— STRIKING OUT —

House Republicans Offer a Troubling Vision for Welfare Reform

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STRIKING OUT:
HOUSE REPUBLICANS OFFER A TROUBLING VISION FOR WELFARE REFORM

EXECUTIVE SUMMARY

On November 10, 1993, a group of 160 House Republicans introduced H.R. 3500, the "Responsibility and Empowerment Support Program Providing Employment, Child Care and Training Act." For those who hoped for a constructive, bipartisan welfare reform bill in this session of Congress, H.R. 3500 should be cause for serious concern. In numerous instances, the bill identifies emotionally-charged issues connected with families in the welfare system, and offers "tough" responses. The bill would create a number of situations in which states would be required or permitted to cut assistance to families; would likely result in less education and training assistance for poor families than in the current system; and would require a large number of parents to work for welfare, at a rate of pay far below the minimum wage. While there are a limited number of potentially positive features, the bill's overall effect would be to make life harsher and harder for the families who depend on public assistance, without addressing any of the underlying problems that force families to rely on welfare.

Here are some of the key features of H.R. 3500 and the problems they present:

The "AFDC Transition and Work Program": Under H.R. 3500, most families entering AFDC would enter a "transition component" for up to two years. At the two year point, families would enter the "work component," and be required to work 35 hours a week in return for continued receipt of AFDC.

On the surface, these provisions might seem similar to others now being discussed, under which families entering AFDC would initially be provided needed education and training, and then required to work after the two year point. However, under the H.R. 3500 design:

- A state's transition component **could** include all of the elements of the current JOBS Program, but the only **required** component is a job search program. There would be no requirement that a state actually provide education or training services for AFDC recipients. States would also be permitted to waive the "transition component" altogether for cases determined to be "employment-ready." Moreover, after two years in the transition component, a parent would enter the "work component;" from then on, the state would be prohibited from providing education and training assistance for the parent through the AFDC system.

- In the work component, every participant, without exception, would be required to work 35 hours a week in return for receiving AFDC (unless a state opted for 30 hours of work and 5 hours of job search). In the median state, where the AFDC grant for 3 is $367 a month, this would be the equivalent of paying $2.43 an hour. In Mississippi, where the

grant for 3 is $120 a month, it would be the equivalent of paying $.79 an hour. Based on how the bill is drafted, if a family were only receiving a partial AFDC grant, e.g., $50 a month, a family would still be subject to a 35 hour a week work requirement.

In short, while a number of proposals involve some combination of education and training followed by work requirements, H.R. 3500 is distinctive both because it does not require states to provide education and training, and because it requires work at what is often a small fraction of the minimum wage.

Funding for the Transition/Work Program is authorized through FY98. Based on its phase-in schedule, the projected costs for the program begin to explode in FY99. According to preliminary staff estimates of the Congressional Budget Office, federal costs for the Transition/Work Program would be $3.5 billion in FY98, and would increase to $7.3 billion in FY99.

H.R. 3500 proposes an extraordinarily harsh penalty structure for violation of program rules. For both the first and second failures, the family's AFDC and food stamps are reduced by 25% until the failure to comply ceases. For the third failure, the family is made ineligible for AFDC assistance forever. If the first failure lasts more than a month, the family immediately moves into the second sanction; if the second failure lasts more than three months, it is considered the third failure. In what may be an inadvertent drafting error, the bill would apply its penalties for any failure to comply; there is no exception for instances where there is "good cause" for failure to comply. The approach taken could mean, for example, that a parent who was late for three appointments could lose eligibility for assistance for life, or that if an individual had poor attendance one week, and then didn't respond to two notices, her family would be ineligible for aid for life.

State Option to End AFDC for a family: Under H.R. 3500, a state could opt to end AFDC completely for a family after an individual has been required to participate in the work component for three years. The state would be required to continue Medicaid, but all cash assistance could be terminated. Since a state could choose to waive the "transition component" for families determined employment-ready, this provision would mean in practice that a state could permanently terminate assistance to a family after three years.

In light of the bill's penalty provisions, it is difficult to see any possible rationale for this provision. A family consistently violating program rules would already have been disqualified from AFDC for life before reaching the three-year point. Accordingly, this provision would permit states to end a family's AFDC where the parent had diligently worked for her assistance for three years, yet still was unable to find a job.

Denial of Assistance for Additional Child: Unless a state exempted itself, the state would be required to deny aid in cases where a child was born to an AFDC recipient or to anyone who received AFDC at any time during the ten month period ending with the birth of the child.

In recent years, several states have sought federal approval to test "family cap" or "child exclusion" proposals, which typically seek to deny assistance for a child conceived while a parent is receiving AFDC. Generally, the rationale for a child exclusion provision is dubious. AFDC families are not typically large — 72% have one or two children. AFDC family size has declined sharply over time — in 1969, 32% of AFDC families had four or more children, while in 1992, only 10% had four or more children. A Wisconsin study found that fertility rates for AFDC mothers were lower than for other mothers, and declined with time on AFDC. In the median state, the grant increment as a family goes from three to four is $68 — increasing the poverty of the family, and not likely to meet the most minimal needs of an infant. Accordingly, there is no legitimate justification for even a narrowly tailored child exclusion.

This provision, however, is not narrowly tailored: it applies wherever a child was born to an AFDC recipient or to anyone who received AFDC at any time during the ten month period ending with the birth of the child. For example, suppose Mr. Smith deserts Ms. Smith when she is seven months pregnant. Having no income, she applies for AFDC. Under H.R. 3500, no aid will be paid for her infant after the child is born, because Ms. Smith was an AFDC recipient at the time of the child's birth.

Denial of Assistance Until Paternity Established: Under H.R. 3500, unless a state exempts itself, the state would be required to deny cash aid for a child whose paternity was not established (with exceptions only for children conceived as a result of rape or incest, or where the state determines that efforts to establish paternity would result in physical danger to the relative).

Under current law, a parent already must cooperate in establishing paternity and support, and can be removed from the grant for failure to cooperate without good cause. State child support enforcement caseloads often reach or exceed 1,000 per worker, and the length of the process also greatly depends on the speed and efficiency of the judicial system. Even where a parent is fully cooperating, the process of establishing paternity may take months or years. In some instances, e.g., where the absent parent has left the jurisdiction and his whereabouts are unknown, paternity may never be established for reasons beyond the control of the custodial parent. Notwithstanding, H.R. 3500 would deny assistance for children where system delays or an uncooperative father is the cause of their failure to have paternity established. Further, under the bill, the entire family would be ineligible for aid if the mother was unable to provide the father's name and the address of the father or his immediate relatives. Thus, in instances where, e.g., the father had moved and his whereabouts were unknown, there could be no cash aid whatsoever for the entire family, apparently forever.

It is entirely legitimate to expect cooperation (or a showing of good cause) in establishing paternity, but the law already requires that. This bill would go further by denying aid for months, years, or forever when the parent is fully cooperating.

Denial of Assistance for Failure to Verify Children's Health Examinations: The bill provides that aid will not paid for a child under age 6 unless there is written verification that the child has been examined by a physician every six months from birth to age 19 months, and every year thereafter.

This provision does nothing to improve access to medical providers for poor families; rather, if the parent is unable to find a doctor who will take Medicaid, the apparent recourse for the state is to cut off AFDC. Further, there will be situations in which a family comes into AFDC when, for instance, the child is three or four or five years old. Apparently, if the state determines that there were not sufficient examinations at an earlier age, the state's mandated response will be to deny AFDC. As drafted, there is no ability for a parent to correct the problem — if there is not verification of prior receipt of care, the child is simply ineligible until he or she reaches the age of 6.

Lower benefits for new state residents: In instances where an applicant family has resided in the state for less than twelve consecutive months, H.R. 3500 would permit the state to determine eligibility and amount of assistance based on the rules of the prior state. In other words, if a family moved from Mississippi, where the AFDC grant for three is $120, the new state could choose to pay only $120 for the first twelve months in the state.

This type of discrimination against new residents of a state has already been enjoined by a court in California, **Green v. Anderson**, 811 F.Supp. 516 (E.D. Cal. 1993), appeal pending, and there is no serious question but that it is impermissible under long-established Supreme Court precedents. Furthermore, H.R. 3500 would permit a state to apply the eligibility and benefit rules of the prior state even if the family had never received AFDC in the prior state, and it was undisputed that the family moved to the new state for reasons wholly unrelated to the AFDC program.

State Option to Require Permission to Move: H.R. 3500 would permit states to provide that the family must receive the permission of the state agency before taking any action that would require a change in the educational institution attended by a dependent child. In other words, it appears that if the family was in danger of being evicted, the family would need to seek the state's permission before moving. In a world where AFDC grants are not enough to pay fair market rents, families are periodically evicted or forced to move. Instead of recognizing that low grants might affect residential stability, the response is simply to require permission to move.

State option to end AFDC and use funds as block grant. H.R. 3500 would give states an option to cease providing AFDC. A state electing this option could receive 103% of the total amount the state was entitled to receive in FY92. The only requirement would be that the funds be used to carry out "any program established by the State to provide benefits to needy families with dependent children," and that the state must file an annual report accounting for its expenditures. If the Secretary of HHS concluded that the state had expended "any amount" provided for any purpose other than to carry out a program of cash benefits to needy families, the Secretary would be required to reduce the amount payable to the state by 20%.

For many states, this option would be unattractive, since there is no inflation adjustment or population increase adjustor. A state would risk grave difficulty in any future recession where there might be an increase in the number of poor families needing help. However, if any state did seek to exercise the block grant option, the bill's drafting presents a number of questions. For example, it appears that there is no state maintenance of effort requirement —

could the state could receive 103% of whatever it received in FY92, with no state matching funds requirements? Under the penalty provision, it appears that a state would face a 20% reduction if it misspent one dollar, or if it misspent the entire block grant amount. As drafted, it appears that state freedom to use or misuse the funds would be virtually unlimited.

Denial of Aid to Minor Parents: H.R. 3500 would provide that unless a state enacted a law exempting itself, aid could not be payable for a child if either parent of the child was a minor.

Under current law, states already have an option to require a minor parent to live at the home of her parents in order to receive AFDC (with certain good cause exceptions). Moreover, teen parents who are not in school are immediately subject to requirements of the JOBS Program, and can be required to return to school. The state is able to provide needed child care to make it possible for the teen parent to return to school or stay in school. Thus, the parent's involvement in AFDC provides the state an opportunity to link the teen parent with needed social services, education programs, child care, and other support services to make it possible to complete schooling. Programs that provided service and imposed requirements on AFDC teen parents have been found to increase school attendance and completion rates. However, any state that exercised the H.R. 3500 provision would lose the ability to use AFDC as a means of helping teen parents; moreover, the denial of aid would mean that infants and young children were denied assistance solely because of the age of their parents.

Job Search/Work Programs for Non-Custodial Parents: H.R. 3500 contains a provision requiring states to develop job search/work programs for non-custodial parents of AFDC children in arrears on their support obligations. After sending a warning notice, the state would seek a court order requiring the noncustodial parent to participate in a job search program for at least two (but not more than four) weeks; if the arrearage were not sufficiently reduced within thirty days, the noncustodial parent would be required to participate in a work program for at least 35 hours a week (or at least thirty hours a week if job search were also required).

