Clearinghouse Review

NATIONAL CLEARINGHOUSE FOR LEGAL SERVICES, INC.

Volume 28 ▪ Number 9 January 1995

15th ANNUAL REVIEW of POVERTY LAW

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At A Glance

During the past year, the proliferation of harmful federal welfare reform proposals was cause for great concern among families receiving AFDC and their advocates. In addition to reviewing the themes contained in the major federal proposals and their status, this article summarizes the major court decisions and legislative and administrative actions of the past year that will have an impact on poor families in need of AFDC, including matters affecting the following issues:

- HHS use of Section 1115 waiver authority
- electronic benefits transfer
- Suter v. Artist M. and the right to sue

In the year ahead, federal welfare reform is likely to have a profound effect on the well-being and rights of families in need of AFDC. The Center on Social Welfare Policy and Law intends to address these and other issues.

Welfare Developments in 1994

By the Center on Social Welfare Policy and Law

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I. Federal Welfare Reform Proposals

The 103d Congress did not act on welfare reform legislation. However, welfare reform should be near the top of the agenda for the 104th Congress. The bills that are offered in 1995 by the Clinton Administration and others may differ in some ways from last year's proposals. However, the bills introduced in 1994 and the preliminary hearings held on welfare legislation provide strong clues as to the themes likely to underlie legislative proposals this year.

Seven bills in the 103d Congress proposed major changes in welfare with a specific or exclusive focus on AFDC. They came from all quarters with a range of very different ideas. They included proposals

1. limited to changes that would increase the amount of aid available to some families;

2. focused on increased funding for and changes in the JOBS program (the employment and training program for recipients of AFDC) with or without other changes in AFDC;

3. to establish time limits on the receipt of AFDC without involvement in employment;

4. to authorize or require time limits without regard to employment status; and

5. to exclude children born to young unmarried mothers from AFDC and other benefit programs.

As 1994 drew to a close, Republican members, joined by many Republican candidates, announced a ten-point agenda for the 104th Congress that included a form of welfare reform that went beyond anything previously proposed. They described a plan to make AFDC (and other programs including food stamps) a block grant program with federal funding for state programs dependent on yearly appropriations that would be subject to a cap.

This Republican plan would also narrow AFDC coverage and free states from their obligation to provide aid to all those who meet the eligibility tests, allowing, for example, states to pick and choose among eligible groups or simply cut off aid to all. States would not be permitted to provide AFDC to children born to unmarried mothers under 19 or their mothers and could extend the disqualification to births to mothers under age 21. States would not be permitted to provide AFDC to families that had received AFDC for a cumulative total of five years and could limit benefits to two years.

The Republican plan would also require parents to participate for 35 hours a week in unpaid work as a condition of receiving AFDC for their families. An estimated 1.5 million parents would participate in this work relief program by the third year of implementation.

Needless to say, this plan would "end welfare as we know it." The plan does not answer the question of what would happen to the needy children who would no longer receive aid, except for the possibility of institutionalization. Any federal "savings" from benefit reductions due to denial of aid to children born out of wedlock would be paid to the state without any restrictions as to use, and the proponents note that some or all of such savings could be used for orphanages.

This focus on denial of benefits to unmarried teens is one of a number of proposals fueled by a growing drumbeat about the number of births to unmarried women, accompanied by a notion that their incidence will be significantly curtailed by the unavailability of AFDC and other public benefits. As 1994 came to a close, this issue seemed to become as much of a focal point for welfare reform as the support for more extensive work requirements.

The Clinton Administration's welfare reform bill, which was introduced in both houses on June 21, 1994, /1/ relied on this issue as justification for authorizing states to adopt so-called child exclusion or family cap proposals under which a family's aid would not be increased in the case of the birth of a child who was conceived while her mother was receiving AFDC, and for mandating the now optional minor parent residency requirement. Converting this option to a mandate was also a feature in at least two other bills that would have continued permitting AFDC to be paid to such families, the McCurdy-Mainstream Forum bill /2/ and a bill introduced by Cong. Robert T. Matsui /3/ that was generally regarded as the most significant of the "liberal" bills that were offered and that combined the mandate with a number of safeguards designed to limit inappropriate imposition of the requirement. The McCurdy-Mainstream bill also embraced child exclusion, proposing that it be required.

The centerpiece of the Clinton plan proposed placing a 24-month time limit, subject to certain exceptions, on a family's receipt of AFDC without a parent's involvement in work outside the home, and establishing a program to create subsidized employment slots for those not otherwise employed (WORK). The McCurdy-Mainstream bill took this approach a step further by placing a limit of three years on participation in a work program that would be offered after receipt of AFDC for two years, while the latest Republican proposal endorses five years as an outside limit, with an option to cut off aid after two years. /4/ Proponents of time limits offer a mix of theories about discouraging out-of-wedlock childbearing and assumptions that parents could and should be engaged in paid employment as their justification, as well as a theory that the receipt of welfare benefits creates a desire to rely on such benefits rather than to seek income from employment.

