TANF is Broken! It's Time to Reform "Welfare Reform"
(And Fix the Problems, Not Treat their Symptoms)[1]

By Peter Germanis

(Draft as of July 25, 2015)

COMMENTS WELCOME

[1] This second sub-title was added in response to the July 15, 2015, release of a draft bill for discussion by the House Ways and Means Committee; see: http://waysandmeans.house.gov/wp-content/uploads/2015/07/JDG_705_xml.pdf.

ABOUT THIS DOCUMENT: This paper is an assessment of the Temporary Assistance for Needy Families (TANF) program, particularly its effects and implementation.[2] It challenges the widespread view that TANF is a successful program and a model for reforming other programs. Indeed, an objective analysis of TANF should lead anyone to conclude that it is an unprecedented failure. Its flaws stem from the statute itself, particularly conceptual errors in the design of the program and bureaucratic "complexification,"[3] i.e., the tendency to take what should be a simple concept and make it unnecessarily complicated, ineffective, and administratively burdensome. The main purpose of this paper is to identify TANF's flaws and provide information that may lead to improved policymaking, particularly for members of Congress and congressional staff who are now considering TANF reform and similar reforms to other programs.

My review of the program is guided by whether the program provides assistance to needy families, promotes work and self-sufficiency, and uses simple and common-sense rules. This document outlines a myriad of flawed statutory provisions. At times, it may seem like I am too far "in the weeds," particularly in some of the tables (e.g., "TANF's Rube Goldberg Financing Requirements), but my audience is Congress and congressional staff and my hope is that they use the information to make positive changes to the program.

This is also a document born of sheer frustration from the public dialogue about TANF and welfare reform, particularly in Congress and among conservatives. (That is why this personal statement is addressed to members of Congress.) My reason for writing this paper is motivated by a passion to improve policymaking and this document is perhaps more aptly described as a *cri de coeur* for meaningful welfare reform. Unfortunately, the most recent effort by the House Ways and Means Committee, while making some positive changes, will do little to improve the lives of poor families or strengthen work programs – hence, the second subtitle about fixing the problems and not just treating their symptoms.

ABOUT THE AUTHOR: <u>I am writing as a citizen and in my capacity as a conservative welfare expert to express my concerns on this topic.</u> I was a political appointee in President Reagan's White House and senior aide to Chuck Hobbs, the chief architect of President Reagan's 1986 welfare reform proposal. In 1986, the Reagan Administration announced a new welfare reform plan in a report called, *Up from Dependency: A New National Public Assistance Strategy*. That proposal was actually a more comprehensive version of Representative Ryan's "Opportunity Grants." Although Congress did not pass President Reagan's legislation, the exercise ultimately resulted in an interagency waiver process for welfare reform (using existing waiver authority) and the Family Support Act of 1988, which imposed the first real work requirements on states. The vast flexibility provided through the AFDC waiver process led to the political support for the 1996 welfare reform legislation, including the TANF program.

[2] The law made significant reforms to a number of programs, including child support enforcement, child care, Medicaid, food stamps, child welfare, and disability benefits. This paper is focused solely on TANF.
[3] Senator Moynihan used the term "complexifier" in a hearing once, referring to noted social scientist Richard Nathan. See Richard B. Nathan, "'<u>Complexifying</u>'" Performance Oversight in America's Governments," APPAM Presidential Address, October 29, 2004.

I have also worked for and written about welfare at conservative think tanks like the Heritage Foundation and the American Enterprise Institute. My prior employment history is as follows:

- Schultz Fellow, The Heritage Foundation (1981-1984);
- Senior Policy Analyst, The White House (1984-1990);
- Special Assistant to the Director, Office of Family Assistance, HHS (1990-1993); Director, Division of Program Evaluation, Office of Family Assistance, HHS (1993-1995); National Expert, Office of Family Assistance, HHS (1995-1997);
- American Enterprise Institute and University of Maryland Welfare Reform Academy (1997-2004).

APOLOGY: While I affix most of the blame for TANF's problems on Congress, there have been many opportunities to address the problems described in this paper and there is enough blame to go around for everyone, including myself. <u>This paper is not intended to impugn the motives of those who designed TANF and/or support it, but I believe it is important to understand the source of TANF's problems and that is the statute itself.</u>

And, I too may have been responsible in this regard. Governor John Kasich of Ohio was recently featured in an article about how TANF evolved. He explained that the idea for converting AFDC into a block grant program arose from a 1993 proposal to convert food stamps into a state block grant.[4] Apparently, the idea came from something I wrote. In *Work Over Welfare: The Inside Story of the 1996 Welfare Reform Law*, Ron Haskins explains:

> With technical help from a staff team led by Laurie Felton from Kolbe's office and Roger Mahan from Herger's office, the smaller group had been working on a nutrition block grant that would combine funds from the Food Stamp program and several child nutrition programs, control the growth of spending in the block grant, and save money over the long run while greatly increasing state flexibility. Mahan got the idea for a nutrition block grant from a paper on ways to cut federal spending written by Peter Germanis in 1990 for the Heritage Foundation.[5]

To the extent that anything I ever wrote contributed to the creation of TANF or any block grant, I am sorry. As I hope to demonstrate in this paper, a block grant for a safety net program is bad public policy.

COMMENTS WELCOME: This paper is still a draft. I am sharing it for comments now because Congress appears to be considering a block grant approach for SNAP and even Medicaid. Based on the TANF experience described here, this would be a mistake. I realize some of my conservative friends may disagree, so to them (and anyone else), tell me where I am wrong.

[4] Sabrina Eaton, "Gov. John Kasich continues reform quest he started two decades ago: welfare to work," January 27, 2015, available at: http://www.cleveland.com/open/index.ssf/2015/01/john_kasich_continues_quest_fo.html.
[5] Ron Haskins, *Work Over Welfare: The Inside Story of the 1996 Welfare Reform Law* (Washington, D.C.: The Brookings Institution, 2006), pp. 46-47.

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I. Introduction

The Temporary Assistance for Needy Families (TANF) program was created as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). TANF provides a $16.5 billion a year federal block grant to states, along with a state maintenance of effort requirement (about $10.4 billion). TANF is best known for funding cash welfare for needy families with children, but provides considerable flexibility to provide for a wide range of benefits and services that are "reasonably calculated" to promote a TANF purpose. (Indeed, less than 30 percent of TANF/MOE funds today are for basic cash assistance.)

The four purposes of TANF are to:

- provide assistance to needy families so that children can be cared for in their own homes or the homes of relatives;
- end dependency of needy parents on government benefits through work, job preparation, and marriage;
- reduce out-of-wedlock pregnancies; and
- promote the formation and maintenance of two-parent families.

Section 417 of the TANF statute reinforces state flexibility by constraining the ability of federal officials in regulating the conduct of states:

> No officer or employee of the Federal Government may regulate the conduct of States under this part or enforce any provision of this part, except to the extent expressly provided in this part.

While TANF is flexible, there are some requirements that apply primarily to families receiving "assistance" (mainly cash welfare), most notably work requirements and time limits. Many of these requirements do not apply to families receiving "non-assistance," that is benefits and services that are not directed to helping them meet basic needs, such as child care and transportation for the employed, state earned income tax credits, diversion payments, activities to reduce of out-of-wedlock pregnancies and promote two-parent families, and any other activity that is "reasonably calculated" to meet a TANF purpose.

TANF has enjoyed widespread bipartisan support and has even been called "the most successful reform of a welfare program."[6] Some suggest that it is a model for reforming other safety net programs. For example, Rachel Sheffield and Robert Rector of The Heritage Foundation write:

[6] House Budget Committee, *The War on Poverty: 50 Years Later*, March 3, 2014, p. 14.

> [T]he 1996 welfare reform is a rare example of a policy that actually reduced welfare dependence and poverty while cutting welfare costs. It is, therefore, worthwhile to examine the actual policy carefully. The 1996 reform transformed the old Aid to Families with Dependent Children program (AFDC) into the Temporary Assistance for Needy Families (TANF) program. Within about five years, welfare rolls dropped by half, child poverty plummeted, and employment among low-income individuals jumped. This was an important first step in decreasing poverty and dependence, and one that should be replicated in other programs like food stamps and public housing.[7]

A careful examination of the TANF program, however, suggests that using it as a model to reform other welfare programs would be a mistake. Writing elsewhere about the politics of the 1996 legislation, Rector stated: "It isn't enough to get the technical details of a policy right. Words and symbols matter, too."[8] I could not agree more. Unfortunately, when it comes to the TANF legislation, Congress got virtually every technical detail wrong. While the law sent a symbolic message about the importance of work requirements and time limits, in practice, neither of these elements have been implemented to the extent Congress intended.

Section II, "How Congress Blew a 'Huge Hole in the Safety Net'," addresses TANF's effects on child poverty, particularly exaggerations that suggest TANF is responsible for all or much of the drop in poverty after the law was passed. Proponents of the program use simplistic evaluation methods and misunderstand what TANF did and what it should be compared to (i.e., the counterfactual). Perhaps most important, TANF is not "welfare reform," but rather just a change "in federal-state responsibilities and fiscal arrangements."[9]

It is not surprising that poverty declined throughout most of TANF's early years – the economy was strong, aid to the working poor was expanded (most notably the EITC), states had embarked on welfare reform before TANF was enacted (and didn't need TANF to test innovative reforms to their cash assistance programs). (The law made significant reforms to a number of programs, including child support enforcement, child care, Medicaid, food stamps, child welfare, and disability benefits. This paper is focused solely on TANF.) As I show in section III, the block grant provided states massive windfalls of federal funds by basing federal funding on historic spending levels when caseloads were at their peak, while at the same time it weakened work requirements (see section IV). So, to the extent TANF had an effect on child poverty, it would have been mainly by the increased federal funding and the strong work message (even though the requirements themselves were actually weakened). But, the longer-term effects of TANF were predictable and they have been devastating. The TANF block grant is not adjusted for inflation, population growth, or economic conditions; and, states have learned how to avoid most federal requirements. So, consider the following thought experiment:

> Suppose in the years after TANF was enacted, federal fiscal and/or monetary policies, corporate greed, the real estate bubble, and other factors caused a Great Recession that

[7] Rachel Sheffield and Robert Rector, "Paul Ryan's New Anti-Poverty Plan Should Take Work and Marriage Seriously," July 25, 2014.
[8] Robert Rector, "Bill Clinton was Right," *The Washington Post*, August 23, 2006.
[9] Anonymous. This is a very important point; I wish I could take credit for it.

> caused the number of poor children to rise above the levels that existed in 1996 (and between 1996 and 2010 the number of poor children did rise from 14.5 million to an all-time high of 16.3 million; and even by 2013 was still 200,000 above the 1996 level). And, suppose due to inflation the TANF block grant and maintenance-of-effort (MOE) requirement have declined in real purchasing power by about one-third (and, for MOE, this was already set at just 80 percent of historic spending – 75 percent for states that met their work requirements). And, suppose states have used federal TANF funds to supplant existing state expenditures and to divert the funds away from core welfare reform purposes to fill state budget holes. And, suppose states have learned how to count third-party expenditures, including those from non-governmental organizations, to reduce their own MOE commitment. And, suppose states have figured out how to take advantage of the flexibility Congress gave states to avoid work requirements, time limits, and other federal requirements.

Well, that's exactly what happened, so even if TANF were successful in the beginning, there is no way it could be successful now.

Interestingly, Wisconsin, a state long lauded by conservatives for its welfare reforms, is a prime example of TANF's differential effects over time. Unlike Governor Thompson, who reaped a massive windfall from TANF (as Congress overpaid all states), Governor Walker is getting far less in TANF funding when adjusted for inflation and is dealing with a nearly 40 percent increase in the number of poor families with children. And, unlike Governor Thompson, who faced a 0 percent work target throughout most of his Administration, Governor Walker (according to the Wisconsin Legislative Fiscal Bureau) will face a 50 percent requirement and fail in 2012 and 2013. (In fact, recently released data from HHS show that Wisconsin's overall work rate for FY 2012 was 32.4 percent, considerably short of its 50 percent target.[10]) Wisconsin thus faces the prospect of significant financial penalties. Table III-2, "A Tale of Two Governors: The Best of Times and the Worst of Times," contrasts TANF in these two eras. (The comparison here is not intended to be a reflection on either governor, but rather to illustrate the failure of the block grant approach for safety net programs.)

Of course, any state that fails to meet its work requirements can avoid a penalty by entering into a corrective compliance plan, and then game the work requirements through gimmicks (that became available to the states when the law passed), like a number of other governors already have, but that does nothing to provide for the needs of the poor or help them become self-sufficient.

[10] Office of Family Assistance, Administration for Children and Families, "Work Participation Rates – Fiscal Year 2012, available from: http://www.acf.hhs.gov/programs/ofa/resource/wpr2012.

Table III-2
A Tale of Two Governors: The Best of Times and the Worst of Times

	Gov. Thompson (1997)	Gov. Walker (2012)
TANF Block Grant (2014$)	$467.8 million	$327.7 million
Windfall/Deficit vs. 1996 (2014$)	$105.7 million	-$34.4 million
# of poor families w/children	82,984	114,395
$ per poor family w/children (2014$)	$5,637	$2,865
Work Rate Targets	1997: 8% 1998-2006: 0%	2011: 0% 2012-2014: 50%

Sources: CBPP for poverty data; GAO for state-specific 1996 spending and block grant amounts. For Wisconsin work rate targets, see: Wisconsin Legislative Fiscal Bureau, *Wisconsin Works (W-2) and Other Economic Support Programs*, January 2015. Wisconsin's deficit in FY 2012 is relatively smaller than most states because it got one of the biggest windfalls when TANF was enacted. This deficit will continue to grow in the future.

The sharp reduction in funding, along with the fact that Wisconsin has used TANF dollars to fill other budget holes (as have most states), means the state has done a poor job in serving families in poverty (see Table II-3). Before TANF, the ratio of families receiving TANF to families with children below poverty was 96 per 100 poor families; by 2012/13 this had dropped to 24 per 100. So, the state is serving a fraction of its poor families (and even a fraction of those in deep poverty); and despite the sharp caseload drop the state can't meet TANF's work rates. Can anyone in good faith call this success?

Table II-3:TANF and Poverty Trends in Wisconsin

Families with children:	1994/95	2012/13
…on AFDC/TANF	73,400	25,900
…in Poverty	76,500	106,900
…in Deep Poverty	21,700	42,400
State TANF to Poverty Ratio	96	24
National TANF to Poverty Ratio	75	26

	TANF benefit level (family of 3)	Federal share of poverty level	Value change since 1996
State benefit	$653	40%	-15%
National median benefit	$428	26%	-25%

Source: CBPP fact sheet.

In the absence of TANF, the prior Aid to Families with Dependent Children (AFDC) program was in the midst of a reform, with implementation of a work requirement through the Job Opportunities and Basic Skills Training (JOBS) program, along with a process by which states were granted waivers to programmatic rules to test (in a rigorous way) reforms to the existing

program. Ironically, this was President Reagan's legacy, and Congress, by enacting TANF, weakened even the very modest JOBS work requirement and added little to the flexibility states needed for their cash welfare programs (as evidenced by the fact that most states simply continued their waiver programs and made them part of TANF). While both the JOBS work requirement and the waiver process needed improvement (a discussion beyond the scope of this paper), they formed a solid base to build on.

Section III, "Funding and Flexibility: How Congress Shot Itself in the Foot," describes how the creation of the block grant with *excessive* state flexibility set in motion changes that would: (1) initially provide large windfalls of federal funds for states, but also put in place a funding structure that in the longer-term would provide insufficient resources due to inflation and demographic changes (with similar effects for the state funded maintenance of effort provisions); (2) give states excessive flexibility to use federal funds to supplant their own spending (by tens of billions of dollars since TANF was created); (3) give states excessive flexibility to convert TANF (over time) to a giant slush fund with minimal reporting and accountability provisions, which includes but is not limited to supplanted funds); (4) impose a Rube Goldberg-like set of bureaucratic and ineffective funding formulas and requirements; and (5) give states excessive flexibility to avoid or evade virtually all of the federal requirements in the law, most notably work requirements and time limits. The result of this misguided effort is a safety net with massive holes – one that is not effective in providing either basic assistance to needy families or ensuring that low-income parents receive the work-related activities and services they need.

Section IV, "TANF Work Requirements: An Epic Fail," explains how the 1996 law weakened the modest JOBS requirements. This section describes 10 major provisions (and loopholes) that have weakened the work requirements, including the caseload reduction credit (a conceptually flawed provision), separate state or solely state funded programs to remove families not likely to count in the work rates, and gimmicks such as paying token benefits to SNAP families with a child and enough hours to count in the work rate. And, it describes how states have used such gimmicks to artificially inflate their work rates to avoid work penalties. These gimmicks are perfectly legal and permitted solely because of the way the law was drafted. (I don't blame any state for taking advantage of these gimmicks, because TANF is such a flawed program, but I would like to see Congress design a reasonable safety net program with meaningful work requirements.) And, as with TANF's financing provisions, Congress overcomplexified the program's work requirements with an array of rules and limits on the calculation of the work rates. Of course, most of these rules have no practical significance when a state uses one of the many gimmicks allowed by the law to meet the rate, because it can meet the work rate without counting the restricted and/or complexified activities.

Section V, "Time Limits and Other Federal Requirements," gives selected examples (apart from those related to financing and work requirements) that reflect misguided policymaking. I limit myself in this section to six examples that fall into various categories, but all are representative of provisions that waste time and money, and do nothing to advance the lives of poor families or the interests of taxpayers. These include: (1) the federal 60-month time limit; (2) the ban on EBT use at strip clubs, liquor stores, and casinos; (3) the bonus for reducing non-marital births; (4) the Claims Resolution Act reporting requirements; (5) the initial funding for the Survey of

Program Dynamics; and (6) the "Child Poverty Rate Report," for states that experience a statistically significant 5 percent increase in their poverty rate. As with work requirements, the federal time limit and the EBT ban can easily be gamed; the various bonus provisions Congress has enacted have largely failed to provide incentives that actually motivate behavior and mainly provided arbitrary windfalls; and many of the reporting requirements included in legislation have done little to provide meaningful information or action. While in the overall scheme of things, these concerns are relatively minor, they suggest that policymakers spend more time thinking about changes before enacting them into law.

In section VI, "Considerations for Reform" I simply raise questions to be considered in any reauthorization or, preferably, replacement of the TANF program:

- Does it make sense to have a funding structure for a safety net program that is unresponsive to changes in economic and demographic circumstances?
- Does it make sense to have a funding structure that states can manipulate to avoid federal requirements?
- Does it make sense to have a funding structure that allows states to use federal funds to simply supplant existing state expenditures?
- Does it make sense to give states so much flexibility that they can count virtually any expenditure as either a federal TANF or state maintenance of effort expenditure?
- Does it make sense to give states so much flexibility to duplicate the benefits and services of dozens of other low-income programs with little or no accountability?
- Does it make sense to provide funding for programs that have either no income limit or that permit states to set very high income limits?
- Do the rules and requirements promote effective programming; or can they easily be evaded and/or overcomplexify the program?

The programmatic structure left by President Reagan, AFDC/JOBS and waivers, formed a solid foundation that Congress should have built on, mainly by strengthening the work requirements. There was no need to shred the safety net, create a slush fund, and needlessly complicate the program, particularly since work requirements were weakened as a result.

In section VII, "TANF 3: Treating the Symptoms and Not the Real Problems," I briefly describe the July 15, 2015, version of the House Ways and Means Committee's draft bill to reauthorize TANF. The Committee's press release of June 17, 2015, "From Welfare to Work: A Bipartisan Effort to Improve Our Social Safety Net," extolled the virtues of a "discussion draft" to reform and reauthorize TANF. The subtitle of the press release suggests that this is the "biggest redesign of TANF in its history." In fact, it is nothing more than rearranging deck chairs on the *Titanic*. To their credit, the authors of the draft bill make a number of positive changes to the TANF program, but they fail to address the root cause of TANF's problems – the block grant structure and excessive state flexibility. As a result, states will continue to take advantage of loopholes created by Congress and America's low-income families with children will fall deeper into poverty (compared to what poverty would be with a more effective program).

In section VIII, "A SWEET Alternative," I outline a general framework for real reform – the Simple Welfare, Employment, Education, and Training (SWEET) program.

II. How Congress Blew a "Huge Hole in the Safety Net"[11]

There is a widespread perception that TANF was a resounding success in reducing welfare caseloads and poverty. For example, Robert Rector writes:

> Congress enacted welfare reform legislation in 1996. This reform replaced the Aid to Families with Dependent Children (AFDC) program with a new program entitled Temporary Assistance for Needy Families (TANF). The immediate effects of welfare reform were striking.
>
> During the four decades preceding the 1996 welfare reform, the number of participants on welfare had never significantly decreased. By 1995, nearly one in seven children was on AFDC. Yet within just a few years of TANF's implementation, the caseload was cut in half, and employment rates and earnings among single mothers soared.
>
> Rather than keeping people trapped on government welfare—for an estimated average of 13 years prior to the reform—the new law sharply reduced the number of people entering welfare and moved those who were on government assistance into work. The child poverty rates declined significantly. Roughly 3 million fewer children lived in poverty in 2003 than in 1995, including 1.2 million fewer black children, marking the lowest level of black child poverty in the nation's history.[12]

This line of logic erroneously assumes that all the positive effects that occurred after the enactment of TANF are due to TANF, ignoring the effects of the economy and changes in other policies that could affect the outcomes. More important, it reflects a misunderstanding of what TANF is and how it was implemented.

Simplistic Evaluation Approach

The claims of TANF's success are typically based on a simplistic assessment of data and a short-term timeframe. Table II-1 shows the trends in welfare caseloads and child poverty from 1992 to 2001, including the five-year period (1996-2001) emphasized by most proponents of the program. A column showing the trend in the unemployment rate is also included as a general indicator of economic conditions.

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[11] This characterization is based on the title of an article by Peter Edelman, "We have Blown a Huge Hole in the Safety Net," November 10, 2014.
[12] Robert Rector, "Obama's End Run on Welfare Reform, Part One: Understanding Workfare," September 19, 2012.

Table II-1: Welfare Caseloads and Child Poverty: 1992-2001

Year	AFDC/TANF Caseload (000s)	Number of Poor Children (000s)	Unemployment Rate (%)
1992	4,768	15,294	7.5
1993	4,981	15,727	6.9
1994	5,046	15,289	6.1
1995	4,870	14,665	5.6
1996	4,543	14,463	5.4
1997	3,937	14,113	4.9
1998	3,200	13,467	4.5
1999	2,674	12,280	4.2
2000	2,356	11,587	4.0
2001	2,200	11,733	4.7

NOTE: TANF includes separate state program cases in 2000 and 2001.

When TANF was enacted (August 22, 1996), the national AFDC caseload was 4.409 million. Five years later (in August 2001) it was 2.180 million – a drop of 50 percent. Similarly, between 1996 and 2001, the number of poor children fell 19 percent, from 14.463 million to 11.733 million. Are these results because of the 1996 welfare reform law?

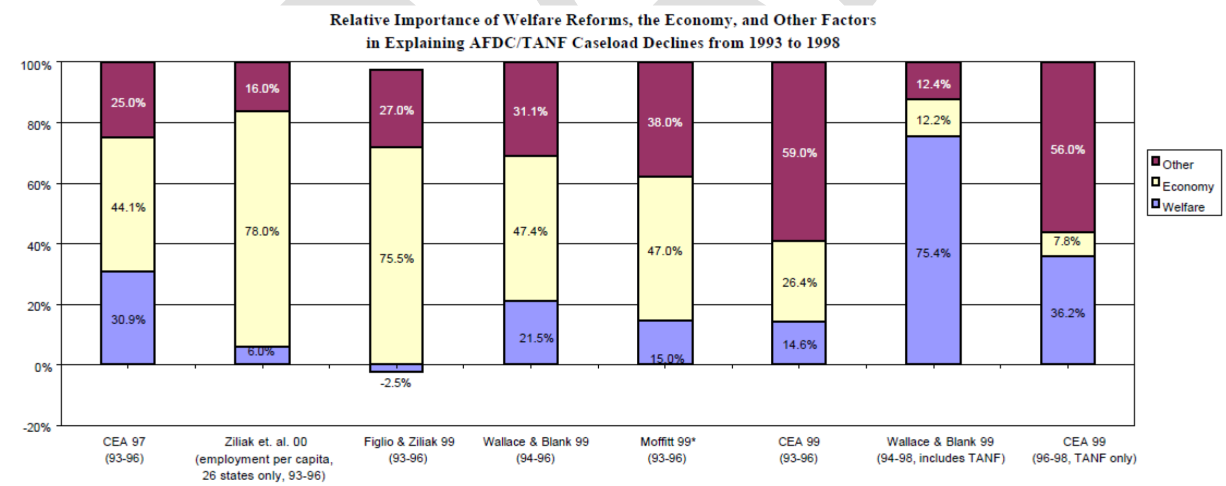
First and foremost, it is important to understand the 1996 welfare reform legislation is not the starting point of welfare reform and TANF should not be given credit for most state reforms to cash assistance programs. Most states began their own welfare reforms under waivers, starting in the late 1980s when President Reagan announced this approach as the cornerstone of his welfare reform strategy. The initial waivers were modest, but the pace of waiver requests and their scope accelerated under the Bush and Clinton Administrations. By August 1996, 43 states had received welfare waivers from the U.S. Department of Health and Human Services (HHS).[13] In this regard, it is worth noting that welfare caseloads peaked in March 1994 and began a rapid descent nearly three years before states implemented their TANF programs. TANF added little to flexibility of states to test these welfare reforms and indeed most states simply continued their waiver-based policies under TANF. These waivers and state welfare reforms form the baseline; states would have had this flexibility whether TANF passed or not. The key question is not what did "welfare reform" do, but rather, what did TANF do relative to this baseline?