Many states and localities have expressed interest in recent years in running some type of program for noncustodial parents with some mix of requirements and services. Because there is little known about the types of programs likely to be most effective, the federal government initiated the Parents Fair Share Demonstration Project, an effort to test and evaluate a range of approaches to programs for noncustodial parents. The issue of program effectiveness is critical, because with limited employment and training dollars, states generally want to spend them in ways that will best raise family incomes or reduce AFDC costs. However, H.R. 3500 is highly prescriptive, mandating a job search/work sequence for all affected persons regardless of individual circumstances or needs.

Running a program for noncustodial parents would cost money, but the bill does not provide any. In recent years, some states have sought federal waivers to run noncustodial parent programs using JOBS dollars. This approach is sometimes controversial, because it may mean that scarce resources are shifted away from providing services to custodial parents. However, H.R. 3500 does not seem to provide for using JOBS or work/transition dollars to implement this requirement; it just requires states to do it. Accordingly, this provision may

have the political virtue of declaring that it imposes requirements on noncustodial parents, but it brings states no closer to being able to do so.

Restrictions on Assistance to Legal Immigrants: Under current law, an immigrant residing in the United States illegally is not eligible for AFDC, food stamps, SSI, or most other federal programs. In contrast, a lawful immigrant resident is typically eligible for assistance under the same terms as other needy individuals. H.R. 3500 would generally end assistance in sixty-one federally assisted programs for legal non-citizens. After the bill was phased in, the only exceptions would be for those over age 75 (who have resided in the United States for at least five years), and for refugees in their first six years in the United States. In all other cases, the individual would be ineligible for assistance.

Among the programs affected are AFDC, food stamps, SSI (assistance to the elderly, blind, disabled); non-emergency Medicaid services, school breakfast and lunch, nutrition assistance for the elderly, foster care, higher education assistance, job training, legal assistance, emergency food and shelter, child care, and numerous others. Some of the restrictions are difficult to understand. For example, the bill makes legal immigrants ineligible for child welfare services or for foster care and adoption assistance. If there is an allegation that an immigrant child is being abused or neglected, what is the state supposed to? The bill bars eligibility for services under the Public Health Service Act relating to immunizations against vaccine-preventable diseases, or for screening, referrals and education regarding lead poisoning in infants and children. Can it possibly be good social policy to seek to deter immigration by increasing the likelihood of communicable diseases or lead-poisoned children? The bill prohibits states from providing child care assistance to immigrants under the Child Care and Development Block Grant or At-Risk Programs. If one does not want immigrants to receive public assistance, presumably one wants them to work. Why deny needed child care?

As these examples underscore, H.R. 3500 does not represent a carefully considered proposal for federal policy relating to immigrants. The H.R. 3500 authors propose no change in the rules governing national immigration policy. Instead, they simply propose to deny essential or sensible services for legal immigrants who are already present in the United States, and who without those services will risk serious harm, or potentially present a public health hazard to their communities.

Capping low income programs: H.R. 3500 would raise funds by restricting the growth of six federally assisted programs (AFDC, Food Stamps, Supplemental Security Income, Section 8 Housing Assistance, Public Housing, and the Earned Income Tax Credit). If aggregate spending for those programs exceeded inflation plus two percent, each program would have to be cut.

This provision would undercut the very concept of a safety net structure. The whole idea of these programs is that they will be available in times of economic downturn, when more people need help. But under this design, when more people need help, program spending will be cut to keep it essentially constant from year to year. Moreover, there is no allowance for the fact that Congress sometimes passes legislation to expand a program. For example, a large EITC expansion has already been enacted into law, and is viewed by many as a

centerpiece of the federal effort to provide support to the working poor outside the welfare system. Yet the very fact of EITC expansion could result in or contribute to aggregate spending for the six specified programs exceeding their cap. And, the use of an aggregate cap would mean that programs would risk cuts for reasons wholly unrelated to their own circumstances. For example, if there were a sudden downturn, and AFDC and Food Stamp spending went up, it would be necessary to cut the Earned Income Tax Credit (along with other programs) to compensate. Or, if the number of aged or disabled increased more rapidly than 2%, other programs could have to be cut.

Most fundamentally, if H.R. 3500 sponsors generally want to restrict the growth of federal spending, why limit the scope to entitlement programs affecting low income families. Why not include all entitlement programs equally, including those affecting moderate and upper-income voters?

H.R. 3500 would combine a number of federal food assistance programs into a single block grant to the states. First year funding would be capped at 95% of current spending for the programs; thereafter, the funding would be adjusted for population growth and food price inflation, but not for other factors. By imposing the initial reduction in funding and then the subsequent limits on growth, this provision is estimated to cut federal spending by $8.3 billion over five years.

Again, H.R. 3500 seeks to generate savings by ensuring that programs cannot respond to increased need. During recessions, the number of poor people grows more rapidly than population growth. Tieing any funding to population growth is a means of preventing the program from being available to all who need it during times of economic downturn.

Program Expansions: There are a small number of positive features of H.R. 3500. It would permit states to improve earnings exclusion rules, so that a state could disregard up to the first $200 and 50% of the remainder of earned income each month. It would permit states to let a family keep up to 50% of its current AFDC benefit if an AFDC parent marries, the marriage would result in AFDC ineligibility, and the combined family income is below 150% of poverty. It would permit states to disregard for recipients, for up to two years, up to $10,000 of assets associated with a microenterprise and to count as income only the net profits of the microenterprise, for up to two years; states could also disregard up to $10,000 in savings placed in a special account for purchase of a home, change of residence, for education or training, or to otherwise improve employability.

Conclusion: H.R. 3500 reflects a dismaying turn in the welfare reform debate. It is a bill that appears to draw its strength from every harsh and negative stereotype about the families who rely on the AFDC system. For virtually every problem or issue it identifies, the bill's basic approach is to intensify existing penalties or create new ones.

Since its introduction, H.R. 3500 has sometimes been cited by those asking why it has taken the Administration so long to develop its own bill. The implicit premise is that if H.R. 3500's authors could develop and fund a bill mandating work after two years, why can't the Administration. The answer, at least in part, is that this bill makes no offer of education and

training services, creates a work-for-welfare structure in utter derogation of the minimum wage, does not authorize funding for the most expensive parts of the program, and fails to address the multitude of critical details that would have to be faced if the bill were ever to be seriously considered as legislation.

Perhaps the most useful feature of the bill is an unintended byproduct: it carries an important message about the cost of revamping the system. The H.R. 3500 transition/work components, with all their problems, still cost vastly more than current law. The Congressional Budget Office staff preliminarily estimate that in the sixth year of implementation, these provisions would result in new federal costs of $7.3 billion. This fact was obscured in initial publicity about the bill, because these costs don't arise until after the five year CBO measurement period, and because the bill was accompanied by spending cuts for immigrants nutrition programs and other low income programs. However, the cost of the transition/work component highlights an important reality that both parties will have to face in the upcoming debates: any attempt to expand the number of participants in education, training, and work in the AFDC system will cost more than the current system. There are better and worse ways to do it, but the ultimate decisions in welfare reform will have to involve making decisions about the best use of scarce resources. The singular accomplishment of H.R. 3500 is to add additional billions in expenditures to the AFDC system, and at the same time make life harder for the families who need assistance.

STRIKING OUT:
HOUSE REPUBLICANS OFFER A TROUBLING VISION FOR WELFARE REFORM

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Analyzing H.R. 3500 is sometimes difficult, because in a number of instances, the bill would create extreme and highly arbitrary results, and it is difficult to tell whether the arbitrary results were intended or inadvertent.

Among its key features, H.R. 3500 would:

- Establish the "AFDC Transition and Work Program." Most families entering AFDC would enter a "transition component" for up to two years. At the two year point, families would enter the "work component," and be required to work 35 hours a week in return for continued receipt of AFDC.

- require each state (which did not pass a law exempting itself) to deny AFDC benefits for a child whose paternity has not been established, with exceptions only for rape, incest, or a risk of physical harm to the custodial parent;

- require each state (which did not pass a law exempting itself) to deny AFDC payments for a minor parent under age 18;

- permit states to provide new state residents with the benefit level of their prior state for the first year of residency;

- require each state (which did not pass a law exempting itself) to deny assistance for a child born while the family is receiving AFDC;

- impose a cap on spending for AFDC, Supplemental Security Income, Public Housing, Section 8 Housing, Food Stamps, and the Earned Income Tax Credit. In any year when total spending for these programs exceeds inflation plus 2%, all of the programs would be reduced;

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- combine nine food and nutrition programs (including food stamps) into a block grant, with a first year ceiling of 95% of total spending for the programs, and a restriction in subsequent years so that program spending can only increase to take into account population growth and food price inflation.

There are a small number of positive features of the bill. It would:

- permit states to improve earnings exclusion rules, so that a state could disregard up to the first $200 and 50% of the remainder of earned income each month;

- permit states to let a family keep 50% of its current AFDC benefit for up to twelve months if an AFDC parent marries, the marriage would result in AFDC ineligibility, and the combined family income is below 150% of poverty; this provision would only apply to individuals first becoming AFDC recipients after October 1, 1993;

- permit states to disregard for recipients, for up to two years, up to $10,000 of assets associated with a microenterprise and to count as income only the net profits of the microenterprise, for up to two years; states could also disregard up to $10,000 in savings placed in a special account for purchase of a home, change of residence, for education or training, or to otherwise improve employability.

The bill is lengthy and this document does not seek to summarize all its features. Instead, it discusses a number of major provisions, and raises a set of concerns that will have to be addressed in any serious welfare reform effort in the coming months.

1. **Under H.R. 3500, families entering AFDC would begin a two year "transition component," after which they would be subject to requirements for a "work component." There would be no requirement that a state actually provide education and training assistance to families in the transition component. In the work component, families would work for welfare, often at a rate far below the minimum wage.**

Under H.R. 3500, the JOBS Program would eventually be replaced by the "AFDC Transition and Work Program." Generally, a non-exempt individual would be subject to requirements of the "transition component" during her first twenty-four months of assistance. After twenty-four months, she would be subject to requirements of the "work component."

To understand the H.R. 3500 approach, it is important to appreciate what it means to be in the "transition component" or the "work component." Then, it is important to appreciate what the combination of exemption rules, participation rates, and funding would likely mean in practice for state programs and for affected families.

a. **Under the "transition component," a state need not provide any education or training services.**

Under H.R. 3500, all non-exempt families entering AFDC would initially be subject to requirements to participate in the "transition component." In important respects a state's

transition component could be very different from the JOBS Program under current law. A state's transition component could include the range of education and training services contained in the JOBS Program. However, the only required service in the transition component is a job search program. If a state wished to do more, it could do so. However, a state would be in full compliance with the law if the only service offered was job search.[1]

In what may or may not be a drafting error, it appears that the transition component need not include such basic JOBS requirements as orientation, assessment, conciliation, and good cause determinations.[2]

The "transition component" could last no longer than the first 24 months of assistance. However, for many people, it could be much shorter. The state could choose to shorten or not allow any transition component for individuals based on their desire to work or based on the state's determination of employment readiness.

