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Child Support Enforcement: New Reforms and Potential Issues

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Summary

P.L. 104-193 (the 1996 welfare reform legislation) made major changes to the Child Support Enforcement (CSE) program. Some of the changes 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. Additional legislative changes were made in 1997, 1998, and 1999, but not in 2000, 2001, or 2002. This report describes several aspects of the revised CSE program and discusses three issues that probably will be reexamined by the 108th Congress — CSE financing, parental access by noncustodial parents, and distribution of support payments. This report will be updated to reflect new developments and issues.

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 Office of Child Support Enforcement (OCSE) in the Department of Health and Human Services (HHS), and funded by general revenues. All 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands operate CSE programs and are entitled to federal matching funds. The following families automatically qualify for CSE services (free of charge): families receiving (or who formerly received) 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 goes to the family (usually through the state disbursement unit). Collections on behalf of families receiving TANF benefits are used to reimburse state and federal governments for TANF payments made to the family.

Between FY1978 and FY2001, child support payments collected by CSE agencies increased from \$1 billion in FY1978 to \$19.0 billion in FY2001, and the number of children whose paternity was established (or acknowledged) increased by 1,312%, from

111,000 to 1.568 million. However, the program still collects only 18% of child support obligations for which it has responsibility¹ and collects payments for only 44% of its caseload. Moreover, OCSE data indicate that in FY2001, paternity had been established or acknowledged for only about 70% of the nearly 10.3 million children on the CSE caseload 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 – FY2001

(caseload numbers are unduplicated)

Total CSE caseload—*Total*, 17.1 million; *TANF*, 3.1 million; *former-TANF*, 7.9 million; *never-TANF*, 6.1 million

Total CSE collections—*Total*, \$18.958 billion; *TANF* families, \$1.346 billion; *former-TANF*, \$7.901 billion; *never-TANF*, \$9.712 billion

Payments to families—*Total*, \$16.6 billion; *TANF*, \$332 million; *former-TANF*, \$6.6 billion; *never-TANF*, \$9.7 billion

Federal share of TANF collections (net), \$895 million

State share of TANF collections, \$1,004 million

Incentive payments to States, \$337 million (estimate)

Medical support payments, \$94 million

Total CSE expenditures—\$4.835 billion

federal share, \$3.222 billion, *state share*, \$1.613 billion

Paternities established and acknowledged—1,567,509

Support orders established—1,181,284 (only includes new orders, excludes modifications)

Collections made for 7,460,459 *total* families; *TANF* families, 773,954; *former-TANF* families, 3,633,449; *never-TANF* families, 3,053,056

Program Elements

The CSE program provides seven major services on behalf of children: (1) parent location, (2) paternity establishment, (3) establishment of child support orders, (4) review and modification of support orders, (5) collection of support payments, (6) distribution of support payments, and (7) establishment and enforcement of medical support.

Locating Absent Parents. To improve the CSE agency's ability to locate absent parents, P.L. 104-193 required states to have automated registries of child support orders, beginning October 1, 1998, containing records of each case in which CSE services are being provided and all new or modified child support orders. The state registry includes 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 includes standardized information on both parents, such as name, Social Security number, date of birth, and case identification number. P.L. 104-193 required 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 supplied to the state new hires directory within 20

¹ In FY2001, \$112.8 billion in child support obligations (\$24.7 billion in current support and \$88.1 billion in past-due support) were owed to families receiving CSE services, but only \$19.9 billion was paid (\$14.2 billion current, \$5.7 billion past-due).

days after the employee is hired. P.L. 104-193 also required the establishment of a federal case registry of child support orders and a national directory of new hires.² The federal directories consists of information from the state directories and is located in the Federal Parent Locator Service (FPLS).

P.L. 104-193 allowed 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.³ It required that a designated state agency, 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 1996 law required the HHS Secretary to conduct similar comparisons of the federal directories.) When a match occurs the state directory of new hires is 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 then, within 2 business days, instructs appropriate employers to withhold child support obligations from the employee's paycheck, unless the employee's income is not subject to withholding.⁴

Paternity Establishment. Legally identifying the father is a prerequisite for obtaining a child support order. Like previous law, P.L. 104-193 required TANF block grant (Title IV-A) applicants and recipients to cooperate in establishing paternity or obtaining support payments. Moreover, it imposed 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 reduce the family's TANF benefit by at least 25% and may remove the family from the TANF program.

