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Office of Child Support Enforcement
Administration for Children and Families
Department of Health and Human Services
OMB No.: 0970-0171

Submitted via email to ocse.dpt@acf.hhs.gov

RE: Proposed Information Collection Activity: Voluntary Acknowledgment of Paternity and Required Data Elements for Paternity Establishment Affidavits Federal Register Vol. 85, No. 150, page 47216 (August 4, 2020)

Dear Colleague:

The Child Support Enforcement Division of the Massachusetts Department of Revenue (DOR) submits these comments on the proposed information collection activity regarding voluntary acknowledgment of paternity and the required data elements for paternity establishment affidavits, published at 85 Fed. Reg. 47216 on August 4, 2020. In general, we believe the current data elements properly balance between providing a well-defined voluntary acknowledgment process to expedite paternity establishment while providing information necessary to the proper performance of the child support agency. We write to suggest that OCSE consider amending the current data requirements to include gender neutral terminology to help ensure that all families have equal access to establish legal parentage.

Diverse families represent an increasing segment of the child support agency's caseload across the country. The Supreme Judicial Court's decision in Goodridge v. DPH, 440 Mass. 309 (2003), brought Massachusetts to the forefront as one of the first states to recognize a constitutional right to same-sex marriage. The Supreme Court in Obergefell v. Hodges, 135 U.S. 2584 (2015) also recognized the right to same-sex marriage under the United States Constitution. Through legislation or judicial action many states have expanded legal parental status to individuals in familial configurations not originally contemplated when OCSE promulgated the required data elements back in 1998. For example, four states have enacted versions of the most recent Uniform Parentage Act and another seven states have similar pending legislation, including Massachusetts.

While the courts provided couples with a means to define a legal relationship between each other, scientific advances in artificial reproductive technology also provided individuals with the means to become a parent in a multitude of ways. The biological parent may serve solely as a donor of genetic material or act as a surrogate mother, with no intention of becoming a legal parent. Conversely, legal parentage may be established for individuals absent any biological or genetic connection to the child. Some states and the Uniform Parentage Act recognize that more than two parents can be named legal

parents. These social and scientific advances force states to examine the underlying processes conferring legal parental status as current practices may not adequately serve the needs of children brought into a diverse family structure.

In Partanen v. Gallagher, 475 Mass. 632 (2016), the Massachusetts Supreme Judicial Court was asked to determine if a woman in a same sex relationship with no biological connection to two children could establish legal parentage under the non-marital children statute, Massachusetts General Laws Chapter 209C. They raised the children together for years but never formalized legal parentage through marriage, adoption, or court action. The court held that she could bring the legal action as the phrase "adjudication of paternity" was gendered and the statute provides a "means for establishing parentage regardless of the parent's gender". The court suggested that a voluntary acknowledgment of parentage process may be available to a same-sex couple to establish legal parentage, even if one member of the couple had no biological relation to the children. In response, Massachusetts developed and implemented a new gender neutral voluntary acknowledgment of parentage form that provides equal access for same sex couples to establish legal parentage.

As the number of diverse families increase, states are faced with challenges to the traditional concept of establishing biological paternity through an acknowledgment. State courts and legislatures are recognizing that a broader concept of voluntarily acknowledging parentage is necessary to protect the best interests of children. Amending the data elements from the historical mother father relationship to gender neutral language will guarantee that the voluntary acknowledgment process is inclusive of all families and will safeguard the rights of some of our most vulnerable children.

Thank you for the opportunity to comment.

Sincerely,



Michele Cristello
Deputy Commissioner & IV-D Director