

Internal Revenue Service
memorandum

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to: National Director, Government Liaison and Disclosure CP:EX:GLD

from: Assistant Chief Counsel (Disclosure Litigation) CC:EL:DL

subject: "Child Support Enforcement Agency" for Section 6103 Purposes

This memorandum addresses the question of whether confidential tax information may be disclosed to nongovernmental agents of federal, state, or local child support enforcement agencies for purposes of carrying out child support enforcement services. The resolution of this question requires an examination of the meaning of the term "child support enforcement agency" for purposes of section 6103 of the Internal Revenue Code (Code).

For the reasons explained below, we are of the opinion that the term "child support enforcement agency" as it appears in provisions of section 6103 was intended by Congress to encompass public sector government agencies. The term does not encompass nongovernmental, private agents under contract to a government or government instrumentality. However, agents under contract to provide child support enforcement services to government agencies may obtain limited tax data to assist them in carrying out their contractual obligations under a recent narrowly drawn amendment to section 6103. See section 6103(l)(6)(B) as amended by section 316(g)(4) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform Act), P. L. No. 193, 104th Cong., 2d Sess. (Aug. 22, 1996).

Statutory Background

The Code authorizes disclosure of designated items of otherwise confidential federal tax information under narrowly circumscribed conditions to federal, state or local child support enforcement agencies to assist such agencies in their efforts to establish, enforce, and collect child support obligations pursuant to the provisions of part D of title IV of the Social Security Act, § 451 et seq., as amended, 42 U.S.C. § 651 et seq., (the Act). See I.R.C. §§ 6103(l)(6), (l)(8), and (l)(10).

Child support programs under part D of title IV of the Act (IV-D programs), operate in tandem with Aid to Families with Dependent Children programs established under part A of title IV of the Act (IV-A or AFDC programs). Sullivan v. Stroop, 496 U.S.

478 (1990). The statutory framework for these two programs has been summarized by the courts as follows:

AFDC is a federal-state cooperative effort administered by the states. The program provides monetary payments from the state to financially needy families, which include children deprived of parental support due to death, disability, or desertion. 42 U.S.C. § 601. States are not required to participate in the AFDC program but, if they do so, they must operate the program in compliance with the statutory requirements and the regulations promulgated by the Secretary. One of these requirements is that the state have a plan in effect for child support collection which meets the standards set forth in Title IV-D of the [] Act, 42 U.S.C. § 651, et seq.

Howe v. Ellenbecker, 774 F. Supp. 1224, 1226 (C.D. S.D. 1991), citing Wehut v. Ledbetter, 875 F.2d 1558, 1559-1560 (11th Cir. 1989), cert. denied, 494 U.S. 1027 (1990); Id. at 1569 (Clark, J., dissenting).

Title IV-D was enacted by Congress in 1974

for the purpose of enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom such children are living, locating absent parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for aid under part A) for whom such assistance is requested [.]

42 U.S.C. § 651; see also S. Rep. No. 1356, 93rd Cong., 2d Sess. (1974), reprinted in 1974 USCCAN (Vol. 4) 8149-8154; S. Rep. No. 387, 98th Cong., 2d Sess. 6 (1984), reprinted in 1984 USCCAN (Vol. 4) 2402; Wehut, 875 F.2d at 1573 (Clark, J., dissenting).¹

Title IV-D provided for increased federal matching funds (75% up from 50%) as an incentive for states to develop effective child support programs and also provided for financial incentive payments to local governmental units that were able to improve their record with respect to enforcement of child support orders. See S. Rep. No. 1356, 93rd Cong., 2d Sess. (1974), reprinted in 1974 USCCAN (Vol. 4) 8153, 8154; S. Rep. No.

¹ Efforts by the federal government to require absent parents to support their children began with the passage of the Social Security Act Amendments of 1950, Ch. 809, § 321(b), 64 Stat. 549 (codified as amended at 42 U.S.C. § 602(a)(1)), requiring welfare workers to inform law enforcement officials of cases in which AFDC was needed due to abandonment by a parent. In 1967, Congress required states to establish child support recovery programs that would be 50% funded by the federal government. Such early efforts were near-complete failures that resulted, in 1974, in Congress' passage of radical amendments to the Act in the form of title IV-D. See Howe, 774 F. Supp. at 1226; Wehut, 875 F.2d at 1569; S. Rep. No. 387, 98th Cong., 2d Sess. 5-7 (1984), reprinted in 1984 USCCAN (Vol. 4) 2401-2403.

87, 98th Cong., 2d Sess. 10, 23 (1984), reprinted in 1984 USCCAN (Vol. 4) 2406, 2419.²

Under the Act, in order to be eligible to receive matching federal funds for IV-D programs, a state must establish a "IV-D plan" approved by the United States Department of Health and Human Services' (HHS') Office of Child Support Enforcement (OCSE), that is administered on a state-wide basis by a state government "IV-D agency." 42 U.S.C. §§ 652(a)(3), 654(3).³

Once approved by OCSE,⁴ a state IV-D plan must operate in a manner that meets organizational and staffing standards set by OCSE or the state faces losing up to 5% of its federal funding for its IV-D plan programs.⁵ For example, an approved IV-D plan is subject to periodic audit by OCSE. If the IV-D plan fails to meet applicable standards, penalties can be assessed ranging from 1% to 5% of the federal government's matching grant support. 42 U.S.C. § 652(a)(4), 603(h). However, if the state's IV-D program complies with federal requirements, HHS may pay up to 66% of the state's IV-D program costs.

Prior to passage of the 1996 Welfare Reform Act, Congress had never entertained a role for private agencies at the national, state, or local government level in the delivery of child support enforcement services under the Social Security Act. To the contrary, the legislative history of child support legislation enacted prior to the Welfare Reform Act, including that of title IV-D, itself, indicates that title IV-D was designed by Congress to require and permit governments to more effectively and efficiently muster available public resources to confront child support enforcement as a broad-based

² Congress recognized the potential for "local units of government" to assist the child support enforcement efforts of state governments and, under title IV-D, provided special -- incentives to encourage child support enforcement at the local government level. S. Rep. No. 1356, 93rd Cong., 2d Sess. (1974), reprinted in 1974 USCCAN (Vol. 4) 8154; see also Wehut, 875 F.2d at 1565-66 quoting S. Rep. No. 553, 93rd Cong., 1st Sess., (1973), reprinted in Senate Miscellaneous Reports on Public Bills (Vol. VII).

³ Congress did not explicitly call for the creation of a public "agency" under section 454(3) of the Act, rather it mandated the creation of what, in essence, amounts to a government agency, specifying that a state IV-D plan must "provide for the establishment or designation of a single and separate organizational unit, which meets such staffing and organizational requirements as the Secretary [of HHS] may by regulation prescribe, within the State to administer the plan[.]" S. Rep. No. 1356, 93rd Cong., 2d Sess. (1974), reprinted in 1974 USCCAN (Vol. 4) 8153; and Social Security Amendments of 1974, Pub. L. No. 647, 93rd Cong., 2d Sess. (1974), 88 Stat.2337, reprinted in 1974 USCCAN (Vol. 2) 2735.

⁴ OCSE is responsible both for approving state IV-D plans and for establishing regulations governing the implementation and operation of such plans. 42 U.S.C. § 652. Such regulations are set forth in 45 C.F.R. §§ 301, et seq., and detail the requirements of IV-D plan design, approval and operation.

⁵ Specifically, under 42 U.S.C. § 652(a)(2), OCSE has the obligation to "establish minimum organizational and staffing requirements for State units engaged in carrying out [IV-D] programs under [approved IV-D plans]."

social problem that warranted comprehensive and orchestrated government intervention.⁶

The respective roles played by federal, state, and local government agencies in the structure and operation of child support enforcement services after title IV-D took effect in late 1975, were summarized by the Senate Committee on Finance in 1984 as follows:

[the structure of the title IV-D program] has not changed since its inception. Basic responsibility for child support and establishment of paternity is left to the States, but the Federal Government also plays a major role in monitoring and evaluating State programs, providing technical assistance, and, in certain instances, in undertaking to give direct assistance to the States in locating absent parents and obtaining support payments from them.

