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Executive Summary

No. 1580 September 3, 2002

THE BAUCUS "WORK" ACT OF 2002: REPEALING WELFARE REFORM

ROBERT RECTOR

The welfare reform law of 1996 has been an enormous success. Since the reform, the welfare caseload in the Temporary Assistance to Needy Families (TANF) program has been cut in half. Among disadvantaged single mothers who had the greatest tendency to become long-term welfare dependents, the employment rate has soared by 50 percent to 100 percent. As employment sharply increased, the poverty rate of single mothers dropped by nearly a third and is now at the lowest point in U.S. history.

These dramatic successes came after a quarter century of failure of a liberal welfare system. For example, from 1970 to the mid-1990s, while liberals were running the welfare system, the black child poverty rate in the United States actually increased. In contrast, since the mid-1990s, black child poverty has dropped by a third and is now at the lowest point in U.S. history.

In the mid-1990s, Congress passed major welfare-reform legislation entitled the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). The act replaced the discredited Aid to Families with Dependent Children (AFDC) program with a new program named Temporary Assistance to Needy Families. This reform (1) ended the old entitlement funding system that gave states more federal funds as dependence increased; (2) established a five-year time limit on receipt of aid; (3) moved away from "one-way handouts" and toward a system of reciprocal obligation that required recipients to engage in constructive activities as a condition of receiving aid; (4) promoted a "work first" system with incentives for states to reduce welfare caseloads and move recipients quickly into employment; and (5) set national goals to reduce out-of-wedlock childbearing and promote two-parent families.

During the welfare reform debate throughout 1994–1996, liberals in Congress initially opposed every element of reform outlined above. Ultimately, some liberals accepted reform with reluctance; others remained steadfast

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in opposition. It should come as no great surprise, therefore, that liberals are now trying to overturn the reform almost completely.

Reauthorization and Risks. Welfare reform is now six years old. Technically, Congress should now "reauthorize" the TANF program. The process of reauthorization has given liberals in Congress the opportunity to attempt to roll back nearly all of the 1996 reform. The centerpiece of the liberal counter-attack against welfare reform is the Work, Opportunity, and Responsibility for Kids Act (WORK act), sponsored by Senator Max Baucus (D–MT). The WORK act, which was passed in June 2002 by the Senate Finance Committee, overturns or undermines nearly every element of the 1996 welfare reform. Specifically, the WORK act:

- **Expands** the size and scope of the welfare state, adding at least $10 billion in new spending over five years ($23 billion over 10 years);
- **Effectively eliminates** the five-year time limit on receipt of TANF benefits;
- **Partially restores** the principle of entitlement funding, giving states more funds when their welfare caseloads increase;
- **Permits** recipients who consistently refuse to work or prepare for work to continue receiving TANF benefits indefinitely;
- **Effectively eliminates** the reduction of welfare dependence as a goal of welfare reform;
- **Contains** weak to non-existent "activity" requirements. (Few, if any, welfare recipients would be required to work or even to prepare for work under the bill, and the activity requirements that it does contain are so lax as to be almost meaningless);
- **Undermines** the concept that welfare recipients should be required to "earn" benefits through constructive behavior and, instead, moves back toward an entitlement or "one-way handout" system;
- **Abandons** the successful "work first" orientation of the 1996 reform and places its emphasis on pre-reform education programs;
- **Effectively prohibits** highly successful Wisconsin-style workfare programs;
- **Has a strong emphasis** on paying welfare recipients to go to college;
- **Authorizes** public-sector unions to organize and represent welfare recipients; and
- **Eliminates** the responsibility of immigrants' sponsors to support individuals they bring to the United States, transferring the burden to the taxpayers.

The WORK bill's authors deliberately refused to include encouragement of healthy, married, two-parent families as a goal of welfare reform. The bill's so-called marriage-promotion grant program is cynically designed so that it has little or nothing to do with marriage. The bill does little or nothing to reduce (and may actually intensify) the anti-marriage penalties in the welfare system. In fact, the bill contains numerous provisions that are designed to encourage and reward out-of-wedlock childbearing and single-parenthood. Finally, the bill creates a new safe-sex/condom-promotion program for the schools, despite the fact that the federal government already spends over $1.1 billion a year on safe-sex and family-planning programs.

President George W. Bush and the House of Representatives should refuse to compromise with liberals in the Senate in their efforts to kill welfare reform. Rather than pursuing a "reauthorization" of welfare reform legislation that would, in reality, end reform, Congress should simply appropriate funding for TANF, on a yearly basis, under the existing law.

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THE BAUCUS "WORK" ACT OF 2002: REPEALING WELFARE REFORM

ROBERT RECTOR

The welfare reform law of 1996 has been an enormous success. Since the reform, the welfare caseload in the Temporary Assistance to Needy Families (TANF) program—formerly called Aid to Families with Dependent Children or AFDC—has been cut in half. Among disadvantaged single mothers, who had the greatest tendency to become long-term welfare dependents, the employment rate has soared upward 50 percent to 100 percent.[1] As employment soared, the poverty rate of single mothers dropped by nearly a third and is now at the lowest point in U.S. history. (See Chart 1.)

These dramatic successes came after a quarter century of failure of a liberal welfare system. For example, from 1970 to the mid-1990s, while liberals were running the welfare system, the black child poverty rate in the U.S. actually increased. But, as Chart 2 shows, since the mid-1990s, black child poverty has dropped by a third and is now at the lowest point in U.S. history.[2]

Opponents argue that these positive changes were due to the strength of the economy in the 1990s. But the decline in dependence, the surge in employment of single mothers, and the sharp drop in child poverty are historically unprecedented. Nothing similar occurred during any prior economic boom. Clearly, it was welfare reform that made the difference in the late 1990s.[3]

KEY ELEMENTS OF THE 1996 REFORM

In the mid-1990s, the Republican-controlled Congress passed major welfare reform legislation entitled the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). The act replaced the discred-

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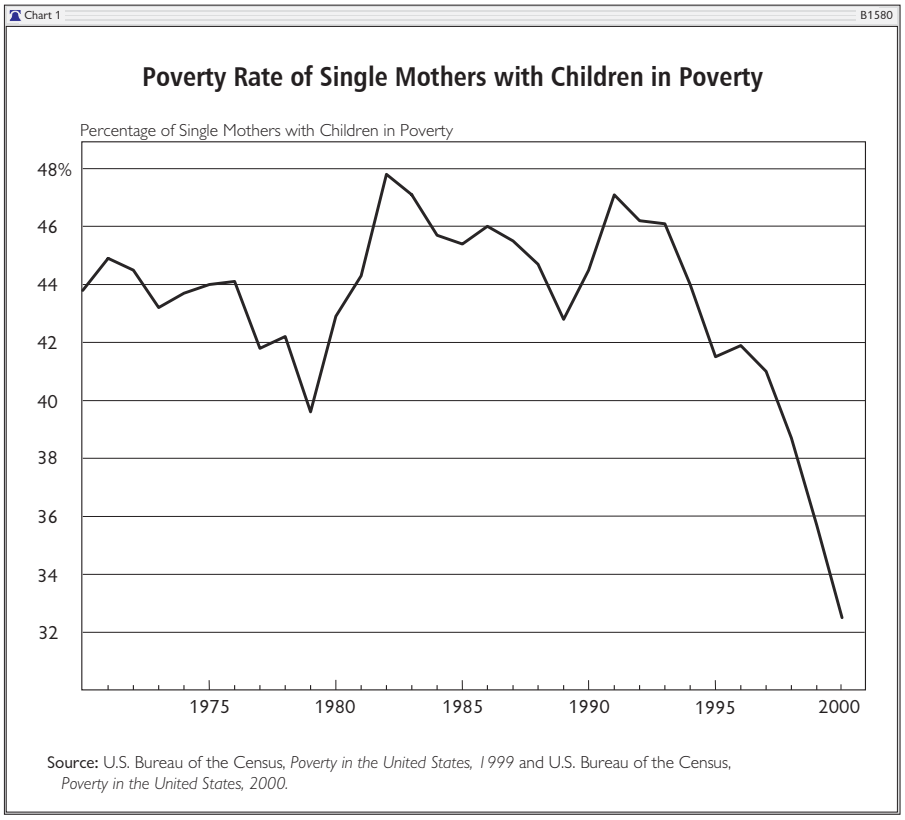
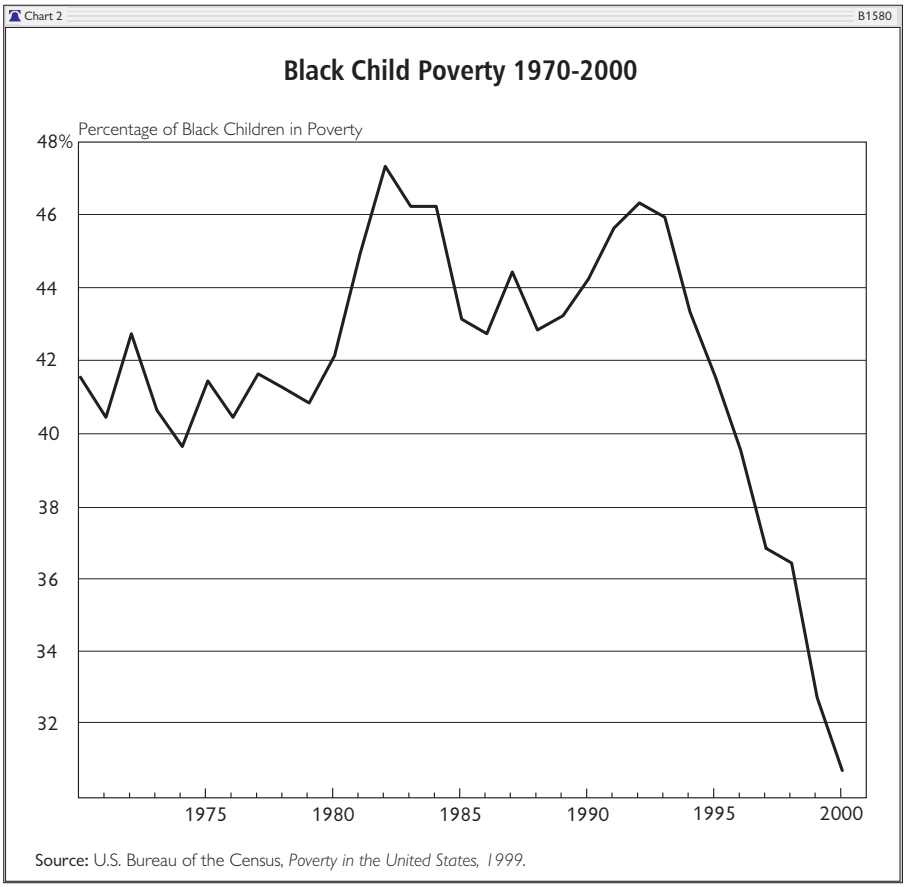
1. June E. O'Neill and M. Anne Hill, "Gaining Ground? Measuring the Impact of Welfare Reform on Welfare and Work," Manhattan Institute *Civic Report* No. 17, July 2001, pp. 8, 9.
2. Robert Rector, "Good News About Welfare Reform," Heritage Foundation *Backgrounder* No. 1468, September 5, 2001.
3. *Ibid.*



