NLWJC - Kagan
DPC - Box 058 - Folder-022

Welfare - Bifurcation Issue [2]

A Needless Obstacle to the Poor

The Clinton Administration has created a needless problem that could make the tough new welfare law even worse. Officials are now saying that states may not be able to spend their own money to fill gaps created by the law. This has alarmed even some of the most conservative proponents of welfare reform. The new law is stringent enough without Washington's finding new ways to frustrate states that want to take proper care of the poor.

The issue involves a provision known as maintenance of effort. Under the old welfare law, Federal spending on state-run welfare programs was tied to state contributions. The new law turns over fixed amounts of money, called block grants, that are no longer tied to the number of poor residents in a state or to what services the state decides to provide them. Republican sponsors of welfare reform were satisfied to let states do pretty much as they pleased with block grants. But liberals, mostly Democrats, fought for and won maintenance-of-effort provisions that require states to spend on the poor at least 75 percent of the amount they spent under the old law.

The Administration is now suggesting, ominously, that some state programs that could be vital to poor people may not count toward a state's maintenance-of-effort minimum. Experts agree that the law prevents states from getting credit for money they spend on non-welfare programs, or on most of the people who are ineligible for Federal aid. But Congress, wisely, softened even these conditions by granting credit to states that spend money on two important groups of ineligible families. These are families that collect welfare benefits for more than five years and legal immigrants.

However, some states will want to spend money on other needy groups without triggering all the restrictions that accompany the use of Federal block grants. For example, several states want to help elderly retirees who have custody of their grandchildren. If the states use Federal money for these purposes, they will be forced to include the retirees in work programs and impose other requirements that apply to everyone receiving money through Federal block grants. There are other programs, like emergency counseling for families in danger of splitting apart, or wage subsidies for low-paid workers, that states may wish to establish without federally mandated time limits and other onerous restrictions.

The answer to this dilemma, some states concluded, would be to set up a separate program free of Federal restrictions that would be financed with state, not Federal, money. As the states interpreted the law, these state funds could then be applied toward the maintenance-of-effort requirement. It is that reading that the Clinton Administration is now questioning.

How the Administration proceeds on this tricky question of interpretation matters a lot. If Washington denies credit for money spent on, say, grandparents or wage subsidies, then states will be driven to spend money on some other, less important program. But that would contradict Congress's major reason for replacing the 61-year-old entitlement with block grants — to give states the flexibility to design welfare programs that make the best sense locally.

It is good policy to give states the leeway to count toward their federally specified target money they spend on worthwhile programs for truly needy people. The Administration can point to no specific provision of the welfare law that would prohibit the states' interpretation. For a Democratic President to hurt the poor with a provision pushed into law by liberals to protect the poor would be more than ironic. It would also be a dismaying sequel to the President's election-year decision to sign a welfare bill that his own staff told him would impoverish a million or more children.

The New York Times

FRIDAY, JANUARY 3, 1997

Abroad at Home

ANTHONY LEWIS

Israel In Danger

BOSTON

When Pvt. Noam Friedman fired his Israeli Army assault rifle at Palestinians in a Hebron market, he made clear a painful truth. He showed how dangerous the mixture of religion and nationalism in Israel has become.

Private Friedman was evidently an unbalanced young man; a psychiatrist had recommended against his being taken into the army. But whatever his mental state, he acted in an atmosphere of fanatical religious nationalism, and he uttered the slogans of the movement.

Asked why he had fired into the crowd, he claimed a religious justification. "Abraham bought the Cave of the Patriarchs for 400 shekels of silver," he said. "No one will return it." That is the Biblical episode cited by religious leaders who are trying to prevent the redeployment of Israeli forces from most of Hebron, as required by the Oslo agreements.

A group of nationalist rabbis had called on soldiers to disobey orders to withdraw from Hebron. Rabbi Eliezer Waldman, who heads a yeshiva in the nearby settlement of Kiryat Arba, said: "Soldiers must not follow an order that is against a commandment of the Torah."

Thus the shooting in Hebron showed again what many in Israel's secular majority now consider the greatest menace to their society. That is the apparent fact that some ultra-Orthodox Israelis do not accept the authority of the democratic state, believing instead that they can enforce what they view as divine command.

Israel has lost a Prime Minister to fanaticism. Yigal Amir said after assassinating Yitzhak Rabin in 1995 that he had fulfilled a religious duty. In 1994 Baruch Goldstein, like Private Friedman a settler, shot 29 Palestinians to death as they prayed in Hebron.

> A volatile mix of religion and nationalism.

Nor is it possible to dismiss those killings as the acts of isolated loners. A number of young Israeli women have declared themselves admirers of Yigal Amir. Extremists have made Baruch Goldstein's grave a place of pilgrimage.

The sincerity of ultra-Orthodox believers who see divine authority for territorial claims is not in doubt. Nor can anyone question the emotional attachment of some Jews to places such as Hebron, where Jews lived for many generations until they were massacred in 1929.

But the principle of deciding territorial claims on the basis of ancient religious texts is a recipe for insecurity. The planting of 400 extremist Jewish settlers amid 120,000 Palestinians in Hebron has put a heavy burden on the Israel Defense Force. Think what the world would be like if every tribe and sect pressed its claims on that basis.

Moreover, the idea is in conflict with the historical basis of Zionism. Theodor Herzl, the founder of the movement, wanted a Jewish national homeland not for religious reasons but to enable Jews to live a normal life.

Those who created modern Israel, David Ben-Gurion and the rest, did not seek to found its legitimacy on biblical text. They sought that legitimacy in international politics and diplomacy: United Nations resolutions, President Truman's crucial support at the founding in 1948 and so on.

Most Orthodox Jews rejected Zionism until after World War II, and some still do. It is only in recent years that ultra-Orthodox elements in Israel have acted to enlist the state's military force on behalf of their religious visions — and that nationalists have used religious groups to legitimize their maximalist territorial aims.

That is the mixture that is so dangerous for Israel. It has entangled and complicated the effort to resolve the Israeli-Palestinian conflict. The hope of peace can no longer be considered apart from the issue of church and state in Israel.

There was a moment after Private Friedman's rampage that dramatized the real demands of peace. The chief of Israel's security service, Ami Ayalon, met the Palestinian head of security in the West Bank, Jibril Rajoub, in public view in the town square of Hebron. They worked out ways to calm the immediate tension.

It was a momentous symbol of a reality that Israelis responsible for security have come to understand. In the long run security will not work on a unilateral basis. It will come from a relationship between the two peoples based not on absolutes but on the accommodations of politics: a relationship of mutual respect. □

In America

BOB HERBERT

'We're Human Beings'

Anna Ayala is a prodigious talker. She answers questions candidly and enthusiastically, often in excessive detail. The words come in a kind of pleasant barrage. She seems to need to talk. But Ms. Ayala hit a conversational wall when I asked her on New Year's Eve what she would do if the city succeeds in its effort to keep her and her seven children out of its emergency shelter program.

Would she and the kids sleep in the subway? Would they make camp in a city park or a homeless enclave, cooking their food and warming themselves over an open fire?

A look of bewilderment crossed Ms. Ayala's face. Her 4-year-old son, Christopher, climbed onto her lap. He seemed surprised that his mother wasn't talking.

Finally Ms. Ayala said: "I don't think it should end like that. We're human beings, you know."

For the moment the family is staying with several other homeless families at the West End Presbyterian Church on Amsterdam Avenue at 105th Street. An interfaith coalition of religious leaders has established a temporary sanctuary at the church for families that are denied shelter by the city and have nowhere else to go. The church's capacity and the coalition's resources are limited. The sanctuary will shut down on Sunday. Where the families will go after that is anyone's guess.

> The city denies shelter to families truly in need.

