

**Congress of the United States**  
Washington, DC 20515

December 22, 2014

Secretary Burwell  
Department of Health and Human Services  
200 Independence Avenue SW  
Washington, DC

Dear Secretary Burwell:

We are writing to express our strong concerns about a recent Notice of Proposed Rulemaking (NPRM) released by the Department of Health and Human Services involving child support enforcement. While we have reservations and questions about some of the specifics relating to the policy changes proposed by HHS, we especially object to the fact that many of these policy changes usurp the legislative role of the Congress. In our view, this NPRM is now part of an emerging pattern of Executive over-reach relating to issues associated with the Patient Protection and Affordable Care Act (PPACA), amnesty for undocumented individuals, and recent attempts to waive welfare work requirements.

The enactment of laws making improvements to child support collection and enforcement polices has traditionally been bipartisan. The most recent example was *The Preventing Sex Trafficking and Strengthening Families Act* (P.L. 113-183), which included several bipartisan reforms to child support enforcement that were included in prior budget proposals from this Administration. HHS was consulted on a number of occasions as part of this legislative process. At no point during these consultations, did HHS raise any of the numerous policy changes contemplated by in this NPRM.

However, only a few weeks after enactment of this bipartisan legislation, HHS unveiled a broad series of policy changes we do not believe the agency has the authority to implement. These are not implementing changes to current law, but entirely new initiatives that have not been appropriately considered by Congress.

The following are particularly flagrant examples:

*Creating a new Job Services program.* The NPRM creates a new job services program not found in the list of allowable program types in the federal statute, and then adds new eligibility criteria for this new program. The rule prescribes seven new attributes (303.6)

and the six new eligibility criteria for this new program (303.6).

*Declaring new policy regarding incarceration and the State plan.* The NPRM creates a new condition requiring a State to provide notice to both parties when a noncustodial parent is incarcerated, saying that "The State must provide notice...when the IV-D agency learns that a noncustodial parent is incarcerated, to the incarcerated noncustodial parent and the custodial parent informing them of the right to request..." (303.8). The rule also overrides State authority in forming their own child support state plan, as the NPRM would add new substantive requirements: "...incarceration may not be treated as voluntary unemployment in establishing or modifying support orders." (302.56). This is despite the fact that the required contents of State plans are authorized in, and typically amended by, statute.

*Altering the parameters of Federal financial participation.* The NPRM makes non-trivial changes involving the availability and rate of Federal financial participation, expanding or adding instances in which Federal funds may be spent (304.20). This includes making Federal financial participation available to the new job services program described above, other expanded items, and other allegedly *de minimis* items.

We understand and are not unsympathetic to the rationale behind many of the policy changes included in NPRM. However, it is the responsibility of the Congress to enact laws making such changes. Despite that, this Administration is once again bypassing the Congress in order to assert an over-reach of executive authority. As a result, we must strongly object to the NPRM and request that the Administration immediately withdraw it.

Once the NPRM has been withdrawn, we urge the Administration to offer these policies as a recommendation for legislation for Congressional consideration in the 114<sup>th</sup> Congress. As has been the case in the past, the Committees on Ways and Means and Finance will provide a full and fair review of any such legislative recommendations. We anticipate that the result of appropriate legislative consideration by the Congress will be a strengthened child support enforcement program and better assistance for those in need.

Sincerely



Chairman Dave Camp  
House Ways and Means



Ranking Member Orrin Hatch  
Senate Committee on Finance