

# CRS Report for Congress

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## Distribution of Child Support Collections

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### Summary

P.L. 104-193, the 1996 welfare reform law, substantively changed the rules governing how child support collections are distributed among families, states, and the federal government. The general rules in effect as of October 1, 2000 are that child support collected during the time a family receives cash welfare belongs to the state; current child support and arrearages (past-due payments) that are owed to a family that is no longer receiving welfare belongs to the family; and child support owed to a family that never received welfare belongs to the family. This is referred to as the “families first” child support distribution policy. (These “families first” distribution rules do not apply to child support collections made by intercepting federal income tax refunds.) Many policymakers contend that Congress should simplify the child support distribution system which currently requires the tracking of six categories of arrearage payments to properly pay custodial parents. Legislation that included provisions to simplify child support distribution procedures and provide more of the child support collected to custodial parents (rather than the government) was passed by the House in the 106<sup>th</sup> and 107<sup>th</sup> Congresses, but not by the Senate. Similar legislation has been reintroduced as part of the welfare reauthorization measure in the 108<sup>th</sup> Congress. This report will be updated as needed to reflect legislative activity.

### Background

P.L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (enacted August 22, 1996), replaced the Aid to Families with Dependent Children (AFDC) entitlement program with a Temporary Assistance for Needy Families (TANF) block grant and made major changes to the Child Support Enforcement (CSE) program. The rules governing how child support collections are distributed among families, the state, and the federal government have changed substantially. In part, CSE distribution rules were changed to acknowledge the fact that child support would be significant, if not critical, to helping single-parent families exit welfare and maintain self-sufficiency.

Since the CSE program’s inception, the rules determining who actually gets the child support arrearage payments have been complex, but not nearly as complicated as they are currently. It is helpful to think of the rules in two categories. First, there are rules in both

federal and state law that stipulate who has a legal claim on the payments owed by the noncustodial parent. These are called assignment rules. Second, there are rules that determine the order in which child support collections are paid in accordance with the assignment rules. These are called distribution rules.

When a family leaves TANF,<sup>1</sup> the order of distribution of any child support collection depends on (1) when the arrearages accrued (pre-assistance, during-assistance, or post-assistance); (2) when the child support was assigned to the state (before October 1997, between October 1997 and October 2000, or after October 2000); (3) how the child support arrearages were collected (through the federal income tax refund offset program or by some other means); (4) the amount of the unreimbursed welfare balance; and (5) when the arrearages were collected (before October 1997, between October 1997 and October 2000, or after October 2000). Some of the complexity of the distribution rules ceased on October 1, 2000 when the rules were completely phased-in, but the confusion with regard to the six categories of arrearages (mentioned below) remains.

## Current TANF Recipients

As a condition of TANF eligibility, the custodial parent must assign to the state the right to collect both current child support payments and past-due child support obligations (i.e., arrearages) which accrue while the family is on the TANF rolls (these are called permanently-assigned arrearages<sup>2</sup>). The assignment requirement for TANF applicants and recipients also includes arrearage payments that accumulated *before* the family enrolled in TANF (these are called pre-assistance arrearages). Pre-assistance arrearages are temporarily assigned to the state while the family is receiving TANF assistance, with the exception of the following. Pre-assistance arrearages which were assigned to the state before October 1, 1997 are considered permanently-assigned arrearages. While the family receives TANF benefits, the state is permitted to retain any current support and any assigned arrearages it collects *up to the cumulative amount of TANF benefits which has been paid to the family*.

Under old law (pre-1996) states were required to pass through the first \$50 of current monthly child support payments collected on behalf of an AFDC family and to disregard it as income to the family so that it did not affect the family's AFDC eligibility or benefit payment. The remaining amount of current child support collected was divided between the state and federal governments according to the state's AFDC federal matching rate.<sup>3</sup>

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<sup>1</sup> The reader should note that all current child support payments owed to a family who is not on welfare go to the family (generally via the state disbursement unit).

<sup>2</sup> This is one of the following six categories of arrearages: (1) permanently-assigned arrearages, (2) temporarily-assigned arrearages, (3) conditionally-assigned arrearages, (4) never-assigned arrearages, (5) unassigned during-assistance arrearages, and (6) unassigned pre-assistance arrearages. The six categories are defined in OCSE Transmittal 97-17, October 21, 1997. *Instructions for the distribution of child support under Section 457 of the Social Security Act*. p. 6. [<http://www.acf.dhhs.gov/programs/cse/pol/at-9717.htm>]

<sup>3</sup> The federal matching rate ranges from a minimum of 50% to a statutory maximum of 83%. (Although AFDC was replaced by TANF under the welfare reform law of 1996, the same (continued...))

The 1996 welfare reform law repealed the required \$50 pass through and gives states the choice to decide how much, if any, of the state share (some, all, none) of child support collected on behalf of a TANF family to send the family. If a state elects the pass-through option, it still must pay the federal share of the collection to the federal government, regardless of how much child support is passed through to the family. The state can then do what it wants with its share. It can give all, a portion, or none of its share to families.