Source: U.S. Bureau of the Census, *Poverty in the United States, 1999* and U.S. Bureau of the Census, *Poverty in the United States, 2000.*



Source: U.S. Bureau of the Census, *Poverty in the United States, 1999.*

ited Aid to Families with Dependent Children (AFDC) program with a new program named Temporary Assistance to Needy Families (TANF). Unwilling to risk a third veto of welfare reform immediately before the presidential election, President Bill Clinton signed PRWORA into law on August 22, 1996.

The 1996 reform act dramatically altered many aspects of the welfare system. The act:

- **Ended entitlement funding.** The pre-reform AFDC program was based on entitlement funding: the federal government awarded funding to states on the basis of the number of families they enrolled in the program. In contrast, the new TANF program was a "block grant" that gave states a fixed sum, regardless of the number of recipients on their rolls.
- **Placed a time limit of five years on an individual's receipt of federal TANF welfare payments.** This time limit was intended to break the cycle of dependence, which, in the pre-reform era, had resulted in the typical welfare mother spending 13 years enrolled in the AFDC program.
- **Replaced a system of one-way handouts with a new emphasis on reciprocal obligation.** Under the old law, individuals in need were *entitled* to aid, irrespective of their behavior. In contrast, the reform made aid *conditional*; recipients would be expected to "earn" welfare benefits by engaging in constructive behavior such as job search, training, or community service.
- **Demanded a substantial increase in constructive activity.** Whereas the old law had allowed recipients to remain idle while on the rolls, the reform sought to increase the number of recipients engaged in constructive activity aimed toward employment and self-sufficiency.
- **Strongly encouraged a "work first" approach to reducing dependence and promoting self-sufficiency.** This approach focused on reducing caseloads and moving recipients quickly into employment rather than placing them in extended training programs. In short, recipients were required to take jobs or prepare to enter the job market quickly. (Work-first strategies have been shown to be more effective in increasing earnings than education-focused policies.)
- **Established prominent national goals of reducing out-of-wedlock childbearing and promoting two-parent families.**
- **Created a new federal abstinence education program.**
- **Restricted welfare benefits to immigrant non-citizens** with the rationale that a person who sponsored an immigrant to come to the United States was legally required to support that individual, and should not simply pass the financial burden on to the taxpayer.

The 1996 reform legislation also gave states greater flexibility in designing welfare programs, but that flexibility was not unlimited. The act did not create a giant welfare slush fund that states could spend in any manner they chose. States were given flexibility to design programs within the context of strong new federal work standards. In establishing the new welfare system, Congress insisted that state flexibility would be subordinate to each of the key principles of reform mentioned above.

During the welfare reform debate from 1994 to 1996, liberals in Congress initially opposed every single element outlined above. Ultimately, some liberals accepted reform with reluctance, while others remained steadfast in opposition. It should therefore come as no great surprise that liberals are now trying to overturn the reform almost completely.

WELFARE REFORM UNDER ATTACK

Welfare reform is now six years old. Technically, it is time for Congress to "reauthorize" the TANF program.[4] On May 16, 2002, the House of Representatives passed a welfare reauthorization bill that retained the essential features of the 1996 reform with modest strengthening in the areas of work and marriage. In the House-passed version, reauthorization means carrying forward the successful 1996 reform.[5]

4. Reauthorization means that Congress would re-enact the old TANF law or pass a new law, working through the two relevant authorizing committees: the Committee on Ways and Means in the House and the Finance Committee in the Senate. Reauthorization of a program is different from allocating funds for the existing program through the annual appropriations process.

By contrast, liberals in Congress have used reauthorization as an opportunity to attempt to roll back nearly all of the 1996 reform. The centerpiece of the liberal counterattack against welfare reform is the Work, Opportunity and Responsibility for Kids Act (WORK act), sponsored by Senator Max Baucus (D–MT), which was passed in June 2002 in the Senate Finance Committee.

Although liberals lamely contend that they wish to continue the 1996 reform, the very size of the WORK bill belies this claim. The WORK bill contains 257 pages of new text.[6] There is scarcely a single paragraph of the existing TANF law that the WORK bill does not significantly alter or rewrite completely. In fact, the WORK act overturns or undermines nearly every important element of the 1996 welfare reform. Specifically, the bill:

- **Expands** the size and scope of the welfare state, adding at least $10 billion in new spending over five years ($23 billion over 10 years);
- **Effectively eliminates** the five-year time limit on receipt of federal TANF benefits;
- **Partially restores** the principle of entitlement funding, giving states more funds when their welfare caseloads increase;
- **Effectively eliminates** the reduction of welfare dependence as a goal of welfare reform;
- **Permits** recipients who consistently refuse to work or prepare for work to continue receiving TANF benefits indefinitely;
- **Creates** new incentives to expand welfare caseloads and lengthen stays on welfare;
- **Contains** weak to non-existent "work" requirements. (Few, if any, welfare recipients would be required to work or prepare for work under this bill, and the work requirements that it does contain are lax and nearly meaningless);
- **Undermines** the concept that welfare recipients should be required to "earn" benefits through constructive behavior and moves back toward an entitlement or "one-way handout" system;
- **Abandons** the successful "work first" orientation of the reform;[7]
- **Effectively prohibits** Wisconsin-style workfare programs;
- **Authorizes** public-sector unions to organize and represent welfare recipients;
- **Relieves** sponsors of immigrants to the United States of their responsibility to support the individuals they bring to the U.S. and transfers the financial burden to the taxpayers.

At the same time, the bill does little or nothing to reduce the anti-marriage penalties in the welfare system. The bill's so-called marriage-promotion grant program is cynically designed so that it has little or nothing to do with marriage. Rather than encouraging marriage, the bill contains numerous provisions that are designed to encourage and reward out-of-wedlock childbearing and single parenthood. Finally, the bill creates a new safe-sex/condom-promotion program for schools, despite the fact that the federal government already spends over $1.1 billion on safe-sex and family-planning programs.

Eliminating Reform's Time Limits[8]

Under the current law, federal TANF funds cannot be used to provide cash assistance for more than five years, although day care and transportation aid can be provided indefinitely.[9] The "WORK" bill effectively ends the five-year time limit on aid by permitting states to give TANF "supplemental housing benefits" to recipients indefinitely. Since there is little or no difference between giving cash aid and giving vouchers for rent payments, this pro-

5. It should be noted that state welfare bureaucracies have complained that it would be difficult for them to implement the work provisions of H.R. 4737. They made very similar complaints in 1996, but nonetheless successfully implemented PRWORA work standards. The fact that states complained about challenging work standards in 1996 and have similar concerns today underscores the similarity between PRWORA and H.R. 4737.
6. By contrast, the current TANF law is about 145 pages in length.
7. The WORK bill undermines the "work first" orientation of the law by abandoning the goal of caseload reduction, weakening the rules concerning sanctions for non-compliant recipients, and shifting the focus from immediate employment back to extended education.
8. Section 105(m).

vision effectively ends the federal time limits on TANF.

Restoring Entitlement Funding: An Incremental Strategy[10]

The old Aid to Families with Dependent Children (AFDC) program was an entitlement-funded program. Under this system, when the number of AFDC cases increased in a state, the federal government increased funding to the state. Conversely, when a state's caseload fell, the federal government decreased funding to that state. This system created perverse fiscal incentives for state governments: in essence, the federal government rewarded increases in dependence and penalized reductions.[11] The 1996 reform legislation replaced AFDC with the new TANF program, eliminating entitlement funding and replacing it with fixed or block-grant funding. Under this system, each state is given a fixed sum of money. If welfare caseloads go down, the state still receives the original amount of funds and can use its unspent surplus funds for other anti-poverty activities. If welfare caseloads increase, the state does not receive an increased federal grant.

The Baucus WORK bill deliberately undermines the 1996 reform, taking major steps that are intended to lead to a restoration of entitlement funding over time. Specifically, the WORK bill restores, at least partially, the pre-reform practice of increasing state funding when welfare caseloads rise and cutting funding when caseloads fall. The WORK bill does this by altering the current TANF "contingency fund."

The contingency fund was created to provide added federal funds to states with very high unemployment levels. To receive contingency funds under current law, a state must meet two criteria: (1) the unemployment rate in the state must be above 6.5 percent; and (2) a state's TANF spending, from its own funds, must at least equal its state spending on AFDC in 1995.[12] The second criterion was set to ensure that a state would not get extra federal dollars unless it was contributing its normal level of state funding to the program. In other words, a state could not cut its own spending on TANF and then ask the federal government for more money. (Since welfare reform, nearly all states have cut their annual state TANF spending by 25 percent. By contrast, the federal TANF spending is greater than federal AFDC spending in 1995.) The current eligibility criteria for the contingency fund were designed so that states would receive funds only in unusual conditions. To date, no state has received these funds.

