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Chairman Breaux and Members of the Subcommittee:

I am a Senior Staff Attorney at the Center for Law and Social Policy. CLASP is a nonpartisan, nonprofit organization engaged in analysis, technical assistance and advocacy on issues affecting low-income families. We do not receive any federal funding. My focus at CLASP is child support.

My written testimony is in support of S. 685, and specifically the child support distribution provisions of that legislation. Many poor fathers and mothers are capable of building workable partnerships to help each other support and raise their children. However, in many studies, poor mothers and fathers of children receiving TANF cash assistance say there is a fundamental contradiction in the child support system that undermines their ability to work together to support their children. The contradiction is that when a TANF father contributes financial support to his children, the money must be turned over to the state and is not paid to his children. S. 685 would help families and fathers support their children by treating child support as the family's money and the father's contribution to his children.

Summary

S. 685 will help low-income working families. S. 685 would allow states to pay more child support directly to welfare and former welfare families, and bring child support rules into line with the family self-sufficiency goals of the 1996 welfare law. S. 685 also includes a number of provisions that would help working families, including funding for fatherhood programs, an Earned Income Tax Credit expansion for larger families, restoration of the Social Services Block Grant, reauthorization and expansion of the Promoting Safe and Stable Families and Chafee Foster Care Independence programs, and support for employer-sponsored child care.

Child support can be an important addition to family budgets--but only if the family gets it. To the extent that fathers work and pay child support, their children often are able to escape poverty. When poor families get child support, the support amounts to over one-fourth of the family budget—the family's next largest income source after the custodial parent's paycheck. Yet when families go on welfare, they assign (or turn over) their rights to child support to the state. Consequently, child support rules often result in government, not families, keeping child support paid by the fathers of children receiving assistance.[1] Even after families leave welfare, many of the payments are kept by the state as reimbursement for welfare costs. By allowing custodial parents to include the child support in their budgets, distribution reform would help families get off of welfare and stay off.

The support paid by fathers should go to their children. When low-income non-custodial parents pay child support, the children often do not see the money. Because the money

[1] Since most custodial parents are mothers and most non-custodial parents are fathers, this discussion uses the term mother interchangeably with custodial parent and father to refer to a non-custodial parent. The situation can be, and sometimes is, reversed. About 15 percent of custodial parents are fathers.

is kept by the state and does not go to the children, non-custodial parents sometimes are driven into the underground economy and avoid paying formal child support. However, if the money goes to their children, these parents may be more likely to support and stay involved with their children. Research from Wisconsin indicates that when child support is passed through to the families and directly benefits the children, parents are more willing to establish paternity and pay ongoing support. The government should recognize that child support represents a father's contribution to his children, and should not treat them as government revenues.

Background

Distribution Rules Often Result in Government, not Families, Keeping Child Support

Title IV-D of the Social Security Act created a joint federal-state program to establish and enforce the obligation of non-custodial parents to financially support their children. Nearly two-thirds of all child support cases in the country are processed through the public child support (IV-D) program.

The child support program is one of the largest human services programs, reaching low-income mothers, fathers, and children. The largest group of families served by the child support program are welfare leavers. The second largest group are other low-income working families who do not receive welfare. Only 20 percent of families in the state child support caseload are current TANF assistance recipients.

The child support program originally was set up to reimburse federal and state welfare costs under the old Aid to Families with Dependent Children (AFDC) program. As a condition of receiving assistance, welfare families must assign (sign over) their rights to child support and to cooperate with the child support program in establishing paternity and obtaining support.[2] Assigned child support collections are not paid to the families, but instead are retained by states as partial reimbursement for welfare benefits. The welfare collections are shared with the federal government, and treated as government revenues.

Although states may spend their share of welfare collections without restriction, most states choose to allocate these revenues to the human services budget. Most states spend their state share of welfare collections to meet their state Maintenance of Effort (MOE) obligation required to draw down federal funds under the Temporary Assistance to Needy Families (TANF) program. About one-third of the states use some or all of their welfare collections to help pay for the state share of matching funds for the child support program.

