire database, as well as regularly broadcasting new hire data to other States through a Federal network. The manner by which employers report this information and the nature of the data is discussed in another issue paper.

Location of State-based new hire database

If new hire reporting is mandated in each State, the question of whether the new hire database should be maintained at the SESA or at the child support agency raises a number of issues.

Since SESA already maintains databases of quarterly wage information, its current system could simply be expanded to include new hire reporting, especially since SESA may want to use the new hire information themselves to detect fraud in unemployment compensation cases. If SESA maintained the database, the child support agency would be relieved of the burden of setting up the database and doing data entry, the

increased data entry burden would then rest with SESA. However, the child support agency would not have control over how quickly the information would be entered by the SESA or how easily it could access the information. Involving a third party, like SESA's also adds an extra step to a process that is dependant on quick receipt of information.

If, alternatively, the child support agency maintained the database, it could receive information directly. This would give the child support agency the quickest possible access to the data, which they could then share with the SESA if the SESA requested it. However, employers would have to report such information to a new location and already overburdened child support agencies would then also have the responsibility for setting up the database and constantly receiving and entering new hire information. In addition, this would be a new requirement and burden on state-wide automated CSE systems.

1. Intrastate Use Only

Although the States which have already enacted new hire reporting legislation match the new hire information they have collected against their own child support database, none of them currently share this information with Child Support Enforcement agencies outside their own State. States with new hire reporting systems which target employers, report a 5-8% "hit" rate when matching the State's new hire database against their own child support database. This can be a cost effective approach since statistics indicate that non-custodial parents remain within the same State in approximately 70% of the cases. However, the U.S. Commission on Interstate Child Support recommended that States also be required to broadcast new hire information to other States through a Federal network.

2. Interstate Use

A. Interstate Commission's Recommendations

In order for new hire information to be useful for both interstate and intrastate cases, it must be widely available to all States. The Interstate Commission recommended a State-based option in which each State would regularly broadcast new hire information to all 54 jurisdictions.

Capability of State Automated CSE systems

Using this approach which involves processing huge volumes of new hire data on a daily basis would place an enormous burden on States and their automated CSE systems. Not only would States be required to regularly broadcast new hire data, but they would also be constantly receiving new hire data from other States and matching it against their entire caseload. Since only a very small percentage of the out-of-State new hire data would apply to child support cases within any given State (statistics indicate that 70% of absent parents remain in same State), a tremendous amount of data would be broadcast to States with marginal returns.

Small State systems will simply not be able to handle such large volumes of data being transmitted to them on a daily basis. There are an estimated 30 million new hires a year nationwide, which translates into 125,000 a day. If the Interstate Commissions' option to broadcast to all States is selected, then each State would receive and have to match each of their child support cases against 125,000 new hire records a day.

A State like California would be matching up to 125,000 new hires against its 1.5 million child support cases each day. A small State like Montana, with a caseload of 21,959, would be matching its cases against 125,000 new hires each day as well. The processing burden placed on both large and small States and territories would be tremendous, with diminishing returns.

Another problem with broadcasting is that it is just a partial solution. New hire data needs to be maintained for an entire quarter if it is to realize its full value. If each piece of new hire information is transmitted to the States in a single broadcast and matched just once against State caseloads, then the only child support cases identified will be those which were open at the time of the match. Potential "hits" will be missed because the match will not be able to identify any child support cases which open after the match has been run. State child support case identification information needs to be matched against the new hire data daily or at least weekly in order to reap the full benefit of new hire reporting. Therefore, with a State-based approach in which new hire information is broadcast to all States, each State will need to maintain a database containing its own new hire data as well as the new hire data received from the other 53 statewide systems for three months. This means that each State will need to maintain an identical new hire database of approximately 7.5 million records. This is unfeasible given the current capabilities of State IV-D and SESA systems.

Broadcast to selected States

An alternative to broadcasting to all States would be to broadcast to only selected States. Limited broadcasting could be used for either the option of broadcasting new hire information to State IV-D Agencies or broadcasting child support data to State SESA's. It could help alleviate the burden on States by reducing the volume of data being received. States could be selected by a number of criteria: they could be contiguous to the broadcasting State; they could be national high-migration States (eg. California, Florida, etc.); or they could be high-migration States specific to the broadcasting State (eg. studies have shown that people typically migrate from New York to Florida).