Last summer the city began a severe crackdown on families seeking emergency shelter. Mayor Rudolph Giuliani has argued that many of the families showing up at the Emergency Assistance Unit in the Bronx are not really homeless but are fraudulently seeking free or subsidized housing from the city. That is the case with some families. But the crackdown that is supposed to weed out ineligible and fraudulent applicants is also denying shelter to families that are truly in need.

Ms. Ayala, who seemed to grow increasingly depressed as she talked, said she and her children had stayed for awhile with her sister. "There were eight of us and five in her family in a two-bedroom apartment," she said. "That couldn't continue."

The city reportedly offered to fly Ms. Ayala and her children to Florida, where her mother lives. But Ms. Ayala said her mother would not be able to house eight additional people, either.

"The city just wants to get rid of us," she said.

The vise is tightening on the poor. Taxpayers and public officials are less interested in where Ms. Ayala and her children will spend the night than they are in why she had seven children in the first place, and where their fathers are. Few things are easier than condemning the poor. But what then? The children are still there after the condemnations have been uttered. Does the city really have a policy option when the choice is between housing homeless youngsters or turning them loose to the streets and the parks?

Mayor Giuliani seems to think so. The crackdown at the E.A.U., the central intake point for homeless families, is being so intensively and arbitrarily applied that truly homeless families are being told repeatedly they are ineligible for shelter. This is happening even to families with notarized affidavits from relatives or landlords stating that the family will not be permitted under any circumstances to stay on their premises.

"This is the cruelest thing we've seen yet," said Episcopal Archdeacon Michael Kendall, president of the State Council of Churches. "These are not people that are criminals, these are people who are poor."

Mr. Kendall and other members of the clergy who helped set up the sanctuary described the city's treatment of homeless families as "callous," "abusive," "inhumane" and "immoral."

"What a dreadful authority we live under," said the Rev. Alistair Drummond, the pastor at West End.

Government officials have a different take. From the perspective of City Hall, homelessness is primarily a budget matter. The fewer people who are granted shelter, the more money is saved.

The children at the sanctuary spent New Year's Eve skylarking — chasing one another, pounding at a piano, playing with whatever toys they could find.

Outside, during the day, there was sleet and a windswept freezing rain. Overnight a low of 11 degrees was recorded. It was the kind of weather that is flat-out terrifying to the homeless.

A. M. Rosenthal is on vacation.

The New York Times
FRIDAY, JANUARY 3, 1997

Bifurcation Issue - HHS 1-9-97

• Staff level: need to resolve - and quickly
  allowing bifurcation - enabling states to provide "some" bens that aren't subj to TANF rules
  That would raise a # of other q's - (related)
  may (not) be in pos to provide guidance on these.

• Context - Old syst: st & fed inextricably intertwined.
  No longer - but some shards of old law survive -
  messiness coming from this change that P. didn't think thru all the way.
  3 or 4 issues - raising tension b/w fed ^rules^ + st flex
  "elig families" ← 1) bifurc - today's
  2) def of assistance - ?? ??
  3) waiver inconsistency issue

  how you decide (partic 1 + 2) these 3 ^have^ implics for ch. support

- Govs feel very strongly - rules shouldn't apply to ST MOE
- Reg process overall - NPRMs - spring final rule fall/winter
  we want to do stuff more quickly here -
  at least key things bef Feb.

EB: not nec here that should decide bef NGA
Oliv: If we do rt thing, states will be happy -

Particulars –

Ambig – what rules of fed TANF rules apply to st. MOE

5 yr time limit does NOT apply to st MOE

→ other way: ??

nothing that explicitly says a rule does apply to st MOE.

?? "st program under this part"

Most neat way to read – MOE subtr – 409(a)(7) fed $ST

states have "the prog under this part" ⟺ integrated prog

(OR) "abil to have progs w/ only st $s – no fed rules don't apply. parallel prog

gives states auth – flexibility

Concerns of this approach

purposes of expends ← ① what are limits of MOE ??

def of "qualified families" ② child support collections –

some moved into st-only prog –

Then feds get no $ – states will say want to keep it all.

No one has come up w/ way of solving this.

Fiscal losers? – up to 1b a year.

Could be left solution??

Most of what states want future flex –

+ panic rate:

what not most approp way –

- types of families
- types of services – emerg. assistance / really want them to go to whr?

one-time cost.

demon. becomes as small as possible.

states will put $ you can't get to whr – into st. only program.

~~(3) data~~

~~Data if states inform~~ (3) Data

Differ. raises issues of comparability of data

we'll have bad data —

KA - Have to find something in the middle.

Can't lose this much !!

Can't completely undermine wh regs.

under TANF proj. Def of "assistance" — Ask DF about this.

"elig famil" — way to put brakes on, find mid position??

— AP: elig if you walked in door — could you be added to the program?

Aliens already helped —

st can provide services to aliens + count it toward MOE — interp'ing provision as HHS wants to do — doesn't aid aliens — states can already do this.

Memorandum

From: **ELENA KAGAN**

To: _____

Suppose you say There are only 2 categories

1) fed grant (w/ commingled $?)

2) state monies
   → thus effectively collapses all 2+3 – any src. of $ is treated as any other – whether "TANF" or not.
   (After all, there's no real difference here, is there.)

Then, the rules of the 2nd category apply.
What does that leave you with.

We ways will apply.
What else does??

What Crisis?

By Richard C. Leone

Critics of Social Security claim that the system is near collapse. Privatizing the system, they argue, will give everybody better protection in old age. But without a complete understanding of what Social Security already provides to Americans, how can we know whether to junk it in favor of something else?

First, despite what its critics claim, Social Security is not similar to a savings or investment program whose purpose is to yield the biggest return. Social Security is more like a disability and life insurance policy that provides vital protections to virtually every member of our society. Currently, seven million survivors of deceased workers and four million disabled Americans receive income support.

The Social Security Administration calculates the value of the disability insurance as the equivalent of a $203,000 policy in the private sector; for a 27-year-old average-wage worker with two children, Social Security provides the equivalent of a $295,000 life insurance policy. The total value of these two policies nationally is about $12.1 trillion, more than all the private life insurance currently in force.

Second, Social Security provides a lifetime retirement annuity whose benefits rise with inflation. Many corporate pensions run out after 20 years, and most are not adjusted for inflation. While there is a lot of loose talk about greedy geezers living luxuriously on the backs of their impoverished children, the facts tell a quite different story. Without Social Security, approximately half the elderly in America would fall below the poverty line.

The notion that these basic protections would be unnecessary if we all saved more money is simply false. The truth is that neither of these protections is available in the private market at a price that the vast majority of Americans can afford.

Social Security works because virtually all of us belong to it and pay into it. Social Security, after all, does not consist of a bunch of piggy banks with our names on them. Our pooled contributions insure that almost every senior citizen receives a minimum income.

Although some of us need the protection more than others, all of us get some benefits. It is the nature of such pooled plans that both the most fortunate among us (the wealthy) and the least fortunate (those who die young and without a family) get the least from the program.

It is a fallacy that everyone can do better than average if we take control away from the Government. Averages exist because some of us do worse and some of us better. In the brave new world of individual accounts, each winner would be matched by a loser. The only way we can insure that every citizen has a minimal retirement benefit is by requiring that we all participate in the Social Security system.

Though the search continues, there is no free lunch. Advocates of privatizing Social Security dangle the prospect of riches in front of impressionable young workers, but hide from them its high costs and risks.

Social Security is really a national insurance policy.

The privatization plans proposed by two minority factions of the Advisory Council on Social Security come with an enormous transition cost. One plan would require increased taxes amounting to $6.5 trillion during the next 72 years; the other would raise payroll taxes by 1.6 percent, costing American families $13 billion each year.

Social Security has some minor problems, but faces no life and death crisis. In fact, without any changes at all, the system will be able to pay full benefits for the next 30 years and more than 70 percent of those benefits for 75 years.

Moreover, the entire Advisory Council agreed that modest changes — such as including state and local government workers in the system — could eliminate a fair share of the projected gap between revenues and benefits.