Second, there were many other economic, demographic, and policy-related changes that occurred in the 1990s that undoubtedly influenced both caseloads and child poverty. For example, beginning in 1992, the unemployment rate began a steady decline, from 7.5 percent to a low of 4.0 percent in 2000. Programs providing aid to the working poor were expanded, most notably the Earned Income Tax Credit (EITC), child care subsidies, and Medicaid and related health care coverage. There were also many favorable social trends that preceded the enactment of TANF, including "broad attitudinal and behavioral changes in drug use, crime, teen sex and pregnancy, and other social behaviors that influence welfare caseloads."[14] For example, the non-marital

[13] U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *Setting the Baseline: A Report on State Welfare Waivers*, June 1997, http://aspe.hhs.gov/hsp/isp/waiver2/title.htm.
[14] Doug Besharov, "Welfare Reform Two Years Later," July 1998.

birth rate had risen steadily for several decades, peaking in 1994 at 46.2 births to unmarried women per 1,000 unmarried women aged 15–44 years. This fell for the next three years, to 42.9 in 1997 – before TANF could have played any real role in the trend. From that point forward, the rate began rising again – peaking at 51.8 per 1,000 unmarried women in 2007 and 2008. Based on the simplistic before-and-after evaluation approach used by many conservatives to assess TANF, one could argue that TANF caused the increase the non-marital birth rate after 1997. Similarly, using this logic, one could argue that the recent decline in the unemployment rate from double-digit levels is due entirely to the stimulus bill; something most conservatives would reject. Simplistic before-and-after comparisons can be misleading, yet this is the only basis for TANF's putative success.

A number of researchers have used statistical modeling in an attempt to isolate the effect of welfare reform on caseloads from these other factors. Stephen Bell of the Urban Institute summarized the findings from eight research studies on the relative importance of welfare reform, the economy, and other factors. [15] The findings are somewhat uncertain and even inconsistent due to different methods, data sets, time periods, and other differences. The important point, however, is that they recognize that other factors, most notably the economy, have an important impact on welfare caseloads (see figure below). Using a rough average across the studies, "welfare reform" explains about 15 to 30 percent of the decline in the caseload, while the economy explains about 30 to 40 percent, and other factors (most notably the increase in the aid to the working poor) explain the remainder.



While statistical studies are often plagued by various biases, random assignment experiments are generally regarded as the "gold standard" of evaluation.[16] In this regard, most states conducted

[15] Stephen H. Bell, *Why are Welfare Caseloads Falling* (Washington, DC: The Urban Institute, March 2001), http://www.urban.org/uploadedPDF/discussion01-02.pdf.
[16] Random assignment studies are not perfect either; they may miss entry and general equilibrium effects. And, the control group may be influenced by the "atmospherics" surrounding welfare reform, thus muting its effects.

such experiments because they were a condition of waiver receipt and many continued them after TANF was enacted. The findings from random assignment experiments are considered the most credible, because the experimental and control groups are alike and subject to the same external conditions, with the only difference being the intervention itself. Thus, any difference in outcomes between the groups can be attributed to the intervention – welfare reform – itself. Researchers at RAND prepared a comprehensive synthesis of the impact of welfare reform on welfare caseloads, child poverty, and a range of other outcomes.[17] While most reform programs showed declines in welfare receipt, and some showed reductions in poverty, the magnitude of the impacts was considerably smaller than suggested by the simple trends in national data. This is because the control group also benefitted from a strong economy and increased aid to the working poor.

In short, welfare reform played a role in the decline of caseloads and child poverty, but it did not account for anywhere near the impact that TANF supporters suggest. But, whether the impact is large or small, the most crucial point is that TANF is not "welfare reform."

TANF is NOT Welfare Reform

TANF is often called "welfare reform," but it is not. As noted above, if state experimentation with cash assistance and related work programs is considered "welfare reform," then it actually started earlier with President Reagan's waiver initiative giving states the freedom to experiment with reforms to their welfare programs. (These policies were continued by the Bush and Clinton Administrations.) If a work requirement is considered "welfare reform," then the Family Support Act of 1988, also signed by President Reagan, could be considered the starting point, with its 20 percent work requirement (effective 1995). This is the "counterfactual" and what TANF should be compared to.

So, if TANF didn't give states significantly more flexibility with their cash welfare programs, what did it do? One observer correctly noted, "The most fundamental change Congress enacted was not the imposition of time limits or work requirements; it was instead a basic alteration in federal-state responsibilities and fiscal arrangements."[18] This resulted in four main changes; specifically, it:

- Provided a fixed federal block grant. In the early years of the program, it gave states a windfall of about $15 billion to $40 billion more in federal funds than they otherwise would have received in the absence of the program (depending on assumptions about how much the caseload would have decline under JOBS/waivers) because Congress chose to base the block grant on historic spending levels at a time when spending was at an all-time high (see section III). As a result, it did not reap the federal savings from the

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Nevertheless, they are certainly far superior to the simplistic pre-post analyses virtually all conservatives rely on to assess TANF's impacts.

[17] Jeffrey Grogger, Lynn A. Karoly, and Jacob Alex Klerman, *Consequences of Welfare Reform: A Research Synthesis* (Santa Monica, CA: July 2002), http://www.acf.hhs.gov/programs/opre/welfare_employ/res_systhesis/reports/consequences_of_wr/rand_report.pdf.

[18] Anonymous.

decline in caseloads that would have occurred in the absence of TANF. (In the longer-term, the block grant reduces federal funding to states due to economic and demographic factors.)

- Increased state flexibility to use federal funds for any activity "reasonably calculated" to advance a TANF purpose. This flexibility is often manifested in using federal TANF dollars simply supplanting existing state funds and/or paying for activities that are not even remotely related to core welfare reform purposes, e.g., billions of dollars for college grants for single adults, prekindergarten, and other programs that most would not consider core welfare reform activities (see section III).
- Gutted the modest JOBS work requirements by driving most state requirements to 0 or near-zero percent and providing loopholes that states could exploit – loopholes that did not exist before the law was enacted (see section IV).
- Imposed a bureaucratic maze of ill-conceived requirements on both federal and state staff administering cash assistance programs, while simultaneously creating a giant slush fund with minimal accountability for TANF spending on "non-assistance" programs (see sections III, IV, and V).

So, of these four changes, the only one that could plausibly help reduce child poverty would be more federal funding (e.g., for child care and work supports). Certainly, diverting federal funds away from core welfare reform purposes or using federal funds to supplant state dollars would have little impact on poverty. And, gutting the work requirements and imposing ineffective bureaucratic requirements would not be expected to reduce caseloads and child poverty. Of course, in the early years, the messaging also undoubtedly played a role, but certainly not enough to explain all or even a large part of the decline. Except for more federal money, TANF added little to the policy toolkit to have any significant effects on reducing poverty.

The legislative history of TANF emphasizes the focus on caseload reduction. An early statement of congressional intent makes this clear:

> The intent of the Congress is to . . . provide States with the resources and authority necessary to help, cajole, lure, or force adults off welfare and into paid employment as quickly as possible, and to require adult welfare recipients, when necessary, to accept jobs that will help end welfare dependency.[19]

From TANF's inception, TANF's caseloads fell much faster than the number of poor families (or families eligible for cash assistance). So, while there may have been some "help," much of the decline seems to come from efforts to "cajole, lure, or force" families off welfare (or keep them from coming on it), whether they have jobs or not.

And, even the impact on TANF caseloads is misleading, as some states have shifted more individuals to the Supplemental Security Income program and families become more reliant on programs like SNAP, which have weak work requirements.

[19] The Personal Responsibility Act of 1994. Draft. Title II, Section 201(b)(1), September 23, 1994.

Caseloads and Poverty in the Long Run

Even if TANF worked as spectacularly as proponents claim in its early years, one can't assume that the program would work in the same way over time. Indeed, note that Rector's claims of TANF's anti-poverty effectiveness cited earlier in this section take the analysis through 2003, even though his article was published in 2012. Why not extend the analysis to 2013 – the latest period for which both caseload and poverty data are available?

It is not surprising that poverty declined throughout most of TANF's early years – the economy was strong, states had embarked on welfare reform before TANF was enacted, and as I show in section III, the block grant provided states massive windfalls of federal funds. But, the longer-term effects of TANF were predictable and they have been devastating. The TANF block grant is not adjusted for inflation, population growth, or economic conditions; and, states have learned how to avoid most federal requirements. So, consider the following thought experiment:

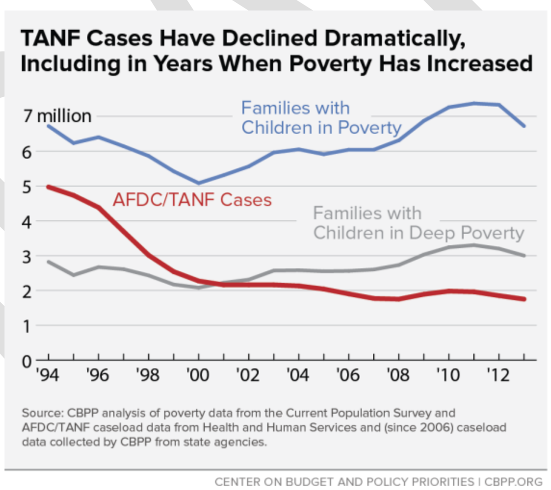
> Suppose in the years after TANF was enacted, federal fiscal and/or monetary policies, corporate greed, the real estate bubble, and other factors caused a Great Recession that caused the number of poor children to rise above the levels that existed in 1996 (and between 1996 and 2010 the number of poor children did rise from 14.5 million to an all-time high of 16.3 million; and even by 2013 was still 200,000 above the 1996 level). And, suppose due to inflation the TANF block grant and MOE requirement have declined in real purchasing power by about one-third (and, for MOE, this was already set at just 80 percent of historic spending – 75 percent for states that met their work requirements). And, suppose states have used federal TANF funds to supplant existing state expenditures and to divert the funds away from core welfare reform purposes to fill state budget holes. And, suppose states have learned how to count third-party expenditures, including those from non-governmental organizations, to reduce their own maintenance-of-effort (MOE) commitment. And, suppose states have figured out how to take advantage of the flexibility Congress gave states to avoid work requirements, time limits, and other federal requirements.

Well, that's exactly what happened, so even if TANF were successful in the beginning, there is no way it could be successful now.

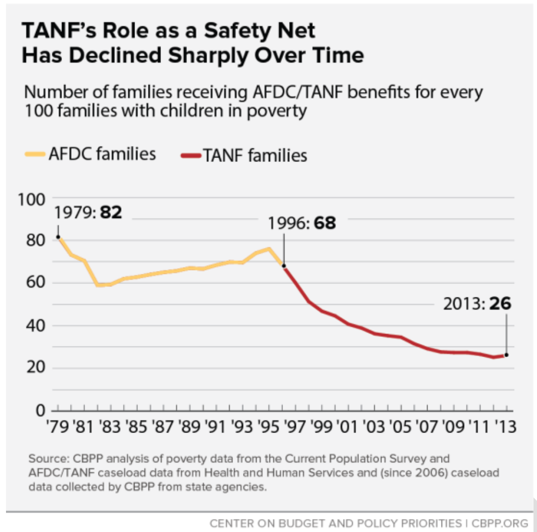
Unlike the AFDC waiver experiments, which could be evaluated using random assignment to assess their impacts on welfare dependency and self-sufficiency, TANF cannot be evaluated in this manner. TANF is really just a funding stream. There is no counterfactual that could be constructed in any rigorous way, because the funds are now used for hundreds of different activities in a range of programs. And, it is impossible to tell which activities are possible because of TANF and which represent supplantation. Clearly, the simplistic short-term before-and-after comparisons of outcomes are wrong, particularly when focused solely on welfare caseloads. <u>To assess TANF, it is not only important to examine trends in key outcomes, but also to examine how the law is written, how the policies are implemented, data and trends, and apply a good dose of common sense.</u>

In the remainder of this section, I use data and charts from the Center on Budget and Policy Priorities (CBPP) that highlight some troubling trends that demonstrate TANF's failure as a safety net. Section III describes reasons why this has happened, most notably the block grant funding structure and decisions Congress made about the extent of state flexibility. Section IV addresses the widespread, but erroneous, perception that TANF's work requirements are effective.

Between 1994 and 2013, AFDC/TANF caseloads fell by two-thirds, from about 5 million to about 1.7 million. As indicated in the chart below, the number of families with children in poverty fell from nearly 7 million in 1994 to 5.2 million in 2000, but has since increased to over 7 million for 2010-2012 – about a million more than when TANF was created. In 2013, the number fell below 7 million, but remained higher than 1996 when TANF was enacted. AFDC/TANF has never served all poor families, so a more relevant comparison may be to families with children in deep poverty (with incomes below half of the poverty line), which was near 3 million in 1994 (compared to an AFDC caseload of 5 million), fell to a low of about 2 million in 2000 (compared to a TANF caseload also about 2 million). Since that time, the number of families in deep poverty rose to over 3 million in 2010-2013 (compared to a TANF caseload of less than 2 million). If TANF were as great a poverty-reducing reform as its proponent suggest, how can these trends be explained?



Neither AFDC nor TANF have ever been targeted to all poor families, but combining the caseload measure with a poverty measure provides one way of assessing the performance of TANF over time; hence, the TANF to poverty ratio. In 1994, before TANF was enacted, nationally, 75 families received assistance for every 100 families in poverty; this fell to 68 in 1996 and has been on a steady downward trend since, falling to just 26 families receiving assistance for every 100 families in poverty in 2013.



This is a powerful testament to TANF's failure as a safety net, due both to the fact that TANF's block grant is not adjusted for inflation or demographic changes, as well as the excessive flexibility Congress gave states to divert spending away from the safety net to fund virtually anything remotely related to a TANF purpose, even when this meant simply supplanting existing state expenditures.

Table II-2 shows the trend in caseloads and families with children in poverty in Wisconsin, with the corresponding TANF-to-poverty ratio. The table shows that the state has clearly succeeded in reducing welfare caseloads, dropping from a high of 81,172 in 1991/92 to a low of 18,079 in 2007/08. But, the same cannot be said for the number of poor families with children. While the number of poor families with children declined from 110,653 in 1992/93 to 77,505 in 1995/96 (before TANF was implemented), it remained relatively flat in the immediate aftermath of TANF. By 2011/12, the number had increased to 114,395 – the highest level in over 20 years – nearly 50 percent higher than the pre-TANF level. As a result, the TANF-to-poverty ratio declined from 81 just before TANF to 23 in 2011/12. Indeed, the sharpest decline occurred from 1995/96 to 1997/98 when it fell from 81 to 27 – and, it has remained below 30 ever since. While economic factors are clearly important, these trends cast doubt on TANF's putative anti-poverty effectiveness.

Table II-2: Wisconsin: TANF-to-Poverty Ratio

Year	Number of TANF Cases	Number of Families with Children in Poverty	State TANF-to-Poverty Ratio	United States TANF-to-Poverty Ratio
90-91	80,167	74,151	108	68
91-92	81,172	87,369	93	69
92-93	80,428	110,653	73	70
93-94	77,901	106,315	73	72
94-95	73,410	76,499	96	75
95-96	63,053	77,505	81	72
96-97	43,078	82,984	52	64
97-98	22,166	81,583	27	56
98-99	16,107	70,469	23	49
99-00	18,092	67,784	27	46
00-01	18,070	75,729	24	43
01-02	19,116	71,351	27	40
02-03	20,557	73,844	28	37
03-04	22,122	95,659	23	36
04-05	21,346	94,551	23	35
05-06	18,986	82,846	23	33
06-07	18,102	87,450	21	30
07-08	18,079	83,739	22	28
08-09	18,823	84,531	22	28
09-10	21,627	88,146	25	27
10-11	25,221	103,447	24	27
11-12	26,028	114,395	23	26
12-13	25,904	106,942	24	26

Source: Ife Floyd, LaDonna Pavetti, and Liz Schott, *TANF Continues to Weaken as a Safety Net* (Washington, DC: Center on Budget and Policy Priorities, July 16, 2015), available at: http://www.cbpp.org/research/family-income-support/tanf-continues-to-weaken-as-a-safety-net.

In terms of welfare dependency, certainly dependency on TANF is down, but dependence on public assistance in Wisconsin overall has skyrocketed, as the average monthly SNAP caseloads rose from 320,000 in FY 1995 to 801,000 in FY 2011. [NOTE: I will convert these figures to families with children when I find the data, but needless to say dependence on public assistance has increased since TANF.] And, while more families with children receive SNAP benefits in Wisconsin than ever before, the low TANF caseloads suggest few have access to the kinds of work activities TANF should be providing.

Table II-3 shows how selected states performed in terms of their TANF-to-poverty ratios. This paper is intended for members of Congress and their staff, so I picked the states based on members who are responsible for welfare reform legislation in key committees – Senator Sessions of Alabama (Budget Committee), Representative Price of Georgia (Budget Committee), Representative Boustany of Louisiana (Ways and Means Committee), Senator Hatch of Utah (Finance Committee), and Representative Ryan of Wisconsin (Ways and Means Committee). The numbers speak for themselves. How can anyone possibly say TANF is a model safety net program? And, when poor families no longer get assistance, their access to work activities is limited, so dependency on other programs may be exacerbated. As LaDonna Pavetti recently observed, “Better work programs will do little to reduce poverty if very few household heads

have access to them."[20]

Table II-3: State TANF to Poverty Ratios

	1994/95	2012/13
National TANF to Poverty Ratio	75	26
Alabama	34	14
Georgia	98	7
Louisiana	49	6
Utah	65	11
Wisconsin	96	24

Source: Ife Floyd, LaDonna Pavetti, and Liz Schott, *TANF Continues to Weaken as a Safety Net* (Washington, DC: Center on Budget and Policy Priorities, July 16, 2015), available at: http://www.cbpp.org/research/family-income-support/tanf-continues-to-weaken-as-a-safety-net. CBPP notes, "Beginning in September 2006, this analysis uses caseload data collected directly from the states rather than the official data reported by HHS, as the state data more consistently reflect the number of families with children receiving cash assistance in each state over time. These data differ from the official HHS TANF data in two important ways. First, they include cases from solely state-funded programs. …Second, unlike the HHS data, the state data we use exclude cases in worker supplement programs under which states provide modest TANF- or MOE-funded cash payments to working families." In addition, "To improve the reliability of the poverty data at the state level, we created two-year averages of the poverty numbers. The caseload data are also transformed into two-year averages in order to calculate the TANF-to-poverty ratios."

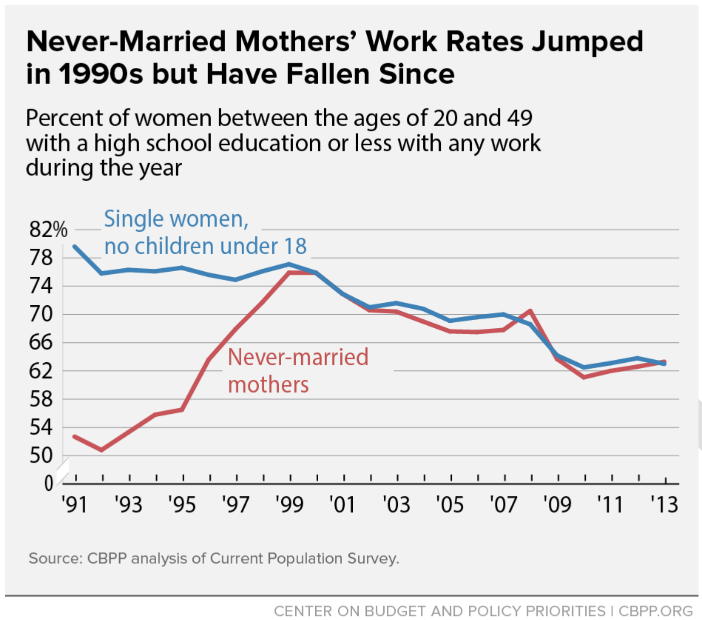
Not only has access to cash assistance fallen sharply, so has the inflation-adjusted value of benefits. Since 1996, the value of benefits adjusted for inflation has declined by 20 percent or more in 38 states. In fact, 17 states have not adjusted their benefits at all since 1996 (i.e., they have declined in value by over 30 percent) and 6 states have actually reduced their benefits. (This issue predates TANF, beginning in the 1970s when the Food Stamp program was implemented nationwide and states began substituting 100 percent food stamp dollars for AFDC.)

Proponents of the 1996 law often argue that TANF is responsible for increasing the employment of never-married mothers. The increase in their employment rates began in 1992 and much of it occurred by 1997 before TANF was implemented in most states. The economy and expansions in aid to the working poor undoubtedly played an important role, as did welfare reform under waivers.[21] TANF did little to add to this, particularly since it weakened work requirements; in any event these rates began declining around 1999/2000. I will acknowledge that TANF's strong work message, the perception that it had real work requirements, and the influx of billions of federal dollars from overpaying states in the beginning all may have had an impact, but it is hard to see how TANF could have had much of a positive effect for the past 10 to 15 years. Indeed,

[20] Testimony of LaDonna Pavetti, Vice President, Family Income Support Policy, Center on Budget and Policy Priorities, before the House Ways and Means Committee, Subcommittee on Human Resources Welfare Reform Proposals, July 15, 2015, available at: http://waysandmeans.house.gov/wp-content/uploads/2015/07/LaDonna-Pavetti-Testimony-071515-HR6.pdf.

[21] See, for example, Jeffrey Grogger, "The Effects of Time Limits, the EITC, and Other Policy Changes on Welfare Use, Work, and Income among Female-Headed Families," *Review of Economics and Statistics*, May 2003. Grogger finds that welfare reform accounted for just 13 percent of the increase in employment among single mothers during the 1990s, with the EITC and strong economy accounting for 55 percent of the increase. Even this overstates the impact of TANF, as welfare reform through waivers did and would have continued to provide states welfare reform opportunities whether TANF passed or not.

by allowing states to siphon funds off to fill budget holes, TANF has probably resulted in a large underinvestment in spending on work-related activities relative to what would have happened in the absence of the program.



Another telling measure is to look at the number of families eligible for TANF and the number that receive it. Before TANF, about 5.6 million families were eligible to receive benefits, and about 80 percent did so. In 2011, 5.6 million families were eligible to receive benefits (though this reflects more restrictive eligibility rules), but only one-third actually received them.[22] In 2011, nearly 4 million eligible families did not receive TANF them. Had they been "helped," as TANF advocates claim, their incomes would exceed the TANF eligibility thresholds, which are well below the poverty line. Peter Edelman and others who predicted disaster were correct. More recently, he has commented: "My take on it was the states would push people off and not let them back on, and that's just what they did. It's been even worse than I thought it would be."[23] How else do you reconcile the falling caseloads with the sharp increase in deep poverty and declining share of eligible families receiving assistance?

Jason DeParle describes what has happened in some states in more human terms:

> Faced with flat federal financing and rising need, Arizona is one of 16 states that have cut their welfare caseloads further since the start of the recession — in its case, by half. Even

[22] HHS, ASPE, *Welfare Indicators and Risk Factors: Thirteenth Report to Congress*, p. II-18.
[23] Cited in Jason DeParle, "Welfare Limits Left Poor Adrift as Recession Hit," *The New York Times*, April 7, 2012.