If a state passes through all of its share to families, it may count that as income to the family or it may disregard all or some of the child support collection so that it does not decrease the TANF payment of the family, but instead enables that family to increase its total income by the child support amount without it affecting the family's TANF eligibility status or benefit amount. Some states send the family two checks, one reflecting the TANF benefit and another reflecting the child support payment received from the noncustodial parent. States also have the option to pass their share of arrearage collections to former TANF recipients (if the arrearage occurred while the family was a cash welfare recipient).

## Former TANF Recipients

Under prior law, 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, payments to families who leave TANF are more generous. Under P.L. 104-193, arrearages are to be paid to the family first, unless they are collected through the federal income tax refund offset (in which case reimbursing the federal and state governments are to be given first priority).

**For collections made before October 1, 1997.** If a custodial parent assigned her or his child support rights to the state before October 1, 1997, the parent had to assign all support rights for support payments (both current and past-due) that accrued to the family during the period of AFDC receipt, as well as payments that had accrued *before* their application for AFDC benefits. Moreover, these families had to permanently assign their rights to pre-assistance arrearages to the state. This means that once these families go off welfare, any pre-assistance arrearages that are collected on their behalf go to the state (and the federal government) as reimbursement for AFDC aid paid to the family.<sup>4</sup>

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<sup>3</sup> (...continued)

matching rate procedure is still used.) In practical terms, the federal matching rate is synonymous to the term "federal share." The "state share" is defined as 100 percent minus the federal share. The reader should note that states with a larger federal matching rate keep a smaller portion of the child support collections, i.e., if the federal matching rate for a state is 65%, the federal government gets 65% of child support collected on behalf of TANF families, and the state keeps (or shares with the family) 35% of the amount collected.

<sup>4</sup> Note also that before October 1, 1997, federal law required states to distribute all *current* child support payments to the family once it had left AFDC/TANF, but did not specify how arrearage payments were to be distributed. However, states were required to have procedures that specified the order in which child support collections were applied to satisfy arrearages.

**For collections made on or after October 1, 1997 and before October 1, 2000.** If a custodial parent assigned her or his child support rights to the state on or after October 1, 1997 and before October 1, 2000, the parent had to assign all support rights for both current and past-due payments accrued while the family is receiving TANF benefits. Unlike pre-1997 assignments, the TANF applicant or recipient only had to temporarily (rather than permanently) assign to the state all rights to support that accrued to the family *before* it began receiving TANF benefits. This temporary assignment lasts until October 1, 2000 or the date on which the family stops receiving TANF benefits, whichever is later.

These temporarily-assigned arrearages become conditionally-assigned arrearages when the family leaves the TANF rolls (or on October 1, 2000, whichever date is later). They are considered conditionally-assigned because if they are collected via the federal income tax refund offset program they are to be paid to the state (and federal government) rather than the family. If conditionally-assigned arrearages are collected through a method other than the federal income tax refund offset, they belong to the family.

Since October 1, 1997, states have been required to distribute to former TANF families current child support and child support arrearages that accrue *after* the family leaves TANF (these arrearages are called never-assigned arrearages) before the state and the federal government are reimbursed for TANF payments to families. (However, arrearages that accrued before the family began receiving TANF benefits did not have to be distributed to the family first if the pre-assistance arrearages were collected by the CSE agency before October 1, 2000.)

As mentioned above, an exception to the distribution requirement occurs when the child support is collected via the federal income tax refund offset program. In federal income tax refund offset cases, the child support arrearage payment (up to the cumulative amount of TANF benefits which has been paid to the family) is retained by the state (and federal government) if such arrearages were assigned to the state either temporarily or conditionally. Thus, if child support arrearages are collected via the federal income tax refund offset program, the family does not have first claim on the arrearage payments.

**For collections made on or after October 1, 2000<sup>5</sup>.** If a custodial parent assigns her or his child support rights to the state on or after October 1, 2000, the parent has to assign all support rights that accrue while the family is receiving TANF benefits. In addition, the TANF applicant must temporarily assign to the state all rights to support that accrued to the family before it began receiving TANF benefits. This temporary assignment lasts until the family stops receiving TANF benefits.

For child support collections made after October 1, 2000 (unless the sum is collected through the federal income tax offset program), the state is required to first distribute to the former welfare family the amount collected to satisfy the current monthly child support obligation. If any money remains, it is to be paid to the family to satisfy never-assigned arrearages, which are child support arrearages that accrued after the family went

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<sup>5</sup> The reader should note that the Balanced Budget Act of 1997 (P.L. 105-33, enacted August 5, 1997) gave states the option of implementing the new distribution rules for former TANF families, in one step, effective October 1, 1998 (without regard to the phase-in rules).

off welfare or arrearages owed to families that never received welfare. If there is money remaining, it is to be paid to the family to satisfy *unassigned pre-assistance arrearages* (i.e., all previously assigned arrearages which exceed the cumulative amount of unreimbursed assistance when the family leaves welfare and which accrued before the family began receiving welfare) and conditionally-assigned arrearages (described earlier). If there is still money remaining, it is to be used to reimburse the state and federal government for TANF benefits paid to the family; the state shall retain its share of the amount and pay to the federal government the federal share of the collection (to the extent necessary to reimburse amounts paid to the family as cash assistance<sup>6</sup>). If any money remains, it is to be paid to the family.

