

# BACKGROUND

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## Obama's End Run on Welfare Reform, Part Two: Dismantling Workfare

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### Abstract

*Work requirements formed the foundation of the welfare reform law of 1996. However, in July, the Obama Administration issued a directive declaring that states no longer need comply with the law's work standards. Contrary to media reports, the Obama Administration is not merely "tweaking" the law's workfare system. Rather, HHS explicitly asserts that it will lower the number of recipients who are required to work or, even worse, allow states to bypass the law's work requirements entirely. The Administration is turning welfare reform on its head by jettisoning the legislative goal of reducing welfare caseloads. Under the Administration's new welfare performance standard, the pre-reform welfare system is judged a rousing success and the 1996 welfare reform is a failure.*

This paper, in its entirety, can be found at <http://report.heritage.org/bg2731>

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In 1996, Congress enacted welfare reform legislation. This reform replaced the old Aid to Families with Dependent Children (AFDC) program with a new program entitled Temporary Assistance for Needy Families (TANF). The immediate effects of welfare reform were striking.

During the four decades that preceded the 1996 welfare reform, the AFDC caseload never experienced a substantial decrease. However, within just a few years of TANF's implementation, the caseload was cut in half, and employment rates and earnings among single mothers soared.<sup>1</sup> Child poverty rates declined significantly. Roughly 3 million fewer children lived in poverty in 2003 than in 1995, including 1.2 million fewer black children, marking the lowest level of black child poverty in the nation's history.<sup>2</sup>

In July 2012, the Obama Administration issued a bureaucratic edict proposing to overturn the work requirements that formed the core of the 1996 reform law. This action clearly violated the intent and letter of the law.

This paper is the second part of a two-part series on work and welfare reform. The first part discussed the impact of workfare programs (how

### KEY POINTS

- In 1996, Congress enacted historic welfare reform, inserting work requirements into the largest cash-assistance federal welfare program. As a result, welfare caseloads dropped by half, and employment rates and earnings among welfare recipients surged.
- The work requirement was the driving force behind this success.
- In July 2012, the Obama Administration granted itself authority to "waive compliance" with the welfare reform law's work provisions and unilaterally devise new rules. These changes will lower the number of recipients who are required to work or, even worse, allow states to bypass the law's work requirements entirely.
- The Obama Administration's new policy violates the intent and letter of the law and will lead to increased numbers of welfare recipients who receive a check without performing any work activity.
- Government should change course by strengthening the reform law's work requirements and applying similar requirements to other federal welfare assistance programs.

workfare works).<sup>3</sup> This part describes the dramatic changes in the TANF work program planned by the Obama Administration.

### TANF Work Requirements

In 1996, Congress enacted welfare reform through the Personal Responsibility and Work Opportunities Reconciliation Act (PRWORA), which created the new TANF program. At the core of the TANF program are the work participation requirements in Section 407 of the act. This section establishes a workfare system with three core elements:

1. Around 30 percent to 40 percent of the “work-eligible” adult TANF caseload is required to engage in work activities.
2. Work activities are defined very broadly and include unsubsidized employment; subsidized employment; on-the-job training; up to 12 months of vocational education; community service work; job search (for up to six weeks) and job readiness training; high school or GED education for recipients under age 20; and high school or GED education for those 20 and over 20 if combined with other listed activities.
3. Individuals are required to engage in activities for 20 hours per week

if the individual has a child under age six in the home and 30 hours per week if all children are over six.

This TANF workfare framework is simple and quite flexible. It allows states a wide range of choices in fulfilling their participation standards. The TANF work requirements are actually too lenient. In the typical month, half of able-bodied recipients receive a welfare check while doing no activity whatsoever.

### The Administration’s Attack on Work Requirements

On July 12, the Obama Administration issued a bureaucratic edict declaring that state welfare bureaucracies would no longer need to comply with the work participation standards established in the 1996 welfare reform law. Under the new policy, all states and all TANF recipients could potentially be exempted from federal work requirements. This edict blatantly violated the intent and letter of the welfare reform legislation.

Contrary to press reports, the Obama Administration did not merely “tweak” the law’s workfare system. The proposed changes are not temporary responses to the current recession; they constitute a permanent long-term change in the TANF program. The Department of Health and Human Services (HHS)

asserts that it has authority to “waive compliance” with every provision in Section 407, which means all of the work rules in the TANF law.<sup>4</sup> The Obama Administration is planning to fundamentally change the TANF work rules in two ways:

*First*, in its July 12 guidance memorandum, HHS clearly states that it is empowered to change the “definitions of work activities, and engagement, specified limitations, verification procedures and the calculation of participation rates.”<sup>5</sup> HHS is proposing to alter the core elements of the TANF work rules by lowering the work participation rates and the hours of required participation and by broadening the definitions of work.