The WORK bill alters the contingency fund to make it vastly easier for states to get extra federal funds. Under the WORK bill, a state's TANF spending no longer needs to equal its 1995 AFDC spending for it to be eligible for extra federal contingency funds. States will be eligible for contingency funds if they meet new criteria as a "needy state." To be designated as "needy," a state must (1) have an unemployment rate that is one percentage point higher than the rate in either of the prior two years; or (2) have a 10 percent increase in either TANF or food stamp caseloads, relative to the average caseload in either of the prior two years.

It will be extremely easy for states to qualify as "needy" states. For example, if a state has an unemployment rate of one percent and the rate rises to two percent, the state becomes a "needy" state and will remain one until the unemployment rate falls back to one percent. In effect, states are likely to qualify as "needy" unless their unemployment rates

9. The 1996 welfare reform legislation changed only the AFDC program; other welfare programs such as food stamps and public housing were largely unchanged by the reform. While the new TANF program has time limits and work requirements, food stamps and public housing, for the most part, have neither, even though much of the clientele in these programs is similar to the TANF population. The next stage of welfare reform should take the successful principles of the TANF program and apply them to related programs such as food stamps and public housing. Instead, the WORK bill seeks to weaken work requirements and time limits in the TANF program.
10. Section 102(a).
11. However, under the old law, states' incentives to increase AFDC caseloads were partially limited by the fact that roughly half of AFDC costs were borne by the state.
12. There is a third condition that triggers eligibility for contingency funds under current law: an increase in state food stamp caseloads to a level that is 10 percent above the 1995 level. At present, nearly all states have food stamp caseloads that are so far below the 1995 levels as to make this condition irrelevant.

are near all-time lows. (The U.S. Department of Health and Human Services (HHS) estimates that, under the WORK bill, nearly all states will qualify as "needy states" in 2003 and 2004. Even by 2007, more than half of the states would qualify. This seems to be a conservative projection.)

Once it has become a "needy" state, a state's federal TANF funding will be governed by the pre-reform entitlement principle: When the state's TANF caseload goes up, the state will receive more TANF funds; when its caseload goes down, the state will receive less funding (but never less than its 1996 federal TANF allocation.)

The Return of Perverse Incentives

A bedrock premise of the 1996 welfare reform was that entitlement funding created perverse incentives that led to harmful levels of dependence. By financially rewarding states for increased caseloads and penalizing them for lower caseloads, the old system gave states incentives to keep recipients on the rolls and trapped millions of families in unnecessary dependence. This is why welfare reform abolished entitlement funding. The WORK bill rejects this fundamental premise of reform and restores entitlement funding for at least half the states.

True, the WORK bill does put limits on the contingency fund. The annual maximum a state can receive from the fund cannot be more than 10 percent of its regular federal TANF funds. In addition, total contingency fund spending for all states would be limited to $2 billion over five years. But, these restrictions are deceptive. The designers of the WORK bill realize that welfare reform is extremely popular; therefore they cannot simply repeal reform overnight no matter how much they might wish to do so. Thus, their efforts to undermine reform will be complex and incremental. Once the WORK bill's new contingency fund is set up, it is likely that efforts will be initiated to ease the funding restrictions. This is particularly the case with the $2 billion overall spending limit. Because it will be so easy for states to qualify for contingency funds, the $2 billion will be exhausted within a few years.[13] Once this occurs, Congress will immediately hear clamors that there is a "crisis" in the contingency fund and that the program must be "fully funded." Opponents of expanding the fund will be attacked as miserly enemies of the poor.

Although the WORK bill also stipulates that a state will not receive contingency funds for TANF caseload increases if those increases were due "in a large measure…to state policy changes," this caveat is meaningless. Liberals have traditionally argued that economics, rather than policy, determines caseload size and have never agreed that lenient policies increase dependence. For example, liberal experts have argued that the unprecedented caseload declines of the past five years were due mainly to the economy rather than reform policy. Based on the experience of the last decade, the question of whether changes in a state's caseload were largely driven by economics or policy will be subject to endless dispute. Moreover, policies that affect caseload size often involve subtle and undocumented administrative changes in outreach, intake procedures, frequency of sanctions, assignment of activities, and dozens of other procedures. Because of the complexity of the welfare system, it would be virtually impossible, in most cases, to prove that changes in bureaucratic practices led to a caseload increase.

Penalizing State Rainy-Day Funds[14]

When TANF was created as a fixed-funding or block-grant program, there was an expectation that states would set up TANF "rainy-day" funds, saving a portion of TANF funds during good economic years and then expending that surplus when caseloads rose during a recession. Both the President's proposal and the House-passed welfare reauthorization (H.R. 4737) seek to make it easier for states to operate such rainy day funds in the future. The WORK bill does the opposite. It declares that states that have put away even a small amount in rainy-day funds will be ineligible for contingency funds. Specifically, the bill asserts that a state will be ineligible for federal contingency funds if the state has placed more than 30 percent of its annual federal

13. Some estimates have placed the cost of this change in the contingency fund at less than $2 billion. These estimates assume that many states will retain surplus rainy-day funds that will make them ineligible for contingency aid. Such analysis ignores the prospect that states will deliberately spend down surpluses to become eligible for contingency funds.

14. Section 102(b)(4).

TANF grant in a rainy-day fund.[15] Thus the Baucus bill deliberately penalizes states for saving TANF funds. Overall, the bill ensures that states will save little and will demand additional federal funds whenever their caseloads increase.

ABANDONING THE GOAL OF REDUCING DEPENDENCE

Reducing welfare dependence was a critical goal of welfare reform. It was an essential element of the work-first orientation of the reform and was a major factor in the reform's success. Since the enactment of reform legislation, welfare caseloads and the poverty rate of single mothers have both dropped dramatically. Prior to the reform there had been no net reduction in either welfare caseloads or poverty of single mothers for a quarter century.

The 1996 welfare reform set clear performance standards for states to reduce dependence. Over five years, states were required to reduce their AFDC/TANF caseloads by 50 percent or to have 50 percent of the caseload engaged in "work-related" activities, or some combination of the two. (For example, if a state cut its TANF caseload by 30 percent, it was expected to have 20 percent of its welfare recipients participating in "work-related" activities.)

Ironically, the very success of the PRWORA performance standards has rendered them obsolete. In PRWORA, caseload reduction goals were tied to specific conditions in the mid-1990s; states were required to reduce caseloads by 50 percent relative to their 1995 caseload levels. Over the past six years, nearly all states have reduced their TANF caseloads by 50 percent or more. Hence, PRWORA caseload reduction standards and the contingent work participation standards have become irrelevant because states have superseded them. The House-passed welfare reauthorization bill (H.R. 4737) solves this problem by updating the PRWORA caseload-reduction and work-participation standards. Under the House bill, states are required to reduce current adult TANF caseloads by 70 percent by 2007 or to increase work-related participation of TANF recipients by the same amount, or any combination of the two.[16]

Despite the success of welfare reform, the Baucus WORK bill jettisons the primary goal of reducing welfare caseloads. It also effectively eliminates work participation requirements (See "Eviscerating Work and Work Preparation Requirements" below). In place of the original PRWORA goals, Baucus substitutes a new performance measure called "employment exits" (i.e., the number of TANF recipients who leave the welfare rolls and take jobs). While this sounds plausible, it is, in fact, a very misleading measure of success.

Under the old AFDC program, millions of recipients left the rolls each year, even as caseloads rose to record levels. Today, in the typical state, the number of families leaving TANF each year is equal to about 130 percent of the monthly adult TANF caseload.[17] The number of annual "leavers" who are employed around the time they exit is typically around 80 percent of monthly TANF caseload. Thus, most exit standards would be very easy to meet. Nearly all states could readily fulfill the Baucus exit standards without improving their performance, without increasing employment, and without reducing welfare caseloads.

Dependence is reduced only if the number of exits from the TANF caseload is greater than the number of entrances. The Baucus bill is deceptive: It deliberately focuses on exits while ignoring entrances. Thus, under the bill's requirements, states could be judged successful in reducing dependence even as their caseloads grew. This is no accident.

While it is not the only objective of welfare reform, reducing welfare dependence has been and should remain an important goal of effective reform. The Baucus bill utterly rejects this goal. Indeed, the bill actually reverses the goal by creat-

15. This restriction means that a state would be penalized if it saved more than 6 percent of its five-year TANF allocation (30 percent of a single-year grant would be 6 percent of the total five-year allocation).

16. Due to technicalities in H.R. 4737, the real participation standard in 2007 would be around 55 percent rather than 70 percent.

17. The average monthly number of adult-headed TANF families is used as the denominator for "work" standards in the Baucus bill as it is in current law and H.R. 4737.

ing financial incentives through the contingency fund that reward states for increasing caseloads.

EVISCERATING WORK AND WORK-PREPARATION REQUIREMENTS

The WORK bill effectively eviscerates meaningful work requirements and state goals for work participation.

A Hollow Notion of "Universal Engagement"[18]

The Baucus bill places a strong rhetorical emphasis on the concept of "universal engagement"—the idea that all recipients should be engaged in activities leading to self-sufficiency. While universal engagement is an excellent concept, in reality, the WORK bill requires little or no engagement.

In order to promote "universal engagement" the bill requires that all recipients complete an individual responsibility plan (IRP) within two months of enrollment.[19] In fact, an IRP is not a new idea; most states already require an IRP or something similar in their TANF programs. However, policymakers have realized that, without enforceable follow-up, an IRP alone is meaningless. Unless a welfare agency continually engages a recipient in constructive activities after the IRP is signed, the document is nothing but an additional piece of paper in the recipient's case folder. (Federal work-participation standards were instituted precisely to ensure that recipients make active progress toward self-sufficiency.) The Baucus bill does not require or even suggest that continuous participation in such activities is necessary; its notion of universal engagement is a hollow slogan and nothing more.