ACF has developed migration patterns from its analysis of Locate and Tax-offset cases indicating the most likeliest State where the absent parent has moved from, which would facilitate selection. Statistics indicate that 70% of absent parents remain in the same State. If a good number of the 30% of out-of-state

obligors live in the selected States, then the system could reach most obligors without universal broadcasting. The new hire information would still be available on the State database if any non-targeted State makes a locate request for an absent or alleged parent. Although this approach would help ease the burden on States, the information being received by any one State, even in a limited broadcast, may be difficult for many States to handle.

B. Expanded FPLS/SESA Cross-Match Locator System

A method that would facilitate interstate location would be to match the child support locate requests against new hire databases. ACF currently operates a FPLS/SESA Cross-Match Locator System as a part of its Federal Parent Locator System (FPLS). States extract locate records from their child support databases and submit them to the FPLS/SESA Cross-Match Locator System at the ACF Data Center. The locate records are consolidated at the ACF Data Center, and broadcast monthly through the Cross-Match Locator System to the State SESAs to be matched against wage and employment data. States do not use the FPLS Cross-Match Locator System to submit locate records to their own State SESA, since it is assumed that States will match their locate records against the wage and employment data maintained by their own State SESA prior to submitting them to the FPLS. The Cross-Match Locator System submits approximately 200,000 records to the 46 participating State SESAs each month. The match rate for child support locate records broadcast to State SESAs through the FPLS Cross-Match Locator System is approximately 25%. The match rate increases significantly when each State's match rate against its own SESA is included in the calculation.

The U.S. Commission on Interstate Child Support recommended broadcasting employment data on newly hired employees to all States and matching that data against each State's total child support caseload. Although related, this proposal differs in several key areas from the FPLS/SESA Cross-Match Locator System.

- The SESA wage and employment data which is accessed by the FPLS/SESA Cross-Match Locator System is 3 - 6 months old and updated quarterly.
- The new hire employment data which would be broadcast under the U.S. Commission on Interstate Child Support recommendation would be current, with daily updates.
- The FPLS/SESA Cross-Match Locator System is used primarily for locate purposes only. Thus the volume of cases submitted may only comprise a portion of the entire caseload. Cases with existing orders in the enforcement function, are not processed by the system.

The U.S. Commission on Interstate Child Support recommended matching new hire employment data against total child support caseloads. This would facilitate immediate wage withholding for new hires that have existing child support orders.

Even under the option of expanding the FPLS/SESA Cross-Match Locator System and matching child support cases against the new hire SESA database, many of the SESA agencies would not be able to handle the increased number of cases or frequency of matches. In addition, based on past experience, the cooperative agreements with the SESA's would have to be re-negotiated.

Communications network

With the implementation of the Child Support Enforcement Network (CSENet), States have a Federal communications network that permits them to broadcast interstate case data to other States. For example, CSENet was designed to permit a State to broadcast a quick locate request to one State, several States or all child support jurisdictions. However, with over 30 million new hires per year, the high volume and frequency of matches dictates the use of another communication network that can accommodate large traffic volume, such as the Social Security Administration's (SSA) File Transfer Management System (FTMS).

SSA's new FTMS communications initiative replaces their older batch data transmission system. It is the new SSA standard for Mainframe to Mainframe and Mainframe to PC file transfers for non IBM Mainframe sites utilizing 9 track tape. It currently serves 12 SSA Data Centers, 50 State welfare agencies and other Federal Agencies including HHS/ACF, IRS, and USDA/FNS. The ten largest States, serving over 50% of the US population utilize a higher speed for transmission (56 KB instead of 9.6 KB). Since SSA has already provided these State and Federal datacenters with a copy of the communications software licenses (DataMovers), each State has access to a communications network designed for transferring large volumes of data to ACF, SSA or IRS.

