

Subcommittee Chairmen LaHood and Schweikert, Ranking Members Davis and Pascrell, distinguished members of the Work and Welfare and Oversight Subcommittees, thank you for holding today's hearing on the use of federal tax information (FTI) in the Child Support program. And thank you for the opportunity to testify on this important issue to the economic health of American families.

My name is James Fleming. I have been the director of the North Dakota Child Support program for more than thirteen years, after serving as the program's deputy director and chief legal counsel for eight and a half years. Over those 21 years in child support management, I have been very active in the National Child Support Engagement Association (NCSEA) and the National Council of Child Support Directors (NCCSD), serving as policy committee co-chair, board and executive committee member, and president of both organizations. I am also a member of the board of directors for the Western Intergovernmental Child Support Engagement Council.

I am speaking to you today on behalf of the state of North Dakota to address the need to expand access to FTI to Tribal child support programs and to clarify current law regarding contractor access to FTI.

The Child Support program is mandated under Title IV-D of the Social Security Act and administered through a network of state, territorial, local, and Tribal child support agencies. The program has changed a lot since enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). PRWORA, also known as Welfare Reform, authorized many new sources of information and collection tools to improve paternity and child support establishment and enforcement. In the past, the focus of the Child Support program was on recipients of public assistance and collections were used to offset the government's cost of that assistance. Today, however, roughly 90% of collections are distributed directly to single-parent families who will hopefully remain self-sufficient with the help of reliable child support payments.

A key to reliable child support payments is a sustainable monthly obligation based on the paying parent's income or ability to earn. This can be a challenge if the paying parent is not forthcoming with his or her current address or income, which makes FTI very important as an independent source of income information. Child Support tries to avoid unrealistic obligations based on past earnings that are no longer achievable or that overlook employment barriers precluding the parent from earning full-time minimum wage or what others in the same line of work might earn who don't have the same barriers. When an obligation is too high, the parent owing child support struggles to be self-sufficient, the family receiving support cannot rely on regular payments, and the Child Support program consumes precious resources trying to collect the uncollectible.

In addition to the sources of information and tools authorized in PRWORA, federal law has also given states broad ability to partner with other state and local government agencies and private vendors to deliver child support services in the way that is most efficient and cost-

effective for the state. This has led to wide diversity among states, ranging from a state-run program which receives and disburses collections through in-house employees to a state-supervised network of county and private child support offices supported by contracts with private vendors to receive and disburse collections and manage a customer service call center. But however diverse state programs may be, the constant is that Child Support is a very effective program as measured by the five performance measures created in the Child Support Performance and Incentive Act of 1998.

The delivery of child support services is highly dependent on personal information obtained under authority mandated in PRWORA, including banking and federal tax information. This information is highly confidential. Accordingly, interagency cooperative agreements and service contracts with private vendors contain strong privacy provisions to ensure that program data is used only for establishment and enforcement of child support and medical support. To put it simply, safeguarding private information is in Child Support's DNA.

A recent survey of the state child support directors revealed seven categories of agreements or contracts for child support services:

1. Other supporting state agencies such as data centers, auditors, and printing and mailing centers
2. State and local agencies, such as local prosecutors
3. Clerks of court
4. Information Technology operations and maintenance
5. State disbursement units
6. Private vendors including full-service offices, call centers, shredders, and attorneys
7. Hosting and cloud service providers

Many of these agreements and contracts have been in place since PRWORA implementation. These agreements and contracts meet all the requirements of IRS Publication 1075, which guides government agencies on protection of FTI, but as of February 2023 these agreements and contracts are now at risk.

In contrast to the flexibility in federal law regarding the structure of child support programs, the Internal Revenue Code lists only three pieces of FTI that can expressly be shared with child support contractors: the name and Social Security number of the taxpayer and the amount of federal tax refund offset. Other key pieces of FTI received by Child Support are not listed in the Internal Revenue Code as being allowed to be shared with contractors, including taxpayer address, income, whether the refund comes from a joint return, and the name of the joint filer.

Around 2009 or 2010, long after states created many of the public and private child support partnerships that still exist today, the Internal Revenue Service (IRS) started conducting information security audits of states. Although there was no suggestion that FTI had been

improperly disclosed to the public, the IRS still noted in the audit findings that child support contractors had access to more than the three items of FTI listed in the Internal Revenue Code.

