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Child Support Enforcement: New Reforms and Potential Issues

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Summary

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), signed into law on August 22, 1996, made major changes to the Child Support Enforcement (CSE) program. The newly strengthened program is intended to send the following message to noncustodial parents: If you are an unwed father, we will identify you; if you are a mother or father not paying your child support, we will find you; if you have any income or assets, we will locate them, and enforce your child support obligation. P.L. 104-193 requires establishment by the federal government and the states of an automated registry of child support orders (by October 1, 1998) and an automated directory of new employees (by October 1, 1997) for the purpose of quickly tracking and locating absent parents. It also requires states to operate an automated centralized collection and disbursement unit. It requires states to establish paternity for more children, and implement expedited procedures that allow them to secure assets of a debtor parent to satisfy an arrearage in child support payments. In addition, it requires states to implement procedures to withhold, suspend, or restrict the use of driver's licenses, professional and occupational licenses, and recreational licenses of debtor parents, and makes numerous other changes. In March and April, the House and Senate, respectively, passed H.R. 3130, a bill that would change the CSE incentive payment system and reduce financial penalties for noncompliance with CSE statewide automated data processing and information retrieval requirements.

Background

The CSE program, Part D of Title IV of the Social Security Act, was enacted in January 1975 (P.L. 93-647). The CSE program is administered by the Department of Health and Human Services (DHHS). The main goals of the program are to reduce welfare spending for actual and potential public assistance recipients by obtaining support from noncustodial parents on an ongoing basis; and to establish paternity for children born outside of marriage so that child support can be obtained. The following families automatically qualify for CSE services (free of charge): families receiving (or who formerly received) Aid to Families with Dependent Children (AFDC)/Temporary Assistance to Needy Families (TANF) benefits (Title IV-A), foster care payments, or

Medicaid coverage. Other families must apply for CSE services, and states must charge an application fee that cannot exceed \$25. Child support collected on behalf of nonwelfare families go to the family (via the state disbursement unit). Collections on behalf of families receiving Title IV-A benefits are used to reimburse state and federal governments for Title IV-A payments made to the family.

The federal government pays 66% of state and local CSE costs, makes incentive payments to states (out of its share of collections), and provides higher matching funds for computerization and laboratory testing for paternity determination. All 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands operate CSE programs and are entitled to federal matching funds.

Between FY1978 and FY1996, child support payments collected by the CSE agencies increased twelve-fold, from \$1 billion in FY1978 to \$12 billion in FY1996. The number of children whose paternity was established increased by 862%, from 111,000 to 1,067,508; parents located increased by 1,173%, from 454,000 to 5,779,489; and support orders established increased by 243%, from 315,000 to 1,081,781. However, the program still collects less than one in four dollars of child support obligations for which it has responsibility¹ and collects payments for only 21% of its caseload. Moreover, OCSE data indicate that in FY1995, paternity was established for only 18% of the 3.7 million children without legally identified fathers. The CSE program is estimated to handle at least 50% of all child support cases; the remaining cases are handled by private attorneys, collection agencies, or through mutual agreements between the parents.

Child Support Data—FY1996

Total CSE caseload—19.3 million; **AFDC cases**, 10.0 million; **non-AFDC cases**, 9.3 million
Total CSE collections—\$12.0 billion; **AFDC families**, \$2.86 billion; **non-AFDC**, \$9.16 billion
Payments to AFDC families, \$480 million
Federal share of AFDC collections, \$888 million
State share of AFDC collections, \$1,014 million
Incentive payments to States, \$409 million
Medical support payments, \$64 million
Total CSE expenditures—\$3.1 billion
Federal share, \$2.04 billion, **State share**, \$1.02 billion
Absent parents located—5,779,489
Paternities established—1,067,508
Support orders established—1,081,781
Collections made for 1,341,000 **AFDC families**; 2,612,000 **non-AFDC families**
Families ineligible for AFDC because of collections—285,314
AFDC payments recovered through collections—15.5%

Some of the changes made by P.L. 104-193 include requiring states to increase the percentage of fathers identified, establishing an integrated, automated network linking all states to information about the location and assets of parents, and requiring states to implement more enforcement techniques to obtain collections from debtor parents.

¹ In FY1996, \$57.1 billion in child support obligations (\$17.1 billion in current support and \$40.0 billion in past-due support) were owed to families receiving CSE services, but only \$11.7 billion was paid (\$8.7 billion current, \$3.0 past-due).

Program Elements

The CSE program provides six major services on behalf of children: (1) parent location, (2) paternity establishment, (3) establishment of child (and spousal) support orders, (4) review and modification of support orders, (5) collection of support payments, and (6) distribution of support payments. Moreover, since 1984, CSE agencies have been required to petition for medical support as part of most child support orders.