Loopholes in Work- or Activity-Participation Standards[20]

The White House has sought to increase the percentage of TANF recipients who are engaged in work-related activities. In the past, an increase in work requirements has led to drops in welfare dependence and increases in employment. Increasing the number of recipients engaged in work and other constructive activity would seem to be essential to the idea of "universal engagement" that is promoted in the Baucus bill. However, while the language of the WORK bill implies that it would increase work participation levels, in reality, it would not.

On the surface, the Baucus bill requires 60 percent of TANF recipients to participate in education, work, or other related activities by 2005 and raises the nominal participation level to 70 percent in 2007. However, the bill provides exit credits and other credits against the work participation rates that, in total, are worth more than 100 percent of caseload.[21] Consequently, the real required participation rate would be zero. No recipients would be required to do anything.

In response to criticism about excessive credits, the bill creates a second "floor" of required participation rates—40 percent in 2005 and 50 percent in 2007. However, the bill immediately drills five separate holes in this "floor." Several of these holes involve the ploy of "shrinking the denominator," a standard tactic for creating the appearance of high participation without the substance. (For example, if a reported participation rate is 50 percent, but half of the actual caseload is excluded from the denominator of the calculation, then the real participation rate would be just 25 percent.)

18. Section 201.

19. The WORK bill does not require states to develop IRPs on their entire caseloads until October 2004.

20. Section 202.

21. The exit credits in the WORK bill permit any individual who has left the TANF rolls and obtained a job in the prior year to be counted twice against the 70 percent participation requirement. The bill allows any individual who has left the rolls and obtained a job paying more than 33 percent of the state median wage to be counted three times against the participation rate. These provisions would give the typical state a participation rate over 150 percent without requiring any currently enrolled TANF recipient to do anything. In addition, the bill also gives credits for parents who receive TANF-funded day-care subsidies but are not receiving TANF cash payment and are not part of the TANF caseload. This credit is probably worth about 30 percent of the TANF caseload.

HOLE #1: The Baucus bill excludes parents with children under age one from the participation rate denominator. These parents represent around 13 percent of the adult TANF caseload.[22]

HOLE #2: The bill also allows a state to exclude up to 15 percent of adult TANF recipients from work calculation if the parent is caring for a child with a chronic illness or disability "as defined by the state."[23] It will be easy for states to exclude at least 15 percent of TANF parents from the participation rate denominator on these grounds, since states are free to define widespread problems such as attention deficit disorder or developmental delay as disabilities.

HOLE #3: The bill requires the U.S. Department of Health and Human Services (HHS) to approve any waiver request from any state that duplicates a waiver that currently exists in another state. One of the waivers that HHS would be forced to approve would allow the states to exempt all parents with children under five from the work requirement and also to remove them from the work participation rate denominator. This would enable states to remove 55 percent of the TANF caseload from the participation-rate calculations.

Of course, many parents on the TANF caseload may not be expected to immediately participate in work or other constructive activities. It is reasonable for a state not to impose work or activity requirements on mothers with very young children or mothers caring for authentically disabled children. Because not every mother can work or prepare for work, federal participation rates are always set well below 100 percent. However, to exclude most of those who are not working from the denominator is very misleading; it creates the appearance of high levels of work and participation when, in fact, the levels may be very low. The Baucus bill is deceptive because it sets a low participation "floor" of 50 percent and then lowers that floor even further by excluding large portions of the caseload from the denominator in assessing participation levels.

There is considerable overlap between holes #1, #2, and #3. Together, they would probably permit states to exempt some 60 percent of adult TANF participants from activity requirements and to exclude them from the participation rate denominator. This would reduce the required participation rate floor to just 16 percent in 2005 and 20 percent in 2007. Yet, the WORK bill cuts even more holes in its participation floor.

HOLE #4: The Baucus bill allows states to reduce their participation rates by the number of applicants who are diverted from entering the TANF rolls. The magnitude of this exemption is unclear.

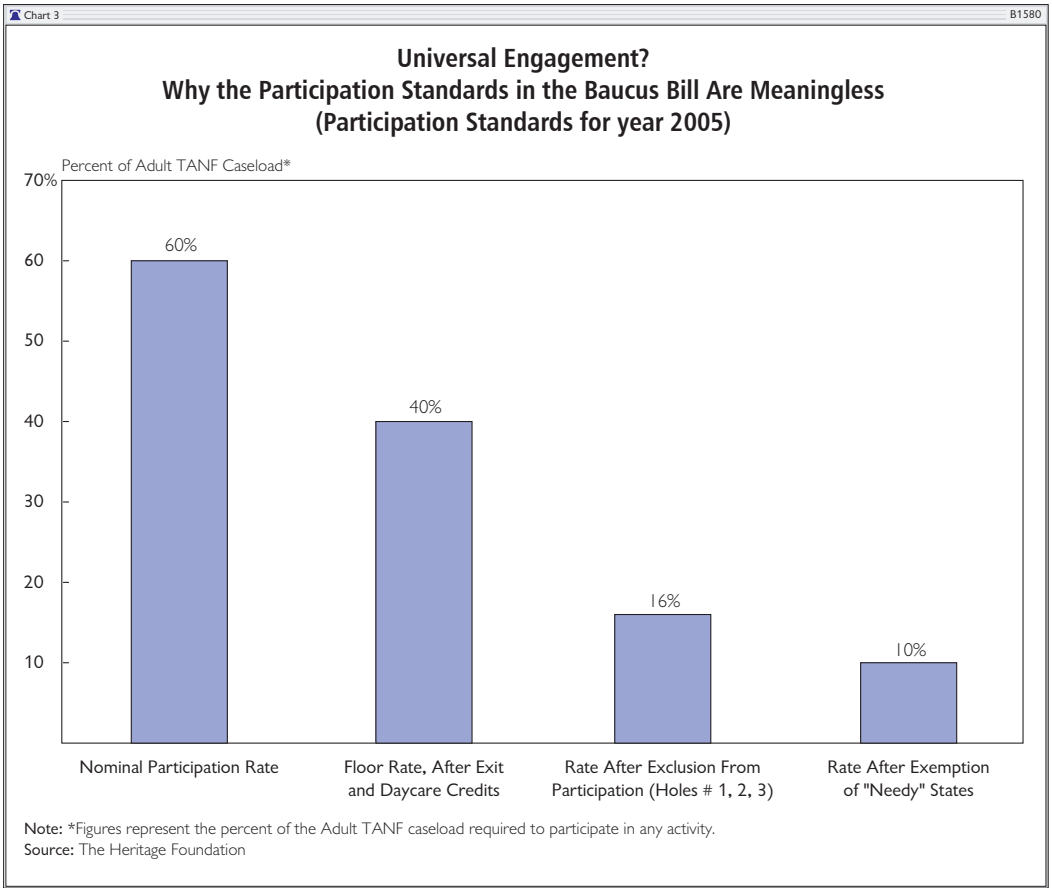
HOLE #5: Finally, the bill exempts any state from work-participation floor requirements if the state meets any two of the following conditions used in defining a "needy" state: rising unemployment, a rising TANF caseload, or a rising food stamp caseload.[24] The U.S. Department of Health and Human Services estimates that this provision would exempt approximately 20 states from the "floor" requirements in 2005 and 17 in 2007.

The bottom line is that the so-called work floor in the Baucus bill is made of Swiss cheese. Under the bill, the number of TANF recipients who will be required to participate in any activity, even five years in the future, will probably be no more than 10 percent to 15 percent. The hollowness of the Baucus work-participation standards should not be surprising, given that members of Senator Baucus's staff have publicly stated that they regard federal participation rates to be unnecessary and counterproductive.[25]

22. This provision is in the current TANF law. It was put into the law in 1996 by those seeking to soften federal work standards. The provision weakens the effective participation rates in the WORK bill just as is does in current law.

23. The bill permits 10 percent of TANF cases to be included under the exemption for caregiver of disabled family members. Approximately one-third of TANF cases do not have adult members, so the exemption would cover around 15 percent of adult-headed TANF households.

24. See the section on the contingency fund for the definition of a "needy state."



Ironically, the participation standards in the Baucus bill for the year 2007 are actually below the current levels of "engagement" in states under the largely obsolete participation standards of the 1996 act.[26] At present, approximately 39 percent of recipients are engaged in some type of work-related activity. To maintain the current moderate levels of participation, new federal standards are probably not needed. However, if the goal is to increase the level of activity of recipients, moving states toward universal engagement and increasing progress toward self-sufficiency, then higher federal standards will be necessary. Yet tougher participation standards are one thing the designers of the ironically named WORK bill definitely do not want. Since the WORK bill does not strengthen the work requirements (and, in fact, greatly weakens them), it would be better to simply extend the current TANF law indefinitely rather than to enact the spurious and misleading provisions of the Baucus reauthorization bill.

Failure to Increase Hours of Required Activity[27]

In contrast to President Bush's proposal, the Baucus bill does not increase the hours of required activity for TANF recipients. The bill is similar to current law. As in current law, mothers with children under age six are to participate in work-related activities for 20 hours per week. Mothers of older children are to participate in activities for 30 hours per week, 24 of which are to be "work-related." (Under current law, mothers of older children are required to participate in 30 hours of activities a week, 20 of which must be work-related). Not only is the bill's definition of work-related very porous, but, because the bill's required participation rates are so low, these provisions are effectively meaningless.