Thus, as this debate continues, let us agree that we cannot all be above average, and that when it comes to benefits we should compare apples to apples. We shouldn't give up a critical universal insurance program for no insurance at all. And we should not compare a guaranteed lifetime inflation-adjusted annuity to a 401(k) plan or brokerage account.□

Richard C. Leone is president of the Twentieth Century Fund.

The New York Times
WEDNESDAY, JANUARY 15, 1997

Tightening the Welfare Noose

By Douglas J. Besharov

WASHINGTON

During the debate over welfare reform, both liberals and conservatives made the new law seem tougher than it really is.

Liberals, wanting to stir up opposition, painted bleak images of millions of hungry children being tossed onto the streets. The right, eager to be seen as champions of legislation ending the "culture of dependency," played up the bill's harshest sounding provisions.

But all along, those familiar with the bill's specifics knew that it contained dozens of obscure loopholes that would give states the ability to soften the toughest of the Federal mandates.

These loopholes were not accidents; they were intended to give states the freedom to consider their own particular needs when they refashioned their welfare programs to meet the new Federal goals.

Now, however, officials at the Department of Health and Human Services have said they are considering a strict legal interpretation of the law that would close the most important loopholes.

Thus despite President Clinton's campaign promise to ease the most Draconian aspects of the welfare law, his Administration is threatening to make the worst fears of liberals' come true.

Consider how the Administration's tough line would affect the law's most notorious provision: the five-year limit on all Federal benefits.

Why the Federal push for strict time limits?

The welfare law does allow states to exempt 20 percent of recipients from this time limit. But most policy experts assumed that the law would actually be much more flexible. For instance, most experts believed that states would be able to give their own monies to families that reached the five-year time limit with no Federal strings attached. Since the law requires states to continue to spend at least 75 percent of their current welfare budgets, most would have ample money on hand to help struggling families after they are cut off by Washington.

Yet the Department of Health and Human Service's proposed approach would attach so many obstacles to the way state aid is given — including requiring states to place a higher number of recipients in jobs, cutting off mothers who haven't identified the fathers of their children and increasing the states' obligations to supply welfare data to Washington — that states will be very hesitant to help these families.

The department's tougher stance would also close a loophole that would allow states to use Federal money to help families that have reached the five-year cut-off. This loophole is a provision that applies the time limit only to "a family that includes an adult who has received assistance ... for 60 months."

It had seemed that a state could have provided assistance to a welfare mother for 59 months, at which point it could have terminated her grant but then continued Federal aid to her children. States even thought they would have the ability to raise a child's grant to compensate for the loss of a parent's benefit.

Some might say that continuing benefits in this way would further dependency. But states could dole out such payments to children in gradually shrinking increments, thus giving mothers more time to achieve self-sufficiency without shutting them off cold turkey.

There were other ways that states expected to enhance their programs. Many had planned to use their money for programs that would help families avoid welfare, including subsidized child care, a beefed-up state earned income tax credit, transportation subsidies, one-time grants to families, job counseling, substance-abuse treatment and parenting classes.

Unfortunately, the Administration's tough talk puts state financing for such services and benefits in question. For example, if a state gave a poor working mother $30 a week in child-care subsidies, the department might now count this against her time limit on welfare. Thus if she received subsidies for five years and then lost her job, she would be ineligible for assistance, even though she had never actually been on welfare.

The Department of Health and Human Services insists that it has no political agenda in wanting to interpret the law so strictly. A spokesman told me that the agency is only concerned with clearing up what it considers several murky passages in the law that "require further legal analysis."

But few experts doubted the intent of these murky passages. If not for the promise of state flexibility, support for the bill would have dropped and it might never have been made law. If the Administration takes back that promise of flexibility, it would undermine the careful balance achieved in the final bill and could create a welfare program that really does hurt the poor.

After all, almost half of all welfare mothers have been on the rolls for more than five years, more than 60 percent are high school dropouts and half of them have never held a job. It is likely that far more than 20 percent of welfare recipients will not be able to support themselves after five years.

Legal loopholes gave states flexibility.

Conservatives, too, should be unhappy with the Administration's strict new line. For all their rhetoric, they know that if welfare reform is to retain public support, states must be given the freedom to provide an adequate safety net — even as they attack the problem of long-term dependency.

The Department of Health and Human Services should back off and interpret the new law in the context of the political compromises that made it possible. A rigid interpretation of the law would only hurt the poor and make it harder for states to reform welfare. □

Douglas J. Besharov, a resident scholar at the American Enterprise Institute, is a visiting professor of public affairs at the University of Maryland.

Note to Readers

The Op-Ed page welcomes unsolicited manuscripts. Because of the volume of submissions, however, we regret that we cannot acknowledge an article or return it. If manuscripts are accepted for publication, authors will be notified within two weeks.

The New York Times
WEDNESDAY, JANUARY 15, 1997

Olivia Golden

Keep bifurcation
Strengthen focus on wk — w/ your 3 things
a) Make them give us data —
leg fix + into an fam structure / wk
push admin auth —
i) tell us ast caseload in sp progs
ii) consider asking states for overall wk effort — on hi perf. bonus provision

(not award — apparent, not real, success)

iii) penalty side — if not meeting partic rates, then need info to determine reas cause
b) Telling intent — right now —
But if states are gaming totally
Then we will revisit our interpretation

OK

Going to Cong rt now to get clud support + wk regs fixed.

↔ Wking w/ govs/Cong — way to solve.

c) talk tough about contingency —

Sec's office
Home.

Sec may try to solve ↑ during course of day.

362 0493

MEMORANDUM FOR THE PRESIDENT

PURPOSE

The purpose of this memo is to provide the Department's perspective on a major welfare reform implementation issue that the Administration is facing -- i.e., what amount of flexibility does the welfare reform statute provide to the states in spending their own money to meet the statute's general maintenance-of-effort (MOE) requirements? It is urgent that we give states an immediate and clear answer on this issue (sometimes called "bifurcation") because state legislatures are currently making key programmatic and financing decisions that will enable them to make welfare reform work. Governors, legislators, and administrators are strongly pushing for a quick response, and the issue is currently under consideration.

The Department's view is that the statute provides states with flexibility in spending their own money for benefits and services that count towards general maintenance of effort, without having to apply the requirements that apply to the TANF program. This view is shared by the key members of Congress, the National Governors Association, the American Public Welfare Association, the National Conference of State Legislatures, and numerous other commentators who have analyzed the legislation.

The statute is clear that states must spend their own money on needy families and for the purposes of the Act, but our view is that qualifying expenditures outside the TANF program are not bound by the other requirements of the Act. That is, the statute allows states to count expenditures in "any other state program," in addition to the TANF program, towards the maintenance-of-effort requirement. Our position thus gives states a wide range of flexibility in spending their money, whether they choose to spend that money for innovative post-employment services, a state EITC, family support services for needy families, or welfare benefits for families who have not met Federal requirements.

NEED FOR DECISION

This issue requires interpretation by HHS because PRWORA is such a large and complex piece of legislation, and there is no single clause in the statute which lays out how much flexibility States have with respect to expenditures of their own funds. The statute does make clear that a number of the TANF requirements apply only when Federal funds are used, and that States also have more flexibility to spend State funds on immigrants and families reaching the time limit. For other requirements, including work requirements and participation rates, data collection, child support assignment and cooperation, and distribution of child support collections, it is less clear whether these requirements apply to the state maintenance-of-effort funds.

The DPC and HHS have different views on this question of interpretation. The DPC believes that the best choice is to exclude from MOE state expenditures that fail to meet those requirements, because of a great concern that such flexibility might undercut the work and participation requirements; they thus oppose bifurcation. HHS shares the DPC's commitment to the work requirements and the legitimate concern that some states may use flexibility to reduce inappropriately the population subject to work participation rates. HHS has a different view of how to promote work and believes that bifurcation is the only option sustainable in working with states.