Whatever its limits, the transition component would be the only period during AFDC receipt in which a family could potentially have access to education and training services, because the "work component" would mandate full-time participation in a work activity. Since states would be prohibited from allowing a transition component to continue past twenty four months, the rules governing how to count "24 months" would be of great significance.

Any proposal that seeks to limit education and training to the first two years of AFDC and then requires work faces a number of difficult "counting" issues. For example:

- Should months count against the limit when an individual is awaiting participation in an activity but the activity is not yet scheduled to begin, or there are no available openings?

- Should months count against the limit when due to limited resources, there are no appropriate services to the individual?

- Should extensions be allowed in individual circumstances for good cause?

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[1] There is a requirement that, in accordance with regulations developed by the Secretary, individuals participating in education full-time and making satisfactory progress be regarded as participating in the transition component. However, there is no requirement that the state provide any assistance in helping individuals enter educational programming; the mandate instead simply involves approving programs in which individuals are participating.

[2] Based on the way the bill is drafted, it is not clear what JOBS requirements apply to the transition component. There is a requirement that each person subject to transition plan requirements must cooperate with the state in developing a plan describing the state's and individual's responsibilities. However, as drafted, there is no general provision specifying that requirements of the JOBS program also apply to the transition component. As a result, it would seem to follow that the basic JOBS requirements for orientation, assessment, employability plans, conciliation, good cause, etc., would not be required in the transition component. This may or may not be the intent of the bill authors.

- Should extensions be provided when an individual had been required to participate in a program that was plainly deficient or inappropriate?

- How should time be counted for individuals who leave AFDC during the two years — If they return, should they have the remaining months on their two year clock, or should the clock start over again? Should it matter if they return one year later, or five years later? What about those who leave AFDC due to employment, and subsequently return due to job loss?

- How should time be counted for individuals who are employed, e.g., fifteen or twenty or twenty five hours a week, but in a job paying so little the family is still AFDC-eligible?

- Is the 24 month limit a lifetime limit, i.e., if Ms. Smith receives AFDC and participates in the transition component when she is 20 and 21 years old, is the state precluded from providing another education or training activity ten years later?

Generally, H.R. 3500 does not deal with any of the difficult counting issues. It appears that H.R. 3500 would operate on the rule that a month of assistance as a non-exempt individual counts against the 24 month limit regardless of whether services are available or appropriate, and regardless of whether the individual could demonstrate good cause in support of an extension.[3] It also appears that the 24 month limit is a lifetime limit, and that the state would have no discretion to waive it in individual cases. This approach has the virtue of offering a "bright line," but would be utterly arbitrary in numerous cases, and cannot fairly be characterized as an approach that would provide two years of the education and training for families in need.

In effect, the "transition component" design creates the appearance of two years of access to education and training, but only the appearance. A state could choose to run a job search only program, or as minimal an education and training program as it chose. A state would be free to make its own definition of "employment ready," and could therefore deny any "transition component" access whenever the state wished to do so. Even if a state never made an offer of services, or rejected an individual's request to receive services, the twenty-four month clock would continue to run.

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[3] This appears to be the case, though it is not entirely clear how months would be counted under H.R. 3500. The bill provides that a "qualified individual" could not participate in the transition component after the first 24 months for which the individual was a qualified individual. After the program is fully phased in, it appears that a person will be a "qualified individual" in each month that she is non-exempt and receives AFDC. However, for purposes of phasing in the program, the bill draws a distinction between those applying for aid on or after October 1, 1994, and those continuously receiving aid without interruption. "Qualified individuals" are all non-exempt individuals "eligible for aid under the plan who applied for such aid on or after October 1, 1994..."; and, after October 1, 1998, all non-exempt individuals "eligible for aid under the plan..." This appears to mean that, for those applying for AFDC on or after October 1, 1994, each month for which an individual is non-exempt and receives AFDC counts as one of the twenty-four months; for those continuously receiving aid without newly applying, the twenty-four month count will begin as of October 1, 1998.

H.R. 3500 is entitled the "Responsibility and Empowerment Support Program Providing Employment, Child Care and Training Act," and states that among its purposes are "to provide welfare families with the education, training, job search, and work experience needed to prepare them to leave welfare within 2 years." It is distressing to see that a bill which includes the word "training" in its title and declares a purpose of providing education and training does not require that states provide any.

b. After two years (or potentially earlier), parents would enter the "work component." In the "work component," individuals would be required to work for welfare, at a rate often far below the minimum wage.

Under H.R. 3500, after a parent has completed the transition program (either because 24 months have elapsed, the state has terminated transition participation, or the individual volunteers for the work component), the "work component" would begin.[4] The work component could be:

- Community work experience (CWEP), i.e., work for a public or non-profit agency as a condition of receiving an AFDC grant;
- Work supplementation, in which AFDC grants would be diverted to employers, who would then pay wages to recipients; or
- another work program approved by the federal government.

In AFDC-UP families, at least one parent would be required to participate in work activities for 32 hours a week, and job search for 8 hours a week.[5] In all other families, the parent must participate in the work component for 35 hours a week (or 30 hours of work and a job search requirement).

While the bill permits use of either work supplementation or CWEP, it seems likely that states would ultimately rely heavily on CWEP (community work experience) for the work component. Under current law, usage of work supplementation has been minimal; in the last available federal reporting, a total of 751 people were in work supplementation for the entire country.[6] Though the bill does broaden the circumstances in which work supplementation

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[4] In what may be a drafting error, the bill also states that a qualified individual who is not participating in the transition component must be required to participate in the work component. It is unclear how this language is intended to be reconciled with the participation rate requirements for each program.

[5] It is not clear how this provision is intended to relate to the "transition component." Can AFDC-UP family members participate in the transition component during their first two years of assistance, or must they immediately begin the work component? It is also not clear how these 32 hour work requirements relate to 16 hour UP work requirements of current law since, e.g., parents under 25 without a diploma can satisfy the current requirements through participation in education.

[6] See Greenberg, *Welfare Reform on a Budget* (CLASP, June 1992), Appendix B.

can be used, the program has historically been used on a very limited basis, and it seems unlikely that it could suddenly become a vehicle for hundreds of thousands of work slots.[7]

In practice, then, the typical work component participant would be in a 35-hour-a-week CWEP slot, and in return, would receive no wage but rather would be paid the amount of AFDC for which the family would be eligible. This would mean that in the median state, a parent of two children with no income but AFDC would be working 35 hours a week for a $367 AFDC grant, which translates to the equivalent of $2.43 an hour. In Mississippi, where the AFDC grant for a family of three is $120 a month, a parent of two children would be working for compensation at the rate of $.79 an hour. And, in every state, the hours worked would not count for the worker for purposes of qualifying for unemployment compensation, Social Security, or the Earned Income Tax Credit. Parents who wanted to work but could not find a job would be required to work full-time without the rights, status, or compensation of a minimum wage worker.[8]

Any bill requiring work at the two year point faces a set of difficult issues about the nature of the required obligation and about fair compensation for work. One key issue is whether a parent who is willing to work should be given an opportunity to work for wages instead of working for welfare. Another is the appropriate rate of compensation. While some pending proposals have emphasized the importance of work for wages, and others have relied on CWEP, all major proposals up to now have always recognized that there needs to be some

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[7] The way in which work supplementation is broadened is also of concern. Under current law, states are prohibited from using work supplementation slots to fill existing unfilled position vacancies. The intent is to ensure that wage subsidies are used for new jobs, rather than to simply reduce the cost of labor for employers without creating new job openings. H.R. 3500 would eliminate the prohibition on using work supplementation for existing jobs, thus opening the door to potential abuse.

[8] Some supporters of the H.R. 3500 approach suggest it is unfair to evaluate the compensation for work by dividing the AFDC grant by the minimum wage, since all AFDC families receive Medicaid, and most AFDC families (86%) receive food stamps. Accordingly, it is suggested, the value of the entire "package" is greater than the AFDC grant.

One problem with this approach is that the duty to work 35 hours a week is solely tied to receiving AFDC. If Ms. Smith only receives food stamps and Medicaid, she is not subject to the 35 hour a week work obligation. But if she receives any AFDC whatsoever, the obligation attaches.

Second, while there have been a range of proposals introduced in the debate on national health care, no one has yet proposed that the uninsured be provided Medicaid and be required to work off the value of the Medicaid in community work experience programs.

Third, while recognizing the value of food stamps and Medicaid, the fact remains that there is no relationship between a flat 35 hour work obligation and the amount of assistance received by the individual family. The AFDC/Food Stamp combination for a family of three with no other income is $652 in the median state, but varies from $1191 in Alaska to $412 in Mississippi. Moreover, food stamp allotments may vary with housing and other expenses. For any particular family size, some families receive more in food stamps, and some receive less; and some AFDC families receive none at all.

Finally, consider the broader implication of this defense of the H.R. 3500 approach. Suppose any private employer were charged with violating the minimum wage laws. The fact that his company provided health insurance for its workers would not be material; nor could he justify paying workers $2 an hour by pointing out that he also provided some workers with food coupons, and that the value of those coupons might possibly bring some of the workers in some families near or above the minimum wage.

relation between hours worked and compensation at the minimum wage.[9] In contrast, H.R. 3500 simply imposes a 35-hour obligation on all, in utter derogation of the concept of the minimum wage, and without any attempt to address the inequities posed by such an approach.

One obvious set of inequities involve the between-state problems, i.e., that a family receiving $120 in Mississippi has the same obligation as a family receiving $923 in Alaska. Another set of inequities involve families in the same state with different sizes and grants. For example, in the median state, a family of two with no other income receives an AFDC grant of $310, while a family of four receives a grant of $435; despite receiving these different levels of assistance, they would have the same 35 hour a week obligation. In addition, there are other inequities which the bill authors may or may not have considered. For example:

- Many families do not receive the state's maximum grant, because they have other income. For example, a family receiving social security children's benefits might also receive a small amount of AFDC, e.g., $20. Under H.R. 3500, receiving any amount of AFDC, however small, triggers a 35 hour a week work obligation.

- Some families may not be "exempt," but are not appropriate cases for a 35-hour-a-week obligation. For example, to be exempt, the individual must be working 30 hours a week. Accordingly, Ms. Smith, working 28 hours a week in a private sector job, would be subject to an additional 35-hour-a-week CWEP obligation.

In short, a uniform 35-hour-a-week obligation presents a set of serious and arbitrary inequities.

A uniform 35-hour-a-week obligation cannot be justified as fair compensation for benefits received, or as simply enforcing a principle of reciprocity. Neither can it be justified as a reasonable way to expend limited resources if the goal is to improve the employability of participating families. The Manpower Demonstration Research Corporation (MDRC) has extensively evaluated state work-welfare programs. When MDRC has sought to measure the impact or added impact of unpaid work experience, it has generally found no impact on employment or earnings of participants; the only instance where a statistically significant impact was found was for one sub-group of applicants in one site.[10] A recent MDRC

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[9] This does not necessarily mean payment of the minimum wage. Some proposals suggest a sub-minimum wage payment to ensure adequate incentive to seek private employment. However, the sub-minimum wage payment is still reasonably close to the minimum wage, and at least there is a relationship between hours worked and payment.