One of the major concerns of the Committee when it designed the [IV-D] child support enforcement program was how to assure that the program would have sufficient visibility and stature to be able to operate effectively. The Committee bill thus required the Department of Health, Education, and Welfare, (now Health and Human Services) to set up a separate organizational unit under the control of an Assistant Secretary for Child Support who would report directly to the Secretary.

The Director of [OCSE] is given broad authority under [Title IV-D]. He has the responsibility of establishing the standards for State programs which he determines to be necessary to assure that the programs will be effective. In addition, he is required to establish minimum organizational and staffing requirements for State child support agencies.

The Director is also required to review and approve State plans, and to evaluate the implementation of State plans, and to evaluate the implementation of State programs to determine whether they are in conformity with the Federal Requirements. He must conduct annual audits of State programs to determine whether the actual operation of the program in each State conforms to the Federal requirements, and must impose a penalty if he finds noncompliance.

⁶ Congress strongly reiterated its longstanding position in this regard when it incorporated into the Act, itself, as part of the Child Support Amendments of 1984, "the language of S. Con. Res. 84 urging State and local governments to focus on the vital issues of child support, child custody, visitation rights and other related domestic issues that are within the jurisdictions of such governments." S. Rep. No. 387, 98th Cong., 2d Sess. 5, 59 (1984), reprinted in 1984 USCCAN (Vol 4) 2401, 2477, see also Pub. L. No. 378 § 23, 98th, Cong., 2d Sess. (1984), reprinted in 1984 USCCAN (Vol. 1) 98 Stat. 1329-30.

The child support statute leaves basic responsibility for child support enforcement and establishment of paternity to the States. Each state is required to designate a single and separate organizational unit of State government to administer the program. The 1967 child support legislation had required that the program be administered by the welfare agency. The 1975 Act deleted this requirement in order to give each State the opportunity to select the most effective administrative mechanism. In practice, most states have placed the child support agency within the social or human services umbrella agency which also administers the AFDC program. However, two States have placed the agency in the Department of Revenue. The programs may be administered either on the State or local level. Eight programs are locally administered. A few programs are State administered in some counties and locally administered in others...

Finally, as an incentive to encourage State and local governments to participate in the program, the law provides for a payment equal to 12 percent of collections made on behalf of AFDC families. These incentive payments are deducted from the Federal share of collections and are to be retained by the level of government making the collection.

S. Rep. No. 387, 98th Cong., 2d Sess. 5-11 (1984), reprinted in 1984 USCCAN (Vol. 4) 2401-2407 (comments of the Senate Committee on Finance in the course of its consideration of a bill (H.R. 4325, enacted as the Child Support Enforcement Amendments of 1984, P.L. No. 378, 98th Cong., 2d Sess. (1984), 98 Stat. 1305, reprinted in 1984 USCCAN (Vol. 1)) to amend title IV-D to strengthen child support enforcement and paternity establishment, e.g., through income withholding and increased incentive payments to states).

Shortly after Congress' ambitious title IV-D program to enhance child support enforcement was enacted, Congress began its overhaul of federal law governing confidentiality and disclosure of federal tax information. Congress amended section 6103 of the Code to establish the general rule that "[r]eturns and return information shall be confidential"⁷ and that:

except as authorized by this title--

(1) no officer or employee of the United States,

⁷ A "return" includes any tax or information return as well as schedules, attachments, amendments, and supplements thereto. I.R.C. § 6103(b)(1). "Return information" is broadly defined to encompass virtually all data received or prepared by the Service with respect to liability or possible liability "for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense" under the Code, including, for example, a taxpayer's identity, the nature, source or amount of his income, assets, or liabilities, and whether or not the taxpayer's return, has been, is being or will be investigated. I.R.C. § 6103(b)(2), (b)(6).

(2) no officer or employee of any State, [or] any local child support enforcement agency, ... [and]

(3) no other person (or officer or employee thereof) who has or had access to returns or return information under ... paragraph (6) ... of subsection (l),...

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section.

I.R.C. § 6103(a).

Thus, returns and return information are to be confidential unless disclosure is permitted by some specific provision of the Code. Church of Scientology of California v. Internal Revenue Service, 484 U.S. 9 (1987). Moreover, the unauthorized disclosure of returns and return information may result in civil damages (I.R.C. § 7431) and/or criminal penalties (I.R.C. § 7213).

While title 26 does not authorize disclosure of tax information for child support enforcement purposes, generally, nor for purposes of administering title IV-D programs, generally, limited disclosures for certain such purposes are permitted under I.R.C. §§ 6103(l)(6), (l)(8), and (l)(10). As described below, these exceptions allow federal, state and local agencies responsible for implementing OCSE approved IV-D plans to obtain certain tax information for their use in conducting IV-D plan programs. Moreover, certain items of tax data provided to a child support enforcement agency under section 6103(l)(6)(A) now may be redisclosed by the agency to agents under contract to the agency for child support enforcement purposes under new section 6103(l)(6)(B).⁸ See pp. 11-12 & n.16, 20-21, infra.

Section 6103(l)(6) authorizes the Service to disclose to "Federal, State or local child support enforcement agenc[ies,]" certain items of information from any return of an individual with respect to whom child support obligations are sought to be established or

⁸ Previously, this Division has examined aspects of the scope and application of the disclosure authority bestowed under section 6103(l)(6). For example, in a 1980 opinion, we concluded that agents under contract to state or local child support enforcement agencies are not authorized recipients of return information under section 6103(l)(6). See CC:D:Br3-656-79. In affirming our prior opinion, we note that the rationale underlying that opinion not only precludes disclosure of return information to third party contractors of federal, state or local government child support enforcement agencies under section 6103(l)(6) (except as narrowly authorized by the 1996 Welfare Reform Act), but precludes such disclosure under sections 6103(l)(8), and (l)(10), also.

requests information under section 6103(l)(6) is a child support enforcement agency described in that Code provision. Only those child support enforcement agencies which have been determined by the Service to be eligible to receive return information under the terms of section 6103(l)(6) may request and access federal tax information via OCSE.

Tax data obtained by agencies under section 6103(l)(6) may be disclosed to personnel within the agencies only on a need-to know basis for the purpose of performing the IV-D plan functions specified in section 6103(l)(6). As a general rule, recipient agencies are not authorized to disclose tax data released to them pursuant to section 6103(l)(6) to third parties nor in litigation (not even for purposes of establishing or collecting child support obligations) and the tax data may not be used in any other welfare or relief program administered by the recipient agency.¹⁵

A limited redisclosure exception was created recently pursuant to section 316(g)(4) of the Welfare Reform Act. This provision amended section 6103(l)(6) explicitly to provide that federal, state, and local child support agencies that obtain tax data under section 6103(l)(6)(A) no longer are subject to an absolute bar on redisclosure of that data to their agents. Such agencies now may redisclose, "to any agent of such agency which is under contract with such agency to carry out the purposes [of establishing and collecting child support obligations from, and locating, individuals owing such obligations]," three items of tax data relating to "any individual with respect to whom child support obligations are sought to be established or enforced." I.R.C. § 6103(l)(6)(B), as amended by section 316(g)(4) of the Welfare Reform Act. Specifically, a child support enforcement agency now may redisclose to its agent the address and social security number(s) of an individual with respect to whom child support obligations are sought to be established or enforced, as well as the amount, if any, offset against a federal income tax refund to which the individual was otherwise entitled, pursuant to section 6402(c) which authorizes such offsets to collect past due child support. Id.¹⁶

¹⁵ Section 6103(l)(6) does not address the issue of whether agencies which receive tax information under that provision subsequently may disclose that data. However, the Staff of the Joint Committee on Taxation has stated with regard to tax information that a child support enforcement agency obtains under section 6103(l)(6), as follows:

Congress did not intend [] that the child support enforcement agency be authorized to disclose Federal return information to third parties or in litigation relating to establishing or collecting child support obligations.