25. On June 12, 2002, in a meeting with congressional staffers and outside welfare experts, Senate Finance staffer Doug Steiger said, "I would prefer to have a welfare bill without any participation rates. I do not think participation rates serve a useful purpose."
26. The 1996 law required states, over five years, to (a) increase participation in "work-related" activity to 50 percent of caseload or (b) cut their caseloads by 50 percent relative to 1996 levels. States would be given credit for any combination of (a) and (b) together. Since 1996, nearly all states have cut their caseloads by 50 percent or more. Thus, they fulfilled the work requirements of and are not subject to any further federal work requirement.
27. Section 202.

Sending Welfare Mothers to College[28]

In section 105(e), the WORK bill creates a new TANF sub-program to encourage states to send TANF recipients (nearly all of whom are single mothers) to college. Under the new provision, welfare mothers can spend up to six years completing college while the TANF program supports the mother and her children.[29] For purposes of meeting the state work participation rates, states may count up to 15 percent of adult welfare recipients as "working" while they attend college.[30]

In some respects, this provision is not new. Under current law, states are free to send TANF mothers to college; however, college attendance, in general, cannot be counted as a work activity for purposes of meeting the federal work standards. Since the federal work standards never applied to more than half the TANF caseload, the federal rules were not an impediment to states' sending TANF recipients to college; however, those rules did mean that states could not focus exclusively on education in lieu of work-related activities.

The emphasis on college education in the Baucus bill is intended to send a symbolic message to state welfare bureaucracies and to welfare recipients across the nation. That message is that the era of work-oriented welfare reform is at an end. This effort to turn away from the "work first" orientation of the 1996 reform and to return to the pre-reform focus on classroom training would be counter-productive. "Education first" strategies have proven to be largely ineffective in reducing dependency, reducing poverty, and promoting employment.[31]

An emphasis on sending welfare mothers to college is highly problematic. First, society should be very careful about the symbolic messages it sends to young women who are at risk of out-of-wedlock childbearing. The message "Have a child out of wedlock and the government will put you through college for free" is not healthy and is very likely to have negative side effects. Second, three quarters of adult Americans do not have college degrees. Taxing these individuals to provide welfare payments to send never-married mothers through college raises severe equity problems.[32] As a general rule, society should not reward dysfunctional behavior. It should not give less benefits to those who play by the rules than to those who break them.

Focusing on Education Rather than Work

The WORK bill increases the number of TANF recipients who could enroll in education programs and still be counted as working. Eight percent of TANF recipients could attend high school and be counted as working. An additional 30 percent of all "work participants" could attend vocational education programs. As noted, 15 percent of adult TANF recipients could attend college for up to six years under the "post-secondary education program" specified in section 105(e) and be counted as working. In addition, an unlimited number of TANF recipients could attend post-secondary schools for up to two years and be counted as working. Given this very broad definition of "work," states could meet even rigorous work participation standards without requiring any recipients to work or even search for a job.

No Work Requirements in the Food Stamp Program

The House-passed welfare reauthorization bill permits up to five states to convert their food stamp programs from entitlement programs to block grants. Hopefully, several states would use this

28. Section 105(e) and Section 202(g)(2).

29. Under the provision, federal TANF benefits would be used to support the family while a mother attends college and could not be used to pay for tuition. In most cases, the tuition would be paid for by the federal Pell grant program.

30. The bill permits up to 10 percent of all TANF cases to attend college and be counted as working. Roughly a third of TANF cases do not have adult members, so the college provision could cover up to 15 percent of adult-headed TANF cases.

31. See Brian Riedl and Robert Rector, "Myths and Facts: Why Successful Welfare Reform Must Strengthen Work Requirements," Heritage Foundation *Backgrounder* No. 1568, July 12, 2002

32. The issue here is not whether the government should pay for college tuition for low-income single mothers, since these mothers are generally eligible for free or heavily subsidized college in the same manner that other low-income persons are. The issue is whether the welfare system should support the single mother and her family for an extended period while she attends college using a tuition subsidy.

opportunity to establish work requirements in food stamps similar to those in TANF. In contrast, the WORK bill does not allow states to block grant food stamps, and it does not increase work requirements in the national food stamp program.

Creating a New CETA Program

The bill abolishes the current high-performance bonus fund and replaces it with a program called Innovative Business Link Partnership Grants.[33] This program will spend $200 million per year to provide subsidized jobs to current and former TANF recipients as well as to non-custodial fathers who have difficulty paying child support. Individuals placed in these jobs would be paid the same wage rate as non-subsidized employees. The program closely resembles the costly, ineffective Comprehensive Employment and Training (CETA) program of the late 1970s.

The intent of this program is to provide recipients with much better paying jobs than they could otherwise obtain. In addition to being costly, this program entails equity problems: It provides job opportunities to women who have had children out of wedlock that are not available to similar women who have not had children out of wedlock.

The program also targets delinquent non-custodial fathers as beneficiaries but very deliberately makes no mention of supportive married husbands. While it is possible that a few husbands might benefit from the program as current or former TANF recipients (around 10 percent of TANF families are married couples), the number would be extremely small. The emphasis of the program is clear: Like most other welfare programs, it is intended to reward single mothers and delinquent non-married fathers—conscientious husbands need not apply. This is typical of the ubiquitous neglect and disdain for marriage and husbands that permeate the Baucus bill.

Weakening Work Requirements with New Waivers.[34]

The WORK bill allows ten states with existing waivers to continue those waivers through 2007. These waivers, in varying degrees, exempt states from federal work standards. Moreover, the bill permits any other state to automatically obtain new waivers equivalent to those held by these 10 states. This provision would allow any state to exempt over half its caseload from any federal requirement for work or constructive activity and to remove all exempted recipients from its participation rate denominator. This further undermines the work standards of the bill.

PROMOTING WELFARE AS A ONE-WAY HANDOUT

Prior to the 1996 welfare reform, welfare benefits were largely one-way handouts. Individuals deemed "needy" were entitled to a check and aid was given out unconditionally. Recipients were rarely, if ever, required to engage in constructive activities as a condition of receiving aid. The 1996 reform act was a major step toward ending cash welfare as a one-way handout.[35] The AFDC system of cash entitlements was replaced by the new TANF program, which focused on reciprocal obligation: Individuals in need would be given aid but would be required to work or to prepare for work as a condition of receiving that aid. Under TANF, aid would no longer be unconditional but would be linked to constructive behaviors.

In establishing a welfare system based on conditional aid and reciprocal obligation, two points are critical. First, recipients must not be permitted to remain in idle dependence, but instead must be required to engage in constructive activities while on the rolls. Second, recipients who consistently fail to perform required activities (such as job search, job training, or community service) should not continue to receive welfare checks.

Accordingly, the 1996 welfare reform legislation insisted that an increasing proportion of recipients

33. Section 704.

34. Section 711.

35. However, other parts of the welfare system such as public housing and food stamps have not been reformed. Aid in these programs is still largely provided as unconditional one-way handouts.

engage in constructive activities. The law also required that TANF recipients be subject to a "full check sanction." Recipients who refused to perform any and all required activities would not continue to receive TANF benefits. Specifically, the law stated that if a recipient refused to perform required activities, the state should, at a minimum, "reduce the amount of assistance otherwise payable to the family pro rata." That is, the family's TANF check should be reduced in proportion to the degree of non-compliance. The clear meaning of this provision was that individuals who consistently performed none of the activities required of them should receive no TANF benefits. "No activity" meant "no benefits." The congressional conference report on the law clarified this basic point.

Regrettably, the Clinton Administration ignored the clear content of the PRWORA reform law on this point and issued TANF regulations that authorized states to use lenient or partial sanctions on parents who were fully non-compliant. Today, more than half of the nation's TANF recipients reside in states with lenient or partial sanctions. In these states, parents can consistently fail to perform any and all required activities, month after month, and still continue to receive most of their TANF cash aid.

The welfare reauthorization bill passed in the House of Representatives on May 16, 2002, reaffirms the principle of reciprocal obligation between society and the welfare recipient. The bill reaffirms the sanctioning provisions of the original TANF law, stipulating that state TANF programs must have meaningful sanctions for non-compliant behavior. At a minimum, if a parent on TANF who is required to engage in activities fails to perform any activity whatsoever for two consecutive months, the entire TANF check for the family must be suspended for one month. The TANF check may be resumed in the next month if the parent has complied with the activity requirements.

By contrast, the WORK bill rejects the fundamental premise of reform that a reciprocal obligation exists between society and welfare recipient. According to the WORK bill, society has an obligation to support welfare recipients, but recipients have no obligation to engage in constructive activities in exchange for that aid. The bill seeks to incrementally re-establish a system of one-way cash handouts. The bill permits states to give federally funded TANF checks indefinitely to individuals who have consistently refused to perform all activities that have been required of them.

Furthermore, the bill makes it considerably more difficult for all states to impose any penalties on non-compliant TANF recipients by creating an additional bureaucratic step to the sanctioning process. It mandates that a state agency must review the recipient's Individual Responsibility Plan (IRP) before applying any sanction. This provision does not make sense. Since recipients are sanctioned for failure to perform activities required by the state, a review of an individual's IRP is completely irrelevant. The sole intent of this provision is to reduce the number of sanctions by making it more difficult for welfare officials to impose them. (This restriction on sanctioning is discussed more fully below in the sections on Wisconsin-style workfare.)

PROHIBITING WISCONSIN-STYLE WELFARE REFORM

Under the welfare reform implemented in Wisconsin, adult AFDC/TANF caseloads were cut by 90 percent and child poverty fell by 40 percent—one of the larger declines in the nation. Despite Wisconsin's leading role in reform, the WORK bill launches a deliberate attack on Wisconsin-style reforms. Jason Turner, who played a key role in designing the state's welfare reform as Manager of Employment Programs in Wisconsin and later served as New York City Commissioner of Welfare under Mayor Rudy Giuliani, declared, "The provisions of the Baucus bill constitute a de facto prohibition on operating workfare programs like those in Wisconsin or New York City."[36]

Employment Laws: Obstructing Workfare and Community Service[37]

The core of the successful Wisconsin model is the requirement that TANF recipients perform community service or be involved in "work experience" (typically, in non-profit and public-sector

36. Interview with Jason Turner, August 1, 2002

37. Section 712.

organizations) in exchange for their benefits. The maximum number of hours of required activity was set by dividing a recipient's TANF and Food Stamp benefits by the minimum wage. Although work-experience positions are not formal jobs, they provide preparation and motivation that help recipients enter the workforce. Most individuals in work-experience positions quickly leave to obtain actual employment.