[10] Specifically, in those instances where the Manpower Demonstration Research Corporation has sought to measure the impact or added impact of CWEP activities in work programs, the findings have been:

- No impact on employment or earnings for AFDC recipients in West Virginia.
- No impact on employment or earnings for AFDC-UP recipients in West Virginia.
- No impact on employment or earnings for AFDC recipients in Cook County.
- No impact on employment or earnings for AFDC-UP applicants in San Diego.
- No impact on employment or earnings for AFDC applicants in a weak economy in San Diego.
- A statistically significant impact for AFDC applicants in a strong economy in San Diego.

These findings are discussed in Greenberg, *Community Work Experience: Research Suggests Little or No Effect on Employment and Earnings for AFDC Families*, Testimony Submitted to the Health and Welfare Committee, Vermont House of Representatives (1992).

discussion paper on unpaid work programs concluded "there is little evidence that unpaid work experience leads to consistent employment or earnings effects."[11] It is true that the work experience programs evaluated in these studies typically have involved limited numbers of people, and have not involved an ongoing intensive requirement. Accordingly, there are legitimate open questions about the likely impacts of a broad-based, intensive requirement. However, given the current state of research, there is no basis for infringing on the ability of states to provide education and training services, or for imposing on states a uniform national mandate to require unpaid work regardless of the needs or circumstances of affected families.

The uniform mandate is particularly inappropriate in light of the high cost of operating a CWEP-type program. Preliminary staff estimates from the Congressional Budget Office indicate that average annual CWEP costs are approximately $2200 (excluding child care); under H.R. 3500, where CWEP would involve 35 hours a week, CBO staff estimate that the 1999 average cost of CWEP to be $3300 (excluding child care). Child care costs per participant under current law are estimated at about $1000 a year (averaging those with and without costs). Under HR 3500, with more people with young children subject to requirements, and greater intensity of participation, CBO's preliminary staff estimate increases to $3000 in child care costs per family.[12] Thus, it appears reasonable to estimate that the cost per person for a year of CWEP participation could be $6300. In view of these costs, it is difficult to understand why a state should be prohibited from paying the same or less funds to continue education and training programs in instances where the state believes such programs will be more productive.

c. The Transition and Work Program would provide for additional federal funding, but under rules which would be difficult or impossible for states to meet.

It is generally recognized that expanding numbers of participants or intensity of participation in work-related programs costs additional money. H.R. 3500 expands the numbers of persons subject to program requirements, expands program participation rates, and — in the work program — expands intensity of participation. The bill does provide for the availability of additional federal funding, but there are serious questions about the adequacy of the approach taken. Moreover, no additional authorization is made for the years after FY98, when program requirements escalate most dramatically.

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[11] Brock, Butler, and Long, *Unpaid Work Experience for Welfare Recipients: Findings and Lessons from MDRC Research* (Manpower Demonstration Research Corporation, September 1993). The discussion proceeds to note: "In the few studies where MDRC was able to isolate the effects of unpaid work experience, statistically significant, positive effects on employment and earnings were found in only one instance: for the predominantly female, single parent AFDC applicants in San Diego I. Even this finding warrants qualification: The positive employment and earnings effects were attributable solely to those applicants who were assigned to the program group during the last half of the evaluation (there was no effect for applicants assigned to the program group in the earlier cohort)."

[12] Memorandum to Interested Parties, November 29, 1993, from John Tapogna and Julie Isaacs, re Proposed AFDC Transition and Work Program.

Participation Requirements

Under H.R. 3500, more persons would be subject to participation requirements, because exemptions would be narrower than current law. With few exceptions, parents with a child age 6 months and older would be required to participate in JOBS and the transition/work components. An exemption would be provided only if the individual was:

- incapacitated;
- working 30 or more hours a week;
- attending elementary, secondary, vocational or technical school full time;
- the parent of a child who had returned home during the preceding two months after having been removed from the home;
- providing full time care for a disabled dependent;
- making progress in a substance abuse program for up to twelve months (state option);
- the parent of an infant: for the first child born while receiving AFDC, a six month exemption would be granted, with the months allocated before and after the child's birth at the parent's option; for the second and subsequent children, a four month exemption period would be allowed.

It is possible that the bill authors may not have intended such narrow exemptions. In a number of instances where the bill curtails exemptions in current law, it is not clear whether or why the authors sought to do so:

- It is unclear what, if any, exemption would be available for a family entering AFDC with an infant. In what may be a drafting error, a limited exemption period is allowed for those having a child after becoming eligible for aid, but not for those who already have an infant when they enter the system.

- Current law allows exemptions for those who are ill and those who are incapacitated; H.R. 3500 only allows an incapacity exemption. Do the authors intend to end the exemption for illness?

- Current law allows an exemption for individuals of "advanced age" (interpreted in regulations as those age 60 and over); H.R. 3500 eliminates this exemption. It is hard to believe that the authors intend to mandate transition requirements or work requirements on, e.g., grandparents in their sixties or seventies, yet this is how the bill reads.

- Current law provides a "remoteness" exemption for those residing in areas where the program is not available, recognizing that there are some areas where operation is administratively infeasible; this exemption does not appear in H.R. 3500.

- Current law provides an exemption for children under 16; H.R. 3500 has no similar exemption. While children attending school full-time are exempt, the bill as written would make infants, toddlers, and pre-schoolers subject to transition and work requirements.

While these issues leave the precise scope of exemptions unclear, it nevertheless appears very likely that over 80% of AFDC recipients would be subject to program requirements under H.R. 3500, as compared with less than 50% who are classified as "required to participate" for purposes of JOBS participation rates under current law.[13]

Participation Rates and Funding

Participation requirements would be significantly greater than current law, though it is somewhat difficult to be certain what they are. In part, participation requirements would increase even if participation rates remained constant, since a greater percentage of AFDC recipients would be subject to requirements to participate. In addition, however, H.R. 3500 increases both the number of participation rates and their magnitude.

Under current law in the JOBS Program, states face two participation rates: a basic rate, affecting all non-exempt families, which reaches 20% in FY94 and FY95; and a separately calculated "work requirement" participation rate for AFDC-UP families which begins at 40% in FY94. Under H.R. 3500, it appears that there would be four or five separately calculated participation rates. They are as follows:

- Those who apply for aid on or after October 1, 1994 would be required to participate in the transition component/work component, with a participation rate of 30% in FY96, 40% in FY97, and 50% in FY98.[14]

- Through FY98, the basic JOBS participation rate of 20% would continue to apply to all other non-exempt recipients.

- In FY99, the transition/work rate would be 60% and would include all non-exempt recipients. Rates would continue to escalate until they reached 90% in 2002.

- The current law AFDC-UP work requirement participation rates would continue through FY98, reaching 90% in FY98.

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[13] In FY 92, 43% of AFDC recipients were "required to participate" in JOBS for purposes of calculating JOBS participation rates. A much larger group was "non-exempt" and subject to program participation requirements, but for purposes of determining the participation rate denominator, only 43% of adult recipients were counted.

In contrast, under H.R. 3500, the denominator would be comprised of all non-exempt people, and a smaller group would be exempt. It is impossible to determine how small that group would be, but only 3.8% of AFDC families are coded as having an incapacitated parent; only 5.1% are coded as having a child under age 1; and only 2.2% of female parents and 1.9% of male parents are coded as being employed full-time. Accordingly, it seems very reasonable to assume that 80% or more of AFDC parents would be non-exempt and "required to participate" under H.R. 3500.

[14] To count as a participant, the individual would need to be participating for an average of not less than 10 hours a week, or be a full time student making satisfactory progress.

- To qualify for additional funding beyond the existing JOBS cap, a state would need to satisfy an additional blended participation rate, based on an annual participation calculation, escalating from 20% in FY95 to 90% in FY2002.

Funding would increase, but in a manner not likely to meet the increased requirements. Under current law, $1.3 billion is available to states for JOBS in FY95, and $1 billion in subsequent years. H.R. 3500 would provide additional funding — $300 million in FY96, $1 billion in FY97, and $1.9 billion in FY98. This additional funding would be provided at an improved match rate — federal participation for program costs would be available at the higher of 70% or the state's Medicaid match rate. However, a state would be unable to access the enhanced funding until it drew down all available JOBS funding at the lower match rate.

How much assistance would this additional funding provide? In FY92, only about 60% of the available federal JOBS funds were drawn down, and it is at best unclear whether states have the capacity or willingness to increase their state match. By way of contrast, the American Public Welfare Association recently proposed that additional funding for states be available at a 90% federal matching rate, subject only to a state maintenance of effort requirement. Accordingly, it is at best unclear whether many states could access this additional funding.

Moreover, the bill does not make any change in match rates for child care expenditures, which a number of states indicate is the biggest problem affecting their ability to expand JOBS participation. To keep pace with the increased participation requirements, all states would need to expand their JOBS and child care state funding. Those states unable to secure sufficient legislative appropriations would be facing increased participation requirements with little or no new money.

Altogether, a state's requirements would look like this:

A Simplified Explanation of Participation Requirements under H.R. 3500

Year	JOBS Basic Rate	Transition/ Work Rate	UP Work Rate	Annual Rate	Federal Funding (billions)
FY94	15%	---	40%	---	$1.1
FY95	20%	---	50%	20%	$1.3
FY96	20%	30%	60%	30%	$1.3 ($1 basic, $.3 enhanced)
FY97	20%	40%	75%	40%	$2 ($1 basic, $1 enhanced)
FY98	20%	50%	90%	50%	$2.9 ($1 basic, $1.9 enhanced)
FY99	incorporated into Transition/Work	60%	---	60%	$1 (JOBS authorization, no further authorization under H.R. 3500)
FY2000	---	70%	---	70%	$1
FY2001	---	80%	---	80%	$1
FY2002	---	90%	---	90%	$1

Ultimately, the authors of H.R. 3500 impose their greatest requirements on states after FY98; though no authorization of funds is made for these increased costs. In effect, the participation rate for those initially subject to JOBS jumps from 20% in FY98 to 60% in FY99; in addition more people become subject to the work component over time. Here are the preliminary Congressional staff estimates for additional federal and state costs under H.R. 3500:[15]

[15] These preliminary estimates do not include potential welfare savings or the costs of transitional child care and Medicaid.

PRELIMINARY PARTIAL CBO STAFF ESTIMATES FOR FEDERAL AND STATE COSTS, AFDC TRANSITION AND WORK PROGRAM
(Outlays by fiscal year, in billions of dollars)

	JOBS Work Training (Federal)	JOBS Child Care (Federal)	JOBS Work Training (State)	JOBS Child Care (State)	Total Spending (Federal and State)
FY94	0.0	0.0	0.0	0.0	0.0
FY95	0.0	-0.1	0.0	savings, less than .05	savings, less than .15
FY96	0.3	0.1	0.2	0.1	0.7
FY97	1.0	0.6	0.4	0.5	2.5
FY98	1.9	1.6	0.8	1.2	5.5
FY94-98	3.2	2.2	1.4	1.8	8.6
FY99	3.5	3.8	1.5	2.7	11.5

As one looks at the above chart, there are three important considerations to keep in mind:

- First, these are estimated outlays, based on the assumption that states will be able to meet the state match requirements necessary to operate their programs in accordance with the bill. Many state administrators may be prepared to acknowledge that it is extremely unlikely that their legislatures could or would expand their spending in this manner. If, however, states are unable to meet necessary match requirements, then they will face very substantial increased mandates without the capacity to meet them.