Staff of the Joint Committee on Taxation, 94th Cong., 2d Sess., General Explanation of the Tax Reform Act of 1976, 337 (Comm. Print 1976), 1976-3 C.B. (Vol. 2) 349.

¹⁶ The limited redisclosures by agencies to their agents that are authorized under new section 6103(l)(6)(B) do not facilitate agencies "opting-out" of child support enforcement activities in favor of "full-service" private sector contractors since the provision does not allow the Service to disclose tax data directly to an agent of a child support enforcement agency. Rather, Congress has required that the tax data be channelled to an agent via its principal, a child support enforcement agency. Thus, far from facilitating replacement of public sector child support enforcement agencies with private, nongovernmental contractual agents, under new section 6103(l)(6)(B) such private agents are dependant, totally, on their

With respect to the safeguard and security issues associated with the implementation of new section 6103(l)(6)(B), section 316(g)(4) of the Welfare Reform Act enacted conforming amendments necessary to ensure that officers and employees of agents of child support agencies that obtain tax data under this amendment are subject to the Code's general disclosure prohibition (see 6103(a)(3)) and, therefore, to civil remedies and criminal penalties for unauthorized disclosure (see sections 7213(a)(2) and 7431(a)(2)) and to ensure that tax data in the hands of such agents is subject to the Code's safeguard requirements (see section 6103(p)(4)). Therefore, an agent of a child support enforcement agency may not share tax data redisclosed to it under new section 6103(l)(6)(B), e.g., with a subcontractor. In sum, under new subsection 6103(l)(6)(B), an agent may receive specified tax data subject to the same use and redisclosure restrictions that apply to the data in the hands of the agent's child support enforcement agency principal.

In 1980 Congress amended section 6103 to require the Commissioner of Social Security to disclose

return information with respect to net earnings from self-employment, wages, and payments of retirement income to officers and employees of a State or local child support enforcement agency.

S. Rep. No. 408, 96th Cong., 2d Sess. 67 (1980), reprinted in 1980 USCCAN (Vol. 3) 1414-15. Congress explicitly defined "State or local child support enforcement agency" for purposes of this new disclosure provision to mean "any agency of a state or political subdivision thereof operating pursuant to a[n] OCSE approved state IV-D plan." I.R.C. § 6103(l)(8)(C); see also Pub. L. No. 265 § 408, 96th Cong., 2d Sess. (1980), reprinted in 1980 USCCAN (Vol. 1) 94 Stat. 468-469.

I.R.C. § 6103(l)(10) authorizes disclosure of federal tax information for purposes of collecting, in the manner provided for under I.R.C. § 6402(c), past due title IV-D child support owed to a particular state by a taxpayer.¹⁷ The release of tax data, pursuant to

agency principals as their only source of tax data. In this regard, we note the United States' General Accounting Office's (GAO's) observation that the Welfare Reform Act has only partially resolved the issue of "contractors' access to IRS tax information" as an impediment to future full-service privatization "by authorizing contractors access to certain tax information" via state child support agencies. See Child Support Enforcement: Early Results on Comparability of Privatized and Public Offices (GAO/HEHS-97-4, Dec. 16, 1996) at 14. The GAO notes that OCSE officials agree that the Welfare Reform Act only affords contractors access to certain of the tax data that may be furnished to child support enforcement agencies under section 6103(l)(6). Id. at 15.

¹⁷ Tax data released under section 6103(l)(10) is limited to:

- (1) taxpayer identity information,
- (2) the fact that a reduction has or has not been made,
- (3) the amount of such reduction,
- (4) whether the taxpayer filed a joint return, and
- (5) the fact and amount of a payment made to the spouse of the taxpayer on the basis of a joint return.

section 6103(l)(10), to states for purposes of facilitating collection of past due title IV-D child support debts owed to the agencies administering state IV-D plan programs is channelled via OCSE to automated state IV-D agency databases and subsequently is disbursed to subsidiary state and local agencies according to the same "conduit" procedures that apply to disclosures under section 6103(l)(6). Section 6103(l)(10) does not authorize recipient agencies to redisclose this tax data to their agents.

Legal Analysis

I. The Release of Federal Tax Information to "Agencies" for Title IV-D Purposes under section 6103(l)(6)

When Congress overhauled federal law governing disclosure of tax data, in 1976, it recognized that tax data consisting of the most recent address and place of employment of a deserting parent was available via OCSE's FPLS upon request of (1) a local or state official with support collection responsibility under [title IV-D], (2) a court with support order authority, or (3) the agent of a deserted child not on welfare, pursuant to provisions of title IV-D. S. Rep. No. 1356, 93rd Cong., 2d Sess. (1974), reprinted in 1974 USCCAN (Vol. 4) 8152.

In amending section 6103, Congress expanded the items of tax data that could be disclosed for title IV-D purposes (see section 6103(l)(6)(A)(i) and (ii)) in addition to authorizing ongoing disclosures of current address and place of employment "tax" data for such purposes, but narrowed the class of authorized recipients of that data "to the appropriate Federal, State, or local child support enforcement agency." I.R.C. § 6103(l)(6); S. Rep. No. 938, 94th Cong., 2d Sess. 340, 341 (1976), 1976-3 C.B. (Vol. 3) 378, 379 (" [r]eturns and return information of taxpayers and spouses could be disclosed to appropriate Federal, State and local agencies for purposes of, and only to the extent necessary in, locating deserting parents and determining ability to make support payments.") (Emphasis added).¹⁸

Congress did not define the terms "Federal, State, or local child support enforcement agency" for section 6103(l)(6) purposes. Considering Congress' legislative priorities at the time--child support enforcement being chief among them--in our view, Congress did not conceive of there being any doubt as to the meaning of those terms

¹⁸ Congress offered only a cursory explanation of the disclosure authority granted under section 6103(l)(6) :

The committee decided that it was necessary to allow the disclosure of returns and return information in miscellaneous situations. In most of these situations, disclosure is permitted under present law. In each situation, the committee decided either that returns or return information should be public as a matter of policy, or that the reasons for the limited disclosures involved outweighed any possible invasion of the taxpayer's privacy which might result from the disclosure.

The conferees agreed to amend the Internal Revenue Code to provide that, upon written request, the Commissioner of Social Security shall directly disclose return information with respect to net earnings from self-employment, wages, and payments of retirement income to officers and employees of a State or local child support enforcement agency. Disclosure will be allowable only for purposes of, and to the extent necessary in establishing and collecting child support obligations from, and locating individuals owing child support obligations.

Any agency receiving information must comply with conditions specified in current law for safeguarding information. Under these safeguards information may be used on a computer in encoded form if the computer is used only by the child support enforcement agency. If this information is used on computer systems shared with agencies which are not child support agencies, it must be introduced into the system and coded so that it is available only to officers and employees of the child support enforcement agency. Generally, disclosure to individuals other than officers and employees of the child support enforcement agency would not be authorized; however, the information may be disclosed to the taxpayer to whom the information pertains.

