

# An Introduction to the Temporary Assistance for Needy Families Program

By Wendy Pollack

Created as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the Temporary Assistance for Needy Families Program (TANF) is the federally funded assistance program for low-income children and their families.<sup>1</sup> TANF marked a major shift in welfare policy—both the philosophy and the mechanics of the law.<sup>2</sup>

The first part of this article is an overview of the federal TANF law and its basic provisions. While there is great vari-

ance in state TANF programs throughout the country (because each state operates its own program or has devolved responsibility further to county or local governments), there is often little variance in the impact of TANF on our clients.<sup>3</sup> The second part is a snapshot of the TANF population and the legal issues that it faces. The TANF population includes current and former recipients and eligible people who may not be receiving benefits. Clients likely seek legal assistance for

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<sup>1</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended primarily in scattered sections of 42 U.S.C.). Title I of the Act replaced the Aid to Families with Dependent Children (AFDC) grant program with the Temporary Assistance for Needy Families (TANF) block grant program. 42 U.S.C. A. §§ 601–619 (West. Supp. 2001). *See also* General Temporary Assistance for Needy Families Provisions, 45 C.F.R. §§ 260–286 (2000).

<sup>2</sup> E.g., no federal guarantee of aid, work requirements, incentives for caseload reduction, time limits, block grant funding (finite resources and devolution of decision making and responsibility to the states and federally recognized tribes), discouragement of out-of-wedlock births and encouragement of two-parent families, live-at-home and school requirements for teen parents, restrictions for immigrants, and reproductive health provisions.

<sup>3</sup> *See* OFFICE OF PLANNING, RESEARCH & EVALUATION, ADMIN. FOR CHILDREN & FAMILIES, HHS (U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES), TEMPORARY ASSISTANCE FOR NEEDY FAMILIES FOURTH ANNUAL REPORT TO CONGRESS chs. 12–13 (2002) [hereinafter TANF ANNUAL REPORT], available at [www.acf.dhhs.gov/programs/opre/ar2001/indexar.htm](http://www.acf.dhhs.gov/programs/opre/ar2001/indexar.htm) (accompanying tables available at [www.acf.dhhs.gov/programs/opre/ar2001/appendices.htm](http://www.acf.dhhs.gov/programs/opre/ar2001/appendices.htm)). For a listing of state policy choices on TANF programs and Medicaid in the fifty states and the District of Columbia, see State Policy Documentation Project (SPDP), a joint project of the Center for Law and Social Policy and the Center on Budget and Policy Priorities, [www.spdp.org](http://www.spdp.org); State Plan Database of the Welfare Information Network, at [www.welfareinfo.org](http://www.welfareinfo.org). Most states administer TANF at the statewide level, but some states have devolved nearly complete authority for TANF administration to the county or local governments. Matthew Diller, *The Revolution in Welfare Administration: Rules, Discretion and Entrepreneurial Government*, 75 N.Y.U. L. REV. 1121, 1179–80 (2000).

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some issues; for others, they are unlikely to seek help.<sup>4</sup>

## TANF Basics

The federal government provides funding to the states and federally recognized tribes to operate their own TANF programs.<sup>5</sup> For TANF, the federal law lists four purposes, any of which states should design their programs to meet:

- (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and (4) encourage the formation and maintenance of two-parent families.<sup>6</sup>

TANF funds have been used for cash assistance, education and job training, child care, transportation, services that address

barriers to work such as mental health and domestic violence, and other services that help families make the transition from welfare to work.<sup>7</sup> The following TANF provisions are most determinative of the shape of state assistance programs.

## Entitlement and Eligibility

The PRWORA explicitly states that there is no federal entitlement to TANF.<sup>8</sup> This means that states are not obligated to provide assistance to persons who are eligible under the law. States may deny aid to any poor family or category of poor families. States have reacted in several ways. Some states provide an explicit entitlement to cash assistance in their state TANF statute. Other states' statutes explicitly deny entitlement. Still others have no explicit language regarding entitlement.<sup>9</sup>

While no individual or family is entitled to receive TANF benefits under federal law, states must use TANF funds to serve needy families with children.<sup>10</sup> But states have broad discretion to determine who is eligible for TANF-funded benefits and services.<sup>11</sup> And states must "set forth objective criteria for the delivery of benefits and the determination of eligibility

<sup>4</sup> The TANF block grant expires on September 30, 2002, the end of the federal fiscal year. TANF may change with reauthorization, but some basics about the program and the population it is intended to serve are likely to remain.

<sup>5</sup> As of September 30, 2001, HHS had approved tribal TANF plans covering 172 tribes and Alaska native villages. TANF ANNUAL REPORT, *supra* note 3, ch. 11.

<sup>6</sup> 42 U.S.C.A. § 601(a) (West Supp. 2001).

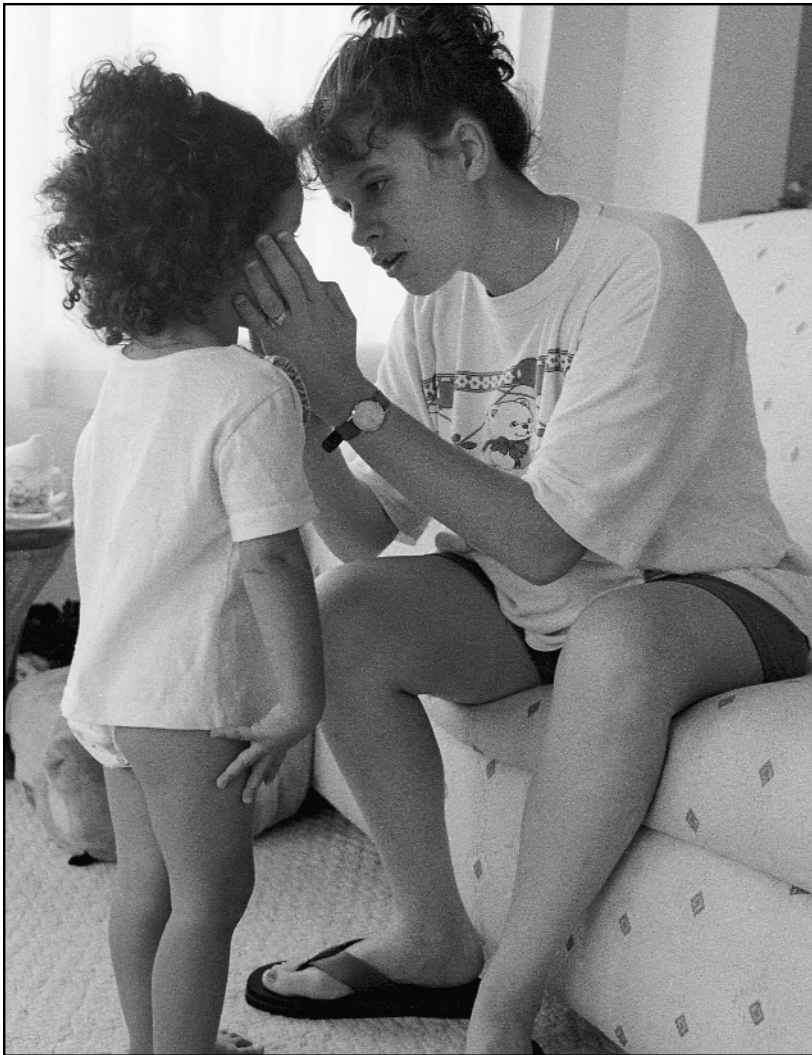
<sup>7</sup> Since TANF funds may be used to meet any or all four purposes of TANF, not all federal TANF funds are restricted to needy families or to assistance to meet basic needs (e.g., expenditures for pregnancy prevention and encouragement of the formation and maintenance of two-parent families). Temporary Assistance for Needy Families Program Final Rule: Preamble, 64 Fed. Reg. 17719, 17825 (Apr. 12, 1999) [hereinafter TANF Final Rule].

<sup>8</sup> 42 U.S.C.A. § 601(b) (West. Supp. 2001).

<sup>9</sup> SPDP, Findings in Brief: Entitlement to Benefits, at [www.spdp.org/tanf/entitlement/cash\\_assistance\\_entitlement\\_summlist.htm](http://www.spdp.org/tanf/entitlement/cash_assistance_entitlement_summlist.htm) (last modified Aug. 29, 2000). A few states have helpful language in their constitutions. New York in particular guarantees assistance to the needy. *See, e.g.*, N.Y. CONST. art. XVII, § 1 (rev. 1938).

