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2005 (P.L. 109-171)*

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Child Support Provisions in the Deficit Reduction Act of 2005 (P.L. 109-171)

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Summary

Among other things, P.L. 109-171 (the budget reconciliation measure, now referred to as the Deficit Reduction Act of 2005 — S. 1932) made a number of changes to the Child Support Enforcement (CSE) program. The act will reduce the federal matching rate for laboratory costs associated with paternity establishment from 90% to 66%, end the federal matching of state expenditures of federal CSE incentive payments reinvested back into the program, and require states to assess a \$25 annual user fee for child support services provided to families with no connection to the welfare system. P.L. 109-171 also simplifies CSE distribution rules and extends the “families first” policy by providing incentives to states to encourage them to allow more child support to go to both former welfare families and families still on welfare. In addition, P.L. 109-171 revises some child support enforcement collection mechanisms and adds others. The Congressional Budget Office (CBO) estimates that the CSE provisions contained in P.L. 109-171 will reduce federal costs of the CSE program by \$1.5 billion over the five-year period FY2006-FY2010. This report will not be updated.

Background

Over the years, CSE has evolved into a multifaceted program. While recovery of costs to provide cash welfare to needy families with children still remains an important function, other aspects of the program include service delivery and promotion of self-sufficiency and parental responsibility.

The CSE program has helped strengthen families by securing financial support for children from their noncustodial parent on a consistent and continuing basis, and by helping some families to remain self-sufficient and off public assistance by providing the requisite CSE services. Child support payments now are generally recognized as a very important income source for single-parent families. On average, child support constitutes 17% of family income for households that receive it (2001 data). Among poor families who receive it, child support constitutes about 30% of family income (2001 data).

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 cash TANF benefits (Title IV-A), foster care payments (Title IV-E), or Medicaid coverage (Title XIX). Collections on behalf of families receiving TANF cash benefits are used to reimburse state and federal governments for TANF payments made to the family. 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.

In 1996, Congress passed major changes to the CSE program as part of its reform of welfare. Since FY2002, when the authorization expired for the Temporary Assistance for Needy Families (TANF) block grant and other related programs, proposals for significant changes to the CSE program have been linked to welfare reauthorization legislation. P.L. 109-171 (the Deficit Reduction Act of 2005, S. 1932),¹ among other things, reauthorized the Temporary Assistance for Needy Families (TANF) block grant and made substantive changes to the CSE program. CBO estimates that the CSE provisions in P.L. 109-171 will reduce federal costs of the CSE program by \$1.5 billion over the five-year period FY2006-FY2010. For a comparison of selected provisions, see **Table 1**.

Child Support Assignment and Distribution Policies

P.L. 109-171, the Deficit Reduction Act (S. 1932), seeks to improve the CSE program and raise collections in order to increase the economic independence of former welfare families and provide a stable source of income for all single-parent families with a noncustodial parent. It simplifies CSE assignment and distribution rules, and strengthens the “family-first” policies started in the 1996 welfare reform law.

Assignment of Child Support Rights. As a condition of receiving TANF cash benefits, a family must assign its child support rights to the state. Assignment rules determine who has legal claim on the child support payments owed by the noncustodial parent. The child support assignment covers any child support that accrues while the family receives cash TANF benefits, as well as any child support that accrued before the family started receiving TANF benefits. Assigned child support collections are not paid to families; rather, this revenue is kept by states and the federal government as partial reimbursement for welfare benefits. Nonwelfare families who apply for CSE services do not assign their child support rights to the state, and thereby receive all of the child support collected on their behalf. An extremely important feature of the assignment process is the date on which an assignment was entered. If the assignment was entered on or before September 30, 1997, then pre-assistance and during-assistance arrearages are “permanently assigned” to the state. (Note that past-due child support payments are

¹ The conference agreement on S. 1932, the Deficit Reduction Act of 2005 (H.Rept. 109-362), was originally passed by the House on December 19, 2005. It was then passed by the Senate with amendments on December 21, 2005, and subsequently was passed again by the House on February 1, 2006. It was signed into law (P.L. 109-171) by the President on February 8, 2006.

referred to as arrearages.) If the assignment was entered on or after October 1, 1997, then only the arrearages that accumulate while the family receives assistance are “permanently assigned.” The family’s pre-assistance arrearages are “temporarily assigned,” and the right to those arrearages goes back to the family when it leaves TANF, unless the arrearages are collected through the federal income tax refund offset program.

P.L. 109-171 stipulates that the child support assignment only covers child support that accrues while the family receives TANF benefits. This means that any child support arrearages that accrued before the family started receiving TANF benefits would not have to be assigned to the state (even temporarily), and thereby any child support collected on behalf of the former-TANF family for pre-assistance arrearages will go to the family.

Distribution of Child Support. Distribution rules determine which claim is paid first when a child support collection occurs. The order of payment of the child support collection is important because in many cases arrearages are never fully paid.

