

KEY ISSUES IN THE HOUSE TANF REAUTHORIZATION BILL

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Overview

During the first week of May, the House Ways and Means Committee and the House Education and the Workforce Committee approved companion TANF reauthorization legislation. These two bills have been combined into a single piece of legislation that was passed by the House on May 16, 2002. The House-passed bill (H.R. 4737) raises a number of issues and concerns, including the following:

- *New work participation requirements would reduce state flexibility to design effective welfare-to-work programs.* Under the bill, states would be required to place a substantially higher proportion of cash assistance recipients in work activities. In addition, the bill would increase significantly the number of hours parents would have to participate in such activities to count toward those participation rates. Under the House bill, parents would have to participate in activities for 40 hours each week to count fully toward the state fulfilling its work participation requirements. Moreover, the bill would require parents (with very limited exceptions) to participate in a very narrow set of activities — far narrower than those allowed under current law — for at least 24 hours each week. This narrow set of activities does not include various types of activities states are increasingly interested in making use of to help some parents move from welfare to work. For

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example, activities that help parents with a physical, mental, or learning disability overcome that disability and move toward employment or targeted, intensive training programs that can help recipients find stable jobs that pay more adequate wages generally would *not* count toward the participation rate.

- *Despite imposing costly new work mandates on states, the bill would freeze TANF funding at its current level and provide only a modest increase in child care funding. The increase in child care funding would be insufficient to maintain the current purchasing power of the mandatory child care block grant even before taking the increased child care costs of the new work mandates into account.* Over the next five years, the purchasing power of the TANF block grant would erode steadily with inflation at the same time that states would be required to meet escalating and costly work requirements. The bill adds only \$1 billion in mandatory child care funding (the bill also increases the discretionary child care authorization level, but there is no assurance that these additional funds would be appropriated). CBO estimates that more than \$1.36 billion is needed over the next five years in order to maintain the purchasing power of the mandatory child care block grant if the TANF work requirements are not changed. Thus, the bill provides no additional “real” child care resources with which to meet the increased work requirements or address the substantial unmet need for child care assistance. The Congressional Budget Office estimates that if states are required to enforce the 40-hour requirement under the House bill, the cost to states of meeting the work requirements would total *up to \$11 billion* over the next five years. This includes \$6 billion in TANF-related work program costs and \$5 billion in increased child care costs for work program participants.
- *States would be required to terminate all assistance to a family (including the children) if a parent failed to meet program expectations for just two months.* In a notable departure from the Administration’s welfare plan, the House bill would mandate states to impose so-called “full-family” sanctions if an adult TANF recipient failed to meet program requirements for two months. Under current law, states have considerable flexibility in designing their sanction policies. While 36 states have adopted full-family sanctions, a substantial number of states have chosen not to terminate all benefits to children when an adult fails to meet program requirements. Moreover, 13 states that impose full-family sanctions under some circumstances impose a lesser penalty first and only terminate assistance to families after noncompliance has lasted for an extended period of time or has occurred several times.

Mandating increased use of full-family sanctions is troubling. Such a policy ignores the substantial research showing that such sanctions disproportionately fall on families with serious “barriers to employment” that impede a parent’s ability to comply with requirements. Such recipients often are willing to comply with program requirements but have not been given the help to do so. In addition,

a growing body of cautionary research suggests that sanctions may increase children's risk for food insecurity — a commonly used measure of hunger risk — and involvement in the child welfare system.

- *Significant TANF resources would be devoted to narrow marriage-promotion activities.* The bill earmarks up to \$1 billion in federal funds over five years for competitive grants to states for a narrow set of marriage-promotion and education activities. These resources could *not* be used for broader programs to strengthen families such as teen pregnancy prevention efforts or programs to help noncustodial parents meet their parenting and financial obligations, despite interest among policy experts and states in testing new initiatives in these areas. An additional \$500 million in federal funds over five years is provided to the Secretary of Health and Human Services for research, demonstration projects, and technical assistance; these funds must be used primarily for marriage promotion activities. The total amount of funding the House bill earmarks for marriage promotion is excessive given how little is known about the potential effectiveness of marriage promotion programs. Furthermore, a substantial share of the funding for these marriage-promotion projects comes from redirecting TANF funds that states can currently use for a wide range of proven programs, including child care and welfare-to-work programs.
- *The bill would make modest, though important, improvements in the child support enforcement system.* These improvements would help states defray the cost of ensuring that more of the child support paid by noncustodial parents is received by their children, rather than being retained by the federal and state governments to offset welfare costs. Although helpful, these improvements are far more modest than a child support bill sponsored by Representatives Nancy Johnson (R-CT) and Ben Cardin (D-MD) that passed the House of Representatives at the end of 2000 with overwhelming bipartisan support. (The bill received more than 400 votes.)
- *The bill does not grant states the flexibility to provide TANF-funded services or benefits to many legal immigrants.* The bill would continue the current-law ban on providing such benefits to legal immigrants who entered the country within the last five years. Even if states want to use federal TANF funds to help such immigrants find jobs or learn English, they are barred from doing so. An Associated Press story on May 3rd suggested that the Administration may support — or at least not oppose — allowing states the option of providing TANF-funded benefits and services to legal immigrants now barred from TANF-funded programs. Tommy Thompson, Secretary of Health and Human Services, was quoted as saying, “If states want to do it, they should have the opportunity....We're not pushing it, but if it passes, it's going to be included.”
- *The bill also includes a troubling “super-waiver” provision that would give the Executive Branch broad authority to waive federal laws and rules.* Executive

Branch officials could waive federal law and rules that apply to several low-income programs, including: the Food Stamp Program, public housing and homeless assistance programs, the Child Care and Development Block Grant, the Social Services Block Grant, most workforce investment and job training programs funded under the Workforce Investment Act, the Employment Service, adult education programs, and TANF. Executive Branch officials would have virtually unfettered authority to approve waivers that effectively rewrite federal laws and alter the fundamental nature of affected programs. The Executive Branch could approve waivers that allow states to use federal funds in ways not authorized by Congress and negate provisions of federal law that target program funds to particular needy populations.

The effect of language that was added shortly before final House passage of the bill to address concerns raised about the superwaiver by members of the House Appropriations Committee is much more limited than some Members of Congress and journalists appear to have thought. This language — which would prohibit waivers of “funding restrictions” — would do little to limit the extent to which the authorization statutes governing low-income programs could be overridden. Furthermore, new restrictions on shifting funds from one federal budget account to another would *not* prohibit Executive Branch officials from granting state requests to shift federal funds to other uses; superwaivers could be used to accomplish such shifts since the Executive Branch could allow funds in a given program to be used in ways not authorized under federal law, without formally transferring the funds to a different budget account.

- *Five states would be allowed to block grant the food stamp program with virtually no limits on how states could structure the program under the block grant.* Five states could elect to receive a block grant. The block grant funding level would remain fixed for five years, during which time it would decline in value as a result of inflation. As a result, the program would lose its ability to expand (or contract) in response to recession or changes in need. Fixed funding would make it harder for states to increase participation among the working poor and implement provisions recently enacted in the Farm Bill that would allow states to restore food stamp benefits to certain legal immigrants. In addition, without any requirement that the program be evaluated or the impact on beneficiaries be measured, states would be able to shift funds away from food assistance to other activities and reduce or eliminate benefits to any group.

The Work Provisions in the House Bill

The House bill includes a far-reaching set of changes to the work provisions in the TANF law. The most significant changes are to TANF’s work participation rate structure, under which states must place a certain percentage of families in federally-authorized work activities or face

Claims that Few Parents are Participating in Work Activities are Based on Inaccurate and Incomplete Data

The Bush Administration and some Congressional leaders have frequently cited federal data that appears to show that 58 percent of adult TANF cash assistance recipients are not engaged in work activities. There are at least two ways in which this figure is misleading as a measurement of the success states have had in engaging families in welfare-to-work programs:

- *The statistic substantially understates the number of TANF recipients who are participating in welfare-to-work programs.* States are required to report to the federal government only the number of adults who are engaged in a limited set of work activities that count toward the federal rate. Many states assign recipients to participate in other state-defined welfare-to-work activities that do not count toward the federal rate — such as substance abuse treatment, certain job readiness programs, literacy programs, domestic violence services, and other activities designed to help families overcome barriers and prepare for employment — but do not report participation in these activities to the federal government. Thus, the percentage of states' caseloads that are participating in both federally countable and state-defined welfare-to-work activities is substantially higher than 42 percent. In fact, the recent survey of state TANF programs conducted by NGA and APHSA found that an average of *61 percent* of adult TANF recipients were engaged in work-related activities each month in the 37 states that responded to this section of the survey.
- *The 58 percent figure does not exclude those adults who are not engaged in work activities — often temporarily — for legitimate reasons.* Some recipients are not engaged in such activities in a particular month for legitimate reasons such as caring for an infant, having a disability that limits participation in work activities, and caring for a child with severe health problems. Federal participation statistics do not measure the proportion of recipients the state determines are unable to participate in a particular month due to such circumstances. The work participation figures also do not exclude those recipients who are in the process of being assigned to welfare-to-work programs, but whose program session has not yet begun, or those who are between work assignments.

