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THE SENATE FINANCE COMMITTEE'S TANF REAUTHORIZATION BILL

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Executive Summary

In September 2003, the Senate Finance Committee approved legislation that reauthorizes the TANF program for five years and makes a number of changes to the program. The full Senate has yet to approve the Finance bill, but the Senate did vote in March 2004 to amend the bill to increase funding for child care above the level set in the House bill. Because of disagreements between Democrats and Republicans on how the process for debating and finalizing the bill would go forward, the bill was “pulled” from the Senate floor. It is unclear whether the Senate will take up the bill again this year.

The Senate Finance bill differs markedly from a controversial version of the legislation approved by the House in 2003. The Senate Finance bill is a significant improvement over the House bill. Despite these improvements, the Senate Finance bill still raises a number of issues and concerns that the full Senate should address when it returns to the bill.

Congress has approved several short-term extensions of the TANF and child care block grants since their original authorizations expired in September 2002. Regardless of what happens with the Senate bill this year, Congress will need to extend TANF's current authorization before it expires on June 30, 2004.

Key Areas in which the Senate Finance Bill Improves on the House Bill

If the House version of TANF reauthorization legislation became law, state efforts to reform welfare would be undermined. The House bill would sharply limit state flexibility to continue operating successful welfare-to-work programs for recipients of TANF cash assistance and force states to make substantial cuts in child care assistance for low-income working families. The Senate Finance bill places fewer restrictions on state flexibility in the welfare-to-work area and provides substantially more funding for child care. It also improves on the House bill — and on current law — in the areas of child support, Transitional Medical Assistance, and the TANF contingency fund. Finally, the Senate Finance bill does not include the House's ill-conceived “superwaiver” provision. These differences are explained in greater detail below. A table at the end of this summary provides a side-by-side comparison of current law to some of the key provisions in the House and Senate Finance bills.

- *Both bills limit state flexibility to determine on a case-by-case basis how many hours of work activities adult recipients should be engaged in above current levels, but the Senate Finance bill is less restrictive.* Under current law, states can get credit toward meeting their work participation rates for single parents who are engaged in specified work activities for at least 30 hours per week or 20 hours per week if the parent has a child under age 6. States have flexibility to determine whether additional hours are a cost-effective use of their TANF resources and are appropriate based on their assessment of each recipient’s circumstances and needs. The House bill would limit this flexibility by requiring states to place adult recipients in work activities for 40 hours to get full credit toward their work rates. This “one-size-fits-all” rule would apply even to recipients with children under age 6 and regardless of whether additional hours would be cost-effective or appropriate based on the state’s assessment. The Senate bill also increases the hourly requirements, but the increase — four hours a week — is less restrictive than the House bill and retains the distinction between parents with children under age 6 and other parents. One improvement to current law in both bills would allow states to receive “partial credit” toward the work participation rates if parents participated for less than the number of hours required for full credit.
- *The Senate Finance bill does not include the restrictions that the House bill would place on counting participation in job search, job readiness, and education and training toward participation rates.* Under current law, a state can place a TANF recipient in a full-time vocational educational training program for up to 12 months and get credit toward its participation rate. In addition, states can get credit for recipients placed in job search and job readiness for up to six weeks. The House bill would place new restrictions on the extent to which these activities could count toward TANF participation rates. The Senate bill retains current state flexibility in these areas and also would give states the option to place no more than 10 percent of their TANF caseload in a “Parents as Scholars” program that would allow education activities that last longer than the current 12-month limit.
- *The Senate Finance bill provides sufficient child care funding to preserve the existing number of child care slots for low-income workers and cover the costs states would incur to meet increased welfare-to-work requirements.* States rely on federal child care funding to provide child care to families moving from welfare to work and to other low-income families who might end up on the welfare rolls without child care. Recent research suggests that the increase in employment among single parents in the 1990s was due in part to the expansion of child care subsidies. Despite this progress, the House bill fails to include the funding necessary to maintain the existing level of child care services and even fails to provide sufficient funding to pay for the increased costs that would result from the bill’s increased TANF work requirements, if states sought to meet the work requirements by actually increasing the number of recipients participating in welfare-to-work activities.¹ By contrast, the \$7 billion increase in child care

¹ The Congressional Budget Office (CBO) has estimated that the cost to states of meeting the increased TANF work requirements in the House bill would be between \$3 billion and \$9 billion over the next five years, assuming that

funding in the Senate Finance bill would be sufficient both to maintain child care at its current levels and pay for the child care costs of the bill's increased TANF work requirements. The additional child care funding provided by the bill is not enough, however, for states to *increase* the number of child care slots significantly from current levels and, thus, would not reduce the large numbers of low-income families who need help affording child care but do not receive it due to a lack of funding.