> as it turned away the needy, Arizona spent most of its federal welfare dollars on other programs, using permissive rules to plug state budget gaps.
>
> The poor people who were dropped from cash assistance here, mostly single mothers, talk with surprising openness about the desperate, and sometimes illegal, ways they make ends meet. They have sold food stamps, sold blood, skipped meals, shoplifted, doubled up with friends, scavenged trash bins for bottles and cans and returned to relationships with violent partners — all with children in tow.[24]

And, Arizona has since gone further, as recently reported by LaDonna Pavetti:

> To save $9 million a year beginning in July 2016, Arizona policymakers have cut families' time limit for cash assistance from Temporary Assistance for Needy Families (TANF) to 12 months in a lifetime, the shortest in the country. Shortening time limits hurts the very families that need this assistance the most, research shows — those with limited work experience, low levels of education, and other barriers to employment.
>
> The move also exemplifies the risk of further expanding states' already considerable responsibility for assisting the poor, such as by block-granting programs like Medicaid and SNAP (food stamps)…
>
> The cut, part of a budget deal that lawmakers passed last weekend and Governor Doug Ducey supports, continues Arizona's pattern of plugging budget holes with funds previously used to support the poorest families. In 2009, Arizona cut the monthly TANF benefit for a family of three from $347 to $278 and in 2010 it shortened the time limit from 60 to 36 months. The next year, it shortened the time limit to 24 months. The state also applied these time-limit changes to grandparents raising their grandchildren — the only state that has done so.[25]

There are a myriad of articles and stories that document the struggles of poor families who are eligible for but no longer receive TANF assistance. It would be one thing is TANF families left the rolls (or did not come on them) because the program provided the encouragement and help they needed to become more self-sufficient, but it largely failed in this effort.

Many politicians talk about the importance of giving the poor a "hand up," rather than a "hand out." Where is the "hand up"?

[24] Jason DeParle, "Welfare Limits Left Poor Adrift as Recession Hit," *The New York Times*, April 7, 2012.
[25] LaDonna Pavetti, "Arizona Experience Shows Risks of Further Expanding State Role in Helping Poor," CBPP, March 11, 2015.

III. Funding and Flexibility: How Congress Shot Itself in the Foot

Congress not only blew a hole in the safety net, it shot itself in the foot by writing a law that allows states to totally circumvent congressional intent by giving states excessive flexibility and massive loopholes to federal requirements. Early on, one welfare expert accurately predicted the long-term effects of the TANF legislation:

> "The most fundamental change Congress enacted was not the imposition of time limits or work requirements; it was instead a basic alteration in federal-state responsibilities and fiscal arrangements; over time, this alteration…is what is most likely to lead to the collapse in income maintenance assistance for poor families."[26]

This section will describe how the creation of the block grant with excessive state flexibility set in motion changes that would: (1) initially provide large windfalls of federal funds for states (about $15 billion to $40 billion in the first five years depending on assumptions about how far caseloads would have fallen in the absence of TANF), but also put in place a funding structure that in the longer-term would provide insufficient resources due to inflation and demographic changes (with similar effects for the state funded maintenance of effort provisions); (2) give states excessive flexibility to use federal funds to supplant their own spending (by tens of billions of dollars since TANF was created); (3) give states excessive flexibility to convert TANF (over time) to a giant slush fund with minimal reporting and accountability provisions (by well over $100 billion since TANF was created); (4) impose a Rube Goldberg-like set of bureaucratic and often ineffective funding formulas and requirements; and (5) give states excessive flexibility to avoid or evade virtually all of the federal requirements in the law, most notably work requirements and time limits. In particular, a major contributing factor to (5) stems from the replacement of a federal matching program with a block grant and a separate state maintenance-of-effort (MOE) requirement. This has allowed states to separate how they fund activities across funding streams in a way that was not allowed when federal expenditures matched state expenditures and created many of the loopholes states now exploit.

The result of this misguided effort is a safety net with massive holes – one that is not effective in providing either basic assistance to needy families or ensuring that low-income parents receive the work-related activities and services they need.

Congress Gives States Huge Federal Windfalls (1997 through mid-2000s)

In the first five years of the program (FY 1997-FY 2001) TANF resulted in raising federal costs above what they would have been in the absence of the program – by about $15 billion to $40 billion. Congress chose to base each state's block grant on the federal share of expenditures in

[26] Anonymous, 1997. See also, Gene Falk of the CRS (*The Temporary Assistance for Needy Families Block Grant: An Introduction*, October 23, 2013): "TANF is not a program, but rather a flexible funding stream that states can use to provide a wide range of benefits, services, and activities."

the pre-1996 AFDC, Emergency Assistance (EA), and JOBS programs. Each state received the greatest of the average federal share of expenditures in these programs for FY1992 through FY1994; the federal share of expenditures for these programs in FY1994, adjusted for states that amended their EA programs in FY1994 or FY1995; or the federal share of expenditures for these programs in FY1995.

I will vastly oversimplify the calculation of the federal windfall (and hence the large range), but the fact of the matter is that by any metric, Congress gave states huge windfalls during the earlier years of the program. The federal block grant is about $16.5 billion. But, since caseloads were already coming down, the actual amount of spending on prior AFDC and related programs was declining. In FY 1996, the federal cost was just $15 billion, so had the block grant been in available in FY 1996, federal costs would have been inflated by nearly10 percent, or $1.5 billion.[27] In many states, the windfall was even greater. For example, Wisconsin spent just $240 million in federal pre-TANF-related program spending in FY 1996, yet in FY 1997 the federal block grant for the state was $318 million. <u>How is paying Wisconsin $80 million more (33 percent) under TANF than under the pre-TANF programs fiscally sound welfare reform (particularly since much of the decline in costs had nothing to do with welfare reform, much less TANF)?</u>

But even FY 1996 is not the right baseline, as caseloads were coming down rapidly throughout the year for reasons totally unrelated to TANF. And, most states didn't implement TANF until sometime in 1997 (as late as July 1). So, based on a cursory look at caseload statistics and state implementation dates, I would roughly estimate that the windfall in federal funds, i.e., the excess states received because Congress chose to provide a federal grant based on historically high expenditures rather than what costs would have been, was about $3 billion per year. Since caseloads continued to decline for a number of years and would have done so whether TANF passed or not, this represents a minimum federal windfall of about $15 billion (over the FY 1997 to FY 2001 period). But, as explained in section II, TANF itself did little to cause the short-term decline in the caseloads – that was due to state welfare reforms to cash assistance (which TANF does not get credit for), the economy, increased aid to the working poor, and other favorable social trends. If one assumes most of the caseload decline would have happened anyway, the five-year windfall in federal funds is more like $40 billion.

The U.S. General Accounting Office (GAO) performed a similar estimate for FY 1997: "For the United States as a whole, we estimated that if all states had received a full year's TANF allotment in 1997 and maintained state funding at 80 percent of historic levels, they would have had about $4.7 billion more than we estimate they would have spent in 1997 under prior methods of financing. On average, given the actual caseload in 1997, we estimated that states would have had about 25 percent more budgetary resources under TANF than they would have had under AFDC funding rules."[28]

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[27] U.S. General Accounting Office, *Early Fiscal Effects of the TANF Block Grant*, August 1998, pp. 39-40.
[28] U.S. General Accounting Office, *States are Restructuring Programs to Reduce Welfare Dependence*, June 1998, p. 78.

Overpaying states initially may have been one of the factors that contributed to state support, as governors soon found ways of using the funds to fill their own budget needs, but the block grant also put in place a funding mechanism that would penalize future governors and the poor, as it does not adjust for inflation or economic need.

Congress Slashes Federal Funding in the Long-Run

While TANF initially provided a massive federal windfall, the longer-term fiscal implications of the block grant depend on inflation, demographic trends, and changes in economic need (e.g., the number of families in deep poverty). Table III-1, “Fiscal Effects of the TANF Block Grant: From Early Federal Windfalls to Long-Term Disaster,”shows how the fiscal calculation changed for selected years from FY 1996 through FY 2012. FY 1996 represents the last year states operated the pre-TANF programs, with spending of about $15 billion that year, which is about $22.7 billion adjusted for inflation (2014 $). Although FY 1997 was a transition year, I use the value of the block grant ($24.1 billion), adjusted for inflation, to show the initial windfall – about $1.5 billion. As explained above, the FY 1996 spending level understates the windfall. From that point forward, the value of the block grant declined (by about one-third). To compound the problem, the number of poor families with children increased by over 15 percent from 1996 to 2012, from about 6.3 million to about 7.4 million (a historic high). The table also shows that for the U.S. as a whole, federal TANF funding per poor family with children declined by 36 percent between 1996 and 2012, from $3,594 to $2,298 per poor family. And, even the $2,298 exaggerates the amount available for core welfare reform purposes, as states have used their federal TANF funds to fill state budget holes.

Table III-1
Fiscal Effects of the TANF Block Grant: From Early Federal Windfalls to Long-Term Disaster (1996 to 2012; 2014 $)

			U.S.			
	1996 (AFDC)	**1997**	**2000**	**2004**	**2008**	**2012**
U.S. Block Grant ($16.4 billion)	$22,650,000	$24,110,000	$22,500,000	$20,500,000	$18,000,000	$16,900,000
# Poor Families w/ children	6,316,094	6,269,993	5,254,030	6,003,591	6,173,820	7,354,186
$/poor family	$3,594	$3,844	$4,282	$3,415	$2,916	$2,298
			Wisconsin			
WI Block Grant ($318 million)	$362.1	$467.8	$435.9	$397.8	$350.0	$327.7
# Poor Families w/ children	77,505	82,984	67,784	95,659	83,739	114,395
$/poor family	$4,672	$5,637	$6,430	$4,159	$4,180	$2,865
CPI Adjustment	1.51	1.47	1.37	1.25	1.1	1.03

Sources: CBPP for poverty data; GAO for state-specific 1996 spending and block grant amounts.

This table clearly illustrates the different calculus states face in the short-run vs. the long-run. As Peter Edelman observed in 1997:

> Many governors are currently crowing about this "windfall" of new federal money. But what they are not telling their voters is that the federal funding will stay the same for the next six years, with no adjustment for inflation or population growth, so by 2002 states will have considerably less federal money than they would have had under AFDC.[29]

It is now 2015, and the basic structure of TANF remains. To see the impact of TANF on a state, let's look at Wisconsin and compare the deal Governor Thompson got when TANF was created (using 1997) to the deal Governor Walker got (2012). When Governor Thompson got the TANF block grant, he benefitted from a windfall of over $100 million in federal funds (in 2014 dollars), compared to what the state received in FY 1996. Indeed, the state continued to receive a federal windfall through the mid-2000s, and from FY 1998 through FY 2006, it faced a work participation rate requirement of 0 percent.

[29] Peter Edelman, "The Worst Thing Bill Clinton Has Done," March 1997.

Initially, Wisconsin got one of the best deals in terms of federal windfalls. In the longer-run, however, Wisconsin is reaping the downside of block grants, as it has experienced a sharp increase in poverty among families with children. Governor Walker, who took office in 2011, faces much greater challenges. Table III-2, "A Tale of Two Governors: The Best of Times and the Worst of Times," highlights some key figures. Notably, Governor Walker has a TANF block grant that is about 30 percent lower than the 1997 value, but he has to deal with a 38 percent increase in poor families with children. As a result, he has about 50 percent less per poor family (and that is before adjusting for the fact that TANF funds have been diverted to fund other activities). And, unlike Governor Thompson, it appears that he will face a 50 percent target for the work requirement from FY 2012 through at least FY 2014 (according to the Wisconsin Legislative Fiscal Bureau), whereas Governor Thompson faced a 0 percent target (except in 1997, when it was just 8 percent). The Wisconsin Legislative Fiscal Bureau expects the state to fail to meet the work requirement each of these years. (Indeed, HHS data confirm this failure for FY 2012.[30]) Wisconsin faces the prospect of significant penalties. Of course, at that point, Governor Walker may, like other governors may attempt to take advantage of the massive loopholes Congress built into the law as part of a corrective compliance process to avoid any penalties. I don't blame the governors/states for taking advantage of these loopholes, because the defects of the 1996 law make it very difficult for any state to meet the 50 percent work requirement straight-up today; and the challenges will only grow in the future as funding is not adjusted for inflation or demographic changes. <u>Except for the initial group of governors who were around when TANF was enacted, TANF is a bad deal and getting worse each year.</u>

Table III-2
A Tale of Two Governors: The Best of Times and the Worst of Times

	Gov. Thompson (1997)	Gov. Walker (2012)
TANF Block Grant (2014$)	$467.8 million	$327.7 million
Windfall/Deficit vs. 1996 (2014$)	$105.7 million	-$34.4 million
# of poor families w/children	82,984	114,395
$ per poor family w/children (2014$)	$5,637	$2,865
Work Rate Targets	1997: 8% 1998-2006: 0%	2011: 0% 2012-2014: 50%

Sources: CBPP for poverty data; GAO for state-specific 1996 spending and block grant amounts. For Wisconsin work rate targets, see: Wisconsin Legislative Fiscal Bureau, *Wisconsin Works (W-2) and Other Economic Support Programs*, January 2015. Wisconsin's deficit in FY 2012 is relatively smaller than most states because it got one of the biggest windfalls when TANF was enacted. This deficit will continue to grow in the future.

[30] Office of Family Assistance, Administration for Children and Families, "Work Participation Rates – Fiscal Year 2012," May 29, 2015, available from: http://www.acf.hhs.gov/programs/ofa/resource/wpr2012.

Congress Permits Unbridled Flexibility

TANF is best known for providing cash assistance to needy families. When a state uses federal TANF funds to provide "assistance," certain federal requirements apply, most notably those related to work requirements, time limits, and data reporting. (Work requirements and data reporting apply to MOE funded assistance, but time limits apply only if federal funds are used.)

Congress also provided states the flexibility to create and design programs that go well beyond the core welfare reform activities of the pre-TANF programs. The four purposes of TANF are to:

- provide assistance to needy families so that children can be cared for in their own homes or the homes of relatives;
- end dependency of needy parents on government benefits through work, job preparation, and marriage;
- reduce out-of-wedlock pregnancies; and
- promote the formation and maintenance of two-parent families.

States may also use federal TANF funds to pay for any activity that was part of their pre-1996 programs even if they do not meet a TANF purpose (i.e., "grandfathered activities"). Thus, states have the flexibility to go beyond cash assistance and work-related activities to fund a wide range of programs. Indeed, in FY 2013, less than 30 percent of TANF funds were used to provide basic assistance and just 6 percent funded work-related activities, despite the fact that the number of poor families with children (or number of poor children) was higher than in 1996. Also, note that the third and fourth purposes are not limited to "needy families" or "needy parents" as the first two purposes are. Even for the first two purposes, states are free to set need levels wherever they choose and some have set them as high as 600 percent of the federal poverty line for some activities.[31] This is possible because section 417 of the Social Security Act (added by TANF) constrains the ability of federal officials in regulating the conduct of states:

> No officer or employee of the Federal Government may regulate the conduct of States under this part or enforce any provision of this part, except to the extent expressly provided in this part.

So, states can do whatever they want as long as it is "reasonably calculated" to achieve a TANF purpose. As a result, billions of dollars have been diverted from TANF's initial core welfare reform benefits and services to fund activities like preK, child welfare, and college scholarships (for young single adults) under the guise of advancing purposes 3 or 4. These activities may be worthwhile, but because TANF is block grant with fixed funding, this means that money is not available for core welfare reform purposes for the most vulnerable families.

[31] In the Reagan Administration, our focus was on the "truly needy," but Congress put state flexibility ahead of this important principle.

Congress Permits – Even Encourages – Supplantation: Federal Taxpayers Get Nothing!

Supplantation is the practice of states using federal funds to replace state spending on a program or activity. According to one source, Wisconsin pioneered this practice:

> WISCONSIN pioneered "supplantation," the practice of diverting TANF funds to pay for programs serving non-poor people and for tax cuts. Under then-governor Tommy Thompson, now Secretary of the Department of Health and Human Services, at least $112 million in TANF funds were diverted to pay for tax cuts or non-poverty related programs in FY 1998 and FY 1999. Another $170 million was diverted in FY 2000 and FY 2001. Wisconsin reduced its contribution to its welfare program, from $225.2 million prior to passage of welfare reform to $168.9 million in FY 1999, the bare minimum 75 percent "Maintenance of Effort" required by federal law.
>
> In 1999, after the federal government published final TANF regulations, the Wisconsin Legislative Fiscal Bureau identified the potential for using TANF to replace state funding for the Earned Income Tax Credit (EITC) program. Accordingly, the legislature passed its 1999-2001 budget bill with a provision that uses TANF funding to pay for the refundable portion of the EITC – estimated to be about $48 million per year – or 80 percent of the $60.4 million total cost of the credit. The net impact of this fund shuffle was to save the state about $48 million in general revenue per year.[32]

This story is also reflected in a 10-state study conducted by the GAO of state supplantation, which found that in TANF's early years, in the 10 study states, supplantation ranged from about 5 percent to 25 percent of the block grant.[33]

Allowing states to supplant existing state expenditures with federal TANF funds was bad enough, but Congress exacerbated the practice. In TANF's early years, Congress provided states huge windfalls; states had large amounts of unspent TANF dollars, so Congress threatened to take their funds away unless they spent them. On March 16, 1999, former Rep. Nancy Johnson, then chair of the House Ways and Means Subcommittee on Human Resources, wrote individually to all 50 governors warning that more TANF funds needed to be spent or they risked having Congress take back some of the unspent funds or would have future grants reduced:

> According to our budget analysts, states have about $6 billion in unspent funds left over from fiscal years 1997 and 1998. My colleagues and I on the Committee on Ways and Means are fighting to save this money from those who would like to spend it on other priorities, but I want you and all the other governors to understand that unless states begin

[32] See, "States Behaving Badly," at: http://lobby.la.psu.edu/_107th/110_TANF_Work_Training/Organizational_Statements/NCJIS/NCIJS_States_Behaving_Badly.pdf.

[33] GAO, *Challenges in Maintaining a Federal-State Fiscal Partnership*, August 2001.

> spending more of this money, we will eventually lose the battle to protect it here in Washington.[34]

Is it a surprise that states would have unspent funds when the creation of TANF itself gave them a huge federal windfall? And, isn't saving the money for a future contingency the responsible thing to do? Here again, congressional interference led to a further undermining of the program. This threat led states to divert funds away from core welfare activities and in many cases just supplanted existing state spending. Then, when Congress began to learn about supplantation, Rep. Johnson wrote a second letter to all 50 governors a year later (March 2000):

> In reviewing these and similar investments for your own state, I hope you will be careful to avoid supplanting TANF funds. By supplantation, I mean replacing state dollars with TANF dollars on activities that are legal uses of TANF funding. Supplantation, of course, is perfectly legal under the TANF statute. However, if the savings from supplanted federal funds are used for purposes other than those specified in the TANF legislation, Congress will react by assuming that we have provided states with too much money. As the reauthorization of the TANF legislation in 2002 approaches, it would be a shame if a few states followed the suggestions of their budget officials and replaced state dollars with TANF dollars in order to provide tax cuts, build roads or bridges, or in general use funds for no-TANF purposes. It has become increasingly clear that the media, child advocates, Congressional committees, and, at my request, the General Accounting Office, are watching to see if states supplant TANF funds. Thus, it is likely that jurisdictions that do so will become widely known and criticized. Equally important, these jurisdictions could provoke Congress to take actions that would hold serious consequences for every state.[35]

A cursory examination of state practices in this area suggests that states have supplanted billions, even tens of billions, of dollars since TANF was enacted and except for a warning letter, Congress has done nothing. For example, the Wisconsin Budget Project updated the information on supplantation in Wisconsin recently to explain "how a significant portion of the federal funding for ... assistance is being siphoned off for use elsewhere in the budget, to the detriment of the Wisconsin Works (W-2) program and child care subsidies for low-income working families."[36] Similarly, Georgia was ordered by the court to improve its child abuse and neglect system, but rather than raise its own funds to pay for these improvements, Georgia used over half of its block grant on on foster care and related services.[37] Louisiana used TANF funds to

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[34] For an example of the letter sent to each governor, see: http://fiscalpolicy.org/text-of-march-161999-letter-from-nancy-l-johnson-sent-individually-to-all-50-governors.

[35] For an example of the letter sent to each governor, see: http://fiscalpolicy.org/letter-from-nancy-l-johnson-sent-individually-to-all-50-governors.

[36] Wisconsin Budget Project, "Funding for Low-Income Families Siphoned off for Other Uses," April 29, 2013, available at:

[37] Claire S. Richie, "Georgia TANF Funds Sink to New Low: Majority Still Spent on Indirect Purpose," Georgia Budget and Policy Institute, September 2012, available at: http://gbpi.org/wp-content/uploads/2012/09/Georgia-TANF-Funds-Sink-to-New-Low09202012-policy-report-final.pdf and Stephanie Mencimer, "Paul Ryan Has a Plan for the Poor. It's Terrible," *Mother Jones*, April 2, 2014, available at: http://www.motherjones.com/politics/2014/04/paul-ryan-budget-food-stamps-medicaid-block-grants.

supplant state spending on child welfare services, early education, and financial aid for college students.[38] In Arizona, most of the federal TANF money pays for other state services, notably foster care and adoption assistance, but uses only a small percentage of its funds for cash assistance and work activities. As State Representative John Kavanagh, chairman of the Arizona House Appropriations Committee explained, "Yes, we divert – divert is a bad word. It helps the state."[39]

This is a waste of federal taxpayer dollars and does nothing to help low-income families (unless the freed up state dollars are used on other programs for low-income families). And, because of section 417, the federal government can't collect any information about these programs beyond the dollars spent in broad general categories. <u>This has all contributed to making TANF a giant slush fund with little accountability</u>.

TANF as a Slush Fund

Congress gave states too much flexibility and they have used it to create a giant slush fund. TANF spending should have been limited to core welfare reform purposes, but the lessons from TANF are important and we should not repeat them by adopting block grants for other programs. Consider the following statement from the Center on Budget and Policy Priorities:

> Recently both the House and Senate passed budget plans that would turn key safety net programs into block grants. The House plan included block grants for both Medicaid and the Supplemental Nutrition Assistance Program (SNAP); the Senate plan converted much of Medicaid into two block grants. Block grant proponents often tout the replacement of the Aid to Families with Dependent Children (AFDC) program with the Temporary Assistance for Needy Families (TANF) block grant under the 1996 welfare law as a model for how to restructure key federally funded safety-net programs for low-income families. A close examination of how states have used the funds under TANF, however, provides a cautionary tale about the dangers of block-granting core safety-net programs and providing extensive flexibility to states on use of the funds. The cash assistance safety net for the nation's poorest families with children has weakened significantly under the TANF block grant.
>
> Beginning in TANF's early years, when the economy was strong, shrinking cash assistance caseloads freed up federal and state funds that had gone to poor families in the form of benefits. States used the flexibility of the block grant to redirect those funds. Some of the freed-up funds initially went to child care and welfare-to-work programs to further welfare reform efforts. But over time, states redirected a substantial portion of their state and federal TANF funds to other purposes, in some cases to substitute for – or "supplant" – existing state spending. And when need increased during the Great Recession, states were often unable to direct the funds back to core welfare reform services and instead made cuts in basic assistance, child care, and work programs.

[38] Liz Schott, LaDonna Pavetti, and Ife Floyd, "How States Use Federal and State Funds Under the TANF Block Grant," Center on Budget and Policy Priorities, April 8, 2015.
[39] Cited in Jason DeParle, "Welfare Limits Left Poor Adrift as Recession Hit," *The New York Times*, April 7, 2012.

> Currently, states spend only slightly more than one-quarter of their combined federal TANF funds and the state funds they must spend to meet TANF's "maintenance of effort" (MOE) requirement on basic assistance to meet the essential needs of families with children, and just another quarter on child care for low-income families and on activities to connect TANF families to work. They spend the rest in other areas, including programs not aimed at improving employment opportunities for poor families. TANF does not require states to report on whom they serve with the federal or state funds they shift from cash assistance to other uses, let alone what outcomes they achieved. Thus, there is no evidence that giving states this broad flexibility has improved outcomes for poor families with children.[40]

Many members of Congress complain about duplication of services and lack of accountability. In creating TANF, that's what they got![41]

State Maintenance-of-Effort: Congress Shoots Itself in the Foot

Under AFDC/JOBS, the federal government provided matching grants to the states, where federal funding was generally provided at the Medicaid matching rate (FMAP), which could range from 50 percent to 83 percent. TANF replaced the matching approach with a maintenance-of-effort (MOE) requirement, requiring states to maintain spending from their own funds on TANF or TANF-related activities. Each state's MOE amount is based on its historical (FY 1994) spending on cash, emergency assistance, job training, and welfare-related child care expenditures. The basic MOE requirement is set at just 80 percent of this historical spending level (about $11.1 billion), but this falls to 75 percent for any year in which a state meets its TANF work requirements (about $10.4 billion).

