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COMMUNITY CHANGE**

To: Interested Parties
From: Shawn Fremstad, Rachel Gragg, and Margy Waller
Re: Summary of TANF Changes in the Budget Reconciliation Bill and Initial Thoughts on State-Level Implementation
Date: January 6, 2006

In late December, the U.S. Senate approved—with a few minor changes—the House-passed budget reconciliation bill (S. 1932). This bill includes language reauthorizing the TANF program for five years and making certain other changes to TANF. A copy of the bill's provisions related to TANF (and to the child care and development fund and the child support enforcement program) is available at: <http://inclusionist.org/files/TANF%20Provisions.pdf>. There is also a side-by-side analysis comparing the policy provisions included in reconciliation to current law as an appendix to this paper.

Because the Senate made changes to the reconciliation bill, even though they were relatively limited, the House must now pass the bill again. The House could make further amendments to the legislation (if so, the bill will go back to the Senate for another vote) or simply have an up or down vote on the bill. If approved by the House in its current form, the bill will go to the President for his signature. A vote on the bill in the House is currently scheduled for February 1, 2006, but that date could change.

Every effort should be made in the weeks ahead to defeat (or, failing that, amend) the budget bill in the House. Taken as a whole, the bill is an example of the profoundly misplaced priorities that currently prevail inside the beltway. Most notably, in order to give \$70 billion in tax cuts to the most privileged, the bill makes substantial cuts in student loans, child support enforcement, Medicaid, and other essential programs.

However, even as we work to defeat the budget bill, those of us who are particularly concerned about the TANF provisions in the bill need to: 1) develop an effective strategy for making improvements to the TANF provisions currently included in the reconciliation bill and for influencing the TANF regulations that the bill directs HHS to issue;¹ and 2) prepare for

¹ For some of the arguments that were made opposing the TANF reconciliation provisions prior to their passage in the Senate see: Sharon Parrott, *Conference Agreement Imposes Expensive*

possible *state-level* implementation of the changes included in the bill.

This memo focuses on state-level implementation. Two of us worked on welfare reform issues in the states in the mid-1990s—Margy in Ohio and Shawn in Minnesota—and one of our “lessons-learned-well” is the importance of starting advocacy on implementation before the ink is dry on federal welfare legislation. States made numerous changes to their welfare programs prior to 1996 and these changes were based as much on expectations about what the final legislation would include as what it actually ended up including.

Our sense is that the same thing is happening now (and, in some states, has been happening over the past few years). Officials and legislators in numerous states are already developing state-level proposals that assume the TANF changes included in the reconciliation bill will become law. And, even if the reconciliation bill is defeated or delayed in the House in February, we can be fairly certain that many state officials and legislators will go ahead with changes to state TANF policy assuming that Congress would enact these changes at some point this year. Indeed, a number of states have already made changes to their TANF programs based on elements of earlier versions of proposed TANF legislation, and HHS officials have been urging states over the last few years to make such changes.

Understanding What *Isn't* in the TANF Title of the Reconciliation Bill

As a starting point, it is important for relevant state legislators, officials and others to understand that the TANF title included in the reconciliation bill is probably best thought of as a *new and different piece of legislation* than the earlier versions of TANF reauthorization.² Although in retrospect it seems clear that HHS has always prioritized the set of issues included in reconciliation—increased participation standards, funding for marriage promotion, and a

New TANF Requirements and States, Center on Budget and Policy Priorities, December 19, 2005 and Mark Greenberg, *Conference TANF Agreement Requires States to Increase Work Participation by 69 Percent, but New Funding Meets Only a Fraction of the New Costs*, CLASP, December 20, 2005.

² Most likely, leadership dropped changes included in earlier versions of TANF legislation because they anticipated objections in the Senate based on the Congressional Budget Act and Senate rules. These rules prohibit the inclusion of provisions in reconciliation legislation that have no budget impact or that have a budget impact that is merely incidental to policy changes made by the provisions. (For more than you ever want to know on these rules, see our paper [“Breaking Faith and Violating the Congressional Budget Act”](#) on CCC’s website) A number of state and local advocates worked hard to ensure that Senators were prepared to raise these objections.

limited investment in child care funding—the policy provisions ultimately included in the reconciliation bill are much more limited than previous proposals.