- Second, the authors were able to fund their bill over five years primarily because the major phase-in costs occur after the five year period. The bill is funded through FY98, when federal costs are $3.5 billion, but not for FY99, when estimated federal costs jump to $7.3 billion. In fact, the cost for the sixth year alone is greater than the total cost for the first five years.

- Third, the bill imposes its greatest requirements on states beginning in FY99, but only $1 billion in federal funds is authorized for FY99 and thereafter. While one can fairly say there is uncertainty about what the costs are likely to be over time, the bill's authors nevertheless mandate steadily increasing participating rates on states which would apply even if no additional funding was authorized.

In short, the authors of H.R. 3500 have not "solved" the problem of how to implement and fund a welfare reform bill that provides two years of services and then requires work. Instead, they have put forward a bill that has no requirement for education and training services, mandates work at a rate far below the minimum wage, and is only funded until the year before the major costs begin to be felt.

2. H.R. 3500 would provide an extraordinarily harsh penalty structure, in which the third violation of program rules would result in permanent ineligibility for AFDC. In some instances, penalties would be wholly disproportionate to program infractions; the basic design is one in which there would be no safety net for children in instances where a parent fails to meet program requirements.

Any program with requirements has to address the problem of what to do when a parent does not comply with the program requirements. The issue is difficult because many administrators want to have a "stick" that can be used to encourage compliance, but few people want to hurt children in those instances when a parent does not comply.

Under current law in the JOBS program, a parent's first offense means that the parent is removed from the AFDC grant until the failure to comply ceases; for the second offense, the parent is removed from the grant for a minimum of three months; for the third offense, the parent is removed for a minimum of six months. A food stamp sanction may also be imposed if the JOBS requirement was comparable to requirements imposed by the Food Stamp Employment and Training Program. Current policy reflects an attempt to balance the need for a sanction with the recognition that the well-being of children is also at stake.

H.R. 3500 would provide instead that for the first failure, the family's AFDC and food stamps are reduced by 25% until the failure to comply ceases.[16] For the second failure, the family's AFDC and food stamps will be reduced by 25% until the failure to comply ceases. For the third failure, the family is made ineligible for AFDC assistance forever. The bill also says that if the first failure lasts more than a month, the family immediately moves into the second sanction; if the second failure lasts more than three months, it will be considered the third failure.

In what may be an inadvertent drafting error, the bill would apply its penalties for any failure to comply; there is no exception for instances where there is "good cause" for failure to comply, and no provision allowing for any opportunity to "cure" a violation. It appears that

[16] The bill mandates that there be a 25% reduction in the food stamp benefits payable to the household which includes a member of the family of the individual who commits the program violation. In many instances, a food stamp household includes more people than the AFDC unit, e.g., when adult siblings live together, when more than one generation lives in the same home, when unrelated persons share a dwelling unit. As a result, the food stamp penalty would affect all members of the food stamp household, including those who are not members of the AFDC unit.

the bill authors intended that disqualified persons would still be eligible for Medicaid, but in a drafting error, failed to cross-reference the appropriate section to ensure this result.[17]

What is the justification for H.R. 3500's extreme increase in program penalties? We are aware of no evidence that existing sanctions have been inadequate to attain sufficient levels of program participation under JOBS. In addition, in studies of work-welfare programs by the Manpower Demonstration Research Corporation, the consistent finding has been of no apparent relationship between extent of sanctioning and program impacts.[18]

The approach taken seems oblivious to the realities of program administration and people's lives. It would mean, for example, that if an individual was uncooperative as a nineteen year old, she would be denied any aid ten or twenty years later. It could mean, in practice, that a parent who was late for three appointments could lose eligibility for assistance for life. It could mean that if an individual had poor attendance one week, and then didn't respond to two notices, her family would be ineligible for aid for life.

It would also mean that enormous systems resources would need to be committed to arguing about the correctness of sanctions, rather than focusing on resolving problems to ensure future participation. For example, under current law, suppose Ms. Smith is late for program activities, is sent a notice of noncompliance, and then offers an explanation — e.g., she says her car was not working. Under current law, there is a "conciliation process" in which the state and participant attempt to reach agreement on future participation. Ms. Smith might indicate that the problem has now been resolved (the car is fixed), or the state might offer assistance in addressing the problem (a bus pass, information about car pooling, assistance with car repairs). In any case, the focus is on straightening out the problem prospectively, i.e., what needs to happen so that Ms. Smith will participate in the future? A sanction occurs only if there is a refusal to resolve the problem, or continued noncompliance without good cause.

In contrast, under H.R. 3500, there is no required conciliation process, and a sanction is imposed for failure to comply with "any requirement." As noted above, the bill does not provide for a "good cause" exception. But even assuming one would be allowed, in the above example, there would now have to be a fact-finding process to determine whether the car had really not been working, whether Ms. Smith had exercised due diligence in trying to get it repaired or identify other transportation, etc. Even if all parties were in agreement that Ms. Smith was now ready and able to participate, it would be essential to devote substantial systems resources to determining the correctness of the charge against Ms. Smith, because otherwise the "first strike" would be imposed against her family.

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[17] Section 101(b) of the bill would create a new Social Security Act Section 402(a)(19)(I)(v), establishing penalties, with Section 402(a)(19)(I)(v)(II) governing second failures and (402(a)(19)(I)(v)(III) governing third failures. Section 402(a)(19)(I)(vii) provides for continuation of Medicaid if the family becomes ineligible for aid for reason of clause (v)(II), i.e., the second failure, rather than the third failure.

[18] See discussion in Gueron and Pauly, *From Welfare to Work* (Russell Sage Foundation, 1991), at pp. 182-84.

Given the realities of program administration, an even more troubling scenario might often occur. As H.R. 3500 is constructed, penalties for the first and second failures are removed as soon as the failure to comply ceases, but the system is apparently required to track penalties over the individual's lifetime. Suppose Ms. Smith misses class because her car is not working and is sent a notice of penalty. She calls her worker, indicates she now has an alternative form of transportation, and the worker says her grant will be reinstated. Since the problem seems resolved, Ms. Smith might believe she has no reason to request a hearing. Then, five years later, Ms. Smith might reach the point of being charged with a third offense, but which the penalty is lifetime disqualification. At that point, it might be critical to establish that the first penalty was erroneously imposed, but Ms. Smith might reasonably have difficulty in proving that she had car trouble five years ago. Thus, the basic structure of H.R. 3500 is one where both ambiguous incidents and ones where the recipient was not at fault can easily accumulate and result in lifetime disqualification from assistance.

It is not clear what exactly would happen to the children when a parent was banned for life. Would the children be banned for life also? The bill says that in the case of the third failure, "the family of the individual shall not be eligible for aid..." Does this mean that, for instance, if a parent is disqualified and the children go to live with a grandparent, they are still "marked" as ineligible forever. If children are in a disqualified family, will they be barred from receiving aid as adults?

It is easy to declare one's willingness to be tough or put forward a slogan like "three strikes and you're out." It is much harder to come up with a serious response to a difficult problem. While some states have expressed an interest in wanting to impose stronger penalties than current law, it is not clear what, if any, evidence suggests stronger penalties are needed. Current law seeks to balance the need for penalties with the need for safeguards to protect children; H.R. 3500 does not.

3. **H.R. 3500 would permit states to terminate AFDC altogether for a family after an individual in the family has been required to participate in the work component for three years.**

Under H.R. 3500, a state may opt to end AFDC completely for a family after an individual has been required to participate in the work component for three years. The state would be required to continue Medicaid, but all cash assistance could be terminated. Since a state could choose to waive the "transition component" for families determined employment-ready, this provision would mean in practice that a state could permanently terminate assistance to a family after three years.

In light of the bill's penalty provisions, it is difficult to see any possible rationale for this provision. Keep in mind that a family that has failed to comply with work requirements would already have been disqualified from AFDC for life before reaching the three-year point. Accordingly, this provision would permit states to end a family's AFDC where the parent had diligently worked for her assistance for three years, yet still was unable to find a job. The issue here is not about the appropriate penalty for breaking a rule; the issue is whether a state should be able to end assistance to a parent who follows every rule, and simply cannot find a job.

4. **Unless a state exempted itself, the state would be required to deny aid in cases where a child was born to either an AFDC recipient or to anyone who received AFDC during the ten month period ending with the birth of the child. The rationale for any child exclusion provision is dubious, but this denial of assistance is crafted so broadly that it would sometimes result in denial of assistance for children for no imaginable policy reason.**

In recent years, several states have sought federal approval to test "family cap" or "child exclusion" proposals, which typically seek to deny assistance for a child conceived while a parent is receiving AFDC. H.R. 3500 goes two steps further. Unless a state exempts itself from this requirement, the state would be required to deny assistance to:

- any child born to an AFDC recipient; or

- any child born to an individual who received AFDC at any time during the ten month period ending with the birth of the child.

This may have been a drafting error, but as written, H.R. 3500 would sometimes result in denial of assistance for children for no imaginable policy reason:

- For example, suppose the Smiths have one child, and Ms. Smith is pregnant with another. Mr. Smith leaves while Ms. Smith is five months pregnant. Ms. Smith begins receiving AFDC for herself and her child. Under H.R. 3500, no aid will be paid for her second child if she is an AFDC recipient at the time the child is born.

- Suppose Ms. Smith and her child begin receiving AFDC when she is five months pregnant with a second child. Suppose that two months later, Ms. Smith exits AFDC, and is not receiving AFDC when her second child is born. Under the bill, no aid would ever be paid for this second child, because Ms. Smith received AFDC within the ten month period before the birth of the child.

Under any circumstances, the rationale for a child exclusion provision is dubious. Federal data demonstrates that AFDC families are not typically large — 72% have one or two children. Data demonstrates that AFDC family size has declined sharply over time — in 1969, 32% of AFDC families had four or more children, while in 1992, only 10% had four or more children. A Wisconsin study found that fertility rates for AFDC mothers were lower than for other mothers, and declined with time on AFDC. In the median state, the grant increment as a family goes from three to four is $68[19] — increasing the poverty of the family, and not likely to meet the most minimal needs of an infant. Accordingly, there is no legitimate justification for even a narrowly tailored child exclusion provision, and certainly no justification for a provision that appears to strike out randomly at families with infants.

5. **The bill identifies worthy goals such as increasing paternity establishment and children's preventive medical care. In each area, instead of seeking to improve**

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[19] In the median state, the AFDC grant for a family of three with no income is $367 a month; the grant for a family of four with no income is $435.

access, the bill simply imposes penalties on parents, and demonstrates a willingness to punish families for events beyond the control of the parent.