Like the House bill, the Senate Finance bill would continue to freeze TANF block grant funding at its current level. Over the past few years, many states have made cuts in TANF-funded programs. These cuts were made both because of weak state fiscal conditions and because states are running out of unspent TANF funds from the initial years of TANF. While the child care funding in the Senate bill is sufficient to maintain child care programs at current levels, the lack of any increase in TANF block grant funds will leave many states without the resources to avoid having to make cuts in TANF-funded programs other than child care.

- *The Senate Finance bill would direct more child support to families than the House bill.* The Senate bill gives states broader flexibility to change their child support rules to direct significantly more child support to children — the government keeps much of this money under current rules — than the House bill. In addition, the Senate bill does not include fees that the House bill imposes on custodial parents who are receiving child support services from the government.
- *The Senate Finance bill does not include the House bill's radical "superwaiver" proposal.* The House bill includes an extremely controversial provision known as the "superwaiver" that would give executive branch officials sole authority to waive, at the request of states, nearly all federal laws and rules applicable to a long list of low-income programs, including the Food Stamp Program, public housing, most homeless assistance programs, several job training programs, child care, and TANF. While the Senate Finance bill includes a provision with much of the same language as the House "superwaiver" provision, it would limit waiver authority to three programs — TANF, child care, and the Social Services Block Grant — and allow no more than 10 states to receive waivers under the provision. Given these limitations, the Senate provision raises far fewer concerns than the House superwaiver.

states sought to meet the requirements by increasing participation in welfare-to-work activities. CBO has estimated that the cost to states of meeting the increased work requirements in the Senate bill would be between \$1.1 and \$1.5 billion, again assuming that states sought to meet the requirements by increasing participation in welfare-to-work activities. CBO has said in conjunction with both the House and Senate estimates of the work-related costs that it "expects states would instead partially or fully avoid these costs by moving families to separate state programs or averting the requirements by some other means." (See, for example, "Potential Cost to States of Meeting Proposed Work Requirements," Congressional Budget Office, September 2003.) Despite this statement from CBO, it is very unclear the extent to which states would seek to avoid new work requirements through such strategies. A number of states have done their own estimates of the cost of meeting the work requirements associated with the House bill and those states assumed that they would meet the new requirements by increasing participation in work programs.

- *The Senate Finance bill reauthorizes Transitional Medical Assistance for five years with new state options to improve the program.* Transitional Medical Assistance (TMA) provides temporary Medicaid coverage to many families moving from welfare to work. The Senate Finance bill extends the program for five years and includes new state options that extend eligibility and simplify participant reporting requirements. The House bill only extends TMA for one year and does not make these program improvements.
- *The Senate bill makes it easier for states to access the TANF Contingency Fund if they need additional funding during an economic downturn.* The TANF Contingency Fund is supposed to help states meet costs associated with increases in TANF caseloads during recessions, but design flaws have limited its effectiveness. The Senate bill redesigns the TANF contingency fund to ensure that states have access to additional funding when they face rising caseloads during economic downturns. The House bill makes only minor changes to the contingency fund that would do little to improve its responsiveness to state needs.

Senate Will Have Opportunity to Make Needed Improvements

The Senate bill improves in many respects on the extremely problematic House bill, but there are several areas where additional improvements are needed, some of which are discussed below. Senators already have filed several amendments — often with bipartisan support — to address many of these concerns.

- *The Senate bill does not provide states with enough flexibility to design individualized welfare-to-work plans that are appropriate for recipients with disabilities.* The Senate bill would require states to increase the number of parents participating in work activities and the hours each parent participates. Yet, states would have limited flexibility to place recipients with disabilities and other severe barriers to employment in rehabilitative and other services that are appropriate to their individual needs. A bipartisan amendment sponsored by Senators Smith (R-OR) and Jeffords (I-VT) would address this issue by giving states broader flexibility to engage recipients with disabilities in a mix of standard work activities and rehabilitation services to help them address their disabilities.
- *States that increase their work participation rates by significant amounts could still face stiff fiscal penalties.* Under the bill, states that increase their work participation rate significantly but fall short of the overall work participation rate standard would be subject to a reduction in their TANF block grants. Such a penalty structure is counterproductive — the loss of TANF funding would make it more difficult for states to make continued progress on improving their work rates. Senator Rockefeller (D-WV) has filed a bipartisan amendment that would provide penalty relief for states that improve their participation rates by at least five percentage points. The amendment is supported by the National Governors Association.