Despite the Wisconsin model's dramatic record of success in increasing employment and decreasing dependency, Senator Baucus's WORK bill would deliberately make it difficult or impossible for states to operate workfare programs similar to this model. The bill does this by making all community service workfare programs subject to an unlimited range of "workplace laws." The term "workplace laws" is undefined, but, in the past, liberals have argued that work experience and other activities to which TANF recipients are assigned should be subject to the Davis–Bacon Act, the Service Contract Act, the National Labor Relations Act, and some 20 additional labor laws. Under the Davis–Bacon Act or Service Contract Act, states would have to either substantially increase the welfare benefits given to recipients performing work experience or greatly reduce the hours of "work" performed.

In addition, the "workplace law" provision of the Baucus bill appears to require welfare agencies to pay unemployment insurance and Social Security taxes for recipients who participate in work-experience programs. This would substantially increase the costs and paperwork involved in operating these programs. The National Labor Relations Act would give unions the right to organize and represent welfare recipients as union members. Governments would then be required to engage in collective bargaining with unions regarding the operation of the TANF programs.

Prohibitions on Alleged Job Displacement[38]

The Baucus bill launches an additional assault against Wisconsin-style welfare reform, stipulating that work-experience programs cannot "supplant" normal employment.[39] This means that a welfare recipient performing work experience in a non-profit organization or government agency could not perform any activities that had previously been performed by a regular employee—even if the employee had left voluntarily and the organization had expanded its workforce in other areas.[40] For example, consider the following scenario. A non-profit has a paid employee who answers the telephone. The employee quits. The organization wants to use a work-experience participant to answer the phones. It cannot do this because to do so would involve "supplanting" normal paid employment.

This provision constitutes a de facto prohibition against states' operating community-service or work-experience programs. As Jason Turner explains, "If these worker displacement rules had been in effect earlier, it would have been very difficult, if not impossible, to establish the current workfare programs in Wisconsin and New York City. Even the most limited interpretation of the Baucus language would give advocacy groups ample grounds to repeatedly sue welfare departments over the operation of work-experience programs. The prospect of endless lawsuits will dissuade most states and counties from operating work-experience programs."[41]

The provisions in the Baucus bill to outlaw Wisconsin-style workfare have been urged by public-sector unions who have always feared that work-experience programs would displace government employees. However, even from the narrow self-interested perspective of the unions, such fears are unrealistic. Wisconsin operates the strongest work-

38. *Ibid.*

39. To understand the provisions of the WORK bill on employee displacement, it is useful to review the current provisions of the TANF law. The current law states that a work-experience participant "may fill a vacant employment position." However, the work-experience recipient may *not* fill a particular position "when any other individual is on layoff from the same or any substantially equivalent job or if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy so created with the [welfare recipient]." The WORK bill deletes this current language and replaces with entirely new broader language, indicating a clear intent to move well beyond current law in this area.

40. Section 712.

41. Interview with Jason Turner.

experience program in the nation and has placed nearly all of the state's TANF beneficiaries in work-experience slots. Even so, there are only about 10,000 work-experience positions in the whole state, most of which are in the under-funded non-profit sector. By contrast, there are over 300,000 state and local government employees in Wisconsin. Workfare hardly poses a credible threat to public-sector employment. In fact, employment by the state and local governments actually increased under Governor Tommy Thompson's tenure.

Restricting Sanctions[42]

In the Wisconsin welfare system, all adult TANF recipients are required to work as a condition of receiving aid. Those who do not have a private-sector job perform work experience/community service. Recipients in community service slots are under a "pay for performance system": they must earn their TANF checks as they would earn a real paycheck. If they fail to perform work without good cause, their TANF check is immediately reduced in direct proportion to the work missed. For example, if a recipient was required to perform 120 hours of community service in a given month but actually performed only 60 hours, the TANF check for the month would be cut in half. Like any payroll system, the reduction in the TANF check is calculated automatically by computer in response to the number of hours of work reported by the supervisor.

The Baucus WORK bill would make it difficult or impossible to operate this system because it imposes a cumbersome bureaucratic review process that must occur before any check can be reduced for noncompliance. The WORK bill states that the welfare bureaucracy must actively "review the individual responsibility plan prior to imposing a sanction against the adult recipient or the family for failure to comply with a requirement of the plan." This provision is pointless; there would be no reason to review the individual responsibility plan because the recipient would be sanctioned for failing to perform those activities to which he was assigned under the plan. The sole purpose of this provision is to make it much more difficult for states to sanction recipients who refuse to work. In the case of Wisconsin, it would make very difficult or impossible for the state to operate the current automatic pay-for-performance system. The reduction in a recipient's welfare check for failure to perform required activities would probably be delayed for a month or more, and the critical linkage between behavior and reward would be dismantled.

DISCOURAGING MARRIAGE: ENCOURAGING OUT-OF-WEDLOCK CHILDBEARING

Just as the notion of "universal engagement" and work participation within the WORK bill are empty slogans, the bill's "marriage-promotion" elements, likewise, are hollow. Overall, the bill discourages marriage and promotes single parenthood.

Marriage Promotion Grants That Have Nothing To Do with Marriage[43]

Two of the four principal goals of the 1996 welfare reform legislation were to reduce out-of-wedlock childbearing and to increase two-parent families. It was expected that states would use TANF funds to develop programs to promote healthy marriages. Yet, despite the fact that more than $100 billion in federal TANF funds has been available for this purpose over the last six years, only $20 million has been spent on pro-marriage programs. States claim they were unable to promote marriage because they lacked model programs to follow. Because of the lack of activity on the critical marriage issue, the Bush Administration decided to allocate $300 million annually to fund pilot programs to reduce child poverty and increase child well-being by increasing healthy marriages. (This sum equals roughly 2 percent of future federal TANF funds.)

Although the Baucus bill allocates $200 million per year to a "healthy marriage promotion grants" program, this program is about marriage in name only. Indeed, most of the activities that qualify for funding under the Baucus marriage program have nothing to do with marriage. For example, Senator Baucus's own summary of his bill states that "marriage promotion" funds may be used for "broad-

42. Section 201(a).

43. Section 301.

based income-support strategies that provide increased assistance to low-income working parents, such as housing, transportation, transitional benefits, etc., independent of family structure."[44] In other words, the marriage grant program is designed to support the vast array of conventional welfare services rather than to promote and support healthy marriages. Under the Baucus bill, providing cash, public housing, health care, or day care to single mothers would constitute a "pro-marriage" activity.

Prohibiting Reductions in Anti-Marriage Penalties[45]

Existing means-tested welfare programs such as TANF, food stamps, public housing, Medicaid, and the Earned Income Tax Credit (EITC) profoundly discriminate against married couples. If a single mother marries an employed father, the father's earnings will make the mother ineligible for most welfare aid. The existing welfare system creates strong financial incentives for low-income mothers and fathers to remain separate rather than to marry.

One of the objectives of President Bush's proposed marriage program was to encourage small-scale experimentation in reducing the anti-marriage incentives of welfare and to assess the impact of these experiments in promoting healthy marriages. In contrast, the so-called marriage promotion program of the Baucus bill appears to prohibit any reduction in the anti-marriage penalties of the welfare system, dictating that all benefits must be provided in a manner that does not "exclude families from participation based on the number of parents in the family."

While this language sounds benign, it is not. In the simplest sense, it prohibits the relatively meager marriage program funds from being targeted toward low-income married couples. Even worse, the language may prohibit experimentation in reducing the anti-marriage penalties in welfare programs.[46] As explained above, the welfare system creates anti-marriage penalties because a mother loses most of her benefits if she marries an employed man. The disincentive for marriage can be reduced by allowing a mother to retain at least a portion of her benefits if she marries; this would generally be done by "disregarding" a portion of the husband's earnings, that is, ignoring them for purposes of calculating the mother's benefits. The Baucus language appears to prohibit disregarding a husband's earnings, thus ensuring that the full anti-marriage bias of welfare will be retained for couples participating in the so-called marriage promotion program.[47]

States to Pay the Full Costs of Out-of-Wedlock Births[48]

There are 1.3 million out-of-wedlock births in the United States each year. The Medicaid program pays for the medical costs for about 85 percent of these out-of-wedlock births. (By contrast, if a mother-to-be is married to an employed husband, in most cases, she will be ineligible for Medicaid assistance.) Under current law, states may attempt to recoup some or all of the hospital maternity costs from the non-married father of the child. The Baucus bill prohibits states from attempting to have non-married fathers reimburse the government for child-birth costs.[49] This is, again, in keeping with the general thrust of the bill, which seeks to pro-

44. From the bill summary prepared by Senator Baucus's staff, "Description of the 'Work, Opportunity, and Responsibility for Kids (WORK) Act of 2002,'" June 24, 2002, p. 9.

45. Section 301.

46. The healthy marriage promotion program in H.R. 4737 specifically states that funds may be used to "reduce the disincentives to marriage in means-tested aid programs…." While the Baucus bill includes much of the language on marriage promotion from the House bill, it deliberately omits this provision. The apparent implication is that the authors of the bill do not want such disincentives reduced.

47. If this is not the intent of the Baucus bill, the bill's language must be clarified.

48. Section 501.

49. Specifically, the WORK bill prohibits states from using their child support systems to seek reimbursement from the absent fathers. Since such funds would ordinarily be collected through the child support system, the practical effect of this provision is to ensure that the funds will not be collected.

mote and increase government subsidies for out-of-wedlock childbearing and to relieve non-married parents of responsibility for their actions.