*Second*—and more radically—HHS proposes to permit states to bypass the TANF work rules of Section 407 entirely and operate under alternative standards devised unilaterally by HHS without consultation with or approval from Congress. HHS clearly explains that its aim is to develop policies and welfare rules “other than those set forth in Section 407.”<sup>6</sup>

The objective is to replace the three-part core “participation rate requirements” with alternative standards. For example, in the memo’s “HHS Priorities” section, the Administration explicitly asserts that it will encourage states to develop TANF programs that use “employment outcomes *in lieu*

1. Robert Rector and Patrick F. Fagan, “The Continuing Good News About Welfare Reform,” Heritage Foundation *Backgrounder* No. 1620, February 6, 2003, <http://www.heritage.org/research/reports/2003/02/the-continuing-good-news>.

2. Ibid.

3. Robert Rector, “Obama’s End Run on Welfare Reform, Part One: Understanding Workfare,” Heritage Foundation *Backgrounder* No. 2730, September 19, 2012, <http://www.heritage.org/research/reports/2012/09/obamas-end-run-on-welfare-reform-part-one-understanding-workfare>.

4. U.S. Department of Health and Human Services, Administration for Children and Families, “Temporary Assistance for Needy Families,” Information Memorandum, July 12, 2012, <http://www.acf.hhs.gov/programs/ofa/policy/im-ofa/2012/im201203/im201203.html> (accessed September 18, 2012).

5. Ibid.

6. Ibid.

of participation rate requirements [emphasis added]” provided in the law.<sup>7</sup> Similarly, the memo clearly asserts that HHS will focus on creating state TANF programs that use a “universal engagement system *in lieu of* certain participation rate requirements [emphasis added]” in the existing law.<sup>8</sup>

In states operating under such waivers, the law’s work requirements would be null and void. The policy will clearly waive compliance with the law’s existing work participation standard. If this is not gutting the work requirements, it is difficult to imagine what would be.

### “Fact Checkers”

Certain “fact checkers” have claimed that the Obama Administration is not guilty of gutting the law’s work requirements because the Administration will replace those requirements with new standards.<sup>9</sup> This is a distinction without much difference. If someone tears down an existing building and replaces it with another building, the first building is still gone. Under the waiver plan, states will no longer be required to comply with the work participation requirements in the TANF law. A law that no one has to obey is no longer a law.

Of course, it is possible to believe that the replacement work standards devised by HHS will be as vigorous as those in the present law, but the historical record and HHS’s own statements weigh heavily against this view. The HHS directive shows

that the replacement work rules that HHS plans to implement will be at best lenient.

As this paper explains, the Administration has clearly stated that it will weaken the law’s work rules by lowering the participation rates, exempting more TANF recipients from work, and broadening the definitions of work. Moreover, as noted, HHS plans to allow states to waive compliance with the legislative work rules entirely, replacing them with alternative systems based “universal engagement,” “employment outcomes,” or other unspecified designs. This will almost certainly eliminate any meaningful federal work participation requirements for many TANF recipients.

### Bogus Issues of “Flexibility”

The Obama Administration has claimed that the goal of its waiver policy is merely to make modest changes in the law to permit greater state flexibility. In its discussions of the waivers, the Administration has promoted a number of issues that are intended to demonstrate the inflexibility of the TANF law and the modest nature of the changes that HHS seeks.

This is simply a public relations strategy. Most of the “flexibility” issues raised by HHS are bogus. To the extent that they represent actual problems, HHS can easily address them without any waiver or change in the TANF statute. HHS has promoted these bogus issues—subsidized jobs, college and vocational

education, and participation reporting—to camouflage its backdoor dismantling of TANF’s work participation requirements or workfare system.

**Restrictions on Subsidized Jobs.** HHS contends that it needs to waive Section 407 of the law so that individuals placed in “TANF subsidized jobs” can be counted as participating in “work activities.”<sup>10</sup> Yet the TANF law already accepts participation in subsidized jobs as a countable work activity. There is no need to grant states greater flexibility on this point, and there is certainly no need to waive all of Section 407 to do so. This is a sham issue designed to camouflage the major changes that HHS is planning.

**College and Vocational Education.** HHS asserts that it seeks to grant waivers to states so that they can count post-secondary education and vocational educational training beyond one year as a work activity for purposes of fulfilling federal participation rate standards.<sup>11</sup> It is true that the current law does not allow a state to count attending college or vocational education (beyond one year) as work.

On the other hand, the typical state is required to have only 30 percent to 40 percent of its work-eligible TANF caseload participate in any of the 12 broad “work activities” listed in the law. The state is completely free to do as it pleases with the remaining 60 percent to 70 percent of its work-eligible caseload. It can let them do nothing or engage in any

7. Ibid. (emphasis added).

8. Ibid. (emphasis added).

9. For example, see Eugene Kiely, “Does Obama’s Plan Gut Welfare Reform?” FactCheck.org, August 9, 2012, <http://www.factcheck.org/2012/08/does-obamas-plan-gut-welfare-reform/> (accessed September 18, 2012).

10. U.S. Department of Health and Human Services, “Temporary Assistance for Needy Families.”

11. Ibid.

activity whatsoever that it chooses. If a state wishes, it can send all of the remaining recipients to college. Nothing in federal law prevents that. This is a sham issue intended to camouflage HHS's real objectives.

