The Heritage Foundation
LEADERSHIP FOR AMERICA

LEGAL MEMORANDUM

No. 84 | AUGUST 8, 2012

Welfare Reform's Work Requirements Cannot Be Waived

Andrew M. Grossman

Abstract
Under the guise of providing states greater "flexibility" in operating their welfare programs, the Obama Administration now claims the authority to weaken or waive the work requirements that are at the heart of welfare reform. But Congress intended that those requirements be absolutely mandatory in all instances and specifically withheld any authority to weaken or waive them. Waiving the work requirements that are at the center of the 1996 welfare reform is not only terrible policy, but also a violation of the President's constitutional obligation to "take care that the laws be faithfully executed."

This paper, in its entirety, can be found at **http://report.heritage.org/lm84**

Produced by the Center for Legal & Judicial Studies

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 stands as perhaps the most important entitlement reform in the nation's history, chiefly because of its core requirement that able-bodied parents eligible for welfare assistance work, search for work, or train to work. Its centerpiece (and the most controversial provision at the time of its passage) is Section 407, "Mandatory Work Requirements," which sets out an absolute requirement that state welfare programs achieve specific work-participation rates or forfeit federal funding.

Even after President Bill Clinton twice vetoed welfare reform legislation, Congress refused to budge on the core requirement of Section 407, insisting on strong work incentives to discourage abuses and to help lift recipients off of welfare and out of poverty. And it worked: Employment surged, caseloads dropped, and child poverty plummeted.[1]

Under the guise of providing states greater "flexibility" in operating their welfare programs, the Obama Administration now claims the authority to weaken or waive the work requirements that are at the heart of welfare reform. In particular, it argues that Section 1115, which provides waiver authority for states

Key Points

- The 1996 welfare reform law requires that able-bodied parents eligible for welfare assistance work, search for work, or train to work. Its centerpiece is Section 407, which sets out an absolute requirement that state welfare programs achieve specific work-participation rates or forfeit federal funding.
- Under the guise of providing states greater "flexibility" in operating their welfare programs, the Obama Administration now claims the authority to weaken or waive these work requirements.
- But the law is clear that Section 407's work requirements are absolutely mandatory and cannot be waived.
- The waiver authority cited by the Obama Administration specifically excludes Section 407, and the text and structure of the statute demonstrate that Congress intended to preclude the federal government and the states from weakening or waiving work requirements.

to establish demonstration projects, authorizes it to approve state programs that "test approaches and methods other than those set forth in section 407," including different "definitions of work activities and engagement." In this way, states could evade Section 407's work-participation requirement without sacrificing federal funding.

SECTION 407 ESTABLISHES A STAND-ALONE REQUIREMENT FOR STATE WELFARE PLANS THAT BROOKS NO EXCEPTIONS, BEFITTING ITS STATUS AS THE CORE COMPONENT OF THE 1996 REFORM. IT IS ALSO ABSENT FROM THE LIST OF REQUIREMENTS THAT MAY BE WAIVED UNDER SECTION 1115.

But the Obama Administration's claim that it may weaken or waive work requirements is contrary to law. Section 407 establishes a stand-alone requirement for state welfare plans that brooks no exceptions, befitting its status as the core component of the 1996 reform. It is also absent from the list of requirements that may be waived under Section 1115. Indeed, to eliminate any possible ambiguity as to whether the work requirements could be waived immediately following passage of the 1996 reform, a separate provision specifically states that waivers "shall not affect the applicability of section [407]."

The Obama Administration's argument that the authority to waive a separate section that merely mentions Section 407 places all work requirements at the Administration's mercy simply beggars belief.

1996 Act Established "Mandatory Work Requirements"

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (1996 Act) replaced the failed Aid for Families with Dependent Children (AFDC) program, which perversely encouraged dependence on government by offering states additional federal funding as their welfare rolls grew.[2] The new program, Temporary Assistance for Needy Families (TANF), offered funding to states with programs that met certain conditions. Foremost among these conditions were that states require able-bodied welfare recipients to engage in "work activities" and that the state achieve specified work-participation rates for welfare recipients.