P.L. 104-193 also (1) required that paternity be established for 90% of the CSE cases needing such a determination (up from 75%), (2) implemented a simple civil process for establishing paternity, (3) required a uniform affidavit to be completed by men voluntarily acknowledging paternity and entitles such affidavit to full faith and credit in any state, (4) stipulated 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, (5) provided that no judicial or administrative action is needed to ratify an acknowledgment that is not challenged, and

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 P.L. 104-193 permitted both custodial and certain noncustodial parents to obtain information from the FPLS. However, P.L. 105-33, the Balanced Budget Act of 1997(which made numerous changes to P.L. 104-193), prohibits FPLS information from being disclosed to noncustodial parents in cases where there is evidence of domestic violence or child abuse and the local court determines that disclosure may result in harm to the custodial parent or child.

⁴ There are three 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, (2) if both parties agree in writing to an alternative arrangement, or (3) at the HHS Secretary's discretion, if a state can demonstrate that the rule will not increase the effectiveness or efficiency of the state's CSE program.

(6) required all parties to submit to genetic testing in contested paternity cases. (See CRS Report RL31467, *Paternity Establishment: Child Support and Beyond*.)

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. Building on legislation (P.L. 102-521) enacted in 1992, P.L. 105-187, the Deadbeat Parents Punishment Act of 1998, established two new federal criminal offenses (subject to a 2-year maximum prison term) with respect to noncustodial parents who repeatedly fail to financially support children who reside with custodial parents in another state or who flee across state lines to avoid supporting them.

P.L. 104-193 required states to implement expedited procedures that allow them to secure assets to satisfy an 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 required states to implement procedures under which the state would have authority to withhold, suspend, or restrict use of driver's licenses, professional and occupational licenses, and recreational and sporting licenses of persons who owe past-due support or who fail to comply with subpoenas or warrants relating to paternity or child support proceedings. It also required states to conduct quarterly data matches with financial institutions in the state in order to identify and seize the financial resources of debtor noncustodial parents. P.L. 104-193 authorized the Secretary of State to deny, revoke, or restrict passports of debtor parents. P.L. 104-193 also required states to enact and implement the Uniform Interstate Family Support Act (UIFSA), and expand full faith and credit procedures. P.L. 104-193 also clarified which court has jurisdiction in cases involving multiple child support orders.

Financing. 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. In addition, the federal government pays states an incentive payment to encourage them to operate effective programs. P.L. 104-193 required the HHS Secretary in consultation with the state CSE directors to develop a new cost-neutral system of incentive payments to states. P.L. 105-200, the Child Support Performance and Incentive Act of 1998, establishes a new cost-neutral incentive payment system. P.L. 105-200 also replaced the 100% disapproval penalty with reduced financial penalties for states that failed to meet the October 1, 1997 deadline for implementing a CSE statewide automated data processing system.⁵

⁵ Federal CSE 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 could lose funding for the TANF block grant. P.L. 105-200 imposes substantially smaller financial penalties on states that failed to meet the automated data systems requirements. The HHS Secretary is required to reduce the amount the state would otherwise have received in federal child support funding by the penalty amount for the fiscal year in question. The penalty amount percentage is 4% in the case of the first year of noncompliance (FY1998); 8% in the second year (FY1999); 16% in the third year (FY2000); 25% in the fourth year (FY2001); or 30% in the fifth or any subsequent year.

Collection and Disbursement. Pursuant to P.L. 104-193, as of October 1, 1999, all states were required to have a centralized automated state collection and disbursement unit to which child support payments are paid and from which they are distributed.⁶ P.L. 104-193 generally requires employers to remit to the state disbursement unit income withheld within 7 business days after the employee's payday. Further, the state collection and disbursement unit is required to send child support payments to custodial parents with 2 business days of receipt of such payments. (See CRS Report RS20352, *Centralized Collection and Disbursement of Child Support Payments*.)

