

## THE SUPPORTING STATEMENT

### Specific Instructions

Please do not remove or alter the headings below

#### A. Justification

##### **1. Circumstances Making the Collection of Information Necessary**

###### Voluntary Establishment of Paternity (0970-0175)

Section 331 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 amended section 466(a)(5) of the Social Security Act to impose new statutory requirements for a voluntary paternity acknowledgement process and to require the Secretary to promulgate regulations governing voluntary paternity establishment services and identifying the types of entities other than hospitals and birth record agencies that may be allowed to offer voluntary paternity establishment services. States are required to adopt laws and procedures that are in accordance with statutory and regulatory provisions.

Section 303.5(g) (2) (i) (A) of the regulations requires the hospitals, birth record agencies, and other entities participating in the State's voluntary paternity establishment program to provide both the mother and alleged father, if he is present, written materials about paternity establishment. Section 303.5(g) (5) (i) of the regulations requires the State to provide to all hospitals, birth record agencies, and other entities participating in the State's voluntary paternity establishment program written materials about paternity establishment.

Section 304.20(b) (2) establishes that the services and activities for which Federal financial participation will be available shall be those made pursuant to the approved title IV-D State plan which are determined by the Secretary to be necessary expenditures properly attributable to the Child Support Enforcement program including the costs of developing and providing to hospitals, birth record agencies and other entities participating in the State's voluntary paternity establishment program written and audiovisual materials about paternity establishment and forms necessary to voluntarily acknowledge paternity.

Prior to the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) required States to pass laws ensuring a simple civil process for voluntarily acknowledging paternity under which the State must provide that the rights and responsibilities of acknowledging paternity are explained. However, there was no specific requirement that these rights be explained in writing.

##### **2. Purpose and Use of the Information Collection**

The information is to be used by hospitals, birth record agencies and other entities participating in a State's voluntary paternity establishment program. There is no requirement that this information be reported in any form to the Federal government. This is not an information collection, but the burden associated with a third party disclosure under #0970-0171.

### **3. Use of Improved Information Technology and Burden Reduction**

The information does not have to be collected, nor does it have to be collected through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

### **4. Efforts to Identify Duplication and Use of Similar Information**

If the necessary information to inform mothers and putative fathers of their rights already exists, States are welcome to use it. There is no need for new information to be developed if States already have a format they are using.

### **5. Impact on Small Businesses or Other Small Entities**

This collection of information does not impact small businesses. The information being requested has been held to the absolute minimum required by the statute and regulations.

### **6. Consequences of Collecting the Information Less Frequently**

The statute requires States to pass laws ensuring a simple civil process for voluntarily acknowledging paternity under which the State must provide that, before a mother and putative father can sign a voluntary acknowledgement of paternity, the mother and putative father must be given notice, orally and in writing of the alternatives to, the legal consequences of, and the rights (including any rights, if one parent is a minor, due to minority status) and responsibilities of acknowledging paternity. The information can not be provided any less frequently than once to each mother and putative father.

### **7. Special Circumstances Relating to the Guidelines of 5 CFR 1320.5**

There are no special circumstances associated with this collection of information.

### **8. Comments in Response to the Federal Register Notice and Efforts to Consult Outside the Agency**

The first notice was published in the Federal Register on April 01, 2014 in Volume 79, Number 62 on page 18296. We received several requests for a copy of the information collection. The following comments were received:

- **Comment:** Our state's experience is that the "burden" of the proposed collection of information is more time consuming for each parent than the amount of time (0.17 average burden hours per response/respondent) provided

in the “Annual Burden Estimates”. The time it takes for a witness to explain California’s Paternity Opportunity Program, benefits of establishing paternity (or alternately have the parent(s) view a 14 minute video), and other required information, as well as providing assistance and instruction to a parent in the completion of the declaration form, and for the witness to ensure accurate completion in the presence of the parent(s) takes at least 10 minutes, but most likely at least 20 minutes, and can be as much as 30 minutes. Note that California has not conducted an actual survey to estimate the average time per parent.

**Response:** We acknowledge that it takes longer in some states to establish paternity than it does in other states. That is why we use the average time of 10 minutes.

- **Comment:** Ways to minimize the burden:  
Our state is piloting an effort to collect information through electronic means. However, this does prompt several questions regarding the acceptance of electronic signatures as a data element on a paternity declaration (affidavit) as follows:
  1. Is there a barrier, regulation, or express prohibition under federal law to capturing paternity data electronically?
  2. If the process for executing a voluntary acknowledgment of paternity form were electronic (including using electronic or facsimile signatures instead of wet signatures), would this meet the federal requirements for an affidavit?
  3. If state law provides an affidavit of voluntary acknowledgment of paternity may be executed electronically, are there any concerns that it may not be entitled to full faith and credit when presented in other states and territories?
  4. Does OCSE have other issues or concerns that should be considered should a state decide to implement an electronic process for executing affidavits for voluntary paternity form?
  5. Are there anticipated federal proposed rules that will address electronic signatures?

**Response:** While not all states are able to minimize the burden of paternity establishment through electronic means, some states may be considering accepting electronic signatures on paternity acknowledgment forms.

