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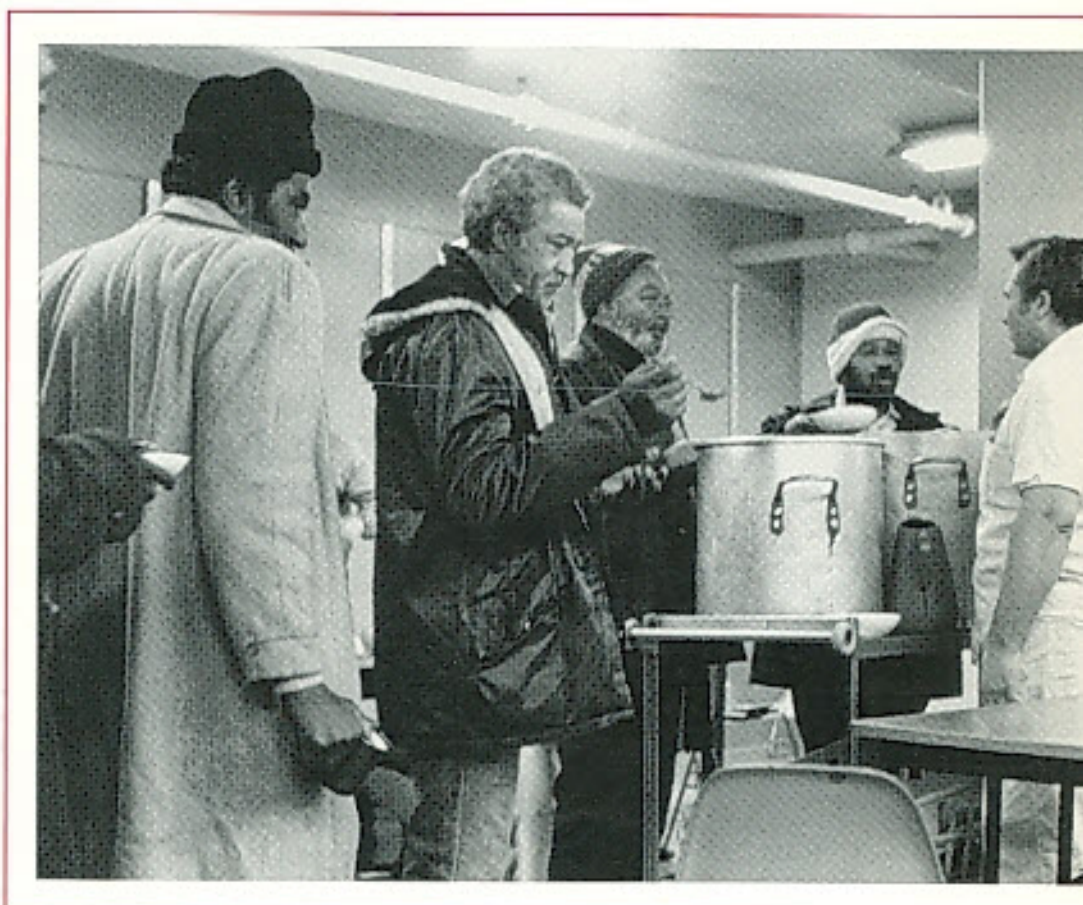
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Block Grant Implementation Issues

Seeking to Deter Parental Behavior Through Welfare Policy: New Jersey's Child Exclusion, Housing and Homelessness

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I. Introduction

Congress is currently considering eliminating the Aid to Families with Dependent Children (AFDC) program and replacing it with block grants to states. The House and Senate have approved separate versions of bills that would implement a block grant program. Both versions would eliminate an individual's federal entitlement to cash assistance and would impose a five-year lifetime limit on receipt of such assistance. The House bill also contains a "child exclusion" provision under which states would be expressly prohibited from providing cash assistance through the block grant to any child born to a recipient, except in cases of rape or incest. Under the Senate version, child exclusions are not mandated upon states but are at state option. /1/ At writing, it is uncertain what form any child exclusion will take in the event welfare reform legislation becomes law. /2/

