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Child Support Enforcement Annual User Fee: In Brief

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Background

The Child Support Enforcement program (CSE; Title IV-D of the Social Security Act) provides services to families who receive cash and other kinds of public assistance, and it may also serve families not receiving any assistance. Nonassistance families must pay certain fees, including an annual user fee. This report provides an overview of the annual user fee, including the recent changes made by P.L. 115-123. Effective October 1, 2018, this law requires that states raise the amount of the fee to $35 (increased from $25) for non-assistance cases that collect at least $550 (increased from $500) in child support. This report also discusses the policy issues surrounding the fee, which relate to the historical development of the CSE program as a whole. Finally, the report provides data on the variety of approaches taken by the states to implement the fee, which have evolved over time, prior to the changes enacted in P.L. 115-123.

The CSE program was enacted in 1975 as a federal-state program (P.L. 93-647). Today, all 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands operate CSE programs, which provide seven major services on behalf of children:

1. parent location,
2. paternity establishment,
3. establishment of child support orders,
4. review and modification of child support orders,
5. collection of child support payments,
6. distribution of child support payments, and
7. establishment and enforcement of medical child support.

The program is administered federally by the Office of Child Support Enforcement (OCSE) in the Administration for Children and Families, a Department of Health and Human Services (HHS) agency.

Families who are required to enroll in the CSE program are those receiving cash assistance under the Temporary Assistance for Needy Families program (TANF), Medicaid coverage, or, at state option, Supplemental Nutrition Assistance Program (SNAP) food assistance.[1] The program is also available to nonassistance families if they choose to enroll.

When the CSE program was first enacted, its primary purpose was to reduce public expenditures for recipients of cash assistance (i.e., "cash assistance cost-recovery"). This was to be accomplished by obtaining ongoing support from noncustodial parents, which could be used to reimburse the federal and state governments for part of the expenses involved in providing assistance to needy families. Relatedly, the program also sought to strengthen families by securing financial support for children from their noncustodial parent on a consistent and continuing basis to enable some families to remain off public assistance. Over the years, the mission of the CSE program has shifted to emphasize the promotion of self-sufficiency and

[1] States may choose to require that either a custodial or noncustodial parent receiving SNAP benefits cooperate with the CSE program. In addition, one or both parents of a child who is placed in foster care may be ordered to pay child support, but the determination of whether this requirement should be made is left up to the state child welfare agency. Section 471(a)(17) of the Social Security Act requires the child welfare agency "where appropriate" to secure assignment of child support rights on behalf of any child receiving foster care support pursuant to Title IV-E of the Social Security Act. However, the establishment of child support order is not a condition of IV-E foster care support.

parental responsibility. Throughout this evolution in program focus, the CSE program has maintained different rules for assistance and nonassistance families.[2]

The CSE program costs, which are incurred through providing services to families, are funded via a number of sources. These include federal matching funds for state CSE expenditures and incentive payments to the states from the federal government. States also collect child support on behalf of families receiving TANF assistance to reimburse themselves (and the federal government) for the cost of that assistance to the family.[3] Finally, fees and administrative costs recovered also help finance the CSE program.

Fees and recoveries may be collected through a variety of mechanisms.[4] Currently, CSE agencies must charge a one-time *application fee* to nonassistance families who are seeking CSE services, in an amount not to exceed $25.[5] Fees also may be charged in other circumstances, including for performing genetic tests (for purposes of paternity establishment) on any individual who is not a recipient of TANF assistance or Medicaid.[6] Moreover, states may recover costs from either the custodial or noncustodial parent.[7] Many of these authorities to charge fees and recover costs date back to the inception of the program. As they have been implemented and expanded over the years, the approaches taken by the states have varied significantly in the amount charged for each fee and the extent to which costs are recovered.

Effective October 1, 2006, the Deficit Reduction Act of 2005 (DRA; P.L. 109-171) added a new *annual user fee* applicable to certain nonassistance family child support cases.[8] Unlike the application fee and cost recovery authorities, which allow states in many circumstances to determine how much to charge or recover, states must either collect the full amount of the annual user fee or reimburse the federal government's portion of the fee from state funds. The initial amount of the annual user fee was $25 when the CSE program collects at least $500 in child support annually from the noncustodial parent.[9] However, effective October 1, 2018, P.L. 115-123

[2] In some cases, CSE program rules distinguish between TANF and non-TANF families. In others, the special rules for those receiving assistance apply both to families who receive TANF, and also those who have received or are eligible for other assistance, such as Medicaid coverage, IV-E foster care, or, at state option, SNAP food assistance.