- *The bill does not lift current restrictions on legal immigrants' eligibility for TANF, health care, and other benefits.* Under current law, states are prohibited from using TANF funds to provide benefits and services — including employment services or English-language instruction — to legal immigrants until they have lived in the United States for five years. The same prohibition applies to Medicaid and SCHIP. The bill maintains these restrictions, despite bipartisan support for state flexibility in this area. An amendment filed by Senators Graham (D-FL) and Chafee (R-RI) would give states the option to lift the restrictions in Medicaid and SCHIP in order to provide health care coverage to pregnant women and children who are legal immigrants. There also will likely be an amendment to lift the restriction on providing TANF-funded benefits to legal immigrants who have lived in the United States for less than five years. Opponents of equal access to benefits for legal immigrants have filed various “poison-pill” amendments in an attempt to undermine any restorations approved by the Senate.
- *Substantial new resources are provided for untested and restrictively-defined marriage-promotion programs.* The bill redirects up to \$1.5 billion in TANF funding to a very limited set of “marriage-promotion” activities. States could no longer use these funds for child care and other supports and services with a proven record of effectiveness. Earmarking this amount of TANF funds for a narrow set of marriage-promotion activities is unwarranted given the lack of evidence that these programs will be effective, the strict limitations on how states and organizations can use the funds, and the considerable resources the federal government and states already have committed to research and demonstrations in this area.

In short, the Senate Finance TANF bill is an improvement on the damaging House bill. The Senate bill would be more workable for states than the House bill and provides a minimally adequate level of child care funding. At the same time, the Senate Finance bill imposes needlessly prescriptive welfare-to-work program requirements on states and has several other flaws. The Senate will have the opportunity to address some of these problems when it returns to its consideration of the bill.

Introduction

In September 2003, the Senate Finance Committee approved its version of TANF reauthorization legislation on a straight party-line vote, with only Republican members supporting the bill. In March 2004, the full Senate briefly took up the bill and considered a bipartisan amendment offered by Senator Snowe (R-ME) and Senator Dodd (D-CT) to add an additional \$6 billion in child care funding on top of the \$1 billion increase already included in the bill. The Snowe-Dodd amendment was approved by an overwhelming vote of 78-20. More than 40 additional amendments to the bill have been filed by Senators.

Shortly after the child care vote, Senate Majority Leader Frist filed a cloture motion to end debate on the bill. The cloture motion, which requires support by 3/5ths of the Senate, was

Table: Comparison of Key Provisions of Current Law to Pending TANF Bills

	Current Law	House-passed Bill	Senate Finance Bill
Participation Rate Standards	50% in FY2004 and thereafter.	55% in 2005; increases by 5 percentage points each year until reaching 70% in 2008. Credit given toward rate for caseload reduction.	55% in 2005; increases by 5 percentage points each year until reaching 70% in 2008. Credit given toward rate for employed welfare leavers.
Hours of Work Required for Single Parents to Count toward Participation Rate	Single parent with a child under age 6: 20 hours. Other single parents: 30 hours per week. No “partial credit” for parents engaged in work activities for fewer than required number of hours.	40 hours, regardless of age of child. Monthly rate determined using a 4-week month. Partial credit for adults who participate at least 24 hours in specified work activities.	Single parent with child under age 6: 24 hours. Other single parents: 34 hours. Monthly rate determined using a 4-week month. Partial credit for single parents who participate for at least 20 hours.
Education and Training	Vocational education training allowed as a full-time activity that counts toward participation rates for up to 12 months.	Allowed as a countable activity: 1) if recipient is working 24 hours a week; and 2) during 3-month period discussed under “Services for Individuals with Barriers.”	Retains current law and provides state option to count postsecondary or vocational education as a work activity for more than 12 months (capped at 10 percent of caseload).
Services for Individuals with Barriers to Work	Not a countable activity.	Allowed under a provision that gives states the discretion to count state-defined work activities for 3 months.	Allowed for 6 months; months 4-6 must be combined with work or job readiness activities.
Sanctions	Sanction amount left to state.	Mandates “full-family” sanction.	Current law.
Child Care Funding	Mandatory: Frozen at \$2.7 billion per year. Discretionary: \$2.1 billion appropriated in FY2003.	\$1 increase in mandatory funding over 5 years; increased discretionary authorization level	\$7 billion increase in mandatory funding over 5 years
Funding for “Marriage Promotion” Activities	State can use TANF funds for marriage-promotion activities, but no funding is earmarked for this purpose.	Earmarks up to \$1.7 billion over five years for marriage promotion.	Earmarks up to \$1.5 billion over five years for marriage promotion.
Superwaiver	No “superwaiver” authority in current law, but extensive authority exists to align and coordinate programs.	Superwaiver includes food stamps, public housing, child care, and other programs.	10- state demonstration limited to child care, TANF, and Social Services Block grant.
Legal Immigrant Eligibility for TANF and Medicaid	Legal immigrants ineligible during first five years in U.S., except for refugees and certain humanitarian immigrants.	Current law.	Current law.

defeated on a party-line vote. Senator Frist later pulled the bill from the Senate calendar after Republicans and Democrats were unable to reach agreement on how the Senate debate would proceed. It is unclear whether the Senate will return to the bill this year.