Child exclusions are intended to deter the behavior of parents on AFDC by denying cash assistance to them and/or their individual children. At bottom, however, this exclusion policy reduces AFDC cash assistance to poor families, notwithstanding that this assistance is the only resource they have to procure a place to live. How will these families maintain safe and decent housing -- or any housing at all -- with substantially reduced AFDC grants? How will AFDC assistance reductions affect federal housing programs, such as public housing and Section 8 rental assistance? Will child exclusions contribute to AFDC recipients' homelessness, increasing demand for emergency shelter, emergency assistance, and other emergency services?

Some insight into these questions can be gleaned from examining New Jersey's child exclusion, sometimes referred to as the "family cap." /3/ This experiment, in effect statewide since August 1993 under a waiver from the U.S. Department of Health and Human Services (HHS) under section 1115 of the Social Security Act, deprives AFDC cash assistance to needy children conceived and born to AFDC recipient parent(s).

New Jersey was the first state to adopt and implement child exclusion, but other states have since followed its lead by obtaining section 1115 waivers from HHS. /4/ This article describes how the New Jersey child exclusion works, including the reductions in cash assistance triggered by the birth of an excluded baby, and the effect of those reductions on the family's ability to pay rent and avoid eviction or homelessness.

II. Child Exclusion

In early 1992, the New Jersey legislature amended existing state law to authorize child exclusion. Under the law, the New Jersey Department of Human Services (DHS) is directed to eliminate the standard AFDC grant increase for any child conceived by and born to an AFDC recipient. /5/ The law also provides that, as an incentive to work, parents of excluded children may retain more earned income than other AFDC recipients. /6/ Because the exclusion conflicts with federal law, the state applied for a section 1115 waiver and, on July 20, 1992, the Secretary of HHS granted waivers to authorize the exclusion as a five-year experiment. /7/

In September 1992, DHS adopted regulations to implement the HHS waiver and state law. These regulations provide that every child born after August 1, 1993, to a parent who has received AFDC for any month within ten months preceding the birth of the child "shall be excluded from the [AFDC] eligible unit, for cash assistance purposes only," and the parent "shall not be entitled to incrementally increased AFDC benefits as a result of the birth of a child(ren)." /8/ Children of new AFDC applicants born within ten months of the application are not excluded from the eligible unit, and the parent is entitled to incrementally increased benefits for that child. /9/ There is no exception for children conceived through rape or incest, or born because of failed contraception. All children in a multiple birth are excluded. Excluded children remain eligible for food stamps and Medicaid. /10/

The regulations also provide an additional state earned income disregard for parents of excluded children and give these parents access to education and job training through an expanded Job Opportunities and Basic Skills Training Program -- the Family Development Program (FDP). /11/ Because excluded children are part of the AFDC filing unit, countable income attributable to the child will reduce the family's grant even though the grant will not be increased to reflect the child's needs. /12/ In addition, the state treats child support paid on behalf of the excluded child the same as it does of any other eligible child. The child support is assigned to the state, which then retains it, except for the \$50 per family pass-through, as reimbursement for the AFDC paid to the family. /13/

The terms and conditions under which HHS granted the waiver require DHS to evaluate the impact of child exclusion on "family structure" by examining "marital status and birth rates" among a small segment of AFDC households. For this purpose, 9,000 AFDC families have been randomly selected and equally divided into control and experimental groups. The remaining 113,000 AFDC families statewide are subject to child exclusion even though they are not part of the evaluation and no data will be gathered from them. HHS has never explained why it imposed the exclusion on virtually the entire AFDC population for no experimental purpose whatsoever. /14/