**Flexibility in Reporting Hours of Work Participation.** Many state welfare officials complain that TANF rules for reporting the number of hours that recipients participate in work activities are too complex and difficult to administer. The Obama Administration alludes to this issue when it says that TANF rules “focus attention on paper work”<sup>12</sup> and promises that its waiver policy will cut through “red tape.”<sup>13</sup>

This, too, is a sham issue. Some background is useful to understand this point. After Congress passes a law, the federal bureaucracy issues regulations that interpret and implement the law. Federal bureaucrats have wide discretion in creating and altering these regulations, but they have no authority to change the law itself. The TANF law is extremely broad and flexible with respect to state obligations to report hours of work participation. The law simply states that “the [HHS] Secretary shall promulgate regulations to

ensure consistent measurement of work participation.”<sup>14</sup>

Any reporting rules that inconvenience state welfare officials are thus contained in the HHS regulations, not in the law itself.<sup>15</sup> Of course, HHS has complete authority to alter any of these regulations. It does not need to waive any provision of the TANF law to provide state governments with greater flexibility in reporting. This “issue” is a deceptive pretext, intended to provide cover for the more radical changes that HHS is pursuing.

### Exempting Recipients from Work

HHS has defended its decision to illegally bypass the federal work standards of the TANF law by arguing that the impetus for its decision came to a considerable degree from a letter from the Nevada state government.<sup>16</sup> This letter was written by Michael Willden, the current director of welfare in Nevada. Willden is a career welfare bureaucrat who has served in the Nevada Department of Health and Human Services for nearly four decades.<sup>17</sup> HHS has emphasized that this individual currently serves under a Republican governor, Nevada Governor Brian Sandoval

subsequently stated that Nevada had not sought and would not seek any waiver from HHS.<sup>18</sup>

HHS has publicized Willden's letter as an example of the type of changes it would implement through its waiver policy.<sup>19</sup> HHS could make most of the changes in the TANF program mentioned in the letter by modifying HHS regulations rather than by overturning the TANF law itself. However, the main change sought in the letter, and one that would clearly require suspending the Section 407 work requirements in the law itself, involves explicitly weakening the TANF work requirements.

Willden's letter asks HHS to waive the federal work requirements to “exempt the hardest-to-employ population for a period of time (i.e., six months) to allow time for their barriers to be addressed and their household circumstances stabilized.”<sup>20</sup> In other words, the Nevada welfare official is urging HHS to weaken the work standards in the TANF law by permitting states to exempt more able-bodied work-eligible recipients from work activities.

In its original guidance memo, HHS declared that it would use

12. Ibid.

13. Kathleen Sebelius, letter to Senator Orrin Hatch, July 18, 2012, p. 1, <http://www.washingtonpost.com/blogs/ezra-klein/files/2012/07/Sen-Hatch-TANF-7-18-.pdf> (accessed September 18, 2012). Representative Dave Camp received an identical letter.

14. 42 U.S. Code § 607(i)(1)(A)(i) (2012).

15. The Deficit Reduction Act of 2005, which reauthorized the TANF program, contained the following language: “407 (i) ... the [HHS] Secretary shall promulgate regulations to ensure consistent measurement of work participation ... which shall include ... uniform methods for reporting hours of work by a recipient of assistance.” This provision is extremely broad, allowing the HHS almost complete flexibility in regulating state reporting. Whatever problems state officials have with reporting requirements, resolving them clearly does not require overturning the statute.

16. Michael J. Willden, letter to George Sheldon, Acting Assistant Secretary, Administration for Children and Families, U.S. Department of Health and Human Services, August 2, 2011, <http://big.assets.huffingtonpost.com/NevadaFlexibilityLetter8-2-11.pdf> (accessed September 18, 2012).

17. Nevada Department of Health and Human Services, “Mike Willden,” [http://dhhs.nv.gov/bio\\_MikeWillden.htm](http://dhhs.nv.gov/bio_MikeWillden.htm) (accessed September 20, 2012).

18. Ricardo Alonso-Zaldivar, “Obama's Welfare Waive: Gutting Rules or Tweaking?” Yahoo News, August 9, 2012, <http://news.yahoo.com/obamas-welfare-waiver-gutting-rules-tweaking-203544319.html> (accessed September 18, 2012).

19. Mickey Kaus was the first to make this point. Mickey Kaus, “NYT Proves Romney Right on Welfare,” *The Daily Caller*, August 10, 2012, <http://dailycaller.com/2012/08/10/nyt-proves-romney-right-on-welfare/> (accessed September 18, 2012).

20. Willden, letter to George Sheldon, p. 2.



waivers to alter “the calculation of participation rates” and to exempt states from the law’s “participation rate requirements.”<sup>21</sup> However, in defending its illegal waiver policy against criticism launched from Senator Orrin Hatch (R-UT) and House Ways and Means Committee Chairman Dave Camp (R-MI), HHS Secretary Kathleen Sebelius subsequently backtracked, declaring that “if a Governor proposes a plan that undercuts the work requirements established in welfare reform, that plan will be rejected.”<sup>22</sup>

Yet if exempting work eligible adults from work requirements does not undercut work requirements, what does? Clearly, the HHS pledge not to weaken the TANF work standards has little meaning. More important, as the analysis of “universal engagement” and “employment exits” below demonstrates, the actual HHS goal is not merely to weaken the work requirements in Section 407 but to bypass them entirely.

