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October 18, 2021  
Office of the Secretary  
ATTN: Child Support Enforcement Division Public Comments  
P.O. Box 2348  
Santa Fe, New Mexico 87504-2348

Via email: [john.lujan2@state.nm.us](mailto:john.lujan2@state.nm.us)  
RE: 8.50.100 – 8.50.130.125 NMAC Public Comment

To Whom It May Concern:

Please accept the following comments on the proposed revisions under 8.5.100 NMAC regarding the New Mexico Child Support Enforcement Division (CSED).

The undersigned organizations have extensive experience working with families impacted by Child Support Enforcement Division polices. These organizations work day-to-day with families who work to support their families and interact with the Department regarding child support. We make these suggestions in order to let the Department know which changes would better support families. We urge the Department to take the additional steps outlined below and promulgate a final rule which incorporates our specific suggestions.

**I. Section 8.50.100.7(EE) NMAC – The Department Should Define “Physical or emotional harm”**

The Department should make additional changes to define “emotional harm” as this term is not adequately defined. The only reference to emotional harm is “mental abuse.” We propose the following definition so the Department can provide better service to survivors of emotional harm, emotional abuse, psychological abuse, or mental abuse: emotional abuse is when an abuser manipulates a survivor’s feelings in order to control their partner. Alternatively, the Department can consider that emotional abuse is a way to control another person by using emotions to criticize, embarrass, shame, blame, or otherwise manipulate another person. The Department can help survivors if the term is clearly defined so that caseworkers will have a resource definition to identify whether someone is subject this abuse.

**2. 8.50.107.8(B) NMAC “Determination of Parentage” – The Department should define “best interests of the child.”**

The Title IV-D agency is not required to establish parentage or pursue genetic testing in any case involving incest or rape, or in any case in which legal proceedings for adoption are pending, or if, in the opinion of the IV-D agency, *it would not be in the best interests of the child*. We urge the Department to define, “not be in the best interests of the child.” It is important to define this term because the discretion given to the agency to make this determination is not adequately explained. There are many reasons why determining parentage may not be in the best interests of the child. 22 states list in their statutes specific factors to consider in making determinations regarding the best interests of the child.<sup>1</sup> Some factors commonly required include: emotional ties and relationships between the child and his or her parents, siblings, family and household members, or other caregivers; and the mental and physical health needs of the child.<sup>2</sup> The importance of family integrity is a guiding principle in 28 states.<sup>3</sup> This means that the State should consider the impact on the child when pursuing parentage and allow custodial parents to decline pursuing parentage when it would not be in the best interests of the child for any of the above reasons.

**3. 8.50.108.8(C) NMAC Establishment of Support Order - The Department Should Define “Best Interest” of the Child.**

Here, again, the agency has discretion to not pursue a support order when a dependent child receives public assistance if it “would not be in the best interests of the child(ren).” As above, we propose that the agency expand on the definition of “not in the best interest” because there are many “best interest” reasons why any family should not pursue child support or decline much-needed public assistance out of fear of the consequences when child support is pursued.

**4. 8.50.112.8 NMAC Parental Responsibility (License Suspension) – The Department Should Provide an Exception to Suspending Drivers Licenses for Very Low-Income Parents**

Suspending licenses for low-income noncustodial parents does not benefit the custodial families because it prohibits many noncustodial parents from being able to get to their jobs. The Department should formulate an exception for low-income individuals who end up going

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<sup>1</sup> [https://www.childwelfare.gov/pubpdfs/best\\_interest.pdf](https://www.childwelfare.gov/pubpdfs/best_interest.pdf)

<sup>2</sup> Id.

<sup>3</sup> Id.

deeper into arrears when they lose their jobs because they have lost their drivers licenses. This rule hurts poor families most.

**5. 8.50.112.11 NMAC Collection of Past Due Support By Federal Tax Offset, 8.50.125.11 NMAC Distribution of Collection (Except for Federal Income Tax), and 8.50.125.12 NMAC Distribution of Collections Through Federal Income Tax Refund Offset – The Department Should Reverse Its Distribution Priority.**

When it comes to public assistance, New Mexico is a “cost recovery” state.<sup>4</sup> Specifically, families who apply for cash assistance through New Mexico Works are required to assign their child support rights to the state.<sup>5</sup> The state then collects child support payments to reimburse itself for the amount of cash assistance paid to custodial families.<sup>6</sup> Where past-due child support is owed, the state can intercept federal income tax refunds from non-custodial parents up to the amount needed to recoup the costs of providing cash assistance.<sup>7</sup>