B. NATIONAL NEW HIRE DATABASE

In the Federal New Hire Database approach, new hire data provided by employers would be retained in a national database rather than State databases. At the time of hiring, employers would utilize a variety of methods to transmit information about the new hire to the database. The information would include name, social security number and possibly date of birth, as well as the Employer's Identification Number. This information could be transmitted by employers either directly to a Federal database or to the State IV-D agency, where it would be forwarded via CSENet to a national, centralized database. Whether the new hire information is submitted directly to the national agency or the State IV-D agency depends on who is assuming the burden of translating paper submissions into machine readable formats. If the new hire data comes to the State first, the State could match it against its child support caseload before forwarding it to the national database. To access the information in the national database, States would have to submit their entire caseload weekly to the national new hire database for matching. Any matches would then be sent back to the State for action, such as issuing a withholding notice to the employer.

If Option 1 of the WRSP project is implemented, the new hire information could be consolidated as part of a harmonized wage code which standardizes employment wage component and employment

data definitions, provides standard formats for filing, standardizes filing periods and methods and uses a unified identification numbering system for cooperating Federal and State agencies.

If new hire child support legislation is implemented independently or prior to STAWRS, then a processing facility will be needed at least in the interim. The ACF Datacenter, co-located in the same building as the SSA Datacenter in Baltimore, Maryland, is capable of serving as either an interim or permanent facility for new hire reporting.

Establishment of National New Hire Database

The size of the database depends on its intended use. If the national new hire database is to be used to match just once against each State child support case registry, then the database would consist of only a few days records, (125,000-250,000). However, to ensure its optimum use as a locate source for child support, then all records need to be retained for a full quarter. After three months, the information on the new hire databases would duplicate or replace the information retained by the State Employment Security Agencies (SESA) for its fraud matches. The number of records retained in the new hire database for a quarter would be approximately 7.5 million.

If employers report at the time of hire or within a short, specified time frame, the new hire information will be available much more quickly. If employers report directly to a national database, the process would be standardized and simplified particularly for multi-State employers. Most importantly, maintaining a national database of new hire information would eliminate the need for broadcasting, and thereby reduce the burden on State CSE systems. However, the benefits of keeping new hire data at the national level are somewhat limited in this approach, since child support case data is currently retained at the State level only. In order to locate alleged or noncustodial parents who live in a different State, a child support agency would have to repeatedly match its entire caseload against a

database of every new hire in the country. States would have to do this often for the information to be timely and useful, however, it would require tremendous numbers of repetitive and unproductive transactions. For example, if the new hire information is kept on the national database for three months and a State submits its caseload for matching once a week, any one new hire will be matched twelve times against the same caseload. This would happen for each State.

Communications Network

Under this scenario, the communication network, either CSENet or Datamovers, would be transmitting data from the 52 States and territories to a single national database, rather than to other States as previously discussed.

II. REGISTRY OF CHILD SUPPORT CASES

A. State based Registry

The U.S. Commission on Interstate Child Support identified the need for an automated record of IV-D support orders through operation of a Child Support State Registry. The Commission found that this approach had the following advantages: (1) access to State locate sources, (2) the ability to use existing and planned communication systems to access federal sources of locate data, 3) conformity with state agencies' organization and automated systems, 4) mostly automatic, relatively inexpensive update methods for information from local courts, and (5) no separate federal data base that requires constant updating.

Capability of Automated Systems

At the present time, 19 States have statewide, automated CSE Systems and are, therefore, capable of matching their entire IV-D caseload against a new-hire database. The FFY 1992 combined IV-D caseload for these 19 States totaled 3,729,419, which represented

24.6% of the total number of IV-D cases nationwide (15,160,044). Of these 19 States, 10 currently carry some non-IV-D cases on their statewide systems.

The Family Support Act of 1988 mandated that all States have fully operational, statewide, CSE Systems by October 1, 1995. Therefore, all States should be capable of matching their entire child support caseload against a new-hire database by that date. Although States are not required to carry non-IV-D cases on their statewide systems, most will carry some non-IV-D cases.