MOE can be combined with federal funds in the TANF program (comingled), segregated from federal funds in the TANF program, or in a separate state program. These three options are available because the statute refers to MOE in two ways, depending on the section: "under the State program funded under this part" in some places and elsewhere "under all State programs." The latter opened the door to the "separate state program." Activities funded under separate state programs are subject to far fewer requirements than other MOE-funded programs. And, <u>this was initially one of the first big loopholes used by states to avoid work requirements, particularly the two-parent requirement.</u> While Congress addressed this issue with regards to work requirements in the Deficit Reduction Act of 2005, requiring states to include assistance cases funded with separate state program dollars in the work participation rate calculations, it did not when it came to other restrictions.

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[40] Liz Schott, LaDonna Pavetti, and Ife Floyd, "How States Use Federal and State Funds Under the TANF Block Grant," Center on Budget and Policy Priorities, April 8, 2015.

[41] For more on the slush fund aspects of TANF, see: Richard Wexler, "TANF Should Not Be a Child Welfare Slush Fund," *Youth Today*, November 8, 2010; and Shawn Fremstad, "Temporary Assistance for Families Should Empower Working-Class Parents Not Serve as a Slush Fund for States," Center for Economic and Policy Research, February 28, 2013.

Under the prior matching approach, everything was simple; one set of rules applied to all expenditures. A state couldn't shield part of its caseload from work and other requirements by choosing a specific funding stream – all of the funds were comingled.

MOE: Congress Cuts State Level of Effort

Congress also enacted a number of rules that allow states to reduce their own level of effort in assisting needy families. First, it set the basic MOE requirement not at 100 percent of historic spending, but at 75 percent (assuming a state meets its work requirements). Second, like the federal block grant, a state's MOE requirement is not adjusted for inflation, so it too has lost about one-third of its value since TANF was created. Third, while TANF has no ban on supplantation with federal TANF funds, it does prohibit supplantation ban with MOE dollars. However, the ban is not particularly effective and can be administratively burdensome and is part of what is known as the "new spending test." State and local governmental expenditures on programs that existed in 1995 and were not part of the state's AFDC and related programs can be claimed only to the extent that they are higher than the spending in 1995. In other words, only new spending counts. Of course, since that level is not adjusted for inflation, over time states can count preexisting spending that rises simply because of inflation. In effect, this permits supplantation with MOE funds as well.

Third-Party, Non-Governmental Spending as MOE

A recent phenomenon is the growing tendency for states to count the spending of third-party non-governmental sources, essentially rewarding states for spending outside groups would have undertaken in the absence of TANF. (Third-party non-governmental spending that a state claims as MOE is not subject to the "new spending" test.) These expenditures must meet a TANF purpose, but otherwise can count as a donation that is considered MOE. Common examples of third-party expenditures that states have claimed as MOE include expenditures by food banks or Boys/Girls Clubs for TANF-eligible families. It has even included in-kind expenditures such as the volunteer hours of Girl Scout leaders and employer-provided supervision and training for people in subsidized employment. None of this happened under the prior AFDC and related programs.

There are two reasons states have chosen to increase their claiming of third-party spending (governmental and non-governmental). First, as described in section IV, states can get "excess MOE" credit for spending above their basic MOE level and receive a larger caseload reduction credit. Since the work requirements have so many loopholes already, this is not a particularly serious concern. However, some states, like Georgia, seem to use these expenditures, particularly non-governmental expenditures, to reduce their own commitment to programs for low-income families. Here's how the Georgia Budget and Policy Institute describes it:

> A state can meet its TANF MOE with state funds or third-party funds each year in order to receive federal funds and to avoid financial penalties. In general, a state must spend TANF MOE on activities that serve eligible low-income families with children and

> satisfy one of the four broad purposes of TANF. A state may also count administrative costs for allowable purposes (not to exceed 15 percent).
>
> Nearly half of Georgia's TANF MOE ($83.5 million) came from third-party funds in FFY 2011, an increase of 19.1 percent from FFY 2010.
>
> Essentially, policymakers replaced state fund investment for TANF MOE with more private, third-party funds. However, these private funds may count existing services already offered by private organizations across the state. Counting private funds for existing services in the community, while cutting state funds to TANF is an overall net cut to services for low-income Georgians.[42]

A GAO study found that in Utah, such expenditures accounted for half of total MOE expenditures in FY 2011.[43] Most of this comes from valuing the volunteer services provided by a food bank, including "Volunteer hours spent growing, preparing, and distributing food and clothing ensure that Utah's needy children and their families have proper nourishment and clothing to allow for a more successful future."[44] By counting such "contributions" as MOE, the state reduced much of its own spending for needy families.

Counting third-party non-governmental "contributions" was not an issue before TANF, but when Congress created the block grant structure with the MOE requirement, it became an unpleasant reality. Congress could eliminate this practice by excluding such expenditures from the definition of qualified state expenditures (i.e., MOE). But, the real problem is the block grant structure itself and having a MOE rather than matching requirement, which contributes to problems like supplantation, the creation of a slush fund, and the ability of states to avoid most federal requirements by selectively using funding streams (as described in subsequent sections). But, Congress also vastly overcomplexified the financing of the program, as described below.

Unbelievable Bureaucratic Complexification

Congress that took a simple, straightforward funding mechanism and replaced with a myriad of flawed funding formulas and requirements that complicate the program, create inequities between states,[45] and allow states to further game some aspect of the program. It is indeed the quintessential Rube Goldberg government program. Congress, in effect, has created a situation in which states must consider the rules that apply to five types of funding streams (federal only, comingled, segregated MOE, MOE in a separate state program, and solely state funded programs). Then there are rules based on which purpose an activity meets, whether the

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[42] Claire S. Richie, "Georgia TANF Funds Sink to New Low Majority Still Spent on Indirect Purpose," September 2012.

[43] GAO, *Temporary Assistance for Needy Families: More States Counting Third Party Maintenance of Effort Spending*, July 23, 2012.

[44] See the state's Annual MOE report at: https://www.motherjones.com/files/12-ut.204.pdf.

[45] This paper doesn't really address the many inequities between states, beginning with the approach for setting the basic block grant, but the issue should be considered in any reform proposal. I may add a section on this topic as I update the paper.

expenditure is assistance or non-assistance, whether the recipient is in an "eligible family" or not, which specific type of federal funding stream (e.g., block grant, Contingency Fund, Emergency Fund), and on and on.[46]

Rube Goldberg was an author, cartoonist, and inventor. He is best known for his cartoons of "overly complex devices that perform simple tasks in indirect, convoluted ways." Today, there are Rube Goldberg contests that challenge participants to make a complicated machine to perform a simple task. If there were such a contest for funding approaches for government programs, TANF would easily win the prize. The main difference between the Rube Goldberg machines and TANF, however, is that at least the machines perform the desired task. Table III-3, "TANF's Rube Goldberg Financing Requirements," highlights some of the major complexifications in this area; all of this would have been unnecessary with a simple federal-state match.

[46] For an excellent summary of the many issues, see the CLASP policy brief by Elizabeth Lower-Basch, "Guide to Use of Funds," March 1, 2011.

Table III-3
TANF's Rube Goldberg Financing Requirements

Provision	Explanation	Comment
The basic block grant – State Family Assistance Grant (SFAG)	Each state's block grant is based on the federal share of expenditures in the pre-1996 AFDC, Emergency Assistance (EA), and JOBS programs. Each state received the greatest of the average federal share of expenditures in these programs for FY1992 through FY1994; the federal share of expenditures for these programs in FY1994, adjusted for states that amended their EA programs in FY1994 or FY1995; or the federal share of expenditures for these programs in FY1995.	The funding allocation is just a one-time calculation and not particularly bureaucratic; however, since caseloads started declining in 1994, about three years before most states implemented TANF, states received a large federal windfall in the program's initial years. Initially, many states saved these excess federal funds, but later Congress threatened states to spend the money or lose it. This led many states to spend more on activities that were not related to TANF's core welfare reform purposes. It also meant that in later years, when a recession came, states would have fewer reserves to fund costs related to increased need. This then required more congressional intervention, e.g., annual adjustments to the Contingency Fund and the creation of the Emergency Contingency Fund during the Great Recession. So, the block grant structure itself is responsible for on-going reviews and changes to any number of federal funding streams. This would have been unnecessary with a simple federal-state match.
Transfer authority	Up to 30% of federal block grant funds can be transferred to the CCDBG and SSBG, with a separate limit of 10% for the SSBG. These limits apply to the SFAG (contingency funds cannot be transferred) and a state can only transfer funds in the year of the award (i.e., carryover funds cannot be transferred). Job access expenditures are applied against the 30% limit.	These limits serve no practical purpose. A state could spend its federal TANF money directly in exactly the same way as funds are spent in these block grants. Indeed, it has more flexibility under TANF, e.g., it can provide child care to families with incomes above the CCDBG limits and for child care arrangements that do not meet the quality standards of the CCDBG. Job access expenditures have always been a very small percentage of TANF expenditures; adding this to the mix takes micromanagement to a new level.
Grandfathered activities (i.e., those "authorized solely under prior law")	Federal TANF funds must be spent on an activity that meets one of its four purposes, but federal law permits an exception for any benefit or service a state had provided under its pre-1996 Emergency Assistance (EA) program to provide help for foster care, adoption assistance, and juvenile justice programs.	Why should some states have broader authority in the use of TANF funds than others? Why should TANF funds be allowed for any activity that doesn't meet a TANF purpose? While an argument could have been made for a transition period, it has now been more than 18 years since TANF was enacted. Congress could at least have limited the amounts to what was spent under the pre-1996 programs to keep TANF focused on its core welfare reform purposes. This provision requires state and federal officials to keep track of state plan provisions that existed nearly two decades ago to ensure that claims are made only for allowable activities.
Spending under purposes 3 and 4 (preventing out-of-wedlock pregnancies and encouraging the formation and	States may use federal TANF funds for activities meeting the third and fourth purposes of TANF without regard to income or whether individuals are part of an "eligible family,"	Why should there be different rules for federal and MOE funds? States have discovered ways to get around these restrictions. For example, some states use state funds for college scholarships for single adults. These funds can't be considered MOE for TANF because the single adults are not in an "eligible family." However, some states

Table III-3
TANF's Rube Goldberg Financing Requirements

Provision	Explanation	Comment
maintenance of two-parent families) of TANF (Federal vs. MOE)	as long as the spending is not considered "assistance."	argue that such scholarships advance purpose 3 and thus use federal TANF funds (e.g., that were previously used to fund assistance); they then use up the freed up state funds (that previously funded college scholarships) to replace the federal funds that had been used to provide assistance. Why would states do this "swap"? To artificially inflate MOE (e.g., to get more excess MOE for the caseload reduction credit or provide the flexibility to create solely state funded programs, as described in section IV and illustrated in the California "swap" discussion). Why bother to enact restrictions that can easily be gamed?
Supplemental Grants	Additional funding was provided to states that had high population growth and/or low historic grants relative to poverty in the state; 17 states qualified for supplemental grants: Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Louisiana, Mississippi, Montana, Nevada, New Mexico, North Carolina, Tennessee, Texas, and Utah. These states received an increase in federal funding of about 10% from FY 2001 to FY 2010, a reduced amount in FY 2011, and nothing thereafter.	The initial formula was flawed and left out a number of poor states, but more important, the formula was not adjusted for subsequent changes in economic and demographic conditions. For example, consider the increase in the number of poor families with children at the state level between 1995/96 and 2012/13. Only 6 of the 17 states had increases in the number of such families in excess of 35%. And, 4 states actually had declines, including Louisiana after Hurricane Katrina forced many families out of state. Six states that are not on the list had increases greater than 35%, including Wisconsin (38%). Why should Louisiana have continued to receive these funds after a natural disaster caused many of its poor to leave the state, while states like Wisconsin that had relatively large increases in poverty did not? Under the prior FMAP, states with increased need could receive additional funds by spending more state funds. There is no need for an entirely different funding stream, particularly one as flawed as this one.
Contingency Fund: This is a seriously flawed funding source. I list just four of many problems. It is worth noting that the intent of the Contingency Fund was to help states provide basic assistance during periods of rising need, but there is no requirement that states spend the money on basic assistance; instead, they can spend it on any activity that meets a TANF purpose and can supplant existing state expenditures. And, there is no real requirement that they spend it at all. A state can simply use Contingency Fund dollars to supplant a TANF block grant dollar and thus build up its TANF reserves.		
Contingency Fund - triggers	A state can qualify for the Contingency Fund by meeting a test of need: 1) its seasonally adjusted unemployment rate averaged over the most recent 3-month period is at least 6.5% and at least 10% higher than its rate in the corresponding 3-month period in either of the previous 2 years; or 2) its SNAP caseload over the	Both triggers are seriously flawed. The unemployment rate trigger makes states eligible if they have high and rising unemployment rates. However, as was the case in the most recent recession, many states had very high unemployment rates for many years and might not qualify despite having a double-digit unemployment rate. Thus, this trigger is a poor indicator of need. The SNAP trigger was presumably a proxy for the number of poor people; however, population growth

Table III-3
TANF's Rube Goldberg Financing Requirements

Provision	Explanation	Comment
	most recent 3-month period is at least 10% higher than the adjusted caseload (subtracting out an estimate of participants who would have been made ineligible for the program) in the corresponding 3-month period in FY1994 or FY1995.	combined with eligibility expansions and outreach in the SNAP program has created a situation in which virtually all states qualify for the indefinite future, even when the economy is strong. Under the prior FMAP, states with increased need could receive additional funds by spending more state funds. There is no need for an entirely different funding stream, particularly one as flawed as this one. If you have to have one, at least try to develop triggers that are both responsive to need and can stand the test of time.
Contingency Fund – 100% MOE Requirement	A state must meet a 100 percent of historic state spending MOE requirement. MOE expenditures on child care and in separate state programs do not count toward the 100% requirement or subsequent matching (and child care expenditures on the pre-TANF programs are subtracted from the historic spending figures).	This requirement was intended to encourage states to invest more of their own funds before providing matching funds through the Contingency Fund; some states soon discovered how easy it was to find additional MOE funds simply by claiming existing state expenditures as MOE or counting the value of third-party non-governmental organizations. The states that are most aggressive about finding such MOE seem to be the ones most likely to access the Contingency Fund, rather than those most in need.
Contingency Fund – Appropriation Levels	The original $2 billion Congress authorized for the CF was depleted in early FY2010. Since then, Congress has provided just over $600 million most fiscal years.	While a funding level may not seem like a bureaucratic complication, the funding level has lately been insufficient to meet demand. Thus, HHS has had to issue funds monthly on a first-come, first-serve basis; this gives states an incentive to apply and accept funds, even if they decide to later return them, which can create complications and require a reallocation of funds. This also creates considerable uncertainty for states as the amount they will ultimately receive depends on what other states do during the year.
Contingency Fund - Formula	Monthly payments are limited to one-twelfth of 20 percent of a state's block grant; the amount is based on the number of months a state is eligible for the Contingency Fund during the fiscal year and its FMAP rate. States may receive these monthly payments on an advance basis.	While most states are now eligible indefinitely, if there are any whose eligibility may fluctuate from month to month, this approach creates uncertainty about the amount of matching funds a state may need to put up for the year.
Emergency Contingency Fund	A state could receive TANF Emergency Funds for 80 percent of its increased TANF/MOE spending in three categories: basic assistance (if its caseload had increased), subsidized employment, and non-recurrent, short-term	Like the Contingency Fund, the amount allocated for the Fund could be insufficient and could run out (and this actually happened); this created a situation where states, which were permitted to apply based on estimates of spending, had an incentive to rush in and claim their share before it ran out (which it did) requiring a complex bureaucratic mechanism for de-obligating and re-obligating the funding. None of this would have been

Table III-3
TANF's Rube Goldberg Financing Requirements

Provision	Explanation	Comment
	benefits relative to a base year (either FY 2007 or FY 2008). The maximum any state could receive over the two-year period was 50 percent of its TANF block grant amount. This cap included the combined amount a state received under the Emergency Fund and the regular TANF Contingency Fund.	needed with a simple FMAP.
TANF replaced federal-state matching programs with a federal block grant and a state maintenance-of-effort requirement. As described above in the text, this choice has given states a way to avoid most federal requirements, such as federal work requirements and the federal 60-month time limit, by funding assistance through separate state programs or (for work requirements, beginning in FY 2007, solely state funded programs).		
MOE – Separate State Programs	MOE can be combined with federal funds in the TANF program (comingled), segregated from federal funds in the TANF program, or in a separate state program.	While all MOE must be spent on behalf of an "eligible family" (a rule that does not apply to pure federal funds), the rules affecting MOE depend on which of the three MOE categories that state dollar is spent on. As noted above, separate state programs were allowed because the statute used terms like "under the State program funded under this part" and "under all State programs." The latter opened the door to the separate state program. Activities funded under these programs are subject to far fewer requirements than other MOE-funded programs, e.g., they were initially a loophole used by states to avoid work requirements, particularly the two-parent requirement. And, while Congress addressed this issue with regards to work requirements, it continues to forget about this distinction on numerous other issues.
MOE – Basic requirement	Each fiscal year a state must spend 80 percent of what it spent in FY 1994, but this is lowered to 75 percent if it meets its work rate for the year.	Since a state doesn't know whether it met the work rate until about a year or more after the end of the fiscal year (when HHS publishes the work rates), this creates unnecessary uncertainty regarding the amount of spending needed and can lead to retroactive adjustments in financial data. Inflation has eroded the value of the MOE requirement and states have found many ways of counting existing state spending and/or spending from non-governmental organizations as MOE, so it is yet another superfluous and unnecessary rule imposed by Congress.
Limits on MOE funds	Unlike federal block grant funds, MOE cannot be used to transfer funds to the CCDBG or SSBG, or for activities "authorized solely under prior law."	Again, different rules for different funding streams. Under the prior FMAP, federal dollars matched state dollars; the types of activities that could be funded were the same.
MOE New Spending Test	State and local governmental expenditures on programs that existed in 1995 and were not part of the state's AFDC and	The new spending test is challenging to monitor and audit, particularly if a state changes what it counts from year to year and the fact that it is based on 1995 spending. A 2001 GAO report explains: "Because all expenditure

Table III-3
TANF's Rube Goldberg Financing Requirements

Provision	Explanation	Comment
	related programs can be claimed only to the extent that they are higher than the spending in 1995. In other words, only new spending counts.	data are archived after 5 years, auditing the annual certification would be especially difficult and time consuming if the state changes the programs it uses to meet the MOE requirement from year to year." It added that a number of state officials "confirmed that enforcement of their own prohibitions [on supplantation] is weak and that compliance is very difficult to test."
MOE – counting third-party non-governmental expenditures	The recalibration of the caseload reduction credit in the Deficit Reduction Act of 2005 (DRA) gave states incentives to find more MOE to take advantage of the credit's "excess MOE" provision.	In many (if not most) cases, this spending would have occurred in the absence of TANF. States that count such expenditures either use the MOE it generates to weaken their work requirements OR to weaken their safety net by spending even less of their own funds on TANF services. In Utah and Georgia, nearly half of each state's reported MOE came from such sources. In the case of Georgia, it appears that these funds are being used so the state can spend even less of its own money on TANF activities. This is also a bureaucratic provision, as state and federal auditors are responsible for ensuring the integrity of all TANF/MOE expenditures. It also raises complicated issues, e.g., how should a Girl Scout leaders volunteer time be valued and what data would be required to ensure accountability. This was not a problem under the FMAP structure, because there was no need to find "excess MOE." This problem arose because Congress allowed states to segregate their expenditures, funding some activities with federal funds and some with state funds.
Note: For the sake of brevity, I ignore smaller funding streams, such as grants for tribal work programs, grants to the territories, healthy marriage/responsible fatherhood grants, and various types of bonuses.		

Summing Up

TANF's funding structure is responsible for many of its problems. First and foremost, a block grant is not an appropriate funding mechanism for a safety net program. It does not adjust funding for changes in economic and demographic shifts that result in changes in need. Under AFDC, payments were based on a federal-state matching rate, unlike many other programs that entirely federally-funded like SNAP. So, there was already more incentive for states to control costs. Under President Reagan's waiver-based approach, state demonstrations were subject to rigorous cost neutrality and evaluation requirements, generally relying on experimental design. States could experiment and the budgetary effects of those changes would be measured by examining the experimental-control group differences in costs, just as one would in a formal cost-benefit analysis. If there were population changes or inflation, the program could adjust (and would be reflected in the control group's expenditures).

Second, by replacing a federal match with a funding structure that allows states to segregate their federal and state MOE expenditures, states can easily circumvent many of the restrictions Congress placed on federal funds. To a large extent, the funds are fungible, so, for example, a

time limit on the receipt of federally funded assistance can easily be avoided by providing benefits with state funds. As such, most federal requirements are mainly symbolic, not real. Nevertheless, they complicate the administration of the program and when the federal requirements are gamed, they undermine the integrity of the program.

Third, the funding approach under AFDC and waivers was relatively simple – all expenditures were subject to a match and the same rules. Even with waivers, cost neutrality was relatively straightforward. TANF replaced this simplicity with an array of funding streams based on flawed formulas, confusing rules, and ineffective/counterproductive requirements.

Fourth, members of Congress often complain about duplication and lack of accountability. That's just what they got when they created TANF, with tens of billions of dollars going to a giant slush fund that we know little about. Under TANF, states can duplicate the benefits and services of just about any other low-income assistance program and even supplant state spending. TANF funds should be reserved for core welfare reform services, such as cash assistance, education/training/work programs, and administrative expenses.

IV. TANF Work Requirements: An Epic Fail

The Urban Dictionary defines an "epic fail" as a "complete and total failure when success should have been reasonably easy to attain." Congress could have built on the JOBS work requirements, but instead it weakened even these modest work requirements (20 percent in FY 1995). Eliminating the work requirements altogether would have been a better outcome – at least that would have eliminated the bureaucratic burdens and gaming behaviors associated with current, ineffective requirements.

Robert Rector and Rachel Sheffield of the Heritage Foundation write:

> What was at the heart of the progress made by the TANF reform? Its carefully crafted federal work requirement. The 1996 reform focused on work and self-sufficiency, clearly specifying requirements for able-bodied adults to work, prepare for work, or look for work in exchange for receiving welfare assistance. This held the state bureaucracies administering welfare programs accountable for ensuring that assistance provided with federal dollars provided a hand up not a handout.[47]

The House Budget Committee's War on Poverty report made a similar claim about TANF's work requirements:

> It assumes that President Clinton and the Republican majority at the time were correct in requiring robust work requirements for the TANF program, which contributed to the largest sustained reduction in child poverty since the onset of the "Great Society."[48]

"Carefully crafted"? "Robust"? Nothing could be further from the truth. The TANF statue is full of loopholes that weakened even the modest JOBS requirements that existed before TANF. While it closed some of these loopholes in the Deficit Reduction Act of 2005 (effective FY 2007), the result was new loopholes and other unintended effects (e.g., incentives to artificially inflate MOE, including counting third-party nongovernmental expenditures).

Liz Schott, LaDonna Pavetti, and Ife Floyd of the Center on Budget and Policy Priorities are absolutely correct in pointing out that TANF has not been about innovative solutions, as so many block grant advocates claim:

> States have not used the flexibility of the block grant for successful innovation in connecting families to work. Experience has not borne out proponents' claims that block-granting would enable states to become laboratories for developing new ways to

[47] Robert Rector and Rachel Sheffield, "Paul Ryan's New Anti-Poverty Plan Should Take Work and Marriage Seriously," July 25, 2014.
[48] House Budget Committee, *The War on Poverty: 50 Years Later*, March 3, 2014, p. 14.

> help recipients move from welfare to work. AFDC's waiver structure required formal evaluation to credibly test whether new approaches had a measurable impact on employment and earnings, but this has not happened under TANF for the most part. Some states have volunteered for rigorous evaluations, but most such evaluations have been relatively narrowly defined; none have involved the level of innovation and experimentation that occurred under the AFDC waiver experiments.
>
> The result is that, 18 years after TANF's creation, we still have no rigorous evidence to inform debates about expanding work requirements to other programs. Similarly, because few states have implemented innovative employment strategies for families with substantial personal and family challenges, we still have very limited knowledge about how to significantly improve their employment outcomes. In short, states had an opportunity to innovate and rigorously evaluate new approaches to service delivery, but that is not the path they chose.[49]

There is one area where states have been innovative and that is in taking advantage of loopholes in meeting the work requirements that Congress created, as explained below, in the section "How Congress Gutted Work Requirements."

Background

The Family Support Act of 1988 imposed the first real work requirements on states under the new Job Opportunities and Basic Skills Training (JOBS) program. By FY 1995, states were to have 20 percent of their nonexempt caseloads involved in a work, education, or training activity for an average of 20 hours per week. About half of the AFDC caseload was exempt (primarily single mothers with a child under the age of three) and thus excluded from the participation rate calculation.