Cost recovery as a means of reducing welfare costs is problematic for a number of reasons. First, when the state intercepts federal income tax refunds to reimburse itself for cash assistance, custodial families never reap the full benefits of this supplemental income—which could otherwise be used for rent payments or other basic necessities. In this way, the cash assistance program fails to serve its primary purpose of supporting struggling families. Second, there is evidence that states recoup only a marginal amount of funds using this approach (when compared to the overall amount of cash assistance expenditures).<sup>8</sup> Research shows that cost recovery has been and still is an inefficient means of reducing the cost of welfare.<sup>9</sup> Lastly, cost recovery is not in the best interests of children.<sup>10</sup> First, it drives families further into poverty.<sup>11</sup> Second, families with more cash to spend can positively impact their local communities through the multiplier effect. When families use cash for rent payments, groceries, or child care, it has a positive impact on local economies which in turn positively impacts a child’s community.<sup>12</sup>

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<sup>4</sup> 8.50.125.10 NMAC.

<sup>5</sup> 42 U.S.C. § 608(a)(3) (2012).

<sup>6</sup> See generally Elizabeth Cozzolino, *Child Support’s Cost Recovery Goal after Welfare Reform* 4, UNIV. OF TEX. AT AUSTIN, (Apr. 27, 2018).

<sup>7</sup> 8.50.112.10(A) NMAC.

<sup>8</sup> Cozzolino, *supra* note 3, at 8 (comparing the amount of child support expenditures at \$20 billion in 2015 to the amount of child support retained by states at \$558 million in 2014, or 2.79% of expenditures); see also Laurie S. Kohn, *Engaging Men as Fathers: The Courts, the Law, and Father-Absence in Low-Income Families*, 35 CARDOZO L. REV. 511, 536 (2013).

<sup>9</sup> See, e.g., Daniel L. Hatcher, *Child Support Harming Children: Subordinating the Best Interests of Children to the Fiscal Interests of the State*, 42 WAKE FOREST L. REV. 1029, 1033 (2007).

<sup>10</sup> *Id.* at 1032.

<sup>11</sup> Kohn, *supra* note 5, at 535.

<sup>12</sup> AMBER WALLIN, N.M. VOICES FOR CHILDREN, NM’S WORKING FAMILIES TAX CREDIT 6 (Jan. 2017), <https://www.nmvoices.org/wp-content/uploads/2017/01/EITC-WFTC-rpt-web.pdf>.

Third, cost recovery strains relationships between custodial and non-custodial parents and may incentivize non-custodial parents to disappear in order to evade payments they know would otherwise go to the state and not to their children.<sup>13</sup>

Fortunately, the federal government has shifted its focus in recent years from cost recovery to the financial well-being of families and children.<sup>14</sup> New Mexico should follow its lead to ensure that families are getting the financial support they need to thrive. Towards this end, the state has several options to improve how its cash assistance program interacts with child support enforcement.

The federal Deficit Reduction Act of 2005 allows states to elect the order in which they apply collected child support payments. Currently, New Mexico distributes collected child support payments to state-assigned debts, with any excess paid out to custodial families.<sup>15</sup> HSD should follow formal rulemaking procedures to reverse the order in which it applies collected payments so that custodial families receive support first. The state's legislature should amend the current statutes<sup>16</sup> to offer *full* pass-through and disregard similar to Colorado—its neighboring jurisdiction.

TANF families automatically assign to the state their rights to child support when they apply for TANF.<sup>17</sup> **The amount of child support assigned to the state should not exceed the total amount of cash assistance paid to the family**, which accrues during the period in which the family receives assistance.<sup>18</sup> These state-assigned child support payments serve as reimbursement to the state for the cash assistance paid to the family. Below is a chart summarizing New Mexico's regulatory schemes for families who have *never* received TANF, *formerly* received TANF and *currently* receive TANF:

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<sup>13</sup> See Kohn, *supra* note 5, at 534-35.

<sup>14</sup> Hatcher, *supra* note 6, at 1033.

<sup>15</sup> 8.50.125.11-12 NMAC.

<sup>16</sup> 8.50.125.11(E) NMAC provides that, "At the discretion of the New Mexico legislature, the IV-D agency may disburse a maximum amount determined on a monthly basis . . . to the IV-A service recipient from collections on current support . . . A pass through payment is in addition to, not in lieu of, the monthly TANF payment." Moreover, New Mexico's statutes on pass-through, disregard and liability for repayment of public assistance are located in NMSA 1978, Sections 27-2B-7(B)(10)(a)-(b) and 27-2-28(E).

<sup>17</sup> 42 U.S.C. § 608(a)(3) (2012); NMSA 1978, § 27-2-28(F) (2009).