We don't say this to downplay the potential impact of the few TANF changes that would be made by the reconciliation bill—the changes that the bill would make are significant and quite objectionable—but for the specific purpose of *state implementation advocacy* it will be important for state legislators and others to understand that *only a few of the provisions included in previous House or Senate versions of reauthorization legislation are included in the reconciliation bill.*

For example, unlike earlier House and/or Senate versions of TANF reauthorization, the TANF reconciliation provisions *would not*:

- Increase overall work hours. Current requirements (20 hours for parents with children under age 6; 30 hours for other single parents) remain in place, instead of the 34- or 40-hour requirements that were included in earlier Senate and House versions of TANF.
- Require participants to be engaged in work or workfare for a minimum of 24 hours a week in order to be counted toward the work rates as earlier House versions of TANF reauthorization would have required.
- Prohibit the counting toward work rates of “stand-alone” vocational education or certain other work activities. Earlier versions of the House bill would have limited vocational education as a stand-alone activity to three months, rather than the current 12 months.
- Increase the overall work participation rate standard to 70 percent, as earlier versions of the House and Senate TANF bills would have done.
- Require states to impose "full family sanctions" as earlier versions of the House bill would have done.
- Require states to meet a “universal engagement” requirement that entails developing a self-sufficiency plan for all TANF participants, including participants who are exempt from work requirements, as earlier versions of House and Senate reauthorization bills would have done.

- Provide states with radical new “superwaiver” authority that would allow them to make fundamental changes to a range of federal programs, including food stamps and the public housing program as earlier versions of House and Senate reauthorization bills would have done.
- Make any changes to the TANF purposes (for example, by adding “marriage” to TANF’s fourth purpose related to the maintenance and formation of 2-parent families) or require states to set targets on meeting a marriage promotion purpose as earlier versions of House and Senate reauthorization bills would have done.
- Make changes to the EITC that would make some legal immigrants and U.S. citizens who are married to or the children of immigrants ineligible for the EITC as the previous Senate version of the reconciliation bill would have done.

Understanding What *Is* in Reconciliation’s TANF Title

While not making any of these and numerous other changes include in earlier versions of TANF reauthorization legislation, the reconciliation bill does make two distinct—and potentially damaging—sets of changes to TANF. One set of changes is related to work, and the other is related to funding.

In a recent analysis, the Congressional Research Service describes the TANF work changes in the reconciliation bill as follows:³

The conference agreement on the budget reconciliation bill (S. 1932) does not overhaul TANF work participation standards. It retains the current 50% standard, current rules for the minimum hours that count toward the participation standard, and current list of activities that are creditable for work participation. However, the agreement makes the following changes:

- *The caseload reduction credit is revised, so that work participation standards are reduced only for caseload reductions that occur from FY2005 into the future. This is effective beginning in FY2007. Thus, absent further caseload declines, a state would face a 50% TANF work participation standard in contrast to the much reduced standards they would face under current law.*

³ The CRS analysis, *Welfare Reauthorization: An Overview of the Issues* is available on the web at <http://www.opencrs.com/document/IB10140/>.

- *Count families in state-funded “Separate State Programs” (SSPs) in the work participation rate calculation. Under current law, states may assist TANF-like families in state-funded programs, and count spending in those programs toward the TANF state spending requirement (known as the “maintenance of effort” or MOE). Families in SSPs are not counted in the work participation rates. The agreement provides that, beginning in FY2007, families in SSPs are to be included in the participation rate calculation. This prevents states from increasing their participation rate simply by moving nonparticipating families into SSPs.*
- *Require HHS to develop standards for states to define work activities and verify work participation. HHS is to develop regulations June 30, 2006 and states would be required to implement procedures for verifying work by the end of FY2006.*

These changes are likely to increase required participation standards significantly for states. The national average work participation rate in FY2003 was about 30% — so requiring 50% of families to participate requires states to significantly boost their participation. Further, work participation rates varied greatly among the states (see FY2003 work participation data at [<http://www.acf.hhs.gov/programs/ofa/particip/indexparticip.htm#2003>]); some states will have to increase their participation rates more than others.