[3] Similarly, families who are enrolled in Medicaid and to whom medical support is due must assign that support to the state to reimburse the cost of Medicaid (see CRS Report R43020, *Medical Child Support: Background and Current Policy*). Likewise, when states establish a child support order from the parent or parents of a child in IV-E foster care, they are required to use the funds to reimburse federal and state costs of foster care first (Social Security Act, §457(d)).

[4] The authorities for states to charge fees and recover costs are located in the Social Security Act, §454(6). For a legislative history of changes made to the fee and cost recovery elements of the CSE program, see CRS Report R44423, *The Child Support Enforcement Program: A Legislative History*.

[5] States may charge the application fee to the person applying for services or the noncustodial parent, or opt to pay the fee out of state funds. Prior to 1997, "assistance families" for the purposes of the application fee exemption were those receiving benefits under the Aid to Families with Dependent Children program (AFDC). The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) transitioned this exemption for AFDC families to TANF families. The Balanced Budget Act of 1997 (P.L. 105-33) stipulated that, in addition to TANF families, families receiving Medicaid coverage, IV-E foster care, or, at state option, SNAP food assistance, also would be exempt from the application fee.

[6] 45 C.F.R., Ch. III, 302.33(a)(3).

[7] Federal regulations prohibit recovering costs from the noncustodial parent for current TANF cases. In addition, costs may not be recovered from the custodial parent in a Medicaid-only case (45 C.F.R., Ch. III, 302.33(d)).

[8] P.L. 109-171, §7310.

[9] Some states had to enact the provision into state law before they could impose the fee. The proposed regulations on the user fee were published in January 2007. (See *Federal Register*, vol. 72, no. 15, January 24, 2007, Child Support Enforcement Program, pp. 3093-3102.) The final regulations were published on December 9, 2008, and became effective on February 9, 2009. (*Federal Register*, vol. 73, no. 237, Department of Health and Human Services, Office

requires that the amount of the fee be increased to $35 and also increases to $550 the minimum amount of child support that must be collected in order for the fee to be assessed.[10] (The law allows states a limited delay in implementation if state legislation is required to implement the fee increase.)

Annual CSE User Fee

Overview of Requirements

Effective October 1, 2018, the Social Security Act, Section 454(6)(B)(ii), requires that states charge a fee for furnishing CSE services when more than $550 is collected for a case in a year. The act exempts current or former TANF assistance CSE cases from this fee.[11] In addition, the state cannot charge a fee to a custodial parent or noncustodial parent who is cooperating with the CSE program as a condition of SNAP eligibility.[12]

The act provides the state with four options to collect the fee

1. The state can retain the fee from the child support collected on behalf of the family. However, that $35 cannot be part of the first $550 collected in any given federal fiscal year.[13]
2. The state may recover the fee from the noncustodial parent, in addition to the child support that is paid by that parent.
3. The state may charge the fee to the custodial parent (or the person applying for CSE services).
4. The state may pay the fee out of its own funds. (If the $35 annual user fee is paid by the state out of state funds, it is not considered an administrative cost of the CSE program and thus is not eligible for federal matching funds.)

The function of the $35 user fee is to recoup, in part, the costs of the CSE program to the federal and state governments.[14] The federal and state governments share income to the CSE program (sometimes referred to as "cost recovery") at the same rate that they share program costs (i.e., 66% federal and 34% state). Consequently, the federal government retains 66% of the fee that is collected ($23.10, once the fee increase is implemented), while the state retains 34% ($11.90, once the fee increase is implemented). If a state chooses to forego collecting the fee and opts instead to pay the fee out of state funds, it must reimburse the federal government's share of the fee.

There are no data available on the total amount of annual user fees collected by the states. (The data in the OCSE *Annual Report to Congress* aggregates this fee with a number of other CSE-

of Child Support Enforcement, Final Rules, December 9, 2008, pp. 74898-74921, available at https://www.gpo.gov/fdsys/pkg/FR-2008-12-09/pdf/E8-28660.pdf.)

[10] See P.L. 115-123, Division E, Title XII, §53117.

[11] Social Security Act, §454(6)(B)(ii).