For more information, see Sharon Parrott, *Are States Requiring TANF Recipients to Participate in Welfare-to-work Activities? Frequently Cited Statistic Is Incomplete and Misleading*, Center on Budget and Policy Priorities, April 25, 2002, <http://www.centeronbudget.org/4-25-02tanf.htm>.

fiscal penalties. The proposed legislation makes the following changes to the participation rate structure.

- States would have to place 70 percent of TANF families in specified work activities by fiscal year 2007, up from 50 percent in the current fiscal year.

- The current caseload reduction credit — which reduces state participation rates by 1 percentage point for each 1 percentage point reduction in caseloads since 1995 — would be redesigned. Under the proposed formula, states would only see their work participation rate reduced if their TANF caseload fell during the previous three years. (See box on page 7.) A set of 17 states would receive a further reduction in their work participation rates based on having exceptionally large caseload declines between 1995 and 2001.²
- To count fully toward the work participation rate, families with children age one or older would have to participate in work activities for 40 hours a week. This change would double the number of hours required for parents with children under age six. It would increase by 10 hours a week the number of hours required for other families.
- In addition to the 40-hour requirement, a second requirement would mandate that parents must spend at least 24 of these hours each week in a narrow set of “direct work activities” — *paid work* including unsubsidized and subsidized employment, and on-the-job training, and *unpaid work* such as workfare in which parents “work off” their welfare benefits. States would be able to count families placed in substance abuse, rehabilitation activities, work-related training, and job search or job readiness assistance for no more than one three-month period in any 24 month period, with limited one-month extensions available for individuals within one month of completing a training program.³

Instead of addressing remaining welfare reform challenges by building on current state strategies to help families overcome barriers to employment and find better jobs, the legislation would curtail state flexibility and effectively require all states to adopt a federally prescribed welfare-to-work program structure. Most states would be forced to restructure their current programs substantially; they would have to abandon many of the successful strategies they currently use to help parents prepare for, find, and retain employment in favor of more costly programs for which there is no evidence of greater effectiveness. Such a change might be warranted if states had clearly failed to implement effective welfare-to-work programs over the past few years, or if there were research evidence showing that the proposed approach was more effective at addressing current welfare reform challenges than existing state approaches. There is, however, no evidence to support either of these conclusions; indeed, there is evidence to suggest that the proposed approach could be *less* effective than other state-based approaches.

The Proposed Participation Rate Structure Would Limit State Flexibility

Under the proposed legislation, states would be required to place a substantially increased proportion of their caseloads in a very narrow set of work activities or be subject to fiscal penalties. Two activities, job search and vocational education, that currently count toward state’s work participation rate would *not* count at all toward the 24-hour requirement. Recipients who do not already have an unsubsidized job could be counted toward a state’s work participation rate

Caseload Reduction Credit in House Bill Rewards Continued Caseload Decline Instead of Job Placement

The reformulated caseload reduction credit could give states little help toward meeting the work participation requirements. Under the House bill, states would only get credit toward their work participation rates if their overall caseloads fell over the previous three-year period. While no one can predict caseload levels with certainty, the rapid caseload decline that occurred in the mid-1990s appeared to be leveling off even before the recession and in 2001, some 34 states saw their caseloads increase. Because the caseload reduction is based on current caseload trends, the magnitude of a state's credit would depend in large part on the business cycle, over which states have no control.

It should be noted that when a state's cash assistance caseload remains steady, this does *not* mean that families are not moving from welfare to work. It simply means that the number of families who have fallen on hard times and need help, at least temporarily, is about the same as the number of recipients who leave welfare, often because they have found jobs.

The House bill would reduce the effective work participation rate a state would have to meet if the state had seen its TANF cash assistance caseload decline by at least 60 percent between 1995 and 2001. Some 17 states would qualify for this additional credit. Under the bill, the super-achiever credit would be available regardless of the extent to which the caseload declines were attributable to state efforts to help parents find jobs rather than state efforts simply to reduce the caseload.

This is one area where the House bill differs from the Administration's proposal. The Administration's proposal did not include either a caseload reduction credit or a super-achiever credit. Instead, under the Administration's proposal, states would get credit toward their work participation rates when a family leaves welfare for work, as a way of rewarding that effort.

only if they worked in a subsidized job or participated in work experience (i.e., workfare), supervised community service, or on-the-job training programs for 24 hours each week. Families would have to be placed in one of these activities even if the state did not believe this would be the best approach to helping those families succeed in the labor market.

Some may argue that because the work participation rates remain below 100 percent, states will continue to have broad flexibility to structure different activities for a significant share of their TANF recipients. This is incorrect. To achieve a participation rate in the 60 to 70 percent range, states will need to impose the federally-mandated work requirements on nearly 100 percent of families. This is the case for two reasons. First, some parents will not be able to meet the hourly requirements for a particular week because of personal or family circumstances, including illness or having to care for a sick child.⁴ Second, even in well-run programs, a significant number of recipients are not in activities during a month because they are waiting for a program to begin a new session, are between work activities or assignments, or cannot begin a work activity until child care is in place.⁵

The proposed legislation would allow states to count families placed in substance abuse, rehabilitative activities, work-related education or training, job search and job readiness activities, and other state-defined activities only for three months in any 24-month period. (This could be extended by a single month only if the recipient were within one month of completing an education or training program.) It also would allow states to define what counts toward work for the final 16 hours of the 40-hour work requirement. As a practical matter, however, these provisions provide almost no new flexibility for states.

Under current law, states have considerable flexibility to place participants in the types of activities the proposed legislation would limit to three out of every 24 months, even though some of these activities currently do not count toward the work participation rates. States generally have achieved work participation rates that are substantially higher than they are required to meet. This is due in large part to the caseload reduction credit in current law, which has lowered the work participation rates that states must meet. As a result, states have been able to place recipients in activities that do not count toward the rate without having to be concerned that they would fail to meet the requirements. By increasing the overall rates and modifying the caseload reduction credit in a manner that would likely limit the extent to which it reduces states' effective rates over time (see discussion in box on page 7), the proposed legislation would eliminate this flexibility that currently exists.

Similarly, allowing states to define work activities that count toward the final 16 hours of a 40-hour requirement is not an enhancement to the flexibility states have under the current work participation requirements. For families with children age one to six, the federally-mandated work requirement is now 20 hours, rather than 40. States already are free to require (and many states do require) parents in these families to participate for additional hours each week in many types of state-approved activities. Since the proposed legislation would require an additional 20 hours of work for these families, it can only be characterized as substantially limiting state flexibility with respect to these families, regardless of whether states are able to define allowable work activities for 16 of the new hours.

For families with school-age children that are currently subject to a 30-hour per week requirement, the proposed legislation would allow states to count a broader range of activities toward hours 25 through 30 of the work requirement than is currently allowed. This is a very limited enhancement of flexibility, however, given that the plan would narrow substantially what counts toward the first 24 hours of the work requirement. In addition to prohibiting vocational education, job readiness, and job search from counting toward the first 24 hours, the plan would prohibit other educational activities and job skills training — which currently can count for 10 of the required 30 hours — from counting at all until the rigid requirement for 24 hours a week of participation in direct work activities is satisfied.

Moreover, states will likely have to place families in the narrower set of paid and unpaid work activities for *more than* 24 hours. This is because a state gets *no* credit for a parent participating in the work activities prescribed by the proposed legislation for 23 hours or less, even if the parent is in other activities for 16 or more hours. To avoid the potential risk of getting

no credit for a family — a considerable risk due to occasional problems with illness, child care breakdowns, or transportation emergencies — states are likely to schedule participants in the narrower set of activities for significantly more than 24 hours each week making it difficult for recipients to participate in other types of activities.

Finally, many states — particularly those with low cash benefit levels — will have difficulty meeting the work requirements while complying with the federal legal requirement that recipients not be required to work at an effective wage below the minimum wage. Some TANF recipients receive only partial benefits because they have other forms of income (such as Social Security benefits) while many families in low benefit states receive cash assistance benefits that are below \$200 per month. The House bill makes *no* exception to the requirement that families participate in paid or unpaid work for 24 hours per week each month for families in which such a requirement would mean that they were working at below the minimum wage.⁶

A provision was added to the House bill that makes the 24-hour direct work requirement "subject to such regulations as the Secretary may prescribe." Some proponents of the House bill have argued that the Secretary could adopt regulations that would allow states with low benefit levels to count recipients toward the work rates if they are participating in less than 24 hours of workfare a week because of minimum wage requirements. This may have been the intent of the drafters of this provision, but the current language is flawed and would not provide the Secretary with authority to adopt such regulations. Any regulations adopted by the Secretary would need to conform with federal law, and the House bill amends federal law to provide that a state can only get credit toward the work requirement for participants who are engaged in direct work activities for 24 hours or more a week. More specific language would be needed to give the Secretary authority to adopt regulations that are not consistent with federal law. A preferable approach to addressing this issue would involve specifying in the TANF law that a participant is deemed to have met the 24-work rate if they are engaged in work for less than 24 hours because of minimum wage requirements.