S. Rep. No. 408, 96th Cong., 2d Sess. 66-67 (1980), reprinted in 1980 USCCAN (Vol. 3) 1414-15 (emphasis added).

Thus, Congress recognized that under then existing provisions of the Code, the Service could disclose certain wage tax data to the Social Security Administration (SSA) for purposes of administering the Act (under sections 6103(l)(1) and (5)), but could not disclose such wage tax data to federal, state and local child support enforcement agencies for purposes of title IV-D of the Act under section 6103(l)(6). Moreover, because recipient agencies, including SSA, "must comply with specified safeguards" under section 6103(p)(4), SSA lacked authority to-transfer the wage tax data it received from the Service to child support enforcement agencies with the result that the latter agencies were limited to the tax data they received directly from the Service under section 6103(l)(6). Congress, therefore, enacted section 6103(l)(8) simply to "bridge a gap" in the disclosure authority bestowed under section 6103(l) by requiring SSA, upon request, to furnish certain wage tax data that it obtained from the Service under that provision, to section 6103(l)(6) agencies for the same title IV-D child support enforcement purposes for which those same agencies already were authorized to receive certain other items of federal tax data directly from the Service under section 6103(l)(6). S. Rep. No. 408, 94th Cong., 2d Sess. 66-68 (1980), reprinted in 1980 USCCAN (Vol. 3) 1414-16.

Congress enacted a parallel amendment to title III of the Act requiring that state unemployment agencies also furnish wage tax data upon request to officers and employees of state or local child support enforcement agencies for IV-D plan purposes and establish safeguards necessary to ensure that the recipient agencies only use such wage tax data for purposes of establishing, and collecting child support obligations from,

and locating individuals owing such obligations. *Id.* See also Pub. L. No. 265 § 408, 96th Cong., 2d Sess. (1980), reprinted in 1980 USCCAN (Vol. 1) 94 Stat. 468-469. Moreover, Congress explicitly defined its "State or local child support enforcement agency" terminology for purposes of both amendments (*i.e.*, for purposes of disclosures of wage tax data under section 6103(l)(7) sic and under title III of the Act) to mean "any agency of a state or political subdivision thereof operating pursuant to a[n] OCSE approved state IV-D plan." *Id.* and I.R.C. § 6103(l)(8)(C).

In our view, Congress' section 6103(l)(8)(C) definition of "state and local child support enforcement agencies" also is illuminating for purposes of disclosures under section 6103(l)(6) in light of Congress having cross-referenced state and local child support enforcement agencies for section 6103(l)(6) and section 6103(l)(8) purposes in the legislative history explanation of its section (l)(8) amendment. See S. Rep. No. 408, 94th Cong., 2d Sess. 66-68 (1980), reprinted in 1980 USCCAN (Vol. 3) 1414-16.

Furthermore, in enacting section 6103(l)(8) Congress made clear that it was authorizing disclosures to "officers and employees of state or local child support enforcement agencies." Section 6103(l)(8)(A) (emphasis added). By thus tightening the language used in section 6103(l)(8) to designate state and local agencies as authorized recipients of tax data for title IV-D purposes, compared with the language that appears in section 6103(l)(6), Congress made clear that it was not authorizing disclosure beyond an agency's own officers and employees to categories of persons such as legal representatives, agents or contractors of agencies. By specifically identifying agency "officers and employees" as the intended recipients of tax data under section 6103(l)(8), Congress obviated any argument to the contrary that might otherwise have been available in the absence of these plain words appearing in the statute. Thus, the language of section 6103(l)(8) reiterates Congress' intent that for section 6103 purposes "child support enforcement agencies" are distinguishable from individuals or entities that may represent or operate on behalf or in lieu of such agencies, pursuant to contract.²⁰

III. The Release of Federal Tax Information to "Agencies" for Title IV-D Purposes under section 6103(l)(10)

Congress authorized collection of past due child and spousal support from federal tax refunds through 1981 legislation that amended title IV-D of the Act and added section 6402(c) to the Code. See Pub. L. No. 35, § 2331, 97th Cong., 1st Sess. (1981), reprinted in 1981 USCCAN (Vol. 1) 95 Stat. 860-861.²¹

²⁰ Congress consistently has rejected proposals to authorize the disclosure of federal tax data to private third party contractors with government agencies. For example, during the drafting of the 1993 Omnibus Budget Reconciliation Act (OBRA '93), the House Committee on Ways and Means rejected a legislative proposal that would have expanded the Service's authority to disclose tax information to contractors for non-tax purposes (Department of Education sought an amendment to section 6103 that would have allowed its agents access to limited tax data in connection with the repayment of income contingent student loans).

²¹ The 1981 legislation did not explicitly authorize the Service to release the tax data that, today, is released pursuant to section 6103(l)(10), to agencies participating in the federal tax refund offset program

As originally enacted in 1981, refund offset was a state debt collection tool only with respect to individuals owing past due child support obligations that were assigned to the state as a condition of eligibility for title IV-A [AFDC] benefits. In 1984, Congress expanded the system to allow withholding of past due support owed by absent parents of non-AFDC minor children from federal tax refunds and outlined the following refund offset procedures:

State child support agencies will be required to submit to the IRS for withholding, the names of absent parents who owe past-due support to whom the withholding procedures may be applied. These must be limited to cases where there are arrearages of \$500 or more, and which, on the basis of current payment patterns and the enforcement efforts that have been made, the State agency determines are unlikely to be paid before the offset occurs

Once a State agency has determined that the name of an absent parent will be submitted to the IRS, it must send notice to that absent parent of the proposed offset, including the procedures to be followed in contesting the proposed offset. The notice must also inform the absent parent and spouse, if any, of the procedures which may be taken to protect the unobligated spouse's portion of the refund.

If, on the basis of the information provided by the State child support agency (through the Department of Health and Human Services) the IRS determines that an income tax refund must be withheld to pay past due-support, the IRS must provide the taxpayer with notice, concurrent with offset, of the amount of the offset and of the State to which it has been paid so that any questions which the taxpayer may have about the child support obligation may be addressed to the appropriate State child support agency. The IRS notice must also inform the taxpayer that, in the case of a joint return where both spouses had income the spouse who is not liable for the past-due obligation may file an amended tax form to recover the unobligated spouse's portion of the amount that was withheld. ...

Amounts of refunds withheld by IRS will be sent to the State child support agency that submitted the name for offset, so that they can in turn be paid to the family that is owed the past-due support. It is expected that generally the state agency will make prompt payment to the families involved.

(TROP). Prior to the passage of section 6103(l)(10) in 1984 (see Pub. L. No. 369, § 2653, 98th Cong., 2d Sess. (1984), reprinted in 1984 USCCAN (Vol. 1) 98 Stat. 1155), enacted without elaboration or commentary in the legislative history (see H. Rep. No. 432, Part II, 98th Cong., 2d Sess. 1413 (1984), reprinted in 1984 USCCAN (Vol. 4) 2101), disclosures for TROP purposes were apparently made incidental to the offset authority and requirements contained in section 6402(c) to agencies identified in and authorized to receive these items of tax data under section 6103(l)(6).

S. Rep. No. 387, 98th Cong., 2d Sess. 55-56 (1984), reprinted in 1984 USCCAN (Vol. 4) 2473-74 (emphasis added).²²

Thus, I.R.C. § 6402(c) provides that a state, upon notifying the Service that a named person owes a past due legally enforceable child support debt (as defined in section 464(c) of the Act, 42 U.S.C. § 642(c)), to the state, may have the Service reduce a federal tax overpayment to be refunded to any such person and pay the reduction to the state. However, the effective operation of federal tax refund offset as a debt collection mechanism depends upon the release of certain tax data, pursuant to section 6103(l)(10), to agencies authorized to seek an offset. Section 6103(l)(10) provides that:

(A) RETURN INFORMATION FROM INTERNAL REVENUE SERVICE.

The Secretary may, upon receiving a written request, disclose [certain tax information] to officers and employees of agencies seeking a reduction under subsection (c) or (d) of section 6402[.]

B) RESTRICTION ON USE OF DISCLOSED INFORMATION. Any officers or employees of an agency receiving return information under subparagraph (A) shall use such information only for the purposes of, and to the extent necessary in, establishing appropriate agency records ... (Emphasis added.)