Child support distribution rules (which determine whether the state or the family keeps collected support) apply to both current and former welfare families. Under welfare reform, the child support distribution rules were amended to allow former TANF families to keep more of the collected child support due before the family began receiving cash assistance. This modified the old AFDC requirement that families relinquish all rights to support that became due before and during a family's assistance period. Under the 1996 rules, the basic approach is that support that is owed while the family receives TANF cash assistance belongs to the state, while support

[2] 42 U.S.C. §608(a)(3)(1999).

owed while the family is off of welfare belongs to the family. This approach is commonly called the "on-off" rule.[3]

However, there are several statutory exceptions to the basic on-off rule created in 1996. These exceptions allow states to keep significant amounts of support paid on behalf of families who are no longer receiving cash assistance. The main exception is that support recouped from federal tax refunds are kept by the state, even if collected when the family has left welfare. The federal tax offset procedure is the only collection method that results in the state, rather than the family, keeping the money once the family has left assistance. If the support is collected through a state tax offset, bank account seizure, or other collection method, the money goes to the family. But if the support is collected through a federal tax offset, the money is kept by the state. (If the family is currently receiving assistance, the state keeps the money under the on-off rule, regardless of collection method.) Although the federal tax offset exception sounds obscure, its impact is not small. Support collected through the federal tax offset procedure totals more than half of the welfare arrears collected by the state.

Another exception to the on-off rule is that the state has a claim on support that was owed before the family went on welfare ("pre-assistance arrears"). Requiring families to assign their pre-assistance arrears also reduces the amount of support paid to families when they leave welfare. As a condition of receiving assistance, families must turn over their right to any support that is owed to them. This includes support that is owed from the months and years before the family applies for welfare, as well as the support that becomes due while the family is receiving welfare. This means that families who tried to hold out the longest before going on welfare can lose all the pre-assistance support owed to them when they start receiving assistance. Even after the family leaves welfare, the state retains its claim to pre-assistance arrears.

The1996 distribution provisions that created the basic on-off rule were intended to get more money in the hands of former welfare families. However, the exceptions to that rule are the uneasy result of legislative compromise between contradictory program goals of helping families become self-sufficient and recovering welfare costs. As a result, the distribution rules are extremely complicated and costly to computerize and administer, requiring states to track several different payment types, depending upon status, time period, and collection method--"assigned" current support; "never assigned" current support; "permanently assigned" arrears; "temporarily assigned" arrears; "conditionally assigned" arrears; "unassigned pre-assistance" arrears; "unassigned during-assistance" arrears; "never-assigned" arrears. One expert estimates that 6-8 percent of all child support program costs–up to $360 million per year--are attributable to maintaining existing distribution rules.

The 1996 welfare reform law also eliminated the federal requirement that the state pay the first $50 of collected child support to families currently receiving TANF assistance. Known as the "$50 pass-through," the child support income was "disregarded," or not counted, in calculating the amount of welfare benefits paid to the family. This meant that families received their full welfare check along with the first $50 of child support. While the 1996 law gave states the option to pass through support to families, states must still repay the federal share. In other words, the state, and not the federal government, bears the entire cost of any support passed through to families. Less than half of states have chosen to continue or increase the pass-through

[3] 42 U.S.C. §657(1999).

on those terms.[4]

Early results from federal demonstration waiver projects in Wisconsin and Vermont to distribute all current support to families receiving TANF assistance indicate that fathers pay more child support and more fathers pay support. In Vermont, early results indicated that the state's pass-through policy increased the average child support payment and the proportion of parents paying child support. In Wisconsin, researchers found a substantial difference in payments among parents who were new to the welfare system, and had not paid support under the old rules: among those cases in which the mother had not received AFDC during the prior two years, 58 percent of fathers in the full passthrough group paid child support, compared to only 48 percent of fathers in the partial passthrough group. Researchers also found that fathers were more willing to establish paternity.