### **Work Exemptions for “Disabled” Recipients**

The HHS policy directive states that HHS will encourage states to develop an “alternative approach to measuring participation and outcomes for individuals with disabilities” in the TANF program.<sup>23</sup> However, the federal means-tested program for persons with disabilities is Supplemental Security Income (SSI), not TANF. Adults receiving TANF benefits are by definition not disabled. The HHS policy would create a new open-ended “disability” category within TANF. This would be an enormous loophole that would

permit states to lower work participation rates without appearing to do so.

Adults placed in this disability category would be fully or partially exempt from work requirements, and individuals exempted from work would generally be removed from the denominator for purposes of calculating a state’s mandatory work participation rate. Thus, the state would appear to maintain a high participation rate when the share of the TANF caseload actually engaged in work activities would fall. (This ploy is explained more fully in the next section.)

### **Shrinking the Work Rate Denominator**

The previous two proposed policies—work exemptions for the hard-to-serve and work exemptions for the disabled—are examples of one of the oldest ploys in welfare: shrinking the work rate denominator. This is a standard deception that allows welfare bureaucracies to appear to maintain high levels of work participation while, in reality, requiring few recipients to engage in work activities.

It works as follows. If a state has 100 able-bodied TANF recipients and a target work participation rate of 50 percent, that state would ordinarily need to have 50 recipients in work activities to meet its target rate. However, if the state is quietly permitted to exempt half its caseload from work participation, the denominator for purposes of calculating work participation shrinks to 50 recipients. To achieve its 50 percent target participation rate, the state would then need to engage only

25 recipients in work activities. The state would continue to proclaim loudly that half of its caseload was working when the real number was 25 percent.

This type of deception was the norm in welfare prior to 1996, when it was used regularly to deceive not just the public, but also legislators. “Shrinking the denominator” was the centerpiece of the Family Support Act, a sham welfare reform law enacted by the Democratic Congress in 1988. When Bill Clinton ran on the promise to “end welfare as we know it,” he was running against the Family Support Act and its false promises.

The 1996 welfare reform act limited the use of the shrinking-the-denominator ploy. Now the Obama Administration is seeking to revive it and other deceptive practices that were essential to the pre-reform welfare system. Such deceptive practices create the appearance of high levels of work activity among recipients when in fact little activity is being performed.

### **Redefining Work**

In its July 12 memo, HHS stated that it would exempt states from the current “definitions of work activities in the law” and ease “verification procedures.” Senator Hatch immediately responded, charging:

[T]he Department of Health and Human Services ... believes it can unilaterally grant itself the authority to exempt states from the work requirements that were a critical element of welfare reform and could allow things

21. U.S. Department of Health and Human Services, “Temporary Assistance for Needy Families.”

22. Sebelius, letter to Senator Orrin Hatch, p. 1.

23. U.S. Department of Health and Human Services, “Temporary Assistance for Needy Families.”

like bed rest, smoking cessation, and exercise to count as work activity to receive these government benefits.<sup>24</sup>

Senator Hatch went on to cite a 2005 Government Accountability Office (GAO) review of 10 states, which found that several states had sought to skirt the federal work requirements by counting welfare recipients as working if they engaged in activities such as “personal journaling,” “motivational reading,” “exercise at home,” “weight loss promotion,” and “helping a friend or relative with household tasks.”<sup>25</sup>

The GAO recommended that HHS tighten the definitions of work activity in the TANF program and develop better systems to determine whether recipients were actually performing the required hours of activity. Under President George W. Bush, HHS took steps to fix these problems. However, the Obama Administration, promising to alter the definitions of work activities in the law and weaken verification procedures, is moving strongly in the opposite direction.

Stung by the criticism from Senator Hatch and Chairman Camp, Secretary Sebelius stated in a subsequent letter that “[t]he Department will not approve a waiver that changes the definition of work requirements to include any of the activities outlined in a 2005 GAO report on TANF such as personal care activities, massage, and journaling.”<sup>26</sup>

This reply is disingenuous. Obviously, HHS would never approve a waiver or issue guidance that explicitly listed “bed rest” or “personal journaling” as a work activity. That would be politically ruinous. On the other hand, HHS clearly asserts that it can use its illegal waiver power to expand the definitions of work activities in the law.

Past experience suggests that this will mean providing new definitions of work that are broad and imprecisely defined, thereby enabling state welfare bureaucrats to smuggle a wide variety of sham activities into their alleged workfare programs. At the same time, HHS promises to reduce verification procedures that monitor state workfare programs. This will allow states to run sham work programs without public scrutiny.

The GAO report clearly shows that some state welfare bureaucracies, if left to their own devices, will game the welfare system, creating deceptive work programs that define bogus activities by recipients as work. By deliberately loosening the requirements on states, the Administration’s policy will intensify this problem.

