

**Testimony before the District of Columbia Council
Committee on Public Safety and the Judiciary
Child Support Services Division of the Office of the Attorney General
2010 Fiscal Year Budget Hearing**

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The Legal Aid Society of the District of Columbia¹ urges the Child Support Services Division of the Office of the Attorney General (CSSD) to thoroughly consider adopting changes to the child support assignment and distribution rules permitted by federal law and ensure that sufficient funding is available to adopt these changes.

The federal Deficit Reduction Act of 2005 (DRA) amends Part D of Title IV of the Social Security Act. These amendments allow states to simplify their child support assignment and distribution rules and put families living in poverty first in line to receive collected child support. The District should take full advantage of this opportunity to decrease CSSD's administrative costs and help families living in poverty increase their income and lift themselves out of poverty. Initiatives that place more money in families' pockets are especially needed during these difficult economic times.

As outlined below, the Deficit Reduction Act includes both mandatory and optional changes to the child support assignment and distribution rules. Unfortunately, CSSD has not yet decided which optional changes to adopt, if any. The agency is currently conducting a fiscal analysis of these options, which should be complete next month. This analysis is extremely important because it will be used to make a decision that will have a tremendous impact on the lives of families living in poverty in the District. Therefore, this Committee should provide oversight and thoroughly review CSSD's analysis.

In order to comply with the mandatory DRA provision, CSSD must reprogram its computer system by October 1, 2009. Because CSSD's budget is encompassed under the general OAG budget, it is difficult to determine whether the budget includes funds for the computer reprogramming project. If these funds are not already included in the budget, then CSSD should ensure that the computer reprogramming project is fully funded so that the agency can adopt the DRA options as well as comply with federal law.

The mandatory and optional changes to the child support assignment and distribution rules included in the Deficit Reduction Act are outlined below.

¹ The Legal Aid Society was formed in 1932 to "provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs." Over the last 77 years, tens of thousands of the District's neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the following four priority areas: consumer, family law, housing, and public benefits.

DRA Changes to the Child Support Assignment Rules

The Deficit Reduction Act includes three changes to the child support assignment rules. One change is mandatory, and two changes are optional.

First, the DRA requires states to eliminate the assignment of pre-assistance arrears, effective October 1, 2009.² Currently, as a condition of receiving Temporary Assistance for Needy Families (TANF), families have to assign their rights to child support to the government. This assignment includes current child support that accrues while a family receives TANF (“during-assistance support”) as well as past due child support that accrued before a family began receiving TANF (“pre-assistance arrears”).

If the assignment was entered on or before September 30, 1997, then the during-assistance support and the pre-assistance arrears are permanently assigned to the government. If the assignment was entered on or after October 1, 1997, then only the during-assistance support is permanently assigned to the government. The pre-assistance arrears are temporarily assigned to the government while the family receives TANF. In turn, if the government collects the pre-assistance arrears during the assistance period, then the government can keep this money. When the family leaves TANF, the government conditionally owns the rights to pre-assistance arrears. The condition is met when the government collects pre-assistance arrears through the federal income tax refund offset program. If pre-assistance arrears are collected in any other manner (e.g., wage withholding), then the money goes to the former TANF family.

These assignment rules produced a very complicated accounting scheme in which child support enforcement agencies must categorize child support payments into one of eight categories: “assigned” current support, “never-assigned” current support, “permanently-assigned” arrears, “temporarily-assigned” arrears, “conditionally-assigned” arrears, “unassigned pre-assistance” arrears, “unassigned during-assistance” arrears, and “never-assigned” arrears.³ This system is costly to administer and susceptible to errors.

To simplify this system, the Deficit Reduction Act eliminates the assignment of pre-assistance arrears, effective October 1, 2009. Consequently, families who begin receiving TANF on or after the effective date only have to assign their rights to child support that accrues while they receive TANF; they no longer have to assign their rights to arrears that accumulate before the assistance period begins. States can elect to implement this rule up to a year early.

This mandatory rule change only applies to assignments entered on or after October 1, 2009. However, the DRA gives states the option to discontinue older assignments, beginning October 1, 2008. States can discontinue: 1) some or all assignments entered on or before September 30, 1997; and 2) some or all pre-assistance assignments entered on or after October 1, 1997. In other words, states may discontinue all assignments, except assignments of during-assistance support entered on or after October 1, 1997.⁴

² Public Law 109-171 Section 7301(a).

³ See Appendix 1, Center for Law and Social Policy, *Child Support Distribution Accounting “Buckets”* (February 2002).

⁴ P.L. 109-171 Section 7301(c).

DRA Changes to the Child Support Distribution Rules

The Deficit Reduction Act gives states the option to adopt three changes to the child support distribution rules. The first option allows states to pass through all or some collected child support to families receiving TANF and disregard this income when determining whether these families are eligible for TANF. Before the DRA was passed, the Social Security Act permitted states to adopt pass-through and disregard programs. However, the DRA changes the manner in which these programs are funded.