Child Support Makes a Difference to Low-Income Families.

Under welfare reform, mothers are expected to work and use their earnings to support their children. Under welfare reform, fathers also are expected to work and contribute to their children's support. By strengthening child support, policy makers recognized that poor and low-income children need the support of both parents. To the extent that fathers have the ability to pay, strengthened child support policies under welfare reform will mean that more low-income families will be able to leave welfare and sustain low-wage employment.

Next to earnings, child support is the second largest income source for poor single female-headed families receiving child support.[5] For poor families who get child support, the child support amounts to 26 percent of the family's budget, or $2000 per year. When families headed by single mothers get at least some child support during the year, their poverty rate drops significantly. Families who receive child support are substantially less likely to return to welfare than families who do not receive support. Child support is complementary to work in that it helps increase single mothers' labor force participation, stabilizes and supplements low-wage earnings, and does not decline when the mother's earnings increase. If low-income single mothers receive child support, they often can forego a second or third part-time job.

Child support has a dual quality, important not only as cash income, but as a way to encourage paternal involvement. Just as a job is about more than a paycheck, child support is about more than money. A father's good faith effort to pay child support carries with it symbolic meaning about his capacity to care for and take care of his children. The stakes are high for all members of the family. For fathers, it represents his basic commitment to his children. For mothers, it is evidence that the father will back her up. For children, it means that their father has put them first.

Regular payment of child support appears to be linked to increased paternal involvement

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[4] For a list of state pass-through policies, *see* Paula Roberts, *State Policy re Pass-through and Disregard of Current Month's Child Support Collected for Families Receiving TANF-Funded Cash Assistance* (Washington, DC: CLASP, 1999), posted at www.clasp.org.

[5] Earnings are 38%, cash assistance is 20%, and other income is 16% of the budgets of poor families receiving child support. See Elaine Sorenson and Chava Zibman, *To What Extent Do Children Benefit from Child Support?* (Washington, DC: Urban Institute, Jan. 2000).

and improved child outcomes. In addition, paternal relatives may be more available as a back-up system for child care and family emergencies when fathers are involved and pay support, an important resource for single mothers working nontraditional hours and relying on multiple care givers. While domestic violence is a problem for some families, many mothers report that they encourage their children's emotional relationship with their father and his family, and try to keep the father involved in the children's lives when feasible.

Researchers in Wisconsin pass through demonstration found intriguing hints in the data that paying child support directly to families helps families in a variety of ways. For example, the evidence suggests that there was less conflict between the parents, that families were able to secure better child care arrangements, and that teenagers did better in school and stayed out of trouble more often.

Child support can be a powerful tool to help strengthen families, financially and emotionally. A growing body of research indicates that effective child support programs are linked to reduced welfare caseloads, reduced poverty rates, reduced divorce rates, reduced nonmarital birth rates, and improved child outcomes such as education.

Cost Recovery Rules Work Against Low Income Families and Fathers.

Existing child support distribution rules make no sense to many poor mothers and fathers. Parents want to be able to use their own money to support their children. Yet poor mothers and fathers both know that unless the father can pay enough to keep their children off of TANF, his support payments will be kept by the state as recovered welfare costs, and will not directly benefit the children.

Poor fathers and mothers who want to improve their children's lives, but cannot fully support their children without some public help often find themselves in an untenable situation. The research indicates that poor mothers and fathers sometimes agree to informal contributions that by-pass the formal child support system. Many mothers and fathers are aware of each other's economic circumstances, and repeatedly re-negotiate their financial arrangements. Sometimes she holds back on formal enforcement. Sometimes, he pays informal financial support for the children. Sometimes, he does not pay regular support, but makes irregular in-kind contributions, such as diapers, school clothes, and Christmas gifts. Sometimes, he pays out of both pockets -- he pays off the state a little and he pays her a little. Sometimes she settles for non-financial support. Sometimes, they fight about the money. Sometimes, he walks away.