### **The Sham of Universal Engagement**

HHS explicitly states that it will use waivers to promote state policies that use a “comprehensive universal engagement system *in lieu of* certain participation rate requirements

[emphasis added].”<sup>27</sup> Universal engagement generally means a policy of seeking to have all adult TANF recipients engage in constructive activities for at least one hour per week. Activities are defined very broadly to include things such as visiting a doctor or looking for day care.<sup>28</sup> Universal engagement can be a positive policy if used in conjunction with existing work standards.

However, HHS is not proposing that states add universal engagement to existing work participation rates; instead, it explicitly asserts that states should use universal engagement “in lieu of” the participation standards in the TANF law. Thus, the standards in the law that require 30 percent to 40 percent of the caseload to engage in clearly defined activities for 20 to 30 hours per week will be replaced by a new standard urging the entire caseload to engage in vaguely defined activities for one hour per week. This gambit follows the left’s habitual pattern of using bold but vague language (e.g., universal engagement) to camouflage efforts to weaken workfare.

### **Employment Exits as a Sham Measure of Success**

The thrust of the Administration’s new welfare policy is to exempt state welfare bureaucracies from the three-part work participation standards written into the 1996 welfare reform law. President Obama is proposing that the federal government

24. Press release, “Welfare Under the Obama Administration: Bed Rest as Work,” Office of Senator Orrin Hatch, July 13, 2012, <http://hatch.senate.gov/public/index.cfm/2012/7/welfare-under-the-obama-administration-bed-rest-as-work> (accessed September 18, 2012).

25. U.S. Government Accountability Office, *HHS Should Exercise Oversight to Help Ensure TANF Work Participation Is Measured Consistently Across States*, GAO-05-821, August 19, 2005, <http://www.gao.gov/products/GAO-05-821> (accessed September 18, 2012).

26. Sebelius, letter to Senator Orrin Hatch, p. 1.

27. U.S. Department of Health and Human Services, “Temporary Assistance for Needy Families” (emphasis added).

28. Jacqueline Kauff and Michelle K. Derr, “Achieving Higher TANF Work Participation Rates: Case Studies from Maryland and Utah,” Mathematica Policy Research, December 2008, <http://aspe.hhs.gov/hsp/08/TANFWPR/4/index.shtml#Implementing> (accessed September 18, 2012).

no longer require TANF recipients to participate in work activities but instead create an alternative system based on different outcomes. HHS asserts that it seeks to create alternative systems based “employment outcomes *in lieu of* participation rate requirements[emphasis added].”<sup>29</sup>

According to the HHS policy, to be exempt from federal work participation standards, a state welfare bureaucracy would need to “move at least 20% more people from welfare to work compared to the state’s past performance.”<sup>30</sup> Even this standard is vague because states do not actually need to fulfill it; they merely have to “demonstrate clear progress toward that goal no later than one year” after they are exempted from the old TANF work standards. Nonetheless, at first glance, this goal looks fairly impressive.

The Obama Administration will thus exempt states from the federal work requirements in the law if they increase the number of TANF cases that lose eligibility due to increases in earnings: These are called “employment exits.” There are four reasons why a 20 percent increase in the number of employment exits, although sounding impressive, is a weak or counterproductive measure of success in welfare reform.

*First*, during the current recession, the normal number of employment exits from TANF has dropped by about one-fourth. Historical data show that the number of exits will almost certainly rebound automatically by a similar amount as the economy revives. Thus, virtually every state in the U.S. will experience a 20 percent increase in employment

exits compared with its past performance as the economy moves from recession toward higher employment. This will occur automatically without any particular action by the state welfare bureaucracy. Thus, the states will become permanently exempt from the TANF work standards for doing nothing at all.

*Second*, about 1.5 percent of the monthly TANF caseload leaves the program because of increased employment each month, but an even larger number leave the caseload for unknown or unspecified reasons. To be exempt from the TANF work requirements, the average state would need to raise its monthly employment exits from 1.5 percent to 1.8 percent of caseload. It seems likely that many states could meet this target by simply collecting or reporting more accurate data on current exits from their caseloads. In other words, states could obtain permanent exemptions from TANF work standards simply through marginal improvements in recordkeeping.<sup>31</sup>

*Third*, a 20 percent increase in employment exits is actually a very small change. The average state has a monthly TANF caseload of around 40,000 families and an annual caseload of perhaps 80,000. Each month, the state has around 600 employment exits from TANF—1.5 percent of monthly caseload. Under the Administration’s new welfare system, the state can be fully exempt from the work standards in the TANF law if it raises its employment exits from 600 to 720 per month.

Why is it reasonable, fair, or wise to exempt the remaining 39,000 welfare households from workfare

participation just because an extra 120 have left the rolls? What are the remaining 39,000 households supposed to do? No one really knows, but we *do* know that, under the new welfare plan, the federal government would no longer require any of those recipients to work or prepare for work. Why is this good policy? Why is it fair to the taxpayers?

*Fourth*—and most important—an increase in employment exits is almost always a reverse indicator of reducing welfare dependence. Increases in employment exits are positively correlated with increases in caseloads and negatively correlated with caseload reduction. In other words, the number of employment exits usually rises as the welfare caseload rises and falls when the caseload falls.