Section 407 lays out these requirements in clear, imperative language. The statute contains two tables specifying minimum work-participation rates, one for all families receiving assistance and one for two-parent families receiving assistance.[3] A state receiving TANF funding "shall achieve the minimum participation rate" specified in each table for each applicable year.[4] For 2002 and thereafter, the applicable participation rates are 50 percent for all families and 90 percent for two-parent families.[5] To prevent gaming, the statute even contains a provision specifying the precise method of calculating participation rates.[6]

The work requirements for welfare recipients are equally clear and equally mandatory. The statute provides that "if an individual in a family receiving assistance...refuses to engage in work..., the State shall" either "reduce the amount of assistance" to that family on at least a pro rata basis or simply "terminate such assistance."[7] States can decline to impose a penalty for violations only in three circumstances: for "good cause," for exceptions established by the state and approved by the U.S. Department of Health and Human Services (HHS), and for a single parent where child care is otherwise completely unavailable.[8] Such exceptions are not counted, however, in calculating states' work-participation rates.[9]

It is apparent from the face of Section 407 that Congress was

1. *See generally* Robert Rector and Patrick F. Fagan, PhD, 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. Robert Rector, Why Congress Must Reform Welfare, Heritage Foundation Backgrounder No. 1063, December 4, 1995, http://www.heritage.org/research/reports/1995/12/bg1063nbsp-why-congress-must-reform-welfare.
3. 42 U.S.C. § 607(a).
4. 42 U.S.C. §§ 607(a)(1), (a)(2).
5. *Id.*
6. 42 U.S.C. § 607(b).
7. 42 U.S.C. § 607(e)(1).
8. 42 U.S.C. §§ 607(e)(1), (e)(2).
9. 42 U.S.C. § 607(b)(1)(B).

concerned that HHS, which administers TANF, or states would attempt to evade the law's strict work requirements. To prevent backsliding, it legislated in great detail, defining terms with specificity and setting hard caps on exemptions.

For example, rather than leave the matter to administrative discretion, Section 407 enumerates 12 "work activities"—including subsidized and unsubsidized employment, on-the-job training, and vocational training—that satisfy the state and individual work requirements.[10] It specified the number of hours per week that family members would be required to work to be considered "participating in work activities."[11] It put a hard cap of 30 percent on the proportion of a state's welfare recipients who could participate in educational activities and still be counted as engaged in work.[12] Finally, the law requires HHS to oversee and verify states' compliance with all work requirements.[13]

In addition to the penalties for individuals refusing to work, the 1996 Act established penalties for states that did not comply with Section 407. States that failed to cut off or reduce assistance to such individuals would lose between 1 percent and 5 percent of their TANF funding in the subsequent year, amounting to millions of dollars.[14] And states that failed to meet the minimum work-participation rates specified in Section 407 would lose 5 percent of their federal funding in the subsequent year, increased by 2 percentage points for each year of noncompliance, up to 21 percent.[15] In this way, Congress gave the work requirements real teeth.

Waiving Work Requirements

On July 12, 2012, HHS issued an "Information Memorandum" to state welfare plan administrators regarding "waiver and expenditure authority under Section 1115."[16] Despite the prosaic title, the memorandum signaled a major shift in policy for HHS regarding the mandatory nature of the work requirements contained in Section 407.

HHS, the memorandum explained, "is encouraging states to consider new, more effective ways to meet the goals of TANF, particularly helping parents successfully to prepare for, find, and retain employment."[17] To achieve these goals, the memorandum announced that HHS would accept applications for waivers from TANF requirements "to allow states to test alternative and innovative strategies, policies, and procedures that are designed to improve employment outcomes for needy families." Specifically, "to improve employment outcomes," HHS would exercise its Section 1115 waiver authority to "waive compliance" with Section 407 and authorize states to adopt different "definitions of work activities and engagement, specified limitations, verification procedures, and the calculation of participation rates."[18]

The memorandum contained a single paragraph of legal analysis supporting HHS's novel contention that it could waive any aspect of Section 407:

> Section 1115 authorizes waivers concerning section 402.... While the TANF work participation requirements are contained in section 407, section 402(a)(1)(A)(iii) requires that the state plan "[e]nsure that parents and caretakers receiving assistance under the program engage in work activities in accordance with section 407." Thus, HHS has authority to waive compliance with this 402 requirement and authorize a state to test approaches and methods other than those set forth in section 407, including definitions of work activities and engagement, specified limitations, verification procedures, and the calculation of participation rates.[19]