<sup>10</sup> 42 U.S.C.A. § 602(a)(1)(A)(i) (West Supp. 2001). Eligibility for pregnant women not caring for a child is a state option.

<sup>11</sup> For immigrants, the 1996 act imposed significant restrictions on eligibility for TANF and additional requirements for access to it and other public benefits. Some of the restrictions have since been reversed. States have responded in a number of ways. A full discussion of immigrants and public benefits is beyond the scope of this article. *See* Sara Campos, *Representing Immigrants: What Do LSC Regulations Allow?*, in this manual. *See also* MICHAEL FIX & JEFFREY PASSEL, URBAN INST., THE SCOPE AND IMPACT OF WELFARE REFORM'S IMMIGRANT PROVISIONS (2002), available at [www.urban.org](http://www.urban.org); WENDY ZIMMERMAN & KAREN C. TUMLIN, URBAN INST., PATCHWORK POLICIES: STATE ASSISTANCE FOR IMMIGRANTS UNDER WELFARE REFORM (1999), available at [www.urban.org](http://www.urban.org); Tanya Broder, *State and Local Policies on Immigrants and Public Benefits: Responding to the 1996 Welfare Law*, 31 CLEARINGHOUSE REV. 503 (1998).



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benefits will be provided to all families who are eligible. All states' policies include the right of all persons

- to file an application,<sup>13</sup>
  - to be notified before cash benefits are reduced or terminated, and
  - to be informed of their right to appeal the decision to a higher authority.<sup>14</sup>
- However, many also explicitly state that benefit payments are subject to funding.<sup>15</sup>

States use a variety of financial, categorical, and behavioral criteria to determine initial and continuing eligibility. Financial eligibility criteria for TANF cash assistance generally include a household's assets and income—the amount (gross and net limits) and sources (e.g., wages, social security benefits—some possibly disregarded). Categorical eligibility includes the group of individuals who are treated as a single TANF assistance unit for determining eligibility and the amount of the cash grant. TANF families must include a minor child or a pregnant woman.<sup>16</sup> Whether individuals living with the minor child or pregnant woman—other children (siblings and nonsiblings), parents, expectant fathers, nonparent caretakers, minor parents, other adults in the household, and even noncustodial parents—are included in the assistance unit is generally left up to the states. Behavioral eligibility criteria include pre-application, pending application and continuing eligibility requirements such as participating in an assessment, conducting a job search and participating in other

and for fair and equitable treatment," including opportunities to be heard in a state administrative or appeal process.<sup>12</sup> A majority of state policies (statute or regulation) state explicitly that cash assistance

<sup>12</sup> 42 U.S.C.A. § 602(a)(1)(B)(iii). (West Supp. 2001).

<sup>13</sup> SPDP, Findings in Brief: TANF Applications, at [www.spdp.org/tanf/applications/appsumm.htm](http://www.spdp.org/tanf/applications/appsumm.htm) (last modified Mar. 3, 2000).

<sup>14</sup> GAO (U.S. GENERAL ACCOUNTING OFFICE), GAO-HEHS-00-44, WELFARE REFORM: STATE SANCTION POLICIES AND NUMBER OF FAMILIES AFFECTED. 5 (2000), available at [www.access.gpo.gov/su\\_docs/aces/aces160.shtml](http://www.access.gpo.gov/su_docs/aces/aces160.shtml) (some simple searching is necessary). Most state sanction policies are more stringent and more extensive than the minimum TANF requires. Most impose the full-family sanction and increase the length of the sanction period. *Id.* at 12–13. *Cf.* Diller, *supra* note 3, at 1128 (under TANF, individual hearings have become less effective in contesting individual determinations).

<sup>15</sup> SPDP, Findings in Brief: Entitlement to Benefits, *supra* note 9.

<sup>16</sup> A minor child is defined as an individual under 18, or under 19 and a full-time student in secondary school or an equivalent level of vocational or technical training. 45 C.F.R. § 260.30 (2000). States may adopt more (not less) restrictive definitions for their TANF-funded cash assistance but, when using state funds, have more flexibility in defining a dependent child.

work activities, submitting to a drug screen, immunizing the children, cooperating with paternity establishment and child support enforcement, living at home and attending school in the case of teen parents, and signing and adhering to an individual responsibility plan, which may include work-related requirements and other behavioral requirements.<sup>17</sup>

The lack of entitlement or specific eligibility criteria in federal law, and vague or conflicting state law, do not negate constitutional rights to due process, equal protection, and other federal and state claims.<sup>18</sup> TANF's stated purpose is to assist needy families. It requires states to describe their criteria for eligibility, limits their discretion in determining eligibility, and gives them the onus to administer the program in a fair and equitable way. Thus recipients arguably have a legitimate expectation that if they meet program requirements

they are entitled to benefits. As long as our clients are treated in an unfair or arbitrary manner or have difficulty navigating the system, they need representation, and litigation remains a necessary and viable option. While most litigation has not challenged general state TANF implementation, legal advocates around the country are actively pursuing individual and class litigation on a wide range of issues.<sup>19</sup>

However, while our clients still have rights and options under TANF, the absence of explicit federal eligibility criteria or entitlement has fostered a sense of entitlement among state and local welfare agencies and caseworkers regarding TANF implementation and client treatment.<sup>20</sup> The lack of these federal protections has substantially contributed in local welfare offices to increased lawlessness, which bureaucrats in power have not checked.<sup>21</sup> This situation aggravates our

<sup>17</sup> On the individual responsibility plan see 42 U.S.C.A. § 608(b) (West Supp. 2001). On state variations in eligibility criteria, see SPDP, Findings in Brief: TANF Applications, *supra* note 13, and accompanying charts, at [www.spdp.org/tanf/tanfapps.htm](http://www.spdp.org/tanf/tanfapps.htm). Twenty-three states operate formal diversion programs under which families receive an up-front, lump-sum payment in lieu of ongoing cash assistance payments.

<sup>18</sup> TANF expressly provides that four nondiscrimination laws apply to any program or activity which receives TANF funds: the Age Discrimination Act of 1975, 42 U.S.C. §§ 6101-6107 (2001); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (2001); the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 (2001); and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2001). See 42 U.S.C.A. § 608(d) (Supp. 2001). Furthermore, 45 C.F.R. § 260.35 (2000) states that other federal laws, including employment laws such as the Fair Labor Standards Act, the Occupational Safety and Health Act, and unemployment insurance and nondiscrimination laws, apply to TANF beneficiaries.

<sup>19</sup> Numerous commentators have addressed the due process issues that TANF has generated. See, e.g., Christine N. Cimini, *Welfare Entitlements in the Era of Devolution*, 9 GEOR. J. ON POVERTY L. & POL'Y 89 (2002); Nancy Morawetz, *A Due Process Primer: Litigating Government Benefit Cases in the Block Grant Era*, 30 CLEARINGHOUSE REV. 97 (June 1996). For a list of thoughtful articles, see the online version of this article at [www.poverty-law.org](http://www.poverty-law.org).

<sup>20</sup> E.g., in my own practice when I refer a caseworker to a section of the caseworker manual (that directs staff on implementation of welfare law and regulations in Illinois and is published by the state welfare agency) to support my client's claim, caseworkers and their supervisors often tell me that they do not have access to or need not follow the manual. Not only is there too often a willful disregard for the rights and dignity of applicants and recipients, but also many caseworkers are ill-prepared to perform their jobs. See Evelyn Z. Brodtkin, *Assessing Welfare Reform at the Street Level: What Policymakers Need to Know*, POVERTY RES. NEWS, July-Aug. 2001, at 11-12. Cf. Diller, *supra* note 3, at 1149 (the expanded role of caseworkers comes with increased caseworker discretion; the number of judgment calls they must make and the degree of oversight that they exercise over recipients have increased).

