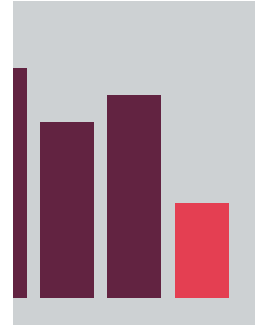


# 5. LLAMA, LLAMA, CHILD SUPPORT UNDER OBAMA

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The purpose of the child support enforcement program is to increase financial support to a child living apart from a parent by collecting child support payments from the parent and sending the support to the child's household.<sup>1</sup> The program identifies parents, sets child support orders, and enforces child support payments. Nationwide, the child support program serves one in five children, making child support one of the largest income support programs for children.<sup>2</sup>

Congress passed and President Gerald Ford signed into law the child support enforcement program in 1975 under Title IV-D of the Social Security Act. The federal Office of Child Support Enforcement (OCSE) in the U.S. Department of Health and Human Services oversees the program. Every state and several tribes administer a child support program funded with federal and state matching funds. In addition, states receive federal funding based on a series of performance measures.<sup>3</sup> The child support program is highly automated, maintaining an extensive set of interstate databases, including the National Directory of New Hires.<sup>4</sup>

In 2011, President Barack Obama issued an executive order directing federal agencies to conduct a review of existing regulations.<sup>5</sup> OCSE conducted a comprehensive regulatory review and consulted widely with state agencies, courts, parent groups, and other stakeholders to identify rules that were outdated, inefficient, or ineffective. Some rules for the child support program had not been updated in decades. One goal of the rulemaking process was to incorporate evidence-based policies and practices into the program. In 2016, the Obama administration issued a regulation to modernize program operations.<sup>6</sup> The development of the rule relied extensively on research to ensure that government instituted the most effective known policies.

## ISSUE BACKGROUND

The child support program has a long history of innovation. However, it took more than a culture of innovation, performance measurement, and commitment to children to see cases as families, to understand how the program's actions could impact parent-child relationships, and to address barriers to payment. While administrators understood that some parents were low-income, the program did not meaningfully address poverty as a barrier to collecting support dollars. Nor was the program generally viewed as an anti-poverty strategy.

### Limited focus on poverty

Child support payments can be a critical source of income for low-income children. More than one-quarter of custodial parents have incomes below the federal poverty level.<sup>7,8</sup> Among poor custodial families who receive payments, child support averages more than 40 percent of family income.<sup>9</sup> However, the reality is that often, the lowest-income custodial families do not receive regular child support payments to support the financial needs of children.

Most noncustodial parents want to provide for their children, and most do pay child support. Three-fourths of child support payments are collected through automatic payroll withholding, similar to income taxes. This means that child support collection depends on the noncustodial parent's ability to find and keep stable employment. Thus, the best predictor of compliance with child support orders is a noncustodial parent's monthly gross earnings. Most parents who fall behind on child support payments have unstable employment and low earnings.<sup>10,11</sup>

Two decades of legislative changes had positioned the child support program to find parents and money. However, by 2009, the evidence was mounting that the program was less effective and sometimes counterproductive in its efforts to collect child support when noncustodial parents had low earnings. Even for low-income parents who want to support children, the design of the system poses challenges. Mothers and fathers from the same low-income communities often have similar barriers to employment. Noncustodial parents with limited education and marketable skills, an intermittent work history, lack of reliable transportation, and sometimes a criminal record often struggle to find and maintain work at a sufficient wage to support themselves and pay their child support obligations.<sup>12</sup>

The importance of child support income for low-income families made it imperative to identify and implement evidence-based policies to increase regular support payments by noncustodial parents without undermining family relationships and community stability. There was evidence that some child support practices were discouraging employment in the regular economy and pushing parents underground. A growing body of research identified payment barriers and disincentives and tested alternative approaches to increasing support payments and reducing unmanageable debt.

## Slowing program innovation

In 1998, Congress enacted a child support performance-based incentive funding system. Under the Child Support Performance Incentive Act, the federal government pays a portion of federal funding based on state performance on a series of standard measures. The performance funding was set up as a competition among states, rewarding states that performed better and penalizing states that performed worse on the measures.