B. National Registry of Child Support Cases

The U.S. Commission on Interstate Child Support explored the option of establishing a national database of child support orders. The Commission felt that the advantages to a national registry was access to federal locate data sources, the ability to identify obligors with multiple support obligations, and greater uniformity and simplicity in the interstate process. The Commission felt that the main disadvantages to a national registry were duplication of information already on file in states and the cumbersome and costly process for States to have to constantly update the registry when orders are modified.

The current 1992 IV-D caseload is 15 million cases, up 13% from the previous year. If non IV-D cases were permitted to opt-into a Child Support case registry, then the child support case registry could be over 30 million cases.

An approach which would take advantage of the detailed information on child support cases which already exist on State's CSE system, is to maintain a registry of child support cases on a national level. This registry would contain only the information needed to match with new hire information or Federal locate and tax offset databases, and to "point" the match back to the interested State or States. These basic data elements could be Absent Parent (AP) Name, AP SSN, AP Date of Birth, Case Number Identifier and State identifier.

The States have a variety of methods by which they could submit their caseloads and their updates to the ACF Datacenter. For example, States are already submitting updates to the Tax Refund Offset System (TROS). Interfaces between State's CSE systems and the national child support case registry could be established and programmed to automatically transmit updates to the national case registry.

Use of Existing ACF Child Support Databases

ACF currently maintains child support databases at the national level that could be used to match against a new hire database. These existing child support databases could be used for matching either pending or in lieu of establishing a more comprehensive registry of child support case records. These databases are: (1) An inactive database of child support cases in which there was a previous FPLS locate request. (This database consists of cases submitted over the last five years, and contains over 4 million cases per year.) (2) the Tax Refund Offset System database, which consists of over 3 million cases with orders that have arrearages. (ACF has retained historical records on TROS cases since 1984.) (3) an inactive database of child support cases submitted to Project 1099 for asset location.

There are some limitations to these existing databases in that the data in these existing databases has not been updated or purged, and may be obsolete. These contain many duplicate records which were submitted for offset or location every year. In addition, the databases would not be a complete registry of all child support records. For example, the current national child support databases would not include a non-custodial parent whose location was known and who does not have a child support arrearage.

Capability of Automated Systems

The Family Support Act of 1988 mandates that all States have fully operational statewide Child Support Enforcement Systems by October 1, 1995. Therefore, all States will be capable of extracting key data elements and submitting them to a national

child support registry by October 1995. However, even today, many States who have not yet developed statewide automated CSE systems, or established child support case indices of State IV-D cases, have the capability of submitting key data elements to a national child support registry. Currently, States regularly submit such data elements for Federal Parent Locator Services' Cross-match locator system for SESA and the IRS Tax Offset program.

The national child support case registry could be established in a manner similar to the Tax Refund Offset Systems (TROS). In TROS, States annually submit eligible cases and then periodically submit deletions or modifications to records already submitted.

Location of National Databases

The national databases for new hire reporting and central registry of child support orders could reside at the ACF Datacenter, the IRS Datacenter, or the databases could be split between the two agencies.

The primary consideration for the optimum location of the new hire reporting database is which National agency could best accommodate the data capture, editing and processing of an estimated 30 million new hires reported each year. Both IRS and ACF have sufficient mainframe capacity but IRS is more likely to have the experience of hiring data entry staff to translate large volumes of paper into automated systems. IRS also has experience with using optical character recognition (OCR) in its Federal Tax Deposit and 1040EZ forms. IRS is committed to digital image-based systems capabilities and has developed input systems procurement plans than can support new hire reporting.

The agency mission can also have a strong influence upon an agency's commitment to perform specific activities. IRS has strong telephone support experience and expertise in supporting employers in the course of performing their submission requirements. If STARWRS is eventually implemented, then it would

be preferable for the employers to report to the same agency that is likely to be the location for STARWRS. Even if STARWRS is not implemented, employers are probably more accustomed to reporting new hire data to IRS than to a human service agency like ACF.

However, ACF would have the incentive to make the programming, processing and data entry needed to implement new hire reporting a priority, since the Child Support Enforcement program would be the primary beneficiary of the information.