Granting TANF Benefits to Non-Citizens Who Give Birth Out of Wedlock[50]

Most non-citizen residents who come to the United States have sponsors who pledge that, if the non-citizen falls into financial difficulty, they will support that individual rather than having the welfare system do so. However, the sponsor's commitment to support immigrants has proven to be completely unenforceable. The 1996 welfare law put teeth into the sponsor's obligation by ensuring that non-citizens could not receive federal TANF aid. The Baucus bill overturns this stipulation and allows state governments to give federal TANF funds to non-citizens. It is expected that states with large immigrant populations will return to the pre-reform practice of giving federal welfare benefits to non-citizens. In effect, the Baucus bill will relieve immigrant sponsors of financial obligation by allowing lawful non-citizens to receive TANF assistance. Nearly all the beneficiaries of this provision will be non-citizen single mothers, many of whom had children out of wedlock after coming to the United States.

At-Home Care Provision: A New Program to Reward Illegitimacy[51]

The WORK bill creates an experimental program with $150 million in funding over a five-year period to pay non-married mothers to provide infant care for their own children who are under age two.[52] Receipt of these at-home care funds would not count against the five-year time limit on receipt of TANF aid. This provision repeats the same failures of the old AFDC system, but will be even more generous in rewarding illegitimacy. The impact of this provision is clear: It is explicitly designed to encourage and reward women for having children out of wedlock.

Increasing Welfare Payments for Single Mothers[53]

Under current law, a single mother's welfare benefits are, in general, reduced when she receives child support from the father. The Baucus bill makes it much easier for mothers on welfare to "double dip," receiving both child support payments and their full TANF check. By significantly raising the incomes of single mothers on welfare, this provision makes it less likely that they will leave welfare and obtain employment. (Ironically, if the mother decides to marry the child's father rather than merely collecting child support, she will, in most cases, lose her TANF aid.) The effect of this provision, like many others in the Baucus bill, is to increase the financial incentives for a mother and father to remain separate and not marry. It is estimated that the cost to the taxpayer for this provision will be approximately $1 billion over five years.

Excluding Goals to Promote Marriage and Reduce Out-of-Wedlock Childbearing[54]

Under current law, each state is required to formulate and publish a "state plan" for its TANF program. The federal law requires that each state plan must "establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies, with special emphasis on teen pregnancy." The current law further requires states to "establish numerical goals to reduce illegitimacy" between 1996 and 2005. The Baucus bill eliminates all references to out-of-wedlock childbearing from the required state plans as well as the state's numeric goals to reduce illegitimacy. The bill also removes all references to reducing out-of-wedlock childbearing from the national TANF performance measures.[55] According to the Baucus bill, it is either

50. Section 301.

51. Section 706.

52. Under this provision, a mother would be paid to care for her own child; she would not be required to care for other children as well.

53. Section 501.

54. Section 701.

55. Section 701, p. 324.

inappropriate or unimportant for the states to reduce out-of-wedlock pregnancies as current law urges.

In place of the current language on reducing out-of-wedlock pregnancies, the Baucus bill creates a new national goal of reducing "teen pregnancies" by one third. HHS is required to assess each state's progress toward that goal.[56] At first glance, the elimination of all reference to out-of-wedlock childbearing from the state plans and the substitution of a new provision targeting teen pregnancy exclusively is perplexing. While one-third of all U.S. births are now out of wedlock, only 15 percent of those births occur to girls under 18. Most out-of-wedlock births occur to women in their early twenties.

The apparent paradox can be understood by taking into account the conventional wisdom within feminist circles. Radical feminists believe that, while it is unwise for a young girl to have a child before she has finished high school, it is perfectly appropriate and even commendable for slightly older women who have completed high school to have a child outside marriage. Thus, while it is appropriate for the government to discourage teen pregnancy, it is inappropriate for the government to seek to reduce out-of-wedlock pregnancies among women who are just a few years older. The philosophy behind the Baucus bill is clear: It is imperative for the government to extensively subsidize never-married mothers, but it is inappropriate or unimportant for the government to seek to reduce out-of-wedlock childbearing.[57]

Ending the Bonus Fund for Reducing Out-of-Wedlock Births[58]

The 1996 reform created a bonus fund of $100 million per year to reward states that were most successful in reducing out-of-wedlock births. The intention was to create an incentive for states to develop vigorous programs to reduce out-of-wedlock childbearing. However, the bonus fund has thus far generated little interest or activity among the states. As a consequence, both the Administration's welfare plan and the House-passed welfare reform bill (H.R. 4737) eliminate the out-of-wedlock birth reduction bonus fund and shift the funds to a new marriage-promotion program that authentically seeks to encourage marriage. The Baucus bill eliminates the reduction bonus and places the funds in its new "healthy marriage promotion program." However, as noted above, the Baucus marriage program has little or nothing to do with marriage. The Baucus bill thus reduces the efforts in current law to reduce illegitimacy without creating a corresponding new emphasis on marriage. This is not an accident; it is consistent with the overall theme of the Baucus legislation, which encourages out-of-wedlock childbearing and subsidizes single parenthood.

Removing Marriage and Illegitimacy from the High-Performance Bonus Fund[59]

The current TANF law established a high-performance bonus fund of $200 million per year. These funds were to be allocated to the states according to their success in meeting the four goals of TANF. Two of these goals were reducing out-of-wedlock childbearing and strengthening two-parent families. In effect, half of the bonus fund was to be targeted to states that were most effective in reducing illegitimacy and strengthening marriage.[60] The Baucus bill restructures the high-performance bonus fund into a "business link partnership program," removing all references to marriage and out-of-wedlock childbearing. (The House bill redirects $100 million from the high-performance bonus to the new marriage promotion program; the smaller rede-

56. Section 701.

57. The welfare system in the United States is primarily a subsidy system for single parents. Federal and state governments provide over $200 billion in means-tested aid to families with children each year. Three-quarters of that aid goes to single-parent families.

58. Section 301.

59. Section 704.

60. In writing the regulations for the TANF, the Clinton Administration ignored the actual content of the law and failed, in crafting the details of the high performance bonus fund, to place appropriate emphasis on marriage and reduction of out-of-wedlock births.

signed high-performance fund is focused on work issues.)

De-emphasis on Out-of-Wedlock Childbearing Uncompensated by an Emphasis on Marriage

The current law makes reducing out-of-wedlock childbearing one of the four major national goals of TANF. While the Baucus bill does not take the blatant step of eliminating this formal goal, it does eliminate all other practical provisions in TANF dealing with out-of-wedlock childbearing. As noted in the preceding sections, the WORK bill eliminates the illegitimacy-reduction bonus fund; removes the reduction of out-of-wedlock pregnancies as one of the four major elements considered in awarding grants under the high-performance bonus plan; and drops out-of-wedlock pregnancy as an element in state TANF plans. Thus, the Baucus bill deliberately neuters the original TANF goal of reducing out-of-wedlock childbearing and renders it meaningless.

The House-passed reform bill also eliminates the illegitimacy-reduction bonus fund and removes both illegitimacy and marriage as criteria from the high performance bonus, but the House bill redirects $200 million from these existing bonus pools to the new healthy marriage promotion program. Since the Baucus bill does not create a meaningful marriage program, its de-emphasis of out-of-wedlock childbearing is uncompensated by any real increase in emphasis on marriage.

Dropping Reference to Marriage in TANF Goals and Findings

As noted, one of the four marriage goals of the original 1996 TANF law was to "encourage the formation and maintenance of two-parent families." Although there was no doubt at the time of passage that the intent of this goal was to encourage marriage, in subsequent years, liberals and state welfare bureaucracies gave a very different interpretation to the term "two-parent families." According to these groups, encouraging the formation and maintenance of "two-parent families" means merely collecting child support from absent fathers or providing job training to non-married fathers in the hopes they will pay more child support.

The Bush Administration's plan and the House-passed reauthorization bill have sought to clarify the original intent of the TANF law by replacing the original language with a more clearly stated goal to "encourage the formation and maintenance of healthy, two-parent *married* families, and encourage responsible fatherhood." (Emphasis added.)

It should be no surprise that the creators of the WORK bill were unwilling to include this clarification of TANF goals in their legislation. Instead, the Baucus bill retains the original vague reference to two-parent families. The fact that the Baucus bill fails to even mention the word "marriage" as part of the goals of TANF is clear evidence of the unstated hostility toward marriage that animates the designers of this legislation.

The House-passed reauthorization bill also contains a list of "findings" concerning the effects of marriage on children and society. In its findings section, the House legislation documents, on the basis of scientific literature, the simple fact that marriage has strong positive effects on children while non-marital childbearing and non-marital cohabitation have negative effects. The Baucus bill also contains an extensive "findings" section but, not surprisingly, it excludes all evidence relating to the positive effects of marriage on adults and children. The WORK bill does make the anemic assertion that "children deserve to be raised in supportive homes, preferably by two parents," but, even here, it avoids the "controversial" term "marriage." As noted above, to liberals "two-parent involvement" means nothing more than collecting child support from absent fathers.

The Baucus bill is saturated with a deep, implicit hostility toward the institution of marriage. Despite the overwhelming evidence that marriage is highly beneficial for children and adults, the promoters of the Baucus bill are unwilling to even mention that evidence, let alone to make an authentic effort to strengthen marriage as an institution.