Subparagraph (A) of this provision, by operation of section 6402(c), authorizes the Service to disclose tax data only to "officers and employees" of agencies seeking a refund offset. Subparagraph (B) then restricts use of the disclosed tax data in the hands of the "officers and employees" of the agencies to whom it was disclosed. In particular, agencies must accomplish refund offset using the tax data that is provided for this purpose, through their own "officers and employees." The agencies cannot, instead, use contractors because there is no authority to disclose the items of tax data required to effect the offset, to contractors.

IV. Congress' 1996 Amendment to Section 6103(l)(6)

Congress' recent amendment to section 6103(l)(6) acknowledges, indeed is premised upon, a clear distinction for section 6103 purposes between an "agency" authorized to receive tax data from the Service for title IV-D purposes, and an "agent" of such agency that is under contract to provide certain IV-D services in lieu of provision of

²² The above-quoted legislative history explaining TROP procedures in light of the explicit disclosure authority bestowed by new section 6103(l)(10) is contained in Congress' comprehensive description of the history of child support enforcement programs under the Act (including intended operations after the passage of the 1984 Child Support Enforcement Amendments to Title IV-D of the Act) notwithstanding that section 6103 (l) (10) was enacted as section 2653(b) (3) (A) of Pub. L. No. 369, 98th Cong., 2d Sess. (1984), reprinted in 1984 USCCAN (Vol. 1) 98 Stat. 1155, not under the provisions of the Child Support Enforcement Amendments of 1984, Pub. L. No. 378, 98th Cong., 2d Sess. (1984), reprinted in 1984 USCCAN (Vol. 1) 98 Stat. 1305.

those services by the agency directly. See Welfare Reform Act § 316(g)(4); pp. 11-12, supra.

This action by Congress undercuts, entirely, any argument that the term "child support enforcement agency" for section 6103 purposes encompasses private sector individuals or entities under contract to public sector government agencies. Had Congress been receptive to the notion that private contractors might qualify as agencies for section 6103(l)(6) purposes, its 1996 amendment authorizing agencies to redisclose certain tax data to their contractual agents would have been unnecessary, indeed meaningless. If a private contractor could qualify as an agency for section 6103 purposes it would be eligible to request all tax data available under section 6103(l)(6) directly from the Service; it would not be limited to the three items of the data that now may be redisclosed to it by its agency principal under new section 6103(l)(6)(B).

It is apparent from an examination of the statutory interplay between the applicable provisions of section 6103 and those of title IV-D that agents under contract to "child support enforcement agencies" are not interchangeable with those agencies for section 6103 purposes. Under an OCSE approved state IV-D plan, the state's IV-D agency is responsible for administering that plan either directly or through delegates under its supervision. 42 U.S.C. § 664. However, when Congress amended section 6103 in 1976, it indicated its clear intention that of all the IV-D agency delegates (including court and law enforcement officials and child support agency staff and private persons or agencies from whom services were purchased) that a IV-D agency properly may involve in the job of implementing an OCSE approved IV-D plan, only "Federal, State, or local child support enforcement agenc[ies]" participating in the administration of such plans were to be provided with federal tax data to assist their efforts.

Subsequently, in 1980 Congress expanded authority to disclose tax data for title IV-D purposes but it did not expand the universe of state and local title IV-D administrative units that were eligible to receive federal tax data for title IV-D purposes, beyond agencies identified in section 6103(l)(6). See pp. 14-17, supra. Likewise when, in 1984, Congress expressly authorized disclosure of specified items of federal tax data for purposes of collecting, by refund offset, past due title IV-D debts, that refund offset program was already firmly in place and was being administered through OCSE and the same state and local organizational and administrative units (i.e., traditional public child support enforcement agencies at the state and local government levels) that Congress had already twice explicitly identified as eligible recipients of federal tax data for IV-D program purposes, first in 1976 (by enacting section 6103(l)(6)) and subsequently in 1980 (by enacting section 6103(l)(8)). In enacting section 6103(l)(10) in 1984, Congress formalized the authority of state and local child support enforcement agencies already explicitly authorized to receive tax data under the conditions specified in section 6103(l)(6) and (l)(8), to receive tax data under the conditions specified in section 6103(l)(10), also. Thus, the specific agencies that section 6103(l)(10) contemplates as recipients of tax data disclosed in connection with collecting past due child support debts by TROP are "section 6103(l)(6)" agencies. Section 6103(l)(10) does not authorize disclosure or redisclosure of refund offset tax information to any non-section

6103(l)(6) agency, public or private, regardless of the degree of involvement of any such entity in the delivery of child support enforcement services at a federal, state or local government level.

V. Title IV-D "Child Support Enforcement Agencies"

The legislative history of title IV-D reinforces our conclusion that the "agencies" Congress had in mind in enacting section 6103(l)(6) were public sector agencies that were being used, at that time, to deliver child support services at federal, state and local levels of government.

An expanded role for, and improved performance by, government agencies (specifically including local government agencies) in establishing and enforcing child support obligations, was a centerpiece of Congress' new child support enforcement program enacted as title IV-D of the Social Security Act (P. L. No. 647, 93rd Cong., 2d Sess. (1974)), that went into effect in August 1975, a few months before Congress embarked on the job of amending section 6103. Congress described its approach under title IV-D, as follows:

In view of the fact that most States have not implemented in a meaningful way the provisions of present law relating to the enforcement of child support and establishment of paternity, ... new and stronger legislative action is required in this area which will create a mechanism to require compliance with the law.

[Title IV-D] builds upon the provisions-of existing law which are basically sound. It mandates more aggressive administration at both the Federal and local levels with various incentives for compliance and with penalties for noncompliance.

S. Rep. No. 1356, 93rd Cong., 2d Sess. (1974), reprinted in 1974 USCCAN (Vol. 4) 8149-50 (emphasis added).

By "Federal and local levels," Congress meant Federal and local levels of government, and the instrument of "more aggressive administration" at each of those levels of government was to be the staff of Federal and local government agencies or departments. For example, the legislative history detailing "federal duties and responsibilities" under title IV-D describes the intended role of the Federal government in monitoring and evaluating state IV-D programs through a "federal child support agency," specifically, the Federal Government's Department of Health, Education, and Welfare (HEW). See S. Rep. No. 1356, 93rd Cong., 2d Sess. (1974), reprinted in 1974 USCCAN (Vol. 4) 8150. Moreover, to focus and hone the performance of this "federal" agency as the instrument of federal government operations in the area of child support enforcement, Congress mandated the creation, within HEW, of

a separate organizational unit under the direct control of an Assistant Secretary for child support who would report directly to the Secretary.²³ This agency would review and approve State child support plans, evaluate and conduct annual and special audits of the implementation of the child support program in each State and provide technical assistance to the States to help them to establish effective systems for determining paternity and collecting support.

S. Rep. No. 1356, 93rd Cong., 2d Sess. (1974), reprinted in 1974 USCCAN (Vol. 4) 8150.

In addition, Congress required the "establishment of a parent locator service within the Department of HEW's separate child support unit" to assist states in the task of tracing absent and deserting parents. S. Rep. No. 1356, 93rd Cong., 2d Sess. (1974), reprinted in 1974 USCCAN (Vol. 4) 8152.

Under title IV-D, Congress also focused on the child support enforcement potential of local governments, noting that

An essential prerequisite to the establishment of paternity and/or the collection of child support is the matter of finding out where the absent parent is. Evidence seems to indicate that most absent parents--continue to reside in the locality or State in which their deserted families reside.