Agency mission and experience also influence the location of the centralized registry of child support orders. The mission of ACF to foster family support and its existing telecommunication links and policies and procedures for exchanging data with State child support agencies favor the selection of the ACF datacenter for the centralized registry. Option II proposes utilizing three existing databases already residing at ACF datacenter as a temporary centralized child support registry to match against new hire database. Family support, location of absent parents and establishment of child support are not the primary missions of IRS and this central registry of child support orders would have to compete with other IRS systems initiatives called for under the Tax Systems Modernization and Business Vision Study.

The datacenter housing the centralized registry would not have the problem of translating paper forms into machine readable format, since all States are already mandated to have certain automated functionality by October 1995.

A solution would be to establish the new hire database at IRS that has experience dealing with employer wage submissions and establish the central registry of child support orders at ACF that has experience dealing with child support agency submissions.

ACF has extensive experiencing matching their child support data against databases residing at IRS, SSA and other major agency datacenters. For example, OCSE matches the 3.7 million locate requests submitted annually by State child support agencies against databases at 6 different Federal agencies, including IRS.

In addition, ACF matches another 3 million annual tax offset requests against IRS's database. The ACF datacenter is pursuing mainframe and mainframe transmissions with SSA and IRS, to avoid manual transmission of tapes. The location of the database in another agency may influence the frequency of the matches, but the frequency of the processing could be negotiated as part of the inter-agency agreement, and is likely to be more feasible as ACF develops a mainframe to mainframe data link.

NATURE OF EMPLOYERS REPORTING NEW HIRE DATA

This issue paper analyses the following areas related to employers reporting new hire information:

- 1) Access methods for employer reporting.
- 2) Targeting of employers
- 3) Employee self-disclosure of child support obligations

I. ACCESS METHODS

To accommodate the various sizes of employers and their current state of automation, we recommend that a variety of access methods be made available to employers for reporting of new hire information. These access methods could range from paper submissions from the smallest employers, to touch-tone telephone, point of sale or computer-telecommunication submissions from mid-size employers with a PC, communications software and modem, to large employers who would prefer electronic submissions via their mainframe computer systems.

Submission of copies of W-4 or I-9: Employer's would submit copies of new hire information to a designated agency. The employers would be responsible for copying the forms and mailing them to the designated agency. The designated agency would be responsible for entering data into the system.

Touch tone access: Employers access the system with an ordinary touch-tone telephone or rotary telephone with a replacement tone generator mouthpiece. To access the system via a touch tone phone, the user dials the toll-free system access number, and a recording instructs them to enter their authorization code followed by a pound (#) sign. The recording would prompt the user to enter all required data elements.

Point of Sale Access: A point of sale (POS) instrument resembles a touch-tone telephone with a small LED or LCD display screen.

Several different types of POS devices are currently on the market. The cost is between \$75-300 depending on whether you select a model with an attached printer. Most of these instruments are used for credit card verification by stores or restaurants. The Immigration and Naturalization Service (INS) is currently using POS devices in an Employer Telephone Verification System pilot program. A POS terminal is connected to an individual telephone line through a normal telephone jack. To make a query, the user would dial the system access number. (This telephone number may be programmed on most POS instruments to be dialed automatically at the push of a button.) The authorization code would then be entered on the keypad after the system returned a prompt. Another option would be to issue all employers of a given device magnetic cards containing the access telephone number, the authorization code, or both.

Dial-up Access: Employers access the system via a personal computer using a standard telephone (synchronous) line. The user is using a PC and a modem to access an application at the Host and entering data interactively.

Electronic File Transfer Access: Access to system is gained for electronic transfer of batched data, using a personal computer, modem, and standard telephone or dedicated telecommunication line. Records can be entered on either a diskette or PC hard disk.

Remote Job Entry (RJE) Access: Access to system is gained via an RJE terminal or personal computer with a RJE emulation board, using a standard telephone or dedicated telecommunication line.

3270 Access: Employers access the system via an 3270 terminal or a PC with a 3270 emulation board, using a dedicated communications line.