Distribution of Support. P.L. 104-193 eliminated 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 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 included a "hold harmless" provision that required the federal government to assure that a state retains an amount equal to its FY1995 share of support collections. P.L. 106-169 modified the CSE hold harmless provision and repealed it effective October 1, 2001.

Other Provisions. P.L. 104-193 also made 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, international enforcement, and the placement of Social Security numbers on various license applications.

Issues

Restructuring the Financing of the CSE Program. Some policymakers are concerned that the federal government is financing too large a share of CSE costs, and contend that the states should pay a greater share of the program's costs. One consequence of the CSE's financing structure is that the federal government has lost money on the program every year since 1979 and the states (collectively) have made a "profit" on the program every year until FY2000. Before 1989, state "profits" more than compensated for federal losses resulting in a net savings for taxpayers. FY2000 is the first year in which states have not collectively made a "profit" on the CSE program. Some observers argue that any reduction in the federal government's financial commitment to the CSE program could negatively impact states' ability to serve families. Moreover, not all benefits of the program can be measured in money terms. Thus, many argue that indirect savings (i.e., welfare cost avoidance) that occur when a family is kept off "welfare" because of child support collections and the intangible benefits (e.g., personal responsibility and parental involvement of noncustodial parents) make the CSE

⁶P.L. 106-113 includes a provision that imposes substantially smaller financial penalties on states that failed to meet the centralized collection and disbursement unit requirement. These penalties are identical to those pertaining to failure to meet automated data systems requirements.

program socially worthwhile. (See CRS Report RL30488, *Analysis of Federal-State Financing of the Child Support Enforcement Program.*)

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 child support payments. In recognition of the negative long-term consequences for children associated with the absence of their father, federal, state, and local initiatives to promote financial and personal responsibility of noncustodial parents to their children (e.g., fatherhood initiatives) are receiving more attention. In 1996, P.L. 104-193 provided \$10 million per year for grants to states for access and visitation programs, including mediation, counseling, education, and supervised visitation. H.R. 4678, passed by the House on September 7, 2000, included a fatherhood grant program designed to promote marriage, promote successful parenting and the involvement of fathers in the lives of their children, and help fathers improve their economic status by providing them with job-related services. Although the House and Senate did not reach agreement on H.R. 4678, Congress appropriated \$3.5 million for a national fatherhood organization called the National Fatherhood Initiative and another \$500,000 for a fatherhood organization called the Institute for Responsible Fatherhood and Family Revitalization (P.L. 106-553 and P.L. 106-554). Several bills that included fatherhood initiatives were introduced in the 107th Congress. President Bush's FY2003 budget (and H.R. 4737, as passed by the House on May 16, 2002) would have provided \$20 million per year for FY2003-FY2007 in competitive grants to community and faith-based organizations to help noncustodial fathers support their families and become more involved in their children's lives, and to encourage and support healthy marriages and married fatherhood. (See CRS Report RL31025, *Fatherhood Initiatives: Connecting Fathers To Their Children.*)

Simplifying Distribution Procedures. P.L. 104-193 requires states to pay a higher fraction of child support collections on arrearages to families that have left welfare by making these payments to families first. This has resulted in making an already complicated set of rules for determining who actually gets the child support arrearage payments more complex. (See CRS Report RS20837, *Distribution of Child Support Collections.*) Although some of the complexity ended when the 1996 distribution rules were completely implemented on October 1, 2000, many policymakers contend that Congress should simplify the distribution system which currently requires the tracking of six categories of arrearage payments to properly pay custodial parents. Several bills that were introduced in the 107th Congress would have simplified CSE program distribution rules as well as extended the "families first" policy by requiring that more child support go to ex-welfare families and allowing more to go to parents still on welfare. President Bush's FY2003 budget (and H.R. 4737, as passed by the House on May 16, 2002) would have given states incentives (1) to pass through and disregard child support collected on behalf of families receiving TANF benefits and (2) to simplify child support distribution rules so as to benefit families who no longer receive TANF benefits.