S. Rep. No. 1356, 93rd Cong., 2d Sess. (1974), reprinted in 1974 USCCAN (Vol. 4) 8152.

Accordingly, Congress legislated incentives to encourage localities to become more involved in child support enforcement:

INCENTIVES FOR LOCALITIES TO COLLECT SUPPORT PAYMENTS

Under present law, when a State or locality collects support payments owed by a father, the Federal Government is reimbursed [out of the amount of support so collected] for its share of the cost of welfare payments to the family of the father

In most States, however, local units of government, which would be in the best position to enforce child support obligations, do not make any contribution to the cost of AFDC payments and consequently do not have any share in the savings in welfare costs which occur when child support collections are made. Since such a fiscal sharing in the results of support collections could be a strong incentive for encouraging the local units of government to improve their support enforcement activities, the bill would provide that if the actual collection and determination of paternity is carried out by local authority, the local authority would receive a

²³

The "separate organizational unit" that resulted from this Congressional mandate is HHS' OCSE.

special bonus based on the amount of any child support payments collected which result in a recapture of amounts paid to the family as AFDC . . .

Similarly, in the situation where the location of runaway parents and the enforcement of support orders is carried out by a State other than that in which the deserted family resides, the State or local authority which actually carries out the location and enforcement functions will be paid the bonus.

S. Rep. No. 1356, 93rd Cong., 2d Sess. (1974), reprinted in 1974 USCCAN (Vol. 4) 8154 (emphasis added).

A plain reading of this explanation of Congress' action reveals that the generic "local authority" terminology was employed by Congress to refer, generally, to the respective local government authorities/agencies/departments that are the instruments of local units of government, e.g., cities, districts, and counties, in directly delivering child support services within localities.

Under title IV-D, Congress actually loosened the "state government agency" requirement slightly from what it had been since 1967. Congress did not dispense with the existing requirement that state agencies operating child support enforcement programs under state plans established under the Act, must be state government agencies. Congress, merely allowed individual state governments to decide for themselves, in light of the prevailing needs and conditions within their respective states, which state government agency they would use to administer public child support services within their respective states. The Senate Committee Report described title IV-D's provisions in this regard as follows:

"Collection of Support Payments By State and Local Agencies"

It should be noted that the provision in the Committee bill would provide only that a separate organizational unit be established for enforcement of support obligations; the bill does not stipulate, as does existing law, that the organizational unit be in the welfare agency. Under the Committee bill, the States would be free to establish such a unit within or outside their welfare agencies (for example, it could be established in the state Attorney General's office).

S. Rep. No. 1356, 93rd Cong., 2d Sess. (1974), reprinted in 1974 USCCAN (Vol. 4) 8152, 8153 (emphasis added).

Federal legislative pronouncements on child support, as early as 1950, had focused on government entities as the vehicle for delivering effective child support

enforcement services.²⁴ There is no indication in the legislative history of title IV-D, or in the language of the statute itself, that Congress considered, much less implemented under title IV-D, the use of "private" agencies as an alternative or supplement to direct (and expanded) government involvement in child support enforcement. Child support programs under the Act were federal/state government partnerships after the passage of title IV-D, just as they had been previously.

Title IV-D did legislate two changes with respect to child support enforcement agencies that are relevant for section 6103(l)(6) purposes. First, Congress required the creation within HEW of a separate child support unit (that unit is OCSE), and the creation within OCSE of a federal parent locator service. S. Rep. No. 1356, 93rd Cong., 2d Sess. (1974), reprinted in 1974 USCCAN (Vol. 4) 8152. Thus, for title IV-D purposes, and for section 6103(l)(6) purposes, the term "Federal" child support enforcement agency referred to one particular federal government agency, HEW, including the special child support unit that Congress caused to be created within HEW (OCSE), and also including the new federal parent locator service within OCSE, or to any combination of those three public agencies. Id. at 8151, 1852.

Second, Congress lifted its 1967 requirement that states must use their state welfare agencies to deliver child support services under the Act and allowed states, instead, the option of using the state government agency of their choice for such purposes. S. Rep. No. 1356, 93rd Cong., 2d Sess. (1974), reprinted in 1974 USCCAN (Vol. 4) 8153. Thus, for purposes of title IV-D and section 6103(l)(6), the term "State agency" referred to a designated state government agency within each state operating an OCSE approved IV-D plan, and although in most participating states, that agency was likely to be the state's welfare agency, that was no longer a requirement of the Act, after the passage of title IV-D.

Accordingly, when Congress used the term "State agency" in the context of title IV-D, for example, in section 6103(l)(6), it reasonably follows that Congress meant an agency of a state or an equivalent governmental unit (e.g., the agency or department of the District of Columbia government) through which the state or equivalent governmental unit performed its title IV-D plan duties and responsibilities.

Likewise "local" child support agency after the passage of title IV-D, e.g., for section 6103(l)(6) purposes, meant a local government agency through which a local governmental unit performed, within the boundaries of its jurisdiction, the title IV-D duties and responsibilities delegated to it, as specified in the state's formal OCSE approved state IV-D plan.

VI. Use of Private Agencies and Resources to Deliver Public Welfare Services under the Act

²⁴ See e.g., S. Rep. No. 387, 98th Cong., 2d Sess. 6 (1984), reprinted in 1984 USCCAN (Vol. 4) 2402 (noting that, as early as 1950, the Act required prompt notice to law enforcement authorities of the furnishing of AFDC benefits to deserted or abandoned children).

In contrast to Congress' consistent designation of government agencies as the organizational and administrative units responsible for delivering child support enforcement services both under title IV-D and prior provisions of the Act, Congress from time to time identified a role for non-governmental agencies in delivering public welfare services under the Act.

For example, in 1962 Congress passed certain public welfare amendments to the Act, including provisions to improve rehabilitation aspects of public assistance programs, and so, help families and individuals attain self-sufficiency. S. Rep. No. 1589, 87th Cong., 2d Sess. (1962), reprinted in 1962 USCCAN (Vol. 1) 1949. Prior to such amendments, a state, at its option, could provide "rehabilitation" services to public welfare recipients through the staff of the state agency or of the local agency administering the state's welfare plan under the Act (generally state or local government welfare agencies), in which case the federal government would contribute to the cost of such services, on a dollar for dollar basis. Under the 1962 amendments, the maximum level of federal funding for such services was raised to 751 and Congress expressly granted states limited latitude to supplement services provided by the staff of government agencies, with contract services. See P. L. No. 543, 87th Cong., 2d Sess. (1962), reprinted in 1962 USCCAN (Vol. 1) 217 (federal funding available for welfare services provided by staff of the State agency or by contract with public (local) Cr nonprofit agencies); S. Rep. No. 1589, 87th Cong., 2d Sess. (1962), reprinted in 1962 USCCAN (Vol. 1) 1950 (indicates that State public welfare agency, upon determining that it cannot provide certain welfare services economically or effectively may enter into an agreement for the purchase of the services).

Certain other provisions of the Public Welfare Amendments of 1962 reveal, and the legislative history of that statute confirms, that Congress recognized a clear distinction between state and local government agencies (referred to interchangeably in the legislative history of this statute both as "State and local agencies," and as "State and local public welfare agencies") on the one hand, and a wide array of non-governmental agencies, bodies and organizations active in the area of child welfare services, on the other. For example, in describing the statute's provisions expanding child welfare services, Congress noted

At the present time, 360,000 children receive these services from public welfare agencies. About 8,200 staff members of State and local public welfare agencies are devoting full time to the child welfare program.

The bill would require each State to show that it is extending services in the State with a view to making child welfare services available throughout the State to all children in need of them by July 1, 1975. The services would be provided by the staff of the State or local public welfare agency who would, to the extent feasible, be trained welfare personnel. In providing for this extension of

services, priority would be given to communities with the greatest need for them, after considering their relative financial need.

To encourage the development of a program that will involve the contributions of welfare, education, and health agencies, the bill includes two additional conditions of plan approval. With respect to day care, the State child welfare plan would be required to provide --

(1) for cooperative arrangements with the State health authority and the State agency primarily responsible for State supervision of public schools to assure maximum utilization of such agencies in the provision of necessary health services and education for children receiving such day care; and

(2) for an advisory committee, to advise the State public welfare agency on the general policy involved in the provision of day care under the State plan, which will include among its members representatives of other State agencies concerned with day care or services related thereto and persons representative of professional or civic or other public or nonprofit agencies, organizations, or groups concerned with the provision of day care.