A. Implementation Since August 1993

Child exclusion took effect statewide on August 1, 1993. From that date through October 1994, 7,893 needy children were excluded from the AFDC program. This represents 43.69 percent of the total children born to AFDC recipients over the 15-month period. The remaining 56.31 percent, or 10,176 children, were born within the first ten months of the family's receipt of AFDC and thus were not subject to the exclusion. /15/

The data released by the state on child exclusion since its implementation has focused on a single issue: the numbers of children born to women on AFDC and whether those numbers prove that the exclusion deters childbearing by lowering the birthrate in the AFDC population. Information released early in the experiment, looking at the overall AFDC birthrate before and after implementation of the exclusion, showed a decline in the birthrate among AFDC recipients statewide. /16/ The declines were then simply attributed to the exclusion policy. /17/

While the focus remains on determining if child exclusion causes fewer births among AFDC recipients, no systematic effort has been made to ascertain its impact on needy children and their families. Thousands of excluded children have been born in New Jersey since August 1993. Their parents and caretakers are receiving no cash assistance for their care and support. How are the parents and caretakers meeting the basic subsistence needs of their children, particularly the need for a safe and decent place to live?

B. Child Exclusion and AFDC Benefit Levels

New Jersey, like other states, sets the amount of cash assistance paid to eligible AFDC recipients by taking into account family size. The more children in a family, the larger the grant, in accordance with an established schedule. /18/ If a child is excluded, however, the family does not receive the standard increase in cash assistance typically provided when a family adds a new member.

The practical consequence of excluding certain children from AFDC is significant reduction in the cash assistance available to parents for the care and support of their children. This reduction is made from AFDC assistance levels that are already far below the poverty level. /19/ The most common reduction occurs when a mother of one or two children gives birth to another child. In New Jersey, the mother would otherwise receive an increase of \$102 per month for the second child, bringing the monthly assistance to \$424, or \$64 for the third child, bringing the monthly grant level to \$488. Mothers of excluded children, however, are deprived of these increases, despite the presence of the additional child in the family. The result is overall reductions of monthly cash assistance of 24 percent and 12 percent, respectively.

The effect of child exclusion on grant levels is shown in the four AFDC families listed in table 1. /20/ E.P. and Q.A. gave birth to a second child who is subject to the exclusion. G.S. and E.S. had two children and then had a third excluded child. K.H., a mother of two children, gave birth to triplets, all of whom are excluded from AFDC.

III. Child Exclusion and Housing Costs

Families subjected to child exclusion have an additional child in need of a safe place to live and less money available each month to meet this basic need. The policy, therefore, furthers the distance between AFDC cash assistance payments and the cost of rental housing in New Jersey.

Thus child exclusion exacerbates housing problems among AFDC households, particularly among those who do not live in public housing or are unable to obtain federal rental assistance.

New Jersey's AFDC grant levels fall far short of the fair market rents (FMR) established by the U.S. Department of Housing and Urban Development (HUD), even before imposition of the assistance reductions due to child exclusion. The 1994 FMR for a two-bedroom housing unit in New Jersey is \$827 per month, whereas the maximum monthly AFDC grant for a family of three is just 51 percent of that, or \$424 per month. /22/ The grant for a four-person family, \$488, represents only 59 percent of the average housing rent. The \$403 shortfall between AFDC grant levels for a three-person family and the FMR for a two-bedroom housing unit in New Jersey is the largest such gap in the nation. /23/

Child exclusion significantly widens the housing cost shortfall for AFDC families, a gap that, even before imposition of the exclusion, stands at close to one-half. The family of three with an excluded child receives only \$322 in AFDC per month, falling 29 percent to a mere 22 percent of the two-bedroom FMR. The \$422 monthly provided to a family of four with an excluded child drops the family another 8 percent to 51 percent of the two-bedroom FMR.