Bogus Elimination of Discrimination Against Marriage[61]

The Baucus bill does contain weak and confused language which allegedly ends TANF's bias against marriage. The language prohibits state TANF pro-

61. Section 712(e).

grams from imposing "stricter eligibility criteria for two-parent families" than for one-parent families. As a means of reducing welfare's bias against marriage, this provision is largely irrelevant and possibly harmful. In all states, married families are currently eligible for TANF benefits; differences in eligibility standards between one-parent and two-parent families are modest and of little practical significance. [62]

In reality, TANF and other means-tested aid programs (such as food stamps and public housing) are biased against marriage not because of eligibility standards but because of the essential structure of means-tested aid. In a means-tested program, welfare benefits are reduced as earned income in the household increases. This means a welfare mother will lose most or all of her welfare benefits if she marries an employed male. Thus, most low-income couples can maximize income if they remain unmarried. Changing eligibility standards will not correct this anti-marriage bias. As noted above, the bias against marriage in TANF can only be reduced if a state "disregards" some or all of a husband's earnings. ("Disregarding" the husband's income means the state does not count part of the husband's earnings when determining the mother's TANF benefits.) Only if a husband's earnings are disregarded can a mother marry an employed father without losing welfare income.

For this reason, the language of the Baucus bill is largely irrelevant on the issue of discrimination against marriage. Even worse, the bill could make TANF's current bias against marriage more severe. The bill asserts that "a state shall not impose a requirement [on two-parent families] that does not apply in determining the eligibility of one-parent families."[63] This provision may prohibit a state from disregarding a husband's income, since a single mother would not have the same disregard.[64] In this way, the Baucus bill could solidify welfare's bias against marriage rather than reducing it.

An additional problem with this provision is that it refers to "two-parent families" rather than married families. As noted previously, to liberals the term "two-parent family" covers non-married cohabiting couples as well as absent fathers who attempt to pay child support to non-married mothers. Consequently, the provision could require states to pay TANF benefits to unemployed cohabiting boyfriends and non-working absent fathers. Such a policy would be wasteful and counterproductive.

Creating a New Condom Promotion Program for Teens[65]

The 1996 welfare reform legislation created a small new federal abstinence program. Despite the creation of this program, most federal funds continue to flow to safe-sex/pregnancy-prevention programs that promote contraceptive use. The federal government currently spends $85 million per year on abstinence programs, compared to over $1.1 billion on safe-sex/pregnancy-prevention programs that promote contraceptive use. Despite the overwhelming current bias in favor of "safe sex," the Baucus bill creates yet another condom promotion program for teens, which it euphemistically calls "abstinence first." Despite its name, this program will have nothing to do with abstinence but will aggressively promote condom use in the nation's schools.[66]

While abstinence-first programs contain little more than cursory references to abstinence, they contain large amounts of material that would be

62. In some cases, states may impose work requirements on both parents in a married family receiving TANF. This, in effect, would make the married couple work twice as much for the same level of benefit when compared to single parents. To the extent the Baucus language would eliminate double work requirements on married couples, it would be useful.

63. This language is similar, but not identical, to the language in the bill's "healthy marriage promotion" program in Section 301. Whereas the language in Section 301 governs only the $200 million marriage promotion program, this language from Section 712 governs all state TANF programs.

64. However, in the case of a non-married mother, the father's income is already "disregarded" or ignored in her TANF benefit calculation. Hence, it could be argued that the Baucus language requires states to disregard the income of husbands as well. The bill clearly does not intend this, since such a policy would impose a huge unfunded mandate costing tens of billions of dollars on the states' TANF programs each year. At best, the Baucus "non-discrimination provision" is very unclear and could have radically different consequences depending on how it is interpreted.

65. Section 302.

alarming to nearly all parents. For example, "Focus on Kids," a so-called abstinence-plus program promoted by the Centers for Disease Control (CDC), teaches middle-school students and high-school students that

> there are other ways to be close to a person without having sexual intercourse…. Brainstorm ways to be close. The list may include…body massage, bathing together, masturbation, sensuous feeding, fantasizing, watching erotic movies, reading erotic books and magazines….[67]

Similarly, in "Be Proud! Be Responsible!," another abstinence-plus program promoted by the CDC, teachers are instructed to ask students to

> brainstorm ways to increase spontaneity and the likelihood that they'll use condoms. (Examples : Store condoms under mattress; eroticize condom use with partner.) Now ask [students] to suggest ways to make condom use fun and pleasurable by finishing these sentences: "Condoms could make sex more fun by….Condoms would not ruin the mood if we…."[68]

These programs are typical of the so-called abstinence-first programs that would be funded by the WORK bill. To refer to such programs as abstinence is both ridiculous and dishonest.

MASSIVE NEW SPENDING

Not content with merely repealing welfare reform, Senator Baucus adds insult to injury by demanding more money to finance the repeal. The WORK bill creates no less than 18 new spending programs. These include the following: a grant program for housing for families with multiple barriers to self-sufficiency; a grant program to promote the purchase of cars; a new tribal job training program; a new teen pregnancy resource center; a grant program for welfare staff training and welfare benefit outreach; a grant program for second chance homes; a new program for child support review; a new advisory panel on child well-being; a tribal TANF technical assistance fund; and, a new grant program for employment of non-custodial parents. The Congressional Budget Office estimates that the bill increases welfare spending by $10 billion over five years. Over a 10-year period, the new spending will amount to $23 billion.

CONCLUSION

The welfare reform passed in 1996 has been a dramatic success. Welfare caseloads have been cut in half. Employment of single mothers has surged. The poverty rates of single mothers and black children, after remaining static for a quarter century, have dropped dramatically and are now at the lowest point in U.S. history.

Ironically, all of the key elements of this successful reform were opposed by liberals in Congress. At the time of reform, liberals opposed:

- **Setting** time limits on receipt of aid;
- **Ending** the entitlement nature of funding;
- **Setting** goals and policies to reduce welfare dependence and caseloads;
- **Requiring** welfare recipients to take a job or, if no job was available, to prepare for work;
- **Making** sponsors responsible for the support of immigrants they bring to the country;
- **Cutting** benefits for able-bodied recipients who refuse to work; and,
- **Setting** goals to reduce out-of-wedlock childbearing and to strengthen marriage.

Prior to 1996, liberals in Congress created and defended a very different welfare system. This pre-reform system provided long-term cash aid to able-bodied adults who did not work, placed no time limits on receipt of aid, and rewarded single parenthood while penalizing marriage. In the strong conservative political tide of the mid-1990s, some liberals were afraid to publicly oppose welfare reform and reluctantly voted for the reform bill. Many others simply voted against it. Overall, most

66. See Robert Rector, "The Effectiveness of Abstinence Education Programs in Reducing Sexual Activity Among Youth," Heritage Foundation *Backgrounder* No. 1533, April 8, 2002.

67. Quoted in Physicians Consortium, *Sexual Messages in Government-Promoted Programs and Today's Youth Culture*, April 2002

68. *Ibid.*

liberals opposed the key principles of reform and sought to preserve most of the pre-reform system.

The attitudes of liberals in Congress on these issues have not changed. They still oppose the essential principles of the 1996 reform and seek, to the maximum extent possible, to restore the pre-reform system. However, in attempting to dismantle welfare reform and to restore the old welfare system, liberal politicians face a dilemma. An overwhelming majority of the public believe that the pre-reform welfare system was a failure and that reform, by contrast, has been a great success. Americans state they would be less likely to vote for a candidate who sought to repeal welfare reform by a ratio of four to one.[69]

American attitudes on marriage are similar. Some 86 percent of the public believe that it is important for the well-being of children that low-income parents get married and stay married.[70] Furthermore, 85 percent favor pilot programs (like those proposed by President Bush) to help reduce the number of children born outside marriage by referring interested couples to marriage education programs.[71]

Obviously, an overt assault against welfare reform or marriage is politically impossible.Therefore, liberals pursue a strategy of deception, publicly claiming to support reform, while surreptitiously working to dismantle it. The Baucus WORK bill exemplifies this strategy. The gap between what proponents claim the bill does and what it actually does is enormous. The Baucus bill creates a surreal landscape in which everything is its opposite. This includes:

- A "universal engagement" policy that does not require recipients to perform any activities;
- A 70 percent "work participation rate" that is really 10 percent and involves no work;
- A "healthy marriage promotion program" that subsidizes single mothers; and,
- An "abstinence" education program that promotes condoms and promiscuity.

Senator Baucus's efforts to restore the old-style welfare system of one-way handouts will have disastrous effects on society and the poor. The Baucus bill's indifference to marriage, the increase in rewards for out-of-wedlock childbearing, and Senator Baucus's defense of a welfare system that actively penalizes poor couples who do marry is a recipe for national disaster.

The 1996 welfare reform has been one of the greatest success stories in public policy in the last half century. Policymakers should resist all efforts to turn back the clock on reform. President Bush and the House of Representatives should refuse to compromise with liberals in the Senate in their efforts to kill welfare reform. Rather than pursuing a "reauthorization" of welfare reform that is, in reality, the demise of reform, Congress should simply appropriate funding for TANF, on a yearly basis, under the existing PRWORA law.

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69. In a November 1999 *Los Angeles Times* poll, Americans were asked: "The 1996 welfare reform bill requires welfare recipients to accept work within two years of applying for benefits and imposes a five-year lifetime limit on welfare assistance…. Let's say a candidate supports repealing welfare reform. Would that make you more or less likely to vote for that candidate...or would that have no effect on your vote one way or the other?" In response, 57 percent said they would be "less likely" to vote for a candidate who supported repeal, 13 percent said they would be "more likely" to vote for the candidate, and 24 percent said it would have "no effect."

70. A May 2002 Opinion Research Corporation poll asked: "Thinking about children in low-income single parent households, how important do you think it is for their overall well-being that their parents get and stay married?" In response, 67 percent of those questioned answered "very important," 19 percent answered "somewhat important," 5 percent answered "not too important," and 4 percent answered "not at all important."

71. The same May 2002 Opinion Research Corporation poll asked: "Would you favor or oppose pilot programs to help reduce the number of children born outside of marriage by referring interested couples to marriage education and preparation programs?" In response, 55 percent of those questioned "strongly favored" such programs, 23 percent "somewhat favored" them, 5 percent "somewhat opposed" them, and 5 percent "strongly opposed" them. A poll with similar findings was completed in the summer of 2002 in Oklahoma.