Locating Absent Parents. To improve the CSE agency's ability to locate absent parents, P.L. 104-193 requires states to have automated registries of child support orders containing records of each case in which CSE services are being provided and each support order established or modified on or after October 1, 1998. Under P.L. 104-193, local registries could be linked to form the state registry. The state registry is to include a record of the support owed under the order, arrearages, interest or late penalty charges, amounts collected, amounts distributed, child's date of birth, and any liens imposed; and also will include standardized information on both parents, such as name, Social Security number, date of birth, and case identification number. P.L. 104-193 requires states, beginning October 1, 1997, to establish an automated directory of new hires containing information from employers, including federal, state, and local governments and labor organizations, for each newly hired employee, that includes the name, address and Social Security number of the employee and the employer's name, address, and tax identification number. This information generally is to be supplied to the state new hires directory within 20 days after the employee is hired.² The new law also requires the establishment of a federal case registry of child support orders and a national directory of new hires. The federal directories are to consist of abstracts of information from the state directories and will be located in the Federal Parent Locator Service (FPLS).

P.L. 104-193 allows all states to link up to an array of data bases and permits the FPLS to be used for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders. By May 1, 1998, a designated state agency shall directly or by contract, conduct automated comparisons of the Social Security numbers reported by employers to the state directory of new hires and the Social Security numbers of CSE cases that appear in the records of the state registry of child support orders. (The new law requires the DHHS Secretary to conduct similar comparisons of the federal directories.) When a match occurs the state directory of new hires would be required to report to the state CSE agency the name, date of birth, Social Security number of the employee, and employer's name, address, and identification number. The CSE agency would then, within 2 business days, be required to instruct appropriate employers to withhold child support obligations from the employee's paycheck, unless the employee's income is not subject to withholding.³ P.L. 104-193 requires employers to remit to the state disbursement unit income withheld within 7 business days after the employee's payday. P.L. 104-193

² Within 3 business days after receipt of new hire information from the employer, the state directory of new hires is required to furnish the information to the national directory of new hires.

³ There are two exceptions to the immediate income withholding rule: (1) if one of the parties demonstrates, and the court (or administrative process) finds that there is good cause not to require immediate withholding, or (2) if both parties agree in writing to an alternative arrangement.

requires states to operate a centralized collection and disbursement unit that would send child support payments to custodial parents within 2 business days.

Paternity Establishment. Legally identifying the father is a prerequisite for obtaining a child support order. P.L. 98-378 required states to implement laws to permit paternity establishment until a child's 18th birthday and P.L. 100-485 required states to meet federal requirements for the establishment of paternity and require that all parties in a contested paternity case submit to a genetic test upon request. P.L. 103-66 required states to adopt procedures under which full faith and credit would be given to a determination of paternity made by another state and simplify the process of voluntarily acknowledging paternity.

Like previous law, P.L. 104-193 requires TANF block grant (Title IV-A) applicants and recipients to cooperate in establishing paternity or obtaining support payments. Moreover, it imposes a penalty for noncooperation; if it is determined that an individual is not cooperating, and the individual does not qualify for any good cause or other exception, then the state must deduct not less than 25% of the Title IV-A assistance that otherwise would be provided to the family of the individual and the state may deny the family all Title IV-A assistance.

The new law also (1) requires that paternity be established for 90% of the CSE cases needing such a determination (up from 75%), (2) implements a simple civil process for establishing paternity, (3) requires a uniform affidavit to be completed by men voluntarily acknowledging paternity and entitles such affidavit to full faith and credit in any state, (4) stipulates that a signed acknowledgment of paternity be considered a legal finding of paternity unless rescinded within 60 days; and thereafter may be challenged in court only on the basis of fraud, duress, or material mistake of fact, and (5) provides that no judicial or administrative action is needed to ratify an acknowledgment that is not challenged. P.L. 104-193 requires states to publicize the availability and encourage the use of procedures for voluntary establishment of paternity and child support.

Enforcement. Collection methods used by CSE agencies include income withholding, intercept of federal and state income tax refunds, intercept of unemployment compensation, liens against property, security bonds, and reporting child support obligations to credit bureaus. All jurisdictions also have civil or criminal contempt-of-court procedures and criminal nonsupport laws.

P.L. 104-193 requires states to implement expedited procedures that allow them to secure assets to satisfy the arrearage by intercepting or seizing periodic or lump sum payments (such as unemployment and workers' compensation), lottery winnings, awards, judgements, or settlements, and assets of the debtor parent held by public or private retirement funds, and financial institutions. It requires states to implement procedures under which the state would have authority to withhold, suspend, or restrict the use of driver's licenses, professional and occupational licenses, and recreational licenses of persons who owe past-due support or who fail to comply with subpoenas or warrants relating to paternity or child support proceedings. P.L. 104-193 authorizes the Secretary of State to deny, revoke, or restrict passports of debtor parents.

It requires states to enact and implement an amended version of the Uniform Interstate Family Support Act (UIFSA), by January 1, 1998, and expand full faith and

credit procedures. UIFSA is a model state law designed to deal with nonsupport by instituting uniform laws in all 50 states that limit control of a child support case to a single state. P.L. 104-193 also clarifies which court has jurisdiction in cases involving multiple child support orders.