Answers to questions:

1. There is no Federal prohibition against State IV-D agencies accepting electronic signatures on paternity acknowledgment forms; however, States must consider if there are any State laws that may prohibit this practice and conduct their own analysis to determine whether electronic signatures are appropriate for paternity acknowledgment forms.
2. Section 466(a)(5)(D)(i)(I) of the Social Security Act requires that States have procedures for inclusion of the father’s name on a birth certificate

“only if the father and mother have signed a voluntary acknowledgment;....” Paternity affidavits must also be signed and authenticated by a witness or notary as required by 45 CFR 303.5(g)(4). PIQ 09-02 provided guidance to states on the use of electronic signatures for applications for IV-D services. As noted in PIQ 09-02, the appropriateness of the use of electronic signatures for a particular function must be carefully determined by States. In making this determination, each State must review its laws pertaining to electronic signatures and consider the reliability of electronic signature technology and the risk of error, fraud and abuse, among other factors. For information on how States may assess the risks, costs, and benefits of using electronic signatures, please see guidance provided to Federal agencies in Appendix II to OMB Circular No. A-130. Please note, this OMB circular is applicable to Federal agencies, and is provided to States only as a resource.

3. Sections 466(a)(5)(C)(iv) and 466(a)(11) of the Social Security Act require states to give full faith and credit to determinations of paternity made by other states whether established through judicial or administrative process or through voluntary acknowledgment. Section 466(a)(5)(C)(iv) provides the state law applicable to determining the validity of a paternity acknowledgment is the law of the state where the affidavit is signed. States are moving towards electronic means for maintaining records, filing of documents, transmission of official documents and acceptance of electronic documents and signatures, however, not at the same pace. As technology advances and states consider moving towards paperless processes, OCSE will monitor developments and continue to provide guidance as needed.
4. Implementing an electronic process is a state decision. States should perform their own analysis to determine whether electronic signatures are appropriate for paternity affidavits, including assessing the possibility of fraudulent practices. States should consider that 45 CFR 303.5(g)(2)(iv) requires all state entities participating in the state’s voluntary paternity acknowledgment program to “[f]ile signed original of voluntary acknowledgments or adjudications of paternity with the State registry of birth records (or a copy if the signed original is filed with another designated entity) for comparison with information in the State case registry.” The filing of the paternity acknowledgment affidavit does not necessarily require a hardcopy/paper process. Such filing can be accomplished electronically as is done now with other types of government functions such as electronic court filing in states that permit such filing, but the state's process should address how this filing will occur.
5. OCSE does not have a published notice of proposed rulemaking at this time.

- **Comment:** We would like to propose that states be given the option of mandating genetic testing as a condition precedent to signing a voluntary paternity acknowledgement.

A requirement to obtain genetic tests does not require either a judicial or administrative hearing. Genetic testing requires only that the parent submit to a simple cheek swab that can be done at a child support agency or anywhere as needed. The process is not adversarial and has significant practical utility. With current advances in technology, the results of genetic tests exceed 99% and in most case are 100 to 1 paternity index. In Wisconsin turnaround time for test results are generally 7 to 14 days.

The child's interests are not protected in the voluntary paternity acknowledgment process as there is not guardian ad litem appointed to protect those interest. If OCSE permitted mandatory testing in connection with voluntary paternity acknowledgments, it would ensure that federal laws and regulations were not being used to perpetrate fraud, invite litigation which may result in emotional harm to the children who find their families uprooted years after their birth. The additional time and cost involved in doing genetic testing pales in comparison to the time and cost involved in having paternities reopened years later and the potential harm to the children whose interests we are trying to protect.

**Response:** Section 466(a)(5)(C) of the Social Security Act and 45 CFR 302.70(a)(5)(iii) require states to have in place a simple civil process for voluntarily acknowledging paternity; however, section 466(a)(5)(B) of the Social Security Act addresses genetic testing being required in certain contested cases. Genetic testing cannot be mandated in place of a simple civil process for voluntarily acknowledging paternity.

## **9. Explanation of Any Payment or Gift to Respondents**

There is no payment associated with the affidavit to acknowledge paternity. The regulations allow payments of up to \$20.00 to hospitals, birth record agencies, and other entities participating in the State's voluntary paternity establishment program for each voluntary acknowledgment of paternity recorded, but this is unrelated to this information collection.

## **10. Assurance of Confidentiality Provided to Respondents**

The confidentiality of the acknowledgments is determined by State law and practice. We assume States will make every appropriate effort to protect these documents as they do other documents containing sensitive and private data.

## **11. Justification for Sensitive Questions**

The affidavit to acknowledge paternity contains several data elements related to personal information about the parents and child. These questions are asked specifically to collect information that could be used to identify and locate the noncustodial parent if that becomes necessary to collect child support at a later date.

## **12. Estimates of Annualized Burden Hours and Costs**

Our state partners estimate that it takes approximately 10 minutes (.166 hours) to help parents fill out an affidavit to be used for the voluntary acknowledgment of paternity. One affidavit is filled out for each paternity established.