Ninety-eight and one-half percent of AFDC households in New Jersey are renters. Of those, at least 72.7 percent rent housing from private owners without any additional housing assistance. Only 14.6 percent of AFDC families live in public housing or have their rent subsidized under the federal Section 8 rental assistance program. /24/ Very few AFDC families -- 2.7 percent -- have earned income to help meet housing costs. /25/ There are no reports that families with excluded children are using the extra state earned income disregard made available just for them, or that these families are participating in the FDP job training program, most likely because of the lack of free or low-cost infant day care.

The data show that few AFDC families in New Jersey have their rent subsidized through a housing program and very few have any earned income. Virtually all families, utilizing the AFDC cash assistance, must rent housing in the private market. Child exclusion, by effectively reducing AFDC cash assistance levels, at a time when families increase in size and have greater housing needs, directly affects the capacity of poor families to maintain housing and thereby avoid eviction and homelessness.

IV. Child Exclusion and Homelessness

New Jersey has made no effort to assess the condition of the housing occupied by families with excluded children, including whether these families are able to find housing they can afford or whether, lacking any alternative, they must crowd into already occupied housing. Neither has the state examined the extent to which these families experience evictions and subsequent homelessness. The only light shed on these important issues is from the experiences of the affected families themselves, particularly those who, when faced with eviction or a need for emergency assistance, seek representation from legal services.

The facts in the cases listed above are illustrative of the housing problems of families with excluded children. /26/ K.H., the mother of the excluded triplets, cannot afford to house her five children on \$424 per month. She and her children live in one room in her sister's apartment. E.S. and G.S. rent an apartment for \$550 per month, well in excess of their \$488 from AFDC. Voluntary help from a relative makes up the difference. Following spells of homelessness, E.P. and Q.A. were able to rent housing only with the help of temporary rental assistance (TRA), a form of assistance made available to homeless AFDC families in New Jersey under its emergency assistance program. /27/ Each of these women receives \$322 in AFDC per month. TRA, which has a twelve-month time limit, fills the gap for their monthly housing rents of \$370 and \$430, respectively.

These individual cases point to several likely trends among families with excluded children. First, the effective AFDC grant reductions drop families so far below even the lowest street rent that they are unable to afford any housing and will eventually be compelled to crowd into units leased by relatives and friends. Second, those families who manage to rent housing are likely to be paying all, or nearly all of their monthly cash assistance for rent. Having little or no funds for clothes, utilities, or personal needs, or to meet a sudden emergency, these families are prime candidates for eviction.

Third, although the rent of AFDC families in public or subsidized housing is fixed by the Brooke Amendment at 30 percent of their monthly AFDC grant, 42 U.S.C. Sec.1437a(a), families with excluded children in this housing also have less money for other basic subsistence needs. In addition, when AFDC grants are reduced under child exclusion, more per unit subsidy from HUD is needed because these families have less money for rent. Because of these factors, the proliferation of child exclusion policies nationwide will add pressure to raise the percentage of income paid for rent by tenants in federal housing programs and to trim the overall level of housing assistance available to very low-income households. /28/

Finally, spells of homelessness, especially among vast numbers of families renting private housing, will increase the demand on emergency service programs, including the AFDC emergency assistance program and the shelter and food networks operated by nonprofit and charitable groups. Providers of services to homeless families indicate the presence of a large number of families with excluded children in emergency shelters and other programs. For example, these families comprise 20 percent of the participants in a central New Jersey transitional housing program and 15 percent to 30 percent of the homeless families in a Camden emergency shelter. /29/ Longer stays in emergency shelter are more likely given that these families have substantially less financial resources with which to lease permanent housing.

V. Conclusion

It seems obvious to those who represent or assist AFDC families that child exclusions worsen their already desperate housing condition and heighten the risk of homelessness. The New Jersey experience, however, demonstrates that the sole concern of those who shape and implement the policy has been to determine, as quickly as possible, whether it has any deterrent effect on the proscribed parental behavior: giving birth while receiving AFDC. The consequences of child exclusion to the children who, when born, are deprived of AFDC, and to their siblings and parents, remain largely hidden from view.