*States Would be Forced to Abandon Successful Approaches
Shown Effective Through Two Decades of Research*

Under the proposal, all states would face sharply increased work participation rate requirements that would require them to focus on meeting these requirements to avoid fiscal penalties. Families that are not able to find unsubsidized employment would have to be placed in subsidized work, work experience, supervised community service, or on-the-job training. Only a few states and localities operate welfare-to-work programs that place a substantial number of parents in these activities and only about 7 percent of TANF recipients nationally participate in one of these narrow activities.⁷ As a consequence, most states would have to reconstruct their work programs, jettisoning current employment initiatives that have been successful in many areas in favor of the narrow set of activities that would meet the new prescriptive federal requirements.⁸

Instead of large-scale subsidized work or work experience programs, most states now operate welfare-to-work programs that are focused on placing participants in unsubsidized private-sector employment. These programs generally require participants to conduct an intensive job search, often in conjunction with “soft-skills” training (for example, training in appropriate work-place behaviors and time management) and other job readiness activities. A growing number of states are modifying their programs to combine an overall work emphasis with opportunities for training and targeted vocational education. While workfare is often a component in these types of programs, it is typically used on a case-by-case basis, rather than as a one-size-fits-all activity for every participant who does not immediately find unsubsidized employment.

The approaches adopted by states draw on two decades of research on welfare-to-work programs. The clearest finding from this extensive body of research is that providing a *range* of employment and training services is the most effective welfare-to-work strategy, rather than the one-size-fits-all model that the Administration proposes. The single most effective program in the recently completed 11-program National Evaluation of Welfare-to-Work Strategies (NEWWS) — a program that operated in Portland, Oregon in the mid-1990s — did not have a large-scale workfare component. Instead, the Portland program emphasized moving participants quickly into private sector jobs, while allowing for varied initial activities and establishing performance standards that encouraged case managers to help participants find jobs that paid above the minimum wage and offered better long-term career opportunities.⁹ Participants were more likely to find better-paying jobs that were full-time and provided employer-based health insurance than welfare participants in a control group.

There is some evidence to suggest that the model mandated by the proposed legislation could be *less* effective than other state approaches. Washington State’s recent decision to discontinue its workfare program is instructive on this point. The state’s decision was based in part on results from a recent evaluation of the state’s TANF program, which found that workfare had no positive impact on participant earnings, while other activities — including short-term occupation-specific training, jobs skills training for employed recipients, and a paid transitional jobs program — all had positive impacts on earnings.¹⁰ The short-term occupation-specific training programs had the strongest earnings impacts, increasing quarterly earnings by \$864. (The workfare program did appear to increase employment rates somewhat but other activities, including job skills training, had greater employment impacts.)

Of the programs evaluated in Washington State, only the workfare program and the paid transitional jobs program would appear to count toward the first 24 hours of the proposed work rates.¹¹ Since the paid transitional jobs program is too expensive to operate on the large scale that would be required to meet the proposed rates, Washington State would have little choice but to resurrect a work experience program that it had previously discontinued because of poor results.

The model that would be dictated by the proposed legislation also runs counter to the growing state interest in tailoring work activities more closely to the needs of individual parents rather than being limited to a narrow set of work activities countable toward the work

Survey of States Finds that Most Would Have to Make Fundamental and Costly Changes to Meet the Proposed Work Requirements

The National Governors Association (NGA) and the American Public Human Services Association (APHSA) surveyed Governors and state TANF administrators in April to assess the impact of proposed work requirement changes in the Administration's TANF plan. (The work requirements in the House bill are based almost entirely on the Administration's proposal.) Forty-eight states (including the District of Columbia and the Virgin Islands) responded to the survey, although responding states did not necessarily answer all 20 questions in the survey. Four states (Florida, Mississippi, Pennsylvania, and Wisconsin) did not respond to the survey. States generally agreed that the Administration plan would require fundamental changes to their TANF work programs and increase program costs.

- States were asked if the proposal would require them to shift their current approach to working with TANF families. Of the 47 states responding to this question, 41 stated that the proposal would cause them to make *fundamental changes* to current welfare strategies and/or redirect resources away from current efforts, particularly work supports for non-welfare families, in order to fund new mandates. Four states said some changes would be required and only 2 states indicated that no changes would be necessary.
- States were asked whether the three-month time frame in the Administration plan for barrier-removal activities was adequate. Most states (34 out of 42 states responding to the question) were concerned that three months was not enough time to address barriers to employment effectively. Among the concerns cited: most vocational education programs run longer than three months and the three-month limitation does not take into consideration substance-abuse relapse issues or the typical stop-start nature of treatment into account.
- Most states reported that they currently operate work experience programs on a limited basis because of high costs and the challenges of finding appropriate work sites. Other states said that they have not used work experience extensively because they have found it less effective than other approaches in preparing recipients for private sector employment.

The results of the survey — *Welfare Reform Reauthorization: State Impact of Proposed Changes in Work Requirements April 2002 Survey Results* — are posted on the website of the American Public Human Services Association at <http://www.aphsa.org/reauthor/ngaaphsasurvey.asp>.

participation requirements. Many states want to move their work programs in this direction in part because of the substantial evidence that now exists about the extent of barriers to employment among the remaining TANF caseload and in part out of a concern that the jobs many TANF recipients get are unstable and pay low wages.

A recent study by the Urban Institute shows that states have expanded the kinds of services they provide in their welfare-to-work programs. The Urban Institute studied the welfare-to-work programs in 17 sites (in 13 states) in 1997 — as states were just beginning to implement their TANF programs — and again in 2000. The researchers found that in 1997, 11

out of 17 sites operated pure “work first” programs that did not include education and training or barrier-removal components. By 2000, however, only five states operated such programs. Fully 12 out of the 17 programs studied augmented traditional “work first” activities — such as job search, job readiness, and unpaid work — with education and training and/or activities to help parents overcome barriers to employment.¹²

By narrowing what counts toward meeting work requirements and diverting funding to that very limited set of activities, the proposed legislation will make it more difficult for states to invest in services and strategies that address the significant challenges that remain — helping the harder-to-employ move from welfare to work and helping recipients with persistently low wages secure higher-paying jobs. In fact, in February the National Governors’ Association passed on a bipartisan basis a welfare reform policy that called on Congress to allow states to count a *broader* range of activities toward the work participation requirements.¹³

House Bill Would Require States to Terminate All Assistance to Families When a Parent Does Not Meet Program Expectations

The relevant subcommittees of the House Ways and Means and Education and the Workforce Committees added a troubling provision related to state policies for imposing “sanctions” or fiscal penalties on families that do not meet a program requirement to the original versions of TANF reauthorization legislation introduced by the chairmen of these subcommittees. Amendments were passed on party-line votes that would *require* states to terminate *all* assistance to a family — including benefits for children — if an adult recipient does not meet work requirements for as little as two months. This provision was included in the House-passed bill.¹⁴ The Administration proposal did not include such a provision and, thus, would have allowed states to continue their current sanction policies.

Under current law, states have used the flexibility afforded them in the TANF structure to adopt a range of sanction policies. While most states — some 36 — impose full-family sanctions under some circumstances, a substantial number of states have chosen not to terminate all benefits to the children when an adult fails to meet program requirements. Moreover, 13 states that apply full-family sanctions first impose a *lesser* penalty and only terminate all assistance to families after the noncompliance has lasted for an *extended period* of time or has occurred several times. Imposing a lesser penalty initially allows a parent an opportunity either to come into compliance with program rules or discuss with her caseworker any problems that may be preventing her from complying with program rules prior to having her case closed entirely.