[12] 45 C.F.R., Ch. III, 302.33(a)(3), (e)(3)(i-iii).

[13] In addition, this method cannot be used to collect the fee from any international case with a foreign obligee receiving services pursuant to Section 454(32)(c) of the Social Security Act.

[14] In FY2013, CSE program expenditures amounted to nearly $5.6 billion; child support payments collected from noncustodial parents by CSE agencies totaled $28.0 billion.

related collections made by the states.[15]) However, in its cost estimate of the Deficit Reduction Act of 2005, the Congressional Budget Office (CBO) estimated that the $25 CSE annual user fee provision would save the federal government $405 million, and the state governments $215 million, over the nine-year period between FY2007-FY2015.[16] More recently, in its cost estimate of both the $10 increase to the fee and the $50 increase to the threshold child support amount that must be collected in order for the fee to be charged, CBO estimated that those changes would save the federal government $201 million between FY2018 and FY2027.[17] (This CBO estimate did not include possible savings to state governments over that same period.)

Policy Debate

The policy question of whether an annual user fee should be charged for CSE services has received attention from federal and state stakeholders for the past few decades. For example, years before the fee requirement was enacted, the issue was studied by HHS.[18] A proposal for the fee also was included in the George H. W. Bush Administration's FY1992 budget request, and again in the George W. Bush Administration's FY2003 budget request. State attention to the issue prior to the enactment of the federal requirement included an extensive study of the feasibility of collecting fees for child support conducted by the Washington State Division of Child Support in 2001.[19]

Over the years prior to and immediately after the user fee requirement was enacted, a number of possible implications were identified as arguments for and against the fee.[20] Arguments in favor were largely focused on the potential budgetary benefits of the fee, which would, to a limited extent, compensate the federal government and the states for the costs of operating a CSE program. Arguments against included concerns that charging fees for child support services would generally have the effect of reducing funds that otherwise could be available to the child and the family. Some also asserted that the administrative cost of reprogramming a state's

[15] See Table 50, "Fees and Costs recovered in Excess of Fees for Five Consecutive Fiscal Years," in Office of Child Support Enforcement, *FY2015 Annual Report to* Congress, January 12, 2017, p. 303, available at https://www.acf.hhs.gov/sites/default/files/programs/css/fy2015_part_11.pdf.

[16] Congressional Budget Office (CBO), *Cost Estimate of S. 1932 (Deficit Reduction Act of 2005)*, January 27, 2006, p. 55 and p. 60.

[17] CBO, Estimated Direct Spending Effects of Division F of Rules Committee Print 115-58 as Modified by Manager's Amendment #1—SUSTAIN Care Act of 2018, as posted on docs.house.gov on February 5, 2018, available at https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/divisionfhousecr.pdf.

[18] See Department of Health and Human Services, Office of Inspector General, '*States' Practices and Perspectives for Assessing Fees for Child Support Services to Applicants not Receiving Aid to Families with Dependent Children*, July 8, 1992, available at https://oig.hhs.gov/oas/reports/region6/69100048.pdf.

[19] Carol Welch, *Feasibility of Collecting Fees for Child Support Services*, Washington State, Department of Social and Health Services, Division of Child Support, Fiscal Management, June 2001, https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/feestudy.pdf.

[20] In addition to the sources above, see, for example, Steven Garasky, "User Fees and Family Policy: Attempting to Recover Costs for State-provided Child Support Enforcement Services," *Policy Studies Journal*, Vol. 25, No. 1, 1997, pp. 100-108; National Women's Law Center, "Attempting to Finance the Child Support Enforcement System Through Increased Fees Will Harm Families and the Child Support System," December 1999; National Child Support Enforcement Association, *Resolution on $25 Annual Fee*, June 17, 2002; Lewin Group/ECONorthwest, *Anticipated Effects of the Deficit Reduction Act Provisions on Child Support Program Financing and Performance Summary of Data Analysis and IV-D Director Calls*, July 20, 2007, available at https://www.ncsea.org/wp-content/uploads/2011/12/The-Lewin-Group-Report-on-Anticipated-Effects-of-the-Deficit-Reduction-Act-Provisions-on-Child-Support-Program-Financing-and-Performance.pdf.

automated computer system to account for the fee would outweigh the financial benefit of the fee's increased income to the state.