Magnetic Tape or Cartridge Access: Access to the system is gained using batched queries recorded on magnetic tape or cartridges. The tape/cartridge will be mailed by US postal service or commercial mail such as Federal Express. The cartridges are more reliable than the "round" magnetic tapes because the risk of

getting data-check errors is lower (ie. input-output errors when reading or writing tape)

Mitron: The Mitron system is a tape-to-tape data transfer system. This system enables the user to transmit a copy of a computer tape. No mailing is necessary. In order to utilize this system, the user must have a MITRON.

Mainframe to Mainframe Transfer: There are a variety of commercial communication software packages available that permit mainframe to mainframe transfers of data. The ACF datacenter utilizes the Datamover's Hub software used by the Social Security Administration's FTMS network and Supertracks software. Some coordination between datacenters is needed to insure compatibility.

II. TARGETING OF EMPLOYERS FOR REPORTING OF NEW HIRES

Several States have targeted certain employers for inclusion in their employer reporting programs. Employers can be targeted either by industry or by size. If employers are not targeted, all new hires are reported, giving employer reporting the greatest possible impact. Requiring all employers to report would enable a child support agency to know immediately if any obligor or absent parent gets a new job in the State or, in a national system, in the country. Newly hired obligors would not be able to escape detection in such a universal system.

Since some industries may employ very small numbers of obligors, however, this approach may not be the most efficient or cost-effective. There are over 30 million new hires per year (CBO's estimates). Requiring all employers to report these new hires would generate immense volumes of data that would never be connected to a child support case. Collecting, entering, and storing this data would increase the burden and cost of maintaining the system. In addition, though all employers are equally burdened, many are burdened with minimal results. Even if employers in all industries were required to report, targeting

may be necessary by size, as there is often political pressure to exempt small businesses from burdensome requirements.

Targeting of Specific Industries

Several States with employer reporting systems "target" employers by industry, that is, only employers in specified industries must report new hires. Seven States so far have proposed or implemented targeting with respect to employer reporting of new hires. Targeting new hire reporting to those industries where it will be most effective would conceivably allow child support agencies to reach a maximum number of employers at a lesser cost. Several States, including Washington and California, have shown that careful targeting of industry groups can potentially reach a substantial percentage of absent parents. Washington State's new hire reporting program (in targeted industries) reports that 16,000 hits were made from 216,000 employer reports, or that about 8% of reports resulted in hits. California found that 66% of obligors in the State were employed in 20 of its 99 industry categories. Note: See Attachment A for matrix of State new hire reporting.

Targeting, of course, would allow many obligors to escape early detection by child support agencies. One way to avoid this is to require employers in non-targeted industries to participate in a program of employee 'self-disclosure' (see Section III). The benefit of targeting is that it reduces the volume of data coming in and thus the cost and burden of maintaining the system. Targeting certain industries also relieves many employers of any reporting responsibility.

Some of the criteria used by States to target industries are:

- the rate of turnover in an industry;
- the size of an industry;
- the percentage of males in an industry; and

- the percentage of obligors potentially employed within a particular industry.

Targeting requires a variety of data about the employment and/or child support situation in a State.

Targeting Industries in a Nation-wide Employer Reporting Program

Though several states have gone through the targeting process, there is a lack of experience and knowledge about the best way to target industries. Each state's decision to target and their experience with selecting industries is somewhat unique to their own economic structure. Many states have found that targeting wouldn't be very effective in their particular situation, while other states have so far found it successful.

Targeting industries on a nation-wide basis would be extremely difficult given the tremendous differences in the economies of various regions and states. For example, the types and sizes of industries vary widely from region to region or even from state to state. The major industries in California are very different than those in West Virginia or Oregon. Differences in unemployment and growth rates among regions and States also have an impact. Even within the same industry, there are wide variations in hiring patterns. Targeting the construction industry in New England, for example, will yield significantly less new hires than targeting construction in the Northwest. In addition, the data available about the numbers of obligors employed in different industries is usually on a State, not national, level.

One option is to target on a regional rather than national basis. This would alleviate some of the problems of varying economic structures, but major differences would remain. Another option is to allow each State to develop their own targeting program. This would allow the targeting to be tailored to each specific State's economy. The problem, of course, is that States who did not want to do new hire reporting could effectively gut the requirement by exempting many or most employers. By targeting at

the region or State level, new hire reporting could be widely inconsistent from one region or State to another. It could also complicate new hire reporting for many multi-state employers, who may be exempt in one place but not in another.