This decision is urgent because state legislatures are convening right now and making decisions on the scope, nature, and funding of their new programs. In addition, the National Governors Association is meeting beginning next weekend. If an answer is not provided this week, we can expect deep concern from all fifty Governors about Administration silence on this issue. We can also expect to lose valuable time in getting welfare reform up and running.

HHS VIEWS

HHS and the DPC share the common goals of making welfare reform succeed and moving families from welfare to employment. We believe that the best way to meet these goals is to adopt the position that States have the authority under the new welfare law to set up separate State programs -- funded entirely by State funds -- which are not subject to the requirements of the TANF program, but are included in the calculation of MOE. We believe that this position will enable states to get moving on welfare reform, will be consistent with the intentions of the sponsors and the words of the statute, and will avoid losing months or even years in battles with all fifty states over what they will see as Federal bureaucracy attempting to hold on to its power. While we do not believe that all the consequences of bifurcation are desirable, we believe it is the best choice we have. As noted later, we are prepared to take all administrative actions possible to mitigate against negative results and to consider a range of additional next steps if states should abuse this flexibility.

Our principal reasons for taking this position follow.

1. <u>Key Congressional members indicate that this is the interpretation they intended in drafting the bill.</u> As noted in the attached letter from Chairmen Archer and Shaw, the Congress understood that there were potential negative consequences to this State flexibility but nonetheless believed it to be the best available choice. In the letter, Chairmen Archer and Shaw commit themselves to working with us to resolve any problems that might occur if states misuse the flexibility.

2. The States, as represented by the National Governors' Association, American Public Welfare Association, and National Conference of State Legislatures have strongly supported this view. (See attached letter co-signed by the three organizations.) All fifty Governors and state legislatures can be expected to hold this view as a matter of principle: in their view, the Federal government should not be dictating requirements for the expenditure of state money.

3. State flexibility will make possible state creativity and innovation that can support the critical goals of work and responsibility. While not all states will use this flexibility in effective ways, the most creative states could well use it to build models that we all could learn from, and to try out a range of ways to support families in their move from welfare to work. For example, states might choose to use state funds to support a state EITC, or transportation assistance that would help low-wage workers keep their jobs. These uses of funds would be discouraged if we required all these cases to assign child support to the state, provide all the data elements required by the statute, and meet other requirements.

4. Making welfare reform work requires a partnership between the Federal government, the States, community leaders, and private employers. If we take the position envisioned by the drafters of the legislation and proposed by HHS, we will be taking a step that is viewed by States and others as consistent with that partnership. That will put us in the position to hold them accountable for meeting programmatic goals, provide technical assistance, shine a spotlight on success and failure, and do everything else we can in partnership to move families from welfare to work.

5. By contrast, if we take the position that states do not have flexibility with their own funds, we will lose precious months and years in an ongoing battle over Federal micromanagement of state programs. We risk undermining our relationships with the States (and the Hill) at the very beginning of implementation; creating an atmosphere of anger and distrust through our first major policy statement; and shifting the focus from the real issues of work and responsibility to the question of whether the Federal bureaucracy still doesn't understand the Congressional directive for Washington to give up detailed control. No matter how we describe our decision, States, and others, will view a narrow reading on State flexibility as an attempt by the Federal government to overstep its authority and to micromanage State decisions on the expenditure of their own monies. They may accuse us of attempting to transform the new block grant program back into a matching program. They could well argue that, through our policy interpretations, we are actually reducing the flexibility they had under prior law (i.e., the state share of Emergency Assistance expenditures, which were folded into the TANF block grant, supported a wide range of non-welfare activities, including family support, social services, etc.).

6. While we share the concerns of the DPC that the state flexibility approach risks some state "gaming" of key requirements -- and we propose strategies to address these risks below -- we do not believe that state actions under the flexible approach are likely to "gut" the work requirements of the PRWORA.

- o First, State MOE funds make up well under half (about 40 percent on average) of the combined Federal/State funding of these programs, and there is no question the work requirements apply to assistance provided by Federal funds.

- o Secondly, based on what we have heard so far, States have many different purposes in mind for using their MOE funds and will therefore have many competing demands for scarce resources. Most importantly, MOE monies provide the safety valve available to States to provide benefits to families who need some support but are not necessarily appropriate subjects for time limits and TANF work, child support, and data collection requirements -- such as grandparent caretakers; working families needing work-support services such as wage supplements/tax credits; and victims of domestic violence. In short, States have limited MOE money to serve a lot of very important needs; they will need to think twice about giving short shrift to such needs in order to avoid work requirements.

- o Third, the statute requires that states seeking to gain access to the contingency fund spend their maintenance of effort money solely on TANF. Therefore, states that believe they are at risk of needing to use contingency fund resources will have an incentive to avoid making large commitments to state-only programs that would not meet the TANF requirements.

- o Within states and their legislatures, supporters of work-based welfare reform are likely to criticize extreme efforts by state administrators to undermine work requirements.

7. Both because of our own commitment to the goal of work and in response to the DPC's concerns, we have identified several steps we would be willing to take in the guidance to discourage state misuse of this flexibility to "game" the work requirements:

i. We would take every administrative action in our power to collect information about the families served by states under their MOE programs, so that we could highlight successful approaches and punish gaming. For example:

- We could propose in regulation to deny States any reduction in the work participation requirements applicable to them (based on caseload reductions) unless they provide us with information on the families receiving State-funded assistance;

- We could propose in regulation to look at a state's bifurcation policy in deciding whether it is subject to one of the TANF fiscal penalties (i.e., in deciding whether it has reasonable cause for noncompliance); and

  If I can do this...

- We could propose in regulation to consider a State's overall work effort in deciding whether they qualify for a high performance bonus.

- We could publicize the data collected regarding families receiving state-only assistance and thereby put a spotlight on states engaging in inappropriate practices.

ii. In addition to taking every administrative action possible, we would go to Congress with a legislative fix on the data collection provisions to ensure that we have all basic information on the universe of recipients served by State-funded programs and a better ability to determine whether the legislative goals are being achieved.

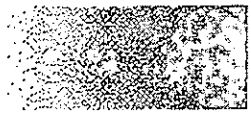
iii. We could indicate in this initial guidance that even though this is our best interpretation of the statute at this point, we would consider a different interpretation in the final TANF regulation relating to appropriate uses of state and federal funds if we learn that the work provisions are being undermined during this interim period.

iv. We could advise States to think carefully about the risks of bifurcation because such a practice will greatly complicate a State's ability to access contingency funds if and when it faces an economic downturn.

URGENCY

It is important to resolve this issue immediately in light of the upcoming NGA meeting, the continuing press coverage of this issue, and the urgent desire of states to make the key funding decisions and get moving on welfare reform.

Donna E. Shalala



Diana Fortuna

01/30/97 01:48:40 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:
Subject: Bifurcation

They are planning to roll this out this afternoon.

Intergovernmental: Starting around 3pm, the sequence of telling/briefing people is Ray Scheppach, Dem governors; staff from NGA/APWA/NCSL. They expect states will have a lot of questions/concerns.

Congress: Tarplin's shop happens to be meeting with all the appropriate Hill staff this afternoon, and will let them know.

Press: As Melissa told Bruce, they will tell NYT/Pear this afternoon (although he may focus on a story about the Governors' Medicaid proposal).

Emily Bromley 1/21/97

Can't wait until after NGA mtg

At mm, RR haven't brought to pres.

Point he says he'll stir pot - two pres' only issue - unless we resolve (correctly)

RS: HHS already say they agreed w/ us.

↓ EB: We're waiting for paper.

Child sup issue: understand concern

↓ can try to solve this.

Can't believe we would react in any other way.

G.O. issue - They'll get unan, bipartisan resolution.

get bad news story.

cause trouble on Hill.

If went to Pres, he'd agree w/ slater.

Shalala will start agitating bec. Ltr says she's sitting on this.