TANF Families. While a family receives TANF cash benefits, the states and federal government retain any current support and any assigned arrearages collected up to the cumulative amount of TANF benefits that has been paid to the family. While states may pay their share of collections to the family, they must pay the federal government the federal government’s share of child support collections collected on behalf of TANF families. This means that the state, and not the federal government, bears the entire cost of any child support passed through to families and disregarded by the state in determining the family’s TANF cash benefit.

P.L. 109-171 provides incentives in the form of federal cost sharing to states to direct more of the child support collected on behalf of TANF families to the families themselves (often referred to as a “family-first” policy), as opposed to using such collections to reimburse state and federal coffers for welfare benefits paid to the families. P.L. 109-171 will help states pay for the cost of their CSE pass-through and disregard policies by requiring the federal government to share in the costs of the entire amount of child support collections passed through and disregarded by states. P.L. 109-171 will allow states to pay up to \$100 per month (or \$200 per month to a family with two or more children) in child support collected on behalf of a TANF or foster care family to the family, and would not require the state to pay the federal government the federal share of those payments. In order for the federal government to share in the cost of the child support pass-through, the state would be required to disregard (i.e., not count) the child support collection paid to the family in determining the family’s cash TANF benefit. CBO estimates that this provision will cost the federal government \$140 million over the five-year period FY2006-2010. This provision takes effect on October 1, 2008.

Former TANF Families. Pursuant to the 1996 welfare reform law (P.L. 104-193), beginning on October 1, 2000, states must distribute to former TANF families the following child support collections first before the state and the federal government are reimbursed (the “family-first” policy): (1) all current child support, (2) any child support arrearages that accrue after the family leaves TANF (these arrearages are called never-assigned arrearages), plus (3) any arrearages that accrued before the family began receiving TANF benefits. Any child support arrearages that accrue during the time the family is on TANF belong to the state and federal government.

One of the goals of the 1996 welfare reform law with regard to CSE distribution provisions was to create a distribution priority that favored families once they leave the TANF rolls. Thus, generally speaking, under current law, child support that accrues before a family receives TANF and after the family stops receiving TANF goes to the family, whereas child support that accrues while the family is receiving TANF goes to the state. This additional family income is expected to reduce dependence on public assistance by both promoting exit from TANF and preventing entry and re-entry to TANF.

P.L. 109-171 gives states the option of distributing to former TANF families the full amount of child support collected on their behalf (i.e., both current support and all child support arrearages — including arrearages collected through the federal income tax refund offset program). Thereby, P.L. 109-171 allows states to simplify the CSE distribution process by eliminating the special treatment of child support arrearages collected through the federal income tax refund offset program. Under P.L. 109-171, the federal government shares with the states the costs of paying child support arrearages to the family first. CBO estimates that this provision will cost the federal government \$283 million over the five-year period FY2006-2010. This provision takes effect on October 1, 2009, or at state option not before October 1, 2008.

Expansion or Enhancement of Collection/Enforcement Tools

The CSE program has numerous methods by which to obtain child support from noncustodial parents. They include income withholding; interception of federal and state income tax refunds; seizure of lump-sum benefits, lottery winnings, and settlements; withholding of driver's licenses, professional licenses, and recreational licenses of persons who owe past-due child support; seizure of assets from banks and other financial institutions; denial of passports; imposition of criminal penalties against noncustodial parents who repeatedly fail to financially support children who reside with custodial parents in another state; and civil or criminal contempt-of-court procedures. Nonetheless, in FY2004, states were collecting only 18% of child support obligations for which they collectively had responsibility. For several years, child advocates and Members of Congress have been pushing for more or enhanced CSE tools.

P.L. 109-171 includes provisions that (1) lower the threshold amount for denial of a passport to a noncustodial parent who owes past-due child support; (2) allow states to use the federal income tax refund offset program to collect past-due child support for persons not on TANF who are no longer minors; (3) authorize the Secretary of HHS to compare information of noncustodial parents who owe past-due child support with information maintained by insurers concerning insurance payments and to furnish any information resulting from a match to CSE agencies so that they can pursue child support arrearages; (4) allow an assisting state to establish a CSE interstate case based on another state's request for assistance (thereby enabling an assisting state to use the CSE statewide automated data processing and information retrieval system for interstate cases); (5) require states to review and, if appropriate, adjust child support orders of TANF families every three years; and (6) require that medical child support for a child be provided by either or both parents. CBO estimates that these CSE collection tools will reduce federal costs by about \$36 million over the period FY2006-2010. (The effective dates related to collection techniques vary; a few take effect immediately, while others take effect between October 1, 2006, and October 1, 2009.)

Financing Provisions

The federal government reimburses each state 66% of the cost of its CSE program. However, it reimburses states at a higher 90% matching rate for the laboratory costs of establishing paternity. In addition, the federal government pays states an incentive payment² to encourage them to operate effective programs.