The sanction provision of the House bill is troubling for several reasons:

- *Mandating full-family sanctions ignores substantial evidence that many families that fail to comply with program rules have serious “barriers to employment” that impede their ability to comply.* In many cases, families with such barriers are

not willfully violating program rules, but rather have circumstances or conditions — such as substance abuse problems, mental or physical impairments, very limited literacy skills, or problems with domestic violence — that make participation in standard welfare-to-work programs difficult or impossible.¹⁵

For example, a study by the Manpower Demonstration Research Corporation (MDRC) of TANF recipients in four urban areas found that recipients with a larger number of health problems were more likely to be sanctioned than healthier recipients. One-third of the women with three or more health barriers, compared with about one-fourth of those who had no such barriers, reported having been sanctioned by the welfare agency. The health barriers most strongly associated with reports of being sanctioned were physical abuse, being at risk of depression and having a child with a health problem.¹⁶

Dan Bloom of MDRC and Don Winstead, then head of Florida’s welfare department and now a senior HHS official in the Bush Administration, reviewed the available research on sanction policy in a brief published by the Brookings Institution. In this review, the authors stated, “Sanctioned clients are a diverse group, but the studies have consistently found that, on average, sanctioned clients have lower levels of education and are more likely than other recipients to face barriers to employment such as physical and mental health problems.”¹⁷

- *The work provisions of the House bill provide substantial incentives to states to impose full-family sanctions.* By increasing the work participation rates states must meet, the legislation’s work provisions would provide an incentive to states to cut families off of assistance if they are unable to meet the prescriptive 40-hour work requirement in the bill. Faced with a family that is unable to meet this requirement because of barriers to employment, a state would have two options — continue to provide assistance and services to the family or terminate the family from the program. If a state opts to continue providing assistance to such a family, the family is a “drag” on the state’s work participation rate as the adult will not be countable toward the work rate. The sanction provision would send a still stronger signal that such families should be cut off, rather than trying to tailor services to help them overcome their barriers.
- *The provision would take away one of the tools states now use to communicate the importance of program requirements and encourage compliance — lesser penalties for initial instances of noncompliance.* Many states impose such lesser penalties initially so that parents who do not respond to what are often-confusing written notices about program requirements will contact the welfare office when their benefits have been reduced. (The HHS Office of Inspector General found that most sanction notices fail to explain the steps a family must take to come into compliance.¹⁸) At that point, the caseworker has an opportunity to explain the requirements to the recipient and determine whether barriers are impeding

participation. Data from Minnesota — a state that does not impose full-family sanctions — demonstrate that the vast majority of families subject to a partial sanction are no longer being sanctioned four months later either because they have come into compliance or because they no longer receive TANF benefits.¹⁹

- *The House provisions also ignore a growing body of cautionary research that suggests that sanctions have measurable negative effects on children.* Boston University researchers found, for example, that children in sanctioned families were at significantly higher risk for “food insecurity” — a commonly used measure of the risk of hunger — than children in families receiving full TANF assistance grants.²⁰ In addition, a recent study found that the use of full-family sanctions is associated with increases in TANF recipients’ involvement with the child welfare system.²¹
- *Because full-family sanctions can leave families without any income, their use should not be mandated without firm research evidence that documents that such sanctions improve the effectiveness of welfare-to-work efforts substantially and that the harm done to families is small.* In the Brookings Institution article on sanctions, Bloom and Winstead review the available research on the relative effectiveness of partial and full-family sanctions at eliciting compliance with program rules and improving the employment rates and earnings of recipients. The authors conclude that while it is important for states to monitor program compliance and sanction recipients who fail to participate, there is no available evidence to indicate that full-family sanctions are more effective than partial-family sanctions: “Unfortunately, there is very little direct evidence to inform this debate. Many welfare-to-work programs using partial sanctions have generated high rates of participation in employment activities — and substantial increases in employment and reductions in welfare use — but there have been very few comparable evaluations of programs using full-family sanctions . . . at this point there is not enough solid evidence to draw firm conclusions about the relative effectiveness of full-family and partial sanctions . . . states should have the flexibility to set the sanction policy that works best in their program.”²²

Sanction policy ultimately represents a balance of two important goals of basic income assistance programs — the goal of ensuring that adults participate in welfare-to-work programs and the goal of ensuring that families have the financial resources to meet their children’s basic needs. States have adopted varying approaches to these two goals, with less than half of all states opting to impose full-family sanctions immediately, as the House bill would require, and 14 states opting not to terminate all aid to children when a parent does not meet program expectations. Given that there is no compelling research to suggest that one approach is clearly superior — and a growing body of research to suggest that sanctions fall disproportionately on families with the greatest problems — there appears to be no justification for mandating that states increase their use of such sanctions.

The Child Support and Family Formation Provisions of the House Bill²³

The House bill makes several changes in the areas of child support and family formation.

- For current and former welfare recipients, states would be given a new option and new incentives to direct child support payments currently retained by states and the federal government to families. (Collections on behalf of current and former welfare recipients are often retained by the federal government and states as reimbursement for welfare costs.)
- The current “illegitimacy reduction bonus” would be replaced with a “Healthy Marriage Promotion” competitive matching grant program costing *\$1 billion* over five years. States would be able to use federal TANF funds to meet the state match requirement.
- An additional \$100 million annually — \$500 million over five years — would be diverted from the current “high performance bonus” for use by the Secretary to fund further marriage promotion research, demonstrations, and technical assistance.
- The fourth purpose of TANF would be changed from “encourag[ing] the formation and maintenance of two-parent families” to “encourag[ing] the formation and maintenance of healthy, 2-parent married families, and encourag[ing] responsible fatherhood.”²⁴ States would be required to establish annual, specific plans and numerical performance goals to improve outcomes with respect to this purpose, as well as the other three purposes of TANF.

Child Support Provisions are More Modest than Earlier House-Passed Legislation

There is strong evidence that noncustodial parents are more likely to pay child support if they know that the support goes to their children. Research has shown that when child support is passed through to families receiving welfare, the child support paid by noncustodial parents increases, welfare receipt declines, and children’s financial well-being improves.²⁵

The House bill includes two provisions that would help states to implement policies that increase the extent to which child support goes directly to children. The first provision would give states a new option to direct delinquent child support payments collected by intercepting noncustodial parents’ federal tax refund checks to these noncustodial parents’ children without regard to whether the *custodial* parent received welfare benefits in the past. The second provision would help states implement or enhance policies that direct a portion of child support payments collected from noncustodial parents of children who are *currently* receiving TANF to these children. Under current law, states and the federal government generally retain child support payments made by noncustodial parents of children receiving TANF. While states already have the flexibility to pass through child support to these children, if a state exercises this

House Bill Extends Transitional Medical Assistance for Only One Year

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. Because health care constitutes a key work support that, like child care, helps facilitate entry into the workforce, TMA is widely viewed as an essential part of welfare reform.

While there is significant bipartisan support for the TMA program, the House bill only extends the program through fiscal year 2003. Limiting TMA reauthorization to one year appears to be a budget gimmick designed to avoid showing the costs of operating TMA after 2003. Given that all parties expect TMA to continue well beyond 2003, a more reasonable and straightforward approach would be to extend TMA at least through 2007 — the same length of time that the House bill reauthorizes TANF for — or to reauthorize TMA permanently.

To finance the TMA extension, the House bill includes a temporary reduction in federal Medicaid matching payments to states for administrative costs. Many states experiencing severe budget shortfalls are already considering cuts in their Medicaid programs. This provision would further increase the fiscal pressure on states and make cuts in state Medicaid programs more likely.

In addition, the House bill does not include TMA changes included in bipartisan bills in the House (H.R. 2775) and Senate (S. 1269) that would allow states to simplify the program and make it easier to enroll and retain eligible families. For example, under current law, families are only eligible for TMA if they received Medicaid for three out of the prior six months. Some states have noted that this rule is inconsistent with welfare-to-work approaches that move recipients into the labor market as quickly as possible. The bipartisan TMA bills would give states an option to provide TMA to families that find jobs before they have received Medicaid for three months. Another TMA improvement included in the bipartisan bills would give states an option to reduce paperwork requirements that place administrative burdens on states and can lead to gaps in health care coverage for families.

For more information on TMA, see Leighton Ku and Edwin Park, *Improving Transitional Medicaid to Promote Work and Strengthen Health Insurance Coverage*, Center on Budget and Policy Priorities, April 29, 2002.

option, it must still send the federal government its portion of any child support collected, making this an expensive option to take. The bill would help states pay for the costs of passing through up to the greater of \$100 per month or \$50 more than the state's current "pass through" to children in families receiving TANF.

These provisions represent improvements. They are far more modest, however, than child support legislation sponsored by Representatives Nancy Johnson and Ben Cardin that passed the House of Representatives in 2000 with overwhelming bipartisan support. For example, under the Johnson-Cardin bill, all states would have been required (within five years) to direct the intercepted tax refunds of noncustodial parents to the children of these noncustodial

parents, even in cases in which the child had previously received welfare benefits. Under the House bill, by contrast, states could opt to continue retaining child support owed to children and collected through intercepting federal tax refunds if they formerly received welfare benefits. There are other significant differences as well. The Johnson-Cardin bill would have helped states offset the costs of passing through a higher level of child support to children receiving TANF benefits and would not have required families applying for welfare benefits to relinquish their rights to child support debts owed to them while they were not receiving TANF cash assistance.²⁶

Family Formation

There is substantial interest in developing programs that further reduce nonmarital births, foster and strengthen healthy two-parent families, and increase the proportion of children cared for by both parents, preferably in married-couple families. However, very little is known about what kinds of policies and programs could produce desirable results in these areas. (One exception is teenage pregnancy reduction, where a growing body of research points to successful strategies.²⁷)

Unfortunately, both the Healthy Marriage Promotion competitive matching grant program and the additional research and demonstration funding proposed in the House bill are so narrowly focused that little would be learned about effective strategies for strengthening and improving child well-being. The Department of Health and Human Services could only award competitive matching grant program funds for a narrow set of marriage promotion projects and activities that are listed in the House bill. While the additional research and demonstration funding could be used for a wider range of activities, the House bill stipulates that these funds must be used primarily for marriage promotion activities.