In issuing those early audit findings, the IRS also noted the conflict in federal law. For example, the contractor audit finding for North Dakota in 2010 said: “Agency corrective actions to remove unauthorized ... access to FTI are held in abeyance pending resolution by OCSE [the federal Child Support office] and IRS of conflicting interpretations of federal statute.” Today, according to an informal internal survey of state child support directors, more than 45 of the 54 state and territorial child support programs have similar findings that are expressly held in abeyance. It is important to note that an audit finding does not mean a breach has occurred – only that the IRS feels that its information security standards have not been fully satisfied.

The IRS and the federal Office of Child Support Services (OCSS) have been in agreement since 2002 on the need to change the Internal Revenue Code to clarify what can be shared with child support contractors. As long as corrective actions were held in abeyance pending resolution of the conflict in federal law, states could be patient while numerous Presidential budget requests recommended such changes to Congress and, in the meantime, continue working with public and private partners in the manner that was best for each state.

In February 2023, this status quo changed when the IRS sent states an email notice that effective October 1, 2023, the audit findings regarding contractors would no longer be held in abeyance. It was naïve to think that states could bring all the contracted services in-house in fewer than nine months. After states objected, the IRS issued a new notice in June 2023, pushing back the deadline to October 1, 2024, and requiring states to develop plans for mitigating contractor access. This timeframe is still far too short to terminate long-standing contracts and obtain legislative approval for the personnel and expense to bring such services in-house. Abandoning these successful and economical public and private partnerships will not be easy or popular among many state legislatures.

The exchange of FTI and federal offset collections between states and the federal government is highly automated, which leads to efficiency and cost effectiveness but also requires significant commitment to technology. Many states continue to struggle with antiquated mainframe computer systems that are difficult to modify. In many states, use of the data elements that are not listed in the Internal Revenue Code is inherently necessary to perform the contracted services. In many other states, the data elements are comingled in a data system that cannot be concealed from contractors without exorbitant expense.

Thirty-three states so far have responded to a survey sponsored by the National Council of Child Support Directors, with preliminary mitigation estimates of 4,500 additional public Child Support employees and additional annual costs of \$740 million, including more than \$488 million per year in federal costs. The efficiencies from partnering with other public or private

service providers will be lost, and Child Support program efforts to continue to improve services to families will be on hold for years as states restructure their service delivery to resolve the IRS audit finding.

The stakes are huge. Federal law does not give states an option – submission of past-due child support for federal tax offset is mandatory. Even if participating in the federal tax offset process was optional, those offsets remain a source of significant collections for families. Of the \$27.4 billion collected in child support in Federal Year (FY) 2022,¹ federal tax offset collections totaled \$2.284 billion or 8.3% of total collections.² In FY 2022, there were 1,257,954 federal tax offsets for an average of \$1,815 per offset.³

In my state, a federal tax offset was the *only* collection during FY 2022 for 8.2% of those receiving child support. This number appears to be low compared to other states who responded to the state director survey, with one large eastern state reporting nearly 25% of offset collections were the sole collection for the family during FY 2022. Combining offsets of federal tax refunds and other federal payments, 83.8% of federal offset collections are paid to families rather than retained by the government to offset the costs of public assistance.⁴ The federal offset process is clearly an important source of collections for families – and one that makes a significant difference in meeting their basic needs.

There is a solution. [S.3154](#), the Tribal Child Support Enforcement Act, has been recently re-introduced in the Senate by Senators Thune (SD) and Wyden (OR). A similar bill passed by unanimous consent in the Senate last session. S.3154 proposes the needed changes to update the Internal Revenue Code and ensure the continued use of FTI to strengthen services under the Child Support program.

You may ask why the bill is titled “Tribal Child Support Enforcement Act.” As I explained earlier, because the IRS audit findings have been held in abeyance, the contractor issue has largely been dormant for states for many years. However, for more than ten years, the National Tribal Child Support Association (NTCSA) has advocated to expand access to FTI to Tribal child support agencies.

PRWORA authorized funding for Tribes to operate their own Title IV-D Child Support programs, but the Internal Revenue Code was not updated to give Tribal child support programs the same access to FTI that is permitted for state and local child support agencies. There are three direct-funded Tribal child support programs in North Dakota, and I can attest that the existence of these programs is critical to resolving the unique

¹ Office of Child Support Enforcement [Preliminary Data Report for FY 2022](#), Table P-1

² Office of Child Support Enforcement [Preliminary Data Report for FY 2022](#), Table P-98.