10. 42 U.S.C. § 607(d).
11. 42 U.S.C. §§ 607(c)(1)(A), (1)(B).
12. 42 U.S.C. § 607(c)(1)(D).
13. 42 U.S.C. § 607(i); see also 42 U.S.C. § 609(a)(15) (imposing penalties for states' failure to comply with work-participation verification procedures).
14. 42 U.S.C. § 609(a)(14).
15. 42 U.S.C. § 609(a)(3).
16. Memorandum from Earl Johnson, Director, Office of Family Assistance, to States administering the TANF Program and other interested parties (July 12, 2012), at 1, *available at* http://www.acf.hhs.gov/programs/ofa/policy/im-ofa/2012/im201203/im201203.html.
17. *Id.*
18. *Id.* at 2.
19. *Id.*

That same day, Representative Dave Camp (R–MI), Chairman of the House Ways and Means Committee, and Senator Orrin Hatch (R–UT), Ranking Member of the Senate Finance Committee, sent a letter to HHS Secretary Kathleen Sebelius requesting that she provide "a detailed explanation of your Department's legal reasoning" underlying its assertion of authority to waive Section 407's requirements.[20]

The Secretary responded a week later with a three-page letter explaining that "Republican and Democratic Governors have requested more flexibility in welfare reform" and, in particular, that governors of both parties had supported legislation in 2005 to broaden waiver authority.[21]

Accompanying Secretary Sebelius's letter was a one-page attachment setting forth the Administration's "Legal Basis for Utilizing Waiver Authority in TANF." This document recapitulates the legal basis offered in HHS's earlier Information Memorandum—i.e., that because Section 1115 authorizes waiver of requirements in Section 402 and Section 402 mentions Section 407, Section 1115 authorizes HHS to waive Section 407.[22]

HHS, the Secretary's letter further explains, "has long interpreted its authority to waive state plan requirements under Section 1115 to extend to requirements set forth in other statutory provisions that are referenced in the provisions governing state plans." As an example, it mentions Wisconsin's "Work Not Welfare" program, which included a waiver of rules related to the distribution of child support contained in Section 454, despite the fact that Section 1115 only references the child support state plan provisions of Section 457 (which, in turn, references Section 454). Even if there were doubt as to this authority, the document continues, Congress has ratified HHS's more expansive interpretation by declining to amend it.[23]

THERE CAN BE NO QUESTION BUT THAT, BY DEFAULT, SECTION 407 APPLIES TO ALL STATES ACCEPTING TANF FUNDING. HHS DOES NOT DISPUTE THIS POINT, NOR COULD IT.

Finally, the document dismisses the argument that a separate provision, Section 415, precludes HHS from waiving Section 407's work requirements, on the basis that this limitation applied only to the "former AFDC program" and "does nothing to restrict the Secretary's waiver authority with respect to the current TANF program."[24]

Lack of Legal Authority to Waive Work Requirements

By its own terms, Section 407 establishes a set of obligations on states accepting TANF funding from the federal government. It expressly conditions their entitlement to funds on satisfying specified "work requirements." It contains no exception to its reach and no provision giving the Secretary of HHS authority to relax or waive its requirements. There can be no question but that, by default, it applies to all states accepting TANF funding. HHS does not dispute this point, nor could it.

The questions that HHS's actions raise, however, are (1) whether the Secretary possesses authority from some other statutory source to excuse states accepting TANF funding from full compliance with Section 407's requirements and (2), if so, whether that authority is limited by any other provision. As to the first question, HHS points to Section 1115's waiver authority, but as is discussed below, that provision cannot be read to reach Section 407. As to the second, even if Section 1115 were found, standing alone, to authorize the waiver of Section 407's requirements, it may still be trumped by the more specific language of Section 415, which arguably precludes the waiver of work requirements and, in any case, confirms Congress's intention that Section 407's work requirements not be subject to waiver.