State and federal governments share the child support that TANF families assign to them. For example, the District gives the federal government fifty percent (50%) of the assigned support that it collects. Before the DRA, if a state passed through collected child support to families receiving TANF, the state had to bear the entire cost of the program because states still had to pay the federal government its share of collected support. Under the DRA, effective October 1, 2008, if a state passes through and disregards \$100 of collected child support to current TANF families with one child and \$200 to those with two or more children, then the federal government will waive its share of collected support.⁵ Since the District already has a \$150 pass-through and disregard program, the federal government now waives a portion of its share of collected support.

The second option allows states to pass through assigned support to families that have left TANF, beginning October 1, 2008.⁶ If a state elects to adopt this change and passes through both the state and federal share of collected support, the federal government will waive its share. There is no dollar limit to the amount that may be passed through. Therefore, even if a state does not discontinue old assignments, it can pass through assigned support to former TANF families. Moreover, although the DRA does not allow states to eliminate some during-assistance assignments, states can still pass through this assigned support, resulting in families that have left TANF receiving all the child support that the government collects for their case after the enactment of the pass-through program.⁷

The third option allows states to eliminate the special distribution rule for child support collected through the federal income tax refund offset program.⁸ Currently, child support payments are generally distributed using a “family first” model. When families leave TANF, collected support is distributed to the family before the government. The money is distributed in the following order: 1) to the family for current support; 2) to the family for arrears that accrued after the family left TANF; 3) to the family for arrears that accrued before the family began receiving TANF (“pre-assistance arrears”); and 4) to the government.

⁵ P.L. 109-171 Section 7301(b)(1).

⁶ *Id.*

⁷ If a state adopts a pass-through program for former TANF families, the state does not have to pass through assigned child support that was collected before the pass-through program was adopted. See Office of Child Support Enforcement (OCSE), *Instructions for the Assignment and Distribution of Child Support Under Sections 408(a)(3) and 457 of the Social Security Act*, AT-07-05 (July 11, 2007).

⁸ P.L. 109-171 Section 7301(b)(1).

Child support collected through the federal income tax refund offset program is an exception to the “family first” rule. Currently, when an obligor owes past due child support, his federal income tax refund is intercepted to pay these arrears; these funds are not used to pay current support. The arrears that are collected through federal tax refunds are distributed first to the government, then to the family.

The DRA gives states the option, effective October 1, 2008, to eliminate the special rule for child support collected through intercepting federal income tax refunds.⁹ If states choose this option, then federal tax refund intercepts will be treated like other types of collections—the money will be applied first to current support, then to the family’s arrears, and finally to the government’s arrears. Moreover, the federal government will waive its share of collected support if states adopt this rule.

CSSD Should Thoroughly Consider Adopting the Optional DRA Rule Changes

Legal Aid urges CSSD to thoroughly consider adopting the optional DRA rule changes. The agency should consider adopting the following options: 1) discontinue pre-assistance assignments entered on or after October 1, 1997; 2) discontinue all assignments entered on or before September 30, 1997; 3) pass through assigned support to families who have left TANF; and 4) eliminate the special distribution rule for child support collected through the federal income tax refund offset program.

CSSD should thoroughly consider adopting these rule changes for two reasons. First, these changes will simplify the child support distribution system. If child support is not assigned to the government, then the money collected is simply distributed to families. In turn, there will be no need to conduct complex audits to determine whether the government or families are entitled to collected child support. A simplified system will reduce administrative costs and error rates.

Second, these changes will increase the income of families living in poverty and help these families become more self-sufficient. The elimination of pre-assistance assignments is particularly illustrative. Pre-assistance assignments penalize families in two situations. The first group obtains a child support order before resorting to public assistance, but the obligor does not pay the ordered amount, forcing the custodial parent to apply for TANF to support the family. As a condition of receiving TANF, the parent must assign to the government all the arrears that accumulated before the parent began receiving public assistance. The second group obtains a child support order while the custodial parent is receiving TANF, the obligor pays consistently for a period, and the family leaves TANF. Eventually, the obligor stops making payments, forcing the custodial parent to re-apply for TANF. To receive benefits, the parent must assign to the government the child support arrears that accumulated during the time that the parent did not receive public assistance.

⁹ *Id.*

Families in both of these situations are desperately trying to maintain self-sufficiency. However, the current assignment rules penalize the efforts of these families and give the government the money that would help the families lift themselves out of poverty. If older assignments are discontinued, child support collected to pay these discontinued assignments would be distributed to the family rather than the government. If families receive this money, they would be more likely to leave TANF sooner and remain self-sufficient.