<sup>18</sup> § 608(a)(3); § 27-2-28(C).

	<b>(A) Never received TANF</b>	<b>(B) Formerly received TANF</b>	<b>(C) Currently receive TANF</b>
<p><b>(1) No past-due child support</b></p> <p><b>State interception does not occur.</b></p> <p>Child support payments generally.</p>	<p>Child support rights are <b>not</b> assigned to the state.</p> <p>All child support collections are paid to the custodial family.<sup>19</sup></p>	<p>Child support rights <b>were</b> assigned to the state.</p> <p>New Mexico (1) pays the family the amount needed to satisfy current monthly child support obligations.<sup>20</sup> Then (2) the state can <b>either</b> distribute the remaining amount to the family or the state.<sup>21</sup> The state can pay the family the state's share of the unreimbursed assistance. Otherwise, if the state reimburses itself, it must also pay the federal government its share of unreimbursed assistance.</p>	<p>Child support rights <b>are</b> assigned to the state.</p> <p>New Mexico (1) pays the federal government its share of the amount collected, (2) retains its own share of the amount collected, then (3) distributes any amount in excess to the custodial family.<sup>22</sup></p>
<p><b>(2) Past-due child support</b></p>	<p>Child support rights are <b>not</b> assigned to the state.</p> <p>Child support collections from federal</p>	<p>Child support rights <b>were</b> assigned to the state.</p> <p>Using federal income tax refund offset, New</p>	<p>Child support rights <b>are</b> assigned to the state.</p> <p>Using federal income tax refund offset, New</p>

<sup>19</sup> 8.50.125.11(H) NMAC.

<sup>20</sup> 8.50.125.11(F) NMAC.

<sup>21</sup> 8.50.125.11(F) NMAC.

<sup>22</sup> 8.50.125.11(C) NMAC.

	<b>(A) Never received TANF</b>	<b>(B) Formerly received TANF</b>	<b>(C) Currently receive TANF</b>
<b>State interception occurs.</b>	income tax offset are paid to the custodial family. <sup>24</sup>	Mexico (1) retains the cumulative amount of unreimbursed assistance paid to the family then (2) distributes any amount in excess to the custodial family. <sup>25</sup>	Mexico (1) retains the cumulative amount of unreimbursed assistance paid to the family then (2) distributes any amount in excess to the custodial family. <sup>26</sup>
Child support collected from federal income tax offset. <sup>23</sup>			

For example, where a family **never received** TANF (column A), the family receives all child support collections (including those from federal income tax offset) because no child support rights were assigned to the state—regardless of any past-due child support (rows 1 and 2).

Where a family **formerly** received TANF (column B), child support payments were assigned to the state and distribution of collected child support depends on whether there is past-due child support. Where there is **no** past-due child support (row 1), the state must first pay to the family the amount needed to satisfy current monthly child support obligations. Then the state has two options for the remaining amount: either pay the family or the state. If the state pays itself, it must also pay the federal government for its share of unreimbursed assistance. Alternatively, if there **is** past-due child support (row 2), the state can intercept federal income tax refunds to recoup the amounts paid to the family as assistance by the state. Any amount in excess is distributed to the custodial family.

Where a family **currently** receives TANF (column C), child support payments are assigned to the state and distribution of collected child support depends on whether there is past-due child support. Where there is **no** past-due child support (row 1), the state uses these payments to reimburse the federal government and the state for cash assistance paid to the custodial family. Any amount in excess is distributed to the family. Alternatively, if there **is** past-due child support (row 2), the state can intercept federal income tax refunds to recoup the

<sup>23</sup> 8.50.112.10(A) NMAC (“Criteria for federal income tax offset: A IV-D case may be referred for federal income tax offset . . . so long as there is a delinquency or arrearage owed.”).

<sup>24</sup> 8.50.125.12(C) NMAC.

<sup>25</sup> 8.50.125.12(B) NMAC.

<sup>26</sup> 8.50.125.12(A) NMAC.

amounts paid to the family as assistance by the state. Any amount in excess is distributed to the custodial family.

When it comes to families identified in the gray boxes above (who either (a) **formerly** received TANF and are owed past-due child support or (b) **currently** receive TANF and are entitled to either current or past-due child support), New Mexico's current regulatory scheme is problematic. Specifically, the state should not prioritize its state-assigned debts over the needs of families who have received or are currently receiving TANF. **When the state uses child support collections to pay its debt, it diverts critical child support assistance away from families who may otherwise use this supplemental income to stay sheltered and pay for basic necessities.** Indeed, it is counterproductive to the stated goals of the cash assistance program, which is to increase family income and improve the quality of life for families and children in New Mexico.