Section 1115 Waiver Authority. HHS argues that Section 1115 authorizes it to waive Section 407's work requirements. It does not. Section 1115 provides, in relevant part:

20. Letter from Dave Camp, Chairman, House Ways and Means Committee, and Orrin Hatch, Ranking Member, Senate Finance Committee, to Kathleen Sebelius, Secretary of Health and Human Services (July 12, 2012) (hereinafter "Camp/Hatch Letter"), *available at* http://waysandmeans.house.gov/UploadedFiles/7.12.12_TANF_work_requirements_letter.pdf.
21. Letter from Kathleen Sebelius, Secretary of Health and Human Services, to Orrin Hatch, Ranking Member, Senate Finance Committee (July 18, 2012) (hereinafter "Sebelius Letter"), *available at* http://www.washingtonpost.com/blogs/ezra-klein/files/2012/07/Sen-Hatch-TANF-7-18-.pdf.
22. *Id.* at 4.
23. *Id.*
24. *Id.*

> In the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of [various human welfare programs], in a State or States—(1) the Secretary may waive compliance with any of the requirements of section 302, 602, 654, 1202, 1352, 1382, or 1396a of this title, as the case may be, to the extent and for the period he finds necessary to enable such State or States to carry out such project[.][25]

(Because it refers to U.S. Code provisions, rather than the organic statute, its reference to Section 602 corresponds to Section 402 of the Social Security Act.)

Section 402, in turn, defines what it means to be an "eligible state"—i.e., one that is eligible to receive a TANF block grant.[26] In particular, it requires a state that is seeking funding to "submit[] to the Secretary a plan" in the form of a "written document that outlines how the State intends to" carry out various requirements for federal funding.[27] Among other things, a state must outline how it intends to "[e]nsure that parents and caretakers receiving assistance under the program engage in work activities in accordance with section [407]."[28]

This provision, HHS argues, allows it to waive Section 407's work requirements. But that contention can be rejected on three grounds.

The first and simplest is the negative-implication canon, or *expressio unius est exclusio alterius* (the expression of one thing implies the exclusion of others). Section 1115 lists seven provisions the requirements of which the Secretary may waive. Section 407 is not among them. Ergo, the Secretary has no authority to waive its requirements. The enumeration of statutory provisions subject to waiver manifests congressional intent to limit the Secretary's discretion, not to allow her free rein over the entirety of Title 42.[29]

THE ENUMERATION OF STATUTORY PROVISIONS SUBJECT TO WAIVER MANIFESTS CONGRESSIONAL INTENT TO LIMIT THE SECRETARY'S DISCRETION, NOT TO ALLOW HER FREE REIN OVER THE ENTIRETY OF TITLE 42.

Second, the Secretary ignores the actual language used in Sections 402 and 407. Section 407 clearly establishes freestanding requirements for state programs receiving TANF funding and does not depend on Section 402 for its effectiveness. Its text contains commands for states participating in TANF: They "shall achieve the minimum participation rate" and "shall reduce the amount of assistance otherwise payable" to a family whose members refuse to work.[30] These provisions establish independent obligations on states participating in TANF and are effective irrespective of any requirement of Section 402. In other words, even had Section 402 omitted any reference to Section 407, they would still continue in force; a state would merely be relieved from "outlin[ing]" in a "written document…how the State intends to satisfy" any portion of Section 402.

This interpretation is confirmed by Section 402's limited reference to Section 407's requirements. As described above, Section 407 imposes two separate types of requirements for states: (1) that they attain certain "minimum participation rate[s]" and (2) that they impose penalties on any recipient of assistance (with certain exceptions) who "refuses to engage in work."[31] But Section 402 refers only to the latter requirement; it does not so much as mention the minimum participation requirements. Accordingly, those requirements cannot possibly be among the "requirement[s] of section [402]" that Section 1115 authorizes the Secretary to waive. And there is no basis in the text of Section 407 to distinguish between the two types of work requirements; both are specified in the same imperative language as freestanding commands on participating states.[32]

25. 42 U.S.C. § 1315(a)(1).
26. 42 U.S.C. §§ 602(a), 603(a)(1)(A).
27. 42 U.S.C. § 602(a)(1)(A).
28. 42 U.S.C. § 602(a)(1)(A)(iii).
29. *See, e.g., United States v. Giordano*, 416 U.S. 505, 514 (1974).
30. 42 U.S.C. §§ 607(a)(1), (a)(2), (e)(1).
31. *Id.*
32. *Compare* 42 U.S.C. §§ 607(a)(1), (a)(2) *with* 42 U.S.C. § 607(e)(1).