Child support is an essential source of income for families that have left TANF. Among these families, child support constitutes about thirty percent (30%) of their income.¹⁰ Furthermore, the results of Wisconsin's pass-through demonstration project suggest that when child support is distributed to families rather than retained by the government, obligors are more willing to establish paternity, pay more child support, and are less likely to work underground.¹¹ Moreover, studies indicate that receipt of child support leads to higher academic achievement for children, and noncustodial parents who pay child support are more involved in their children's lives, providing both financial and emotional support.¹²

As demonstrated above, adopting the DRA optional changes will help families living in poverty in the District increase their income and become more self-sufficient. Initiatives that place more money in families' pockets are especially needed during these difficult economic times.

Other States Have Implemented the Optional DRA Rule Changes

Other states have passed or introduced legislation to implement the DRA optional changes. In May 2008, Pennsylvania passed a statute that: 1) adopts a \$100/\$200 pass-through and disregard program; and 2) eliminates the special distribution rule for child support collected through the federal income tax refund offset program. These changes were effective October 1, 2008.¹³ The Massachusetts legislature has proposed legislation that: 1) discontinues pre-assistance assignments entered on or after October 1, 1997; 2) adopts a \$100/\$200 pass-through and disregard program; and 3) eliminates the special distribution rule for child support collected through the federal income tax refund offset program.¹⁴ In addition, several other states have legislation pending to adopt a \$100/\$200 pass-through and disregard program,¹⁵ and many states plan to adopt alternative pass-through programs.¹⁶ A wide range of states are embracing the

¹⁰ Elaine Sorensen. "Child Support Gains Some Ground." *Snapshots of America's Families III*, No. 11. Washington, DC: The Urban Institute (2003).

¹¹ Daniel R Meyer and Maria Cancian, *W-2 Child Support Demonstration Evaluation, Phase I: Final Report* (April 2001).

¹² Virginia Knox. The effects of child support payments on developmental outcomes for elementary school-age children. *Journal of Human Resources* 31(4): 816-840 (1996); John Graham, Andrea Beller, and Pedro Hernandez. The effects of child support on educational attainment (pp. 317-354). In *Child Support and Child Well-Being*, Garfinkel, Irwin, et al. (Eds.). Washington, DC: The Urban Institute Press (1994); Virginia Knox and Mary Jo Bane. Child support and schooling (pp. 308-316). In *Child Support and Child Well-Being*, Garfinkel, Irwin, et al. (Eds.). Washington, DC: The Urban Institute Press (1994).

¹³ Pennsylvania Senate Bill No. 1278, 2008 Session.

¹⁴ Massachusetts Senate Bill No. 2588, 2007-2008 Session.

¹⁵ Iowa, New Mexico, and Washington.

¹⁶ Oregon, New Jersey, Texas, and Virginia.

DRA options as a mechanism to simplify child support rules and increase the income of families living in poverty.

Resources Necessary to Implement the DRA Optional Rule Changes in the District

As outlined above, in order to comply with the mandatory change to the assignment rules, CSSD must reprogram its computer system by October 1, 2009. Unfortunately, CSSD has not decided which optional changes to adopt. CSSD is conducting an analysis of the fiscal impact of the optional changes, which should be complete next month. The decision about which options to adopt is extremely important because this decision will have a tremendous impact on the lives of families living in poverty in the District. Therefore, this Committee should provide oversight and thoroughly review CSSD's analysis.

Because CSSD's budget is encompassed under the general OAG budget, it is difficult to determine whether the budget includes funds for the computer reprogramming project. If these funds are not already included in the budget, then CSSD should ensure that the computer project is fully funded so that the agency can adopt the DRA options as well as comply with federal law.

Conclusion

The optional changes to the child support assignment and distribution rules permitted by the Deficit Reduction Act of 2005 will simplify CSSD's complicated accounting system and put families living in poverty first in line to receive collected child support. This Committee should thoroughly review CSSD's analysis of the DRA options and ensure that CSSD's computer reprogramming project is fully funded.

Child Support Distribution Accounting "Buckets"

Current Support

Assigned current support

- Owed + collected during assistance period

Not assigned current support

- Owed + collected after assistance period

= state keeps

= family gets money

Arrears

"Permanently assigned" arrears

- Owed during assistance period
- Owed before 1997
- Collected anytime

"Temporarily assigned" arrears

- Owed before assistance period
- Collected during assistance period

"Conditionally assigned" arrears

- Owed before assistance period
- Collected after assistance period
- Federal tax offset collection

"Unassigned pre-assistance" arrears

- Owed before assistance period
- Collected after assistance period
- Collected by any means except federal tax offset

"Unassigned during assistance" arrears

- Owed during assistance period
- Collected when welfare costs are fully reimbursed

"Never assigned" arrears

- Owed after assistance period
- Collected after assistance period

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REAUTHORIZATION ISSUES