P.L. 109-171 includes provisions that (1) establish a \$25 annual user fee for individuals who have never been on TANF but receive CSE services and who have received at least \$500 in any given year — saving the federal government \$172 million over the five-year period FY2006-2010; (2) reduce the CSE federal matching rate for the laboratory costs associated with establishing paternity from 90% to 66%³ — saving \$28 million over the five years; and (3) eliminate the federal match on CSE incentive payments that states, in compliance with federal law, reinvest back into the CSE program — saving \$1.6 billion over the five years.⁴

Table 1. Comparison of Child Support Assignment, Distribution, and Financing Rules Under Old and New Law

| | Old Law | New Law (P.L. 109-171) |
|--------------------------------|---|---|
| Child Support Assignment Rules | Assignment rules stipulate who has a legal claim on the child support payments owed by the noncustodial parent. Generally, child support owed before and during a family's time on TANF belongs to the state and federal government, and child support owed after the family leaves the TANF rolls belongs to the family. | Stipulates that the child support assignment only covers child support that accrues during the period that the family receives TANF. Thus, child support owed before a family enrolls in TANF and after the family leaves TANF belongs to the family, and child support owed during the time the family is on TANF belongs to the state. Effective October 1, 2009; October 1, 2008, at state option. |

² The CSE incentive payment was statutorily set by P.L. 105-200. In the aggregate, incentive payments to states may not exceed \$446 million for FY2005, \$458 million for FY2006, \$471 million for FY2007, and \$483 million for FY2008, to be increased to account for inflation in years thereafter. The incentive payment is based in part on five performance measures related to establishment of paternity and child support orders, collection of current and past-due child support payments, and cost-effectiveness. In addition, P.L. 105-200 required mandatory reinvestment of child support incentive payments into the CSE program or related activities.

³ Paternity establishment costs that are not associated with laboratory testing are reimbursed at the regular CSE federal matching rate of 66%.

⁴ In addition, P.L. 109-171 establishes a minimum funding level for technical assistance and the Federal Parent Locator Service (FPLS) — costing \$4 million over the five-year period FY2006-FY2010. P.L. 109-171 prevents funding for technical assistance (which is equal to 1% of the federal share of child support collected on behalf of TANF families) from going below the amount the state received in FY2002. Similarly, P.L. 109-171 prevents funding for the FPLS (which is equal to 2% of the federal share of child support collected on behalf of TANF families) from going below the amount the state received in FY2002. It is expected that the diminishing share of the CSE caseload that receives cash TANF benefits, together with the new rules related to assignment and distribution, will result in the federal government receiving a smaller amount of child support collections than it previously received.

| | Old Law | New Law (P.L. 109-171) |
|----------------------------------|--|--|
| Child Support Distribution Rules | <p>Child support distribution rules determine the order in which child support collections are paid when both the family and the state have competing claims on the money. The general rule is that if the family is on TANF (or receives federal foster care aid), then the state is paid first. While a family receives cash TANF benefits, the state can send some, all, or none of its share of the child support collected to the family. The state is required to send the federal government the federal share of any child support collected on behalf of TANF families.</p> <p>If the family is not on TANF, then the family is paid first. However, an exception occurs for former TANF families if the child support is collected via the federal income tax refund offset program, in such cases, the state is paid first.</p> | <p>For families who receive assistance from the state (TANF or foster care), requires the federal government to waive its share of the child support collections passed through to TANF families by the state and disregarded by the state — up to an amount equal to \$100 per month in the case of a family with one child, and up to \$200 per month in the case of a family with two or more children. Effective October 1, 2008.</p> <p>Simplifies child support distribution rules to give states the option of providing families that have left TANF the full amount of the child support collected on their behalf (i.e., both current child support and child support arrearages, including support payments collected via the federal income tax refund offset program). The federal government would have to share with the states the costs of paying child support arrearages to the family first. Effective October 1, 2009; October 1, 2008 at state option.</p> |
| Financing Rules | <p>Welfare families are automatically enrolled free of charge in the CSE program. Nonwelfare families must apply for CSE services, and states must charge an application fee that cannot exceed \$25.</p> <p>In general, the federal government reimburses each state 66% of the cost of expenditures on its CSE program. However, for the laboratory costs of establishing paternity, the federal government reimburses states at a higher 90% matching rate.</p> <p>In addition, the federal government pays states an incentive payment to encourage them to operate effective programs. Federal law requires states to reinvest CSE incentive payments back into the CSE program or related activities. If incentive payments are reinvested in the CSE program, they are reimbursed at the appropriate CSE federal matching rate, i.e., 66% for general activities or 90% for laboratory testing for paternity determination.</p> | <p>Requires families that have never been on TANF to pay a \$25 annual user fee when child support enforcement efforts on their behalf are successful (i.e., at least \$500 annually is collected on their behalf). Effective October 1, 2006.</p> <p>Reduces the federal matching rate for laboratory costs incurred in determining paternity from 90% to 66%. Effective October 1, 2006.</p> <p>Prohibits federal matching of state expenditure of federal CSE incentive payments. (This means that CSE incentive payments that are received by states and reinvested in the CSE program are not eligible for federal reimbursement.) Effective October 1, 2007.</p> |