### **Number of Disclosers**

The American Hospital Association reports that there were 5,724 private and public hospitals in 2011, the most recent year for which there is complete data. We have decided to use the number of counties in the country in lieu of the number of birth record agencies, TANF agencies, Food Stamp offices, and child support agencies. In February 2007, there were 3,143 counties in the 50 states. The American Bar Association reports that there were 1,268,011 licensed lawyers in the country in 2013. The American Medical Association reports that in 2010, there were 954,224 licensed doctors in the country. According to the 2008 Child Care Licensing Study: Final Report, there were 329,882 licensed facilities in the United States. In the past, we spoke with members of the child care resource and referral community to arrive at our estimate of 500 child care resource and referral centers. We decided to use the number of Supplementary Feeding Programs for Women, Infants and Children (WIC centers) as an estimate of the number of public health clinics. According to the 2012 Survey of WIC Participants, there were 2,300 WIC centers. Previously, staff of the Department of Health and Human Services helped us to arrive at our estimate of 1,600 Community Action Agencies (Grantees).

### **Number of Disclosures per Discloser**

In addition to making voluntary paternity establishment services more broadly available, under the requirements of PRWORA, entities participating in a state's voluntary paternity establishment program have been able to help parents of newborn and older children establish paternity. ACF's data indicates that there were 1,113,719 paternities voluntarily established in hospitals in 2010, the most recent year for which complete data is available. This represents a decrease from our last OMB submission for this information collection. In that same year, there were 1,445,399 out-of-wedlock births nationally. This means that putative fathers voluntarily acknowledged paternity in approximately 77 percent of out-of-wedlock births.

By making voluntary paternity establishment available more broadly, such as in birth record agencies, community action agencies, and WIC centers and by encouraging the establishment of paternity for older children, the number of paternities established will

continue to increase. We estimate that the majority of voluntary paternities will continue to be established in hospitals and that the second largest number of voluntary paternities will be established in TANF agency offices. Therefore, we estimate that of the 1,167,097 paternities voluntarily established in 2009, 583,549 were established in hospitals, 291,774 were established in TANF agency offices, and the remainder was approximately evenly divided among the remaining entities.

#### ANNUAL BURDEN ESTIMATES

INSTRUMENT	NUMBER OF RESPONDENTS	NUMBER OF RESPONSES PER RESPONDENT	AVERAGE BURDEN HOURS PER RESPONSE	TOTAL BURDEN HOURS
IC	1,113,719	1	0.17	189,332.23

#### Estimate of Burden Cost

The monetized cost is 1,113,719 disclosures at \$1.24 each, or \$1,381,011.56.

#### 13. Estimates of Other Total Annual Cost Burden to Respondents and Record Keepers

Disclosers are able to get copies of the affidavit form from the state office free of charge. As a conservative estimate, if we round up the number of possible disclosers to the nearest hundred thousand, 1,100,000, and estimate that state offices provide 2,500,000 copies of the affidavit of paternity form to disclosers at an average cost of \$.30 each, the total is \$750,000. Many states also have brochures and pamphlets regarding paternity establishment on the web. Disclosers may choose to design and order additional professional paternity establishment brochures from other entities at an average cost of \$.40 each. We do not have data on the number of professionally produced brochures that are ordered each year, but we believe that some disclosers (e.g. large hospitals) may order several dozen, while most community-level agencies choose to obtain copies of the form for free. , Using the conservative estimate listed above, if 2,500,000 copies of professionally printed brochures are ordered annually, at \$.40 per copy, the total cost is \$1,000,000.

#### 14. Annualized Cost to the Federal Government

Federal Financial Participation (FFP) is available at a rate of 66% to partially reimburse States for the cost of various expenditures related to child support enforcement. We estimate that as a result of changes brought about by PRWORA, the cost to the Federal government for reimbursing States for expenditures related to voluntary paternity establishment in hospitals, birth record agencies and other entities participating in the State's voluntary paternity establishment program would be

approximately \$23,127,043.27 (66% of disclosure costs (1,113,719\*\$1.16) + \$20 x the number of paternities established (1,113,719)). However, there would be a net savings to the Federal government because of costs avoided by not having to go through a court-based paternity establishment process. There is no Federal hourly burden associated with this information collection.

**15. Explanation for Program Changes or Adjustments**

There are no program changes.

There was an adjustment due to the increase in the number of out-of-wedlock births and a decrease in the number of unwed fathers that established paternity. The decline is attributed to fewer acknowledgements being signed in the hospital.

- 16.** There will be an increase in disclosures and an increase in burden hours based on an increase in the number of out of wedlock births and the number of possible disclosers. **Plans for Tabulation and Publication and Project Time Schedule**

Not applicable.

**17. Reason(s) Display of OMB Expiration Date is Inappropriate**

Not applicable because there is no Federal form.

**18. Exceptions to Certification for Paperwork Reduction Act Submissions**

There are no exceptions to the certification statement.

SUPPORTING STATEMENT:

**PART B – COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

The information collection requirements outlined in this report do not employ the use of statistical methods.