<sup>21</sup> Interviews of welfare applicants and recipients in ten cities and rural areas across the country revealed arbitrariness of the welfare systems and strong evidence of discrimination. REBECCA GORDON, APPLIED RESEARCH CTR., CRUEL AND USUAL: HOW WELFARE REFORM PUNISHES THE POOR (2001), available at [www.arc.org](http://www.arc.org); *Lawlessness*, ORGANIZING (Center for Community Change, Washington, D.C.), No. 18 (Feb. 2000), available at [www.communitychange.org](http://www.communitychange.org) (a newsletter on jobs, transportation, and welfare reform organizing).

clients' perceptions that they have no rights (and therefore no reason to seek legal representation); this in turn contributes to the unprecedented decline in caseloads in every state.<sup>22</sup>

### Funding

TANF funding is complex. Knowledge of a few of the rules that govern it—the amount, the source (federal or state), the restrictions and allowable uses, and the alternative ways states may structure state spending—fosters increased understanding of TANF and the limitations on and options available to states.

The federal government and the states share funding for TANF. The federal government provides \$16.5 billion each year to the states to operate TANF pro-

grams. This is a flat amount not adjusted for inflation or changes in the level of need in a state.<sup>23</sup> Each state's share of the TANF block grant is based on pre-1996 Aid to Families with Dependent Children (AFDC) spending levels. The amount of money each state must contribute to funding its own TANF program is also based on pre-1996 spending levels. States must spend at least 80 percent of their 1994 contribution to AFDC and AFDC-related programs each year.<sup>24</sup> This is the state "maintenance of effort" requirement. Total expenditures for maintenance of effort are about \$11 billion each year.<sup>25</sup>

The combination of flat federal funding and decreased state contributions translates into far fewer resources available to meet the needs of the current and

<sup>22</sup> See Diller, *supra* note 3, at 1219–20 (“Workers are given license to exhort, advise, and ultimately threaten clients, while clients are disabused of the notion that they have rights and can make demands.”). The lawlessness, including inadequate procedural due process protections, makes it harder to get into the eligibility door and harder to stay in. See, e.g., DEBORAH L. SHAPIRO & HELENE M. MARCY, CTR. FOR IMPACT RESEARCH, KNOCKING ON THE DOOR: BARRIERS TO WELFARE AND OTHER ASSISTANCE FOR TEEN PARENTS—A THREE-CITY RESEARCH STUDY 1–3, 13–20 (Apr. 2002) (interviews with teen parents in Atlanta, Boston, and Chicago found, *inter alia*, that between 16 percent and 46 percent of those who were not receiving TANF and had tried to apply were “turned away at the door,” i.e., they were told that they were ineligible for TANF without being given an application), *available at* [www.impactresearch.org](http://www.impactresearch.org); CHI. JOBS COUNCIL, YOU SEE WHAT I’M SAYING? CURRENT AND FORMER TANF RECIPIENTS TALK ABOUT BEING ON WELFARE 38 (2002) (in five focus groups women relayed their experiences with the welfare system). A significant number of recipients have been sanctioned or forced off TANF or both for failure to comply with program requirements. These families are more likely to have barriers that may interfere with their ability to comply. HEIDI GOLDBERG, CTR. ON BUDGET & POLICY PRIORITIES, A COMPLIANCE-ORIENTED APPROACH TO SANCTIONS IN STATE AND COUNTY TANF PROGRAMS (Mar. 28, 2001), *available at* [www.cbpp.org](http://www.cbpp.org); TRACY ROBERTS, URBAN INST., FINAL SYNTHESIS: REPORT OF FINDINGS FROM ASPE “LEAVERS” GRANTS ch. 3 (“Employment and Earnings,” at 2) (2001) [hereinafter “LEAVERS” REPORT], *available at* [www.aspe.hhs.gov](http://www.aspe.hhs.gov) (fifteen states and localities received grants to study the status of families leaving TANF; funded by the HHS Office of the Assistant Secretary for Planning and Evaluation) (between 32 percent and 53 percent of former TANF recipients or “leavers” were not employed during the quarter they exited TANF).

<sup>23</sup> States may receive additional federal dollars through a supplemental grant (through the 2001 fiscal year) and two performance bonuses. 42 U.S.C.A. § 603(a)(2)–(3) (West Supp. 2001). Under the AFDC program the federal government provided open-ended matching funds for state welfare costs. 42 U.S.C. § 603 (1991) (prior to 1996 amendment).

<sup>24</sup> 42 U.S.C.A. § 609(a)(7) (2001 Supp.); 45 C.F.R. § 263.1 (2000). The state contribution level is reduced to 75 percent if the state meets the TANF overall and two-parent work participation rate requirements.

<sup>25</sup> TANF ANNUAL REPORT, *supra* note 3, at 65 (ch. 2 tbl.E (“Analysis of State Maintenance of Effort (MOE) Spending Levels in FY 2000 Through the 4th Quarter”) or apps. tbl.2:13). The 75 percent and 80 percent spending levels for each state are available at *id.* tbl.2:13. Most states are spending between their 75 percent and 80 percent levels.

former TANF population than in the pre-TANF era.<sup>26</sup> Because of the historic caseload reductions, applicants have not been turned away or put on waiting lists due to lack of funds, as advocates initially feared.<sup>27</sup> But this welfare reform success has masked the extent and depth of low-income families' need.<sup>28</sup>

The TANF block grant and maintenance-of-effort funds may be spent "in any manner that is reasonably calculated to accomplish the purpose of [TANF]."<sup>29</sup> Therefore funding use is not restricted to cash assistance or to families receiving TANF cash assistance. Federal and state TANF funding may be used for child care assistance, education, and a wide range of other activities.<sup>30</sup>

Funds used for "assistance" must meet certain requirements: "The term 'assistance' includes cash payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses)."<sup>31</sup> Any benefit or service not included in this definition is not assistance. From the definition of assistance, the regulations specify seven exclusions, of which the most important are supportive services such as child care and transportation provided to employed families.<sup>32</sup> Assistance-related requirements include

<sup>26</sup> Since TANF is intended to serve a broader purpose than was AFDC, expecting that more, not less, resources be available is reasonable. What is more, the adequacy of the block grant and maintenance-of-effort obligations has yet to be tested during a recession. *Cf.* GAO, GAO/AMID-98-137, WELFARE REFORM: EARLY FISCAL EFFECTS OF THE TANF BLOCK GRANT 11 (Aug. 1998) (because federal spending and caseloads were already falling before the enactment of the welfare law in 1996, and the block grant and maintenance-of-effort levels are based on higher pre-1996 spending and caseload levels, total federal and state resources available under the block grant compared to what 1997 federal-state spending would have been under prior law was about \$4.7 billion more nationwide), *available at* [www.access.gpo.gov/su\\_docs/aces/aces160.shtml](http://www.access.gpo.gov/su_docs/aces/aces160.shtml); GAO, GAO-01-828, WELFARE REFORM: CHALLENGES IN MAINTAINING A FEDERAL-STATE FISCAL PARTNERSHIP 16–26 (2001) (states have replaced, rather than supplemented, their own spending with federal TANF dollars, thereby freeing up state funds for other budget priorities; some states have used freed-up state dollars to fund other programs serving needy and low-income families, such as employment and training programs and child care, and some states have used freed-up state dollars to benefit state residents regardless of income, such as Wisconsin's property tax cut).

<sup>27</sup> Caseloads began to fall before TANF implementation. Since 1994, caseloads nationally have dropped by more than half. However, most states are no longer experiencing large caseload declines. HHS figures show that nationally the number of families receiving TANF increased in most states in the final three months of 2001. *See* Press Release, HHS (May 21, 2002), *at* [www.acf.dhhs.gov/news/stats/tanf.htm](http://www.acf.dhhs.gov/news/stats/tanf.htm).

<sup>28</sup> *See, e.g.,* KATHYRN H. PORTER & ALLEN DUPREE, CTR. ON BUDGET & POLICY PRIORITIES, POVERTY TRENDS FOR FAMILIES HEADED BY WORKING SINGLE MOTHERS, 1993 TO 1999 (2001) (increased earnings were fully offset by a decline in government safety net benefits, particularly food stamps and cash assistance, for families headed by working single mothers), *available at* [www.cbpp.org](http://www.cbpp.org). *Cf.* TANF ANNUAL REPORT, *supra* note 3, ch. 2 (with the decline in the caseload, states are increasing spending on child care and other services that support work activities for TANF and non-TANF families).

<sup>29</sup> 42 U.S.C.A. §§ 604(a)(1), 609(a)(7)(i)(I) (West Supp. 2001); 45 C.F.R. § 263.2(a), § 263.11(a) (2000).