The TANF funding changes made by the reconciliation bill are:

- The basic TANF block grant would be extended (at current funding levels) until FY2010.
- Mandatory child care funding would be increased by \$1 billion over five years. (The previous Senate TANF bill provided \$6 billion over five years for child care funding—this funding was partially offset by the cuts to the EITC noted above—while the previous House bill provided only \$500 million over five years).
- TANF supplemental grants would be extended, but for only three years.
- TMA would be extended, but for only one year.

- \$100 million a year would be provided for “healthy marriage promotion” research and demonstrations. (Previous TANF reauthorization bills included \$200 million per year in grants for healthy marriage promotion—\$100 million per year for matching grants to states and tribes and a second \$100 million per year in research and demonstration funding).
- \$50 million a year in mandatory funding would be provided for responsible fatherhood initiatives. (Such programs were authorized but not funded in earlier TANF reauthorization bills.)
- Existing TANF bonuses—a High Performance Bonus based on states’ progress toward meeting TANF goals (\$200 million per year) and a bonus for reducing out-of-wedlock pregnancies (\$100 million per year)—would be eliminated.

Some Very Preliminary Thoughts on Implementation Advocacy

The primary implication of these changes is that in federal fiscal year 2007 (which begins on October 1, 2006) states will need to meet a “hard” 50-percent participation rate or risk being penalized. States will also need to meet a “hard” 90-percent participation rate for two-parent families (and won’t be able to avoid the higher rate by placing families in separate state programs).

Only a handful of states currently meet a 50 percent rate, and many states will need to make double-digit increases in the work rates. (For state-by-state tables on the impact of the work rates on states, see the CRS memorandum “TANF Work Participation Rate Standards: Revising the Caseload Reduction Credit” at <http://inclusionist.org/files/cdrebasedcrc.pdf>. In addition, state-by-state tables detailing the number of families engaged in various work activities are available at <http://www.acf.hhs.gov/programs/ofa/particip/indexparticip.htm>).

However, CBO estimates that no significant work rate penalties will be levied on states in fiscal years 2006 to 2008, and only modest penalties will be levied in subsequent years. This may be because CBO assumes HHS will try to minimize penalties by allowing states to enter into “corrective compliance” plans and using other available mechanisms to ease penalties as long as states are making progress toward the 50 percent standard.⁴

⁴ In its annual TANF report to Congress, HHS describes the penalty and corrective

Work participation rates are an outmoded way to measure state performance in TANF and should be replaced by measures that emphasize positive outcomes like improvements in earnings and reductions in poverty. But for the time being we're stuck with them, as the provisions included in reconciliation continue to emphasize process over outcomes. So, in the spirit of "making lemonade out of lemons", it will be important for state advocates to promote ways of meeting a 50 percent rate that don't involve further efforts to reduce

compliance process as follows:

Each year, States submit to HHS case-level data on participation in work activities, as well as information needed to calculate the caseload reduction credits.

HHS calculates the participation rate achieved by each State, with and without waivers, and the caseload reduction credit. HHS then notifies each State of the participation rate it achieved and whether it is subject to a penalty. A State that fails to meet a participation rate has 60 days to submit a request for a reasonable cause exception or submit a corrective compliance plan.

To ensure State accountability, HHS has defined a limited number of circumstances under which States may demonstrate reasonable cause. The general factors that a State may use to claim reasonable cause exceptions include (1) natural disasters and other calamities; (2) Federal guidance that provided incorrect information; and (3) isolated problems of minimal impact. There are also two specific reasonable cause factors for failing to meet the work participation rate: (1) federally recognized good cause domestic violence waivers; and (2) alternative services provided to certain refugees.

The statute requires a reduction in the work participation penalty based on the degree of the State's noncompliance. The TANF regulations include a formula for calculating such reductions. This formula incorporates the following: (1) a reduction for failing only the two-parent work participation rate (prorating the penalty based on the proportion of two-parent cases in the State); (2) two tests of achievement for any further reduction; and (3) a reduction based on the severity of failure. The formula combines three measures for determining the severity of a State's failure: (1) the amount by which it failed to meet the rate; (2) the State's success in engaging families in work; and (3) how many consecutive penalties it had and how many rates it failed to meet. In addition to the required penalty reduction, the Secretary also has the discretion to reduce a work participation rate penalty for certain other reasons.