While using the rhetoric of individual responsibility, H.R. 3500 would reduce or deny assistance to families based on events unquestionably beyond a parent's control. In each instance, the bill identifies a worthy goal, e.g., paternity establishment, child medical care. But in each area, instead of providing assistance to help meet the goal, the basic approach is to simply cut family aid. For example:

- **Child Support:** Under H.R. 3500, unless a state exempts itself, the state would be required to deny cash aid for a child whose paternity was not established (with exceptions only for children conceived as a result of rape or incest, or where the state determines that efforts to establish paternity would result in physical danger to the relative).

  Under current law, a parent already has a duty to cooperate in establishing paternity and support, and the parent can be removed from the grant for failure to cooperate without good cause. A mother must tell the state all she knows about the identity and location of the likely father, go to the child support office for interviews, provide documents (e.g., birth certificates), appear as a witness, give sworn testimony and turn over to the state any child support payments she receives directly from the alleged father. In addition, if requested to do so, she must submit to genetic tests. It is then the state's responsibility to pursue paternity through a court or administrative process.

  Current federal regulations give states up to 18 months from the date the mother is referred by the AFDC agency or applies for IV-D services to establish paternity. After providing needed information, there may be little or nothing the mother can do to speed up the process. Some parts of the process inevitably take time. Since IV-D caseloads may reach or exceed 1,000 per worker, the process may not be completed within 18 months in instances where the mother is undisputedly cooperating to the best of her ability. Moreover, a spate of recent research suggests that a major barrier to establishing paternity is the judicial system itself. Mothers have little or no control over much of the complex set of institutional arrangements governing paternity establishment.

  Congress recently recognized this and has taken steps to address problems. In the Omnibus Budget Reconciliation Act of 1993 (OBRA 93), Congress required states to establish in-hospital paternity programs so that parents who want to by-pass the cumbersome legal processes can do so by simply signing a paternity affidavit. OBRA 1993 also includes changes which make it easier to establish paternity based genetic testing. While these changes should improve paternity establishment for newborn children, they will take time to implement. Furthermore, the changes will have little effect on paternity establishment for older children for whom in-hospital procedures were not available or in those instances where a father actively contests paternity or seeks to avoid being located.

It would be utterly unfair to punish children by denying their AFDC eligibility when the system or an uncooperative father is the cause of their failure to have paternity established. Yet under H.R. 3500, in instances where a parent had cooperated to the fullest possible extent, no assistance would be provided for a child during the time the state child support agency was working on the case, which could take months or years. If the parent was fully cooperating, but the absent parent could not be located, no assistance would be provided for the child. Further, under the bill, the entire family would be ineligible for aid if the mother was unable to provide the father's name and the address of the father or his immediate relatives. Thus, in instances where, e.g., the father had moved and his whereabouts were unknown, there could be no cash aid whatsoever for her family, apparently forever.

It is entirely legitimate to expect cooperation (or a showing of good cause) in establishing paternity, but the law already requires that. This bill would go further by denying aid for months, years, or forever when the parent is fully cooperating.

- **Child Health**: The bill provides that aid will not paid for a child under age 6 unless there is written verification that the child has been examined by a physician every six months from birth to age 19 months, and every year thereafter. This provision is notable in two respects. First, it does nothing to improve access to medical providers for poor families; rather, if the parent is unable to find a doctor who will take Medicaid, the apparent recourse for the state is to cut off AFDC. Second, there will be situations in which a family comes into AFDC when, for instance, the child is three or four or five years old. Apparently, if the state determines that there were not sufficient examinations at an earlier age, the state's mandated response will be to deny AFDC. As drafted, there is no ability for a parent to correct the problem — if there is not verification of prior receipt of care, the child is simply ineligible until he or she reaches the age of 6.

  Under the bill, an eligibility condition for children is that the child must also have been immunized in accordance with recommendations of the Surgeon General. While the bill mandates that states engage in education and outreach about available services, it does not require states to actually provide any services toward helping a parent get her children immunized.

6. H.R. 3500 authorizes states to set lower benefits for new state residents, and permits states to require approval of "any action" which would require a change in the school attended by a child.

In two respects, the bill seeks to restrict the ability of families to move. One provision is, in all probability, unconstitutional. The other reflects a profound insensitivity to the hardships faced by families who do not have enough income to avoid being evicted.

First, in instances where an applicant family has resided in the state for less than twelve consecutive months, H.R. 3500 would permit the state to determine eligibility and amount of assistance based on the rules of the prior state. In other words, if a family moved from Mississippi, where the AFDC grant for three is $120, the new state could choose to pay only

$120 for the first twelve months in the state. This type of discrimination against new residents of a state has already been enjoined by a court in California, **Green v. Anderson**, 811 F.Supp. 516 (E.D. Cal. 1993), appeal pending, and there is no serious question but that it is impermissible under long-established Supreme Court precedents. Furthermore, H.R. 3500 would permit a state to apply the eligibility and benefit rules of the prior state even if the family had never received AFDC in the prior state, and it was undisputed that the family moved to the new state for reasons wholly unrelated to the AFDC program.

The other restriction on movement in H.R. 3500 would permit states to provide that the family must receive the permission of the state agency before taking any action that would require a change in the educational institution attended by a dependent child. In other words, it appears that if the family was in danger of being evicted, the family would need to seek the state's permission before moving. Undoubtedly, it would be better if there were minimal disruptions to family living arrangements, but in a world where AFDC grants are not enough to pay fair market rents, families are periodically evicted or forced to move. It is incredible that instead of recognizing that low grants might affect residential stability, the response is simply to require permission to move.

7. **H.R. 3500 would provide a state option to end AFDC and substitute a program of the state's choice. States would be free to provide less help to fewer people, with minimal federal safeguards or accountability.**

H.R. 3500 would give states an option to cease providing AFDC. A state electing this option could receive 103% of the total amount the state was entitled to receive in FY92. The only requirement would be that the funds be used to carry out "any program established by the State to provide benefits to needy families with dependent children," and that the state must file an annual report accounting for its expenditures. If the Secretary of HHS concluded that the state had expended "any amount" provided for any purpose other than to carry out a program of cash benefits to needy families, the Secretary would be required to reduce the amount payable to the state by 20%.

As a threshold matter, it is not clear that states would have an interest in exercising such an option, since there is no inflation adjustment or population increase adjustor, and since a state would risk grave difficulty in any future recession where there might be an increase in the number of poor families needing help. However, if any state did seek to exercise the block grant option, the bill's drafting presents a number of questions. For example:

- In return for receiving the federal funds, what responsibility would the state have to contribute its own resources? In H.R. 3500, it appears there is no state maintenance of effort requirement — the state could receive 103% of whatever it received in FY92, with no state matching funds requirements.

- How would federal accountability work? H.R. 3500's penalty provision would be both too stringent in some cases, and insufficiently stringent in others. For example, if it were determined that a state had misspent one dollar, it appears that the 20% penalty would be applied, which is surely more rigid than one would want. If, at the other extreme, a state decided to spend its funds for purposes wholly unrelated to

assisting poor families, it appears that the state would be subject to the same 20% penalty. Further, the bill only provides for a requirement that the state must submit a report; there is no specified mechanism for monitoring, auditing, etc.

- Would the state be free to spend 50% or 75% of its federal allocation on salaries and administrative expenses? Would a state be free to spend all or much of its funds on bus tickets to other states? Would a state be free to deny assistance to those individuals deemed not worthy by town overseers? Would a state be free to apply any criteria, qualifications, and restrictions it chose so long as they were somehow arguably related to providing benefits to needy families with children? As drafted, it appears that state freedom to use or misuse the funds would be virtually unlimited.

As these examples illustrate, the idea of creating a block grant option in AFDC raises a number of serious questions, none of which are addressed in H.R. 3500.

8. **Unless a state exempted itself, the state would be required to deny assistance in cases where either parent was a minor. This would have the effect of punishing infants because their parents were too young, and of preventing state welfare departments from providing needed services to help teen parents complete school.**

Under current law, states have an option to require a minor parent to live at the home of her parents in order to receive AFDC (with certain good cause exceptions). When a minor applies for AFDC and is living at home, part of her parents' income is counted in determining whether AFDC will be provided. Teen parents who are not in school are immediately subject to requirements of the JOBS Program, and can be required to return to school. The state is able to provide needed child care to make it possible for the teen parent to return to school or stay in school.

H.R. 3500 would provide that unless a state enacted a law exempting itself, aid could not be payable for a child if either parent of the child was a minor. Approximately 1.6% of female AFDC parents were under age 18 in FY92.

The provision is promoted as one to discourage teen births. The relationship between the availability of AFDC and teen births is, at best, unclear. Kristin Moore of Child Trends, Inc., recently summarized the research by noting:

> It is frequently contended that the availability of AFDC benefits provides an incentive for early or non-marital childbearing. Research on this question is inconclusive. A few studies show associations between higher benefit levels and fertility; more often, studies show no effects or effects that are small relative to other factors such as school failure, peer influences, parental monitoring, and aspirations for achievement.[20]

While determining the precise effect of AFDC is difficult, it seems clear that AFDC benefit levels are not the major factor affecting the teen birth rate in states. This becomes evident when one compares teen birth rates with AFDC benefit levels. For example, in 1991, the

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[20] Moore, *Facts at a Glance* (January 1994).

states with the highest teen birth rates all had AFDC benefit levels below the national median, while states with the lowest teen birth rates all had AFDC benefit levels well above the national median:[21]

State	Rank	Birth Rate †	Rank	AFDC Benefit††
	States with high teen birth rates often have low AFDC benefit levels			
Mississippi	1st	86/1000	49th	$96
Arizona	2nd	81/1000	39th	$233
Arkansas	3rd	80/1000	45th	$162
New Mexico	3rd	80/1000	35th	$247
Texas	5th	79/1000	46th	$158
	States with low teen birth rates often have high AFDC benefit levels			
Vermont	46th	39/1000	2nd	$571
Massachusetts	47th	38/1000	9th	$446
Minnesota	48th	37/1000	11th	$437
North Dakota	49th	36/1000	20th	$326
New Hampshire	50th	33/1000	7th	$451

† for 15-19 Year Olds (per thousand (1991))

†† for Family of 2 (1991)

As these figures suggest, some of the states with the lowest AFDC grants have the highest teen birth rates; conversely, some of the states with the highest grants have the lowest birth rates. Plainly, part of the variation reflects differences in the racial and ethnic composition of states.[22] The point, however, is that when the teen birth rate in Mississippi, with a $96 AFDC grant is 86/1000, and the rate in Vermont, with a grant of $571 is 39/1000, it should be clear that AFDC benefits are not the primary factor affecting the teen birth rate.

[21] This chart excludes the District of Columbia, which in 1991 had a teen birth rate of 114/1000, and an AFDC grant for two of $336/month. Since the District is comprised of one city, it is best compared with other urban areas.

[22] In 1991, the birth rate for females aged 15-19 was 118 for non-Hispanic Blacks, 107 for Hispanics, and 43 for non-Hispanic Whites.

While it is unclear whether or to what extent ending AFDC would reduce teen births, it is clear that the elimination would have another effect — to deny cash assistance to a group of poor families with infants. In any instance where the teen birth was not deterred, the effect of the policy would be to increase the poverty and stress faced by households containing a teen mother and child.