I. Nature and Purpose of this Guidance

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) gives States enormous flexibility to design their Temporary Assistance for Needy Family (TANF) programs in ways that promote work, responsibility, and self-sufficiency and strengthen families. Except as expressly provided under the statute, the Federal government may not regulate the conduct of States.

Within this context, we are planning to focus our proposed TANF regulations on areas where Congress has expressly provided for the Secretary to take action -- i.e., with respect to data collection, penalties and bonuses. We have also been undertaking extensive outreach to ensure consultation with a wide range of persons and organizations holding perspectives on children and families. To date, we have asked State executive and legislative officials and their national representatives, advocates, local government representatives, non-profit organizations and foundations, labor, and business organizations to participate in this consultation process.

Because State legislative sessions are starting and the TANF statute is so far-reaching, we have frequently heard of the need for early guidance on certain issues of immediate importance to the development of State programs. Among these issues are Federal requirements related to the expenditure of Federal grant funds, including the definition of "assistance" which triggers these requirements; the scope of State flexibility in using State funds which qualify as expenditures for maintenance-of-effort (MOE) purposes; and State flexibility in using State MOE funds in State programs operated apart from TANF.

Consequently, we are providing preliminary guidance on these important issues. However, because of the scope of the TANF statute, and the interrelationships among its many pieces, it is important to note that many other questions will be answered through the regulatory process. We believe the guidance reflects Congressional intent on TANF policies, and that it will promote program accountability, support substantial innovation in program design~~,~~ ~~and~~ provide States the flexibility they need to serve needy families effectively~~,~~ ~~and help achieve the central goal of welfare reform: moving people from welfare to work~~.

Key Points

The guidance makes the following key points:

1) States have the flexibility to count, towards their general TANF MOE requirement, expenditures of State funds under separate State programs. These expenditures must meet the statutory requirements for "qualified State expenditures," including the requirement that they are made on behalf of "eligible families," but are not subject to

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discussion and chart).

Because the statutory language for contingency fund MOE is different, States do NOT have the flexibility to count expenditures under separate State programs for the purpose of meeting the Contingency Fund MOE. All expenditures counted towards the 100% Contingency Fund MOE requirement must be made under the TANF program and therefore must meet TANF requirements.

2) In order to ensure that State decisions to establish separate programs do not undermine the work provisions of the new law, undercut Congressional intent to share child support collections between the Federal and State governments, or have other negative consequences, we will be taking steps to obtain additional information on State practices, exercising the administrative authority available under the statute to support the legislative goals of PRWORA, and seeking certain legislative changes (see discussion in section II below).

3) Under the definition of "assistance" included in section VI, all but two forms of assistance provided to families under the TANF program would be considered "assistance." Thus, TANF requirements such as time limits, work requirements, assignment of child support, and data collection are applicable (depending on the nature of funding involved).

4) During the interim period before final rules are available, any penalty decisions will be based solely on whether violations of the statute occurred. Further, statutory interpretations forthcoming in final rules will apply prospectively only; they will not be a basis for penalties during this interim period. States will need to conform their programs to Federal rules after final rules are promulgated.

II. Ensuring Positive Impacts

Program Accountability. At this point, we do not know what States will do with the flexibility they have to set up separate programs which qualify for MOE purposes, but are not subject to many of the TANF rules (see section IV). The flexibility provided in this guidance gives States the opportunity to try out some innovative and creative strategies for supporting the critical goals of work and responsibility. For example, States might choose to use State funds to support a State EITC or transportation assistance that would help low-wage workers keep their jobs.

At the same time, States could use this new flexibility in ways

that might undermine important goals of welfare reform. In particular, we are concerned that States could design their programs so as to avoid the work requirements in section 407 or to avoid returning a share of their child support collections to the Federal government.

We believe it is our responsibility to use the administrative avenues available to us to mitigate against these potential negative consequences.

Work

We intend to take administrative action to collect information about the families served by States under their separate MOE programs, so that we can: 1) better identify which States are truly successful in serving needy families; and 2) promote work and the other legislative goals. For example, in the proposed regulations we are developing on work requirements, penalties, and high performance bonuses, we intend to require that information be provided on families served by separate State programs and, to the maximum extent possible, consider the effects of State policies in setting up separate programs. More specifically, we intend to propose regulations to:

- deny States any reduction in the work participation requirements applicable to them (i.e., not give them credit for caseload reductions) unless they provide us with caseload information for separate MOE as well as TANF programs, and they demonstrate by this data that TANF caseload reductions are not artifacts of the way they structured their programs (i.e., the result of transferring beneficiaries from TANF to separate MOE programs);

- deny good cause to a State whose MOE policies work to circumvent the work requirements of the Act. If a State fails to meet the participation rates, the Secretary would not entertain good cause considerations unless the State provided information about its MOE program. It must also demonstrate that it was making a good faith effort in the work area with respect both to its TANF and its separate MOE programs and that it was not using its separate MOE program to evade the force of the work participation rates; and

- look at a State's <u>overall</u> work effort in deciding whether it qualifies for a high performance bonus, i.e., a State's success with its TANF program cannot be adequately judged without knowing how the State's TANF and separate MOE programs are configured and what is happening to needy families in the separate MOE programs.

Additional information on participants in separate MOE programs will help us evaluate whether work goals are being undermined and

publicly report our findings.

To ensure that we have critical information which will enable us to determine whether the work and other legislative goals are being achieved, we will propose a change to the statutory provisions on data collection which will enable collection of information on recipients served by separate State programs that are used as MOE.

This guidance sets forth our best current interpretation of the statutory language on the fiscal and programmatic implications of different program configurations. However, we would consider a different interpretation in the final TANF regulation if we learn that the work provisions are being undermined during this interim period.

Also, we strongly advise States to think carefully about the risks to the long-term viability of their TANF program if they rely too extensively on separate State programs. Because States cannot receive Contingency Funds unless their expenditures within the TANF program are at 100 percent of historical State expenditures, excessive State reliance on outside expenditures for their TANF MOE may make access to Contingency Funds much more difficult during economic downturns.

Finally, we intend to work with Congress and the Governors in a bipartisan fashion to ensure that each State's overall work effort meets that statute's work participation requirements. Specifically, we will seek language making clear that calculation of whether a States has met the applicable participation rate shall take into account the State's success in placing participants in both TANF and MOE programs in work activities.

Child Support

In assessing the potential budgetary impact of this bill, Congress apparently did not envision major losses in the Federal share of child support collections. We are advising States not to set up separate State programs which retain what would otherwise be the appropriate Federal share of child support collections.

In order to track State practices in this area, as part of the regulatory efforts proposed above, we will seek to incorporate requirements for States to report child support information for families in State MOE programs, as well as TANF. Likewise, in our legislative proposal on data collection for recipients served outside the TANF program, we will be asking for authority to collect child support data.

We also intend to work with the Governors and the Congress to identify approaches that will ensure that States do not use the

THE WHITE HOUSE

Elena —

This is a problem! NGA is threatening to blow this up in a "Greenie only" session if we don't answer them before NGA. Talked to Ray this am. Call me!

Emily

flexibility provided to retain Federal dollars in State coffers.

Summary. Because the States' ability to set up separate State programs can result in much more responsive and effective programs, we do not want to stifle creative State thinking about how best to serve their needy families and children. We will monitor the overall implementation of this legislation to assess whether the goals of welfare reform are being achieved. We will work with the Congress and the Governors on legislative remedies in the areas noted.

III. Overview of Guidance.

This section summarizes the remaining sections of the guidance, provides some additional context, and sets forth our policies on penalties in the interim period before final rules are available.

Section IV. Basic State Options in Program Design (p.) -- a conceptual framework for the TANF program and its Federal and State components.

Section V. Use of Federal Funds (p.) -- the flexibility available to States and the limits on use of Federal funds, including restrictions on the assistance payable with Federal funds.