If a State does not demonstrate that it had reasonable cause, it may enter into a corrective compliance plan that will correct the violation and insure continued compliance with the participation requirements. If a State achieves compliance with work participation rates in the time frame that the plan specifies, then we do not impose the penalty.

caseloads or cuts in work supports like child care for families who do not receive TANF assistance.

Much like in 1996, the current welfare debate is as much about sending signals to the states as anything else. Unfortunately, again much like 1996, the signals that the policy changes included in reconciliation send are bad. Once again, Congress and the Administration have chosen to emphasize caseload reduction over real strategies that help move families into good jobs and out of poverty.

Without strong advocacy, state lawmakers may decide that the easiest and cheapest way to make the new participation standards—especially the 90 percent rate for 2-parent families (which is literally impossible for any state to achieve)—is to simply begin purging their welfare rolls once again. States understand the value of the caseload reduction credit, having used it since 1996 to create broad flexibility in their programs, and will certainly realize that one solution to the new participation standard would be to simply build their credit back up.

Obviously, this kind of approach would do considerable harm to low-income parents and their children, and state lawmakers must be made to understand that there are alternative strategies to achieving the new participation standards. Advocates should focus on the fact that welfare reform should *not* be about simply pushing people off of the rolls, but rather should be about helping recipients successfully enter and stay in the job market.

As a starting point, legislators and officials should be encouraged to stop thinking of TANF as simply a “welfare” program for which the only measure of success is declining caseloads. In addition to providing a basic safety net of temporary cash assistance for families with children, TANF provides wage subsidies and advancement services to those families who aren’t well served by unemployment insurance or WIA. Moreover, most TANF funding now goes to provide work supports and services to the working poor. Moving forward, it will be important to build understanding of these facts.

States that used federal TANF dollars to supplant state spending or otherwise frittered away federal TANF dollars will need to (and should anyway) “get back to basics” on welfare reform. In other words, they should focus their TANF and MOE spending on the core components of the program: wage subsidies and other income supplements, child care, transportation, and getting parents better jobs.

Figure 1. A recent report by the U.S. Government Accountability Office (GAO) outlines the variety of activities, particularly those that we tend to think of as “barrier removal” services, that various states currently count toward the federal work standards.

Number of Reviewed States that Count Certain Activities toward Meeting the Federal Work Participation Rate and the Categories of Work in Which the States Counted the Activities

Activity	Number of 10 reviewed states that count the activity as federal work participation	Federal categories of work in which the reviewed states counted the activity
Caring for a disabled household or family member	5	Community Service
Substance abuse treatment	6	Job Search/Readiness, Work Experience, Community Service
Domestic violence counseling	3	Job Search/Readiness, Work Experience, Community Service
Other mental health counseling	5	Job Search/Readiness, Work Experience, Community Service
English as a second language	7	Job Skills Training, Secondary School or Education Directly Related to Employment, Community Service, Vocational Education

Source: GAO review of 10 states' TANF documents and interviews with the states' TANF officials.

Note: An additional state counts substance abuse treatment, domestic violence counseling, and other mental health counseling toward meeting the federal work participation rate in limited circumstances.

Viewing TANF in this broader and more positive sense suggests a number of strategies that states should implement. These changes are good policy, and also would increase the likelihood that states are able to meet the 50 percent work participation rate in fiscal year 2007 without relying on reductions in the caseload.

- States should allow more participants who are in need of "rehabilitative services" and related services—such as chemical dependency treatment, mental health counseling, and physical rehabilitation services—to receive such services. Such activities are countable toward state work rates under current law and several states that currently meet work rates near or in excess of 50 percent, including Wisconsin, Washington, and New York define community service to include such activities. As the table above shows, GAO recently found that more than half of 10 reviewed states treated various rehabilitative services as a federal work activity and counted participation in them toward the work rates.⁵

⁵ GAO, *HHS Should Exercise Oversight to Help Ensure that TANF Work Participation is Measured Consistently across States*, August 2005, www.gao.gov/new.items/d05821.pdf.

