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

*Submission for the Record for the House Ways and Means Committee, Subcommittee on Income Security and Family Support Hearing on Recent Changes to Programs Assisting Low-Income Families*

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In January 2006, Congress reauthorized the Temporary Assistance for Needy Families (TANF) block grant as part of the consolidated Deficit Reduction Act of 2005 (DRA). For the most part, the legislative language that was incorporated into the DRA did not reflect the bills that had been considered by both House and Senate over the previous three years. 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. Child support distribution options and strengthened enforcement tools included in the DRA are positive, but the deep funding cuts were unanticipated and devastating for families and child support program operations. It removed state flexibility to individualize work activities according to the real needs of participants and employers.

In the interim final rule issued this summer to implement the TANF changes in the DRA, 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), 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 resulting new structure of the program creates

strong incentives to cut welfare caseloads and to sanction off the families with the greatest barriers to employment.

At present, the full picture of the effects of the DRA and HHS regulations are only beginning to come into focus. HHS has not yet provided any state with individualized feedback on its interim Work Verification Plan, even though it expects states to be in compliance with these plans by October 1, 2007. Some states have been hesitant to make major program changes before the implementing regulations are finalized. And the legislatures in many states are still trying to determine how to respond to the program changes. However, some patterns are already becoming clear. Below, we discuss some of the early effects of the DRA and proposed regulations on TANF, child care, and child support participants and programs and offer recommendations as to how Congress should respond.

**1) The DRA is forcing states to focus on meeting the process-oriented participation rate requirements, not on promoting key outcomes such as increasing employment and wages or reducing poverty.** The DRA changes shift state attention toward meeting an arbitrary process measure and away from helping recipients achieve employment success or escape poverty. By setting a new base year for the caseload reduction credit, the DRA encourages states to further cut their already historically low welfare caseloads.

Since enactment of the DRA, state actions have overwhelmingly been focused on increasing their participation rates by removing non-participating families from the rolls, whether by implementing full family sanctions, by discouraging them from submitting applications for TANF benefits, or by moving them into solely state-funded programs. There is very little evidence that states are developing innovative programs for engaging recipients in activities.

> ***Recommendation: Congress should reward states for promoting employment, not for cutting 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.

**2) There has been an immediate reduction in access to education and training for welfare recipients.** Under the old rules, many states defined the countable work activities broadly enough to include a range of educational activities that could fit participant and employer needs. Others used the flexibility available as a result of the caseload reduction credit, or under separate state programs, to allow individuals to participate in non-countable activities when they were included in an approved self-sufficiency plan. The interim final rule prohibits states from counting programs leading toward a BA as vocational educational training and discourages programs that blend basic education into vocational skills training. We are already hearing that some states are responding to the regulations by telling students that they may continue in their educational programs only if they can combine them with full-time work. This is simply not feasible for many students, given that they are already juggling their school attendance with parenting responsibilities.

These problems stem from several aspects of the proposed regulations. In addition to the regulations' outright ban on counting education leading toward a BA degree or higher as part of vocational education, it appears that the regulations requiring all hours of participation in education and training to be supervised are proving to be a heavy burden for both students and educational institutions. For example, at least one state (Kentucky) has determined that online education (distance learning) cannot be counted toward the participation requirements because they can not verify that the recipient is staying at the computer once logged in. This interpretation of the regulations has significant ramifications, as nearly 28 percent of TANF "Ready to Work" program students enrolled in the Kentucky community and technical college system are taking at least one fully online course, and another 30 percent are taking courses with some online components. Consequently, the new policy disallows coursework by more than half (58 percent) of all Ready to Work community college students in the state. While we do not have national data for TANF students alone, about one in six of all college students nationally enrolls in online courses, with the proportion higher among community college students and among adults who are juggling college, work, and family[1]—two traits that most TANF students are likely to share.

These policies limiting access to education and training are highly counterproductive, as there is strong evidence that education leading to a credential—whether a training certificate or a postsecondary degree—is an effective pathway to higher earnings. For example, a study of TANF recipients who exited California community colleges in 1999 and 2000 found that TANF students were twice as likely to work year round after college as they had been prior to entering the program.[2] Students who left with an associate degree earned, on average, five times more in their second year out of school than they had when they entered college. More generally, welfare to work programs that have succeeded in helping participants find higher paying jobs have typically made substantial use of education and training, including access to postsecondary programs.[3]

> ***Recommendation: Congress should remove arbitrary limits on education and training.*** The TANF law should be amended to count vocational educational training, including postsecondary education, toward the participation rate for at least 24 months. 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 for all participants who need them, whether or not they have a high school diploma. The intent of the law should be clarified to explicitly allow distance learning hours of study to count as participation.