Section VI. Basic Requirements Governing State MOE Expenditures (p.) -- the requirements governing State expenditures that qualify for TANF MOE purposes and the expanded flexibility available to States to expend State funds on certain needy families, including certain immigrants, individuals who exceed the time limits and teen parents. [NOTE: The immigrant policy on pp. 12-13 gives States broader flexibility to spend State MOE funds on immigrant families than was previously indicated in guidance sent to State Commissioners on October 9, 1996. The new interpretation reflects the additional work done on interpreting "State program under this part" and on trying to find the appropriate meaning for the many pieces of the statute which directly and indirectly speak to this issue.]

Section VII. Definition of Assistance (p.) -- guidance needed to assess the scope of key TANF provisions, including time limits, work requirements, child support assignment, and data collection.

Section VIII. Overview of TANF Provisions (p.) -- a chart depicting the applicability of key provisions in the TANF statute, depending on whether Federal or State funds -- and whether a State TANF program or a separate State program -- are involved.

Section IX. Conclusion (p.)

We recognize that this guidance does not provide answers to all the major issues and does not answer many specific questions. Through the regulatory process, we will provide broader and more specific guidance. The rulemaking process will also permit us to take into consideration ongoing input we receive from various interested parties.

Interim Penalty Policies. We want to strongly encourage State efforts to implement effective and innovative program designs and develop targeted service strategies which will produce the best outcomes for families (including those with special needs, such as those headed by grandparent caretakers). Thus, during this interim period, States should not be unduly fearful of incurring penalties under section 409. Before Federal regulations are in effect, States will not be subject to penalties under the new law so long as they implement programs which are related to the intent of the statute and operate within a reasonable interpretation of the statutory language.[1] Also, there are possible "reasonable cause" exceptions and an opportunity to undertake corrective compliance before imposition of most penalties.

IV. Basic State Options on Program Design

To understand the basic options available to States under the new title IV-A, it is important to make note of some of the key terminology used in the statute.

> The term "grant" refers to Federal funds provided to the State under the new section 403 of the Social Security Act.[2] References to amounts "attributable to funds provided by the Federal government" have a similar meaning.
>
> The terms "under the program funded under this part" and "under the State program funded under this part" refer to the State's TANF program. Unlike "grant" references, they encompass programs funded both with Federal funds and with State expenditures made under the TANF plan and program.

What counts as a State expenditure for TANF maintenance-of-effort

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[1] This would include the requirement that both Federal and State "maintenance-of-effort" expenditures must generally support the statutory purposes outlined in section 401 of the Social Security Act, as amended.

[2] References to a grant under section 403(a) would exclude the Contingency Fund, but would include other TANF funds in section 403.

(MOE) purposes is governed by the language in the new section 409(a)(7) of the Social Security Act. The statutory language in this section allows expenditures "in all State programs" to count as TANF MOE when spent on "eligible families" and meeting other requirements.

When the statutory provisions are read with these terms in mind, it is possible to distinguish three different types of program configuration under the new title IV-A: TANF programs funded by expenditures of Federal grant funds or by co-mingling of State funds and Federal grant funds; TANF programs where Federal grant and State funds are segregated; and programs funded by expenditures of State funds in programs outside of TANF, but counting towards meeting the State's MOE requirements. The language used in a specific TANF provision (or in a related provision elsewhere in the statute) will determine its applicability to these three types of programs.

In order to tailor programs to meet the specific needs of families moving from welfare to work, States may find some advantage to segregating Federal and State TANF dollars or spending State MOE funds in separate programs outside of TANF. We encourage States to take great care in making such decisions and to ensure that any such decisions are consistent with meeting the goals of the program.[3]

The definition of "assistance" is also a critical factor in determining the applicability of key TANF provisions. This paper includes a separate discussion of that definition.

V. Use of Federal TANF Funds

Compared to prior law, the TANF statute provides States with enormous flexibility to decide how to spend the Federal funds available under section 403. In repealing the IV-A and IV-F statutes, Congress freed the States from very detailed rules about the types of families that could be served, the benefits that could be provided, administrative procedures that needed to be followed, etc. However, to ensure that programs would achieve key program goals, the new statute imposes certain requirements and limitations on how States can use Federal funds to provide assistance. To a lesser extent, it also limits State flexibility on how to use State funds that count towards MOE.

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[3] Later in the paper, we provide a chart summarizing the applicability of key provisions of the statute to the different program configurations. We also summarize the rules governing allowable uses of Federal and State MOE funds. Because of the complexity of the TANF statute, States should review all of these sections in concert, together with the underlying statutory language, in deciding what program design to pursue.

The key provisions applicable only to the use of Federal funds are time limits, restrictions on expenditures for medical services and prohibitions on assistance to certain individuals and families, including certain aliens[4] and teen parents. Also, when Federal TANF funds are spent, all provisions applicable to the TANF program apply. Most importantly, work requirements, data collection, and requirements for child support assignment and cooperation apply.

More specifically, provisions governing the use of Federal TANF funds are found in three sections of the statute.

The new section 404 of the Social Security Act sets forth the basic rules for expenditure of Federal TANF funds.

- o They must be: (a) reasonably calculated to accomplish the purposes of the TANF program; or (b) an authorized expenditure for the State under title IV-A or IV-F as of September 30, 1995.

  --The statute specifies that assistance to low-income families for home heating and cooling costs falls within the purview of category (a) above.

  --To fall under category (b), the expenditure would need to be recognized as an allowable expenditure under the State's approved IV-A or IV-F plan in effect as of September 30, 1995.

- o Administrative expenditures may not exceed 15 percent of the total grant amount. The statute specifically excludes expenditures on "information technology and computerization needed for tracking or monitoring" required by or under TANF.

- o States may transfer up to 30 percent of the total grant to either the Child Care and Development Block Grant or the Social Services Block grant program.

  --No more than 1/3 of the total amount transferred may go to the Social Services Block grant.[5]

  --Once transferred, funds are no longer subject to the requirements of TANF, but are subject instead to the

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[4] Other restrictions on the use of State funds for aliens are contained in title IV of the PRWORA.

[5] In other words, States must transfer $2 to the Child Care and Development Block Grant in order to transfer $1 to the Social Services Block Grant.

requirements of the program to which they are transferred. However, funds transferred to the Social Services Block grant may only be spent on children or families with income below 200 percent of poverty.

- States may reserve their Federal TANF funds for future TANF expenditures without fiscal year limitation.

- States may also use their Federal TANF funds for employment placement programs and for programs to fund individual development accounts.

The new section 408 imposes some restrictions on the use of Federal grant funds. Under this section, Federal funds may not be used to:

1) provide assistance to families that do not include a minor child residing with a custodial parent or other adult caretaker relative (or a pregnant individual);

2) provide assistance to a family that includes an adult who has received 60 months of countable assistance, unless the family qualifies for a hardship exception;

3) provide assistance to families which have not assigned rights to support or to individuals who do not cooperate in establishing paternity or obtaining child support[6];

4) provide assistance to unmarried parents under age 18 who have a child at least 12 weeks old and are not attending high school or an equivalent training program;

5) provide assistance to unmarried parents under age 18 who do not live in appropriate adult-supervised settings (unless exempt);

6) pay for medical services, except pre-pregnancy family planning services;

7) provide cash assistance for a 10-year period following conviction of fraud in order to receive benefits in more than one State;

8) provide assistance to fugitive felons, individuals fleeing felony prosecution or violating conditions of probation and parole violators; or

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[6] Section 408(a)(2) provides that there must be a deduction of not less than 25 percent and the State may deny the family any assistance.

9) provide assistance for a minor child who is absent (or expected to be absent) from the home, without good cause, for a specified minimum period of time.

Finally, section 115 of PRWORA calls for denial of TANF assistance to any individual convicted of a drug-related felony after August 22, 1996. However, the State may opt out of this provision or reduce its applicability, and certain kinds of Federal benefits are excepted.