Prior to the implementation of the user fee, the debate also focused on the question of whether states should charge the fee to custodial parents.[21] Some argued that even if the fee was charged to custodial parents, they would still find the program to be a good value compared to the much higher fees that a private attorney or collection agency would charge for obtaining child support payments. They also pointed out that the fee (as enacted) was structured to apply to those who had received a certain minimum amount of child support payments. And, they asserted, even if states opt to charge the fee to custodial parents, most of those parents have income above the poverty level and therefore could likely pay the user fee without it negatively affecting their family's standard of living. In contrast, some opposed to imposing the fee on the custodial parent contended that it would treat similarly situated custodial families in an unequal manner (based on whether they had received TANF benefits in the past). In effect, some posited, the annual fee would impose a new surcharge on working poor families who had been successful in remaining self-sufficient.[22]

Implementation Prior to Fee Increase

Table 1 is based on an examination of the CSE profiles of the 54 jurisdictions with CSE programs from the OCSE Intergovernmental Reference Guide.[23] (These jurisdictions are the 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.) As of June 2017, prior to when the fee was raised to $35, CSE programs imposed the fee on the custodial parent in the majority of jurisdictions, either indirectly by withholding it from the support payment, or directly by recovering it through a separate process.

- 19 jurisdictions paid the annual user fee with their own funds.
- 5 jurisdictions recovered the fee from the noncustodial parent.
- 2 jurisdictions recovered the fee directly from the custodial parent.
- 27 jurisdictions imposed the fee indirectly on the custodial parent by retaining it from the family's child support payment (after the minimum amount of support per year had been collected on behalf of the family).
- 1 jurisdiction imposed the fee on both the noncustodial parent (directly) and the custodial parent (indirectly) via the family's child support payment.

[21] Ibid.

[22] A similar policy debate occurred with regard to the CSE application fee, which was first required in 1984 (P.L. 98-378). In the first years of its implementation, many states opted to charge a $1 or less application fee to maximize non-AFDC (now-TANF) clients' access to CSE services. Some who did so argued that application fees would be a barrier to clients who lack financial means to apply for services, or could discourage clients from seeking services because the fee is paid regardless of whether any child support is collected on behalf of the family. (See Government Accountability Office (GAO), *Child Support Enforcement: Opportunity to Defray Burgeoning Federal and State Non-AFDC Costs*, GAO/HRD-92-91, June 5, 1992, available at http://www.gao.gov/products/HRD-92-91; Office of Inspector General, Department of Health and Human Services, '*States' Practices and Perspectives for Assessing Fees for Child Support Services to Applicants not Receiving Aid to Families with Dependent Children*, July 8, 1992, available at https://oig.hhs.gov/oas/reports/region6/69100048.pdf.) Others viewed application fees for non-TANF families as a way to reduce CSE program costs, and argued that custodial parents would not find them to be a barrier because CSE services are less expensive than the alternative. (See S. Rept. 98-387, pp. 30-31, April 9, 1984.)

[23] The information in these profiles is self-reported by each respective state or jurisdiction within the OCSE guide. For further information, see https://ocsp.acf.hhs.gov/irg/welcome.html.

Table 1. Method by Which CSE Annual User Fee Is Imposed

State	Fee Paid by State Out of State Funds	Fee Paid by Noncustodial Parent	Fee Paid by Custodial Parent	Fee Paid Out of Child Support Payment
Alabama				X
Alaska	X			
Arizona				X
Arkansas[a]			X	
California[b]				X
Colorado[c]				X
Connecticut				X
Delaware				X
District of Columbia	X			
Florida	X			
Georgia[d]		X		X
Guam	X			
Hawaii				X
Idaho[e]		X		
Illinois	X			
Indiana		X		
Iowa				X
Kansas	X			
Kentucky				X
Louisiana				X
Maine				X
Maryland[f]	X			
Massachusetts	X			
Michigan	X			
Minnesota	X			
Mississippi		X		
Missouri		X		
Montana	X			
Nebraska				X
Nevada				X
New Hampshire				X
New Jersey	X			
New Mexico	X			
New York				X
North Carolina				X

State	Fee Paid by State Out of State Funds	Fee Paid by Noncustodial Parent	Fee Paid by Custodial Parent	Fee Paid Out of Child Support Payment
North Dakota				X
Ohio[g]		X		
Oklahoma				X
Oregon				X
Pennsylvania[h]	X			
Puerto Rico	X			
Rhode Island	X			
South Carolina			X	
South Dakota	X			
Tennessee				X
Texas				X
Utah				X
Vermont	X			
Virgin Islands				X
Virginia				X
Washington				X
West Virginia	X			
Wisconsin				X
Wyoming				X