Moreover, denying AFDC assistance would mean that the state would lose a critical opportunity to help the teen parent complete her schooling. In recent years, states have increasingly come to realize that the parent's involvement in the AFDC Program provides the state an opportunity to link the teen parent with needed social services, education programs, child care, and other support services to make it possible to complete schooling. In the last year, two programs that provided services and imposed requirements on teen parents have been found to increase their school completion rates:

- Ohio's Learning, Earning, and Parenting (LEAP) Program seeks to promote school attendance and completion among pregnant and parenting AFDC teens, through a combination of fiscal bonuses and sanctions, child care and transportation assistance, and case management. The interim evaluation of LEAP concluded that the program had increased school retention among in-school teens, and increased the number of dropouts returning to a school or program.[23]

- The Teenage Parent Demonstration was a three-site, HHS-funded demonstration program requiring pregnant and parenting teens in the demonstration sites to stay in or return to school, enroll in appropriate postsecondary education or skills training, or seek employment. The demonstration also provided case management, workshops, child care and transportation assistance, and counseling. The evaluation found that overall levels of participation in school, job training, or employment over two years were substantially higher than they would have been in the absence of the program.[24]

As the results of these programs suggest, the AFDC Program can clearly be used as a means to improve schooling outcomes for pregnant and parenting teens.[25] Shutting teen parents out

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[23] In the first year impacts, 61% of teens in the program group who were initially enrolled in a school or program met a standard of either completing or being enrolled for 10 or more months in high school or adult education; only 51% of control group members met this same standard. For teens who were initially not enrolled, 47% of program group members, versus 33% of control group members, were ever enrolled in high school or adult education; 17.5% of program group members, versus 8% of control group members, met the standard of completing or being enrolled for 10 or more months in high school or adult education.

[24] For those subject to the program, 79% participated in school, job training or employment during the two years following intake, versus 66% of those receiving "regular" AFDC services. There were statistically significant increases in the percentage of months active, the percent ever in school, the percentage in job training, and the percentage employed. Mathematica Policy Research, *Building Self-Sufficiency Among Welfare-Dependent Teenage Parents: Lessons from the Teenage Parent Demonstration* (June 1993).

[25] This is not intended to imply that states should necessarily replicate the LEAP or Teen Parent Demonstration approaches with no modifications. For both programs, the evaluations present clear evidence that

(continued...)

of AFDC may seem like a way to be "tough" about teen parenting, but the practical effect may be to make it more difficult for a teen parent to return to or complete her education.

9. HR 3500 makes changes in the child support system which could hinder efforts at real reform.

There is a broad bipartisan consensus about the importance of strengthening child support enforcement. In recent years, a number of ideas have been widely recommended, including strengthening the use of income withholding, improving interstate sharing of information, making use of the "W-4 process" (the tax status statement filed by newly hired employees) to better locate and enforce orders.

H.R. 3500 draws on a number of the frequently recognized proposals for strengthening child support enforcement. Unfortunately, however, it does so in a manner that is limited and riddled with exceptions. As a result, the bill may offer the appearance of actively improving child support enforcement, but its practical effect would be far more modest, and might even undercut the ability to move the system toward more comprehensive reforms.

The bill also draws on another frequently suggested proposal — that states establish job search/work programs for non-custodial parents who are in arrears on child support. While mandating that states operate such programs, the bill provides no money to do so.

a. The efforts to enhance parent locate would be ineffective and could give abusive parents the ability to locate their ex-spouse or children.

A major problem in the existing child support enforcement system is its inability to quickly locate non-custodial parents, their income and their assets. H.R. 3500 seeks to address this issue by expanding the Federal Parent Locate System. It calls for linking existing state databases containing information on non-custodial parents to create a national system.

Federal law already requires each state to have a state system for locating non-custodial parents who live and/or work in the state. Federal regulations list a number of data sources a state could include in its state parent locate network, but there are no specific state sources which must be included. As a result, each state's locate capacity is different. Some states have computerized access to large amounts of information; some can access a variety of sources, but must do some manually; others access very few data bases. Thus, as recognized by the U.S. Commission on Interstate Child Support, the first necessary step to improving the locate system is federal legislation mandating that states give their state parent locate system

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[25](...continued)
the program was successful in raising school attendance. However, it remains unclear whether other approaches could be more effective, could generate additional positive outcomes, or could generate comparable positive outcomes without relying on sanctions. It also remains unclear which aspects of the program design were most significant — how important was the case management or services, how important were the sanctions and/or bonuses? It also seems clear that the program treatment did not lead to improved school attendance for at least a subgroup of those subject to the requirements, leaving open the question of what alternative or additional components might be needed.

access to a variety of information sources including real property records, records of professional and recreational licenses, state and local tax records, birth, death and marriage records and utility company records. In addition, the Commission recommended that certain data must be available for computer match so that locate can be accomplished quickly. Included here are employment security records, public assistance records and crime information system records.

H.R. 3500 neither sets minimum national requirements for what data should be available to the state parent locate system nor requires that any of the data be computerized. At best, it would simply link together inadequate state systems into one inadequate federal system.

In addition, H.R. 3500 requires states to allow non-custodial parents to use the system to locate custodial parents and their children. It provides that this access must be "in accordance with safeguards established to prevent release of information if the release might jeopardize the safety of any individual..." However, no specific safeguards are outlined or suggested, leaving open the possibility that this provision could ultimately turn into one which could facilitate abusive parents tracking down their former partners and children.

b. The proposed W-4 reporting system would do little to improve the likelihood that support would be collected.

H.R. 3500 also calls for the Secretary of the Treasury and the Secretary of Labor to establish a W-4 reporting system. In this system, some employees would be required to indicate on their W-4 tax form 1) if they were required to pay child support; 2) the amount of the order, and 3) to whom the support should be paid. This would enable employers to deduct the child support payments from the employee's paycheck. Such a system implemented on an universal basis would greatly increase the chances that child support would be paid. Unfortunately, the bill allows states to limit the number of employers and employees that would be required to participate in this system. The only requirement is that the state select at least one industry to participate in the program. Children who are owed child support by non-custodial parents working in unaffected industries would be made no better off by this bill.

Further, the bill requires that W-4 forms be "matched" with a state database containing information about child support orders being enforced by the state child support agency. In this way, noncustodial parents who do not indicate on the W-4 that they owe child support can be "found" and required to pay. However, about half of all child support orders are not enforced by the state agency. Thus, half of the cases won't even appear in the state databases unless these parents choose to opt into the structure. Matching W-4 forms with such a limited database means the orders for many children owed child support won't be matched. All support orders should be placed in the database for the system to reach its potential.

c. HR 3500 requires states to establish job search/work programs for non-custodial parents, but with a set of rigid requirements, and with no funding to implement the requirements.

H.R. 3500 also contains a provision requiring states to develop job search/work programs for non-custodial parents in arrears on their support obligations. Requirements would apply in

any instance where a non-custodial parent of an AFDC child was at least two months in arrears, unless the noncustodial parent was incapacitated or already subject to a court-approved plan for paying the arrearages. Initially, the state would send the noncustodial parent a letter reminding him of the support obligation and informing him that he would be subject to fines and other penalties for failure to comply. If he did not reduce the arrearage by a sufficient percentage within thirty days, the state would be required to seek a court order providing that:

- the noncustodial parent must participate in a job search program for at least two (but not more than four) weeks; and

- if the arrearage were not sufficiently reduced within thirty days of the order, the noncustodial parent would be required to participate in a work program for at least 35 hours a week (or at least thirty hours a week if job search were also required).

The bill is silent on the important question of whether an individual who is required to work will be paid for doing so. As a result, it is unclear whether the intent is that the individual "work off" his child support obligation, or earn money with which the child support obligation can be paid, or simply whether this a community service requirement for which there is no payment. It is also not clear whether if, for instance, the noncustodial parent works thirty five hours a week, there will be any payment of support transferred to the custodial parent and the children. Thus, there are key unresolved questions about the intended design of the requirement.

Many states and localities have expressed interest in recent years in running some type of program for noncustodial parents, with some mix of requirements and services. Because there is very little known about the types of programs likely to be most effective, the federal government has initiated the Parents Fair Share Demonstration Project, an effort to test and evaluate a range of approaches to programs for noncustodial parents. The issue of program effectiveness is critical, because with limited employment and training dollars, states generally want to spend them in ways that will best raise family incomes or reduce AFDC costs.

Apart from its unclarity, there are two principal problems with the H.R. 3500 approach: it is needlessly prescriptive, and it is not accompanied by the funding states would need to implement it.

- The approach is needlessly prescriptive because it would allow no state discretion to vary its approach based on individual circumstances. For example, all non-custodial parents in arrears (except those incapacitated or already under a repayment order) would be subject to the job search/work program sequence. As the bill is drafted, this would include noncustodial parents who are already employed full-time, but simply not paying support. It would also include, e.g., a young noncustodial parent who was still in high school, a middle-aged noncustodial parent who was actively participating in a displaced worker training program, etc. The job search/work sequence would be mandated even in instances where all parties agreed that the noncustodial parent would better benefit from a training program, or where all parties

agree that a noncustodial parent with a long and unimpeachable payment record is temporarily in a period of crisis. In short, the design allows for no distinctions between individuals, in a context where states are actively exploring a range of alternative program designs.

- Running a program for noncustodial parents costs money, and the bill does not provide any. In recent years, some states have sought federal waivers to run noncustodial parent programs using JOBS dollars. This approach is sometimes controversial, because it may mean that scarce resources are shifted away from providing services to custodial parents. However, H.R. 3500 does not seem to provide for using JOBS or work/transition dollars to implement this requirement; it just requires states to do it. Accordingly, this provision may have the political virtue of declaring that it imposes requirements on noncustodial parents, but it brings states no closer to being able to do so.

10. The bill's three non-AFDC financing mechanisms are each profoundly flawed. They may allow the sponsors to assert that the bill has a funding mechanism, but each presents great difficulties if considered as a serious proposal.

A key difficulty for any welfare reform proposal is the need for a funding source. As noted above, H.R 3500 would greatly increase the costs of administering the AFDC system, through its expansion of the numbers of persons participating in work-related activities, through its additional work requirements, and through the accompanying child care costs. A comparable issue will face the Administration, or anyone else putting forward a proposal to increase services or work-related requirements.

H.R. 3500 generates a portion of its savings through restricting AFDC eligibility for children whose paternity has not been established. Otherwise, the bill relies on three funding mechanisms:

- curtailment of assistance to lawful immigrants;
- capping the aggregate growth of six federal programs;
- combining nine food and nutrition programs into a block grant for states, with a first year ceiling of 95% of total spending for the programs, and a restriction in subsequent years so that program spending can only increase to take into account population growth and food price inflation.

The following discussion is not a comprehensive discussion of the problems presented by each of these proposals, but suggests that there are major difficulties with each of the three.

a. With limited exceptions, the bill would end assistance under 61 federally assisted programs for legal immigrants. While loosely described as "ending welfare for immigrants," the bill goes much further, and would deny essential help to legal immigrant families, and to legal immigrants who are elderly, blind, or disabled.

Under current law, an immigrant residing in the United States illegally is not eligible for AFDC, food stamps, SSI, or most other federal programs. In contrast, a lawful immigrant resident is typically eligible for assistance under the same terms as other needy individuals.