Efforts to reduce teen pregnancy are notably absent from the list of projects that could be funded with the competitive grant resources and that are a focus of the additional research and demonstration funding, despite evidence indicating that reducing teen pregnancy can be an effective means to reducing the number of children living in single-parent families.²⁸ Also absent are efforts to foster the involvement of noncustodial parents in the lives of their children or to enhance the ability of noncustodial parents to pay child support; such efforts could not be supported with these resources.²⁹ Because so little is known about what works in these areas, states should be allowed to use these funds to conduct a wide range of research and demonstrations that could reasonably be expected to have positive impacts on family formation.

Finally, there are two troubling aspects of the funding mechanism for these efforts. While eliminating the current “illegitimacy bonus” makes sense (it appears to have rewarded states that experienced falling nonmarital births for reasons unrelated to state efforts in this area), it would be undesirable to cut the “high performance bonus” by 50 percent to fund these marriage promotion efforts. The TANF program includes many fiscal penalty provisions, but the high performance bonus is the only TANF provision that rewards states for achieving better employment outcomes and increasing access to work supports. In addition, states should not be permitted to use federal TANF funds as the state match for the Healthy Marriage Promotion

competitive matching grant program. If the Congress decides that additional resources should be allocated to such marriage-related proposals, states should contribute new resources (rather than taking funds from existing TANF efforts) to participate in a competitive matching program for which they are receiving new federal funds.

The Fiscal Implications of the House TANF Reauthorization Bill

Despite increasing the participation rates that states must meet, increasing the number of hours families must participate in activities, and requiring states to place substantially more parents in more expensive subsidized jobs or workfare-type programs, the House bill would *freeze* TANF funding for five years at the FY 2002 level. The bill would increase mandatory child care funding, but only by \$1 billion over five years. (The bill also would increase the discretionary child care authorization level, but there is no assurance that additional child care funds actually would be appropriated.) This level of funding is insufficient not only to meet *any* of the new costs that stem from the increased mandates placed on states by the House bill, but also falls far short of the level of funding needed to maintain the *current* level of child care and welfare-to-work services provided with federal TANF and child care funds.

The new child care funding falls short of what is needed to maintain the current level of child care services provided with mandatory child care funding. According to CBO, approximately \$1.36 billion is needed over the next five years to adjust the mandatory child care block grant for inflation so that it does not *lose* purchasing power.³⁰ Because mandatory child care funding accounts for only a portion of total child care funding, substantial additional funding would be needed to maintain the overall level of child care provided with various funding sources. CBO estimates that an additional \$4.55 billion is needed over the next five years in order to keep pace with inflation for the mandatory federal child care funding stream, state funds used to match these federal funds, and the TANF funds devoted to child care.³¹

Even without the proposals included in the bill to impose far more costly work participation requirements on states, freezing TANF funding for five years would itself mean that most states would be unable to maintain their current welfare reform efforts. The 1996 law based each state's TANF block grant level on its historical AFDC spending. Funding was not indexed for inflation. Data from the Treasury Department show that in FY 2001, states spent \$18.5 billion a year on TANF — *\$2 billion more* than the annual TANF block grant level. States have been able to do this because they tapped unspent funds from the early years of the TANF program. Those funds, however, are dwindling quickly. Many states either have small remaining reserves of unspent funds from prior years or will be without any significant reserves at some point in the next couple of years. In fact, a number of states have begun to cut TANF-funded programs already either because they no longer have reserves to draw on or as a result of rising costs associated with the recession. If funding remains frozen, many states will have to cut TANF services significantly, including supports for working poor families with children. Adding to this problem, the \$16.5 billion will purchase less in services and benefits with each passing year, due to inflation. Since 1997, the block grant has lost 11.5 percent of its value. Five more

Federal Caseload Statistics Substantially Understate the Number of Families Receiving TANF-Funded Benefits and Services

Many point to the decline in the cash assistance caseload as evidence that states do not need additional TANF resources to maintain current programs and meet costly new work requirements. While TANF cash assistance caseloads have declined by more than 50 percent in the past five years, this does *not* mean that TANF funds are being used to help 50 percent fewer families than five years ago. Conservative estimates from data collected by the General Accounting Office reveal that there are *more than one million* “uncounted cases”— families receiving TANF funded services and benefits other than cash assistance that are not counted in the frequently-cited official TANF “caseload” figures.

The 1996 welfare law gave states new discretion to use federal and state TANF funds to provide a range of benefits and services that are considered “non-assistance” to families that are not receiving a monthly cash assistance check. These benefits and services — including child care, transportation subsidies, state earned income tax credits, and employment services — are designed to help families maintain employment. Families receiving such benefits — which can be as costly as cash assistance — are not included in official TANF “caseload” figures. Over the past five years, states have used an increasing proportion of their TANF funds for these benefits and services, and a decreasing proportion of funds for ongoing cash assistance. In 1996, states spent 76 percent of state and federal funds on cash assistance compared with 40 percent in 2001. A large share of the remaining funds were used to provide work supports, especially child care, to low-income working families not receiving cash assistance — families not considered part of the TANF “caseload.”

Two states — Indiana and Wisconsin — surveyed by the General Accounting Office were able to provide more comprehensive data on the number of non-welfare families receiving TANF-funded benefits and services. If the more precise estimates from these states are extrapolated to all the states, nationally more than 2.1 million families could be receiving services in TANF-funded programs without being counted in the official TANF caseload. In light of this, an estimate of one million families is quite conservative.

For more information on TANF’s “uncounted caseload,” see Shawn Fremstad and Zoë Neuberger, *TANF’s “Uncounted” Cases: More than One Million Working Families Not Counted in TANF Caseload*, Center on Budget and Policy Priorities, April 25, 2002.

years of funding at the current level would mean that it would fall 22 percent below its value in 1997.

Providing no new resources for child care — except a portion of the funds needed to ensure that mandatory child care funding, but not other child care funding, does not erode with inflation — would be problematic even in the absence of substantially increased work requirements. Research suggests that there is substantial unmet need for child care subsidies for which *additional* resources would be needed.³²

The House bill includes a provision which would allow states to transfer up to 50 percent of their TANF funds to the child care block grant. Under current law, states can transfer up to 30 percent of TANF funds to the child care block grant but also can spend an unlimited amount of TANF funds directly on child care. Under current law, a state could choose to spend its entire TANF block grant on child care assistance if it wanted to do so. Thus, increasing the amount that can be transferred to the child care block grant provides *no additional resources* for child care.

New Work Requirements Would Be Costly

Under the proposed legislation, states would face a five-year freeze on TANF funding at the same time that the new federally-mandated work program structure substantially increased their work program costs. In addition, the mandatory child care block grant funding would receive only \$1 billion in additional resources over the next five years. This is less than the amount of funding needed to ensure that the block grant keeps pace with inflation and provides no additional “real” resources to help meet escalating work requirements. The Congressional Budget Office estimates that states would need to spend an additional *\$11 billion* between 2003 and 2007 to meet the requirements in the House bill if they were expected to enforce the requirement that recipients participate in activities for 40 hours per week.³³ This figure includes \$6 billion in additional TANF-related costs to operate the work programs and \$5 billion in additional child care costs.

States would face this combination of decreased inflation-adjusted funding for TANF and child care, and increased work program and child care costs at the very time their reserves of unspent TANF funds from the program's early years were running out. Taken together, these factors likely would force most states to cut spending on TANF-funded programs that support low-income working families that do not receive cash assistance, since the bulk of state TANF spending outside of the traditional welfare system is dedicated to providing supports to these working families.

If states are forced to scale back supports such as child care for low-income working families, programs designed to help welfare recipients find and retain jobs may become less successful. If a parent finds a job and leaves welfare but does not have access to child care, transportation or wage supplements — supports that states now fund with TANF and child care block grant funds — the parent is less likely to retain the job and remain off welfare.

Bill Would be Especially Problematic for States With Low TANF Funding Levels

The fiscal implications of the House legislation would be especially problematic in the states with very low TANF block grant allocations relative to their needy populations. In fiscal year 2001, eight states received less than \$600 in TANF block grant funding per-poor child — the national average is about \$1,200 per-poor child — and another 13 states received less than \$900 per-poor child. (These figures include additional TANF funds provided in “supplemental grants,” which are designed in part to provide additional funding for underfunded states). These

underfunded states would likely have even greater difficulty than most states in summoning the resources necessary to create large subsidized job or work experience programs.

*Child Support Options Will Be Difficult for States to
Adopt Without Additional TANF Funding*

As discussed above, the House bill would provide states with new options to pass through child support payments directly to children, rather than retaining those payments to offset current and prior welfare benefits. Under the bill, the federal government would *share* in the cost of passing through increased support payments directly to children, but states also would have to absorb part of the costs of adopting this option. If TANF block grant allocations are frozen at the same time that states must meet costly new work requirements, many states may decline to adopt the child support options because of the associated costs.