Congress has approved several short-term extensions of the TANF and child care block grants since the original authorizations for these programs expired in September 2002. Most recently, these authorizations were extended until June 30, 2004. Regardless of what happens with the Senate bill this year, Congress will need to extend TANF's current authorization before it expires in June.

Child Care Funding Adequate to Maintain Current Services Level

States rely on federal child care funding to provide child care not only to families moving from welfare to work but also to other low-income families who might end up on the welfare rolls without child care. During the 1990s, states increasingly extended child care assistance to these working families. Recent research suggests that the expansion of child care subsidies in the 1990s helped fuel the substantial growth in single-parent employment that occurred in that decade. There also is evidence that providing child care subsidies increases the likelihood that single parents work full-time.²

As amended by the full Senate, the Finance bill includes \$7 billion in additional child care funding over the next five years, substantially more than the \$1 billion in funding contained in the House TANF bill. The Senate funding level figure is sufficient to maintain the current level of child care assistance to low-income working families not receiving TANF cash benefits while also meeting the child-care costs of the work requirements in the Senate bill.

Under the House bill, more than 500,000 children would lose child care assistance over the next five years. This decline would occur for three reasons:

- *The cost of providing child care assistance increases over time as the wages of child care workers and the cost of space and other materials increase.* The House bill does not provide the resources needed to cover the costs of these increases.
- *States will have less TANF funding to devote to child care over the coming years.* The Congressional Budget Office projects that overall TANF spending will fall significantly as unspent TANF funds from prior years are exhausted.³ As overall TANF spending falls, TANF funds directed to child care are almost certain to fall as

² See studies cited in Shawn Fremstad, "Recent Welfare Reform Research: Implications for TANF Reauthorization and State TANF Policies," Center on Budget and Policy Priorities, January 2004.

³ In TANF's initial years, states spent much *less* than their annual TANF block grant. In recent years, states have used the funds that went unspent to augment their annual block grant allocation. States have used a large share of unspent funds from prior years for child care. As states exhaust these unspent reserves, however, this source of funding for child care disappears. CBO projects a rapid decline in unspent reserves and estimates that, as a result, overall TANF spending will fall from \$19.4 billion in 2003 to \$16.9 billion by 2008 — a decline of nearly 13 percent *before inflation is taken into account*.

well. In fact, states already have been cutting child care programs because their unspent TANF funds have dwindled.

- *The cost of meeting the new work requirements in the House bill will leave fewer child care and TANF resources available for providing child care to low-income working families who are not receiving TANF cash assistance, including many working families with incomes below the poverty line.*

Access to child care assistance already has begun to shrink as recent reports by the General Accounting Office and various organizations have shown. More than half of the states have instituted cutbacks in their child care programs over the past three years. In fact, in 24 states, child care assistance is no longer available to any low-income working families newly applying for such help.⁴ Tennessee, for example, no longer accepts child care applications from families that do not receive TANF cash assistance.

Even before these latest cutbacks, funding levels were so low that most children eligible for child care subsidies did not receive them. In 2000, only an estimated one in seven children eligible for child care subsidies received them.⁵ While some of these children do not need child care assistance for a variety of reasons, many do, as is evident from the substantial waiting lists for child care assistance in many states. In Florida, for example, there were some 48,000 children on the child care waiting list as of December 2002.

Work Requirements

The Senate Finance bill would increase the TANF participation rates that states must meet — this means increasing the share of TANF recipients that states must engage in a specified set of work activities — and increase the required hours each TANF recipient must participate in such work activities to count toward the participation rates. While the Finance bill imposes fewer restrictions on states than the House-passed bill, it still needlessly restricts state flexibility in several key areas.⁶

⁴ See Danielle Ewen and Katherine Hart, *State Budget Cuts Create a Growing Child Care Crisis For Low-Income Working Families*, Children's Defense Fund, March 2003 and Sharon Parrott and Nina Wu, *States Are Cutting TANF and Child Care Programs*, Center on Budget and Policy Priorities, June 2003.

⁵ Jennifer Mezey, Mark Greenberg, and Rachel Schumacher, *The Vast Majority of Federally-Eligible Children Did Not Receive Child Care Assistance in FY 2000: Increased Child Care Funding Needed to Help More Families*, Center for Law and Social Policy, October 2, 2002.