While the reconciliation bill directs HHS to develop standards for states to use in defining work activities, we don't believe that states should wait for the issuance of these standards to ensure that rehabilitative and related services are made available to TANF beneficiaries and counted toward work rates. We believe that making such services available to TANF beneficiaries is good policy and that widespread adoption of work activity definitions including rehabilitative and related services will make it more difficult for HHS to adopt regulations that restrict such activities. Moreover, if HHS does end up adopting restrictive definitions, states will only have this fiscal year (and arguably the next one) to have maximum flexibility to place people in barrier removal activities without having to worry about the participation rate implications of doing so.

- States should maximize the use of vocational educational training as a work activity. They can do this by making full use of their “allowance” for vocational education (and teen parent school attendance), which allows them to place almost one-third of all families that are counted toward the 50 percent rate in vocational education.
- States should create “transitional jobs” programs for parents unable to find a job, especially in places with a high proportion of the state’s long-term cash assistance caseload. Transitional jobs are an especially promising policy response to the needs of hard-pressed urban and rural communities, and unemployed people facing barriers to work. Transitional jobs are wage paying, community service jobs for welfare recipients and other unemployed adults who have not been hired after a job search in the regular labor market. Workers in these jobs also count toward the state’s required participation rate, while providing experience and employer references that improve chances of success in the job market and enable families to avoid destitution when welfare benefits end. For more information on transitional jobs, see <http://www.transitionaljobs.net>.
- States should make it easier for working parents in low-wage jobs to get wage subsidies through TANF. Illinois provides a model that all states should emulate. Parents working in low-wage jobs remain eligible for a wage subsidy through TANF until they reach just under the federal poverty line. The wage subsidy is paid for with state MOE funds so that it doesn't count toward the 60-month time limit. In FY2003, Illinois

work participation rate was 58 percent; more than half of the families that counted toward the rate were employed.

- State should allow parents of infants to be available as full-time caregivers for their children, while also assuring that such parents have access to the same work supports and services available to other TANF beneficiaries.
- States should count parents caring for disabled children or other dependents as engaged in community service.

Implementation of these policies would improve state TANF programs considerably, while simultaneously making it easier for the state to meet a 50 percent rate.

In addition, states would be well advised to ensure that they are not undercounting the number of TANF beneficiaries who are engaged in work activities. In a policy brief on meeting the challenges of higher work rates, LaDonna Pavetti made the following recommendations on this point:⁶

Devote additional resources to case management. There is considerable variation in the range of tasks TANF workers are required to perform and in the number of cases they handle at any given time. In welfare offices where workers carry high caseloads, they may find it difficult to achieve high levels of program participation. If sufficient time is not available to monitor participation, some families may be missed because there is not sufficient time to obtain proper documentation. For nonparticipating families, it takes time to determine what factors may be contributing to the nonparticipation and to develop strategies to resolve them. When time is limited, these families may simply fall through the cracks and end up not participating in program activities for extended periods and may not be sanctioned for nonparticipation. Welfare offices could provide additional case management through existing employment service contracts or by implementing group case management models such as Pathways, a program designed by staff from Project Match in Chicago that is in use in several counties in New York and California.

⁶ La Donna Pavetti, *The Challenge of Achieving High Work Participation Rates in Welfare Programs*, The Brookings Institution, Welfare Reform and Beyond Brief #31, October 2004, available on the web at: www.brookings.edu/es/research/projects/wrb/publications/pb/pb31.htm.

Improve data collection and program monitoring. Monitoring participation in work activities is a complicated task, especially when multiple providers are involved. If the system in place for monitoring program activities does not adequately capture all the program activities in which recipients are engaged, the reported work participation rate will underestimate the number engaged in work-related activities. Some recipients could be participating in activities that they do not report to the TANF office; or they may participate in activities but do not provide sufficient documentation. In addition, if the data collection and monitoring system is primarily designed to meet federal requirements, participation in noncountable work activities may not be collected. States should develop improved reporting systems and computer systems that capture all countable activities.

The TANF provisions in the reconciliation bill also would require states to meet a 90 percent participation rate in their two-parent caseloads. Many states have been unable to meet the current two-parent participation rates and have relied on separate MOE-funded programs (called “separate state programs”) to avoid penalties.