Source: Table prepared by the Congressional Research Service (CRS) on June 5, 2017, based on data from the Office of Child Support Enforcement website (Intergovernmental Reference Guide, available at https://www.acf.hhs.gov/css/irg-state-map). Unless otherwise noted, additional information in table notes is taken from questions F11.1-4.

a. Arkansas pays the fee out of state funds for Medicaid-only cases.

b. California pays the fee out of state funds on behalf of "state-only aided custodial parties" (e.g., CalWorks).

c. Colorado counties may opt to pay the fee out of county funds.

d. Georgia requires $13 from the noncustodial parent (to be paid in monthly installments) and $12 from the child support payment (after the $500 threshold has been met) at a rate of $1 per month.

e. Under Idaho Department of Health and Welfare Administrative Rules (16.03.03 §304), the $25 fee is billed to the noncustodial parent once $500 in support has been collected.

f. Maryland pays the fee out of state funds for cases in which the annual child support collection is between $500 and $3,499.99. If the annual child support collection is $3,500 or more, the fee is retained from child support payments.

g. Ohio adds a processing charge (the greater of 2% or $1) to each child support obligation that is paid by the noncustodial parent. The mandatory annual fee is recovered from the processing charges collected after $500 has been paid on never assistance cases. When recovered processing charges do not total to $25 on the case, the state pays the balance of the fee out of its own funds.

h. Pennsylvania pays the fee out of state funds for cases in which the annual child support collection is between $500 and $1,999.99. If the annual child support collection is $2,000 or more, the $25 annual CSE user fee is retained from child support payments.

Soon after the annual user fee was first implemented, the Government Accountability Office (GAO) conducted a study that, in part, examined how the 54 jurisdictions had implemented the user fee.[24] It also summarized the primary rationales reported by those interviewed for how the fee had been implemented

> Some CSE officials we interviewed stated that their states absorbed the $25 service fee due to concerns that the fee would be a burden, while others said that they charged the fee to custodial parents because their states couldn't afford to absorb the fee due to budgetary constraints. Some of the latter told us that the reason they charged the service fee to custodial, rather than noncustodial, parents was because it was easier administratively. A few also reported that families affected by the fee had voiced little opposition to it.[25]

The information in the 2011 GAO report also shows that state practices can change. At the time of the report, GAO found that 27 states charged the custodial parent either directly (through action to recover) or indirectly (by deducting it from support paid),[26] while 22 jurisdictions paid the fee with their own funds.[27] Since that time, five jurisdictions have shifted from paying the fee out of their own funds to directly recovering the fee from the custodial parent (Arkansas) or deducting the fee from the child support paid (California, Connecticut, Maine, and Texas). In addition, three jurisdictions have shifted their approach from directly or indirectly recovering the fee from the custodial parent to covering the fee out of state funds (Michigan and Minnesota) or recovering the fee from the noncustodial parent (Idaho).

It is unclear the extent to which the $10 fee increase that is to occur as a result of P.L. 115-123 might alter how states impose the fee. On the one hand, some of the states that currently cover the fee out of state funds might decide instead to charge the fee to the custodial or noncustodial parent for reasons such as the cost that the higher fee would add to their state budgets. On the other hand, some of the states that currently charge the fee to the custodial or noncustodial parent might decide to start covering the fee due to concerns such as the possibility that a higher fee might discourage families from continuing to participate in the CSE program.

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[24] U.S. Government Accountability Office, *Child Support Enforcement: Departures from Long-term Trends in Sources of Collections and Caseloads Reflect Recent Economic Conditions*, GAO-11-196, January 2011, p. 24.

[25] Ibid, p. 25.

[26] These two methods of collecting the fee from the custodial parent were aggregated in the GAO report.

[27] Four jurisdictions recovered the fee from the noncustodial parent, and Georgia recovered $13 of the fee from the noncustodial parent, and deducted the remainder ($12) from the child support paid to the custodial parent. U.S. Government Accountability Office, *Child Support Enforcement: Departures from Long-term Trends in Sources of Collections and Caseloads Reflect Recent Economic Conditions*, GAO-11-196, January 2011, p. 25.

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