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July 21, 2020

Assistant Secretary Lynn Johnson
U.S. Department of Health and Human Services
Administration for Children and Families
330 C Street, S.W.
Washington, DC 20201

Dear Assistant Secretary Johnson:

In follow-up to our phone meeting of June 9, 2020, the National Council of Child Support Directors (NCCSD) would appreciate your thoughtful consideration to a collaborative plan to mend the deteriorated relationship between state Child Support Programs and the Office of Child Support Enforcement (OCSE). We hope you agree that it is during challenging times and crises that our partnership must be stronger than ever. Unfortunately, this has not been NCCSD's experience during the last several months. We know and expected that the June 9 phone meeting would not afford you the opportunity to respond at that time. This letter summarizes our concerns to which we hope you will respond so we can move forward together.

As with all ACF programs, state Child Support agencies face unprecedented challenges internally and externally during the COVID-19 pandemic, including a sudden shift to working remotely; ceasing in-person contact with families; diminished workforce due to staff health and child care concerns; extraordinary pressure and demands from families for funds, relief, or access to services; and closed courts and community services. The following highlights our concerns and grievances, for which examples were provided during the June 9 call.

- While trying to adapt to the emergent environment and accommodate families with constrained resources, the much-needed guidance and information from OCSE consistently was substantively deficient and untimely, creating significantly greater stress on state and county programs.
- In the last decade, OCSE has taken great strides to introduce flexibility into policy, and with full cooperation and collaboration with state directors. During the initial months of current pandemic (starting mid-March), we were dismayed by the disappearance of that flexibility and collaboration as we were summarily informed about several single-minded and short-sighted policy and legal conclusions. Those

conclusions have profound adverse impacts on services to families; it appears those impacts were either disregarded or not considered. This is not the culture of the Child Support Program as we have known it, nor is it the culture we want to best serve the families in our program.

- OCSE's partnership with other federal programs, such as the Internal Revenue Service, is undoubtedly important. However, we expect that OCSE will exercise strong leadership and challenge its partners to collaboratively seek solutions in favor and support of the Child Support Program, instead of submitting to the sole decisions of the other federal programs, especially when state program directors have repeatedly expressed their needs and the decisions of the other federal programs have dire consequences for Child Support.
- NCCSD questions the explanation for the absence of support for state Child Support programs as a lack of sufficient resources at OCSE when outstanding support was being provided through this crisis to states for other ACF programs as well as from the Center for Medicaid and Medicare Services. ACF allocates its resources by its priorities and within its legal parameters. Allowing such inequity for OCSE and the Child Support Program has had a detrimental effect in states' operational and administrative abilities.

As we emphasized in our original letter, our phone call, and again here, NCCSD needs OCSE to be communicative, creative, and courageous in its guidance and support to states during this extraordinary COVID-19 challenge, and after. To move us forward, NCCSD asks that the following actions be taken immediately.

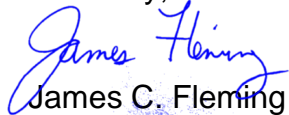
1. OCSE has already made the determination that it is appropriate to modify specific timeframes for certain Child Support services, as detailed in Dear Colleague Letter 20-04, Flexibilities for State and Tribal Child Support Agencies during COVID-19 Pandemic. OCSE has also approved numerous other waivers or modifications of program requirements requested by several states. Rather than requiring a state or tribal child support agency to independently petition for these pre-determined and approved flexibilities, we ask that **OCSE proactively approve these modified timeframes and other approved waivers and modifications for all states.**
2. States are at risk of financial penalty for falling below the 90% paternity establishment percentage defined at 45 CFR §305.2. We ask that **OCSE waive this penalty for FFY 2020 and 2021.**
3. There are times when governing laws and regulations are subject to different interpretations from the Child Support community and OCSE's single organizational interpretation does not always reflect the consensus understanding or prevailing interpretation among states. Several of OCSE's interpretations in recent years before COVID-19 and particularly during the pandemic have caused unnecessary upheaval and disruption of existing state practices and harmful impacts to families. Previously, OCSE had respected state flexibility to develop unique ways of delivering services to families as required in federal law and regulation, and refrained from mandating a single common approach. We ask that **OCSE advise its policy and legal leadership to refrain**

from attempting to resolve long-standing ambiguities in federal law or regulation by policy, and to expressly recognize state flexibility when program requirements are subject to more than one reasonable interpretation. If OCSE wants to force a preferred approach on states, it should do so through the rulemaking process, including a public comment period on the consequences of OCSE's proposal, rather than issuing a policy interpretation.

4. The role of the OCSE Commissioner is vital to the success of the Title IV-D Child Support Program. The demands faced at all levels of the Program (federal, state and tribal) require, and we ask for **a full-time OCSE Commissioner to be appointed immediately.**

Simply stated, the pandemic is the time of greatest need that state directors have known, yet we have lost confidence in our OCSE partnership and its leadership. We are hopeful you will give thoughtful consideration to our communication on this matter and the proposals in this letter to move toward restoring a constructive working relationship between OCSE and state directors for the benefit of the families served by our program. Thank you for your time and attention.

Sincerely,


James C. Fleming
NCCSD President