The 1996 law changed the overall work participation rate for a state by requiring that at least 50 percent of TANF families with an adult engage in one or more of 12 specified work activities for a minimum average of 30 hours per week (or 20 hours per week for a single parent with a child under six years of age) in a month. The required work participation rates were phased in at 5 percentage point increments, starting at 25 percent in FY 1997 to 50 percent in FY 2002. The two-parent work participation rate requires states to have at least 90 percent of two-parent families in work activities for at least an average of 35 hours per week (or 55 hours per week for a family receiving federally subsidized child care) in a month. The required two-parent rate was also phased-in, but more quickly, rising from 75 percent in FY 1997 and FY 1998 to 90 percent in FY 1999 and thereafter.

On paper, TANF sounds much tougher. TANF raises participation requirements to 50 percent of all families and 90 percent of two-parent families. It also narrows exemptions and makes changes to the countable work activities (permitting states to count hours in employment and

[49] Liz Schott, LaDonna Pavetti, and Ife Floyd, "How States Use Federal and State Funds Under the TANF Block Grant," Center on Budget and Policy Priorities, April 8, 2015.

restricting the hours and types of educational activities that can be counted). However, the work participation standards are reduced by a caseload reduction credit, initially by the percentage caseload decline from FY 1995 (not counting reductions due to federal and state eligibility changes) and later from FY 2005 (effective with the work participation rates starting in FY 2007). Thus, the effective standards states face are often less than the 50 percent (overall rate) and 90 percent (two-parent rate) targets, and vary by state. States that fail to meet work requirements are at risk of a financial penalty in the form of a reduced block grant.

TANF initially extended work requirements to families with an adult receiving TANF assistance. Those exempt or disregarded from participation requirements were "child-only" families, single parents with child under 1 (12-month lifetime limit), and those who are sanctioned (do not count for 3 months in a 12-month period). After the Deficit Reduction Act of 2005, the work requirements included families with a "work-eligible individual" (including some non-recipient parents) in both TANF and separate state programs.

Since TANF's inception, states have achieved an overall work participation rate of about 30 percent. Gene Falk and his colleagues at the Congressional Research Service describe this as "relatively modest":

> Under TANF, the rate of participation in work and related activities has been relatively modest. The official TANF work participation rate has hovered in the vicinity of 30% during the life of the program. (The official participation rate is the number of families engaged in activities divided by the number of families subject to the rate.) Additionally, the most common activity for recipients was engagement in unsubsidized employment. Far fewer families had members participating in activities that states placed recipients into, such as job search, vocational educational training, and work experience.[50]

Indeed, the term "modest" may be too generous a characterization for many states, because the participation rate would be less than 15 percent in most states if unsubsidized employment were not counted. Moreover, these low participation rates come at a time when states have pushed many eligible families off the rolls so they are not receiving assistance. The bottom line is that states are simply not investing in work programs for low-income families with children due to the block grant structure and flexibility to divert dollars to dozens of other activities.

How Congress Gutted Work Requirements

The TANF law was written in such a way that it gave states a variety of ways to easily meet the work requirements. For most states, the caseload reduction credit alone was sufficiently generous to avoid the need for any gimmicks or loopholes, but – when it was not – other options were available. None of these loopholes or gimmicks was allowed under the previous

[50] Gene Falk, Maggie McCarty, and Randy Alison Aussenberg, *Work Requirements, Time Limits, and Work Incentives in TANF, SNAP, and Housing Assistance* (Washington, DC: Congressional Research Service, February 12, 2014), p. 16, available at: https://www.hsdl.org/?view&did=751040.

AFDC/JOBS program.[51] And, while the prior AFDC/JOBS work requirements themselves were weak, Congress should have used that foundation to build on; instead, they weakened even those requirements.

#1. Caseload Reduction Credit (before the Deficit Reduction Act). The caseload reduction credit lowered the work participation targets to the extent sates lowered caseloads below FY 1995 levels. For example, if a state's caseload fell 30 percent from FY 1995 to FY 2001, its target rate requirement for the overall rate for FY 2002 would have been 20 percent instead of 50 percent. The national TANF caseload peaked in March 1994 and then started a six-year period of steady decline. Since most states did not implement TANF until sometime in 1997 (as late as July 1), they received credit for declines that occurred before TANF was implemented. And, most of the decline even after TANF implementation would have occurred regardless of whether TANF was enacted or not, whether it was due to the economy, expansions in aid to the working poor, or the welfare reforms begun using state waivers.[52]

The caseload reduction credit has largely eviscerated the work requirements as many states had no requirement or a near-zero percent target rate throughout TANF's first 10 years. For example, in FY 1998, the first full year after TANF implementation, 6 states had a 0 percent target, 23 states had a target between 0.1 percent and 10 percent, and 16 states had a target between 10.1 percent and 20 percent. Only 6 states had a target higher than the JOBS 20 percent requirement. By 2000, an astounding 31 states had a 0 percent target and only 4 states had a target higher than the JOBS 20 percent. (See Table IV-1: "The Myth of the 50 Percent Work Requirement.")

Some TANF advocates may argue that the TANF rate is applied to a larger share of cash assistance families because it narrowed exemptions (and thus raised the denominator), most notably the youngest child exemption from age 3 to age 1. While this is true, it also eliminated the exemption for full-time employment and made employment an activity. As explained in more detail below, this latter change gave states a huge windfall in the number of people they can count in the numerator and further weakened the work requirements.

And, some TANF advocates may argue that the caseload reduction credit itself incentivized the states to implement effective welfare-to-work programs. The problem with this argument is that the credit also gave states considerable credit for declines that occurred before states implemented their TANF programs. It also erroneously assumes that the caseload declines would have stopped had it not been for TANF.

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[51] For the sake of brevity I will focus only on the overall work requirement as many states have effectively exempted themselves from the two-parent requirement by placing families in a separate state program (before FY 2007) or a similar solely state funded program (starting in FY 2007).

[52] As explained throughout this communication, TANF is not "welfare reform," it is largely just a change in federal-state funding arrangements and responsibilities, along with a number of largely ineffective federal requirements and many new bureaucratic complexifications of the welfare law.

So, the 50 percent work requirement is a myth. From the beginning, TANF involved a lessening of work requirements. Throughout most of its history, through FY 2011, about 20 to 30 states had work requirement targets of 0 percent! <u>In other words, there was no requirement.</u>

Table IV-1: The Myth of the 50 Percent Work Requirement

	Fiscal Year													
Target	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**
0%	6	24	31	28	20	19	16	15	17	3	21	21	21	22
1-10%	23	19	11	13	20	14	17	16	14	5	0	1	3	2
11-20	16	6	5	7	7	13	11	14	14	6	10	10	8	8
21-49%	6	2	4	3	4	5	7	6	6	36	18	18	18	18
50%	0	0	0	0	0	0	0	0	0	1	2	1	1	1

Source: Annual HHS work participation rate reports.

As Ron Haskins noted a number of years after TANF passed, "…because of the caseload reduction credit, the average state now has only a 5 percent work participation requirement and many states have a zero requirement. States argue that they have done a good job even without a true work requirement. And so they have." And, the Carleson Center for Welfare Reform: "…welfare reform succeeded prior to, and without the help of, federal work participation requirements. The work requirements … were not effectively enforced prior to the law's reauthorization in 2006. Indeed, during the law's first decade, the caseload work participation requirement on the states was reduced to almost nothing by a 'caseload reduction credit' that TANF gave states that reduced their welfare rolls. Prior to the 2006 amendments, which closed this 'loophole,' the effective work participation rate never exceeded six percent nationally, and in 17 states and two territories it was effectively zero. And yet, the main measures of reform's success — shrinking caseloads, rising employment, falling poverty — were all quite visible by 2001, five years before the work requirements could have had any real effect."[53]

Aside from weakening the work requirements, one of the fundamental and conceptual problems of the caseload reduction credit is that it does not make any distinction between caseload changes due to welfare-to-work efforts and the economy, demographic changes, or many policy changes. States already had an incentive to reduce the caseload because the number of cases they would have to place in work activities would decline; giving them further credit in reducing the target rate all the way to 0 percent was a massive conceptual error that totally gutted the work requirements in most states.

Congress should have picked a target rate that is reasonable, predictable, and constant. As noted above, the JOBS 20 percent standard was a tougher standard in most states than TANF's putative 50 percent rate and it was certainly less subject to gaming and manipulation (see more loopholes below). The caseload reduction credit is also a major bureaucratic complexification, as described in Table IV-2, "TANF's Ineffective and Bureaucratic Work Requirements."

[53] Carleson Center for Welfare Reform, "Block Grants Were THE Key to the Success of Welfare Reform," available at: http://www.theccwr.org/pdfs/block-grants-were-the-key.pdf. While I agree with the Center's overall conclusion about work requirements, I obviously disagree with their analysis of the impact of block grants.

The House Ways and Means Committee July 2015 draft bill reauthorizing TANF eliminates the caseload reduction credit, a welcome change. But, it should reset the work participation rates to reflect the fact that states are nowhere near 50 percent and then gradually increase them. And, it should ensure that states have the funds to pay for work activities and support services. The number of poor families with children has increased since TANF was enacted, yet the value of the block grant has declined by over 30 percent.

#2. Caseload reduction credit after the Deficit Reudction Act – the discovery of "excess MOE." Congress tried to address the problem of excessive caseload reduction credits in the Deficit Reduction Act by recalibrating the base year from FY 1995 to FY 2005. Nevertheless, it wasn't long before states used the credit to drive down their effective target rates—over 20 states had a 0 percent target for the FY 2008-FY 2011 period. (This is just one of several examples in which Congress attempted to fix a problem, but failed, only to create new problems.) The post-Deficit Reduction Act caseload reduction reflected in the credit wasn't due to real caseload declines, but because of a regulatory provision that allowed states to reduce their comparison year caseload by spending in excess of their MOE requirement. (Note: While this is a regulatory provision, it is only possible because Congress replaced the federal-state match with a block grant and a separate MOE requirement. The concept of "excess MOE" wouldn't exist in a federal-state matching program.) The "excess MOE" provision allows a state that is investing state MOE funds in excess of the required 80 percent or 75 percent basic MOE amount to include only the pro rata share of caseloads receiving assistance that is required to meet basic MOE requirements.

Grant Collins, former TANF official in HHS, explained in testimony before the House Ways and Means Committee:

> Because of the excess MOE credit, States began looking at spending in other departments throughout government that could be claimed in the TANF program, as is allowed under current program rules. So a State may begin counting new child care programs, prekindergarten classes, or earned income tax credits as TANF spending. The State may even count volunteer hours as MOE by multiplying the hours by an estimated wage and reporting this as TANF spending. States can also report spending by third parties as MOE. For example, a State may count the value of food given out at food banks as TANF spending.
>
> In closing, I want to point out that none of these practices are illegal. None of them are questionable according to current policy. States cannot be blamed for working within rules and regulations to meet Federal requirements. However, based on my experience as overseeing the TANF program and implementing the Deficit Reduction Act regulations, I believe that this combination of factors has resulted in weaker work requirements, less investment in TANF families, and fewer families becoming self‐sufficient.[54]

[54] See: Hearing on State TANF Spending and its Impact on Work Requirements, at: http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=319232.

Indeed, one of the unintended effects of the Deficit Reduction Act was to lead states to simply find more third-party spending to count as MOE, including third-party nongovernmental expenditures, just so that they could artificially inflate the caseload reduction credit.[55] And, reported MOE did rise sharply – from $12 billion in FY 2006 to $13.7 billion in FY 2008 to over $15 billion in FY 2009 and most subsequent years.

As Collins notes, this led to even weaker work requirements; it also undermined the integrity of the program as a whole. The GAO observed that in FY 2008, of the 44 states that met the overall work rate, 30 used “excess MOE” to calculate their work rate target and 14 would not have met the target had it not been for this excess MOE.[56]

Some states have found a new way to maximize MOE, called the “swap.” They use federal TANF funds to pay for an existing state activity that meets a TANF purpose and is an allowable use of federal funds, but not MOE funds (because MOE can only be spent on “eligible families,” i.e., those that are needy and have a minor child). For example, California has used federal TANF funds that were used to fund basic assistance to instead pay for college scholarships that were previously funded with state general fund dollars. The freed up general fund dollars are then used to pay for the assistance that had been funded with state general fund dollars. In short, this is a gimmick that allows a state to inflate its MOE to either maximize excess MOE or to help it create solely state funded programs to bypass federal requirements. Here is a description of how the “swap” works in California, involving nearly $1 billion in expenditures:

> **TANF–CSAC Funding Swap Provides Additional State Flexibility**
>
> *Swap Has No Net Impact on CalWORKs Funding Levels or Overall General Fund Spending.* The 2012–13 enacted budget redirected $804 million in Temporary Assistance for Needy Families (TANF) block grant funds from the California Work Opportunity and Responsibility to Kids (CalWORKs) program to the California Student Aid Commission (CSAC) to be used for expenditures in the Cal Grants program that are allowable under federal rules that govern the use of TANF funds. Reduced TANF funds in CalWORKs were replaced dollar for dollar with General Fund monies from CSAC, resulting in no net impact on funding levels for Cal Grants and CalWORKs or General Fund spending overall.
>
> *Spending Above MOE Has Important Implications.* Having higher General Fund expenditures in CalWORKs than is required by the MOE provides potential benefits to the state. First, should the state choose to do so, General Fund and county spending above the MOE could be counted as excess MOE to obtain an additional reduction in the required work participation rate (WPR), thereby lowering the risk of federal penalties.[57]

[55] See GAO’s July 23, 2012, testimony on the extent of this problem at: http://www.gao.gov/assets/600/592861.pdf.
[56] GAO, *Implications of Recent Legislative and Economic Changes for State Programs and Work Participation Rates*, May 2010.
[57] Legislative Analyst’s Office, “The 2013-14 Budget: Analysis of the Health and Human Services Budget,” February 27, 2013.

The initial inclination for dealing with this issue might be to eliminate (or limit) this "loophole," as suggested by the Heritage Foundation[58] and GAO.[59] This recommendation would not solve the problem; it would just lead to a different loophole. Indeed, the description of California's "swap" goes on to note this very thing:

> Second, General Fund and county spending above the MOE could, at the state's choosing, not be counted towards the MOE requirement. This opens the door to CalWORKs spending on purposes that are not allowed under TANF rules but that benefit the state. For example, the state can fund CalWORKs benefits for individuals that it wishes to exclude from the state's WPR in a so–called "solely state–funded program," as discussed in more detail in the body of the CalWORKs analysis. Finally, should the need arise in the future, the state has greater flexibility to enact policy changes—including those that would reduce General Fund spending in the CalWORKs program—without coming up against the constraint of the MOE requirement.[60]

So, eliminating the "excess MOE" provision would simply lead to a different loophole – solely state funded programs (discussed in #4 below). In fact, given changes to the "excess MOE" provision that will affect many states starting in FY 2012, solely state funded programs may become a more favored loophole.[61] Then, the hunt will be for MOE to satisfy TANF's basic MOE requirement and any "excess" to simply fund assistance cases outside the TANF/MOE structure. And, with fewer assistance cases, TANF will become more of a slush fund than it already is with limited information and accountability due to the limitations Congress placed on HHS data collection.

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[58] Kiki Bradley, "Loophole Guts TANF Work Requirements," May 23, 2012, at: http://dailysignal.com/2012/05/23/loophole-guts-tanf-work-requirements/.

[59] *Potential Options to Improve Performance and Oversight*, May 2013, at: http://www.gao.gov/assets/660/654614.pdf).

[60] Legislative Analyst's Office, "The 2013-14 Budget: Analysis of the Health and Human Services Budget," February 27, 2013.

[61] Normally, the comparison year for the caseload reduction credit is the previous fiscal year (e.g., FY 2010 for the FY 2011 work rate's caseload reduction credit), but the American Recovery and Reinvestment Act of 2009 (ARRA) allowed a state the option of using FY 2007 or FY 2008 as the comparison year for rates in FY 2009, FY 2010, and FY 2011 if it was advantageous to the state. This hold-harmless provision was intended to prevent required state participation standards from rising if state caseloads rose as a result of the economic recession. The final rule implementing the DRA, promulgated in February 2008, set forth a specific methodology effective FY 2009 for calculating the effect of "excess MOE" on the caseload reduction credit. The new approach essentially limited the amount of "excess MOE" that could be used by excluding cases to the share of a state's total TANF/MOE spending devoted to assistance. Nationally, states spend about one-third of their TANF/MOE funds on assistance; therefore, effective FY 2009, the amount of "excess MOE" that could be used in the caseload reduction credit calculation decreased by about two-thirds nationally. While the exact impact would vary considerably by state, many states found it advantageous to make use of the ARRA hold-harmless provision, both because caseloads in many states were lower in FY 2007 and FY 2008 and because the treatment of "excess MOE" was more generous. So, for FY 2012, the caseload reduction credit, which includes caseload adjustments due to excess MOE spending, reduced the overall rate requirement below the 50 percent statutory standard for all but ten states. However, following the expiration of the ARRA hold-harmless provision, instead of there being 22 states with caseload reduction credits large enough to reduce their overall target rates to zero (as was the case for FY 2011), only 4 states had a target rate of zero in FY 2012.

Congress believed that recalibrating the base year from FY 1995 to FY 2005 would restore a meaningful target rate, but it failed to address the structural problems of TANF stemming from the block grant structure and excessive state flexibility. Congress should have retained the federal-state matching requirements that existed before, instead of creating a funding structure that encourages states to manipulate funding streams for maximum gain.

#3. Separate state programs. When Congress created TANF, it replaced a matching rate with a block grant and a MOE requirement. And, because of the wording of the law (see section III), cash assistance could be provided under a variety of funding streams – federal funds, comingled funds (federal and MOE funds together), segregated state MOE funds, or separate state program funds that count as MOE. Families assisted through separate state programs were not subject to TANF's work requirements. Congress was either careless in writing the law or it intentionally created a massive loophole. An August 2005 GAO report noted that some states had placed families in separate state programs to "remove those families from the calculation of work participation rates."[62] Over half the states had such programs. The most common populations that were moved to this funding stream were two-parent families, because the 90 percent work participation rate target was considered unachievable. States also moved other families that were not likely to meet the work requirements, including those applying for SSI, with employment barriers, or caring for a disabled family member.

As Douglas Besharov and I explained in 2004, this loophole could be used to greatly inflate a state's work participation rate:

> Technically, a state can simply move some number of nonparticipating cases out of TANF (thereby raising its participation rate and reducing the absolute number of recipients it needs to place in work activities). Indeed, Rhode Island uses federal money for families that meet the two-parent participation requirement and state money, through a separate state program, for those that do not. One HHS official observed, "Obviously, they aren't perfect at this game, since their two-parent rate was 94.8 percent–not 100 percent." (This compares to a 7.0 percent participation rate in their separate state program.) This blatant evasion and similar actions in other states did not cause an uproar because they were responses to the widely appreciated impracticality of the 90 percent participation rate for two-parent families.[63]

In FY 2001, Rhode Island's average monthly two-parent caseload in TANF was 347, compared to more than double that number in its separate state program (778), where cases were effectively exempted from TANF's work requirements.

#4. Solely state funded programs after the Deficit Reduction Act. Congress eliminated the separate state program loophole in the Deficit Reduction Act by requiring states to include such families in the work participation rate calculation. However, the TANF law has made it very

[62] GAO, *HHS Should Exercise Oversight to Help Ensure TANF Work Participation Is Measured Consistently across States*, August 2005, available at: http://www.gao.gov/assets/250/247482.pdf.
[63] See Douglas J. Besharov and Peter Germanis, Toughening TANF: How Much? And How Attainable? March 23, 2004, pp. 153-154, available at: http://www.welfareacademy.org/pubs/welfare/toughening_tanf.pdf.

easy for states to meet their basic MOE requirement without spending more money and most states report an "excess" amount of MOE. Indeed, states were only required to spend 75 percent of their previous spending, resulting in an immediate state savings. Inflation has further reduced the state requirement so that it is 50 percent of what it was before TANF. Add to this the fact that under TANF states can count virtually any state expenditure that meets a TANF purpose and even the value of third-party non-governmental "donations," it's easy to see how states can have a significant amount of "excess MOE." As noted above, this can be used to maximize the caseload reduction credit, but a state can also just fund part of its assistance caseload outside the TANF/MOE structure in solely state funded programs so those families are not subject to TANF's work requirements.

The Center for Public Policy Priorities descrbes this approach for meeting work rates as the "take-out strategy":

> Under this approach, states divide TANF recipients into two categories: those likely to meet federal work requirements and those unlikely to meet the requirements. States then provide assistance to those recipients unlikely to meet the requirements with non-MOE state funds.[64]

In a summary of solely state funded programs in the immediate aftermath of the Deficit Reduction Act, Liz Schott and Sharon Parrott also described how this funding approach can work without the need for additional state funds:

> The state funding for benefits and administration of a solely state-funded program, by definition, does not count toward the state's maintenance-of-effort requirement. This does not mean, however, that additional state spending is required for a state to implement such an approach. SSFs typically serve families that otherwise would be served in the state's TANF- and MOE-funded programs, so establishing the SSF does not increase overall state assistance costs. If a state does not want to increase state expenditures, it can "swap" funding by identifying current state expenditures that it could count (but has not counted in the past) toward the TANF maintenance-of-effort requirement to allow the state to fund the SSF program with state funds that do not need to be claimed toward the MOE requirement. It also could do a similar swap with TANF funds.[65]

In a 2008 survey, Mathematica found that 26 states had adopted solely state funded programs, 24 of which used them to serve two-parent families, 14 to serve hard-to-employ families, and 7 to

[64] Center for Public Policy Priorities, "A New Welfare-to-Work Approach for Texas," February 2007, available at: http://www.workingpoorfamilies.org/pdfs/TANF_reform_80th.pdf.

[65] Liz Schott and Sharon Parrott, "Designing Solely State-Funded Programs: Implementation Guide for One 'Win-Win" Solution for Families and States," Center on Budget and Policy Priorities, January 8, 2009, p. 5, available at: http://www.cbpp.org//sites/default/files/atoms/files/12-7-06tanf.pdf. An earlier version of this paper was published on July 16, 2007, and even this appears to be an update of an earlier paper, well before the final rule implementing the DRA was published.

serve families in college.[66] (The number of states with such programs probably would have been larger, but in FY 2008 over 20 states had a 0 percent target rate due to the caseload reduction credit.) The survey also indicated, "In a few instances, SSF programs are explicitly targeted to families that are not meeting their work participation requirement."[67] LaDonna Pavetti, Linda Rosenberg, and Michelle K. Derr of Mathematica describe how this works in the District of Columbia:

> The District of Columbia caseload provides an illustration of the importance of considering participation in TANF and SSF programs to accurately track the number of families receiving cash assistance. According to the data reported by HHS, between FY 2005 and 2008 the District's TANF/SSP caseload declined by 69 percent, from 17,254 to 5,375 cases. Data maintained by the District on all of its cases show a decline of just 12 percent, to 15,171 cases in FY 2008. The District employs a systematic strategy for assessing their caseload and assigning cases to different funding groups depending on their characteristics and their level of participation in work activities. This means that the number of families on the TANF/SSP caseload is dependent on the number of families meeting the work requirement in any given month, not on the number of families receiving assistance. While the federal TANF/SSP data show the District's caseload declining between FY 2007 and 2008, the local data show the caseload starting to increase.[68]

As described above with Rhode Island's separate state program for two-parent families, if a state removes non-participating families from its TANF-MOE caseload, it can artificially inflate its work participation rate.

Over time, the number of states with solely state funded programs and the number of families in such programs has grown.[69] For example, in FY 2014, in Illinois, solely state funded program cases outnumbered the actual number of TANF/SSP cases (an average monthly caseload of 24,349 vs. 20,050).[70] Several of the programs were created effective October 1, 2006, just as the new DRA provisions were being implemented. These early programs included: "Two-Parent

[66] LaDonna Pavetti, Linda Rosenberg, and Michelle K. Derr, Understanding Temporary Assistance for Needy Families Caseloads After Passage of the Deficit Reduction Act of 2005 (Washington, DC: Mathematica, September 21, 2009), pp. 7-8, available at: http://www.mathematica-mpr.com/~/media/publications/PDFs/family_support/TANF_caseloads.pdf.

[67] LaDonna Pavetti, Linda Rosenberg, and Michelle K. Derr, Understanding Temporary Assistance for Needy Families Caseloads After Passage of the Deficit Reduction Act of 2005 (Washington, DC: Mathematica, September 21, 2009), p. 7, available at: http://www.mathematica-mpr.com/~/media/publications/PDFs/family_support/TANF_caseloads.pdf.

[68] LaDonna Pavetti, Linda Rosenberg, and Michelle K. Derr, Understanding Temporary Assistance for Needy Families Caseloads After Passage of the Deficit Reduction Act of 2005 (Washington, DC: Mathematica, September 21, 2009), p. 10, available at: http://www.mathematica-mpr.com/~/media/publications/PDFs/family_support/TANF_caseloads.pdf.