**3) HHS regulations discourage states from providing appropriate accommodations to individuals with disabilities, as required by the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act.** Under the interim final rule issued by HHS last summer, if a state recognizes that an individual with disabilities is unable to participate in federally countable activities for the full number of hours required, the state receives no credit for engaging that individual at all. Activities designed to remove barriers to employment may only be counted under the time-limited category of job readiness; if an individual requires such services for more than four consecutive weeks, they may not be counted. In addition, HHS has

stated that even a single hour of participation in such activities must be counted as using up a full week of the countable time.

Such policies are inconsistent with the principles of ADA and Section 504, which require that all program participants be provided (1) individualized treatment and (2) an effective and meaningful opportunity to participate. To fulfill these principles, states must treat individuals on a case-by-case basis and provide reasonable accommodations, auxiliary aids, and services to program participants. States are required to ensure equal access through the provision of appropriate services; to modify policies, practices, and procedures to provide such access; and to adopt non-discriminatory methods of administration. As currently written, states will find it difficult if not impossible to meet the requirements of TANF, as interpreted in the regulations, and also meet their ADA obligations.

While it is true that in the past relatively few states claimed participation in such activities under one of the federally countable activities, states had significant flexibility to assign clients to non-countable activities without risk of being penalized. With the increase in the effective participation rate requirement and the removal of states' flexibility with programs funded out of state-only dollars, this is no longer the case. States that comply with the requirements of ADA and Section 504 now run a real risk of facing financial penalties. Moreover, exactly the wrong signals are sent by treating a state that provides appropriate services and accommodations for individuals with disabilities exactly the same as one that exempts individuals with disabilities from participation requirements and provides minimal services.

> ***Recommendation: Congress should recognize 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 interim final 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.

**4) Families are losing access to child care funding.** From 1996 to 2002, funding for the Child Care and Development Block Grant (CCDBG), the primary source of federal funds for child care assistance to families, more than doubled. States also increased their investments through a maintenance of effort requirement and a state match requirement that were required in the CCDBG law passed in 1996. At the same time, states directed large portions of their TANF block grants to child care. With increased resources, states were able to more than double the number of children served, increase eligibility, raise reimbursement rates and lower family fees, and invest in initiatives to improve the quality of child care for all families.

Since 2002, the funding story has changed dramatically. Federal funds for child care assistance are no longer increasing as they once were, despite the continued need from low-income working families. CCDBG funding has been essentially frozen for the last four years. TANF funds used

for child care, through both the transfer of TANF funds to CCDBG and through direct child care payments out of the TANF program, have fallen from a high of $4 billion in 2000 to $3.2 billion in 2005, the most recent year for which we have data.

As a result of declining federal investments in child care, many states have made policy changes in recent years that restrict access for child care for low-income working families. The Government Accountability Office (GAO) found that between 2001 and 2005, 19 states restricted eligibility or made other changes that limited low-income families' access to child care help.[4] In 2004, spending on child care fell nationally for the first time since the passage of welfare reform in 1996.[5] The impact of this decline was felt by families, as the number of children served by state programs has steadily dropped from a high of 2.45 million children in 2000 to 2.3 million children in 2006.[6]

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. For example, in May 2006, state officials in Virginia notified local agencies that, in response to the changes in the TANF program, they would be using more funds to serve TANF families and that localities would be cut significantly—resulting in thousands of working families losing child care assistance.

Overall, these changes will impact the state welfare program, as research demonstrates that families who cannot get help paying for child care often turn to welfare, raising caseloads and potentially undermining state efforts to increase work participation rates

> ***Recommendation: Congress should expand funding for child care.*** 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.

**5) Child support agencies are cutting back on staff and services to families.** Preliminary estimates by the Congressional Budget Office indicate that $11 billion in support payments will go uncollected over the next 10 years as a result of deep cuts to child support enforcement funding included in the DRA, including eliminating the federal match on performance-based incentive funds and reducing the federal match on paternity testing. Last session, the Congressional Budget Office determined that these cuts represented an unfunded mandate on states. The cuts will significantly reduce child support collections for families and impede paternity establishment, as states and counties reduce staff, forego computer upgrades, limit access to paternity genetic tests, and abandon promising initiatives, including implementation of DRA provisions to distribute more payments to families, expand health insurance coverage through the child support system, and connect low-income fathers to work and their children. Poor families, including those receiving TANF assistance, will likely be hurt the most, since their child support cases often require more intensive casework to collect reliable child support month after month.

There is already evidence that services will be reduced, as governors begin to release their proposed budgets. While some governors are asking state legislatures to backfill lost federal funds, an equal number of governors are not proposing to backfill all of the funds. Counties, particularly poorer urban and rural counties, rely heavily on performance-based funding (including incentive payments and federal matching funds) to operate. Performance-based funding has increased state program investments and evened out performance across the country. As program resources are reduced, a state's ability to meet federal performance measures will deteriorate. A downward spiral in performance will further decrease state program funds and increase penalty risks. The performance gap will widen between states and counties able to backfill funds and those that cannot.