Bill Also Would Weaken the Maintenance-of-Effort Requirement

In addition to freezing federal funding, the House bill would weaken the current maintenance-of-effort requirement (MOE) that requires states to spend a certain level of their own state resources in order to be eligible for the TANF block grant. Under current law, only state spending on needy families can count toward the maintenance-of-effort requirement. The House bill would allow state spending on activities related to reducing nonmarital pregnancies or promoting marriage that are *not* targeted on low-income families to be counted toward the MOE requirement. States already have the ability to spend federal TANF funds on pregnancy prevention and marriage-related programs for non-needy families. Thus, there are ample resources available if states are interested in funding such efforts. The practical effect of the House proposal would be that states could count spending on current efforts in these areas and then *reduce* the amount of resources they spend on TANF-related programs for low-income families.

For example, suppose a state has been operating for the past five years a mediation program through its court system to reduce divorce rates, and the program is available to all couples contemplating divorce. This program would have been established without any consideration of the TANF statute or the MOE requirement. Under the House bill, the state would be permitted to count the *entire cost* of this program toward its maintenance-of-effort requirement, enabling it to withdraw substantial state resources it currently spends on low-income programs to meet the MOE requirement.

Immigrant Eligibility

The House bill does not provide states with the flexibility to use federal funds to serve recent legal immigrant families in their TANF-funded work programs.³⁴ Legal immigrant families that have been in the country for less than five years remain ineligible not only for

TANF-funded cash assistance, but also for TANF-funded employment services and supports, such as child care, transportation, job training, and English-language instruction.

Both the National Governor's Association and the National Conference of State Legislatures have recommended that states be given the option to serve recent legal immigrants with federal TANF funds. States have recognized that a growing portion of their populations are composed of legal immigrant families. In fact, about one in four low-wage workers with children is an immigrant, and most of the children in these families are U.S. citizens. A significant share of these low-wage legal immigrant workers are excluded from the federally-funded TANF program because of the current federal eligibility restriction.³⁵

Three arguments have been advanced by those who oppose giving states flexibility to use federal TANF funds to include recent legal immigrants in their TANF programs: 1) that a five-year eligibility ban is needed to prevent welfare dependency among legal immigrants; 2) that an eligibility ban is necessary because legal immigrants otherwise may be induced to migrate to the United States for welfare benefits — the so-called “magnet effect” hypothesis; and 3) that legal immigrants’ sponsors, not the government, should assist them.

None of these arguments provide persuasive reasons for denying state flexibility in this area. First, TANF already provides ample safeguards against welfare dependency, including mandatory work requirements and a five-year limit on assistance. These restrictions apply regardless of immigration status. It isn't clear why a complete eligibility ban — a drastic additional measure that does not apply to long-term immigrants or to citizens — is necessary for legal immigrants during their first five years in the United States. Second, recent social science research does not support the hypothesis that immigrants migrate to the United States to secure welfare benefits.³⁶ In fact, some of the staunchest proponents of immigrant restrictions acknowledge there appears to be no such effect.³⁷ Finally, while sponsors certainly should have responsibility to help the immigrants they sponsor, this is best accomplished by reasonable sponsor deeming provisions that take a sponsor’s income into account when determining cash assistance eligibility for a sponsored immigrant. Moreover, recent research suggests that providing public benefits to legal immigrants does not lead to a reduction in the types of help sponsors provide.³⁸

While the Administration’s reauthorization proposal unveiled in February also continued the bar on providing TANF-funded benefits and services to recent legal immigrants, an Associated Press story on May 3rd suggests that the Administration now may support — or at least not oppose — allowing states the option of providing TANF-funded benefits and services to legal immigrants now barred from TANF-funded programs. Tommy Thompson, Secretary of Health and Human Services, was quoted as saying, “If states want to do it, they should have the opportunity...We're not pushing it, but if it passes, it's going to be included.”

Superwaiver Proposal³⁹

The House bill contains a proposal to grant sweeping authority to the Executive Branch to override, at a governor's request, nearly all provisions of federal law that govern a range of low-income and other domestic programs. Under this "superwaiver" proposal, Executive Branch officials would have virtually unfettered authority to approve waivers that effectively rewrite federal laws and alter the fundamental nature of affected programs. The Executive Branch could approve waivers that allow states to use federal funds in ways not authorized by Congress and negate provisions of federal law that target program funds to particular needy populations.

The superwaiver provision raises the following concerns:

- *Superwaivers could alter the fundamental nature of affected programs.* Almost any programmatic provision that relates to the affected programs could be waived. Among the types of statutory requirements that could be waived are requirements that statewide food stamp waivers not be used to terminate eligibility or sharply cut benefits for categories of households that may lack political appeal in a state but are eligible for food stamps under federal law and are fully complying with all program requirements. States could seek to make such changes in their food stamp programs to secure more funds to meet the substantially intensified work participation rate requirements that would be imposed on states under the House welfare bill or to free up state funds that could be used elsewhere in state budgets. As another example, superwaivers could be used to override federal rules in public housing that tenants pay 30 percent of income for rent and to raise rents to higher levels. The increased rent collections could then be used for purposes set forth in a superwaiver request.
- *States would be able to replace some state funding currently being used for low-income programs with federal funds from programs covered by the superwaiver.* As a result, superwaiver authority would likely lead in some areas to a reduction in the total amount of resources provided for low-income families and communities from federal and state sources combined. States often face substantial budget pressures, especially in bad economic times when they — unlike the federal government — must balance their budgets. The opportunity the superwaiver would present states to replace state funding for some low-income programs with federal funds and to use the freed-up state funds to fill budget holes would likely prove attractive, especially when alternative policy courses involve politically painful choices. The inclusion of the Food Stamp Program in the superwaiver makes the potential for, and the likelihood of, such funding shifts quite large.
- *The Executive Branch could waive basic targeting requirements that Congress has set for various low-income programs to insure that federal funds serve those most in need.* The superwaiver would allow most of the targeting rules in the

affected programs to be waived. Resources could be shifted from poor families to families that have higher incomes and lesser need but represent more powerful constituencies. For example, some public housing funds could be shifted from rental assistance for poor families to homeownership assistance for lower-middle-income families.

- *Superwaivers would not be limited to demonstration projects to test new ideas.* Unlike many past demonstration projects that have been conducted on a limited geographical basis and accompanied by rigorous independent evaluations, superwaivers overturning longstanding provisions of federal law in various programs could be approved and implemented on a statewide basis in an unlimited number of states across the country. Furthermore, the superwaiver proposal lacks any requirement for superwaivers to include an independent evaluation.
- *Democratic processes would be weakened.* Superwaiver authority would replace what are largely transparent Congressional legislative processes with largely behind-closed-doors Executive Branch deliberations and decisions. Congress would have no role in a process that would effectively allow Governors and the Executive Branch to create new federal laws that had never been voted on by Congress. Moreover, in many states, the state legislature would have no role or only a limited role in the superwaiver process. Low-income families and individuals who would be affected would have less opportunity to participate in the decision-making process through their elected representatives.
- *The balance of power between Congress and the Executive Branch would be altered:* If enacted, the superwaiver proposal would alter the balance of power between Congress and the Executive Branch in the Executive Branch's favor. The superwaiver provision would allow any Administration, in conjunction with one or more governors, to make unilateral changes in programs that Congress might not — or had already declined to — approve. This sweeping waiver authority would mean that the Executive Branch could ignore compromises reached with Congress through the legislative process by soliciting superwaiver applications that adopt the Administration's preferred position, rather than the legislative compromise, and then granting such waivers in an unlimited number of states. Given the few restrictions that would be placed on Executive Branch authority to waive the federal laws governing these programs, the superwaiver would significantly weaken Congressional control over the programs and hence over a substantial amount of federal funds. Congressional Budget Office data show that the programs covered by the House superwaiver provision involve projected expenditures of \$65 billion in fiscal year 2003 and \$670 billion over ten years.

Since its unveiling by the White House in February, the superwaiver has been modified several times. These modifications address only a few of the fundamental concerns that have

been raised about the superwaiver concept. The most recent modification — which prohibits waivers that would shift funds from one federal budget account to another or that override “funding restrictions” in federal laws — was made to address concerns, particularly from Republican members of the House Appropriations Committee, that the superwaiver would allow the Executive Branch to encroach too heavily on Congressional powers. The effect of the new language is much more limited than some Members of Congress and journalists appear to have thought. The bar on waiving “funding restrictions” would do little to limit the extent to which the authorization statutes governing these programs could be overridden. Furthermore, the restriction on shifting funds from one federal budget account to another would *not* prohibit Executive Branch officials from granting state requests to shift federal funds to other uses; superwaivers could be used to accomplish such shifts since the Executive Branch would allow funds in a given program to be used in ways not authorized under federal law, without formally transferring the funds to a different budget account.