S. Rep. No. 1589, 87th Cong., 2d Sess. (1962), reprinted in 1962 USCCAN (Vol. 1) 1957-59 (emphasis added).

In the same vein, the Social Security Amendments Act of 1965 contained certain health insurance and medical care provisions designed "to improve the Federal and state public assistance programs" under the Act. S. Rep. No. 404, 89th Cong., 2d Sess. (1965), reprinted in 1965 USCCAN (Vol. 1) 1943. Noting that "the provision of medical care for the needy has long been a responsibility of the state and local public welfare agencies" Congress indicated that it contemplated a role for private as well as public agencies in the administration of such public welfare programs under its 1965 amendments to the Act. *Id.* at 2014. For example, Congress explained that:

Under the hospital insurance plan, groups of providers; or associations of providers on behalf of their members, could nominate a national, State, or other public or private agency or organization which they wished to have serve as a fiscal intermediary between themselves and the Federal Government. While it is expected that most providers would want to nominate a private organization, the bill would permit nomination of a public agency (a State public health agency, for example) by providers which wished to have such an agency serve as fiscal intermediary.

Id. at 1993 (emphasis added).

Thus, it seems clear that, in 1976, when Congress authorized disclosure of certain tax data to federal, state, or local child support enforcement agencies "only for the purpose of, and to the extent necessary in, establishing and collecting child support obligations" "pursuant to the provisions of title IV-D of the [Act]" it was referring to the government agencies through which Congress understood and intended its new title IV-D programs were being administered.

VII. Role of Courts and Law Enforcement Officers under Title IV-D and Section 6103(l)(6)

Congress clearly recognized that state and local agencies responsible for administering OCSE approved IV-D plans would need the cooperation and assistance of courts and law enforcement officers in establishing and enforcing child support obligations, particularly in interstate and contested cases. For example, title IV-D specified that a state IV-D plan must--

(1) provide that it will be in effect in all political subdivisions of the State;²⁵ [and]

(7) provide for entering into cooperative arrangements with appropriate courts and law enforcement officials (A) to assist the agency administering the plan, including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and (B) with respect to any other matters of common concern to such courts or officials and the agency administering the plan

42 U.S.C. §§ 654(1) and (7) (emphasis added).²⁶

Congress' intention in requiring, as a condition of approval, that state IV-D plans must provide that the plan will operate statewide, i.e., in every political subdivision of the state, and must provide for cooperative agreements with courts and law enforcement personnel to assist the efforts of administrative agency staff, was not to grant states the option of dispensing with child support agencies and to administer child support programs, instead, directly through such law enforcement personnel pursuant to

²⁵ Consistent with this title IV-D requirement, HHS' implementing regulations provide that if, and to the extent, a state's IV-D agency delegates responsibility for administering the IV-D plan to a political subdivision of the state, "the [IV-D] plan will be mandatory on such political subdivision." 45 C.F.R. § 302.10(b).

²⁶ 45 C.F.R. § 302.34(a) specifies that state IV-D plans "shall provide that the State will enter into written agreements for cooperative arrangements with appropriate courts and law enforcement officials" and that such cooperative agreements must comply with criteria set forth at 45 C.F.R. § 303.107. The conditions and limitations of federal financial participation in the costs of such cooperative arrangements with courts and law enforcement officials (and a definition of law enforcement officials) are contained in 45 C.F.R. § 304.21.

cooperative agreements. Rather, the state plan specifications set forth in sections 454(1) and (7) of title IV-D, 42 U.S.C. §§ 654(1), were intended by Congress to remedy serious deficiencies in child support enforcement resources that had undermined the operation of pre-title IV-D child support programs, and to ensure that, generally, states instituted more effective and comprehensive plans for child support under title IV-D. In this regard Congress observed as follows:

FAILURE TO ENFORCE CHILD SUPPORT

Researchers for the Rand Corporation ... cite studies that show "a large discrepancy exists between the normative law as expressed in the statutes and the law in action." Thousands of unserved child support warrants pile up in many jurisdictions and often traffic cases have a higher priority. The blame for this situation is shared by judges, prosecutors and welfare officials alike, and is reinforced by certain myths which have grown up about deserting fathers. The Rand researchers state:

Many lawyers and officials find child support cases boring and are actually hostile to the concept of fathers' responsibility for children. A report to the Governor (of California) expresses concern at the 'Cavalier attitudes on the subject of child support expressed by some individuals whose work responsibilities put them in daily contact with persons affected by the problem.' It continues, 'Some of these individuals believe that child support is punitive and that public assistance programs are designed as a more acceptable alternative to the enforcement of parental responsibility.'...

The Rand Corporation researchers emphasize the number of well-off physicians and attorneys whose families ultimately are forced onto welfare because of insufficient mechanisms for enforcement of obligations to support. This situation, they point out, is confirmed by investigators, who point to the difficulty of proving the income of the self-employed, the ease with which unwilling fathers can conceal their assets, the statutory barrier to collecting from military personnel and Federal employees, and the low priority given child support investigations by the understaffed district attorney's offices.

S. Rep. No. 1356, 93rd Cong., 2d Sess. (1974), reprinted in 1974 USCCAN (Vol. 4) 8146-47.

As these observations demonstrate, Congress recognized the importance of providing effective judicial and litigation support services to assist and enforce the work of administrative child support agency staff. Mandatory cooperative agreements with courts and law enforcement officials were seen by Congress as the mechanism for ensuring that administrative child support enforcement "agencies" received such

assistance under title IV-D. Hence, the role that Congress envisioned for attorneys in the delivery of IV-D plan programs was a litigation support role complementing the work of non-attorney caseworkers--not as substitutes for agency staff caseworkers.

Nevertheless, we understand from OCSE personnel--although no documentation evidencing the practice has been provided--that certain state IV-D plans are designed, approved by OCSE, and operated, based on an interpretation of the IV-D plan specification in sections 454(1) and (7) of the Act and implementing regulations²⁷ as authorizing certain individual attorneys (those who qualify, technically, as state "political subdivisions" under 45 C.F.R. § 301.1)²⁸ and their staff,²⁹ to perform administrative agency functions with respect to the delivery of IV-D plan services within a particular local government area, in addition to providing litigation support services for title IV-D cases within that local government jurisdiction.³⁰

Based on the language of the cited regulations--rather than on clear statutory authority--we recognize an argument can be made that a state IV-D plan that delegates IV-D program responsibilities, for example, to a county district attorney (and to staff in the district attorney's office) pursuant to a cooperative agreement between the state's IV-D agency and the County (or possibly, directly between the IV-D agency and the county district attorney's office), technically, would qualify for OCSE approval notwithstanding that IV-D program responsibilities thereby delegated to the "attorney/political subdivision/law enforcement official" under the IV-D plan entail

²⁷ See e.g., 45 C.F.R. § 302.12(a)(3) (except for non-delegable functions detailed in 45 C.F.R. §§ 303.20(d) and (e), a state IV-D agency is permitted to delegate IV-D functions "to any other State or local agency or official, or any official with whom a cooperative agreement as described in [45 C.F.R.] § 302.34 has been entered into[,] i.e., court or law enforcement officials, or to purchase such services "from any person or private agency" pursuant to 45 C.F.R. § 304.22, provided, however, the IV-D agency continues to have responsibility for securing compliance with the requirements of the state SV-D plan by such agency or officials. (Emphasis added).

²⁸ The term "political subdivision" is broadly defined in HHS' regulations implementing title IV-D to mean "a legal entity of the State as defined by the State, including a legal entity of the political subdivision so defined, such as a Prosecuting or District Attorney or a Friend of the Court." 45 C.F.R. § 301.1.