⁶ This analysis is limited to a few key elements of the work provisions in the bill. For a more detailed comparison of the work provisions in the bill and the House-passed bill, see Sharon Parrott, Heidi Goldberg, and Shawn Fremstad, "Recycling an Unwise Proposal: State Concerns and New State Fiscal Realities Ignored in House Republican Welfare Bill," Center on Budget and Policy Priorities, February 2003 and "Key Provisions in TANF Reauthorization Bills Passed by the Senate Finance Committee and the House," Center for Law and Social Policy and Center on Budget and Policy Priorities, September 2003.

Work Participation Rates

Under the Finance bill, the *participation rates* states must meet would increase over current levels. By 2008, states would be required to engage 70 percent of all adult recipients each month in certain types of work activities. States would receive a credit toward this participation rate based on the number of families that leave welfare and are working.

In addition to increasing the number of adults that states must engage in work programs, the bill also would increase the *hours an adult must participate* in order to be fully countable toward the work participation rates. The hourly requirement would increase as follows:

- from 20 to 24 hours for single parents with children under age six;
- from 30 to 34 hours for single parents with children age six and over; and
- from 35 to 39 hours for two-parent families who do not receive federally-funded child care (the current 55-hour requirement remains in place for two-parent families who receive federally-funded child care).

The bill makes two useful changes from current law in this area. First, states would receive significant partial credit for recipients who participate for some, but not all, of the required hours. States could claim partial credit for single parents who participate for at least 20 hours. Similarly, states could claim partial credit for two-parent families if they participate at least 26 hours (40 if they are receiving federally-subsidized child care). States also would receive a very modest amount of “extra credit” for recipients who participate for more than the required hours. Second, when determining the average number of hours per week a recipient participated in a month, the participation rate formula assumes that each month has four weeks, and ignores the several additional days past four weeks that are in each month except February. This change provides a modest allowance for a small number of missed hours over the course of the month, such as could be due to a recipient’s illness or the illness of her child.

Both the House and Senate bill would limit state flexibility to determine whether additional hours above the current levels are a cost-effective use of their TANF resources and are appropriate based on their assessment of each recipient’s circumstances and needs. The Senate bill is less restrictive than the 40-hour per week requirement in the House bill that would apply regardless of the age of children in the family. (The House bill also allows for partial credit — using a somewhat different formula than the Senate — and determines average hours of participation per week assuming a 4-week month.) Senator Talent (R-MO) has filed an amendment, however, that would move the hourly requirements in the Senate bill closer to those in the House bill by imposing 40-hour per week requirements on single parents with children age 6 or over and on two-parent families who do not receive federally funded child care.

These increases in hourly requirements in the House bill, the Senate Finance bill, and in the Talent amendment would increase the costs of operating welfare-to-work programs and reduce state flexibility to tailor work requirements for families and to local circumstances. Supporters of the new mandates cannot point to any research evidence showing, or even

suggesting, that restricting state flexibility to determine the number of hours of participation in welfare-to-work activities that should be required above the current levels would result in improved employment outcomes for TANF recipients or improved cost-effectiveness of TANF programs. In fact, Gordon Berlin, senior vice president of the Manpower Demonstration Research Corporation — a leader in the evaluation of welfare-to-work programs for HHS and state and local governments — has criticized increasing the hourly requirement because it would make it more difficult to reach the goal of universal engagement of TANF recipients.⁷

Limits on Rehabilitative Services as a Countable Activity

While the bill would increase the work participation rates states must meet and increase the hours of required participation by individual recipients, states' ability to engage recipients in *rehabilitative services* designed to address recipients' barriers to employment or in education or training programs would be limited. The bill includes a provision which would allow participation in certain activities designed to address barriers to employment, including disability, substance abuse, or low literacy levels, but it would place a six-month limit on the amount of time a recipient placed in such activities could count fully toward the work rates. After six months, such activities only would count if the recipient also participated in standard work activities for 24 hours each week — a bar that will be too high for some recipients with serious barriers. The six-month limitation fails to take into account the reality that some recipients with serious or multiple barriers to employment may need additional time in specialized activities.

David Butler, vice president of the Manpower Demonstration Research Corporation, testified about the importance of allowing recipients with barriers to employment to participate in a broader range of activities tailored to their circumstances without imposing arbitrary limits on state flexibility to provide these services. In his April 2002 testimony before the Senate Finance Committee, Butler stated:

The research suggests that many welfare recipients with characteristics that make them hard to employ will need specialized or more intensive services. Ideally, *participation in treatment-related services should not have a pre-imposed time limit. Instead, an individual's progress in treatment should determine the treatment timeframe.* TANF programs in Oregon and Utah have taken this more individualized approach to serving people with serious barriers.⁸

There is bipartisan support for providing states with more flexibility in this area. An amendment sponsored by Senators Gordon Smith (R-OR) and James Jeffords (I-VT) would allow states to count participation in specialized activities designed for people with disabilities

⁷ See Gordon Berlin, "What Works in Welfare Reform: Evidence and Lessons to Guide TANF Reauthorization," Manpower Demonstration Research Corporation, 2002, www.mdrc.org/Reports2002/TANF/TANF-Implications.htm.