To bring the full impact of child exclusion policies into sharp focus, several steps must be taken wherever these policies are implemented. First, where states are required to undertake evaluations of the policy, such evaluations must include tracking excluded children and their families and assessing the effect of the policy on their health and safety. Second, academic institutions and social science research organizations must be encouraged to conduct similar research, especially where the state evaluations are limited to ascertaining the impact on parental behavior. /30/ Third, emergency service programs and providers of assistance to the homeless must be enlisted to monitor the presence of these families in their service population. Fourth, child welfare agencies should be required to track excluded families as they come in for services, including foster care. Finally, public housing authorities and other agencies that provide subsidized housing should be alerted to potential financial and other impacts of child exclusions on their programs and encouraged to monitor those impacts carefully.

Information of this nature is critical not only in determining the extent to which excluded children are joining the ranks of the homeless but also in assessing the social costs of child exclusion policies. Such information also underlines efforts to help families maintain housing and avoid homelessness, a daunting challenge to legal services and other service providers. Finally, such information keeps the focus concerning child exclusions where it belongs: on the needy children who, by virtue of their status at birth or for reasons beyond their control, are deemed by law as beyond the reach of our nation's safety net.

Footnotes

/1/ H.R.4, Personal Responsibility Act, as passed by the House on March 24, 1995, and H.R.4, Work Opportunity Act, as passed by the Senate on September 19, 1995.

/2/ The Budget Reconciliation Act of 1995, H.R. 2427, contains a compromise between the Senate and House versions of H.R.4. The Act does not include the House provision requiring states to impose child exclusion. There are reports, however, that any final welfare reform legislation may prohibit assistance to children born to recipients unless a state opts out. Under this approach, a state must implement the child exclusion provision in its block grant unless the state passes a law specifically allowing these children to receive assistance. See Center for Law and Social Policy, Summary of Key Provisions of the Temporary Assistance for Needy Families Block Grant, Preliminary Analysis (Nov. 29, 1995).

/3/ The term "family cap" is a misnomer. A family cap is a limit on the total amount of money any family or household may receive. *Dandridge v. Williams*, 397 U.S. 471, 477 (1970) (Clearinghouse No. 1048). In contrast, child exclusion places no maximum dollar grant limitation on a family. Instead, the exclusion seeks to deter specific parental conduct: having a child while in receipt of Aid to Families with Dependent Children (AFDC). It does this by targeting particular children -- those conceived and born to a mother on AFDC -- and then excluding the child from the AFDC program, effectively reducing the size of the grant the family would otherwise receive.

/4/ As of September 1995, in addition to New Jersey, 12 states (Arkansas, Georgia, Nebraska, Indiana, Wisconsin, Arizona, Delaware, Virginia, Illinois, Maryland, Massachusetts, and Mississippi) have received U.S. Department of Health and Human Services (HHS) waivers to conduct a child exclusion experiment and at least three states have waivers pending (California, Kansas, and South Carolina). See Center on Social Welfare Policy and Law, Pub. No. 169-2, Summary of AFDC Waiver Activity Since February 1993 (Apr. 1995). Center on Social Welfare Policy and Law, Welfare News 9 (Nov. 28, 1995). The approved experiments vary somewhat. E.g., some child exclusion proposals make exceptions for children born as a result of rape or incest or for the first child of a minor parent. Some are statewide while others are geographically limited. Unlike New Jersey's experiment, HHS has required in most other waivers that the states assure that family planning services are made available to AFDC recipients.

/5/ N.J. Stat. Ann. Sec. 44:10-3.5.

/6/ N.J. Stat. Ann. Sec. 44:10-3.6.