[69] There is no single source for information about solely state funded programs, as they are not subject to TANF data reporting requirements; this conclusion is based on my own informal search about such programs and the numbers of families in them.

[70] Illinois Department of Human Services, "TANF Caseload Reduction Credit Report FY 2015," December 2, 2014, available at: https://www.dhs.state.il.us/page.aspx?item=41152.

Families Paid With State Only Funds," "First Time Pregnant Women Paid With State Only Funds," "Refugee Cases Paid With State Only Funds," and "Child Under One cases Paid with State Only Funds." Then, in FY 2012 when the hold harmless period for calculating the caseload reduction credit ended and target rates increased, the state implemented another solely state funded program aptly called "Single Parent Cases Not in A Countable Activity Paid With State Only Funds."

Similarly, California has increased the number of families in solely state funded programs, including cases in which all adults have been discontinued from cash aid due to reaching the CalWORKs 48-month time limit, but remain in the work rate calculation as non-recipient parents who are work-eligible individuals. More recently, it added families subject to a work sanction for the same reason. The reason for these funding shifts was to manipulate and raise its work participation rate, as explained in an "All County Letter":

> The 2013-14 Budget Act shifted funding for CalWORKs cases with an unaided but federally work-eligible adult from Maintenance of Effort (MOE) General Fund (GF) to non-MOE GF. The intent was to remove these cases from the state's Temporary Assistance for Needy Families (TANF) caseload for exclusion from the TANF work participation rate (WPR) calculations.[71]

The impact of one such shift was over 50,000 families. From September 2014 to October 2014, the state's TANF caseload fell from 528,764 to 472,115.[72] The reduction doesn't represent a decline in welfare receipt, just a shift from a funding stream where families are subject to federal work requirements to one that is not. Presumably, these cases did not have enough hours to count as full participants and depressed the state's work rate, so by shifting them this way California is able to achieve a higher work rate.

The use of this "loophole" is likely to grow, as work participation rate targets have increased in most states since FY 2012 and the "excess MOE" provision of the caseload reduction credit has become less generous.

The House Ways and Means Committee recently published a discussion draft bill reauthorizing TANF, but by maintaining the block grant structure, this loophole will continue and will likely become the loophole of choice for most states. Even if Congress is successful in curbing the claiming of third-party non-governmental assistance as MOE, the basic MOE level has not been adjusted for inflation and states can still count a broad range of activities as MOE, so generating enough "excess MOE" to fund solely state funded programs will be very easy for most states. To close this loophole, Congress should go back to a matching formula, requiring a federal-state match for all expenditures. Then, there would be a financial penalty, so to speak, for creating a solely state funded program.

[71] California Department of Social Services, All County Letter No. 15-37, April 17, 2015, available at: http://www.dss.cahwnet.gov/lettersnotices/EntRes/getinfo/acl/2015/15-37.pdf.

[72] HHS, ACF, OFA, "TANF: Total Number of Families, FY and CY 2014" available at: http://www.acf.hhs.gov/sites/default/files/ofa/2014_family_tan.pdf.

#5 Broad state definitions of work activities. When Congress wrote the TANF statute, it "defined" work activities simply by listing 12 activities that could be counted toward the work rates. An August 2005 report by the GAO explained that some states were defining work activities to include bed rest and personal care activities as part of recovery from a medical problem, physical rehabilitation including massage and exercise, personal journaling and motivational reading, participation in a smoking cessation program, and other activities typically not considered "work activities."[73]

In its response to the GAO report, HHS noted that while it had the authority to regulate the definitions of work activities, it initially had chosen not to because of the law's emphasis on state flexibility. The HHS response also noted that "consistency" in the measurement of work rates was not a goal of the 1996 law, as Congress explicitly gave 20 states authority to continue their earlier waivers which permitted different definitions of work activities and other provisions related to the work requirements. It also allowed states to place families in separate state programs that count as maintenance-of-effort and are totally excluded from the federal work participation requirements. If Congress wanted specific definitions, it should have defined the activities itself or directed HHS to do so (as it did in the Deficit Reduction Act of 2005).

It is interesting to note that Wisconsin, which is often hailed as a model when politicians point to TANF's success, was one of the pioneers in the use of these broad definitions. For example, note some of the activities it considered under job search and job readiness assistance, as described in its 2004 Annual Report on State TANF Programs:

> Personal Care/Self Care
> This activity is reported when participants cannot be assigned to other work activities due to restrictions documented by a health care provider, e.g., Physician, AODA or Mental Health Counselor/Provider. The activity is used to document bed rest, short-term hospitalizations and personal care activities a participant is engaged in as part of recovery from a medical problem.
>
> Physical Rehabilitation
> This activity is reported when a health care provider engages the W-2 participant in physical rehabilitation or occupational therapy. Examples include, massage, regulated exercise, or supervised activity with the intent of promoting recovery or rehabilitation. Hours assigned are only the hours that the W-2 participant is actually receiving these services.
>
> Personal Development
> Activities that promote a healthier lifestyle and will eventually assist the person in obtaining employment. These activities may include, but are not limited to personal journaling, motivational reading, exercise at home, smoking cessation and weight loss promotion.[74]

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[73] *HHS Should Exercise Oversight to Help Ensure TANF Work Participation Is Measured Consistently across States*, August 2005, available at: http://www.gao.gov/assets/250/247482.pdf.
[74] See: http://archive.acf.hhs.gov/programs/ofa/data-reports/MOE-04/wisc-04.htm.

Congress should have retained the common-sense definitions in JOBS and/or directed HHS to define the activities in regulation, as it eventually did in the Deficit Reduction Act. (In fairness to Wisconsin and other states, it is unlikely that many states counted significant numbers in these activities; after all, many states like Wisconsin had a 0 percent target due to the caseload reduction credit. However, for states that needed this loophole, it was available.)

#6 Waiver inconsistencies. States with section 1115 welfare reform waivers when the 1996 welfare reform law was enacted were allowed to continue the waiver policy to the extent it was inconsistent with TANF through the end of the approved project period. While states still had to meet the new work participation rate targets, they could continue to operate under pre-TANF policies that often gave them a distinct advantage in the meeting these rates. Twenty states continued such waivers, which included provisions related to exemptions, countable work activities, and hours of participation.[75]

It is ironic that Governor Mitt Romney, in reacting the President Obama's waiver initiative, asserted, "We must restore, and I will restore, work into welfare." In FY 2005, in the midst of his term as governor, Massachusetts had the lowest work participation rate in the nation (when measured according to TANF rules) at just 12.6 percent; however, the state's pre-TANF waivers gave it a huge advantage in meeting the work rate by exempting parents with a child under six years of age and removing TANF's strict limits on how long education activities can be counted. Thus, its rate with the waivers was 59.9 percent.[76]

Aside from weakening TANF's work requirements, it is unclear why Congress thought it was fair to give some states such a huge advantage in meeting their work targets (and potentially avoiding a financial penalty) for as long as 5 to 10 years after enactment of TANF.

 # 7 Adding unsubsidized employment as a countable work activity. Under JOBS, a full-time worker was exempt from participation requirements; TANF made it a countable activity. This made it considerably easier for states to meet their work rates. The states that gained most from this decision are those with the highest breakeven levels (which are a function of the generosity of benefits and earnings disregards).

A simple example illustrates this concept. Suppose a state has a caseload of 10,000, and 5,000 are required to participate. Suppose 1,000 of these have a full-time worker (due to expanded earnings disregards) and that 1,000 meet the hourly requirements to count toward work rates through allowable work activities other than unsubsidized employment. Under TANF, the work rate would be 40 percent (2,000/5,000). Using the JOBS rules, however, the participation rate would be just 25 percent (1,000/4,000), because the 1,000 families with a full-time worker come out of the denominator as opposed to counting in the numerator.

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[75] For more detail, see Gene Falk, *Temporary Assistance for Needy Families: Welfare Waivers*, Congressional Research Service, September 6, 2012, at: http://democrats.edworkforce.house.gov/sites/democrats.edworkforce.house.gov/files/documents/112/pdf/TANF-CRSMemo-9.6.12.pdf.

[76] See HHS data, Table 1B available at: http://www.acf.hhs.gov/sites/default/files/ofa/wpr2005.pdf.

Table IV-2: "How Work Participation Changed under TANF: 1995-2011 (selected years)," shows how TANF sharply reduced the number of participants counted in a work activity, other than unsubsidized employment, which is largely a function of earnings disregards. So, while the number of countable participants grew between FY 1995 and FY 1998, from 499,388 to 699,573, the number in activities other than unsubsidized employment fell sharply, from 437,964 to 208,736, with a particularly large drop in education, as Congress intended. The comparison between FY 1995 and FY 2011 is also interesting, as in both years just over 5.5 million families met TANF's eligibility rules. However, in FY 2011 the actual caseload was much lower because many eligible families no longer received assistance. Despite a comparable number of "needy" families in the two years, the number of families in a real activity (as opposed to simply counting unsubsidized employment) is more than two-thirds lower, falling from 437,964 (7.7 percent of eligible families) to 135,727 (2.4 percent of eligible families). How can this be considered a strict work requirement? Certainly, the AFDC/JOBS participation requirements were weak and needed strengthening, but TANF just weakened them further.

Table IV-2: How Work Participation Changed under TANF: 1995-2011 (selected years)

Year	Families Eligible for TANF Cash Assistance * (millions)	Caseload	Required to Participate	Participants	JOBS / TANF Overall Participation Rate	Unsubsidized Employment (countable)	All Activities Other Than Unsubsidized Employment	Job Search and Job Readiness Assistance	Education
1995	5.7	4,382,134	1,864,602	499,388	26.8%	61,424	437,964	120,851	235,711
1998	5.5	3,146,870	2,104,265	699,573	35.3%	490,837	208,736	87,371	69,217
2001	4.6	2,120,841	1,112,577	382,853	34.4%	248,149	134,704	51,832	56,384
2004	5.1	1,984,560	952,523	307,784	32.0%	163,889	143,895	55,765	57,942
2007	4.8	1,755,554	882,613	264,119	29.7%	182,954	81,235	39,786	40,287
2008	5.2	1,690,819	827,322	244,280	29.4%	181,925	62,355	24,413	38,088
2009	5.7	1,796,698	931,738	275,943	29.4%	178,077	97,866	46,702	49,755
2010	5.7	1,907,041	998,263	294,383	29.0%	168,248	126,135	53,519	60,792
2011	5.6	1,921,872	1,029,700	306,495	29.5%	170,768	135,727	74,018	57,291

*Calendar Year *Source:* Various HHS work participation rate tables at: http://www.acf.hhs.gov/sites/default/files/ofa/wpr2002.pdf
Author's calculations; ROUGH DRAFT.

In many states, fewer than 10 percent of families were involved in an actual work activity. Writing in 2004, Doug Besharov and I recommended "toughening TANF" by requiring a 10 percent target, but in more narrow, but real, work activities: "Establish a separate minimum participation rate for work experience, on-the-job training, and other designated forms of education and training of 10 percent—to add a needed focus on activities that build human capital."[77]

[77] See Douglas J. Besharov and Peter Germanis, "Toughening TANF: How Much? And How Attainable?," March 23, 2004, available at: http://www.welfareacademy.org/pubs/welfare/toughening_tanf.pdf.

Michael Wiseman and his colleagues at the George Washington Institute of Public Policy made a similar observation about the weakness of TANF work requirements and the excessive reliance on unsubsidized employment to boost the rate:

> By 2008, just under 40% of eligible adults were spending at least one hour in an activity, with approximately 4.5% of eligible adults engaged in workfare. The percentage of families meeting the work participation requirement declined slightly over the decade, from 34% in 2000 to 29% in 2008. Activation rates also apparently declined.
>
> By 2008, over half of the 39.5% activation rate and nearly three-quarters of the 29% participation rate were attributable to unsubsidized employment, an artifact of state earnings "disregard" policies discussed earlier. Moreover, in 2008 only 50% of cases nationwide had a work-eligible individual. Hence, the 29% of families meeting the participation requirements only represents 14% of all cases, and the nearly 40% "activated" individuals only involves 21% of TANF families. Finally, the 5% incidence of workfare among adult recipients involves less than 3% of all cases. *That's all there is*.[78]

In short, work requirements are actually quite weak; most states meet them simply by counting those who are employment, much of which may have no connection to state welfare-to-work programs.

#8 Unsubsidized employment as a loophole. One of the gimmicks states employ to meet work rates, either to avoid a penalty or as part of a corrective compliance plan to meet the rate and cure a penalty, is to pay a token benefit to full-time working families just to be able to count them in the work rate calculation. For example, Governor Kasich of Ohio, who was a supporter of TANF when he was in Congress, submitted a corrective compliance plan to address three years of failing to meet work rates (FY 2007-2009) in an attempt to avoid about $135 million in penalties. The central element of the corrective compliance plan has nothing to do with engaging more families in work activities. Instead, the plan would make $10 payments to SNAP participants who have a child and have enough in earnings to be counted toward the TANF work rate.[79] Here is how Ohio officials at the Department of Jobs and Family Services describe the action.

> ODJFS also initiated the Ohio Works Now Program, which provided a $10 monthly OWF benefit to families on the Food Assistance Program who were working. By receiving this benefit, these working families could be counted toward the state's TANF work participation rate. This program was only in effect from January to June 2012.

[78] Theresa Anderson, Katherine Kairys, and Michael Wiseman, "Activation and reform in the United States: What time has told," July 1, 2011.
[79] See: John Kasich, Executive Order 2011-19K, http://www.governor.ohio.gov/Portals/0/pdf/executiveOrders/2011-19K.pdf.

> About 72,323 assistance groups received benefits on average each month. Benefits totaled $4.3 million and were paid from TANF funds.[80]

So, by investing $4.3 million in what is really a gimmick, the state gutted the work requirement in FY 2012 and in doing so may not only meet the rate for that year, but potentially wipe out accumulated penalties from prior years. This did virtually nothing to help low-income families get jobs and wasted federal and state staff time dealing with a gimmick.

Similarly, Governor LePage of Maine has done the same thing. Here is how the Alexander Group, consultants to Maine, described it:

> Maine corrected the overall WPR through a corrective-compliance plan as required under 45 CFR 262.6. This was achieved by the end of FFY 2012. Maine achieved this compliance by adding a worker-supplement benefit ($15 per month), which allowed Maine to count families that have transitioned from TANF and are working the required number of hours to meet the work participation requirement. This benefit is provided to approximately twenty thousand families per month and is included as part of the TANF-MOE caseload. The following charts provide data on how these cases were added to the monthly MOE caseload beginning 2012. Without this new initiative, Maine would not achieve its WPR.[81]

And, here is how an Action Request Transmittal from the Oregon Department of Human Services describes their "Job Participation Incentive":

> JPI provides a $10 food benefit to eligible families to help families meet their nutritional needs. Families who receive the payment are included in the federal TANF work participation rate. In order to achieve the goals in the corrective compliance plan Oregon entered into to address its inability to meet work participation rates in 2007, the state must enroll 20,000 eligible families in JPI by September 2012.[82]

By September 2014, Oregon had over 30,000 families receiving a JPI supplement and added to the TANF work rate. In FY 2014, Massachusetts had 18,659 cases receiving nominal benefits. In the first months of FY 2015 California implemented its WINS program with about 150,000 SNAP families receiving $10 payments just so they could count in the TANF work rate.

Not all of the worker supplement programs are as blatantly structured to game the work requirements as the aforementioned programs, but these programs along with expansions in earnings disregards have became a low-cost option for many states to boost their participation rates in the immediate aftermath of the Deficit Reduction Act. A GAO survey found that in 2008, 23 states provided worker supplement programs, 18 of which were created after the DRA.

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[80] See: http://www.lsc.state.oh.us/fiscal/redbooks130/jfs.pdf.

[81] "Baseline Analysis of Maine's Public Welfare System: A Review Submitted to the Commissioner of Health & Human Services, Final Report, May 2014."

[82] Xochitl Esparaz, Oregon Department of Human Services, Action Request Transmittal, January 13, 2012, available at: http://www.dhs.state.or.us/policy/selfsufficiency/publications/ss-ar-12-001.pdf.

Similarly, 9 states had expanded earnings disregards after the DRA. While the added income support can provide additional help to poor families, by making it easier to meet the work rates, such payments also make it easier to avoid providing meaningful work activities to those who need them.

This gimmick is possible because Congress made unsubsidized employment an activity; it would not have been available if it had remained an exemption as under JOBS.

The House Ways and Means Committee July 2015 draft bill reauthorizing TANF attempts to close this loophole by prohibiting states from counting "atypical benefits" and it sets forth various criteria for judging what would be atypical, e.g., the rules for the program providing such benefits are different than those for the main cash assistance program, the benefits are considerably smaller, etc. While this approach would rule out the most egregious examples of state gaming behavior, most states can still achieve significant increases in participation by expanding their earnings disregards and paying relatively small benefits to working families. In the end, it will marginally increase the cost of the gimmick, but it certainly won't end it. (Many states provide generous earnings disregards as an incentive to reward work and not to game the work rate, so I don't mean to suggest that earnings disregards themselves are not a good or useful policy tool, only that they would be used by some states to mainly as a low-cost way of boosting the work rate.)

#9 Creating child-only cases. TANF work requirements initially were applied to a family with an adult receiving assistance. In some states, sanction policies and time limits removed an adult's needs from the benefit calculation. Since no adult was receiving assistance, the family was no longer included in the work participation rate calculation. In contrast, if a state had an alternative sanction or time limit policy, e.g., reducing the family's grant by a fixed dollar amount or percentage, the adult was still considered to be receiving assistance. While only about a dozen states had such policies, California was one of the states so the number of families effectively exempted by this loophole was not trivial. This policy was largely ended by the DRA, when HHS issued regulations including certain non-recipient parents in the work rate calculation. Of course, this just led states to adopt other loopholes.

#10 Creating diversion programs. Many states have provided TANF applicants non-recurrent short-term benefits (i.e., diversion payments) as a way to help them overcome a short-term crisis without actually going on the assistance rolls. Because short-term (less than four months) benefits are not considered "assistance," many TANF requirements do not apply, most notably the federal 60-month time limit and work requirements. Shortly after passage of the DRA, a number of states began operating diversion programs for all or most TANF applicants, because many could not immediately be transitioned into work activities and would thus lower a states work participation rate.[83] For example, Pennsylvania created a Work Support Component (WSC) Program for employable adults. Families could participate for 4 months in a 12-month

[83] LaDonna Pavetti, Linda Rosenberg, and Michelle K. Derr, Understanding Temporary Assistance for Needy Families Caseloads After Passage of the Deficit Reduction Act of 2005 (Washington, DC: Mathematica, September 21, 2009), pp. 10-12, available at: http://www.mathematica-mpr.com/~/media/publications/PDFs/family_support/TANF_caseloads.pdf.

period and would receive benefits that were essentially the same as those of TANF families receiving assistance. During the initial period in WSC, families develop a work plan and engage in job search and job readiness activities. As soon as the family participates enough hours in a countable activity, it is seamlessly transferred to the TANF assistance and counted in the work participation rate. So, the state could exclude families from the work participation rate for up to four month if not participating sufficient hours to count, but then transfer them as soon as it could.[84]

HHS issued guidance warning states about this practice, noting:

> Nonrecurrent, short-term benefits must not be intended to meet recurrent or ongoing needs. In particular, these benefits are not for the purpose of providing basic income support to meet a current recurring ongoing need that is expected to continue beyond the short-term period. Providing basic income supports to eligible families that have been diverted or shifted from receiving or continuing to receive Federal TANF or MOE-funded assistance because they have barriers to work participation, undermines the intent of section 407 of the Social Security Act. Such "diversion" payments more closely resemble traditional welfare benefits because they are designed primarily to meet basic needs; therefore, the payments constitute assistance. States should not divert cases from their Federal TANF or MOE-funded assistance program solely to avoid the work participation requirements. This not only reduces State accountability for ensuring that needy families take appropriate steps toward achieving self-sufficiency, but also has the effect of inflating a State's work participation results.[85]

While this guidance may have limited the most egregious examples of states taking advantage of this loophole, the decision about whether one form of diversion is gaming or not is ultimately a judgment call. And, given the limits Congress placed on the Executive Branch in section 417, this loophole remains a potential option, at least to some degree.

The Loopholes: Who's to Blame?

As outlined in the description of 10 loopholes above (and there are many others), all were the result of the way Congress wrote the TANF law – some are due to the block grant structure and the ability to separate the use of federal and state funds; others are from flaws in the way the work requirements were written. Congress can't close these loopholes given the current block grant structure of the program. It can try, but as the Deficit Reduction Act showed, closing one loophole just leads to a new one. Indeed, the House Ways and Means draft reauthorization bill leaves the solely state funded program as the most obvious loophole of choice.

How Congress "Complexified" Work Participation Rate Calculations

[84] See Liz Schott, "Up-Front Programs for TANF Applicants," July 16, 2007.
[85] TANF-ACF-PI-2008-05 (Diversion Programs) (AMENDED), May22, 2008, at: http://www.acf.hhs.gov/programs/ofa/resource/policy/pi-ofa/2008/200805/pi200805.

The work participation rate calculation consists of three main sets of calculations: the target rate (the statutory rate minus the caseload reduction credit); the denominator (essentially families with a work-eligible individual less certain excluded groups); and the numerator (the number of families subject to the rate with sufficient hours in countable activities to count).

Under JOBS, the calculation was relatively straightforward. In creating TANF, Congress made this much more complicated. Table IV-3, "TANF's Ineffective and Bureaucratic Work Requirements," shows some (not all) of the ways Congress added complexity to the calculation of work rates. Some, like the requirement to adjust for eligibility changes in the caseload reduction credit, can be incredibly complicated and imprecise, particularly the further a state is from the base year. Others, like the various rules on counting job search and job readiness assistance or education activities, complicate the process and can also easily be evaded.

For example, a state can avoid virtually all of the bureaucratic technicalities by paying enough full-time SNAP families a token benefit and easily meet the work rate without even counting anyone in the regular TANF caseload. Or, it can easily fund people who exceed various time limits on counting work activities in solely state funded programs. So, the complexifications below are mainly just for those who play within the congressional defined rules, a rapidly diminishing number.

<table>
<tr><th colspan="3">Table IV-3
TANF's Ineffective and Bureaucratic Work Requirements</th></tr>
<tr><th>Provision</th><th>Explanation</th><th>Comment</th></tr>
<tr><td colspan="3">The caseload reduction credit: The caseload reduction credit reduces a state's 50 percent and 90 percent work rate targets based on caseload reduction measured from FY 2005 (FY 1995 before the DRA). The caseload reduction credit reduces a state's target rate by one percentage point for each percent decline in the caseload for reasons other than eligibility rules. As noted in the discussion above, the caseload reduction credit is flawed conceptually, giving states credit (or penalizing them) for changes in economic/demographic factors or policies other than their welfare-to-work programs. However, its main effect has been to gut the work requirements in most states for nearly two decades. The focus here is on statutory bureaucratic complexification.</td></tr>
<tr><td>CRC – Adjustment for Eligibility Changes</td><td>Caseload declines since the base year (now FY 2005) due to eligibility changes are not considered in determining the caseload decline for the CRC. So, for example, if a state enacts a stricter time limit and stronger sanctions, along with expanded earnings disregards, it is required to estimate, each year, the ongoing impact of such changes on the caseload and submit these estimates to HHS so that they can be netted out of the caseload decline calculation for the credit.</td><td><u>Federal and state officials waste thousands of hours each year in a massive bureaucratic exercise deriving what in the end can only be considered "guesstimates."</u> During the waiver era before TANF, there were dozens of random assignment experiments to estimate the impacts of various eligibility changes. Why? Because rigorous evaluation is the only credible way to determine their effects, particularly when there are economic changes and other policy changes that could influence caseloads. But, for purposes of the caseload reduction credit, Congress expects state staff to estimate the effects of eligibility changes. Even seasoned evaluation experts would not be able to do this. This is particularly difficult when states have multiple changes over multiple years, all of which must be estimated for the comparison year of the work rate calculation.

Lesson: Keep it simple. Just have reasonable work rate targets; in practice, the CRC has been a giant loophole anyway.</td></tr>
<tr><td colspan="3">Calculating the denominator. Work participation rates are based on families that include a work-eligible individual, i.e., an adult (or minor head-of-household) receiving assistance or a non-recipient parent living with a child receiving assistance unless the non-recipient parent is disabled and receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI), ineligible for TANF due to immigration status, or a parent providing care for a disabled family member that requires the parent to remain in the home. States can also exclude some families from the work rate denominator.</td></tr>
<tr><td>Parents in single-parent families that contain a child under age 1</td><td>A single parent can be disregarded in the work-rate calculation for only 12 months over her lifetime, regardless of whether she has additional children.</td><td>It's easy to keep track of the youngest child's age, but keeping track of how many months over many years (since 1996) a family has been disregarded for this purpose is more difficult. Also, these types of time limits create incentives for strategic claiming. For example, a state with a 0 percent target should not disregard any families for this reason, because they don't need to and thus can save the months for some future date when they may need it.