How can this be? The answer lies in routine caseload turnover. Even before welfare reform, a modest number of households would exit the AFDC rolls each month while a similar number would enter the rolls. The larger the caseload, the greater the number of exits simply because there are more people in the system.

Chart 1 shows this pattern. In the pre-reform period, the AFDC caseload rose and the number of employment exits rose in parallel. After welfare reform, the opposite occurred: Except for a single year shortly after the reform (1998), the number of employment exits fell (or at least remained static) while the caseload declined.

In the 10 years prior to welfare reform (1986–1995), the number of employment exits nearly doubled, and the AFDC caseload increased by

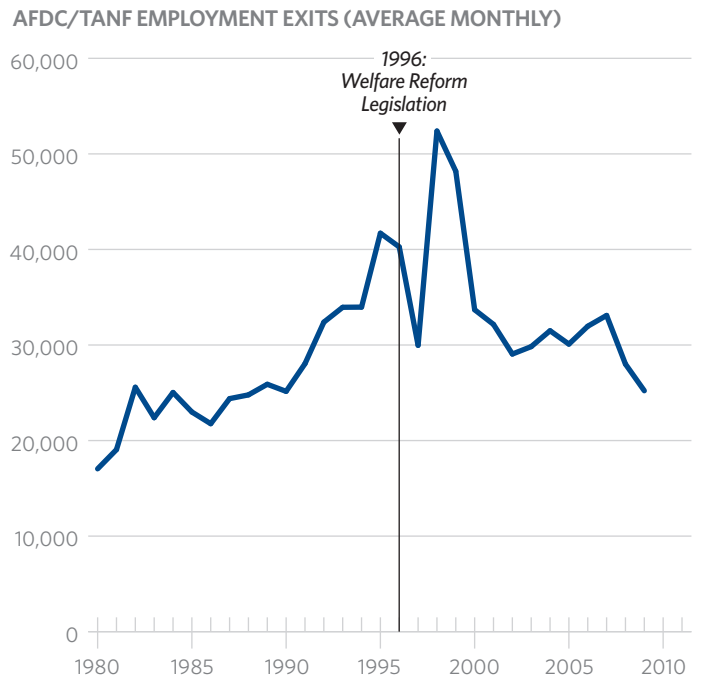
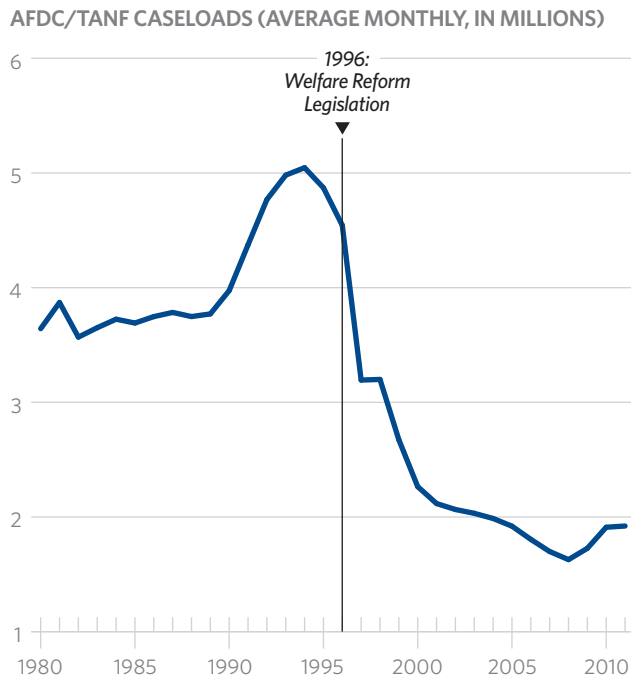
29. U.S. Department of Health and Human Services, “Temporary Assistance for Needy Families.”

30. Sebelius, letter to Senator Orrin Hatch.

31. Recently, HHS has told the press that it would use the new-hires data system to monitor employment of recipients leaving the rolls both as a baseline and to measure subsequent improvement. If true, this would greatly improve the quality of the data used.

CHART 1

## Welfare Caseloads and Welfare Employment Exits



**Source:** Overview of the AFDC Program, fiscal year 1994; Temporary Assistance for Needy Families (TANF) Program, annual report to Congress, various years.

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almost 30 percent. In the 10 years after welfare reform (1997–2006), the TANF caseload fell by 50 percent, and the number of employment exits fell by 7 percent.

Because employment exits are inherently misleading, Congress deliberately excluded them as a performance standard when crafting the 1996 welfare reform law. The Obama Administration is reviving this bogus measure and plans to focus the TANF program around it.<sup>32</sup> According to the Administration’s preferred measure of welfare performance, the pre-reform AFDC system

was a stunning success (employment exits nearly doubled), and the post-reform TANF program was a failure (employment exits declined). President Barack Obama has not merely gutted welfare reform; he has turned it on its head.

### Misleading the Public

The number of employment exits is thus a meaningless method of assessing the TANF program, but employment exits are an excellent tool for any politician seeking to deceive the public. Employment exits are a sham measure of success that

creates the impression that government is reducing welfare dependence when, in reality, the number of persons on welfare is constant or rising.