House Bill Would Allow Five States To Block Grant the Food Stamp Program⁴⁰

The House bill also includes a provision that would allow five states to elect to take a food stamp block grant in lieu of participating in the regular food stamp program. This provision was included in the House bill despite the fact that the House Agriculture Committee — the committee with jurisdiction over the Food Stamp Program — never considered this measure either as part of TANF reauthorization legislation or the just-completed Farm Bill which reauthorized the Food Stamp Program through 2007.

Under the House bill, USDA is given no criteria by which to distinguish among states that seek the block grant. It appears that the first five states that provide the minimal state plan required would have to be approved, regardless of their block grant design.

The block grant level would be a fixed amount equal to the amount that the state issued in food stamp benefits for fiscal year 2002 or the average amount of benefits issued in the state during fiscal years 2000 through 2002, whichever is greater. (Food stamp benefits are 100 percent federally financed.) The state also would receive an amount equal to its federal administrative and employment and training expenditures for fiscal year 2002 or the average for fiscal years 2000 through 2002, whichever is greater. These two amounts would be pooled into a single block grant, with no specific set-aside for food expenditures. For virtually all states, fiscal year 2002 spending in both categories would be greater than the three year average.⁴¹ The amount a state receives would be frozen at this level for the five-year period. There would be no adjustment to respond to economic changes, population growth or increased participation. States could opt out of the block grant after electing it; if they did so, they would be barred from opting back into the block grant.

Block grant funds could be spent only on three things: food assistance in the form of coupons, electronic benefit transfer and commodities; employment and training programs; and administrative costs. There would be no limits on how much a state could spend within any one of these categories, and states would not be required to maintain their current levels of *state*

spending on food stamp administration and employment and training. (States currently pay 50 percent of most food stamp administrative costs and 50 percent of employment and training costs that exceed their federal food stamp employment and training grant.) States would be free to shift funds from benefits to administration and to employment and training programs.

There would be virtually no limits on how a state could structure the program under the block grant. States could cut or eliminate benefits to any group of individuals. No individuals or categories of current recipients are protected, including the elderly and disabled. States also could expand benefits beyond current eligibility rules, although not to legal immigrants. The cost of any such expansion, however, would have to be offset by cuts elsewhere in the state's food stamp program.

No evaluation or even basic data reporting would be required. Beyond submitting an initial state plan, states need only provide for an annual independent "audit" to determine if benefits were issued accurately (i.e. to determine what the state's error rate is.) No standards are set for these audits.

The House proposal to provide for a five-state block grant raises a number of serious concerns. The key issues include:

- The food stamp program would no longer respond to increased need — if a state elected a block grant and need in the state increased subsequently due to recession, the state would receive no additional funding to meet those needs.
- Food assistance would have to be cut as inflation eroded the value of the fixed block grant states received.
- Fixed block grant funding would undermine efforts to increase participation among the working poor, a key goal of the food stamp provisions in the recently enacted Farm Bill. In addition, states that elected the block grant likely would not have the resources necessary to implement the restoration of benefits to legal immigrants recently enacted as part of the Farm Bill. This is the case because the block grant level would be based on food stamp spending prior to the implementation of these restorations.
- States would be able to shift funds away from food assistance to other purposes, a large temptation to states facing budget shortfalls. If this occurred, states would have to cut food stamp benefits still further.
- The proposal provides no protection to recipients. For example, under the proposal states could reduce or eliminate benefits to any group of households, eliminate the current targeting rules which ensure that the poorest households receive the most assistance, or impose time limits on food assistance.

- Finally, this five state ‘demonstration’ would likely be a precursor to a national block grant. While the proposal is called a ‘demonstration,’ there is no requirement for an independent evaluation. In fact, neither states nor USDA would be required to examine or even collect data on the impact of the block grants on participation, food expenditures, benefit levels, administrative spending, or fraud. Congress, the Administration and the public would have no basis by which to judge the block grants by the time the food stamp program is next reauthorized. At the same time, given the degree to which states could use food assistance block grant funds to replace state funds in other areas, the five states with the block grant are likely to tout it as a success, making it more likely that other states will push to have the option to block grant the program.

Conclusion

The House TANF reauthorization bill includes a set of troubling provisions. The bill would require many states to revamp their welfare-to-work programs in favor of a federally-mandated structure that is not based on two decades of research in this area or the last six years of TANF implementation experience. In spite of the substantial costs that the House bill would impose on states, it provides no new resources — except a portion of the funds needed to maintain the current purchasing power of the mandatory child care block grant — to meet these new requirements. The bill also includes two far-reaching provisions that would have a negative impact on several low-income programs other than TANF: a sweeping “superwaiver” proposal and a provision that would allow five states to opt out of the national Food Stamp program and receive a food stamp block grant. The superwaiver proposal would grant sweeping authority to the Executive Branch to waive, at a governor’s request, most provisions of authorization and appropriations laws related to a range of low-income and other domestic programs. The proposal provides almost no protections for program participants and does not prohibit states from using the superwaiver to supplant state spending on low-income programs with federal dollars. While limited to the food stamp program, the food stamp block grant proposal suffers from the same deficiencies and could lead to substantial cuts in food stamp benefits in states adopting the block grant option.

Endnotes

1. The Center for Law and Social Policy (CLASP) provided valuable assistance with this analysis. CLASP and the Center have prepared a set of side-by-side analyses of TANF reauthorization legislation, which can be found at <http://www.cbpp.org/tanfseries.htm#Side> or on the CLASP web site at www.clasp.org.
2. According to an analysis by the Center for Law and Social Policy, the following states would qualify for the “super-achiever” credit: Wyoming, Idaho, Wisconsin, Florida, Illinois, Colorado, Mississippi, Oklahoma, Louisiana, North Carolina, South Carolina, Maryland, Michigan, Georgia, Ohio, West Virginia, and Alabama. (Eight of these states would receive super-achiever credits of less than six percent.) There is no evidence that these states operated the most successful welfare-to-work programs or that a higher-than-average proportion of welfare leavers in these states were employed after exiting the welfare rolls.

3. The bill would limit these extensions to circumstances in which the additional month “is needed to complete a certificate program or other specific course of education in preparation for specific employment to fill a known job need in a local area....”

4. The bill does allow for very limited “leave” for recipients. While months have an average of 4.33 weeks in them, the proposal would provide full credit to a state for a family in which a parent participated in countable activities for 160 hours in the month — the equivalent of four, 40-hour weeks, rather than 4.33, 40-hour weeks. Thus, in an average month, a parent could “miss” up to 13 hours of required activities and still count fully toward the state’s work rates. If the hours were missed in direct work activities and the recipient did not meet the 24-hour per week standard, however, the state could lose all credit for the family toward the work participation requirements. The bill provides that if a participant is engaged in “an average total of fewer than 24 hours per week in a month [in direct work activities], then the number of countable hours with respect to the family for a month shall be zero.” This would mean that if a parent were scheduled to participate in work experience (a direct work activity) for 24 hours each week and missed any of the scheduled hours of work experience in a particular week because her child was sick, she would not meet the requirement that she participate 24 hours each week in direct work activities and the state would not be able to count her toward the work participation requirements.

5. Gayle Hamilton and Susan Scrivener, Manpower Demonstration Research Corporation, *Promoting Participation: How to Increase Involvement in Welfare-to-Work Activities*, September 1999.

6. There also is no mechanism to reduce the number of required hours by any child support paid to the state by a non-custodial parent of a child receiving TANF assistance. In these cases, even if the state retains the child support to reimburse itself for the assistance provided to the child, the custodial parent could be required to work off the entire TANF grant, rather than the amount of the grant less the child support received. In effect, the custodial parent could be forced to work off the non-custodial parent’s child support payment.

7. U.S. Department of Health and Human Services, Office of Planning, Research and Evaluation, Average Monthly Number of Adults with Hours of Participation by Work Activity as a Percent of the Total Number of Adults, Fiscal Year 2000, Table 6C, <http://www.acf.dhhs.gov/programs/opre/particip/>.

8. Nationally, in fiscal year 2000, about 21 percent of TANF recipients subject to the work requirements satisfied those requirements by working in an unsubsidized job. An additional 7 percent of TANF recipients worked in unsubsidized jobs but worked fewer hours than required to satisfy current law work requirements. Even assuming that 28 percent of recipients can be counted toward the work participation requirements in the House bill because they are combining work and welfare, states would have to achieve a very large increase in the proportion of recipients participating in subsidized employment, work experience programs, and supervised community service programs to achieve participation rate standards in the bill. (It is also important to note that many of those currently combining work and welfare do not participate in work activities for a total of 40 hours each week and, thus, would not be fully countable toward the participation rates.)

9. Fewer than 15 percent of participants participated in work experience in the Portland program. Significantly more participants were placed in basic education, vocational education, and job search. Susan Scrivener, Gayle Hamilton, et al., Manpower Demonstration Research Corporation, *Implementation, Participation Patterns, Costs, and Two-Year Impacts of the Portland (Oregon) Welfare-to-Work Program*, May 1998. The Portland program only used work experience on an individualized basis and program staff custom-designed positions based on participant’s skills and interests.