<sup>30</sup> 42 U.S.C.A. § 601(a), § 609(a)(7)(B)(i)(IV) (West Supp. 2001); 45 C.F.R. § 263.2(b), § 263.11(a). (2000). Also, states may transfer up to 30 percent of the TANF block grant to the Child Care and Development Block Grant program (42 U.S.C.A. § 9858 (West Supp. 2001)) or Title XX, the Social Services Block Grant program (42 U.S.C.A. § 1397 (West Supp. 2001)) or both. 42 U.S.C.A. § 604(d) (West Supp. 2001).

<sup>31</sup> 45 C.F.R. § 260.31(a)(1) (2000). *See also* Admin. for Children & Families, HHS, TANF Program Policy Questions and Answers, Definition of Assistance, *at* [www.acf.dhhs.gov/programs/ofa/polquest/assist.htm](http://www.acf.dhhs.gov/programs/ofa/polquest/assist.htm) or [www.acf.dhhs.gov/programs/ofapolques/index.htm](http://www.acf.dhhs.gov/programs/ofapolques/index.htm). HHS publishes subregulatory reports, statistics, and guidance related to TANF, *available at* [www.acf.dhhs.gov](http://www.acf.dhhs.gov).

<sup>32</sup> 45 C.F.R. § 260.31(b) (2000).

- the five-year lifetime limit on receipt of assistance,<sup>33</sup>
- the work participation requirements,<sup>34</sup> and
- the assignment of a family's child support to the state.<sup>35</sup>

Families receiving assistance paid for in whole or part with federal TANF funds are subject to these requirements. States may structure their maintenance-of-effort funds to avoid assistance-related requirements.

States have three choices on how they structure maintenance-of-effort spending. State funds that are commingled with federal TANF funds in a single program are subject to all assistance-related requirements. State funds that are segregated from federal TANF funds in an assistance program are not subject to the federal time limit but remain subject to the other assistance-related requirements (e.g., work participation requirements, child support assignment). No assistance-related requirements apply to a separate state program that uses no federal TANF funds.<sup>36</sup> While this accounting scheme may seem overly technical, it allows states to implement some of the most creative and family-friendly policies, such as stopping the clock on the time limit for working recipients or not requiring participation in paid work and other activities by

recipients caring for a disabled child or earning a college degree.<sup>37</sup>

## Devolution and State Flexibility

A key selling point of welfare reform to the states was the delegation to them of control and responsibility. States and localities had been working on welfare reform for several years before passage of the 1996 welfare law, but to deviate from federal welfare law they had to get permission from and account to the federal government.<sup>38</sup> Supporters of devolution argued that giving states broad discretion in using funds and designing programs would better advance the purposes of TANF. States could implement many of the policies for which they had previously sought federal approval and develop new and creative policies and programs unfettered by federal government oversight.<sup>39</sup>

But devolution and flexibility have come at the expense of federal protections for clients and accountability to clients and to the public (via the federal government). Eligible families have no guarantee of TANF assistance, and a state has no federal duty to follow its own eligibility rules. While states must submit biannual TANF plans to the U.S. Department of Health and Human Services (HHS), they are not required to include much information on their policy choices and program design or even to comply with their plans.<sup>40</sup> While the PRWORA

<sup>33</sup> 42 U.S.C.A. § 608(a)(7) (West Supp. 2001); 45 C.F.R. § 264.1–264.3 (2000).

<sup>34</sup> 42 U.S.C.A. §§ 602(a)(1)(A)(ii), 607 (West Supp. 2001); 45 C.F.R. pt. 261 (2000)

<sup>35</sup> 42 U.S.C.A. § 608(a)(3) (West Supp. 2001); 45 C.F.R. § 264.30, 264.31.

<sup>36</sup> See MARK GREENBERG, THE TANF MAINTENANCE OF EFFORT REQUIREMENT 12–13 (1999), *available at* [www.clasp.org](http://www.clasp.org).

<sup>37</sup> See SPDP, Findings in Brief: Separate State Programs and Segregated State Funds within TANF (with accompanying table), *at* [www.spdp.org/tanf/summlist.htm](http://www.spdp.org/tanf/summlist.htm) (last modified Jan. 2, 2001).

<sup>38</sup> 42 U.S.C. § 1315(b) (prior to 1996 amendment) (deviations, or “waivers,” from federal welfare law were considered research experiments. Waiver requests had to be submitted with a plan for monitoring and evaluating the outcomes. They had to be time-limited and cost-neutral, and they required a public-comment period before HHS approval).

<sup>39</sup> The role of caseworkers has also changed dramatically, from income maintenance workers to social workers with broad discretion in decision making. Although training helps, many caseworkers are unable to perform adequately. Diller, *supra* note 3, at 1132–34, 1164–65.

<sup>40</sup> 42 U.S.C.A. § 602 (West Supp. 2001).

designates that HHS administer TANF block grant programs, it limits federal authority to regulate state conduct or enforce the law.<sup>41</sup>

Devolution and flexibility have also made measuring state performance more difficult, compounding the problem of loss of state accountability.<sup>42</sup> We can measure caseload decline but not the reasons for it. Is it because of reduced need, stricter eligibility rules, more onerous sanction policies, or the “work only” message—if you are not willing or able to accept any job, do not come knocking on the benefits door?<sup>43</sup> Or is it the lawlessness that permeates so many state systems and causes the disparity between policy and practice?

Devolution and flexibility did not come without federal mandates on states.

TANF law is a morass of requirements and rewards, prohibitions and penalties, and explicit and tacit state options.<sup>44</sup> For example, states must meet high work participation rates or risk a financial penalty.<sup>45</sup> At the same time, states are rewarded with a lowered work participation rate

***Devolution and flexibility have come at the expense of federal protections for clients and accountability to clients and to the public.***

if caseloads are reduced.<sup>46</sup> States may opt into some provisions, such as the Family Violence Option, simply by stating so in their state plans.<sup>47</sup> But states must opt out,

<sup>41</sup> On HHS administering TANF block grant programs see *id.* § 616. On limited federal authority to regulate state conduct or enforce the law see *id.* § 617. See MARK GREENBERG & STEVE SAVNER, A DETAILED SUMMARY OF KEY PROVISIONS OF THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT OF H.R. 3734, THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996, at 46 (Aug. 13, 1996), available at [www.clasp.org](http://www.clasp.org).

<sup>42</sup> See, e.g., Mark Greenberg, *Welfare Reform and Devolution, Looking Back and Forward*, 19 BROOKINGS REV. 20 (2001); Richard P. Nathan & Thomas L. Gais, *Federal and State Roles in Welfare: Is Devolution Working?*, *id.* 25, available at [www.brook.edu/dybdocroot/press/review/oldtoc.htm#SU01](http://www.brook.edu/dybdocroot/press/review/oldtoc.htm#SU01). See also Barbara L. Bezdek, *Contractual Welfare: Non-Accountability and Diminished Democracy in Local Government Contracts for Welfare-to-Work Services*, 28 FORDHAM URB. L.J. 1559, 1568–71 (2001); GAO, GAO-HEHS-98-6, SOCIAL SERVICE PRIVATIZATION, EXPANSION POSES CHALLENGES IN ENSURING ACCOUNTABILITY FOR PROGRAM RESULTS 14–16 (1997), available at [www.access.gpo.gov/su\\_docs/aces/aces160.shtml](http://www.access.gpo.gov/su_docs/aces/aces160.shtml).

<sup>43</sup> See, e.g., HHS, ANNUAL REPORT TO THE CONGRESS 2002, INDICATORS OF WELFARE DEPENDENCE ch. 2 (only 52 percent of families eligible for TANF were actually enrolled and received benefits in 1999) [hereinafter INDICATORS REPORT], available at [www.aspe.hhs.gov/hsp/indicators02/index.htm](http://www.aspe.hhs.gov/hsp/indicators02/index.htm).

<sup>44</sup> The PRWORA also provides that if a state opts to continue a waiver that was in effect on the date of enactment (i.e., August 22, 1996), the state need not comply with the law’s provisions that are inconsistent with the waiver until the expiration of the waiver. 42 U.S.C.A. § 615 (West Supp. 2001); 45 C.F.R. § 260.70–.76 (2000). States are also eligible to seek waivers of TANF state plan requirements. 42 U.S.C.A. § 1315(a) (West Supp. 2001). See MARK GREENBERG & STEVE SAVNER, WAIVERS AND THE NEW WELFARE LAW: INITIAL APPROACHES IN STATE PLANS (Nov. 1996), available at [www.clasp.org](http://www.clasp.org); MARK GREENBERG, WAIVERS AND BLOCK GRANT IMPLEMENTATION: INITIAL QUESTIONS (Aug. 12, 1996), available at [www.clasp.org](http://www.clasp.org). See also TANF ANNUAL REPORT, *supra* note 3, apps. tbls.13:4, and 13:13 (a list of states with work requirement and time-limit waivers).