⁸ David Butler, Testimony Before Senate Finance Committee, www.mdrc.org/testimony/ButlerTestimony/Testimony_HardtoEmploy_Butler.htm (italics added).

(including substance abuse problems) after a six-month period if they also participate in standard work activities during half of their hours of participation. Such an approach requires states to move recipients toward work, but recognizes that some recipients need more time in activities designed to help them overcome barriers to employment if they are to succeed ultimately in the labor market.

Education and Training

Under the “Parents-as-Scholars” option provided for in the Senate bill, states could count participation in postsecondary education and vocational training toward the work participation rates for up to 10 percent of adult recipients. (Parents-as-Scholars programs would have to meet some additional requirements as well, such as hourly standards for educational activities and work activities.) This new option would help states that want to expand access to education and training for TANF recipients to help them secure better-paying jobs and achieve long-term self-sufficiency.

Senator Carl Levin (D-MI) filed an amendment that would allow states more generally to count up to 24 months of vocational educational training toward the work participation requirements. This amendment would increase the number of adult recipients who could participate in such activities as compared to the current Senate bill and would ensure that states that do not want to implement a Parents-as-Scholars program have a mechanism for providing increased access to vocational education.

Universal Engagement

Finally, the bill includes a “universal engagement” provision that would require states to assess the skills, work experience, education, and barriers to employment of adult TANF recipients and to develop self-sufficiency plans for each TANF family. This provision is similar to the House’s universal engagement requirement and has bipartisan support. The Senate includes some modest improvements over the House language, including a requirement that states review a family’s self-sufficiency plan prior to imposing a sanction for non-compliance.

Senate Bill Does Not Include House “Superwaiver” Provision

The Senate Finance bill does not include the House bill’s ill-conceived superwaiver provision. The House bill would allow sweeping waivers affecting more than a dozen low-income programs.⁹ The House superwaiver would allow programs to be altered so substantially that states and the Executive Branch could effectively override Congressional decisions about the level of federal resources devoted to specific programs and purposes. Moreover, if states use superwaivers to shift federal resources into an area previously funded with state resources, states

⁹ For more information on the House superwaiver, see Shawn Fremstad and Sharon Parrott, “Superwaiver Provision in House TANF Reauthorization Bill Could Significantly Weaken Food Stamps, Public Housing, and Other Low-Income Programs,” Center on Budget and Policy Priorities, March 2004 and Shawn Fremstad and Sharon Parrott, “Is the Superwaiver the Only Way? Other Less Risky Approaches Would More Effectively Promote the Coordination of Low-Income Programs,” Center on Budget and Policy Priorities, March 2004.

could withdraw state funds and reduce overall funding for low-income programs. Such a scheme would mean that federal funds directed by Congress to assist low-income people could effectively be used by states to bolster their general treasuries. Over time, the superwaiver could erode political support for low-income programs, particularly if members of Congress come to believe that it effectively cuts them out of decisions about how federal funds actually get used by states.

While the Senate bill includes a provision with much of the same language as the House provision establishing the superwaiver, it would limit waiver authority under the provision to three programs — TANF, CCDF, and SSBG — and to 10 states. Given these limitations, the Senate provision raises few of the concerns of the House provision. One of the remaining problems with the Senate provision is that would allow states to waive certain important protections for low-income families, such as the requirement that state child care programs provide families with meaningful choices of child care providers.

Bill Provides No New State Flexibility to Serve Immigrants in Key Low-Income Programs

The bill would continue the current-law ban on providing Medicaid, SCHIP, and TANF benefits to most legal immigrants who have lived in the United States for less than five years. The current ban in TANF applies not only to cash assistance but also to services, including English-as-Second-Language classes and job training.

Both the Senate Finance Committee and the full Senate have voted on a bipartisan basis on previous occasions to limit the applicability of this “five-year bar.” The TANF bill passed by the Finance Committee on a bipartisan basis in 2002 would have given states the option to lift the five-year bar in TANF, and, for pregnant women and children, in Medicaid and SCHIP. And, as part of the Medicare prescription drug legislation passed earlier this year, the Senate included a provision that would lift the five-year bar in SCHIP and Medicaid for pregnant women and children for fiscal years 2004 to 2007. An attempt to strip this provision from the bill on the Senate floor was defeated on a 65-33 vote, although the provision was not included in the final version of the prescription drug bill.