Lesson: Keep it simple; don't add time limits that are difficult to keep track of for both the state officials and federal auditors, or that encourage strategic claiming.</td></tr>
<tr><td>Families under sanction for failure to meet work</td><td>States can disregard these families for no more than 3 months in the preceding 12</td><td>While not particularly complicated, keeping track of sanction periods for rolling 12-month periods is probably more bureaucratic than necessary.</td></tr>
</table>

<table>
<tr><th colspan="3">Table IV-3
TANF’s Ineffective and Bureaucratic Work Requirements</th></tr>
<tr><th>Provision</th><th>Explanation</th><th>Comment</th></tr>
<tr><td>requirements</td><td>months.</td><td></td></tr>
<tr><td colspan="3">Lesson: While the calculation of the denominator is relatively straightforward, it would be even easier to have no disregards and just lower the rate. For example, the child under age 1 reduces the denominator by about 10 percent. So, instead of a 50 percent rate, make it 45 percent, but include everyone.</td></tr>
<tr><td colspan="3">Activities: TANF has 12 categories of work activities that can count toward the work rates; nine are “core” activities that can count toward any hours of work participation for a work-eligible individual, while participation in the three “non-core” activities generally counts only after meeting an average of 20 hours per week in a core activity.</td></tr>
<tr><td>Limit on counting vocational educational training</td><td>There is a 12-month lifetime limit on counting vocational educational training.</td><td>It is unreasonable to expect states to keep track of the number of months an individual has participated in voc ed. (and been counted in the work rate) since TANF’s enactment (1996).

Lesson: Keep it simple. If you create work requirements with large loopholes, don’t try to micromanage something like how long participation in a particular activity can be counted.</td></tr>
<tr><td>30 percent cap on counting certain educational activities</td><td>No more than 30 percent of families that a state counts toward its work rates may be counted by virtue of participation in vocational educational training or, for parents under age 20, school attendance or education directly related to employment.</td><td>The 30 percent cap applies to the numerator; if a state exceeds the cap, some cases are not counted and the numerator is reduced; this leads to an ongoing recalculation because each time the numerator is reduced, you have to recalculate the number of cases that are allowed. While there is a mathematical formula for this, it is more complicated than it needs to be.

Lesson: Keep it simple; if you need a limit, make it a function of the denominator so you don’t have to engage in a confusing recalculation.</td></tr>
<tr><td>Education for minor parents</td><td>Secondary or GED-related school attendance or education directly related to employment can count as full participation for parents under age 20 even if it would otherwise be a non-core activity that can only count after 20 hours per week in a core activity.</td><td>Secondary or GED-related school attendance, or education directly related to employment, are considered “non-core” activities. Except for this circumstance, they don’t count at all for single parents with a child under 6 and only for others who have met the core activities requirement. So, as soon as any qualifying parents turn age 20, they go from counting as full participants to not counting at all. Having rules that change based on the age of the parent and/or child make it more complicated than it needs to be and could distort state choices in program planning.

Lesson: Keep it simple.</td></tr>
<tr><td>Job search and job readiness assistance: 12-week limit on job search and job search assistance</td><td>Job search and job readiness assistance can generally be counted for 6 weeks in a 12-month period; however, if certain qualifying conditions exist, the 6 weeks is raised to 12 weeks.</td><td>The 12-week limit on job search and job readiness assistance was intended to provide more time to be counted when economic conditions worsen; now, thanks to the SNAP triggers and SNAP expansion, the unemployment triggers for this provision are moot; nearly every state will qualify for the 12-week extension for the foreseeable future.

Lesson: If you have triggers, keep them simple and set them so they stand the test of time. Even without eligibility expansions, SNAP caseloads would be</td></tr>
</table>

Table IV-3
TANF's Ineffective and Bureaucratic Work Requirements

Provision	Explanation	Comment
		expected to grow over time simply due to population growth.
Job search and job readiness assistance limited to 4 consecutive weeks		The intent of this provision may have been to keep states from placing individuals in ongoing job search and job readiness assistance, but in practice this is just another bureaucratic monitoring complication and easily gamed, e.g., by shifting more hours of participation in the weeks preceding the fifth week and/or following it.
Job search and job readiness assistance – limited authority to count less than a full week of participation	On not more than one occasion per individual, the state shall consider the participation of the individual for 3 or 4 days during a week as a week of participation by the individual.	Say what? This provision makes no sense. Even if one could make sense of it, states report hours per month, and average weekly hours are calculated. There is no way to monitor this provision.
Providing child care services to an individual who is participating in a community service program	This is a TANF core work activity	This is a totally unnecessary activity. If paid, it could be unsubsidized employment; if unpaid, it might be community service. There is no need for it to be a stand-alone activity. (In FY 2012, there were 148 individuals in this activity in an average month, almost all in Georgia.) Lesson: Keep it simple; don't create an activity when it could easily fit within one of the others.
24-month work requirement		Why put anything into the law that has no practical effect? The TANF statute is already "overcomplexified." There is no penalty and virtually no one pays attention to this provision. Lesson: Keep it simple; don't add provisions that have no practical significance.
Penalties, penalty relief, and corrective compliance. A state that does not meet the work participation rate faces a penalty of up to 5 percent of the state's block grant; this penalty amount increase by 2 percentage points each year for subsequent failures, up to a maximum of 21 percent of a state's block grant. A state can then: dispute the data HHS used; request "reasonable cause" for failing to meet the requirement and have the penalty waived; request that HHS reduce the penalty because the failure was due to "extraordinary circumstances" (e.g., regional recession); enter into a corrective compliance plan under which the penalty will not be assessed if the state comes into compliance; or accept the penalty. Talk about bureaucracy! When a state fails a work participation rate, the result can be years of paperwork that in the end produces nothing of value. The goal of corrective compliance is to get states to run meaningful programs, but the reality is that years after the initial failure a state may simply gut the work requirement with a gimmick to satisfy the work requirement (e.g., as in the Ohio and Maine $10 payment gimmicks described above). Of course, given the fact that the block grant has been eroded by inflation and states have shifted block grant funds to all sorts of other uses, I do not fault Ohio, Maine, and other states for doing what they did, but the current process, like the TANF program, is broken. Lesson: Keep it simple. If you have reasonable work requirements, get rid of reasonable cause, penalty relief, and corrective compliance altogether. Impose a small penalty immediately and then gradually increase it. Get rid of the bureaucracy.		

Work First vs. Human Capital

In developing its list of countable work activities, Congress relied on early research findings testing the impact of two welfare-to-work models. One approach was the "Labor Force Attachment" (LFA) approach, which emphasized rapid job entry, which focuses on job search assistance, followed by work experience or short-term education or training activities. The second approach was the "Human Capital Development" (HCD) approach, which permitted participation in longer, skill-building education and training activities. The impacts of these programs on employment, earnings, welfare receipt, and other outcomes was evaluated using random assignment. A 1995 report describes the program's preliminary, two year impacts on employment, earnings, and welfare receipt in three sites (Atlanta, Georgia; Grand Rapids, Michigan; and Riverside, California).[86] The LFA model raised earnings 25 percent and reduced welfare receipt by 22 percent, compared to the HCD model, which had no impacts on earnings, although it did reduce welfare payments by 14 percent. And, the LFA approach was considerably less costly than the HCD approach. These findings influenced the development of TANF's work activities.

The limits Congress placed on counting educational activities were premature. In 2001, MDRC released a report covering impacts over a five-year period and including a wider range of programs.[87] After five years, there were few statistically significant differences between the three groups (i.e., the LFA vs. HCD vs. control groups as the impacts either faded, or the control group caught up). That report found the most effective program in the NEWWS evaluation was the Portland, Oregon, program which relied on a flexible approach in assigning individuals to job search or short-term education and training, depending on caseworkers' assessment of recipients' skills and needs. The program increased average five year earnings by 25 percent and reduced welfare receipt by 24 percent.

A full assessment of the implications of past research findings is beyond the scope of this paper (at least for now), but if past research suggests anything, it suggests the need for more research to determine the most cost-effective program approaches. Given the post-1996 research findings, it is clear that the original TANF limits on counting education activities are too restrictive and certainly by today are outdated. Moreover, since TANF is a block grant, it is unclear why Congress chose to limit state choices in the first place.

Conclusion

[86] Stephen Freedman and Daniel Friedlander, *The JOBS Evaluation: Early Findings on Program Impacts in Three Sites* (New York, NY: MDRC, June 1995), available at: http://www.mdrc.org/sites/default/files/Early%20Findings%20on%20Program%20Impacts%20in%20Three%20Sites%20ES.pdf.

[87] Gayle Hamilton, Stephen Freedman, Lisa Gennetian, Charles Michalopoulos, Johanna Walter, Diana Adams Ciardullo and Anna Gassman Pines (all of MDRC) and Sharon McGroder, Martha Zaslow, Jennifer Brooks and Surjeet Ahluwalia (all of Child Trends), *How Effective Are Different Welfare to Work Approaches? Five Year Adult and Child Impacts for Eleven Programs* (New York, NY: MDRC, December 2001): 87 and 111, available from: See: http://aspe.hhs.gov/hsp/NEWWS/5yr 11prog01/chapter2.htm.

The problems identified in this section stem from: (1) the TANF's block grant structure that allows states to segregate how their funds are used (especially through the creation of SSPs and SSFs); (2) giving states excessive flexibility (e.g., continuing waivers and defining program activities, (ab)using diversion, and most of all allowing them to spend their money on all sorts of activities that have nothing to do with the provision of basic assistance or work programs); and (3) ill-conceived choices in drafting the legislation (e.g., adding a caseload reduction credit and allowing states to count unsubsidized employment as an activity).

V. Time Limits and Other Federal Requirements

This paper has focused on some of the major problems in the TANF legislation. There are many more that I have not addressed. This section gives selected examples (apart from those related to financing and work requirements) that reflect misguided policymaking. I limit myself in this section to six examples that fall into various categories, but all are representative of provisions that waste time and money, and do nothing to advance the lives of poor families or the interests of taxpayers. These include: (1) the federal 60-month time limit; (2) the ban on EBT use at strip clubs, liquor stores, and casinos; (3) the bonus for reducing non-marital births; (4) the Claims Resolution Act reporting requirements; (5) the initial funding for the Survey of Program Dynamics; and (6) the "Child Poverty Rate Report," for states that experience a statistically significant 5 percent increase in their poverty rate. As with work requirements, the federal time limit and the EBT ban can easily be gamed; the various bonus provisions Congress has enacted have largely failed to provide incentives that actually motivated behavior and mainly provided arbitrary windfalls; and many of the reporting requirements included in legislation have done little to provide meaningful information or action. While in the overall scheme of things, these concerns are relatively minor, they suggest that policymakers spend more time thinking about changes before enacting them into law.

Federal 60-Month Time Limit

Federal TANF funds may not be used for a family with an adult who has received assistance for 60 months. There are arguments for and against time limits, but the federal 60-month time limit is filled with loopholes that allow states to largely ignore it, except for the bureaucratic hoops that it imposes. First, the time limit only applies to families with an adult receiving federally funded assistance. Federal and state MOE funds are largely fungible, so if a state wants to exempt families from the federal 60-month time limit or extend their assistance, it can simply fund the families using MOE with segregated state funds or separate state programs. As noted above, switching from a matching program to a block grant allows states to do this. Second, TANF specifically allows states to extend assistance for up to 20 percent of the caseload by reason of "hardship," with hardship defined by the states. And, the 20 percent calculation applies to the entire caseload, including child-only cases that are not even subject to time limit. Third, a state could just remove the adult from assistance benefit and pay benefits to just the children (and even increase the payments to the children to offset the reduction from removing the adult).

Congress should quit imposing requirements that are so easy to evade. For states that do not want a time limit, this just wastes resources by forcing them to take advantage of loopholes; yet, they still must track and report months of federally funded assistance. In addition to the federal time limit, many states have their own time limits that differ in the duration and exemption/extension criteria. These states now must monitor and enforce two different time limits. A simpler approach would have been to simply require states to have a time limit, but allow each state to develop its own.

Ban on EBT Use at Strip Clubs, Liquor Stores, and Casinos

In 2012, Congress passed legislation requiring states to maintain policies and practices to prevent TANF assistance funds from being used in an EBT transaction in liquor stores, casinos, and strip clubs. This includes both purchases and cash withdrawals at ATMs in such establishments. While it is reasonable to expect that TANF funds be spent on basic needs items, this legislation is misguided. First, it was enacted based on anecdotal evidence without any real understanding of the size and scope of the problem. Based on the data I have seen, as reported in the popular press, the amount of such expenditures/withdrawals is small relative to the program's total expenditures. Second, and more important, regardless of the size of the problem, this solution is totally ineffective and just wastes tens of millions of dollars in monitoring and enforcement efforts (by states and the affected establishments). Why? Obviously, if someone wants to spend their TANF dollars at these establishments, the only thing this provision does is encourage them to go to an ATM at a bank or grocery store to withdraw the cash and then use it on the prohibited purposes. How has this accomplished anything?

Congress should apply the principles of cost-benefit analysis when considering legislation**.** The ban on using EBT cards at strip clubs, casinos, and liquor stores would not pass such a test. Spending welfare dollars at such locations is troubling, but as noted above, anyone inclined to misuse the money can simply go to an ATM in another location and then go and spend the cash as they wish. So, there is no "benefit." But, the proposal imposes very real administrative costs on states in establishing and monitoring this restriction. Policymakers should instead focus on TANF's very real problems. As demonstrated throughout this document, TANF does not work as a safety net or a welfare-to-work program; this is what Congress should focus on.

Provisions for Reducing Non-marital Births

One of the biggest arguments during the welfare debate preceding the 1996 law was about the role of welfare in encouraging out-of-wedlock childbearing and marriage. In the development of the 1996 law, Ron Haskins acknowledges that there was little evidence regarding effective approaches, so Congress tried a variety of approaches: "Undaunted, Republicans argued that the best approach was to do everything possible to attack the problem, especially by rewarding states that tried new approaches and even by cutting off some or most of the welfare benefits of unmarried teens who had babies."[88] Unfortunately, this was not the "best" approach – a better approach would have been to take the money used to fund these activities, particularly the so-called "illegitimacy bonus," and use it instead for rigorous research on discrete interventions to address this issue. At least then we might have learned more about interventions that effective in promoting this goal, but instead the problem has worsened.

The 1996 welfare reform law authorized a total of $100 million in annual bonuses for FY 1999-FY 2002 for the five states with the largest reductions in non-marital births, while also reducing

[88] Ron Haskins, *Work Over Welfare: The Inside Story of the 1996 Welfare Reform Law* (Washington, D.C.: The Brookings Institution, 2006), p. 8.

their abortion rate below the 1995 level.[89] The reduction in non-marital childbearing was based on the "illegitimacy ratio" – the number of non-marital births divided by the number of all births to residents in the state. The ratio was calculated for the most recent two years and then compared to the ratio for the preceding two years. If the ratio declined (representing a reduction the percentage of non-marital births), the difference in the ratios is then divided by the ratio from the earlier period to determine the percent decline.

The design of the bonus was problematic. The illegitimacy ratio is an imperfect measure of trends in non-marital childbearing because it is affected not only by changes in non-marital births, but by changes in marital births, as well as the size and composition of the poor of unmarried women. Although the numerator of the ratio is unmarried births, the denominator is all births and heavily influenced by factors affecting marital fertility, such as changes in the timing of marriage and the number of children. As a result, a state in which non-marital births remained stable, or even rose, could receive the bonus if marital births increased and thereby lowered its illegitimacy ratio. In contrast, a state could experience a decline in non-marital births, but could be ineligible for the bonus, if its marital births declined more rapidly, because this would cause the illegitimacy ratio to rise.

In 1999, five states received the bonus – California, Washington DC, Michigan, Alabama, and Massachusetts. Washington DC, Michigan, and Alabama won the following two years. Arizona was the only other new state to receive the bonus, but only for 1998.

While there were some "winners," it does not appear that the bonus was a factor in incentivizing states. The Lewin Group survey states about their view and experiences regarding their policies to prevent or reduce non-marital childbearing. One finding was that, "Officials in nearly all study states said that potential availability of the bonus had little, if any, impact on state efforts to reduce non-marital childbearing, and among study states receiving the bonus, only one of three directed bonus funds toward non-marital pregnancy prevention activities."[90] The report noted that among the winning states, some had made no special efforts in response to the bonus and indeed one state was so surprised that it won that it only examined the bonus provision after winning the bonus. Instead, the bonus seemed to reward states more due to demographic shifts than policy responses to the bonus or anything else in the 1996 welfare reform law. And, the ratio includes all women, not just those on welfare, suggesting limits in how effective welfare policies may be in reducing the non-marital birth ratio, particularly in states with relatively few women at high risk and on welfare.

The High Performance Bonus suffered similar problems. Congress is now considering employment-related bonuses, but it should study its past record and learn from it. There are challenges in collecting data and approaches are needed to control for economic and demographic shifts. In TANF, even something as simple as a process measure doesn't work. Outcome measures are far more complicated and require more thought and planning.

[89] If five states that qualify for the bonus, each received $20 million. If four or fewer states qualified, the bonus was $25 million per state.
[90] Mark W. Nowak, Michael E. Fishman, and Mary E. Farrell, *State Experience and Perspectives on Reducing Out-of-Wedlock Births: Final Report*, The Lewin Group, February 2003, pp. iv-v.

Claims Resolution Act Reports

The Claims Resolution Act of 2010 included two new reporting requirements, requiring states to conduct special data collection in FY 2011 to provide additional detail about: (1) work participation for families that currently do not meet the TANF program's requirements to count toward state work participation rates; and (2) TANF spending in two broad categories known simply as "other non-assistance" and "authorized solely under prior law."

While the resulting reports provided some useful information, their main effect was to waste the time (thousands of hours) and resources (millions of dollars) of federal and state staff in compiling data and writing reports. And, in the nearly four years since these reports have been issued, Congress has done nothing.

As noted in section IV, TANF's loopholes from work requirements are massive. And, most families eligible for assistance no longer receive it (see section II), so they do not have access to the kind of help they would have received had TANF never been enacted. Congress cannot fix these problems by studying the Claims Resolution Act reports. Similarly, the report on spending was largely unnecessary. HHS had already commissioned and published a report on spending in these categories (see Mathematica Policy Research, *Understanding Two Categories of TANF Spending Other and Authorized Under Prior Law*, September 2009). Thanks to the way Congress wrote TANF's purposes and limits on federal authority, TANF has become a giant slush fund and not just in these two categories. Only about one-third of TANF spending is now on core welfare reform purposes – basic assistance and work activities. You don't need a special report to understand that TANF's failure as a safety net and as a work program stems from the fact that so much of the money has been diverted to other purposes.

Survey of Program Dynamics

To study the effects of welfare reform, Congress directed the Census Bureau to expand the Survey of Income and Program Participation (SIPP) to evaluate the impact of welfare reforms "on a random national sample of recipients and, as appropriate, other low-income families. The study should focus on the impact of welfare reform on children and families, and should pay particular attention to the issues of out-of-wedlock birth, welfare dependency, the beginning and end of welfare spells, and the causes of repeat welfare spells. $10 million per year for 7 years (1996-2002) is appropriated for this study."

The result was the Survey of Program Dynamics (SPD), and continued to collect data from households who participated in the 1992 and 1993 panels of the SIPP (households that had completed survey participation by January 1995 or 1996, respectively. The survey was, in my opinion, a massive waste of tens of millions of dollars. The SIPP already has problems of attrition, and it was predictable that response rates would be low. Moreover, welfare reform and TANF are best studied at the state level, something this survey wouldn't have a large enough sample size to do. (For a more detailed discussion of the issues surrounding large scale surveys

like the SPD, see Douglas J. Besharov and Peter Germanis (editors), *Four Evaluations of Welfare Reform: What Will Be Learned*, 2001.)

The amount spent on this effort surely could have been put to better use – either by beefing up other existing surveys or providing additional money for random assignment experiments of welfare reform related provisions. In fact, before TANF, states were required to conduct rigorous evaluations of their waivers. This ensured accountability and credible results. With TANF, such evaluations were no longer required. The least Congress could have done was to use this money for research, instead of throwing it away in a flawed data collection effort that wasn't well suited for measuring impacts anyway.

Child Poverty Rate Report

If a state experiences an increase in its child poverty rate of five percent or more and determines that this was a result of the state's TANF program(s), it must submit and implement a corrective action plan to reduce the state's child poverty rate. When TANF was implemented, there was a concern about a "race to the bottom" in which states adopt harsh policies that simply cut families of assistance (e.g., full family sanctions or strict time limits). But because TANF grants are so low, most families are below poverty even when they receive assistance, so cutting their assistance might not affect the poverty rate. Similarly, most who leave due to work don't earn enough to escape poverty. Moreover, the child poverty rate is affected by many factors, most notably the economy, and it would be impossible to disentangle the impact of TANF on child poverty.

In any event, this may have been a well-intended provision, but as a practical matter it does little more than create more paperwork for federal and state staff. And, today, if I were in a state, I would simply blame Congress for creating a block grant that is not adjusted for inflation and changes in need. As explained above, the structure of the program has certainly made millions of families poorer than they otherwise would have been.

Bottom-Line

Congress seems to operate under the assumption that "more is better" and has filled the TANF law with a whole host of ineffective and bureaucratic requirements. It's time to apply Einstein's famous quote — "Everything should be made as simple as possible, but not simpler." Certainly, there should be rules to ensure that programs work as intended, but Congress has gone well beyond that point, as illustrated throughout this paper.

VI. Considerations for Reform

In any reauthorization (or preferably, replacement) of the TANF program, policymakers should ask themselves the following questions:

- Does it make sense to have a funding structure for a safety net program that is unresponsive to changes in economic and demographic circumstances?
- Does it make sense to have a funding structure that states can manipulate to avoid federal requirements?
- Does it make sense to have a funding structure that allows states to use federal funds to simply supplant existing state expenditures?
- Does it make sense to give states so much flexibility that they can count virtually any expenditure as either a federal TANF or state maintenance of effort expenditure?
- Does it make sense to give states so much flexibility to duplicate the benefits and services of dozens of other low-income programs with little or no accountability?
- Does it make sense to provide funding for programs that have either no income limit or that permit states to set very high income limits?
- Do the rules and requirements promote effective programming; or can they easily be evaded and/or are overcomlexified?

TANF fails in each of these regards. It’s time to start over.

Section VII: TANF 3[91]
Treating the Symptoms and Not the Real Problems

The Ways and Means Committee's press release of June 17, 2015, "From Welfare to Work: A Bipartisan Effort to Improve Our Social Safety Net," extolled the virtues of a "discussion draft" to reform and reauthorize Temporary Assistance for Needy Families (TANF) program. The subtitle of the press release suggests that this is the "biggest redesign of TANF in its history." In fact, it is nothing more than rearranging deck chairs on the *Titanic*. To their credit, the authors of the draft bill make a number of positive changes to the TANF program, but they fail to address the root cause of TANF's problems – the block grant structure and excessive state flexibility. As a result, states will continue to take advantage of loopholes and America's low-income families with children will fall deeper into poverty.

This paper explains briefly how the Committee's draft bill fails, but the discussion is brief because the draft bill cannot be considered real reform and most of the problems described in this paper will continue.

The Draft Bill: The Good, the Bad, and the Ugly

The draft bill makes some positive changes, but it fails to address the real problems stemming from the block grant structure, excessive state flexibility, and conceptual flaws in the drafting of the work requirements.

The Good. The draft bill makes many changes, most of which individually are programmatic improvements (though many require adjustments), including eliminating third-party non-governmental MOE, setting an income limit of 200 percent of the poverty line (though it really should be lower), and possibly requiring states to spend a minimum percentage of TANF/MOE funds on core welfare reform purposes – basic assistance, work-related activities, and child care (though here it is likely to set the standard too low). The draft bill also makes changes to the work requirements in an attempt to increase program engagement. It eliminates the caseload reduction credit and limits the ability of states to count individuals receiving "atypical" benefits in the work rate. Both are well recognized loopholes, but will make it harder for some states to meet the work rates. So, the bill also modifies some provisions to make it easier for states to meet a 50 percent work rate target, most notably it permits partial credit, eliminates the distinction between core and non-core activities and thus permits states to count more individuals in educational activities and for longer periods of time, and it separates job search and job readiness assistance into two separate activities, allowing states to count all job search hours for three months and half of such hours thereafter. To further add an emphasis on employment, the draft bill requires states to meet performance benchmarks related to employment, retention, and earnings gain.