<sup>45</sup> 42 U.S.C.A. §§ 607, 609(a)(3) (West Supp. 2001); 45 C.F.R. § 261.20–.25., 261.40–.44., 261.50–.57 (2000).

<sup>46</sup> 42 U.S.C.A. § 607 (b)(3) (West Supp. 2001); 45 C.F.R. § 261.40–262.44 (2000). A state’s participation requirement is reduced by a percentage point for every percentage point reduction in its welfare caseload relative to the 1995 level.

<sup>47</sup> 42 U.S.C.A. § 602(a)(7) (West Supp. 2001); 45 C.F.R. § 260.50–.57 (2000). Most states have adopted the Family Violence Option. See, e.g., JODY RAPHAEL & SHEILA HAENNICKE, TAYLOR INST., KEEPING BATTERED WOMEN SAFE THROUGH THE WELFARE-TO-WORK JOURNEY: HOW ARE WE DOING? A REPORT ON THE IMPLEMENTATION OF POLICIES FOR BATTERED WOMEN IN STATE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAMS—FINAL REPORT (1999), available at [www.ssw.umich.edu/trapped/pubs\\_fvo1999.pdf](http://www.ssw.umich.edu/trapped/pubs_fvo1999.pdf).

through enactment of a state law, of the ban on TANF assistance (and food stamps) for persons with felony drug convictions.<sup>48</sup> The law does not include specific requirements that would directly effect an increase in marriage, and states have done relatively little on this front. Other policies for which the law gives no specific guidance have proven popular, the family cap being a prime example.<sup>49</sup>

While states have taken advantage of this control over TANF funds and program design to varying degrees, to both the benefit and detriment of our clients, meeting federal work participation rates and reducing the caseloads dominate day-to-day operations. This focus has significantly contributed to why states have been highly successful at reducing caseloads and, to a lesser degree, at promoting entry-level work but far less successful at addressing barriers to work and career advancement.

### Time Limits

TANF is intended to be a transitional, time-limited system. The imposition of time limits on receiving cash assistance is probably the most prominent feature of the TANF program. In general, no family that includes an adult who has received

TANF assistance funded in whole or in part with federal funds may receive assistance for more than sixty months.<sup>50</sup> This is a lifetime ban. The months need not be consecutive; in which state the assistance was provided is irrelevant; and what the ages of or how many children are living with the adult who has reached the time limit does not matter: the entire family will be cut off.<sup>51</sup> Children who lived with an adult who reached the time limit may resume receiving assistance if the children reside with a different adult and if the adult who is past the time limit is not in the home. States are free to impose more (not less) restrictive time limits.<sup>52</sup>

The federal law includes specific exceptions to the federal lifetime limit. The “hardship exception” allows a state to assist beyond 60 months up to 20 percent of its average monthly TANF caseload.<sup>53</sup> If a state exceeds the 20 percent limit, it may avoid a financial penalty if it can attribute the excess to good-cause domestic violence waivers under the Family Violence Option.<sup>54</sup> Also, states must disregard months of assistance

- when no adult in the family is receiving assistance (child only cases),<sup>55</sup>

<sup>48</sup> 21 U.S.C. § 862a (2002). States have enforced or eliminated the ban or narrowed its scope.

<sup>49</sup> A family’s grant is capped and does not incrementally increase when a newborn joins the family. Over twenty states have a family cap policy. SPDP, Summary of Family Issues, *at* [www.spdp.org/reprexpl.htm](http://www.spdp.org/reprexpl.htm) (last modified Oct. 13, 1999).

<sup>50</sup> 42 U.S.C.A. § 608(a)(7)(A) (West Supp. 2001); 45 C.F.R. § 264.1 (2000); penalties at 42 U.S.C.A. § 609(a)(9) (West Supp. 2001); 45 C.F.R. §§ 264.2–.3 (2000).

<sup>51</sup> *Cf.* TANF Final Rule: Preamble, 64 Fed. Reg. 17719, 17740 (Apr. 12, 1999) (for states to provide federally funded assistance to children in child-only cases when their parents reach the sixty-month limit is inconsistent with statutory intent; but, in the absence of evidence that states are converting cases to avoid TANF rules, states may define families as they see fit while HHS assesses the impact of state policies on the achievement of TANF goals). Since no adult is a member of the assistance unit in child-only cases (they are representative payees), time limits and work requirements do not apply. For variations in state policies, see SPDP, State Time Limits (with accompanying tables), *at* [www.spdp.org/tanf/timelimit.htm](http://www.spdp.org/tanf/timelimit.htm) (last modified June 12, 2000).

<sup>52</sup> 42 U.S.C.A. § 608 (a)(7)(E) (West Supp. 2001). Twenty states impose time limits shorter than sixty months. Other variations include a fixed-period time limit and both a fixed-period and a lifetime limit. SPDP, State Time Limits, *supra* note 51, and accompanying tables.

<sup>53</sup> 42 U.S.C.A. § 608(a)(7)(C) (West Supp. 2001); 45 C.F.R. § 264.1(c) (2000).

<sup>54</sup> 42 U.S.C.A. § 609(9) (West Supp. 2001); 45 C.F.R. § 262.1(a)(9) (2000); 42 U.S.C.A. §§ 602(a)(7), 608(a)(7)(C) (West Supp. 2001); 45 C.F.R. § 260.59 (2000).

<sup>55</sup> 42 U.S.C.A. § 608(a)(7)(A) (West Supp. 2001).

- when a pregnant minor or minor parent is not the head of household or married to the head of household,<sup>56</sup> and
- when the adult lives in Indian country or an Alaskan Native village with 50 percent unemployment.<sup>57</sup>

States may use federal funds for assistance under these circumstances.

The federal law also explicitly allows states to use state funds to assist children and families who reach the federal time limit.<sup>58</sup> Devolution of authority over funds and program design has produced an array of policies governing time limits.<sup>59</sup> Before terminating benefits due to a time limit, several states require someone other than the caseworker to review a family's situation.<sup>60</sup> As of July 1, 2002, five years after states had to begin to implement TANF, families in almost every state have reached their time limit.<sup>61</sup>

## Work Requirements

One stated purpose of TANF is to end dependency on public assistance by promoting job preparation and work. This purpose is advanced primarily through two separate work participation rates that states must meet or risk financial penalties.<sup>62</sup> The all-families participation rate includes all families receiving assistance with an adult or a minor child head of household (one-parent or caretaker-relative and two-parent families).<sup>63</sup> The two-parent-families participation rate has separate (and higher) thresholds.<sup>64</sup>

For the 2002 fiscal year, states must meet an all-families participation rate of 50 percent and a two-parent-families participation rate of 90 percent. To count toward a participation rate, the adult or minor parent head of household in a one-parent or caretaker family must “engage in work” for thirty hours a week; and one

<sup>56</sup> *Id.* § 608(a)(7)(B).

<sup>57</sup> *Id.* § 608(a)(7)(D).

<sup>58</sup> *Id.* § 608(7)(F).

<sup>59</sup> E.g., variable time limits, extensions of the time limit, stopping the time limit, and not applying the time limit for a variety of circumstances for persons with barriers to employment, for certain months for persons working or attending education or training programs, and for persons caring for a disabled family member. See TANF ANNUAL REPORT, *supra* note 3, apps. tbl.13:13 (federally approved time limit waivers). Michigan and Vermont do not impose time limits and spend their own funds after the sixty-month federal limit expires. Jan Kaplan, *TANF Reauthorization and Time Limits*, REAUTHORIZATION NOTES (Welfare Information Network, Washington, D.C.), May 2002, at 6, available at [www.welfareinfo.org](http://www.welfareinfo.org).

<sup>60</sup> The reviewer may be a supervisor, a social worker with whom the state contracted for this purpose, or a “multidisciplinary” team that includes staff and appropriate experts qualified to assess barriers to work (e.g., low literacy, substance abuse, domestic violence).