Third, the Administration's legal argument ignores the distinction between Section 402, which is concerned with states' discretion in carrying out their TANF programs, and other provisions (including Section 407) intended to deprive them of any discretion. Section 402 lays out the minimum contents for a state plan that is "eligible" for funding, requires that the plan be submitted in a "written document," and requires the state to certify that it will carry out the provisions of the written plan.[33] This mechanism allows the states discretion as to how they structure and operate their TANF programs within the parameters allowed by the statute. That discretion may be broadened by Section 1115 waivers that relax Section 402 requirements.

THE STATUTORY STRUCTURE REFLECTS THAT CONGRESS DID NOT INTEND TO GIVE THE STATES UNLIMITED DISCRETION WITH RESPECT TO ALL ASPECTS OF THEIR PROGRAMS AND, IN PARTICULAR, WITH RESPECT TO WORK REQUIREMENTS.

But the statutory structure reflects that Congress did not intend to give the states unlimited discretion with respect to all aspects of their programs and, in particular, with respect to work requirements. This is why minimum work-participation requirements are nowhere mentioned in Section 402; Section 407 affords states zero discretion as to whether they will meet these requirements, such that there is no reason for the states to "outline" their preferred policy choices. They have no choice, other than declining to seek TANF funds.[34] Conversely, because states have some discretion as to how they intend to implement the individual work requirements for welfare recipients, they are required to outline how they intend to exercise that discretion.[35] There is no basis in Section 402 to conclude, however, that their failure to do so—for example, if the outlining requirement is waived—somehow absolves them from carrying out the individual work requirements altogether.

To the contrary, Congress carefully and deliberately distinguished between areas where the states would have some discretion (and where waivers might be appropriate) and those where they would not (and waivers would not lie). This is apparent in comparing the broad and discretion-conferring language of Section 402 with the absolute commands of Section 408, which specifies nonwaivable "prohibitions" and "requirements," and of Section 409, which specifies in comprehensive fashion penalties for states' violation of TANF requirements. Section 408 contains a number of bedrock requirements for all state TANF programs, such as prohibiting assistance to families without minor children.[36] Although containing three separate penalties for violations of Section 407's work requirements, Section 409 does not impose penalties for any "requirement" of Section 402.[37] Instead, it establishes a number of additional requirements for state TANF programs. As a result, states are not penalized for legitimate exercise of their discretion under Section 402, but they are for violations of the requirements of Sections 407, 408, and 409.

The history of Section 402 also shows that Congress intended this distinction. Prior to the 1996 Act, Section 402 contained all requirements for state welfare programs while providing the states substantially less flexibility in the structure and operation of their programs. It opened with the command that "[a] State plan for aid and services to needy families with children *must*..." and proceeded through the subsequent nine pages of the official U.S. Code to enumerate in excruciating detail every requirement for state programs, all of them mandatory.[38] Accordingly, Section 1115 (which did then, as now, apply to Section 402) permitted the Secretary to waive any requirement whatsoever respecting states' welfare programs.

TANF, however, scrapped the prior approach, replacing the specific strictures of Section 402 with general requirements that afforded states substantial flexibility in the design

33. 42 U.S.C. § 602(a)(4).
34. *See* 42 U.S.C. § 607(a)(1) (work requirements apply only to "a State to which a grant is made).
35. In particular, 42 U.S.C. 607(e)(1) grants states some discretion to establish "exceptions" to the recipient work requirement, although they remain subject to the minimum work-participation rate requirements.
36. 42 U.S.C. § 608(a)(1).
37. 42 U.S.C. § 609(a)(3)(A), (a)(14)(A), (a)(15)(A).
38. 42 U.S.C. § 602(a) (1994) (emphasis added).

of their programs, over which the Secretary retained waiver authority to provide still-further flexibility.[39] But where Congress sought to preclude state flexibility, as with work requirements, it used mandatory language and placed those requirements in separate provisions not subject to Section 1115.

