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## **Congress Should Take Action to Restore Flexibility Lost in 2006 Welfare Reauthorization and HHS Regulations**

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In January 2006, after over three years of short-term extensions, Congress reauthorized the Temporary Assistance for Needy Families (TANF) block grant as part of the consolidated Deficit Reduction Act of 2005 (DRA). The legislative language that was incorporated into the DRA did not reflect the bipartisan welfare reauthorization bill that had been passed by the Senate Finance Committee, or even the bill that had been passed by the House Republicans.<sup>1</sup> Many members of Congress did not have the opportunity to read the bill—let alone to debate and amend it—before they were required to vote on it.

As a result, the welfare reauthorization that was passed into law was deeply flawed. Instead of rewarding states for their efforts to help welfare recipients achieve self-sufficiency, the new law acted as if the past decade of welfare reform had never happened. It substantially increased effective work requirements, while providing only a minimal increase in funding for child care. It removed state flexibility to individualize the work requirements to respond to participants' real needs. And it failed to incorporate common-sense provisions to improve program operations that had been included in both House and Senate bills and which received bipartisan support.

In the interim final rule issued this summer to implement the DRA changes, the Administration for Children and Families (ACF) made these flaws even worse. ACF issued narrow definitions of the countable work activities, which unnecessarily restrict state flexibility to use work-related activities that have been shown to be effective in helping families enter employment and get better jobs. While it acknowledges that states are legally obliged to provide accommodations to individuals with disabilities (under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973),

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<sup>1</sup> The House passed welfare reauthorization bills in 2002 (HR 4737 in the 107<sup>th</sup> Congress) and 2003 (HR 4 in the 108<sup>th</sup> Congress), and a similar bill was under consideration in 2005 (HR 340 in the 109<sup>th</sup> Congress). The Senate did not pass a welfare reauthorization bill, but the Senate Finance Committee reported out bills both in the 107<sup>th</sup> Congress, when the Democrats had the majority, and in the 108<sup>th</sup> and 109<sup>th</sup> Congresses, when the Republicans had the majority. The versions in the 107<sup>th</sup> and 109<sup>th</sup> Congress were reported out on a bipartisan basis. The 2005 version of the Finance Committee bill was known as the Personal Responsibility and Individual Development for Everyone (PRIDE) bill and was reported out as S. 667 in the 109<sup>th</sup> Congress.

ACF's inflexible regulatory structure puts states that comply with these laws at significant risk of failing to meet the federal participation rate requirements. The regulations also put arbitrary restrictions on the educational programs that can count as vocational educational training, even beyond the existing statutory limits on the duration that participation in such activities can count. The structure of the program creates strong incentives to cut welfare caseloads and to sanction off the families with the greatest barriers to employment.

While a wholesale revisiting of all the issues that were considered as part of the TANF reauthorization is unlikely, there are a number of specific changes that Congress could make that would ease program administration and encourage states to allow low-income families to participate in a range of activities that will improve their self-sufficiency. These include:

- **Recognizing that individuals with disabilities may require modifications to the participation requirements.** When a state provides a required accommodation to an individual with a disability and the individual participates to the full extent that he or she is able, the state should receive full credit toward the participation rate. The current rules discourage states from providing services that will help individuals with disabilities achieve self-sufficiency in cases in which individuals are not expected to be able to participate in countable activities for the full required hours. States should be allowed to deem as fully participating individuals with disabilities who are participating to the full extent required under their self-sufficiency plan.
- **Eliminating the separate participation rate for two-parent families.** There is broad bipartisan consensus that a 90 percent participation rate is simply unachievable in most circumstances and that the requirement acts as a disincentive for states to provide benefits to two-parent married families. Both the House and Senate reauthorization bills would have eliminated this requirement, which Assistant Secretary for Children and Families Wade Horn has described as “ridiculous.”
- **Expanding funding for child care.** New work participation requirements in the new welfare law will mean that many more mothers will have to enter the workforce or engage in more hours of work. Many will need child care assistance while looking for employment and while working. Without sufficient new funds, states may be forced to make substantial cuts to their child care assistance programs and will face strong pressures to cut child care funding for other low-income working families outside of the welfare program, leaving many families without access to affordable and stable child care. Research shows that when families are unable to get the help they need paying for child care, they may turn to welfare for help—potentially undermining state efforts to increase work participation rates. Congress should expand mandatory child care funding, at a minimum, to the level needed to offset inflationary losses since 2002 in the number of children served.

- **Removing arbitrary limits on education and training.** There is strong evidence that education leading to a credential—whether a training certificate or a post-secondary degree—is an effective pathway to higher earnings. Yet both the law and the regulations discourage states from allowing recipients to attend school. Under the old rules, many states defined the countable work activities broadly enough to include such educational activities. Others allowed individuals to participate in non-countable activities when they were included in an approved self-sufficiency plan. Post-secondary education should be made explicitly countable through a provision such as the Parents as Scholars program, included in bills passed by the Senate Finance Committee. Adult basic education and ESL courses should be allowed to count for all hours of participation for at least six months. These activities should be available thereafter as non-core hours thereafter for all participants who need them, whether or not they have a high school diploma.
- **Rewarding states for promoting employment, not for cutting caseloads.** The DRA changes focus state attention on meeting an arbitrary process measure rather than on helping recipients achieve employment success. By setting a new base year for the caseload reduction credit, the DRA encourages states to further cut their already historically low welfare caseloads. The caseload reduction credit makes no distinction between families who leave assistance due to work and those who are simply cut from the rolls with no other means of support. The caseload reduction credit should be eliminated; instead, states should be allowed to count families that are working after leaving TANF. In addition, a pilot project to hold states accountable for outcomes, rather than a participation rate, should be made available to a limited number of states.
- **Making technical improvements to simplify state administration.** For example, the overly complicated “reconciliation” process, which inhibits qualifying states from drawing down money from the contingency fund, should be eliminated; and the regular and contingency fund definitions of MOE should be aligned. States should be allowed to use their carried-over “rainy day funds” to provide any TANF services, not such cash assistance. Such improvements were non-controversial and had been included in both the House and Senate welfare reauthorization bills