10. Marieka Klawitter, *Effects of WorkFirst Activities on Employment and Earnings*, University of Washington, September 2001.

11. Washington State also places a substantial number of families in “community service”, but this activity was not evaluated and appears to be defined in broader fashion than would be allowable under the bill.

12. Pamela A. Holcomb and Karin Martinson, "Putting Policy into Practice: Five Years of Welfare Reform," in *Welfare Reform: The Next Act*, The Urban Institute, 2002.
13. National Governors' Association, HR-36, Welfare Reform Policy.
14. The House-passed bill includes an exception for states in which this provision conflicts with a state constitutional requirement or statutory requirement that, before 1966, obligated local government to provide assistance to needy families.
15. For a review of the research on the characteristics of families subject to sanctions in TANF cash assistance programs, see *Improving TANF Program Outcomes for Families With Barriers to Employment*, by Heidi Goldberg, <http://www.centeronbudget.org/1-22-02tanf3.htm>.
16. Denise Polit, Andrew London, and John Martinez, *The Health of Poor Urban Women: Findings from the Project on Devolution and Urban Change*, Manpower Demonstration Research Corporation, May 2001, <http://www.mdrc.org/Reports2001/UC-HealthReport/UC-HealthRpt-FullRpt2001.pdf>.
17. Dan Bloom and Don Winstead, *Sanctions and Welfare Reform*, The Brookings Institution, Welfare Reform and Beyond Policy Brief No. 12, January 2002, page 3.
18. U.S. Department of Health and Human Services Office of Inspector General, *Improving Client Sanction Notices*, October 1999.
19. Minnesota Department of Human Services, *Report on Sanctions in the Statewide MFIP Program*, January 1999.
20. Deborah Frank, The Children's Sentinel Nutrition Assessment Program (C-SNAP), Abstract from the Pediatric Academic Society Meeting, May 2001.
21. Christina Paxson and Jane Waldfogel, *Welfare Reforms, Family Resources, and Child Maltreatment*, Joint Center for Poverty Research, December 2000, <http://www.jcpr.org/book/pdf/IncentivesWaldChap2.pdf>.
22. Bloom and Winstead, page 6.
23. Vicki Turetsky of the Center for Law and Social Policy (CLASP) provided valuable assistance on this section of the paper. For a more complete description of the child support provisions in the bill, see *Summary of the Personal Responsibility, Work, and Family Promotion Act of 2000, introduced by Rep. Herger (H.R. 4090 substitute amendment)*, by Vicki Turetsky, available at www.clasp.org.
24. The House bill would make additional changes to the statutory purposes of the TANF block grant. These include adding the improvement of child well-being as an over-arching purpose of TANF and adding a reference to reducing poverty in the second statutory TANF purpose.
25. Vicki Turetsky, *Reauthorization Issues: Child Support Distribution*, Fact Sheet: "Early Findings from Wisconsin Experiment to Get More Child Support to Families," Center for Law and Social Policy, February 2002.
26. Currently, a number of states do pass through some child support — typically up to \$50 a month — to families receiving TANF cash assistance. The House bill impacts these states differently from those that do not currently pass through any child support collections. In the states that currently pass through child support, federal help would only be available in meeting the costs of *increasing* the pass-through above its current level. For example, if a state already had a \$50 pass-through the bill would share in the costs of increasing the pass-through to \$100, but not in the costs associated with the first \$50 of the pass-through.

27. See Isabel Sawhill, *What Can be Done to Reduce Teen Pregnancy and Out-of-Wedlock Births?*, The Brookings Institution, October 2001.

28. Daniel T. Lichter, *Marriage as Public Policy*, Progressive Policy Institute, September 2001.

29. Some of these activities could be funded through the fatherhood initiative included in the proposal. This initiative is only authorized rather than actually being funded. In order to fund fatherhood projects outlined in this part of the House bill, the Appropriations Committee would have to appropriate resources for it. Moreover, the proposal would only authorize \$20 million in funding annually for the fatherhood initiative, far less than the up to \$300 million per year in federal TANF funds that could be spent on the marriage-related projects. It is also important to note that under the fatherhood proposal in the bill, funds could *not* be used for employment services directly and, thus, could not be used to develop innovative strategies for helping noncustodial parents secure jobs so they can fulfill their child support obligations.

30. The House bill increases the mandatory child care block grant by \$200 million per year — from \$2.7 billion to \$2.9 billion. If the block grant were adjusted for inflation, the increases in the first couple of years would be somewhat smaller and the increases in the last three years would be somewhat larger. If the bill were to adjust the block grant for inflation, its level in FY 2007 would be projected to be \$3.07 billion, some \$160 million more than the level proposed in the House bill.

31. CBO's \$4.55 billion figure likely understates the cost of maintaining current child care services for two reasons. First, it does not include the cost of maintaining child care services provided with federal discretionary child care funding. Using CBO child care inflation estimates, approximately \$1 billion over five years is needed for discretionary child care funding to keep pace with inflation. Second, the CBO estimate assumes that states will be able to maintain their current levels of using TANF for child care. Since states are currently spending \$2 billion more than their current TANF allotments, a rate of spending that cannot be sustained indefinitely, this may not be a reasonable assumption.

32. Jennifer Mezey, Mark Greenberg, and Rachel Schumacher, *The Vast Majority of Federally-Eligible Children Did Not Receive Child Care Assistance in FY 2000*, Center for Law and Social Policy, June 4, 2001, <http://www.clasp.org/pubs/childcare/ChildCareNumberFull.htm>.

33. Congressional Budget Office, "Preliminary CBO Estimate of the Costs of Meeting the Work Participation Requirements of H.R. 4090 (as reported by the Subcommittee on Human Resources)," May 2002. The Congressional Budget Office provided two estimates of the cost of meeting the work requirements in the House bill. One estimate, cited in the text above, assumes that the Department of Health and Human Services would issue regulations that would require states to ensure that adult recipients participated in activities for 40 hours each week and that the 16 hours per week in non-direct work activities would be in monitored, structured activities of similar intensity as direct work activities. A second estimate — \$8 billion over five years — assumes that HHS would issue regulations that effectively would require states to enforce the 24-hour requirement, but not the full 40-hour requirement. The authors of the legislation have called explicitly for a 40 hour work requirement and have not limited HHS's ability to regulate how states must enforce the requirement, including the extent to which they must monitor activities in non-direct work activities. While proponents of the legislation may claim that their work proposal would be less costly because states will only be expected to enforce the 24 hour per week direct work activity requirement, the statutory language in the bill does not reflect this policy position.

34. The 1996 welfare law extended eligibility limits that had previously applied only to illegal immigrants to *legal* immigrants who work, pay taxes, and generally have the same responsibilities as citizens. Specifically, states may not use federal TANF dollars to assist most legal immigrants until they have been in the United States for at least five years.

35. According to the Urban Institute, some 3 million legal immigrants — about one-third of all legal permanent residents in the country — have been in the United States for five years or less.

36. See Michael Fix and Jeffrey Passel, *The Scope and Impact of Welfare Reform's Immigrant Provisions*, The Urban Institute, Discussion Paper 02-03 (January 2002); Neeraj Kaushal, *New Immigrants' Location Choices: Magnets without Welfare*, CUNY Graduate Center Working Paper (2002); Madeline Zavodny, *Welfare and the Location Choices of New Immigrants*, Economic Review, Federal Reserve Bank of Dallas (1997); and Madeline Zavodny, *Determinants of Recent Immigrants' Locational Choices*, Federal Reserve Bank of Atlanta, Working Paper 98-3 (1998).
37. See Comments of Daniel Stein, Executive Director of the Federation for Immigration Reform, transcript from Brookings Institution forum on legal immigrants and welfare, February 22, 2002, <http://www.brookings.edu/dybdocroot/comm/transcripts/20020228.htm>.
38. Lingxin Hao, *Public Assistance and Private Support of Immigrants*, Johns Hopkins University, October 2000, Joint Center for Poverty Research Working Paper 171.
39. For more information on the superwaiver proposal, see “*Superwaiver*” *Would Grant Executive Branch and Governors Sweeping Authority to Override Federal Laws* by Robert Greenstein, Shawn Fremstad, and Sharon Parrott, Center on Budget and Policy Priorities, June 4, 2002, <http://www.cbpp.org/5-13-02tanf.pdf>.
40. For more information on this provision, see *Five-state Food Stamp Block Grant Proposal in House Welfare Bill Would Risk Serious Harm to Low-income Families* by Stacy Dean and Robert Greenstein, Center on Budget and Policy Priorities, May 23, 2002, <http://www.cbpp.org/5-13-02fs.htm>.
41. Every state except Hawaii is likely to experience higher benefit issuance and administrative and employment and training costs in fiscal year 2002 than during the three-year average of fiscal years 2000 through 2002.