VI. Basic Requirements Governing State MOE Expenditures

TANF[7] MOE Requirements--General. States may expend their MOE funds on a broad range of activities without necessarily triggering Federal TANF requirements (such as time limits). Although States have significant discretion, especially with respect to State expenditures they make under separate State programs, there are statutory requirements which define the State expenditures which can be counted as TANF MOE. These are found at the new section 409(a)(7) of the Social Security Act.

Section 409(a)(7)(A) provides for a dollar-for-dollar reduction in a State's State Family Assistance Grant (SFAG) to the extent that "qualified State expenditures" in the immediately preceding fiscal year are less than an applicable percentage of "historic State expenditures." "Historic State expenditures" are subsequently defined to include expenditures by the State for FY 1994 under title IV-A (AFDC, EA, and child care) and IV-F (JOBS), as in effect during FY 1994.[8]

If a State fails to meet the work program participation requirements for a fiscal year, its MOE requirement is set at 80 percent of "historic State expenditures." If a State meets these requirements, its MOE requirement is set at 75 percent of historic State expenditures.

Also, in determining a State's MOE requirement, any IV-A expenditures made by the State in 1994 on behalf of individuals now covered by a Tribal TANF program are excluded from "historic

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[7] For Contingency Fund MOE purposes, State expenditures outside the TANF program do not count. See discussion in the following subsection for a further explanation.

[8] See section 409(a)(7)(B)(iii) for the statutory provisions governing the definition of historic State expenditures.

State expenditures."[9]

Contingency Fund MOE Requirements. MOE requirements governing State access to the Contingency Fund are found at section 403(b) and 409(a)(10). In general, this paper does not address special requirements pertaining to the Contingency Fund MOE. However, for the purpose of program planning, it is important for States to note that only State expenditures made within the TANF program count towards the Contingency Fund MOE. State expenditures in outside programs may count towards the TANF MOE, but they do not qualify for Contingency Fund MOE purposes.[10]

Qualified State Expenditures. In order for State expenditures to be considered "qualified State expenditures" for TANF MOE purposes, they must: (1) be made to or on behalf of a family that is eligible under TANF or that would be eligible for TANF except for the fact that the family had exceeded its 5-year limit on assistance or has been excluded from receiving assistance under TANF by PRWORA's immigration provisions (see discussion elsewhere in this paper for guidance on definition of "eligible families" and allowable immigrant expenditures); (2) be for one of the types of assistance listed in section 409(a)(7)(B)(i)(I); and (3) comply with all other requirements and limitations in section 409(a)(7).

Section 409(a)(7)(B)(i) defines "qualified State expenditures" as total expenditures by the State in a fiscal year <u>under all State programs</u> for the following activities with respect to "eligible families":

- *(aa) - Cash assistance;*
- *(bb) - Child care assistance;*
- *(cc) - Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except which involve the provision of services or assistance to a member of an eligible family which is not generally available to persons who are not members of an eligible family;*

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[9] In section 409(a)(7)(B)(iii)(II), the statute suggests an alternative calculation of historic expenditures. This language is apparently left over from a time when the bill included a fixed appropriation for State Family Assistance grants. We believe it is no longer viable, based on the final appropriation language.

[10] The statutory language in both sections dealing with Contingency Fund MOE refers to State expenditures "under the State program funded under this part." The TANF MOE counts expenditures "under all State programs," if otherwise qualified.

- *o (dd) - administrative costs in connection with the matters described in items (aa), (bb) and (cc) and (ee), but only to the extent that such costs do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year;*
- *o (ee) - any other use of funds allowable under section 404(a)(1).*

Meaning of "Eligible Families." Under the new section 409(a)(7)(B)(i)(I) of the Social Security Act, in order to count as qualified State expenditures for MOE purposes, State expenditures must be made with respect to "eligible families." Subclause (III) defines "eligible families" for this purpose to mean families eligible for assistance under the State TANF program and families who would be eligible for assistance except for the time-limit provision and the alien restrictions at section 402 of PRWORA.

We interpret this language to mean that State expenditures count as MOE only if made to or on behalf of families which:

- o have a child living with a parent or other adult relative (or to individuals which are expecting a child); and
- o are needy under the TANF income standards established by the State under its TANF plan.[11]

Finally, many of the restrictions at section 408 -- including the teen parent provisions and the provisions on denial of assistance in fraud and fugitive felon cases -- do not apply to State MOE expenditures because they are written as restrictions on the use of the Federal grant. Additional information on these restrictions can be found in the chart and the discussion on use of Federal funds.

Allowable Immigrant Expenditures.[12] States have the flexibility

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[11] We are not suggesting a definition of "child" for this purpose, but would expect States to use a definition consistent either with the "minor child" definition in section 419 or some other definition of child applicable under State law.

We are also not proposing Federal guidelines for what income standards would be used to determine if a family is needy, but will defer to State standards, for both TANF and MOE purposes.

[12] As noted on p. 2, the following immigrant policy gives States broader flexibility to spend State MOE funds on immigrant families than was indicated in guidance sent to the State

to use State MOE funds to serve "qualified"[13] aliens. They also have the flexibility to use Federal TANF funds to serve "qualified" aliens who arrived prior to the enactment of the PRWORA (August 22, 1996). For "qualified" aliens arriving after enactment, there is a bar on the use of Federal TANF funds which extends five years from the date of entry.[14]

States also have the flexibility to use State MOE funds to serve legal aliens who are not "qualified".[15]

Finally, under section 411(d) of PRWORA, States have the flexibility to use State MOE funds to serve aliens who are not lawfully present in the U.S., but only through enactment of a State law, after the date of PRWORA enactment, which "affirmatively provides" for such benefits.

Restrictions on Educational Expenditures. We believe the intent of the language in section 409(a)(7)(B)(i)(I)(cc) is to exclude general educational expenditures by State or local governments for services or activities at the elementary, secondary, or postsecondary level which serve general educational purposes. Expenditures on services targeted on "eligible families", but not available to the general public, may be included. For example, MOE could include special classes for teen parents (that are TANF eligible) at high schools or other educational settings. Services to "eligible families" designed to accomplish the

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Commissioners on October 9, 1996 (i.e., in the answer to Q. 3). The new interpretation reflects the additional work done on interpreting "State program under this part" and on trying to find the appropriate meaning for the many pieces of the statute which directly and indirectly speak to this issue.

[13] As defined under section 431 of PRWORA.

[14] Pursuant to section 403(b) of PRWORA, the five-year bar does not apply to refugees, asylees, aliens whose deportation is being withheld under section 243(h) of the Immigration and Nationality Act, and U.S. veterans and their spouses and unmarried dependent children.

[15] There is a technical problem in section 411 of PRWORA that prevents States from providing State or local public benefits to a handful of categories of legal aliens, e.g., temporary residents under IRCA, aliens with temporary protected status, and aliens in deferred action status. The structure of section 411 indicates Congress' belief that section 411(a) included all groups of aliens lawfully present in the U.S. Therefore, the Administration has proposed a technical amendment that would allow States to provide State or local public benefits to all aliens lawfully present in the U.S.

purposes specified in section 401 may also be included, pursuant to section 409(a)(7)(B)(i)(I)(ee).

General restrictions. Pursuant to section 409(a)(7)(B)(iv), the following types of expenditures may NOT be included as part of a State's MOE:

(1) expenditures of funds which originated with the Federal government;

(2) State Medicaid expenditures;

(3) State funds which match Federal funds (or State expenditures which support claims for Federal matching funds); and

(4) expenditures which States make as a condition of receiving Federal funds under other programs.[16]

Special Child Care Rules. The statute provides an exception to restriction (4) for certain child care expenditures. When the following requirements are met, expenditures by a State for child care may satisfy both the TANF MOE requirement and the MOE requirement related to accessing child care matching funds at the new section 418(a)(2)(C) of the Social Security Act. First, the amount of child care expenditures countable for TANF MOE purposes may not exceed the child care MOE requirement for the State. Secondly, to count as TANF MOE, the expenditures must meet all the other requirements of section 409(a)(7); to count as child care MOE, expenditures must be allowable under the requirements of the Child Care and Development Fund.[17] Before claiming child care expenditures under both MOE provisions, States need to check that the expenditures in fact meet the requirements of both programs. (E.g., there may be different families eligible for child care assistance under the two programs which prevent all expenditures from counting as MOE in both.)

