Congress Returns in September to an Uncertain Fall

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Congress has recessed for the summer and will return after Labor Day for another truncated session so that members can go home to campaign. In an election year, it is not unusual for Congress to remain relatively quiet in the summer and fall months leading up to November. However, huge legislative issues will remain in mid-November with little time for a lame duck Congress and, possibly a lame duck president, to act. After the election, the December 31 expiration of the Bush-era tax cuts looms, as well as a $100 billion across-the-board cut to a large number of defense and domestic programs, including, perhaps, child support enforcement. That budgetary ax would cut programs by seven to nine percent, depending on calculations made by the Obama Administration’s Office of Management and Budget (OMB).

While Congress will view most legislative action through a partisan election year lens, a few legislative developments may provide some clarity for CSE funding and give state and local programs additional tools to enforce support orders.

CSE Funding

Since the August 2011 enactment of the Budget Control Act, there has been legal ambiguity about whether federal funds for child support administration and incentives would be subject to across-the-board cuts (sequestration) or whether child support funding would continue to be considered as an entitlement exempt from sequestration.

Before the summer 2012 recess, House and Senate leaders laid plans to ensure some short-term funding certainty for all federal programs, including CSE and related initiatives. In September, Congress will adopt a six-month extension of current federal spending before federal funding authorizations expire on September 30, thus avoiding any potential for a government shutdown. The agreement postpones any decisions on reallocating funds or cutting programs until the 113th Congress convenes. At that time, lawmakers will have until March 31, 2013 to craft a spending plan for the remainder of FY 2013.
On August 7, President Obama signed into law the *Sequestration Transparency Act*, (H.R. 5872/PL 112-577). The bill was adopted by the House 412-2 and in the Senate by unanimous consent. The law requires OMB to submit a report to Congress within 30 days of enactment, detailing which programs -- domestic and defense -- would be subject to the cuts and by what amounts. That means in early September we will know whether CSE is subject to the January 2, 2013 sequester.

Under the Budget Control Act, which created the sequester mechanism; OMB has the final say in determining which programs are subject to the cut. While it is clear that most discretionary programs are indeed subject to the cuts, the treatment of child support is still an outstanding question. The program was subject to sequestration under a 1980's budget law, but it was subsequently exempted in later legislation. Congress never repealed the former provision, however. If it is subjected to the possible sequester, CSE funding would be cut between seven and nine percent.

**Ratification of Hague Convention on Recovery of Child Support**

CSE professionals may have another enforcement tool to employ if Congress continues to make progress on Hague Treaty legislation. Earlier this year, NCSEA worked closely with Republican and Democratic members of the House Ways and Means Human Resources Subcommittee as it drafted the bipartisan *International Child Support Recovery Improvement Act of 2012* (H.R. 4282). The bill would put the U.S. on a course to ratify the 2007 Hague International Convention on child support under which participants would cooperate in ensuring that families receive the financial support to which they are legally entitled.

The House held a hearing on the issue in March at which NCSEA Past President Kay Farley (2001 – 2002) and Marilyn Stephen, Director of Michigan’s Office of Child Support, testified. Over the next two months, Ways and Means Committee staff worked with NCSEA and other stakeholders to draft the bill. Congressional leaders mentioned NCSEA’s letter of support when the full House adopted the measure by voice vote in early June.

Section 2 of the House bill provides the implementing language necessary to ratify the 2007 Hague Convention. In its letter, NCSEA noted that the Convention contains procedures for processing international child support cases that are uniform, simple, efficient, accessible, and cost-free to U.S. citizens seeking support from parents in other countries.

On the other side of Capitol Hill, NCSEA apprised staff to Senator Robert Menendez (D-NJ) of the House developments and worked to ensure that both Senate champions and the House Ways and Means staff were aware of each other’s interest in the issue. Senators Menendez and Charles Grassley (R-IA) have authored the *Strengthen and Vitalize Enforcement of Child Support (SAVE Child Support) Act* (S. 1383). Before the July 4 holiday, NCSEA sent a letter to Senate Finance Committee Chairman Max Baucus (D-MT) and Ranking Member Orrin Hatch (R-UT) to express support for many
of the Senate bill’s provisions and urge that the Committee consider the legislation. Specifically, NCSEA noted that Section 3 of the Senate measure contains a Hague Convention provision similar to the House bill. NCSEA also recommended that the Committee work with the bill’s sponsors to amend the original bill language in S. 1383 so the Full Faith and Credit for Child Support Orders Act (FFCCSOA) and UIFSA are interpreted consistently by state courts.

In the Senate letter, NCSEA noted that it supports the bill’s centralized and accessible lien registry provision (Section 4), arguing that a requirement that states create or obtain access to such a registry would greatly improve the interstate lien process, leading to increased collections.

NCSEA also noted support for Section 6, which would require states to match insurance payouts with eligible cases through an existing consortium or though the creation of their own state registries. However, NCSEA recommended that the bill be strengthened to require 100 percent uniform compliance with the provision, as opposed to the threshold requiring that 90 percent of the property and casualty claims be matched. NCSEA’s concern with the existing language is that it leaves unclear how states should determine which ten percent of cases would be exempt from the match requirement. Alternatively, NCSEA requested clarifying language for the provision.

NCSEA member communications with Senator Menendez’s staff indicate that the staff director for the Senate Finance Committee has signaled that the Committee may indeed try to “hot line” a child support package in the fall that would include provisions of S. 1383 that have broad support. A hot line procedure is used by the Senate when moving a bill to the floor under unanimous consent. If no Senator objects, the bill could move forward without a Committee hearing or mark up. Under such a scenario, there may be time for the House and Senate to reconcile any differences between the two bills and send it to the president for his signature.

NCSEA will continue to update the CSE community throughout the fall on these and other child support developments.