/7/ New Jersey Family Development Program: Waiver Approval with Terms and Conditions, July 20, 1992 (Clearinghouse No. 48,935). Under section 1115, 42 U.S.C. Sec. 1315, HHS may waive requirements of the Social Security Act to allow states to conduct "experimental, pilot or demonstration" projects, provided such projects are, in the judgment of the Secretary, likely to promote the objectives of the AFDC program. When an AFDC experimental project is approved, the Secretary traditionally issues a letter identifying the waivers of the Social Security Act and regulations that are granted and a set of "terms and conditions" which define the nature, objectives, and research design of the project. For further information on AFDC waiver projects, see Center on Social Welfare Policy and Law, Pub. No. 170, Overview of the Law Governing Waiver of Federal Requirements Applicable to AFDC Programs (Feb. 1993).

/8/ N.J. Admin. Code tit. 10, Sec. 82-1.11(a).

/9/ N.J. Admin. Code tit. 10, Sec. 82-1.11(a)2.

/10/ N.J. Admin. Code tit. 10, Sec. 82-1.11(a)3.

/11/ See N.J. Admin. Code tit. 10, Sec. 82-2.8(c), for additional state earned income disregard. The state also received a waiver of the Job Opportunities and Basic Skills Training Program (JOBS) exemption provision, 42 U.S.C. Sec. 602(a)(19), to permit parents with children under two years of age to participate in the Family Development Program and-JOBS . The New Jersey Department of Human Services (DHS) then implemented this requirement, see N.J. Admin. Code tit. 10, Sec. 86-3.1(c), and instructed local welfare agencies to give parents of excluded children priority access to the program.

/12/ See N.J. Admin. Code tit. 10, Sec. 82-2.7(a)1i, which provides that excluded children "shall be included in the eligible unit for purposes of the initial eligibility determination."

/13/ At least one child exclusion project -- Delaware -- includes a waiver of the filing unit rule, 42 U.S.C. Sec. 602(a)(38), to allow the excluded child's income, including child support, not to be

counted in determining AFDC eligibility or grant amounts. See Delaware A Better Chance Demonstration Project: Waiver Approval with Terms and Conditions, May 8, 1995 (Clearinghouse No. 50,765D). New Jersey sought such a waiver, but HHS denied it. Other pending applications include provisions for disregard of at least a portion of the excluded child's income. See Massachusetts Welfare Reform '95 Demonstration Project: Application, March 31, 1995 (Clearinghouse No. 50,100B); California Work Pays Demonstration Project: Modifications to Proposed Maximum Family Grant Component, November 1, 1994 (Clearinghouse No. 50,090B); Mississippi New Direction Demonstration Project: Amendment re Family Cap Provision, February 8, 1995 (Clearinghouse No. 49,865B).

/14/ Neither did HHS explain why it authorized the child exclusion experiment in the face of an extensive body of social science research that shows no correlation between childbearing and AFDC benefit levels. Further, the average AFDC family size in New Jersey is 2.9 persons, the same average family size in the general state population. See, e.g., Sheldon Danziger, Univ. of Mich., Sch. of Soc. Work, Welfare and Out-of-Wedlock Births, A Research Summary (June 23, 1994); House Comm. on Ways and Means, Overview of Entitlement Programs, 1994 Green Book 412 -- 13, tbl. 10-32.

/15/ New Jersey Dep't of Human Servs., Monthly AFDC Birth Cohorts -- From FAMIS Cutoff Files for March 1993 and 1994.

/16/ See, e.g., N.J. Dep't of Human Servs. News, Nov. 8, 1993, in which Gov. James Florio states that the drop in AFDC birthrates "tells us that our reforms are beginning to take hold."

/17/ Initial claims that child exclusion lowers birthrates have been criticized; an insufficient and inadequate data base and a failure to consider a range of other factors that might account for seemingly lower birthrates are cited. These factors include lag times in reporting births, some nonreporting of births, as well as overall trends in birthrates and trends in voluntary abortions. See Michael C. Laracy, Center for Law and Social Policy, The Jury Is Still Out (Mar. 10, 1994). In June 1995, Rutgers University released the first data obtained from the research groups established for the official evaluation of the experiment. The data showed no effect on the birthrate among recipients in these groups. See Michael C. Laracy, The Annie Casey Foundation, If It Seems Too Good to Be True, It Probably Is (June 21, 1995).