Financing and Distribution of Collections. The federal government currently reimburses each state 66% of the cost of administering its CSE program. It also refunds states 90% of the laboratory costs of establishing paternity and from 80% to 90% for developing and improving statewide automated information/computer systems. In addition, the federal government pays states an incentive amount ranging from 6% to 10% of TANF and non-TANF collections to encourage states to operate effective programs. P.L. 104-193 requires the DHHS Secretary in consultation with the state CSE directors to develop a new revenue neutral system of incentive payments to states. On March 13, 1997, DHHS submitted its report to the Committees on Ways and Means and Finance.⁴ On March 5, 1998, the House passed H.R. 3130, the Child Support Performance and Incentive Act of 1998, which included a revised version of the DHHS recommendations and provisions to reduce CSE financial penalties for noncompliance with CSE statewide automated data processing and information retrieval requirements. On April 2, 1998, the Senate passed an amended version of H.R. 3130.

P.L. 104-193 eliminates the \$50 passthrough payment (i.e., under old law, the first \$50 of current monthly child support payments collected on behalf of an AFDC family was given to the family and disregarded as income to the family so that it did not affect the family's AFDC eligibility or benefit status). Once a family went off AFDC, child support arrearage payments generally were divided between the state and federal governments to reimburse them for AFDC; if any money remained, it was given to the family. In contrast, under P.L. 104-193, arrearages that are collected through the federal income tax offset are to be paid to the state (and federal government) and any arrearage payments made by any other method are to be paid to the family first. P.L. 104-193 also includes a "hold harmless" provision that requires the federal government to assure that a state retains an amount equal to its FY1995 share of support collections.

Further, under the TANF structure, if a family is assisted with state-only funds rather than federal TANF funds, there is no requirement that the family assign its child support rights to the state or that the state send the federal government any portion of a support collection made on that family's behalf.

Other Provisions. P.L. 104-193 also makes changes related to medical support, modification of support orders, collection from federal employees and members of the Armed Forces, fraudulent transfer of property, access and visitation, CSE for Indian tribes, a work requirement for debtor parents, and international enforcement.

Issues

Restructuring the Financing of the CSE Program. One consequence of the CSE's financing structure is that the federal government has lost money on the program every

⁴ For more information, see CRS Report 97-363, *Child Support Enforcement Incentive Payments: Background and Administration's Recommendations*, by Carmen Solomon-Fears.

year since 1979 and the states (collectively) have made a profit on the program every year. Before 1989, state profits more than compensated for federal losses resulting in a net savings for taxpayers. However, beginning in 1989, the CSE program has been a net cost for taxpayers. In FY1996, the *loss* to the federal government was \$1.151 billion, the *gain* to the states was \$408 million, and the net public *loss* was \$744 million. This pattern of federal deficits and state surpluses from the CSE program raises the issue whether CSE costs and collections are properly divided. Some maintain that the states should pay more of the CSE costs, they assert that the reduction in the federal matching rate for CSE administrative costs would result in an “increased stake by the states in this program” and a closer “scrutiny of expenditures of scarce dollars.” On the other hand, not all the benefits of the program can be measured in money terms. A large segment of the program, namely the non-AFDC/TANF component, by definition, provides no direct CSE program savings to the states or the federal government. Many argue that the indirect savings (referred to as welfare cost avoidance) that occurs when a family is kept off “welfare” because of child support collections make the CSE program worthwhile, despite considerations of cost-effectiveness.

Penalties for States that Fail to Automate. If a state failed to implement the federal CSE statewide automated data processing and information retrieval system requirements by the October 1, 1997 deadline, the federal Office of Child Support Enforcement (OCSE) cannot approve the state’s CSE program. OCSE has indicated that it intends to disapprove CSE plans of several states because of their failure to meet the deadline. The law requires suspension of *all* federal CSE payments to the state when its CSE plan, after appeal, is disapproved. Moreover, states without approved CSE plans are in eventual danger of losing funding for the Temporary Assistance for Needy Families (TANF) block grant program. H.R. 3130, as approved by the House and Senate would impose substantially smaller financial penalties on the states.

The Federal Government’s Share of Child Support Collections. P.L. 104-193 requires states to pay the federal government its share of any child support collected on behalf of TANF families. It is argued that states could aid families who are likely to receive child support with state-only funds, and thereby reduce the amount of money they would be required to pay the federal government. DHHS and some Members are concerned that this option of the states to establish separate funding streams for their welfare families may result in drastic reductions in the amount of child support reimbursements to the federal government.

Cultivating Parental Involvement to Increase Child Support Collections. Historically, Congress has agreed that visitation and child support should be legally separate issues; and that only child support should be under the purview of the CSE program. Both federal and state policymakers have maintained that denial of visitation rights should be treated separately and should not be considered a reason for stopping support payments. Nonetheless, Census Bureau data (1991) indicate that it was more likely for noncustodial parents to make payments of child support if they had either joint custody or visitation rights. In 1996, Congress moderated its position. P.L. 104-193 provides \$10 million per year for grants to states for access and visitation programs, including mediation, counseling, education, development of parenting plans, and supervised visitation. It has been suggested that funding be made available for community workshops on parental responsibility in an effort to find workable solutions to the problems of nonsupport and minimal contact with minor children.