Targeting at any level also raises legitimate fairness and discrimination issues with the business community. These concerns would probably make targeting a political nightmare on a national level, as every industry would lobby to be excluded from this requirement.

Targeting by Number of Employees

In discussing the targeting of certain industries classes, we also have to look at the possibility of exempting small businesses, particularly as Congress may be reluctant to add to their reporting burden. Census bureau figures show that about 87% of businesses in the country have less than 20 employees. The remaining 13% of businesses, however, employ 74% of the workforce. As these 13% are the larger businesses, they would also be more likely to have the technology to transmit electronically. Small businesses, however, are the fastest growing sector in our economy. To date, most States with new hire reporting programs have not exempted small businesses. Georgia, however, exempts employers with less than seven employees.

III. EMPLOYEE SELF-DISCLOSURE

Background:

In employee self-disclosure, the W-4 or other form is adapted to ask the employee at the time of hire whether he or she has a child support obligation and some information about the obligation (e.g. amount, beneficiary, etc...). The employer is then required to report the self-disclosed information to the appropriate court or agency. The employer begins withholding immediately based upon the information provided. The agency then

verifies the information provided and tells the employers if any mistakes were made (as obligors frequently don't know the amount of the obligation or the address of the payee). Because the employer withholds immediately based on the information given, employee disclosure allows for the quickest possible withholding when an obligor changes jobs. A variation of this would allow the employer to wait until receiving verification of the amount and the address before withholding. Although this approach would avoid any mistakes, the wage withholding would no longer be immediate.

It's not clear what percentage of obligors would respond honestly about their obligations on the form, although a stiff federal penalty would probably help convince most obligors. Those obligors intent on avoiding their child support responsibilities would not be found through employee self-disclosure. In these cases, the child support agency would have to wait until information about the new employment was discovered. Unless there was also employer reporting of all new hires to some central database, this could take up to five months through current available means. Although no States are currently using this approach in conjunction with an employer reporting system, employee self-disclosure could conceivably be incorporated into a national Employer Reporting System.

Employee Self-disclosure on its Own:

Most States who proposed or enacted employee self-disclosure programs have not done so in conjunction with an employer reporting system of all new hires. Rather, States have viewed employee self-disclosure as a limited and inexpensive alternative to reporting all new hires. In Minnesota, for example, the one State currently operating an employee self-disclosure program, employers only report those new hires who admit they have a child support obligation. The employer then begins wage withholding immediately for these employees. If there was a good compliance rate by employees, a limited system of only employee self-disclosure could be highly effective, without the burden and expense of reporting all new hires or creating new systems and

databases. Compared to a system of reporting all new hires, however, employee self-disclosure has serious limitations on what it could accomplish. Employee self-disclosure alone could not reach those obligors who are not honest, and, more importantly, employee self-disclosure would not have the locate capabilities that a new hire database would.

Employee Self-disclosure Combined with Reporting of All New Hires:

If all new hires were reported, would requiring employee self-disclosure bring any additional benefits? Essentially, it would be a matter of timing. Assuming an automated system where all new hires were immediately reported by employers and matched for child support obligations, a wage withholding order could conceivably be issued within a week of hire. With employee self-disclosure, on the other hand, wage withholding would begin immediately for those who admitted an obligation. However, as it usually takes several weeks for a new employee to receive his first paycheck, this difference of a week or less may be largely irrelevant. In most cases, wage withholding could probably be implemented as quickly and effectively through reporting of all new hires, without the complications of employee self-disclosure.

Employee self-disclosure might be extremely useful in an employer reporting system where certain industries were targeted for reporting of all new hires. Those employers in the non-targeted industries or who are otherwise excluded from the larger program could be required to do only employee self-disclosure (reporting only those employees with an obligation). This would allow any targeted employer reporting system to have a broader impact, as all employers would be required to participate in one of the programs. Once again, however, employee self disclosure also could not reach those obligors who are no honest, and, more importantly, employee self disclosure would not have the locate capabilities that a new hire database would.