/18/ N.J. Admin. Code tit. 10, Sec. 82-1.2(b).

/19/ The combined New Jersey AFDC grant and food stamps represents only 69.2 percent of the poverty level. See Center on Social Welfare Policy and Law, Pub. No. 210, Living at the Bottom, Analysis of AFDC Benefit Levels, tbl. 1 (July 1993).

/20/ These four families were plaintiffs in a U.S. District Court for New Jersey litigation which challenges child exclusion, and they served as representatives of the class of AFDC families affected by the exclusion. C.K. v. Shalala, Brief in Support of Plaintiffs' Motion for Summary Judgment (Clearinghouse No. 49,519). In an opinion dated May 5, 1995, 883 F. Supp. 991, District Court Judge Nicholas H. Politan denied plaintiffs' motion for summary judgment and dismissed the complaint. The case is on appeal.

/21/ The AFDC standard of need is the minimum amount of money required to maintain a safe, decent, and healthful life. In 1989, the New Jersey Supreme Court held that the state AFDC law obligates DHS to have a standard of need based on actual, current living costs. In re Matter of Petitions for Rulemaking, 566 A.2d 1154 (1989). DHS then revised the standard of need to reflect the actual cost, based on family size, of housing, food, and other essentials as of 1989 -- 90, .

/22/ See 59 Fed. Reg. 49529 (Sept. 28, 1994).

/23/ Low Income Housing Information Service, Out of Reach, Why Everyday People Can't Find Affordable Housing, tbl. 4 (Mar. 1995).

/24/ House Comm. on Ways and Means, supra note 15, tbl. 10-34, at 416 -- 17.

/25/ Id., tbl. 10-33, at 414 -- 15.

/26/ See note 21 supra.

/27/ New Jersey, unlike most other states, has an extensive emergency assistance (EA) program for homeless or imminently homeless AFDC families, adults on General Assistance and Supplemental Security Income recipients. New Jersey EA includes temporary rental assistance (TRA), or time-limited rental assistance provided in lieu of placement in an emergency shelter, hotel, or motel. In May 1995, there were approximately 3,300 homeless AFDC families statewide receiving TRA or EA for emergency shelter. Department of Human Servs., AFDC Emergency Assistance by County/Service Category (May 1995). The EA program was implemented to comply with the state supreme court decision imposing a continuing obligation to provide emergency shelter to homeless families and individuals under New Jersey law. For the development of this case law, see Franklin v. New Jersey Dep't of Human Servs., 543 A.2d 1 (1988); Williams v. New Jersey Dep't of Human Servs., 561 A.2d 244 (1989); L.T. v. New Jersey Dep't of Human Servs., 633 A.2d 964 (1993).

/28/ Congress already appears to be moving in this direction. The 1996 Appropriations bill for the U.S. Department of Housing and Urban Development, as approved by the House Appropriations Committee, requires public housing authorities to charge 32 percent of the "amount of assistance allocated for a month to a family of the applicable size" under the AFDC program. See H.R. 2099, Sec. 210(b), July 21, 1995. This provision, if enacted, would increase the rent of families with excluded children at the same time that their family size increases and they receive less overall AFDC cash assistance.

/29/ Conversations with staff at Amandla Crossing Transitional Housing Program, Edison, N.J.; Anna Semple House, Camden, N.J. (July 1995). Many of these homeless families are placed in these and other emergency shelters through the emergency assistance program which reimburses the shelter operator for the stay. See note 28 supra.

/30/ If child exclusions are included in AFDC replacement legislation, either as mandatory component or by state option, the policies will no longer be experimental or subject to formal

evaluation through the HHS waiver process. Absent any requirement that states evaluate these policies, independent research by academic and social science groups will be the only way to assess the impact of child exclusions on needy children.