This was common practice prior to the 1996 welfare reform. Governors routinely issued press releases claiming: “Last year, Governor X helped 10,000 families leave AFDC!” The press release would fail to mention that during the same period, another 15,000 families enrolled in the program. Welfare reform sought to limit this type of deception; now the Obama Administration is reviving it.

32. The bills that reauthorized TANF in 2003 and 2005 contained performance credits for employment exits. However, these credits were not “in lieu of” the normal TANF work participation rates. In fact, these bills, rather than weakening or replacing the normal TANF work participation requirements, actually increased the work participation rate to 70 percent. The work requirements from the 1996 law were retained intact. The proposed exit credits could be applied only against the increase in the participation rate (from 50 percent to 70 percent of caseload).



## Employment Exits and Dependency Reduction

One of the primary legislative goals of welfare reform was to “end the dependence of needy parents on government benefits.”<sup>33</sup> In establishing performance standards to meet that goal, Congress deliberately rejected employment exits. It recognized that the number of persons receiving government benefits (welfare caseloads) declines only when the number of exits from the caseload exceeds the number of new enrollments. Counting exits alone is meaningless, as the historical record has made clear. For decades, millions of people exited welfare, but the AFDC caseload remained constant or increased.

To promote dependency reduction, Congress followed another path. It required states to establish workfare programs, and it set up linked performance standards: work participation rates and caseload reduction. (See part one of this series.) The result was a dramatic change. For the first time in the history of welfare, the caseload fell dramatically as welfare exits exceeded entrances for an extended period.

Now that reform system is in jeopardy. The Obama Administration has mothballed the legislative goal of reducing dependence. Its waiver policy deliberately bypasses the law’s performance standards: work participation rates and caseload reduction. In place of those standards, the Administration would focus TANF on employment exits, a measure that is positively correlated with rising dependence. This is no accident.

## Eight Positive Impacts of Workfare Revisited

The promotion of employment exits is linked to liberals’ perception of workfare. Part one of this series described the eight impacts or purposes of a workfare program:

1. Establishing fairness between taxpayers and recipients through reciprocal obligation,
2. Serving as a gatekeeping mechanism that targets resources to the truly needy,
3. Reducing unnecessary new enrollments in welfare and thereby shrinking the rolls,
4. Increasing long-term earnings potential by reducing unnecessary enrollments in welfare,
5. Reducing fraud by decreasing recipients’ ability to receive benefits while maintaining unreported employment,
6. Reducing the time spent on welfare by decreasing the utility of welfare,
7. Providing training and job placement services to help recipients to move from welfare into work, and
8. Saving taxpayer funds by reducing welfare caseloads.<sup>34</sup>

As noted in part one, liberals regard only one of these impacts—providing education, training, and employment services to welfare recipients—as important and valid.

Thus, it should be no surprise that the Administration’s new performance goal for TANF (increasing employment exits) addresses only that impact. The other seven impacts of workfare will be dismissed as policy objectives. This is not a “tweak;” it is a fundamental redirection of the TANF program.

## Model Waivers

The Obama Administration has suggested that it is not changing the TANF program greatly because it will only issue a small number of diverse, individually crafted waivers to state governments. In reality, the waiver process will likely be broader and more uniform. In the future, HHS would likely issue a series of guidance letters that more fully outline its priorities and the types of waivers that it will readily approve. Most states will submit waiver requests that fit the models suggested by HHS.

HHS will thus establish a pattern of routine model waivers that will become prevalent among the states. This will replicate the pattern of the waiver process under the old AFDC program, in which the key features of most waivers were quite similar. By outlining models for readily approved waivers, HHS will, in effect, establish a new foundation for the TANF program without congressional input or approval.

## Will Only Liberal States Seek Waivers?

Liberal states are likely to seek waivers to opt into the alternative system fairly quickly, but over time, many states with moderate or

33. 42 U.S. Code § 601(a)(2) (2012).

34. For a more detailed discussion, see Rector, “Obama’s End Run on Welfare Reform, Part One: Understanding Workfare.”

conservative political orientations are likely to choose the alternative performance measures as well. No matter what their political leadership, most state welfare bureaucrats will have a strong impetus to seek exemptions from the work requirements in the TANF law and place themselves under the new systems that feature universal engagement, employment exits, or other lenient performance measures.

States with poor or mediocre performance are likely to be the earliest subscribers to the Obama Administration's new policy because the new "work standards" will be more lenient than the current requirements. Like most other people, welfare officials will rarely choose rigorous requirements when weaker ones are available. Over time, because of this predilection, most states will adopt the Obama Administration policies.

This is especially true because the TANF law imposes significant financial penalties on states that fail to meet the work participation requirements in Section 407. However, the Administration's alternative systems will impose no financial penalties for failed performance. State welfare administrators are under great pressure to avoid even the possibility of financial penalties against their states. Over time, this will create a strong impetus for most states to exempt themselves from the old work requirements and adopt the alternative systems.

If allowed to stand, the Obama Administration's policy will, within a few years, make the law's actual work requirements a dead letter. The

Administration's new policies will pervade the TANF program.