Yet no one is well served when parents agree to under-the-table payments and avoid the formal child support system. If a TANF mother accepts informal support from the father, she is vulnerable to a welfare fraud prosecution. In addition, informal payments are made at the discretion of the father. Informal payments are likely to be smaller and less regular, and there may be more disputes about the amounts paid. Payments are likely to decrease as the child gets older and the parents' relationship deteriorates. If a TANF father pays the mother informal support, his payment will not be credited through the formal system, and he will be liable for a growing arrearage balance. And, fundamentally, if the child support rules work against mothers and fathers, the child support system will lack integrity.

Helping Families Make the Transition Off of TANF.

Most poor children are not in the welfare system. Fewer families are applying for welfare benefits, and most of the families that have left welfare are now employed. However, much of that employment involves jobs that pay wages near the poverty line. When families do enter the welfare system, they often combine welfare and work, and leave welfare within a few months. When families receive regular child support, they are more likely to make it in the job market and less likely to return to welfare. The research shows that the timely receipt of child support payments is critical to the family's ability to remain off of welfare during the first few months after TANF exit.

However, the sheer complexity of the distribution rules result in some states improperly keeping child support that belongs to families. The HHS Office of Inspector General (OIG) found that in half of the six study sites, about 30 percent of custodial parents experienced delays in getting child support or were underpaid their support. Eleven of 51 states survey by the OIG cited difficulties accurately transferring child support payments to families who have left TANF cash assistance.[6] The distribution rules heighten the vulnerability of states to audit problems. At this time, a number of states are facing distribution lawsuits.

Problems with automating complicated distribution rules have been cited by many federal and state administrators as a contributing cause of computer systems delays and costs. The new rules require disproportionate training and staff time devoted to administering the rules, correcting errors, and explaining hard-to-understand decisions to parents. Because the rules are so difficult to explain and administer, they erode confidence in the program's fairness and accuracy.

Simplicity, not complexity, must be the basic principle behind distribution rules. The simplest distribution rule is to treat all child support as support for children and income to the family. Researchers studying the Wisconsin demonstration to pass through all current support to families receiving W-2 assistance are finding important administrative advantages to a very simple distribution system.

Treating Child Support as Support for Children.

There is solid support within the child support community for distribution reform. While there are a number of approaches to addressing distribution, there is widespread agreement that reform is needed. In addition to S. 685, Sen. Kohl and Sen. Snowe both introduced distribution reform legislation as S. 916 and S. 918. Last session, the House passed H.R. 4678, the Child Support Distribution Act of 2000, by a vote of 405-18. This session, similar legislation has been reintroduced in the House as H.R. 1471. The Senate Finance Committee should pass S. 685 out of committee, and the Senate should pass the legislation this session because:

- A child support policy that builds on the earnings of both parents sends the clearest message about parental responsibility and avoids welfare costs. However, distribution rules that emphasize cost recovery instead of family support undermine the efforts of

[6] HHS Office of Inspector General, *Distributing Collected Child Support to Families Exiting TANF*, OEI-05-01-00220 (Oct. 2001).

poor mothers and fathers who want to use their own money to support their children.

- Child support should be part of a self-sufficiency strategy to help families leave TANF and maintain employment. Receipt of child support is especially critical to help families stabilize their incomes in the first few months after TANF exit. However, existing distribution rules withhold child support from welfare leavers and make it more likely that families will return to the welfare rolls.

- Research has shown that there is a two-way connection between child support and paternal involvement. Yet distribution rules that emphasize cost recovery increase family conflict and discourage the poorest fathers from staying connected to their children.

Conclusion

Child support should be treated as the family's money, not the state's money. States should be allowed to simplify complicated distribution rules that emphasize cost recovery and adopt child support policies that strengthen families. S. 685 provides the states with the policy and funding flexibility to help them reform distribution rules. We urge the Senate Finance Committee and the Senate to act on S. 685 this year.