<sup>61</sup> 42 U.S.C.A. § 601 note (West Supp. 2001).

<sup>62</sup> *Id.* § 607 (West Supp. 2001); 45 C.F.R. pt. 261 (2000); penalties at 42 U.S.C.A. § 609(a)(3) (West Supp. 2001); 45 C.F.R. § 262.1(a)(4), (11), (14) (2000). States must require work after two years of receiving assistance. States are free to define what constitutes work under this provision and how many hours per week are required. There is no explicit penalty for a state's failure to comply. 42 U.S.C.A. § 602(a)(A)(ii) (West Supp. 2001); 45 C.F.R. § 261.10(a) (2000) Also, states must require participation in community service after two months of receiving assistance if the recipient is not otherwise engaged in or exempt from work. States may determine the minimum hours per week and tasks and may opt out of this requirement. 42 U.S.C.A. § 602 (a)(1)(B)(iv) (West Supp. 2001); 45 C.F.R. § 261.10(b) (2000).

<sup>63</sup> In the 2000 fiscal year, all jurisdictions met their adjusted all-families work participation rates; only Guam and the Virgin Islands did not. See OFFICE OF PLANNING, RESEARCH & EVALUATION, ADMIN. FOR CHILDREN & FAMILIES, HHS, TANF WORK PARTICIPATION RATES: FY 2000 tbl.1-A, available at [www.acf.dhhs.gov/programs/opre/particip/index.htm#participation](http://www.acf.dhhs.gov/programs/opre/particip/index.htm#participation).

<sup>64</sup> In the 2000 fiscal year, twelve states and Puerto Rico and the Virgin Islands had no two-parent families in their TANF program. Seven states and Guam did not meet their adjusted two-parent rates. See *id.*

or both parents in a two-parent family must “engage in work” for thirty-five hours a week.<sup>65</sup> To count as “engaged in work,” recipients must participate in a narrow list of activities for at least twenty hours per week for the all-families rate and thirty hours a week for the two-parent-families rate. The list of countable activities includes job search, paid employment, unpaid employment options (i.e., work to earn the grant, commonly known as workfare), on-the-job training, and vocational training.<sup>66</sup> For the remaining hours, the countable activities broaden to include training directly related to employment and attendance at a secondary school or a course leading to a GED (general education development) certificate.<sup>67</sup> A wide range of activities that would greatly enhance recipients’ ability to obtain and retain employment and advance in the workplace—basic education, English proficiency or postsecondary education programs, longer-term voca-

tional training programs, or activities that help recipients address barriers to employment—are not countable.

No one individual has to participate in countable activities for thirty or thirty-five hours per week. States must make an initial assessment of the skills, prior work experience, and employability—ostensibly to address individual needs and capabilities—of all adults and those who are under 18 and have not completed high school or obtained a certificate of high school equivalency and are not attending school.<sup>68</sup> States allow exemptions from work requirements due to age (60 or older, or caring for a child under 1), disability, caring for a disabled household member, domestic violence, pregnancy, lack of child care or transportation, or living in a remote area.<sup>69</sup> Because of pressure to meet the work participation rates, states generally require almost 100 percent of adults to look for work and accept any job with little regard for their actual

<sup>65</sup> Both the percentage of the caseload constituting the participation rates and the number of hours required to count toward the rates have increased periodically since 1997 to reach the current levels. 42 U.S.C.A. § 607(a) (West Supp. 2001). A recipient who is the only parent or caretaker relative in the family of a child who is under 6 is deemed to be engaged in work if so engaged for at least twenty (not thirty) hours per week. 42 U.S.C.A. § 607(c)(2)(B) (West Supp. 2001); 45 C.F.R. § 261.35 (2000). While states benefit from this rule, individuals usually do not and are required to participate in activities for thirty hours per week. For the rules governing how the federal government determines each state’s work participation rates, see 42 U.S.C.A. § 607(b)–(d) (West Supp. 2001); 45 C.F.R. § 261.20–25 (2000).

<sup>66</sup> 42 U.S.C.A. § 607(c), (d) (West Supp. 2001); 45 C.F.R. § 261.30–36 (2000). Vocational training is limited to twelve months for any individual and to 30 percent of individuals engaged in work. Teen parent household heads are deemed to count toward the participation rate if the recipient maintains satisfactory attendance at secondary school or the equivalent or participates in education directly related to employment for at least twenty hours per week. Such individuals are countable toward the work participation rates only to the extent that they are included in the 30 percent maximum of individuals engaged in vocational training. 42 U.S.C.A. § 607(c)(2)(C)–(D) (West Supp. 2001); 45 C.F.R. § 261.33 (b)–(c) (2000). These restrictions on vocational training as a countable activity significantly limit access to training and opportunities for high-wage employment.

<sup>67</sup> 42 U.S.C.A. § 607(c), (d) (West Supp. 2001); 45 C.F.R. § 261.31(c) (2000).

<sup>68</sup> 42 U.S.C.A. § 608(b) (West Supp. 2001); 45 C.F.R. §§ 261.11, 261.12 (2000). States have the option of not requiring a single custodial parent caring for a child under 1 to engage in work. If the state so opts, the state may exclude such an individual from the all-families participation rate calculation for a maximum of twelve months. 42 U.S.C.A. § 607(b)(5) (West Supp. 2001); 45 C.F.R. § 261.22(c). (2000) Also, a two-parent family that includes a disabled parent is not treated as a two-parent family for purposes of the work participation rates. 42 U.S.C.A. § 607(b)(2)(C) (West Supp. 2001); 45 C.F.R. § 261.24(e) (2000). But if the two-parent family is receiving federally funded child care assistance and neither of the parents is disabled or caring for a disabled child, the parents must participate in activities for a total of fifty-five hours per week. 42 U.S.C.A. § 607(c)(1)(B)(ii) (West Supp. 2001); 45 C.F.R. § 261.32(d) (2000).

<sup>69</sup> See SPDP, TANF Work Activities and Requirements (with accompanying table), *available at* [www.spdp.org/tanf/work.htm](http://www.spdp.org/tanf/work.htm) (last modified Jan. 2, 2001).

abilities to retain even entry-level employment or to benefit from education or training that leads to high-wage employment. In many states TANF is not just a “work first” program but a “work only” program.

If an individual refuses to engage in work without good cause, under federal law the family must be sanctioned or terminated from assistance.<sup>70</sup> States seem to have trouble distinguishing between a refusal to cooperate and the failure to comply. Far too many families have left welfare not because they found a job but because they were terminated from the program for failing to comply with requirements, often the work requirements.<sup>71</sup> And many more who are eligible do not apply or reapply knowing they may not be able to meet the state’s expectations.

In reality, states have great flexibility in determining how many recipients must “engage in work.” States define and structure countable work activities and may allow additional activities that better address the barriers and build on the interests and talents of recipients. States derive this flexibility in several ways. First, to meet the all-families work participation rate, a state must have 50 percent of the adults and minor-parent heads of households in countable activities for thirty hours a week.<sup>72</sup> The remaining 50 percent do not have to participate in any countable activities. States have the authority to spend TANF funds on activities that are

not countable. They may even allow parents to care for their young children at home instead of insisting that they find a “real” job and nonexistent child care.

Second, states control maintenance-of-effort funds and may provide assistance

***In reality, states have great flexibility in determining how many recipients must “engage in work.”***

in a separate state program that does not use any federal funds. No assistance-related requirements, including the work requirements, apply.<sup>73</sup>

Third, states may define and structure countable work activities to be less demanding and more beneficial for recipients by, for example, counting toward the hours-per-week requirement study time outside the classroom and travel time to and from child care and job sites, or incorporating literacy and English-as-a-second-language classes as part of a work experience activity.<sup>74</sup>

Fourth, a state’s participation requirement is reduced by a percentage point for every percentage point reduction in its welfare caseload relative to the 1995 level.<sup>75</sup> Most states have never reached the 50 percent or 90 percent work participation rates, but they did not need to.

<sup>70</sup> 42 U.S.C.A. § 607(e)(1) (West Supp. 2001); 45 C.F.R. § 261.14 (2000). But a state may not reduce or terminate assistance if the individual is a single custodial parent caring for a child under 6, and appropriate and affordable child care is not available. 42 U.S.C.A. § 607(e)(2) (West Supp. 2001); 45 C.F.R. § 261.15 (2000).