Moreover, federal income tax refunds serve a distinct purpose: they reimburse filers who paid more in tax liability than they actually owed to federal and state governments.<sup>27</sup> The amount of a refund is the excess that a filer overpaid to the government based on reported income and tax liability.<sup>28</sup> These refunds are designed to offset the burden of paying taxes for lower income earners, who make up a majority of child support obligors.<sup>29</sup> It is counterproductive for the state to intercept these refunds because, once intercepted, they no longer serve the purpose of reimbursing lower income tax filers for overpaid tax liability.

The Department should work with the legislature to take the following actions to directly support struggling families in New Mexico: (1) reverse the distribution priority in NMAC Sections 8.50.125.11 and 8.50.125.12; (2) amend NMSA 1978, Sections 27-2B-7(B)(10)(a)-(b) and 27-2-28(E) to provide *full* pass-through and disregard for families receiving cash assistance;

Pass-through refers to the amount of child support that a state elects to pass through to the custodial family in addition to cash assistance.<sup>30</sup> Disregard refers to the amount of child support that is disregarded when determining a custodial family's eligibility for cash assistance

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<sup>27</sup> Susannah Snider, *Everything You Should Know About Tax Refunds*, U.S. NEWS & WORLD REPORT (Jun. 20, 2019), <https://money.usnews.com/money/personal-finance/taxes/articles/everything-you-should-know-about-tax-refunds>.

<sup>28</sup> *Id.*

<sup>29</sup> See TAX POL'Y CTR., *How does the federal tax system affect low-income households?*, URBAN INST. AND BROOKINGS INST. (last updated May 2020), <https://www.taxpolicycenter.org/briefing-book/how-does-federal-tax-system-affect-low-income-households>; see also Hatcher, *supra* note 6, at 1031.

<sup>30</sup> *Child Support Pass-Through and Disregard Policies for Public Assistance Recipients*, NAT'L CONFERENCE OF STATE LEGISLATURES (May 29, 2020), <https://www.ncsl.org/research/human-services/state-policy-pass-through-disregard-child-support.aspx>.

benefits.<sup>31</sup> Full pass-through support and disregard must be implemented via a statute according to NMAC Section 8.50.125.11(E).<sup>32</sup>

**6. 8.50.112.11(C) NMAC The Department Should Stop Requiring Notarization of Documents**

Requirements to notarize documents is referenced throughout the regulation. We urge the Department to remove this requirement and to promulgate a regulation that no longer requires this burdensome requirement for any child support enforcement matter. The Courts already accept sworn statements that do not require notarization. The Department should follow the Courts in this matter.

**7. 8.50.112.11(I) NMAC The Department Should Stop Collecting Fees From Very Low Income non-TANF Custodial Parties.**

“A non-TANF custodial party who has applied for Title IV-D services is assessed fees for the federal income tax refund. The fees are deducted from the tax refund when it is intercepted but are credited to the obligor’s support payment.” We urge the Department to not charge non-TANF custodial parties fees.

**8. 8.50.112.12 NMAC Collection of Past Due Support By New Mexico Taxation and Revenue Department by State Tax Refund Offset – The Department Should Reverse Its Distribution Priority For State Tax Offset.**

For all the reasons stated above, regarding offsetting of federal tax refunds, the Department should elect to reverse its distribution priority for families when it comes to state taxation and revenue of state tax refund offset.

**9. 8.50.125.15 NMAC The Department Should Use Child Level Accounting By Splitting or Pro-Rating The Family Grant Amount on a Per-Child Basis.**

The Department should use child-level accounting by splitting or pro-rating the family grant amount on a per-child basis when the child is (or was) included in the family unit and should not continue to apply collections to the cumulative amount of unreimbursed assistance balances based on the total monthly family grant amount. This hurts families. The state should be in the business of maximizing return on Title IV-D cases. These are the state’s poorest families.

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<sup>31</sup> *Id.*

<sup>32</sup> 8.50.125.11(E) NMAC (“At the discretion of the New Mexico legislature, the IV-D agency may disburse a maximum amount determined on a monthly basis . . . to the IV-A service recipient from collections on current support.”).



## **Conclusion**

We thank the Department for its commitment to modernizing child support so that it works better for all families. We ask the Department to include our suggested amendments in the final rule for the reasons discussed above.

Sincerely,

/s/ Teague González

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NM Center on Law and Poverty

/s/ Arika Sánchez

Arika Sánchez, Policy Director  
NMCAN

/s/James Jimenez

James Jimenez, Executive Director  
New Mexico Voices for Children

/s/ Corey Lee

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Crossroads for Women