³ [Id.](#)

⁴ [Id.](#)

jurisdictional issues with Tribes as separate sovereign entities and ensuring that Tribal children receive effective child support services.

There are now more than 60 direct-funded Tribal programs, and they work every day with the same customer privacy concerns that states have. There is no reason that the families served by these programs should be denied the benefit of FTI and collections from federal tax offsets.

This is another area that is negatively impacted by the IRS audit findings regarding contractors. Recognizing that having strong Tribal child support programs also benefits states, several states including North Dakota have worked to find ways to cooperate with Tribes for offset services.

In May 2007, OCSS was asked if there were any circumstances under which a state could submit past-due support owed in Tribal IV-D cases for federal tax offset. OCSS replied: a “State may submit arrearages owed in Tribal IV-D cases for Federal tax refund offset if” there is a cooperative agreement between the state and Tribe which extends all IRS safeguarding requirements to the Tribe and the Tribal application for child support services includes notice that the parent was also applying for services from the state for the limited purpose of offsetting federal tax refunds and other federal payments.⁵ North Dakota started providing this service to a Tribe located in North Dakota in 2010.

The agreements between Tribes and states to implement the OCSS guidance have also been identified in IRS audits as involving unauthorized release of FTI, and those findings have similarly been held in abeyance until now.

The need for technology can be a particularly daunting challenge for Tribal child support agencies, which are often smaller than state programs. To overcome this barrier, based on our experience submitting Tribal obligors for offset on behalf of the Three Affiliated Tribes in North Dakota, for nine years my state has hosted a consortium of Tribes who are able to submit names of parents who owe child support for federal offset through North Dakota using a simple spreadsheet and secure file transmittal process.

North Dakota designed the consortium process to be easily replicated with a nearly unlimited number of Tribes. In fall 2022, there were nine Tribes in the consortium with one more on the way, and capacity for many more.

⁵ Office of Child Support Services [PIQ-07-02](#), Question and Response #5.

Tribe	Amount Collected in CY 2022
Lac Courte Oreilles	\$ 91,513.35
Fort Belknap	77,993.85
Three Affiliated Tribes	168,117.37
The Klamath Tribes	54,035.55
Standing Rock	47,910.04
Chippewa Cree	36,359.34
Total	\$475,929.50

In December 2022, I received a letter from the IRS directing North Dakota to immediately stop submitting Tribal parents for federal offset. We had no choice but to suspend reporting Tribal obligors pending resolution of the issue. What is particularly frustrating is that North Dakota showed the on-site IRS auditors the limited information we provide to members of the consortium, and those auditors concluded in 2016 and again in 2019 that the information North Dakota shared with Tribes was sufficiently de-identified to no longer constitute FTI.

North Dakota offered this explanation to the IRS in January 2023 and has not heard anything since then. We will be trying to work again with IRS with tax season coming up soon, but unless IRS changes its position, Tribal children will miss out on offset collections for the second tax season in a row. Importantly, even though the IRS agreed until December 2022 that North Dakota was not sharing FTI with the Tribes, the agreements with each consortium Tribe have always included the contract language required in IRS Publication 1075.

The consortium documents specify that it is an interim process until Tribes can obtain direct access to FTI. Nevertheless, if some day direct access to FTI for Tribes is allowed, the consortium process will continue to be a simple and efficient way for Tribes to access the federal offset process without investing in expensive technology. North Dakota remains hopeful that the IRS will be open to learning more about the consortium and we will be able to resume our partnership with these Tribes soon.

Conclusion

With encouragement from Congress, states and Tribes have formed unique, effective partnerships with public and private agencies to collect reliable child support for families. FTI and the federal offset process are critical components of this success. Congress needs to be aware that if action is not taken, states will be forced to abandon these partnerships and assume hundreds of millions of dollars per year in additional expense, of which the federal government will be responsible for 66%.

The IRS and OCSS have agreed federal law needs to be changed. The three national child support organizations (NCSEA, NTCSA, and NCCSD) have adopted a [joint resolution](#) in support for changing federal law.

I thank the subcommittees for their time and attention to this important issue and for their interest in strengthening state and Tribal child support programs.