These distribution rules do not apply to child support collections obtained by intercepting federal income tax refunds. Child support arrearages collected through the federal income tax offset program are to be paid to the state (and the state is to pay the federal share of the collection to the federal government). The state may only retain arrearages that have been assigned to the state and only up to the amount necessary to reimburse amounts paid to the family as cash assistance. If the amount collected through the tax offset exceeds the amount retained, the state must distribute the excess to the family.

To reiterate, effective October 1, 2000, the state must treat any support arrearages collected on behalf of a former welfare family, except for those collected through the federal income tax offset program, as accruing in the following order: (1) to the period after the family stopped receiving cash assistance, (2) to the period before the family received cash assistance, and (3) to the period while the family was receiving cash assistance. The result of these child support distribution changes is that states are now required to pay a higher fraction of child support collections on arrearages to families that have left welfare by making these payments to families first (before the state and federal government).<sup>7</sup>

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<sup>6</sup> Once a family leaves welfare, any previously-assigned arrearages which exceed the cumulative amount of TANF benefits which has been paid to the family and which accrued while the family was receiving TANF are called unassigned during-assistance arrearages. These arrearages are owed to the family.

<sup>7</sup> Under P.L. 104-193 (the 1996 welfare reform law), if states retained less money from child support collections than they retained in FY1995, states were allowed to retain the amount of child support retained in FY1995; this was referred to as the hold harmless provision. P.L. 106-169, the Foster Care Independence Act of 1999, limited the hold harmless requirement by stipulating that states would only be entitled to hold harmless funds if the state's share of child support collections were less than they were in FY1995 *and* the state has distributed and disregarded to Title IV-A families at least 80% of child support collected on their behalf in the preceding fiscal year *or* the state had distributed to former Title IV-A recipients the state share of child support payments collected via the federal income tax offset program. If these conditions were met the state's share of child support collections was increased by 50% of the difference between what the state would have received in FY1995 and its share of child support collections in the pertinent fiscal year. P.L. 106-169 repealed the hold harmless provision effective October 1, 2001.

## Concluding Remarks

Custodial parents and noncustodial parents alike are dissatisfied with the current child support distribution system. Custodial parents are frustrated because they view child support arrearages as belonging to them. They argue that they had to rely on family and friends for financial assistance during periods when the noncustodial parent failed to pay child support that occurred before they went on welfare. They contend that they (and not the state) are entitled to any pre-welfare arrearage payments that are collected on their behalf. Noncustodial parents are annoyed because once they start paying child support they want to see that their money actually helps their children; explanations that welfare benefits are in effect child support paid by taxpayers have not satisfied them. Moreover, advocates point out that while promising families priority in collecting arrearages owed to them as an inducement to encourage them to move off welfare as soon as possible, the states and the federal government keep for themselves collections made via the federal income tax refund offset program—the most lucrative form of arrearage collection. (In tax year 2001, \$1.6 billion in overdue support was collected via federal income tax refunds.)

In contrast, some observers maintain that the seemingly dual mission of the CSE program, on the one hand to pay back the state for welfare costs and on the other to keep families off welfare has contributed to the complexity of the distribution system which most agree was complicated from the program's beginning in 1975. They note that the states' share of retained child support collections generally amount to only 10% of all states' expenditures on the TANF program, and argue that for families currently receiving TANF payments, the states should continue to retain this declining source of funding to help improve their CSE programs. (See CRS Report RL30488, *Analysis of Federal State Financing of the Child Support Enforcement Program*.)

During the 107<sup>th</sup> Congress, many Members favored a child support distribution approach that simply paid former welfare families all the arrearages collected on their behalf (including federal income tax refund offsets) before reimbursing the state or federal government for any owed arrearages. On May 16, 2002, the House passed H.R. 4737 (the welfare reauthorization bill), which would have provided incentives to states to distribute more child support collections to ex-welfare families and permitted states to give a portion of child support collections to TANF families without having to repay the federal government its share of the money. In addition, H.R. 4737 would have simplified child support assignment and distribution rules, and made many other changes.

In the 108<sup>th</sup> Congress, H.R. 4, a welfare reauthorization bill almost identical in substance to H.R. 4737, was introduced on February 4, 2003. H.R. 4 was passed by the House on February 13, 2003. It includes child support assignment and distribution rules identical to those in H.R. 4737 as passed by the House in the 107<sup>th</sup> Congress.