The Child Support Performance Incentive Act was the culmination of a five-year effort, led by OCSE that operationalized goal-setting, strategic planning, and measurement as a result of the Government Performance and Results Act of 1993 (GPRA), a law designed to improve government performance management and strategic-planning systems.<sup>13</sup> One outcome of GPRA was the development of a collaborative, consensus-building approach to strategic planning, policy implementation, and operational changes. Using this collaborative approach, OCSE and states developed performance indicators aligned with core program priorities. State administrators used the performance data to set priorities, allocate program resources, and demonstrate return on investment.

Initially, the new performance system helped to create a performance culture and spur state innovation, as states implemented the new technology and enforcement authorities enacted in the 1996 welfare law. Between 1998 and 2002, collection amounts shot up by 40 percent and some collection rates doubled during a robust economy.<sup>14,15</sup> However, as the performance system matured, innovation slowed as states adjusted their operations to maximize incentive payments and avoid penalties. The program was slow to adapt to underlying shifts in the economy affecting low-wage parents.

By 2009, the program was beginning to struggle with the fall-out from the Great Recession, including federal and state funding cuts, state staffing declines, parental unemployment affecting collections, aging technology, and reduced attention from Congress and advocates. Before the recession, several states had begun to implement promising family support initiatives, often funded by OCSE through its competitive grant programs. However, most states did not consider initiatives such as specialized case management for incarcerated parents and employment services for unemployed parents to be part of the core child support program. When the federal grant funding went away, many of these initiatives were not sustained.

## A program culture geared toward data, but not research

To carry out its program functions, the child support program is a significant consumer of data generated and matched from federal and state agencies, employers, financial institutions, and other sources to locate parents and assets and collect child support payments. The program also uses data to measure, monitor, and improve performance.

However, the goal of improving performance measures did not necessarily align with the goal of incorporating evidence-based practices. Performance measurement does not focus

on long-term impacts like child well-being. Child support administrators understood data management. They were not as familiar with research principles and methods. Administrators asked, “How do our numbers look?” but usually not, “What does the research say?”

By 2009, there were a growing number of research studies in the field. However, compared with other human-services programs like health care, child welfare, and Head Start, the evidence base was small. Studies described caseload characteristics, provided ethnographic insights into the lives of people in the cases, and identified benefits and problems associated with existing practices. A smaller number of studies tested promising program innovations. The research was beginning to answer the question of “What might work?”—but it was nowhere near answering the question, “What works best and in what context?”

One likely reason for the comparatively small number of child support studies was that legislators and administrators historically viewed the program as legal and operational, rather than policymaking and programmatic. However, the main reason for the small number of studies was due to limited research funds. The basic source of federal research funding is section 1115 of the Social Security Act and states, tribes, territories, and the District of Columbia are eligible for the funds. Although a relatively small allotment, these funds have the virtue of a matching fund component that allows states to match research funds with regular program funds—increasing the total number of dollars available for state research.

Section 1115 grants must be used to fund state pilots or demonstration projects and have an evaluation element. The OCSE typically used the funds for an array of state program projects without requiring a rigorous research component. The grants seeded many projects that tried out innovative program approaches, yet millions of dollars were spent without producing useful evidence on whether these approaches worked.

## EVIDENCE AVAILABILITY

Two decades ago, most research evidence about child support was from small-scale nonexperimental studies and program data analysis. One early experiment was Parents’ Fair Share, a large-scale multistate demonstration funded by OCSE in the early 1990s. The Parents’ Fair Share demonstration tested the effectiveness of employment services, enhanced child support case management, parenting classes, and peer support in increasing the employment, earnings, and child support payments of low-income noncustodial parents of children receiving public assistance. Other early experiments included state demonstrations to pass through child support payments to families receiving cash assistance, instead of keeping the money to repay cash assistance.<sup>16,17</sup>

Most child support research has been conducted by nonprofit research firms (MDRC, Urban Institute, Center for Policy Research), state universities (University of Wisconsin, University of Maryland, University of Texas, Indiana State University, Iowa State University), and state

agency research units (Washington state and Orange County, California). Based on the existing research, administrators now know far more about the causes of nonpayment and the consequences of traditional child support policies and practices:

- **Parents' inability to pay support:** The main reason parents do not meet their financial obligations is a lack of resources to pay required child support. In practice, most parents who pay sporadically or who do not pay at all have limited earnings, posing a major challenge to achieving program goals to support children. In contrast, parents who fully pay their support obligations are more likely to be employed and have significantly higher earnings. As earnings increase, compliance increases.<sup>18,19,20</sup>
- **Unrealistic payment requirements:** Many states assume parents earn at least full-time minimum wages, even when there is evidence to the contrary. This assumption can be flawed. In one study, parents issued support orders based on imputed, or attributed, income actually earned 72 percent less than the amount listed on the child support worksheets. As a result, payment requirements are set at unachievable levels. The result is accumulating debt. Existing research suggests compliance and payments fall off by parents at all income levels when support orders are set higher than about 20 percent of gross earnings. Levels above 20 percent of income could in turn decrease payments.<sup>21,22,23</sup>
- **Uncollectible debt:** A nine-state study of the causes and collectability of child support debt conducted by the Urban Institute found that parents with reported incomes of \$10,000 or less owed 70 percent of the unpaid debt balance. Incarceration is one reason for the buildup of large uncollectible debts because few parents can work or make child support payments while in prison. Other studies found that unmanageable child support debt discourages employment and ongoing support payments.<sup>24,25,26,27,28,29,30</sup>
- **Employment services:** The Parents' Fair Share multistate demonstration resulted in small increases in employment and child support payment rates and increased earnings for the hardest-to-employ noncustodial parents. Two state studies with strong nonexperimental designs, Strengthening Families Through Stronger Fathers (New York) and Noncustodial Parent Choices (Texas), found that noncustodial parents offered a set of employment and other services were employed at higher rates and therefore paid more child support. Also, the New York study found that the parents had higher earnings.<sup>31,32,33</sup>

## EVIDENCE USE

While a good deal of evidence existed on certain aspects of the program, key features of the program design lacked robust evidence to inform regulatory or programmatic decisions. Even so, the Obama administration proceeded with a regulatory update that prioritized where knowledge existed about how to make meaningful improvements.

OCSE administrators had several interrelated goals for modernizing the child support program. To successfully promote more effective policies and practices, the program culture had to change. For the program culture to change, child support administrators and line workers needed to access and understand the effects of existing practices on low-income families and adopt better alternatives. To identify better alternatives, the program needed to build the evidence base. To build the evidence base, administrators needed to see the value of applying research in the child support program. In addition, researchers needed to have access to funding and recognize that policymakers were interested in their work.

In other words, research evidence became the frame for highlighting the circumstances of low-income families, the basis for implementing improved policies and practices, and the aim of OCSE research capacity-building. OCSE administrators interjected the language of research into policy and practice discussions. The national strategic plan, updated through a state consensus-building process, included a section on building the evidence base.<sup>34</sup> OCSE used evidence to tell the stories of low-income parents in the child support caseload and to frame acceptable policy responses. The question asked at every turn was, “What would actually work to increase parental support for children?”

### **Goal one: Strengthening program effectiveness for low-income families**

OCSE reviewed regulations and identified several that had not been revised since the program began in 1975. They consulted closely with state administrators and courts to determine which regulations to update. OCSE proposed new rules in several areas, including child support guidelines, civil contempt hearings, and debt buildup during incarceration. One organizing principle of the regulatory changes was that child support obligations should be based on “earnings, income and other evidence of ability to pay.” In addition, the proposed rule allowed states to use federal funding for a limited set of employment services to increase the ability of low-income noncustodial parents to pay child support.

The preamble to the rule documented the specific research findings and studies that contributed to the rules.

### **Goal two: Building a family-centered mission**

The child support program mission had been shifting for years from a debt recovery focus to a longer-term family support mission. This was partly in response to emerging welfare reform research about the role of child support income in families leaving cash assistance, research on debt accumulation, noncustodial parent employment research, the pass-through studies, and research examining the relationship between parenting time and child support payment. Federal legislation and initiatives introduced during the Bill Clinton and George W. Bush administrations built on these research findings.

During the Obama administration, OCSE highlighted evidence to frame a family-centered approach to child support that combined enforcement strategies with case management

and services. This approach focused on understanding caseload demographics and the effects of poverty, identifying the reasons for nonpayment through data analytics and early intervention, implementing specialized case management for cases with missed payments, and incorporating procedural justice principles. The model centered around five evidence-based practices: (1) right-sized orders based on ability to pay; (2) debt management; (3) support collections passed through to families; (4) employment services; and (5) parenting time.

The approach was based on family-centered and “two-generation” service-integration models in other fields, including child welfare, education, and health care. The national strategic plan and the 2016 federal rule included the family-centered model, which received broad support from states, counties, courts, and advocates.