[91] The reference to "TANF 3" refers to the third major legislative action, following the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Deficit Reduction Act of 2005.

The Bad. The Ways and Means press release claims, "The discussion draft ends the credits and loopholes, so states will have to engage at least 50 percent of adults on welfare in work and activities, as the 1996 law intended." This is simply not true. The draft bill fails to address TANF's real problems and leaves gaping loopholes that states can exploit to meet work requirements, perhaps most notably the solely state funded program. It also virtually wipes out any real penalty for states the fail to meet the new work rates, but then adds a steep penalty (up to 10 percent of the block grant) for an untested performance measurement system focused on employment outcomes for leavers that will give states incentives to cream (i.e., focus on the most job-ready) and use TANF's flexibility to game the performance measures using many of the same loopholes that were available to states for gaming the work rates. Congress shoots itself in the foot yet again, because it fails to understand the block grant structure with excessive state flexibility allows states to avoid or evade all of their requirements.

Solely State Funded Programs. While a number of loopholes remain, the single biggest one is the solely state funded program. The TANF law made it very easy for states to meet their basic MOE requirement without spending more money and most states report an "excess" amount of MOE. Indeed, states were only required to spend 75 percent of their previous spending (if they met their work rates), resulting in an immediate state savings. Inflation has further reduced the state requirement so that it is 50 percent of what it was before TANF. Add to this the fact that under TANF states can count virtually any state expenditure that meets a TANF purpose. So, most states can easily meet the basic MOE requirement and fund selected assistance cases outside the TANF/MOE structure in solely state funded programs even if the bill ends the practice of counting third-party nongovernmental MOE.

To close this loophole, Congress should go back to a federal-state matching formula for all expenditures where all expenditures involve comingled funds. If there is a concern about federal costs, then set a cap on total federal costs per state, though this cap should be higher than current block grant amounts and should recognize important demographic shifts, particularly changes in the number of poor families across states.

Atypical Benefits. One of the gimmicks states employ to meet work rates is to pay a token benefit to full-time working families just to be able to count them in the work rate calculation (see section IV). The most common approach among states that do this is to provide $10 payments to SNAP participants who have a child and have enough in earnings to be counted toward the TANF work rate. This loophole arose because Congress made unsubsidized employment an activity and gave states excessive flexibility, so today over 200,000 families have been added to the rolls just so states can artificially inflate the work rate.

The draft bill attempts to close this loophole by prohibiting states from counting "atypical benefits" and it sets forth various criteria for judging what would be atypical, e.g., the rules for the program providing such benefits are different than those for the main cash assistance program, the benefits are considerably smaller, etc. While this approach would rule out the most egregious examples of state gaming behavior, most states can still achieve significant increases in participation by expanding their earnings disregards and paying relatively small benefits to working families. In the end, it will marginally increase the cost of the gimmick, but it certainly

won't end it. (Many states provide generous earnings disregards as an incentive to reward work and not to game the work rate, so I don't mean to suggest that earnings disregards themselves are not a good or useful policy tool, only that they would be used by some states to as a low-cost way of boosting the work rate.)

To end this loophole, Congress should not count unsubsidized employment as an activity or should limit it to a short period those who are unemployed and find a job, e.g., like a job entry rate.

Wiping out work rate penalties. The draft bill eliminates any serious penalty for failing the work rate. Under current law, the penalty can be up to 5 percent of the block grant, and rises with each successive year of failure, up to a maximum of 21 percent. Instead, the draft bill simply requires states to increase their minimum MOE requirement by 5 percentage points for each year of failure from a base of 75 percent up to 100 percent. This is 100 percent of the historic spending level, so after adjusting for inflation, states only have to spend about two-thirds of what they spent under AFDC (and that amount will continue to erode with inflation), even though the number of poor children in 2013 was higher than when TANF was enacted. Moreover, states can count spending on virtually any activity that promotes a TANF purpose, so they now count a wide range of state spending unrelated to core welfare reform purposes. In short, for most states, this is not a serious penalty. In fact, many states already spend over the 100 percent limit so they don't even have to run a work program at all. They can get by with a 0 percent participation rate and ignore any participation requirement. If Congress is unwilling to undertake real reform, it should just do away with work participation rate requirements. What is the point?

As flawed as this bill is in this regard, it is nevertheless an improvement in the current law, which does impose penalties, but then allows states to game them through all the loopholes that it created, wasting the time and money of states that have to play this game. At least with a largely meaningless penalty, there is no need to game the system and waste time and resources. But, the better choice would be to establish meaningful work requirements, with a reasonable rate and reasonable work activities, and then impose a real penalty on states that do not comply. This requires abandoning the block grant structure and significantly altering the program as described in section VIII.

Incentivizing More Gaming. The goal of the employment-related outcomes performance measurement approach in the draft bill is worthwhile, but it does not provide a reasonable timeframe to implement such an approach and imposes too high a penalty (10 percent of the block grant) too early in the process. The draft bill does not reflect the fact that the empirical data needed to develop this approach do not exist and it does not provide time needed to develop the data collection infrastructure and test approaches to target setting that reflect the desire to improve employment outcomes. While the Committee's draft bill aligns the performance measures with those in WIOA, it is important to recognize that the target populations are very different, with WIOA serving actual participants in an employment and training program, whereas the TANF measures would be based on all adult recipients who leave regardless of whether they have participated in any activity.

So, if this provision stands, expect the states to game it using the flexibility of the block grant structure. For example, a state might gradually shift more families to a solely state funded program, particularly those with barriers to employment both to raise its work rate and to increase the likelihood that those remaining have positive employment outcomes when they leave the TANF rolls. A similar result could be achieved if a state adopted a more aggressive stance with respect to full family sanctions, which would further weaken the safety net. Or, it could provide token benefits to families with full-time workers for a month or two, not to the game the work rate, but to again game the outcomes, as these families would become "leavers" and boost employment outcomes. <u>With 10 percent of the block grant at stake, it would be no surprise to see the extent of gaming rise to unprecedented levels.</u>

A far better strategy would be to heed LaDonna Pavetti's advice in her testimony to the Ways and Means Committee in 2012, when she said:

> Instruct HHS to initiate a demonstration project that encourages states to develop alternative performance measures that focus on employment outcomes. There is near-universal agreement that the TANF Work Participation Rate is a flawed measure of state performance. However, we do not have an adequate knowledge base on which to decide what a new, more appropriate outcome measure should be, and we know that outcome measures can have perverse consequences, discouraging programs from serving the most disadvantaged families. A way to move forward is to allow states to propose, experiment with, and report on outcomes based on alternative measures that measure their success at increasing employment among TANF-eligible families while also providing a safety net to those in need.[92]

This would allow time to develop the needed data infrastructure, test statistical models to at least try to account for economic and demographic factors, and then to test how the performance measurement system might work. The timeframe for the draft bill is totally unrealistic and reflects little understanding of the challenges involved in developing an outcomes-based performance model.

Bottom Line. There are a whole host of other problems with this bill. But, because this bill fails addresses the symptoms rather than the real problems, I will not describe them all.

The Ugly. Congress created all the loopholes in the TANF program and in so doing gutted even the modest work requirements that existed before TANF. While, as a conservative, I find this disturbing, even more disturbing is the damage this body has done to the safety net for the nation's most vulnerable families. The draft bill does little to provide the funding or incentives for states to create a meaningful safety net for the poor. Instead, Congress seems satisfied to allow states to use TANF like a giant Revenue Sharing program with virtually no accountability.

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[92] Testimony of LaDonna Pavetti, Vice President, Family Income Support Policy, Before the House Ways and Means Committee, Subcommittee on Human Resources, Hearing on "State TANF Spending and its Impact on Work Requirements," May 17, 2012, available at: http://www.cbpp.org/testimony-of-ladonna-pavetti-phd-vice-president-family-income-support-policy-before-the-house-ways-1.

There are solutions, but rushing through legislation like this draft bill will do little for poor families and will simply encourage more gaming of work requirements, performance measurement requirements, or anything else Congress tries to mandate. In fact, because the bill maintains the block grant structure, makes no change in funding, and adds a real penalty for states that fail to meet certain employment benchmarks, expect the cash portion of TANF for families with a work-eligible individual to disappear in many states. TANF will become one giant slush fund.

Section VIII: A SWEET Alternative

My proposed alternative to TANF refocuses the program on core welfare reform purposes. It addresses TANF's fundamental problems – its ineffectiveness as a safety net and welfare-to-work program, its tendency to become a slush fund, and its needless complexity. This is an outline and all the pieces are intended to fit together; it is not intended to be a laundry list of policy options. It is mainly meant to reflect the kinds of changes that are needed to make TANF a safety net for the truly needy and a hand up for those need help attaining self-sufficiency. Most politicians echo this sentiment. Sadly, as Mark Twain observed, "Action speaks louder than words but not nearly as often." I hope that this document will at least shift the debate to focus on real issues and real reform.

1. **Give the program a name with a meaningful acronym**, e.g., the Simple Welfare, Employment, Education, and Training (SWEET) program.
2. **Eliminate purposes 3 and 4 and limit allowable TANF activities to core welfare reform purposes – basic assistance and welfare-to-work activities (and related administrative/systems costs, including case management).**
    a. If there is a desire to fund marriage and out-of-wedlock childbearing prevention activities, take part of the block grant and create a new program (even a block grant) for those activities.
        i. There is little evidence that any of the programs funded under these purposes have been effective at least in promoting these purposes (e.g., college scholarships for single adults in reducing non-marital pregnancies under purpose 3, yet billions of federal TANF dollars have been used for this purpose).
        ii. Limiting TANF to basic assistance and welfare-to-work activities would drastically reduce the most serious problems related to supplantation, the use of TANF funds to fill budget holes, and limit gimmicks (e.g., California's "swap" which artificially inflates MOE to maximize the excess MOE portion of the caseload reduction credit or create solely state funded programs – see section IV).
    b. Child care funding should be in the CCDF, not in TANF.
        i. There is no need to have so much duplication across welfare programs. Take part of the TANF block grant and put it in the CCDF.
        ii. Having child care in two related programs makes it difficult to implement policies as intended. Suppose Congress adds $1 billion to the CCDF to help states fund more child care. Much of this can easily be undone if states simply decide to transfer less from TANF to the CCDF or spend less directly on child care. They can then spend the TANF savings on anything else they want, undermining congressional intent.
    c. Eliminate spending on activities "authorized under solely under prior law," i.e., spending that does not meet a TANF purpose but is an allowable use of federal TANF funds because it was part of a states AFDC Emergency Assistance plan when TANF replaced AFDC, most notably child welfare services, but also may include juvenile justice and foster care activities.

i. TANF should only be used for activities that promote a TANF purpose.
ii. As noted in section III, this provision adds unnecessary complexity. It requires states to maintain records on the types of spending categories that existed two decades ago under AFDC. It also creates a distinction between how federal TANF and state MOE funds can be used; the same rules should apply regardless of the funding source.
iii. At the very least, the amounts allowed for this purpose should be capped at their historic levels and the funds should be transferred to the child welfare or foster care program, not spent within TANF, where there is minimal accountability.

d. Limit spending to basic assistance and welfare-to-work activities (and associated administrative costs).
   i. If Congress wants to fund preK, college scholarships, refundable tax credits, child welfare, and the hundreds of other things TANF currently funds, it should do so explicitly, not by letting states fund them with virtually no accountability and often simply supplanting a state's own expenditures.

3. **Replace the block grant with a federal-state match.** (If there is a concern about the impact on federal costs, the match does not have to be open-ended, as it was under AFDC; there could be an upper limit on federal spending by state, though the current block grant allocations are outdated, both because they don't reflect inflation and because they don't reflect significant demographic shifts across states.)
   a. This would ensure the program is more responsive to changing economic and demographic conditions.
   b. This would simplify the program by eliminating the need for different rules based on funding stream and TANF purpose – the same rules would apply to all spending. (See Table III-3, "TANF's Rube Goldberg Financing Requirements.")
   c. This would eliminate the need for separate funds, such as the Contingency Fund, Supplemental Grants, and the Emergency Fund, each of which is or was based on flawed funding formulas.
   d. This would eliminate (or greatly minimize) many of the gimmicks used to evade federal requirements, e.g., shielding families from work requirements in solely state funded programs because it would get replace the MOE requirement with a state match. (There would be no such thing as "excess MOE.")
   e. If states did not spend up to their cap (if there is one), the savings should go into a rainy day fund or back to the federal government.
      i. In the short-run, this could actually result in less spending on behalf of low-income families, if states cut back on the services provided with TANF funds.
      ii. In the long-run, it is likely that states would restore funding for core welfare reform purposes, which by any objective measure are seriously underfunded.
   f. ADDITIONAL CONSIDERATIONS:
      i. Under this approach, it would be wise to reconsider federal requirements that can no longer be gamed by using MOE-only funds. For example, the

60-month time limit applies to federally funded assistance. Currently, states can avoid the application of this time limit or fund an extension with state-only MOE funds; under this proposal, that would not be possible as all funds are comingled due to the federal-state match.

ii. If the proposal comes with a cap on federal matching, there are many options.
    1. It could be based on the current block grant allocations; though these have been eroded by inflation and demographic shifts.
    2. It could be increased to reflect inflation, but this would still ignore significant demographic shifts.
    3. Increase federal funding to reflect inflation and adjust the cap to reflect changes in the number of poor families with children across states. For example, between 1995/96 and 2012/13, the number of poor families with children increased by 47 percent in Wisconsin and declined by 20 percent in Louisiana (due in part to the exodus of many poor families after Hurricane Katrina). Indeed, four states have had increases of well over 100 percent, while over a dozen have had declines. These differences have little to do with TANF, but are from larger economic/demographic shifts. So, if additional federal funding is provided, it should first go to the states hardest hit.

iii. Consider a higher federal match for work activities than basic assistance to incentivize spending on work.

iv. Even with a federal-state match, there should be an explicit bar on the use of third-party non-governmental expenditures as a "state match."

4. **Establish an income limit of 130 percent of poverty and require all recipients to be in an "eligible family."** The limit is somewhat arbitrary; but it is consistent with the limit for SNAP. The "eligible family" restriction currently applies only to MOE, but not federal funds.
    a. States can currently set income limits as high as they want; and for some activities, there are no income limits. TANF provides assistance to only 25 families per 100 poor families with children; its welfare-to-work programs reach only a tiny fraction of families eligible for cash assistance.
    b. There is no reason funds should be diverted to those well above poverty when the program does such a poor job serving the poor. The practical implications of this limit are minimized if the range of spending is narrowed to basic assistance and work activities.
    c. Funds should be focused on needy families with minor children.
5. **Fix the work requirements by carefully specifying the allowable activities and simplifying the work rate calculation.** While some provisions make it easier to meet the rate, others make it harder. The starting target rate should not be 50 percent, but rather where states are now in terms of participation in real activities and then the target rate should be phased up. It is long past time for Congress to recognize that the 50 percent rate is a myth; it is time to recognize where states are now and help them improve.

a. Give the new work program a name, e.g., Program for Education and Training Excellence (PETE).
b. Get rid of the caseload reduction credit.
    i. The current credit is a seriously flawed provision that is heavily influenced by changing economic and demographic conditions making it easier for states to meet work requirements in good economic times and harder in bad ones.
    ii. The adjustment for eligibility changes is a highly imprecise and complicated calculation.
    iii. States are already rewarded by lower caseloads because the size of the population to be served has declined; there is no reason to lower the target rate further.
c. Simplify the overall participation rate calculation and count all hours.
    i. The numerator is all hours of participation by a work-eligible individual (including a second individual in a two-parent family).
    ii. The denominator is the expected monthly aggregate hours of participation, e.g., the sum of two products -- 85 hours times the number of families subject to a 20-hour per week requirement <u>plus</u> 130 hours times number of families subject to a 30-hour per week requirement. (Currently, states take the monthly hours and divide by 4.33 to get weekly hours – this would avoid this step.)
    iii. The result is a participation rate for the month that is simple; it helps states achieve a higher participation rate by counting all hours and by permitting the second parent's hours to count in the overall rate.
d. Eliminate the separate two-parent rate.
    i. From the beginning, many states just moved these families to a separate state program or, after the Deficit Reduction Act of 2005, to solely state funded programs reflecting the fact that a 90 percent rate is unrealistic.
e. Modify allowable work activities.
    i. Drop unsubsidized employment as an activity; this mainly gives states a windfall for counting people who would have gone to work anyway and is used as a gimmick. As an alternative, limit employment to those who were unemployed and participated in a concrete work activity and count the hours for a limited period of time (e.g., three months, making it more like a job entry rate measure). Work activities should be to help those who cannot get employment, not to count those who find jobs indefinitely as "participants."
    ii. Permit increased access to education by eliminating the distinction between core and non-core activities. The current limits are based on a narrow and dated reading of the research.
    iii. Limit the hours of job search and job readiness assistance to 10 percent of the required hours in the denominator (or some other designated percentage). (Currently, many states could meet a 50 percent rate just by cycling everyone through a low-cost job search program for 12 weeks – the effective limit in virtually all states now.) Permit substance abuse

treatment and mental health treatment to count as separate activities as long as necessary as determined by a medical professional.

iv. Except for the job search and job readiness assistance limit, eliminate all other limits, e.g., the current limits on job search and job readiness assistance, the 12-month limit on counting an individual in vocational educational training, and the 30 percent cap of counting vocational educational training/teen parent education. These limits are administratively complicated and create uncertainty. The only limit in SWEET would be the 10 percent (or some other designated percentage) cap on hours in job search and job readiness assistance based on the denominator, which poses virtually no administrative burden.

f. Simplify the denominator by counting all families with a work-eligible individual.

  i. The denominator currently is based on families with a work-eligible individual, but it disregards certain families with a child under one or subject to a sanction, both of which are time-limited. States can also retroactively adjust the denominator for cases where individuals are determined eligible for SSI retroactively and thus no work-eligible individuals. These calculations complicate the rate calculation; if the rate is set at a reasonable rate, there is no need for such micromanaging.

g. Simplify reporting of hours. For individuals in educational activities, permit scheduled hours for those who make good or satisfactory progress.

h. Replace the current penalty process, along with corrective compliance and reasonable cause with a quick penalty based on failure to meet the rate, but make the first penalty a small one, e.g., 1 percent of the block grant. After that raise it by 5 percentage points for each additional failure, whether or not consecutive. If the target rate is reasonable, states should be expected to meet it every year and should shoot for a rate higher than the target to have a cushion.

  i. The current penalty and compliance process is time-consuming and ineffective. If a state fails the rate, it can enter corrective compliance and the whole process can take five or more years and often the state will just game the rate to come into compliance.

  ii. Eliminate penalties for any failure prior to FY 2016. The work requirements suffered from a number of fundamental flaws. States could easily game them by using gimmicks and thus overcome penalties anyway. However, if properly redesigned, such gaming can be prevented, but it is time to start from scratch.

i. ADDITIONAL CONSIDERATIONS: Align TANF and SNAP work requirements for families with children. For many states, the TANF benefit (or sanction) is too low to ensure compliance – for example, in a state with a benefit for $250 per month, a family may choose to forego the benefit in lieu of participating 130 hours (i.e., for less than $2 an hour); in the meantime they can typically collect full SNAP benefits because SNAP's exemptions are broader and work participation rarely mandated.

  i. For work participation rate purposes, apply the TANF work-eligible individual concept to the SNAP program as well.

ii. Allow states to count as a full participant anyone who participates for hours equal to the combined TANF/SNAP grant divided by the lower of the federal/state minimum wage. Deem anyone who meets this standard the equivalent of a "full participant." For example, if the combined TANF/SNAP benefit is $725 per month, the maximum expected participation would be set at 100 hours to count as a full participant. ($725 divided by $7.25). This leaves private sector employment more attractive than most work activities, because it leverages the EITC, but it avoids placing unreasonable hourly expectations on families, e.g., participating 130 hours to get $250. (This provision extends the concept of deemed core hours in TANF for work experience/community service to all activities, including what are now considered non-core activities. This policy should apply to those families that receive only TANF or only SNAP.)

iii. Set limits on sanction policies for families receiving SNAP or joint TANF/SNAP benefits. For TANF, many states impose full family sanctions (some for a lifetime); few families are sanctioned in SNAP for non-compliance. The impact of such sanctions has never been subject to a rigorous evaluation. There should be some threshold sanction level in terms of the amount and duration that should not be permitted, at least not without a random assignment experiment to assess the impact on employment, income, and child outcomes. Many states have abused their flexibility under TANF and have gone overboard in sanctioning and setting short time limits just to divert TANF funds to other purposes.

iv. Set the rate at a reasonable level and provide additional funding for work activities. To reflect where states are now, this may be only be in the 10-20 percent range initially; and then raise the target rate gradually. TANF and SNAP have both failed miserably in engaging participants in work-related activities, so it would be unreasonable to suddenly demand a high required participation rate.

6. Hold states accountable for achieving outcomes related to TANF's purposes.

a. Aside from the work participation rate, states should be accountable for ensuring that they provide an adequate safety net, as reflected by the TANF-to-poverty ratio or some similar measure.

i. This does not mean TANF caseloads have to rise; indeed, the goal should be to raise the ratio by actually reducing poverty.

ii. This requirement assumes that the funding structure is changed and that resources available to states for core welfare reform purposes are increased; expecting states to raise the TANF-to-poverty ratio with a fixed block grant can be challenging and states shouldn't be held responsible for the shortcoming of the block grant approach.

b. Experiment using employment outcomes as a complement to the work participation rate.

i. The data infrastructure and approaches to controlling for economic and demographic factors do not exist and must be developed.

    ii. If not designed properly, these approaches can also lead to creaming and gaming.
    iii. Congress should first focus on getting the process measure right; an outcomes based measure is far more complicated.

7. **Eliminate section 417 of the Social Security Act, which states: "No officer or employee of the Federal Government may regulate the conduct of States under this part or enforce any provision of this part, except to the extent expressly provided in this part."**
    a. Taxpayers have a right to make sure their tax dollars are spent wisely; states have supplanted their own spending and used TANF dollars for purposes far removed from the original core welfare reform purposes.
    b. Although states have clearly used funds in ways Congress did not intend, as Rep. Nancy Johnson warned in 2000 when she cautioned against supplantation, Congress had done nothing to stop this.
8. **Require more accountability and evaluation.** TANF was supposed to provide a safety net for the truly needy and a hand-up so families could achieve self-sufficiency. It has failed in to achieve these purposes and some states have enacted harsh policies without regard to the well-being of children, e.g., full family sanctions and very short time limits, just to use the savings to fill state budget holes.
    a. While this proposal addresses the extent to which states can use TANF to fill budget holes, there should be more protections for individuals in the law. At the very least, states with policies that terminate families from the rolls should be required to evaluate them using random assignment to determine the effects on work, welfare receipt, and child outcomes. Indeed, such evaluations may show that the policies on average have positive effects, because they produce the intended results. But, we should be concerned about states like Arizona, which recently passed a one-year time limit, where the likelihood that children will be harmed is great.
    b. Expand funding for rigorous evaluation, e.g., spend 1 percent of the block grant, or $165 million. This may seem like a large sum, but it pales in comparison the amounts TANF wasted through supplantation alone. It's time to rigorously evaluate state policies and not just blindly assume that states know what works and what doesn't. The federal government funds the majority of TANF and it should demand real results. And, this means studying impacts through rigorous evaluation, not just collecting outcome data and assuming that is a proxy for impacts.
9. **Eliminate federal restrictions that are likely to be ineffective and needlessly impose administrative costs on states by applying the principles of cost-benefit analysis.** For example, the ban on using EBT cards at strip clubs, casinos, and liquor stores would not pass such a test. Spending welfare dollars at such locations is troubling, but given that there is little evidence that the problem is pervasive and that the policy can't be enforced, there is virtually no benefit. Obviously, anyone inclined to misuse the money can simply go to an ATM in another location, e.g., a grocery store, and then go and spend the cash as they wish. But, the proposal imposes very real costs on states in establishing and monitoring this restriction.

10. **Build in a transition period from current to new rules.** It's been nearly 19 years since TANF was enacted and states have based funding decisions on the current model, so any transition to a very different model should be phased in over several years. (I would say three years.)

The AFDC/JOBS program with waivers was not perfect – its two main deficiencies were that the work requirements were weak and the evaluations required for waivers weren't structured to maximize learning, but focused instead on ensuring overall cost neutrality. The solution was simple – build on this foundation to strengthen work requirements and require more evaluation of individual provisions to learn what works and what doesn't. Although my SWEET proposal may seem like I recreated the pre-TANF structure, it is still a poor substitute, as TANF has sharply reduced funding and there is still a limited role for evaluation (but at least there is one).

It will now take years to rebuild the safety net and help states create meaningful welfare-to-work programs, but TANF is broken, Congress broke it, and Congress should fix it. Certainly, it would be a massive mistake to replicate this model in other programs.