Notably, the sole example the Administration provides in support of its argument that it may waive requirements outside of those provisions enumerated in Section 1115 concerns a child and spousal support program structured in the same way as the old Section 402—that is, before it was amended by the 1996 Act. Section 454, which is subject to Section 1115 waiver, establishes requirements for state child and spousal support programs. Among other things, "[a] State plan for child and spousal support must…provide that amounts collected as support shall be distributed as provided in section [457]," which in turn provides rules for the distribution of support payments.[40]

Given this wording and structure, it is at least arguable that the distribution rules, although in another section, are incorporated by reference and that HHS may therefore waive them; but the present-day Section 602 is materially different, setting out only a "written document" requirement, and does not incorporate requirements from other sections. That HHS previously waived child and spousal support distribution rules therefore provides no support at all for its broad assertion of waiver authority with respect to TANF. Moreover, there is in any case a strong argument that HHS's waiver of spousal and child support distribution rules was itself unlawful. That HHS may have acted unlawfully in the past, in a low-profile waiver that did not attract legal challenge, does not sanction its latest overreaching.[41]

THE STRUCTURE OF THE TANF STATUTE ALSO CUTS AGAINST THE ADMINISTRATION'S ARGUMENT THAT CONGRESS RATIFIED HHS'S BROAD ASSERTIONS OF WAIVER AUTHORITY; TO THE CONTRARY, CONGRESS ACTED TO PICK AND CHOOSE THE REQUIREMENTS TO WHICH IT WOULD APPLY.

Finally, the structure of the TANF statute also cuts against the Administration's argument that Congress ratified HHS's broad assertions of waiver authority; to the contrary, Congress acted to pick and choose the requirements to which it would apply. The Administration's interpretation, however, would render the distinctions drawn by Congress in the text and structure of the 1996 Act entirely ineffective, as if it had merely amended Section 402 and left it at that. Of course, Congress did no such thing, and a court would not so casually deprive amendments made by Congress of any meaning.[42]

Indeed, when a previous Secretary raised a similar argument concerning his Section 1115 authority, the court rejected it in favor of "[t]he plain language of the statute."[43] There is little doubt that a court would do the same in this instance, perhaps without any need to wade into the intricate details of the TANF program.

Section 415's Limitation on the Secretary's Waiver Authority. That the Secretary lacks authority to waive Section 407's work requirements is confirmed by another provision of the 1996 Act: Section 415, which provides additional limitations on the Secretary's waiver power with respect to work requirements. Section 415 is obtusely written, and the interplay of its subsections may be subject to differing interpretations with regard to the current dispute, but all possible interpretations cut strongly against the Secretary's claim that she has authority to waive the work requirements of Section 407.

Section 415(a) sets out rules governing the treatment of waivers in place at the time the 1996 Act came into effect and those "granted subsequently."

- First, for waivers already in effect, states may continue to receive funding without complying with

39. 42 U.S.C. § 601(a).

40. 42 U.S.C. §§ 654, 657.

41. *Cf. INS v. Chadha*, 462 U.S. 919, 944 (1983) ("By the same token, the fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it….").

42. *United States v. Wells*, 519 U.S. 482, 495–96 (1997) (rejecting ratification argument where Congress reenacted statute).

43. *Portland Adventist Medical Center v. Thompson*, 399 F.3d 1091, 1099 & n.9 (9th Cir. 2005).

the Act's new requirements, although only until the expiration of the waiver, without regard to any extensions.[44]

- Second, for waivers submitted prior to the Act's passage (August 22, 1996) and approved before TANF's full effectiveness (July 1, 1997), states may continue to receive funding without complying with the Act's new requirements so long as the waiver does not increase federal costs.[45]

- However, a third provision states that, notwithstanding the exception for plans submitted and approved during the interim period, "a waiver granted under section [1115] or otherwise which relates to the provision of assistance under a State program funded under this part (as in effect on September 30, 1996) shall not affect the applicability of section [407] to the State."[46]

The Administration argues that this third provision "has no application" to present-day waivers "because it is a transitional provision applicable only to waivers under the former AFDC program,"[47] but there is some ambiguity in the language of the statute. Chairman Camp and Senator Hatch argue that it applies more broadly, precluding any "waiver granted under section [1115]" from waiving Section 407's work requirements.[48] The Secretary reads it more narrowly to apply only to "a waiver granted under section [1115]...which relates to the provision of assistance under a State program funded under this part (as in effect on September 30, 1996)."