### **Goal three: Building an evidence-based culture**

While OCSE continued to emphasize performance-data trends, it coupled performance data with discussions about the research evidence. While some administrators initially expressed concern that the implementation of evidence-based practices would compete with performance goals, particularly cost-effectiveness, OCSE showed how evidence-based practices could improve performance. In presentations and program documents, OCSE administrators emphasized the research evidence that suggested better ways to do business. OCSE invited researchers to give presentations to staff, and highlighted new research at conferences, in social media, and in direct communications to child support administrators and their policy staff across the country. State administrators actively participated in an ongoing exchange of information and insights.

### **Goal four: Building a body of research evidence**

Recognizing gaps in existing knowledge, OCSE used three strategies to help build a strong evidence base.

First, OCSE incorporated a rigorous evaluation component into federal projects funded with section 1115 grant funds. OCSE commissioned an experimental evaluation of demonstrations in the areas of noncustodial parent employment and alternatives to contempt hearings and incarceration. Eight state project sites received grants, with one state in charge of managing the research. Also, OCSE managed a number of smaller pilot implementation studies or braided funding with larger demonstrations conducted by other federal agencies in the areas of homeless veterans, parenting time, asset accounts, and prisoner reentry. OCSE regularly convened grantees to establish “learning communities.”

Recently published results of the noncustodial parent employment demonstration showed the program benefits outweighed the costs in 10 years. Specific findings included a substantial improvement in the satisfaction with the child support program, which was a major achievement since distrust ran high among program participants at enrollment. It also increased the likelihood of working and the amount of earnings. Parents’ sense of responsibility for their children and their contact with their children also increased.<sup>35,36</sup>



Second OCSE sought increased state capacity to conduct child support research. OCSE provided a series of grants to state child support agencies that agreed to partner with state universities to conduct state-specific research, with the goal of increasing state-funded child support research through such partnerships. OCSE and its partners designed a series of behavioral-economics research grants to show states how to conduct rapid-cycle research, saving states money and time before implementing small policy changes.

Finally, to strengthen OCSE's capacity to manage research and to use grant funds, OCSE was reorganized to create a division structure that was responsible for research and staffed with appropriate experts.

## LESSONS

- ***Culture change may be needed before policy change.*** OCSE had two tasks: first, to persuade state agencies and courts that research evidence of what works—rather than values, legal precedent, or operational efficiency alone—should guide program policies and procedures; and second, to marshal the evidence in support of specific policy changes. That OCSE was successful speaks to the ongoing dialogue within the child support program, the commitment to performance, and the willingness of state administrators to engage, consider the evidence, and come to a consensus. In the comments on the proposed regulation, stakeholders—with few exceptions—strongly supported the proposed rule. OCSE administrators worked hard to modify the rule to address operational concerns while still honoring the research. Although the rule took several years to promulgate, that time allowed consensus for change to build, contributing to a longer-term culture shift.
- ***Resource gaps can limit evidence availability and use.*** Over time, the child support program has developed a basic evidence base. However, it is not very large and not very specific. For example, OCSE administrators can point to rigorous studies that support lower orders or the efficacy of employment services, but have little research on whether one intervention model is better than another. In large part, this is because the child support field has limited resources for research. Even though there is more interest than before in child support research, it may be unlikely to garner sufficient research funding to build a stronger evidence base.
- ***Congress, not the evidence, has the final say.*** In the proposed rule, OCSE included language to fund a limited set of employment services based on the research evidence for the subpopulation that needed and wanted services. The existing statute led the Obama administration to conclude that it had authority to promulgate a rule to pay for limited employment services for noncustodial parents. Commenters overwhelmingly supported this provision, and OCSE did not expect that the cost would be high based on its analysis. However, rulemaking authority is only as broad as Congress thinks it should be. Key Republicans in Congress challenged some provisions of the proposed rule, including the employment provision, based on administrative overreach. Compounding this issue are the rules of engagement between Congress and the executive branch in place during the rulemaking process that limit free and open dialogue. The administration ultimately removed the employment provision before finalizing the regulation, and the remaining rule received congressional support. In the end, the policy decision was based on political deference, not evidence. ■

- 1 This chapter is dedicated to the memory of two OCSE employees who devoted their careers to improving the child support program before they each passed away last year. Barbara Addison was the lead author of the Flexibility, Efficiency and Modernization in Child Support Enforcement Programs adopted in 2016. Adrienna Johnson helped prepare program data for publication every year, providing public access to the data. It seems particularly fitting to recognize their work in this chapter.
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