<sup>71</sup> See “LEAVERS” REPORT, *supra* note 22; INDICATORS REPORT, *supra* note 43.

<sup>72</sup> This discussion concerns the all-families rate only. Changes in the work participation rates are likely with the reauthorization of TANF. The bill that passed the House in May 2002 would eliminate the separate rate for two-parent families, increase the all-families participation rate annually starting at 50 percent in 2003 to 70 percent in 2007, and increase the hourly requirement to forty hours per week for all families. H.R. 4737, 107th Cong., 2d Sess. § 110 (2002).

<sup>73</sup> SPDP, Findings in Brief: Separate State Programs, *supra* note 37.

<sup>74</sup> See SPDP, TANF Work Activities and Requirements, *supra* note 69.

<sup>75</sup> 42 U.S.C.A. § 607 (b)(3) (West Supp. 2001); 45 C.F.R. § 261.40–.44 (2000). The caseload reduction credit is unlikely to survive TANF reauthorization, at least in its current form. The credit was clearly intended as an incentive to reduce caseloads. And it worked, with a pernicious impact on our clients who have been terminated from assistance and remain poor.

Based on the decline in a state's caseload, the federal government recalculates downward the state's participation rate. This is the "adjusted standard." With caseload declines of 50 percent or more, most states' adjusted standard has been at or near zero for some time.<sup>76</sup>

This flexibility in the federal law has helped alleviate the pressure on states to meet the all-families and two-parent-families work participation rates. Preferring a rigid, one-size-fits-all approach, states have been miserly in extending this flexibility to recipients. But recent trends indicate that current recipients are benefiting from the willingness of many states to ease up on pushing recipients into employment and other countable activities that may not be suitable and putting more resources into addressing barriers to work and career advancement.<sup>77</sup>

### The TANF Population

The TANF population includes both current and former recipients, newly enrolled and long-term recipients, those who cycle on and off, and families eligible for but not

enrolled in TANF. It is a diverse and complex population. Some have thrived under TANF and others have withered. A tremendous amount of research and writing about the characteristics of and outcomes for the TANF population is often illuminating, sometimes contradictory, much of it repetitive and completely overwhelming. Some of it belies the reality of our clients' lives; much of it reflects their reality.<sup>78</sup>

Sixty percent of TANF families have only one adult recipient, 35 percent are child-only cases, and 4 percent include two or more adult recipients. Ninety percent of TANF adult recipients are women. African American families constitute 39 percent of TANF families; white families, 31 percent; Hispanic families, 25 percent; Asian families, 2.2 percent; and Native American families, 1.6 percent. A quarter of adult recipients have earned income.<sup>79</sup>

Many adult recipients have one or more barriers to employment,<sup>80</sup> including

- chronic health problems and physical disabilities,<sup>81</sup>
- mental health impairments,<sup>82</sup>

<sup>76</sup> See TANF WORK PARTICIPATION RATES, *supra* note 63 (FY 2000 tbl.1-A; FY 1999 tbl.1-A; FY 1998 tbl.1; FY 1997 tbl.1).

<sup>77</sup> See TANF ANNUAL REPORT, *supra* note 3, chs. 2, 12. A majority of states also provide to recipients who leave cash assistance various services and benefits, including case management, employment or retention bonuses, transportation and work expense allowances, education and training services, and tuition assistance. See SPDP, TANF Work Activities and Requirements, *supra* note 69.

<sup>78</sup> Children are the majority of TANF recipients. This article discusses adults, but the effect of TANF on their children cannot be ignored. For research on the impact of TANF on children, see resources listed in the online version of this article at [www.povertylaw.org](http://www.povertylaw.org).

<sup>79</sup> TANF ANNUAL REPORT, *supra* note 3, ch. 10.

<sup>80</sup> See SHEILA R. ZEDLEWSKI, URBAN INST., WORK-RELATED ACTIVITIES AND LIMITATIONS OF CURRENT WELFARE RECIPIENTS (1999) (a national survey found that 78 percent of welfare recipients experienced at least one barrier to employment; 44 percent, two or more barriers; and 17 percent, three or more barriers—individuals with barriers were far less likely to work).

<sup>81</sup> See EILEEN P. SWEENEY, CTR. ON BUDGET & POLICY PRIORITIES, RECENT STUDIES INDICATE THAT MANY PARENTS WHO ARE CURRENT OR FORMER WELFARE RECIPIENTS HAVE DISABILITIES OR OTHER MEDICAL CONDITIONS 3 (2000) (upwards of one-fifth of recipients have physical impairments that limit their ability to work), *available at* [www.cbpp.org](http://www.cbpp.org).

<sup>82</sup> See GAO, GAO-02-37, MORE COORDINATED FEDERAL EFFORT COULD HELP STATES AND LOCALITIES MOVE TANF RECIPIENTS WITH IMPAIRMENTS TOWARDS EMPLOYMENT 3-4 (2001) (44 percent of adult TANF recipients have one or more physical or mental impairments, with 29 percent with a mental impairment), *available at* [www.access.gpo.gov/su\\_docs/aces/aces160.shtml](http://www.access.gpo.gov/su_docs/aces/aces160.shtml); SWEENEY, *supra* note 81, at 2-3 (mental impairments include, inter alia, depression, posttraumatic stress disorder, and general anxiety disorder; two states that tested the IQs (intelligence quotients) of recipients found about one-fifth to one-quarter had IQs of less than 80).

- alcohol and substance abuse,<sup>83</sup>
  - learning disabilities,<sup>84</sup>
  - limited English proficiency,<sup>85</sup>
  - low basic skills,<sup>86</sup>
  - no recent work experience,<sup>87</sup>
  - a criminal record,<sup>88</sup> and
  - domestic or sexual violence.<sup>89</sup>
- One or more of their children or other family members may also have health problems and disabilities.<sup>90</sup> Long-term recipients are more likely to have barriers to work, in many cases multiple barriers.<sup>91</sup> A substantial number of former recipients are not working.<sup>92</sup> They face employment barriers similar to long-term recipients.<sup>93</sup> Welfare “cyclers” (persons who left welfare and then returned) are more likely to have

<sup>83</sup> See SARAH R. CALLAHAN, UNDERSTANDING HEALTH-STATUS BARRIERS THAT HINDER THE TRANSITION FROM WELFARE TO WORK 4–5 (Nat’l Governors’ Ass’n Ctr. for Best Practices 1999) (one study estimated that 25 percent of women on welfare have substance abuse problems; other studies place the estimate as high as 60 percent), *available at* [www.nga.org/cda/files/1999HSBARRIERS.pdf](http://www.nga.org/cda/files/1999HSBARRIERS.pdf).

<sup>84</sup> See SWEENEY, *supra* note 81 (three studies found that between one-fifth and one-third of adult TANF recipients have learning disabilities).

<sup>85</sup> Around the country the percentage of the welfare caseload facing language barriers varies from 7 percent to 20 percent. See AMY BROWN, BEYOND WORK FIRST: HOW TO HELP HARD-TO-EMPLOY INDIVIDUALS GET JOBS AND SUCCEED IN THE WORKFORCE (2001), *available at* [www.mdrc.org/Reports2001/hardtoserve/mdrchow-toHardtoEmploy.pdf](http://www.mdrc.org/Reports2001/hardtoserve/mdrchow-toHardtoEmploy.pdf) 9 (in Los Angeles 20 percent of single parents and 50 percent of the heads of two-parent families who enter the county’s welfare-to-work program do not speak or understand English (BROWN, *supra*, at 96)).

<sup>86</sup> See SHEILA R. ZEDLEWSKI & DONALD ALDERSON, URBAN INST., DO FAMILIES ON WELFARE IN THE POST-TANF ERA DIFFER FROM THEIR PRE-TANF COUNTERPARTS? 26 (2001), *available at* [www.urban.org](http://www.urban.org) (a comparison of education levels of TANF recipients shows that 35 percent of new entrants, 41 percent of cyclers, and 50 percent of long-term recipients had less than a high school education).

<sup>87</sup> *Id.* (a comparison of work history of TANF recipients shows that 17 percent of new entrants, 24 percent of cyclers, and 34 percent of long-term recipients had last worked three or more years ago).