Most children of low-income immigrants live in working, married two-parent families. These children and their families are no more immune to crises such as unemployment and economic insecurity than are families headed by U.S. citizens. In recognition of this fact, many states have used state funds to provide TANF and health care benefits to legal immigrants who are subject to the five-year bar, and both the National Governors Association and the National Conference of State Legislators have called for lifting the bar. Giving states the option to provide TANF and Medicaid benefits to legal immigrants would sensibly allow them to extend the same safety net protections and work supports to these families that they provide to citizens.

The Senate bill also does not address a recently identified problem related to refugees’ and other humanitarian immigrants’ eligibility for the SSI program. Many elderly and disabled refugees, asylees, and Cubans and Haitians with refugee-like status — all of whom have fled

persecution, often including violence and torture, in their home countries — are subject to a provision in the 1996 welfare law that limits their eligibility for Supplemental Security Income (SSI) to their first seven years in the United States unless they are able to become naturalized citizens.

Refugees and other humanitarian immigrants can continue to receive SSI after the seven-year point if they are able to become naturalized citizens, but many immigrants are unable to naturalize within this time frame, in part because of government delays in the processing of naturalization applications.¹⁰ According to recent estimates by the Social Security Administration (SSA), more than 2,000 elderly and disabled refugees have already had their SSI benefits terminated because of the limit and several thousand more will likely lose SSI eligibility this year.

SSI benefits constitute the sole source of income for most of these individuals, who are generally unable to work and rarely eligible for Social Security or other retirement benefits. Bipartisan legislation introduced in the House (H.R. 4035) by Representatives Benjamin Cardin (D-MD) and Amo Houghton (R-NY) would provide refugees with an additional two years of SSI eligibility. The Cardin-Houghton bill is modeled on a similar proposal in the President's 2004 budget which provided one year of additional eligibility.

Bill Includes Significant Funding For Narrow, Untested Marriage Promotion Programs

The Senate bill follows the approach taken in the House bill and devotes a substantial amount of federal TANF funds to a narrow set of rigidly defined “marriage promotion” activities. Like the House bill, the Senate bill would earmark up to \$1.5 billion in federal TANF funds over five years for these activities. This includes \$500 million over five years provided to the Secretary of Health and Human Services for research, demonstration projects, and technical assistance, and up to \$1 billion in federal funds over five years for competitive grants for similar programs and activities. (Sen. Rick Santorum (R-PA) has filed an amendment to the bill to *increase* the marriage-related funding by \$40 million per year for the next four years.)

Committing such a substantial amount of federal funding is unwarranted. Little is known about the potential effectiveness of government-funded marriage programs, particularly the very narrow set of programs the bill would authorize. Furthermore, a substantial share of the earmarked funds come from redirecting TANF funds that states currently can use for a wide range of programs, including child care and welfare-to-work programs. Absent research showing that government-funded marriage promotion programs are more effective than the uses to which these funds are now being put, such a large amount of federal funds should not be dedicated to such a narrow range of marriage promotion programs.

Earmarked federal funding for marriage promotion is not necessary to ensure that marriage-related research and demonstrations are conducted. HHS has been able to commit

¹⁰ See Shawn Fremstad, “Thousands of Refugees who are Elderly or Disabled Could Lose SSI in Coming Months,” Center on Budget and Policy Priorities, November 2003.

considerable funding to marriage promotion-related research and demonstration projects— more than \$90 million over the past three years — without earmarking TANF funds for these uses.¹¹

If such a high funding level is maintained in the bill, at a minimum, the Senate should allow for greater flexibility in the use of the funds, including the flexibility to fund programs that improve the odds of healthy marriages by reducing nonmarital pregnancies and domestic violence. In addition, some of the funds should be used for the fatherhood program that the Finance bill authorizes, but leaves unfunded. These programs would help married and unmarried fathers improve their parenting skills and their ability to provide financially for their children. Even if marriage-promotion programs succeed in dramatically reducing the number of children living in single-parent families, the remaining children in single-parent families would benefit immensely by programs that increase the extent to which their fathers are involved in their lives.¹²

Bill Contains Some Important Improvements to Current Law

In addition to the improvements on the House-passed bill described above, the Senate bill contains three significant improvements to the current federal provisions related to child support distribution, Transitional Medical Assistance (TMA) and the TANF contingency fund.

Child Support Distribution Rules and Responsible Fatherhood

Under existing child support “distribution” rules — the extremely complex set of rules that determine whether the government or the family keeps child support collected when a family receives or used to receive TANF assistance — the government keeps a substantial portion of the child support paid by noncustodial parents that would otherwise go to low-income children. Reforming these child support rules to make it easier for states to pay more child support to families and to simplify child support distribution is broadly supported by states, policy analysts, and advocates for low-income families.