²⁹ Under HHS' regulations, individual attorneys who are "political subdivisions" of a state, e.g., district attorneys, and their staff, together constitute "law enforcement officials" to whom a state IV-D agency may delegate IV-D functions by "cooperative agreement" under 45 C.F.R. § 302.12(a)(3). See 45 C.F.R. § 304.21 ("law enforcement officials" defined as "district attorneys, attorneys general, and similar public attorneys' and prosecutors and their staff"). (Emphasis added).

³⁰ See e.g., Office of Disclosure's Safeguards Branch's Interim and Final Reports of November 22, 1994, and January 9, 1995, respectively, regarding delivery of IV-D plan services in Douglas County, Nebraska, by county attorney's office staff (including attorney staff employed by that office). Id. at 8. In addition, we are advised informally by OCSE that IV-D services are delivered by staff (apparently including attorney staff) of district attorney's Offices in Philadelphia, Pennsylvania, and in Los Angeles, California.

administrative agency functions instead of, or in addition to, judicial and litigation support services to implement and enforce the work of an administrative IV-D agency.³¹

However, this argument appears to disregard the particular language of 45 C.F.R. § 302.12(a)(3) which states, in material part, as follows:

If the IV-D agency delegates any of the functions of the IV-D program to any other State or local agency or official, or any official with whom a cooperative agreement as described in [45 C.F.R.] § 302.34 has been entered into, [i.e., court or law enforcement officials], or purchases services from any person or private agency ... the IV-D agency shall continue to have responsibility for securing compliance with the requirements of the State plan by such agency or officials. (Emphasis added).

A plain reading of HHS' regulation is that, for IV-D plan purposes, "state or local agencies" (including the state's IV-D agency itself) are to be distinguished from, not interchangeable with, categories of attorneys that either technically fit the definition of "law enforcement officials" in 45 C.F.R. § 304.21 (with whom a IV-D agency may enter into "cooperative agreements" to provide support and assistance to a "state or local agency" that is delegated IV-D program responsibilities by the IV-D agency), or, who are "private persons," or, officers or employees of "private agencies" (from whom a IV-D agency may purchase IV-D program services). In any event, the argument that in certain circumstances an attorney technically may qualify as a "local" IV-D child support enforcement agency is not available in the case of any attorney who is not a government agency officer or employee.

We recognize that a court appointed attorney, e.g., a court appointed "Friend of the Court," qualifies as a state "political subdivision" under HHS' regulations, regardless of whether the attorney is a government officer or employee. See 45 C.F.R. 301.1. Likewise, under HHS' regulations, a court appointed attorney such as a "Friend of the Court" and that attorney's staff, would appear to qualify as law enforcement officials, regardless of whether they are government officers or employees. See 45 C.F.R. 404.21. However, the argument that government attorneys may obtain federal tax data for IV-D program purposes--certainly they may not disclose the data to third parties except as authorized under new section 6103(l)(6)(B) nor use it for litigation purposes--does not hinge on the status of the attorneys as "political subdivisions" under HHS' regulations; nor does it turn on the status of the attorneys (and their staff) as law enforcement officials under HHS' regulations. Rather, the argument that attorneys such as county attorneys, state prosecuting attorneys, district attorneys, and staff in their

³¹ If and to the extent this argument is played out in practice with government attorneys serving not as attorneys and officers of the court but as administrative "local" government child support enforcement agencies, such "attorney/agencies" may be eligible to obtain tax data exclusively in their capacity as "local" government administrative agencies under conditions specified in the Code. However, as Congress intended in the case of every recipient agency, the "attorney/agency" would be prohibited from redisclosing the tax data to third parties and from using it while wearing the "hat" of attorney for litigation purposes. See n.15, supra.

respective offices, constitute state or local child support enforcement agencies authorized to obtain federal tax data hinges on the status of such attorneys and staff as "officers and employees" of agencies of a state or a "political subdivision" thereof (e.g., a county district attorney's office). See pp. 31-33, supra.

In contrast to attorneys that qualify as "officers or employees" of a state or political subdivision, a court appointed attorney, such as a "Friend of the Court," who contracts directly with a state or local governmental authority to provide IV-D services at the state or local government level, or who is employed by a private contractor to provide those services (e.g., by a private law firm contractor), is merely a private third party or an "officer or employee" of a private third party doing business with a state, or, with a political subdivision thereof, as an independent contractor or subcontractor.

In sum, we note that there is no evidence that, in 1976, when Congress addressed the issue of whether, and if so, the extent to which, federal tax data should be made available for child support enforcement purposes, Congress was cognizant that under title IV-D and proposed or final implementing regulations, an argument could be made that a government attorney (together with staff in the attorney's office) might take on the technical character and functions of an administrative agency rather than, or in addition to, those of legal counsel with respect to the administrative agency's caseload.³² Nevertheless, to the extent a government attorney's office performs the functions of a local agency for the delivery of title IV-D child support enforcement services, we recognize a basis for affording that government attorney's office access to tax data to carry out its IV-D agency functions. However, to the extent that same attorney's office is engaged in performing litigation support for its own agency function, there is no basis under section 6103 for affording the attorney's office access to tax data, for such purposes:

Conclusions

Congress clearly distinguished between government and private agencies in the context of enacting pre-title IV-D child support measures, in enacting title IV-D itself, in amending section 6103 in 1976, and in amending provisions of section 6103 and title IV-D in the years following Congress' 1976 overhaul of section 6103. In our view, Congress used the term "child support enforcement agency" in the provisions of section

³² In 1976, Congress plainly recognized that individual government officials could obtain tax data under title IV-D. Yet, Congress actually restricted the class of eligible recipients of tax data via OCSE's FPLS under the provisions of section 6103(l)(6), compared with those who had been afforded access to tax data under the provisions of title IV-D itself. Under title IV-D, OCSE's FPLS "upon request of (1) a local or state official with support collection responsibility under this program, (2) a court with support order authority, or (3) the agent of a deserted child not on welfare will make available the most recent address and place of employment which can be obtained from HEW files or the files of any other Federal agency, or of any State." S. Rep. No. 1356, 93rd Cong., 2d Sess. (1974), reprinted in 1974 USCCAN (Vol. 4) 8152. However, under section 6103(l)(6) Congress tightened access to tax data for title IV-D purposes to those federal, state and local agencies described in section 6103(l)(6).

6103 to signify agencies of "political subdivisions," i.e., agencies of federal, state or local units of government.

An individual or entity under contract to any public sector government agency is not, itself, a child support enforcement agency for section 6103 purposes, notwithstanding that such private contractual agency may operate in lieu of a traditional public agency of government. Moreover, an individual attorney (such as a state court-appointed attorney) who, technically, may be a "political subdivision" of a state, under 45 C.F.R. § 301(1), is not a state or local child support enforcement agency for purposes of section 6103 and thus may not obtain federal tax data for local child support enforcement purposes.

There are two instances, only, in which an "individual attorney" potentially may gain access to tax data under sections 6103(l)(6), (l)(8), or (l)(10) for "local" child support enforcement purposes. The first is where the individual attorney is an "officer or employee" of an agency of a political subdivision of a state, e.g., a prosecuting attorney employed in county prosecutor's office, however, such attorney's use of tax data obtained under section 6103(l)(6), (l)(8), and (l)(10), is subject to the conditions specified in those provisions and would not include litigation. The second is to the limited extent authorized pursuant to new section 6103(l)(6)(B) where the attorney is an agent of a government agency under contract to provide title IV-D services to that agency, or is an officer or employee of any such agent, however, such attorney may not redisclose tax data to a third party nor use such tax data for litigation purposes.

If you have any questions, please contact Lynnette Platt, the attorney assigned to this matter, at (202) 622-4570.

_____/s/ John B. Cummings_
JOHN B. CUMMINGS