### **Will TANF Caseloads Increase?**

In most circumstances, relaxing work requirements would significantly increase welfare caseloads. However, under the welfare reform law, the amount of federal funding given to states to operate the TANF program is fixed. If states increase their TANF caseloads, they must pay for the increase out of state funds.<sup>35</sup> Even liberal states will be reluctant to do this. Consequently, even when the federal work requirements are eliminated, most states are likely to maintain modest job search and other policies that can prevent large caseload growth. However, the strong federal work standards that led to dramatic drops in caseload, increases in employment, and declines in child poverty will be gone. The impetus to reduce dependence created by the 1996 reform law will wither away.

In addition, liberals have long sought to increase federal TANF funding. An increase in federal TANF funding coupled with a removal of the TANF work requirements would lead to substantial increases in future TANF caseloads.

Liberals have also sought to expand the pool of welfare recipients by creating a new cash welfare program for single mothers that would supplement TANF. This new program would have no work requirements. Secretary of Commerce Rebecca Blank is a prominent proponent of this approach, and the Administration is likely to promote

such policies in the future.<sup>36</sup> Of course, merely softening the work requirements in TANF goes a considerable way toward accomplishing the goals of the supplemental TANF program.

### **Conclusion**

Federal work requirements in the TANF program form the foundation of the popular welfare reform law of 1996. These work standards have three parts: They require 30 percent to 40 percent of able-bodied TANF recipients to engage in any of 12 different work activities for 20 to 30 hours per week. In July 2012, the Obama Administration unilaterally and illegally granted itself authority to waive compliance with all of the work provisions in TANF.

HHS has declared that the work requirements written in the law are no longer legally binding on state governments and that they can and will be replaced by alternative rules devised unilaterally by the HHS bureaucracy. This action grossly violates the intent and letter of the welfare reform law.

In its guidance memorandum and related documents, HHS outlined the types of changes it was seeking in the TANF program. HHS stated that it would:

1. Lower the already lenient work participation rates in TANF by exempting substantial and loosely defined groups of recipients from the work rates;
2. Likely broaden the definition of work activities;

35. Alternatively, states could divert more federal TANF funds to pay welfare benefits for larger caseloads. In either case, the state would perceive the increased funding for welfare benefits as a financial loss to the state.

36. Rebecca M. Blank, and Brian K. Kovak, "Helping Disconnected Single Mothers," University of Michigan, National Poverty Center *Policy Brief* No. 10, April 2008, [http://www.npc.umich.edu/publications/policy\\_briefs/brief10/policy\\_brief10.pdf](http://www.npc.umich.edu/publications/policy_briefs/brief10/policy_brief10.pdf) (accessed September 18, 2012).

3. Replace the requirement that recipients engage in work activities for 20 hours to 30 hours per week with looser standards, perhaps as little as one hour per week; and
4. Entirely replace the TANF work participation requirements with alternative standards based on employment exits.

All of these changes are likely to substantially increase the number of TANF recipients who receive a check without working.

Stung by criticism that it was weakening the work requirements in welfare, the Obama Administration released a subsequent letter stating that some or all of the states receiving future waivers would be required to increase the number of recipients who left welfare due to employment by 20 percent or at least to make progress toward that target. In reality, this is a miniscule change. To meet this standard, the typical state would merely need to increase the number of monthly employment exits from 1.5 percent to 1.8 percent of caseload.

Moreover, employment exits are a misleading statistic that has been used deceptively within the welfare system for decades. Historically, the number of employment exits

increases as welfare caseloads increase and decreases when welfare caseloads fall. In reality, increases in employment exits are negatively correlated with reductions in caseloads and dependence. For this reason, Congress deliberately excluded employment exits as a performance measure when it crafted the 1996 welfare reform law.

Now the Obama Administration is seeking to make employment exits the central performance standard of a radically revised TANF program. Paradoxically, by this standard, the pre-reform AFDC program was a stunning success: Employment exits nearly doubled in the decade before reform and caseloads increased by a third. By the same deceptive standard, the post-reform TANF program has been a decided failure: Both exits and caseloads have fallen. The Obama Administration is not merely gutting welfare reform; it is standing it on its head.

Some 95 percent of the public believe that able-bodied recipients of government aid should be required to work or prepare for work as a condition of receiving assistance. By that standard, the existing TANF work rules are already too lenient. Half of able-bodied TANF recipients receive a welfare check while performing no activity at all.

In addition, the federal government runs more than 80 means-tested welfare programs that provide cash, food, housing, medical care, and social services to low-income individuals. In 2011, these programs cost \$927 billion. Over 100 million Americans received benefits from these programs at an average cost of \$9,000 per recipient. At the beginning of the year, only three of these 80 programs included a significant work requirement: the earned income refundable credit, the additional child refundable credit, and TANF. Under the President's plan, the TANF work requirements will be weakened or eliminated in many states.

The federal government should take the opposite course. Congress should increase the work participation rates in TANF to cover more recipients. In the long term, it should establish strong work participation standards in other programs, such as food stamps, public housing, unemployment insurance, and Medicaid. Regrettably, the Obama Administration is quick-marching in the opposite direction.

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