H.R. 3500 would generally end virtually all public assistance to legal non-citizens. After the bill was phased in, the only exceptions would be for those over age 75 (who have resided in the United States for at least five years), and for refugees in their first six years in the United States. In all other cases, the individual would be ineligible for assistance.

While described as a provision imposing "welfare restrictions for aliens," the bill goes much further. Preliminary Congressional Budget Office staff projections examined the federal impact of curtailments in AFDC, Food Stamps, Supplemental Security Income, and Medicaid. Only a small fraction of the estimated savings (about 5%) would come from AFDC reductions. The vast majority (85%) of savings would come from eliminating non-emergency Medicaid, and from ending cash help for elderly, blind, or disabled immigrants.[26] Whatever the merits of such curtailments, it is plainly not the picture that comes to mind when one talks of ending "welfare" for immigrants.

Altogether, the bill would affect 61 programs, including school breakfast and lunch, nutrition assistance for the elderly, foster care, higher education assistance, job training, legal assistance, emergency food and shelter, child care, and numerous others. In many instances, it is not clear that the authors carefully considered the pros and cons of imposing eligibility restrictions. For example:

- The bill makes legal immigrants ineligible for child welfare services or for foster care and adoption assistance. If there is an allegation that an immigrant child is being abused or neglected, what is the state supposed to? If an immigrant child's parents die, should the state be barred from assisting the child?

- The bill bars eligibility for services under the Public Health Service Act relating to immunizations against vaccine-preventable diseases, or for screening, referrals and education regarding lead poisoning in infants and children. Can it possibly be good social policy to seek to deter immigration by increasing the likelihood of communicable diseases or lead-poisoned children?

- The bill prohibits states from providing child care assistance to immigrants under the Child Care and Development Block Grant or At-Risk Programs. If one does not want immigrants to receive public assistance, presumably one wants them to work. Why deny needed child care?

As these examples underscore, H.R. 3500 does not represent a carefully considered proposal for federal policy relating to immigrants. The H.R. 3500 authors propose no change in the

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[26] According to preliminary CBO staff estimates, the reductions is SSI, Medicaid, Food Stamps, and AFDC would total $21.3 billion over five years. Only $1 billion of this total would be in AFDC reductions. $17.5 billion would involve reductions in SSI and Medicaid.

rules governing national immigration policy. Instead, they simply propose to deny essential or sensible services for legal immigrants who are already present in the United States, and who without those services will risk serious harm, or potentially present a public health hazard to their communities.

The bill also seeks to deter non-citizen parents from seeking assistance for their citizen children. A child born in the United States is a U.S. citizen, and if otherwise eligible, can receive AFDC. Under current law, an undocumented parent can seek AFDC for her citizen child; the undocumented parent is ineligible for AFDC for herself. Under H.R. 3500, in instances where aid is sought for the citizen child, the state agency would be required to send identifying information concerning the parent to the Immigration and Naturalization Service. It is not clear whether the bill sponsors are counting on the INS to deport the parent, or are simply hoping that the parent will be so fearful of deportation that she will not seek assistance for her needy citizen child.

b. **The bill would provide for reductions in six federally assisted programs (AFDC, Food Stamps, Supplemental Security Income, Section 8 Housing Assistance, Public Housing, and the Earned Income Tax Credit) when their aggregate growth exceeded inflation plus 2%. This would force states to reduce assistance to poor families in times of economic downturn and would impair the effectiveness of the Earned Income Tax Credit.**

The second funding mechanism[27] would limit six federally assisted programs to a growth rate that could not exceed inflation plus two percent each year. The affected programs would be AFDC, Food Stamps, Supplemental Security Income, Section 8 Housing Assistance, Public Housing, and the Earned Income Tax Credit. If aggregate spending for those programs exceeded inflation plus two percent, each program would have to be cut.

Here are some of the key problems with this type of proposal:

- This provision would undercut the very concept of a safety net structure. The whole idea of these programs is that they will be available in times of economic downturn, when more people need help. But under this design, when more people need help, program spending will be cut to keep it essentially constant from year to year.

- There is no allowance for the fact that Congress sometimes passes legislation to expand a program. For example, a large EITC expansion has already been enacted into law, and is viewed by many as a centerpiece of the federal effort to provide support to the working poor outside the welfare system. Yet the very fact of EITC expansion could result in or contribute to aggregate spending for the six specified

[27] While this provision could result in substantial cuts in affected programs, preliminary Congressional Budget Office staff estimates do not ascribe a savings figure to the provision, because the provision is not sufficiently specific in delineating how cuts in the programs would be effectuated.

programs exceeding their cap.[28] And, under H.R. 3500, AFDC spending would increase by more than inflation plus 2% as states began to implement the bill's requirements. Yet that expansion could contribute to the six-program aggregate exceeding its cap.

- The use of an aggregate cap would mean that programs would risk cuts for reasons wholly unrelated to their own circumstances. For example, if there were a sudden economic downturn, and AFDC and Food Stamp spending went up, it would be necessary to cut the Earned Income Tax Credit (along with other programs) to compensate. Or, if the number of aged or disabled increased more rapidly than 2%, other programs could have to be cut.

- Given the broad consensus about the importance of the EITC, it is extraordinary that H.R. 3500 is prepared to make the EITC uniquely vulnerable among the multitude of tax code provisions as the one and only one that will be cut back if its usage is expanded or if other programs have new or unanticipated costs. Presumably, Congress wants more poor families to enter the workforce, and would like utilization of the EITC to expand by more than 2% each year. Yet if such expansion occurs, then assistance in other low-income programs would be subject to cuts.

If this proposal were actually to move forward, there are a multitude of substantive and technical issues that would need to be addressed. For example, suppose each program were to be cut by 5%. How would this happen? In AFDC, would the federal match rate be reduced? Would states then have a maintenance of effort, or could they reduce their own spending correspondingly? Would states still have to assist all eligible people, and simply impose cross-the-board reductions? Could states impose all the cuts on benefits rather than on services? In housing assistance, would the cuts suddenly result in reduced payments to landlords, or cuts in maintenance funds for public housing? Or, consider the EITC: Which tax year would be affected? Would reductions occur pro rata? What about persons who had already received advance payment?

As these questions suggest, a serious proposal would have to address a whole set of difficult issues where H.R. 3500 is silent.

Finally, a fundamental unanswered question is why these six programs were identified and tied together for purposes of controlling costs. If the concern is the growth of entitlements, why limit the scope to low-income entitlements rather than include those affecting middle and upper-income voters?

c. The bill would combine nine federally-assisted food and nutrition programs into a single Food Assistance Block Grant to states, capping first year spending at 95% of the current spending level for the programs. This approach would prevent states from providing increased food assistance to the poor at times

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[28] The Congressional Budget Office projects that federal spending on the Earned Income Tax Credit will increase from $11 billion in 1994 to $20 billion in 1997 as the recent expansion is phased in. See Congressional Budget Office, *The Economic and Budget Outlook: Fiscal Years 1995-1999*, Table 2.6 (January 1994).

when the number of poor persons increased, and would force states to reduce food assistance to some poor people in order to help other poor people.

H.R. 3500 would combine nine federal food assistance programs (including Food Stamps, school breakfast, school lunch, and the WIC Program) into a single block grant to the states.[29] First year funding would be capped at 95% of current spending for the programs; thereafter, the funding would be adjusted for population growth and food price inflation, but not for other factors. By imposing the initial reduction in funding and then the subsequent limits on growth, this provision is estimated to cut federal spending by $8.3 billion over five years.

States do not have complete discretion in expanding the Block grants funds — the Bill would mandate a 12% set-aside for WIC and a 20% set-aside for school breakfast, lunch, and other child nutrition programs. The practical effect of these set-asides when overall funding is reduced and constrained, is to ensure that the brunt of reductions is felt by the unprotected programs, e.g., food stamps, elderly feeding.

Again, H.R. 3500 seeks to generate savings by ensuring that programs cannot respond to increased need. During recessions, the number of poor people grows more rapidly than population growth generally. Tieing any funding to population growth is a means of preventing the program from being available to all who need it during times of economic downturn.

Under current law, the Food Stamp Program is the single federal program that makes assistance available to all poor families and individuals on a uniform national basis. It reflects a national commitment to using federal dollars to prevent hunger and malnutrition. Is the claim that food stamp benefits are too generous, or that eligibility thresholds are too high? If not, what can possibly be gained by eliminating the principle of national uniformity, and inviting each state to design its own Food Stamp Program?

More generally, the H.R. 3500 approach would, by its basic structure, force states to make a set of trade-offs among broadly supported nutrition assistance programs. A state could only expand its WIC program to reach more people by, e.g., curtailing the availability of food stamps or cutting back elderly nutrition programs. A state wishing to improve the quality of its school lunch program would face similar choices. Necessarily, whenever government wants to expand a program, a decision must be made whether to raise revenues or cut another program in order to do so. However, the array of nutrition programs represent only a small percentage of federal spending, and there are a broad array of other governmental programs which might be reduced to fund an expansion of nutrition assistance. There is no justification for creating a structure under which nutritional assistance for one group of poor families can only be enhanced at the expense of the nutritional needs of another group of poor families.

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[29] The affected programs are: Food Stamps; Nutrition Assistance for Puerto Rico; Child Nutrition (including school breakfast lunch); Special Milk; WIC; the Commodity Supplemental Food Program; Food Donations for Selected Groups; Congregate meals & Home Delivered Meals for the Elderly; and the Emergency Food Assistance Program.

Conclusion

H.R. 3500 reflects a dismaying turn in the welfare reform debate. It is a bill that appears to draw its strength from every harsh and negative stereotype about the families who rely on the AFDC system. For virtually every problem or issue it identifies, the bill's basic approach is to intensify existing penalties or create new ones.

Since its introduction, H.R. 3500 has sometimes been cited by those asking why it has taken the Administration so long to develop its own bill. The implicit premise is that if H.R. 3500's authors could develop and fund a bill mandating work after two years, why can't the Administration. The answer, at least in part, is that this bill makes no offer of education and training services, creates a work-for-welfare structure in utter derogation of the minimum wage, does not authorize funding for the most expensive parts of the program, and fails to address the multitude of critical details that would have to be faced if the bill were ever to be seriously considered as legislation.

Perhaps the most useful feature of the bill is an unintended byproduct: it carries an important message about the cost of revamping the system. The H.R. 3500 transition/work components, with all their problems, still cost vastly more than current law. The Congressional Budget Office staff preliminarily estimate that in the sixth year of implementation, these provisions would result in new costs of $7.3 billion. This fact was obscured in initial publicity about the bill, because these costs don't arise until after the five year CBO measurement period, and because the bill was accompanied by spending cuts for immigrants and nutrition programs. However, the cost of the transition/work component highlights an important reality that both parties will have to face in the upcoming debates: any attempt to expand the number of participants in education, training, and work in the AFDC system will cost more than the current system. There are better and worse ways to do it, but the ultimate decisions in welfare reform will have to involve making decisions about the best use of scarce resources. The singular accomplishment of H.R. 3500 is to add additional billions in expenditures to the AFDC system, and at the same time make life harder for the families who need assistance.

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