We believe a wise course for most states will be to continue to use state funds to provide income assistance to such families, but to *not count* those funds toward the MOE spending requirement. States that fail to meet the two-parent rate are subject to a higher MOE requirement—80 percent rather than 75 percent. But in most states, the costs of assistance provided to two-parent families will be far less than five percent of MOE. Moreover, imposing restrictive rules on two-parent families that are not imposed on single-parent families should be rejected by states as a matter of policy. Indeed, the Administration’s TANF proposal (as well as earlier House and Senate versions of TANF reauthorization) would have eliminated the separate rate for two-parent families, explaining that eliminating the separate rate “removes a disincentive to equitable treatment of two-parent families.”⁷ We find it curious that an Administration that has long advocated marriage promotion and responsible fatherhood as effective public policy would fail to make one of the simplest and most obvious policy changes to promote strong, two-parent families, and hope that on-going advocacy can address this flawed policy choice.

⁷ *Working Toward Independence*, <http://www.whitehouse.gov/news/releases/2002/02/welfare-book-04.html>.

Appendix

OVERVIEW OF TANF POLICY PROVISIONS: CURRENT LAW AND AS INCLUDED IN THE BUDGET RECONCILIATION CONFERENCE REPORT

Provision	Current Law	Budget Reconciliation Conference Report
<i>Funding Provisions</i>		
Basic TANF Block Grant	\$16.5 billion per year	Extends current funding levels through FY2010
Supplemental Grants	Provides \$319 million per year to states that have historically low welfare grant payments	Extends supplements grants through FY2008
High Performance Bonus	Provides \$200 million per year to states that perform well in areas such as job placement, job retention, and earnings among welfare recipients	Eliminates high performance bonus
Mandatory Child Care Funding	Provides approximately \$2.7 billion per year in mandatory child care funding	Provides additional \$200 million per year through FY2010
<i>Work-Related Provisions</i>		
Participation Standard	Fifty percent of all families and 90 percent of two-parent families must be engaged in a set of federally defined work activities. States get credit toward the rate for caseload reductions since FFY1995 (see below). States face fiscal penalties if they fail to meet these participation standards.	Maintains current participation standards, but would include cases in separate state programs (programs funded entirely with state money) and change the base year for the caseload reduction credit to FFY2005.
Caseload Reduction Credit	For every one percent a state has reduced its welfare rolls since FFY1995, its work participation standard is reduced by an equal one percent. For example, if a state has reduced its caseload by 40 percent since FFY1995, it would	Beginning in 2007, resets the base year for calculating the caseload reduction credit to FFY 2005.

	have an effective work participation standard of 10 percent: <i>50 percent (set by current law) – 40 percent (the decline in the state's welfare rolls) = 10 percent</i>	
Hours Standard	Single parents of children younger than 6 must work 20 hours per week, single parents of older children must work 30 hours per week (higher hours for two-parent families)	No change
Creditable Work Activities	Allows state to count welfare recipients engaged in activities such as unsubsidized or subsidized employment, on-the-job training, work experience, community service, or vocational education (for up to 12 months) toward its participation standard. Definitions of activities are left to states.	No change in activities, but HHS is directed to develop regulations by June 30, 2006 to “ensure consistent measurement of work rates” and that “include information with respect to determining whether an activity of a recipient of assistance may be treated as a work activity.” States also would be required to implement procedures for verifying work by September 30, 2006.
<i>Marriage and Fatherhood Provisions</i>		
“Marriage Promotion” Grants	No provision	Provides up to \$100 million per year in grants
“Responsible Fatherhood” Grants	No provision	Provides \$50 million per year in mandatory funding
<i>Other Provisions</i>		
Transitional Medicaid Assistance (TMA)	Allows families transitioning off of welfare to automatically continue to receive Medicaid for up to 12 months	Extends TMA for 12 months (through December 31, 2006)
Abstinence-Only Grants	Provides \$50 million per year for abstinence-only grants	Extends abstinence-only grants for 12 months (through Dec 31, 2006)
Mandatory Full-Family Sanctions	No provision in current law	No change
Mandatory Drug Testing	No provision in current law	No change