<sup>88</sup> See PATRICIA ALLARD, SENTENCING PROJECT, LIFE SENTENCES: DENYING WELFARE BENEFITS TO WOMEN CONVICTED OF DRUG OFFENSES 17–21 (2002) (citing reports that a criminal record significantly impairs a person’s ability to find stable and legal employment and limits them to low-wage and low-skill jobs), *available at* [www.sentencingproject.org](http://www.sentencingproject.org). For other useful references on legal strategies for helping parents with criminal records, see the online version of this article at [www.povertylaw.org](http://www.povertylaw.org).

<sup>89</sup> See Richard M. Tolman & Jody Raphael, *A Review of Research on Welfare and Domestic Violence*, 56 J. SOC. ISSUES 655, 657 (2000) (as many as 60 percent of women receiving welfare have been victims of domestic violence as adults (as compared to 22 percent of women in the general population), and as many as 30 percent reported abuse within the last year).

<sup>90</sup> GAO, GAO-02-884, OUTCOMES FOR TANF RECIPIENTS WITH IMPAIRMENTS 13 (2002) [hereinafter OUTCOMES FOR TANF RECIPIENTS] (15 percent of all adult recipients were caring for a child with impairments), *available at* [www.gpo.gov/su\\_docs/aces/aces/60.shtml](http://www.gpo.gov/su_docs/aces/aces/60.shtml).

<sup>91</sup> Krista Olson & LaDonna Pavetti, Urban Inst., Personal and Family Challenges to the Successful Transition from Welfare to Work (1996), *at* [www.urban.org/welfare/report1.htm](http://www.urban.org/welfare/report1.htm); OUTCOMES FOR TANF RECIPIENTS, *supra* note 90, at 2, 17 (recipients with mental and physical impairments are less likely to be working and half as likely to exit TANF as recipients without impairments).

<sup>92</sup> “LEAVERS” REPORT, *supra* note 22, at 2 (between 32 percent and 53 percent of leavers were not employed in the quarter they exited TANF).

<sup>93</sup> PAMELA LOPREST & SHEILA ZEDLEWSKI, URBAN INST., MAKING TANF WORK FOR THE HARD TO SERVE: 2 SHORT TAKES ON WELFARE POLICY (2002), *available at* [www.urban.org](http://www.urban.org). See also OUTCOMES FOR TANF RECIPIENTS, *supra* note 90, at 17 (recipients who have mental and physical impairments and leave TANF are less likely to be employed after leaving than recipients without impairments); SWEENEY, *supra* note 81, at 2 (approximately one-fifth of those who left TANF and are not working have mental impairments).

barriers to work than individuals who left welfare and are working.<sup>94</sup>

Studies of “leavers” (recipients who have left TANF) report that between 47 percent and 68 percent were employed the quarter they left TANF.<sup>95</sup> About three-quarters of all recipients who leave cash assistance work at some point in the year after leaving and more than a third work all four quarters.<sup>96</sup> Of those working, most work at least thirty hours or more per week.<sup>97</sup> Welfare leavers are concentrated in low-paying service and clerical jobs, averaging between \$7 and \$8 an hour.<sup>98</sup> Many work nontraditional hours, and, while their earnings grow over time, they grow slowly and erratically. Even the earnings for leavers who work continuously (about half of all employed leavers) fall below the federal poverty guidelines.<sup>99</sup>

Both employed and unemployed leavers continue to face serious hardships that make finding and keeping jobs difficult: lack of skills, problems with child care, problems with transportation, health limitations, and caring for sick family members. They continue to struggle to pay for food, housing, and medical care.<sup>100</sup> A study using national data found that 47 percent of those who left TANF in 1999 and worked full-time, full-year, experience one or more critical hardships—lack of food, eviction, or inability to receive needed medical care, any of which immediately threatens a family’s health and well-being. Of that same group, 74.3 percent experienced one or more serious hardships, or the day-to-day difficulties that, although not life-threatening, can have long-term consequences for family well-being. These include lack of health insurance and access to regular

and preventive medical care, worries about food, and the inability to pay housing or child care bills on time. Those who remained on TANF suffered less hardship. This does not mean that recipients are better off than those who left, just that the transition off welfare is difficult, and earnings are too low.<sup>101</sup>

While barriers to employment may be determinative for a group of individuals of the likelihood of success in making the transition from welfare to work, they are not necessarily determinative for any one individual. Some individuals with multiple barriers go to work everyday and provide for their families. But what is up to the federal government and the states is to provide the resources, programs, and services and create an environment to enable all who can, to work, and those who cannot, to live decently and with dignity.

### TANF Issues

Most TANF clients seek legal assistance after they receive notice of a denial, termination, reduction, or overpayment of public assistance. The notice of a right to appeal, even a poorly written notice, is probably the only time in the TANF process, from application to termination, that applicants and recipients understand that they have rights—to question, to disagree, to demand something other than what is proffered. And now, for so many recipients reaching the time limits, there may not be anything to demand.

By the time most clients seek out legal assistance, many have suffered a series of violations of their rights and perhaps humiliations, and whatever failure or refusal to comply generated the notice is just the most recent one. But advocates

<sup>94</sup> URBAN INST., *Welfare “Cyclers” More Likely to Have Barriers to Work than “Leavers,”* FAST FACTS ON WELFARE POLICY (2002), available at [www.urban.org/uploadedPDF/900526.pdf](http://www.urban.org/uploadedPDF/900526.pdf).

<sup>95</sup> See “LEAVERS” REPORT, *supra* note 22.

<sup>96</sup> *Id.* at 6.

<sup>97</sup> See ELISE RICHER ET AL., CTR. FOR LAW & SOC. POLICY, FREQUENTLY ASKED QUESTIONS ABOUT WORKING WELFARE LEAVERS 3 (2001), available at [www.clasp.org](http://www.clasp.org).

<sup>98</sup> *Id.* at 3, 12. See also “LEAVERS” REPORT, *supra* note 22, at 7.

<sup>99</sup> RICHER ET AL., *supra* note 97, at 16.

<sup>100</sup> See *id.* at 19–20; “LEAVERS” REPORT, *supra* note 22, at 16–18.

<sup>101</sup> See HEATHER BOUSHEY, ECON. POLICY INST., FORMER WELFARE FAMILIES NEED MORE HELP, HARDSHIPS AWAIT THOSE MAKING TRANSITION TO WORKFORCE 4 tbl.1, 6 (2002), available at [www.epinet.org](http://www.epinet.org).

need to address the denials that come long before the notice.

The issues to address are not hard to identify. In addition to the denials, sanctions, and terminations, issues include the client's right to file an application and to receive assistance and services necessary to enable compliance with TANF requirements, including a thorough assessment conducted by a qualified professional before any assignment to a work activity; an individual responsibility plan that reflects the skills, ambitions, barriers and needs of the client; access to quality education and training to enhance earning potential; child care that enhances a child's development; transportation and other allowances that support the work effort; counseling and other supportive services that address barriers to work; stopping the clock and extending the clock beyond the sixty-month time limit.<sup>102</sup> Aggressively pursuing these issues can achieve two complementary goals. The first, of course, is for the client

to be able to file the application or attend a training program or get reinstated; make the state accountable to the clients. The second is to end the lawlessness, the arbitrary treatment, the rigidity and the disrespect; make the state accountable to the client and the public.

TANF IS NOT ABOUT ENDING POVERTY. IT IS NOT even about ending the need for public assistance. In its current implementation, TANF is about ending public assistance. States have the authority to make it something more—a safety net for low-income workers and those unable to work, an opportunity to escape from a violent relationship, a bridge to high-wage employment, and a better life for our clients. Our duty as their representatives is aggressively to pursue their rights and options. We must push states to make the TANF program provide both the safety net and the opportunities for a better life that our clients need.

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<sup>102</sup> See Wendy Pollack, *Temporary Assistance for Needy Families: Assessments, Individual Responsibility Plans, and Work Activities*, 31 CLEARINGHOUSE REV. 401 (Jan.–Feb. 1998) (a framework for evaluating assessments, individual responsibility plans, work requirements, and model advocacy strategies); Sharon M. Dietrich et al., *Welfare Advocacy: Tactics for a New Era*, 31 CLEARINGHOUSE REV. 419 (Jan.–Feb. 1998) (using laws such as Title VI of the Civil Rights Act of 1964, food stamp regulations, the Americans with Disabilities Act, and traditional employment and labor laws to pursue TANF problems and nonlitigation strategies).