While the House bill makes positive changes in this area, the Senate bill would do more than the House bill to help states finance and implement changes that would ensure that families that have left welfare are paid *all* of the child support collected on their behalf. The Senate bill also goes farther than the House bill in allowing states to provide child support to families receiving TANF benefits and, more generally, to simplify their distribution rules.

The Senate bill also improves on the House bill by not including the House provision that would impose a new \$25 annual fee on low-income families that receive child support services

¹¹ Theodora Ooms, Stacey Bouchet, and Mary Parke, *Beyond Marriage Licenses: Efforts to Strengthen Marriage and Two-Parent Families. A State-by-State Snapshot*, Center for Law and Social Policy, April 2004.

¹² A recent HHS-funded review of existing marriage-related research concludes that “policy makers need to be prepared for relatively small increases in the number of couples who marry as a result of [marriage-promotion] program participation.” Kristin Seefeldt and Pamela Smock, “Marriage on the Public Policy Agenda: What do Policy Makers Need to Know from Research?” National Poverty Center Working Paper #04-2, February 2004.

but have not received welfare. The fee in the House bill would apply regardless of other fees and charges related to child support enforcement that a low-income parent may be required to pay. Such a fee would impose an additional burden on low-income working families who are struggling to make ends meet and treat families who avoided welfare less favorably than similar families who used to receive assistance. Although it might appear to raise revenue for the state child support systems which would share in the fees collected, the House fee provision is opposed by the national association that represents state child support directors and other child support enforcement professionals for these reasons and also because the amount it would cost states to implement and administer would likely exceed any revenue gains they would realize.¹³

The Senate bill authorizes, but leaves *unfunded*, a “Responsible Fatherhood Program.” The House bill also authorizes such a program. The Senate version improves on the House version by targeting low-income men and providing grantees with greater flexibility to use funds to improve the economic stability of low-income men.

Transitional Medical Assistance

Transitional Medical Assistance (TMA) provides temporary Medicaid coverage to families moving from welfare to work. Under TMA, families whose earnings would otherwise make them ineligible for Medicaid — many of whom are also leaving welfare — can receive up to 12 months of Medicaid coverage. Thus, TMA provides an important transitional support to families moving from welfare to work who generally have low-paying jobs that do not provide health insurance.

Under current law, the TMA program is scheduled to expire at the end of 2002. The Senate bill extends TMA for an additional five years, through fiscal year 2008, an improvement over the House bill which only extends TMA through fiscal year 2004.

The Senate bill also includes several important TMA changes which, despite bipartisan support, are not included in the House bill. These changes would give states the option to reduce paperwork requirements that place administrative burdens on both states and families, to extend TMA coverage to certain families that quickly move from welfare to employment that currently are ineligible due to some technical eligibility requirements, and to extend the period of time families can receive TMA coverage from the current 12-month limit to 24 months. Most of these provisions were included in the President’s budget.

TANF Contingency Fund

The Senate bill includes a revamped TANF “contingency fund” that would provide significantly more help to states during economic downturns than the current-law contingency fund. The contingency fund included in the 1996 welfare law was intended to help states meet costs associated with increases in TANF caseloads during recessions. Unfortunately, the design of the original contingency fund was deeply flawed and of no use to states during the recent

¹³ “Resolution on \$25 Annual Fee,” adopted by National Child Support Enforcement Association on June 17, 2002, www.ncsea.org/pdf/Resolution-AnnualFee.pdf.

economic downturn. Despite an increase in the national unemployment rate of more than 2 percentage points between October 2000 and August 2003 and significant caseload increases in some states, *no state received contingency funding during this downturn.*

The bill extends the TANF contingency fund for an additional five years and includes modifications to the fund that would provide states with needed resources during economic downturns. The House bill, by contrast, extends the current contingency but makes such minor modifications to the existing fund that it likely would continue to provide virtually no help to states during recessions.

Under the Senate bill, states that faced economic hard times as evidenced by rising unemployment rates or food stamp caseloads (which typically are a good indicator of job availability in the low-wage labor market), would receive funding to offset a portion of the costs associated with rising TANF caseloads. If the weak economy was not leading to increased numbers of families needing TANF assistance, no contingency funding would be provided. While contingency funds would offset only a portion of the costs of caseload increases, states would not be required to provide state funds to match the federal funds — securing such state funds during a recession when state revenues decline can be very difficult.

Conclusion

In nearly all respects, the Senate bill is an improvement on the controversial and misguided House-passed bill. Despite these improvements, the Senate bill still raises a number of issues and concerns. The full Senate will have the opportunity to address many of these concerns if it returns to its consideration of the bill.