To the extent that Section 415 is ambiguous, the courts are likely to defer to any reasonable interpretation offered by the agency charged with administering it,[49] and the Administration's interpretation is at least plausible in light of the placement of this provision in a subsection regarding "continuation of waivers" and its parallel placement with the interim-waiver provision. (Also, for what little it may be worth, the legislative history says nothing on this point one way or the other.)

THE ADMINISTRATION'S INTERPRETATION OF SECTION 415, EVEN IF ACCEPTED BY A COURT, IS ACTUALLY FATAL TO ITS POSITION REGARDING SECTION 1115 AUTHORITY.

But the Administration's interpretation of Section 415, even if accepted by a court, is actually fatal to its position regarding Section 1115 authority. It concedes, as it must, that Congress allowed states obtaining interim-period waivers to ignore every single new requirement of the 1996 Act *except for the work requirements contained in Section 407*, which states were required to implement immediately upon their becoming effective. This is in tension, to say the least, with the Administration's more fundamental argument that those same states could, under subsequent Section 1115 waivers granted after the 1996 Act went into effect, abandon those same work requirements that Congress specifically required that they implement even under interim-period waiver plans. It makes no sense to suggest that Congress was so concerned about ensuring that the work requirements were not waived that it inserted a stop-gap provision to prevent waiver during the interim period following the passage but then authorized HHS to waive those requirements at will at any time thereafter.

The absurdity of this argument demonstrates its fallacy: If the Administration's interpretation of Section 415 is correct, then its interpretation of Section 1115 to allow it to waive work requirements is surely wrong.

A Violation of the President's Constitutional Duty

Late last year, President Barack Obama stated, "We're going to look

44. 42 U.S.C. § 615(a)(1)(A).
45. 42 U.S.C. § 615(a)(2)(A).
46. 42 U.S.C. § 615(a)(2)(B).
47. Sebelius Letter, *supra* n.21, at 4.
48. Camp/Hatch Letter, *supra* n.20.
49. *Chevron v. NRDC*, 467 U.S. 837, 842–43 (1984); *but see Christensen v. Harris County*, 529 US 576, 587 (2000) ("[I]nterpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law—do not warrant Chevron-style deference."). Of course, deference is unavailable where the standard canons of statutory interpretation definitively resolve the question of a statute's meaning. *New York v. EPA*, 413 F.3d 3, 18 (D.C. Cir. 2005) (explaining that the court must first consider "whether, based on the Act's language, legislative history, structure, and purpose, Congress has directly spoken to the precise question at issue").

every single day to figure out what we can do without Congress."[50] He has followed through on that promise, weakening legal requirements enacted by Congress regarding immigration,[51] education funding,[52] and now welfare. But the President's power to act unilaterally in domestic affairs is limited both by his constitutional obligation to "take care that the laws be faithfully executed"[53] and by the laws that Congress passes.

In this instance, the President has chosen to disregard that obligation. There is absolutely no indication, in the text of the 1996 Act or otherwise, that Congress intended to allow the waiver of that Act's centerpiece provision: its work requirements. To the contrary, Congress placed them in a stand-alone section not subject to waiver authority, gave them independent force and effect, and even precluded their waiver for state welfare plans approved during the interim period following passage of the 1996 Act.

To waive those requirements is a violation of the law, a violation of the Constitution's vesting of legislative power in the Congress, and a violation of the President's fundamental duty to faithfully carry out the laws.

*—**Andrew M. Grossman** is a Visiting Legal Fellow in the Center for Legal & Judicial Studies at The Heritage Foundation.*

50. Remarks by the President on College Affordability, Oct. 26, 2011, http://www.whitehouse.gov/the-press-office/2011/10/26/remarks-president-college-affordability.
51. Matthew Spalding, PhD, An Imperial Immigration Policy, June 19, 2012, http://blog.heritage.org/2012/06/19/imperial-immigration-policy/.
52. Lindsey M. Burke, States Must Reject National Education Standards While There Is Still Time, Heritage Foundation Backgrounder No. 2680, April 16, 2012, http://www.heritage.org/research/reports/2012/04/states-must-reject-national-education-standards-while-there-is-still-time.
53. U.S. Const., Art. II, § 3.