Because of general restriction (3) cited above, child care expenditures by the State which are matched with Federal funds (pursuant to section 418(a)(2)(C)) do not qualify as expenditures for TANF MOE.[18]

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[16] Note the special child care rules below.

[17] This is the name given by ACF to all the child care funding streams under title VI of PRWORA, including the discretionary Child Care and Development Block Grant and the non-discretionary funds under section 418 of the Social Security Act.

[18] Likewise, State expenditures which receive Federal child care matching funds do not qualify for child care MOE.

Interpretation of MOE Exclusion Language. Numerous questions have arisen about the language at section 409(a)(7)(B)(i)(II), entitled "Exclusion of Transfers from Other State and Local Programs."

We believe part of the confusion derives from the caption; it refers to transfers, but the actual statutory language does not. Our view is that the provision should be read as a provision applicable only to State MOE expenditures made under separate State programs. Such expenditures may not involve a literal transfer of funds, but in a figurative sense, they would involve taking funds that are outside the program and bringing them into the program's purview (for MOE purposes).

In general, our view is that this provision is designed to prevent supplantation. We believe Congress wanted to prevent States from substituting expenditures they had been making in outside programs for expenditures on cash welfare and related benefits to needy families. The language in (aa) specifically addresses this point. It provides that States may get credit for MOE purposes only for additional or new expenditures from State and local programs. The standard for determining this is whether their expenditures in the preceding fiscal year were above the levels expended in the 12 months preceding October 1, 1995.

Section 409(a)(7)(B)(i)(II)(bb) can be read as an exception to the general rule in (aa). It would allow a State to make expenditures in programs outside of TANF which were previously authorized under section 403 (and allowable at the time of enactment) and get full credit for such expenditures. In other words, there is not a requirement that these expenditures be additional or new expenditures (above FY 95 levels).

Through regulation, we do expect to require that States be able to document that any outside expenditures they claim for MOE purposes meet the requirements of (aa).[19] At a minimum, States would have to identify the outside programs whose expenditures will be reflected as State MOE, establish what the State contributions to such programs were in the 12 months preceding October 1, 1995, and document the total State expenditures in such programs for the preceding fiscal year. States would also have to provide evidence that expenditures in outside programs which they want credited as MOE be expenditures on behalf of "eligible families". This evidence may be in the form of documentation of eligibility rules and procedures, or in other

[19] Pursuant to the Paperwork Reduction Act of 1995, States will not be subject to specific documentation or reporting requirements prior to OMB approval.

forms established by the State.[20]

VII. Definition of Assistance

The terms "assistance" and "families receiving assistance" are used in the PRWORA in many critical places, including: 1) in most of the prohibitions and requirements of section 408, which limit the provision of assistance; 2) the denominator of the work participation rates in section 407(b); and 3) the data collection requirements of section 411(a).[21] Largely through reference, the term also affects the scope of the penalty provisions in section 409. Thus, it is important that States have some idea of our views of what constitutes assistance. At the same time, because TANF replaces AFDC, EA and JOBS, and provides much greater flexibility than these programs, what constitutes assistance is less clear than it was previously.

Because States ~~are looking for guidance which they can use in designing their programs~~ are currently making key program decisions for which this information is relevant, we are offering an initial perspective on the matter. Our general view is that, because of the combining of the funding streams for AFDC, EA and JOBS, some forms of support that a State is permitted to carry out under TANF are not what would be considered to be welfare. Thus, our initial perspective is to exclude some of those forms of support as assistance. More specifically, we would define "assistance" as every form of support provided to families under TANF except for the following:

1) services that have no direct monetary value to an individual family and that do not involve implicit or explicit income support, such as counseling, case management, peer support and employment services that do not involve subsidies or other forms of income support; and

2) one-time, short-term assistance (e.g., automobile repair to retain employment and avoid welfare receipt and appliance repair to maintain living arrangements).

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[20] States would also have to be able to document that MOE expenditures on educational assistance and administrative costs meet the special limitations at sections 409(a)(7)(B)(i)(I)(cc) and (dd), respectively.

[21] In the absence of any statutory language or legislative history to indicate the contrary, we are viewing the term "assistance" as having the same meaning wherever it occurs in the statute in phrases such as "families receiving assistance" and "no assistance for..."

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We believe that these exclusions are consistent with Congressional intent to provide States with flexibility to design programs that will focus their resources on enhancing parental responsibility and self-sufficiency. At the same time, it will enable them, for example, to exclude families who receive no financial support from participation rate calculations and individuals who only receive one-time help in avoiding welfare dependency from requirements such as assignment of child support rights.

The complexities involved in formulating a definition of "assistance" suggest that it is an area which could be greatly illuminated by both State practice under TANF and by the rulemaking process. Thus, we welcome suggestions from States and other parties as to what an appropriate definition would be.

VIII. Conclusion

As we continue to work on the development of proposed -- and then final -- TANF rules, we welcome comments and suggestions on major issues like those discussed in this paper. In particular, we welcome suggestions about policy positions and administrative actions which we could adopt which would help further the work objectives and other goals of welfare reform.

IX. OVERVIEW OF TANF PROVISIONS IN DIFFERENT PROGRAM CONFIGURATIONS

PROVISION	FEDERAL TANF PROGRAMS[1]	SEGREGATED STATE TANF PROGRAMS[2]	SEPARATE STATE PROGRAMS[3]
Covered by State plan	Yes	Yes	No
Needy per income stds in State TANF plan	Yes	Yes	Yes [4]
Restricted disclosure	Applicable	Not applicable	Not applicable
Allowable expenditures	For purposes and as authorized under IV-A or IV-F as of 9/30/95	Count towards both TANF and contingency fund MOEs. Must be for purposes of program or for cash asst, child care, certain education, or admin costs	Count only towards TANF MOE (not contingency fund MOE). See State TANF section for allowable purposes.
15 % admin cost cap	Yes; ADP exception	Yes	Yes
Medical services	Only pre-pregnancy family planning	No specific restriction	No specific restriction
24-month work reqt	Yes	Yes	No
2-month work reqt	Yes	Yes	No
407 work reqts	Yes	Yes	No
work sanctions	Yes	Yes	No
non-displacement	Yes	No	No
child reqt	Yes; "minor child"	Yes [4]	Yes [4]
child ineligible when absent minimum period	Yes	No	No
child support	Assignment & cooperation req'd. Share of collections to Fed govt.	Assignment & cooperation req'd. Share of collections to Fed govt.	Assignment & cooperation may not be req'd. No share of collections for Fed. govt.
time limit on assistance	Yes	No	No
teen school attendance	Required	No requirement	No requirement
teen parent living arrangements	Must be adult-supervised	No requirement	No requirement
Federal non-discrimination statutes	4 statutes applicable	4 statutes applicable	No specific provision
fraud cases	10-yr exclusion	No exclusion	No exclusion
drug felons	Receive reduced benefits	Receive reduced benefits	No provision
data reporting	Required	Required	Not required
fugitive felons	Barred from assistance	No bar	No bar

[1] This column would also apply to programs where State MOE funds are co-mingled with Federal TANF funds.

[2] Under this scenario, Federal and State funds are not co-mingled. Since State funds are segregated, some -- but not all -- of the Federal TANF rules apply.

[3] These programs count towards State MOE. They are not subject to TANF requirements, per se, but are subject to the MOE restrictions at section 409(a)(7).

[4] Per definition of "eligible families."