Child support helps families escape poverty, provide for their children's needs, and avoid a return to welfare. The federal-state child support enforcement program provides services to over 17 million children. In FY 2005, it collected $23 billion in child support from noncustodial parents, at a total cost of $5 billion to the federal, state, and county governments: $4.58 in collections for every $1 invested, making it highly cost-effective. All families in need of child support enforcement services are eligible, but most of the families that rely on the program are low- and moderate-income working families. Families that formerly received public assistance make up nearly half (46 percent) of the caseload; current recipients represent 16 percent of the caseload.

> ***Recommendation: We commend your introduction of HR 1386, a bill to restore the funding cuts from the DRA, and urge its swift passage.*** Your bill would protect child support enforcement services by restoring the federal match for incentive funds that states re-invest in the child support program. This match is a key part of the results-based incentive payment system, overhauled by the Child Support Performance Incentive Act (CSPIA) of 1998, that has given states the incentives—and the resources—to dramatically improve their child support programs. Over the past 10 years, child support collection rates have doubled, and enforcement has been strengthened on a nationwide basis, thanks to the implementation of child support reforms enacted by Congress as part of the 1996 welfare reform law.

**6) Child support fees will cost more to implement than the revenues it will generate.** We are hearing that the DRA provision requiring states to collect new service fees from parents are adding enormous new complexity to child support computers and increasing administrative costs well beyond the revenues states expect to collect. The irony is that Congress simultaneously adopted reforms to expand family distribution in part to simplify child support program administration and reduce the complexity and costs of child support computers. As a result, about a third of states report that they are planning to pay the fee due the federal government out of their own funds—a shift in costs to states tantamount to a funding cut. About half of states are proposing to charge the fee to custodial parents. While the DRA exempts families who receive or used to receive TANF assistance, the new law directs states to charge the fee to the cases of low-income working families receiving foster care maintenance payments, Medicaid , and food stamps—even though these families are required to participate in the child support program as a condition of receiving benefits.[7] Under proposed HHS rules, families with multiple child support cases will be required to pay multiple service fees.[8]

***Recommendation: Congress should repeal the service fee.*** Congress should repeal the annual service fee charged to cases of families with collections of more than $500 except for those who have received TANF assistance. At a minimum, families receiving Medicaid, foster care maintenance payments, or food stamps should be exempt; and families should not be required to pay more than one annual service fee.

**7) New distribution options in the DRA are a major improvement, but the federal government should fully share in the costs of passing through support.** The DRA includes important family distribution reforms advanced by this committee on a bipartisan basis to encourage states to pay more collected child support to families instead of retaining it to repay welfare costs. Under the new law, the federal government will waive its share of retained child support collected for former TANF families if a state gives up its share. However, the law limits the waiver of the federal share to $100 (for one child) and $200 (for two or more children) for support passed through to families receiving TANF assistance.

A few states are proposing to expand their pass-through policies, but they are bumping up against the $100 and $200 limits. They no longer plan to adopt full family distribution policies—despite research findings that fathers pay more support when their children receive the full amount and cost analyses that suggest that the program could save 6 to 8 percent of all program costs if states adopt full family distribution policies. As discussed above, most states are abandoning or postponing plans to reform their distribution rules because they cannot absorb the costs of distribution reforms at the same time they are implementing new TANF requirements, child support funding cuts and service fee costs, child welfare cuts, and other human services budget pressures.

**Recommendation: We commend your inclusion of important distribution reforms in the DRA but recommend that the $100 and $200 pass-through limits be lifted.** Lifting these limits will give states the authority to adopt full family distribution policies.

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[1] *Making the Grade: Online Education in the United States, 2006*, The Sloan Foundation, http://www.sloan-c.org/publications/survey/pdf/making_the_grade.pdf

[2] Mathur, A., with Reichle, J., Wiseley, C., & Strawn, J. (May 2004): *From Jobs to Careers.* Washington, DC: The Chancellor's Office of the California Community Colleges and the Center for Law and Social Policy.

[3] Martinson, K., & Strawn, J. (April 2003). *Built to Last: Why Skills Matter for Long-Run Success in Welfare Reform.* Washington, DC: Center for Law and Social Policy.

[4] U.S. Government Accountability Office, 2005.

[5] Matthews, Hannah and Ewen, Danielle. *Child Care Assistance in 2004: States Have Fewer Funds for Child Care.* 2005.

[6] Ewen, Danielle and Matthews, Hannah. *Families Forgotten: Administration's Priorities Put Families Low on the List.* 2007.

[7] Families receiving food stamps may be required to participate in the child support program at state option.

[8] 72 Fed. Reg. 3093 (Jan. 24, 2007).