The work issue was also manifested in provisions of the time-limited proposals that would increase work-related requirements during the period of AFDC eligibility prior to expiration of the time limit and impose increased sanctions for failure to meet such requirements.

Outright denial or major new restrictions of benefits to noncitizens were also a major theme as proponents sought ways to pay for any new costs associated with their proposals, primarily the

costs of the work programs, by cutting existing benefits. While the Clinton Administration proposed extending the period during which sponsors' incomes would be presumed to be available to support immigrants, McCurdy-Mainstream and the House Republican /5/ proposals proposed outright disqualification of noncitizens from virtually all means-tested benefit programs.

Even bills that largely or wholly avoided imposing new burdens on poor families offered little in the way of relief except to those with some nonassistance income or resources. Proposals that would permit families receiving AFDC to reach higher incomes focused on items such as more favorable treatment of earnings and resources (including relief from the lump-sum rule) and income from child support. Only two bills included requirements to prevent further cutbacks in AFDC benefit levels and to establish more meaningful need standards, the Matsui and Woolsey-Regula /6/ bills.

Matsui and Woolsey-Regula would extend AFDC to all needy families with children, providing for coverage of families with two parents in the home without an unemployment test. Clinton and McCurdy-Mainstream merely gave states an option not to apply the 100-hour limit as a test of unemployment, with the Administration extending the option to elimination of the work history and McCurdy-Mainstream providing that such requirement is not applicable to teen parents. It is not clear whether these halfway steps to full coverage were motivated primarily by fear of the charge that any expansion of aid to families with two parents in the home would create further incentives to rely on welfare or by cost factors.

II. AFDC Waiver Developments

A. Applicable Law and Demonstration Project Trends

Section 1115 of the Social Security Act gives the Secretary of HHS broad authority to waive federal AFDC requirements when the purpose of the waiver is to allow states to implement demonstration projects judged likely to promote the purposes of the AFDC program. /7/ For many years, HHS approved demonstration projects under this authority without any clearly defined standards. /8/ This practice has continued under the Clinton Administration despite repeated requests from poor people and their advocates for more responsible use of this power.

Encouraged by President Clinton's support for state experimentation, 34 states submitted new applications for AFDC waivers from February 1993 through September 19, 1994. /9/ Several states submitted more than one, and more states are expected to submit applications in coming months. During the prior year, 20 states submitted applications. /10/

From 1993 to 1994, HHS approved 19 projects, 3 carried over from 1992 and 16 received after January 1993. At least 17 of the approved projects included provisions that pose significant risks of harm to some or all families involved. HHS did not deny any project application as not being worthwhile. It denied two that proposed to set lower benefit levels for new residents because of their probable unconstitutionality. Three states withdrew applications during the period and review of a fourth state's applications was terminated when the state could not satisfy HHS cost-neutrality requirements and was reportedly unwilling to commit its own funds.

A major theme in the states' applications has been the imposition of time limits on receipt of AFDC, with 15 projects including some form of time limits pending or approved as of September 19, 1994. In most of these projects, the time limit triggers stricter work obligations for parents enforced by increased sanctions, such as lengthier periods of disqualification from aid and/or increases in the amount of aid lost to the family, for failure to comply. So far, HHS has approved seven of these projects.

HHS has also approved one of the most extreme proposals for a time limit. In November 1993, it authorized Wisconsin to "experiment" for 11 years with a scheme that provides for termination of a family's AFDC eligibility after two years without regard to whether the family is in continuing need, and for a lengthy period of subsequent disqualification after such termination. A large number of states have focused on increased work requirements in their project requests, with or without provision for additional steps to increase the ability of family heads to access paid employment.

Many of the project applications that are pending or have been approved since February 1993 involve repeat "testing" of provisions designed to regulate recipient conduct in areas such as school attendance, childhood immunization, and childbearing. Three states received approval to deny aid to meet the needs of a child who was conceived while her mother was receiving AFDC. Another three states are seeking authorization to do the same, and still other states have enacted legislation that will set such proposals in motion or are otherwise drawing up plans.

Two states have received approval to reduce aid if children do not have required immunizations. These approvals include some provisions to assure recipient access to immunization. Four states have such proposals pending. Five states received approval to tie aid to school attendance or performance; six similar requests are pending. With respect to immunization, the general approach is to reduce the family's aid unless and until children have received required immunizations. In the case of school attendance requirements or "learnfare," the approaches are more varied. Some projects simply impose grant reductions for failure to meet requirements; some combine reductions for failure and dollar bonuses for meeting certain goals; one relies solely on bonuses.

Most of the projects with harmful provisions also incorporate some positive features to benefit selected groups, such as those with earnings. Typical examples include more favorable earnings disregards, liberalized asset rules, and expanded eligibility through elimination of AFDC-UP requirements. Several of the pending project applications focus exclusively on beneficial provisions, such as those expanding disregards of earnings or assets. In some cases, HHS has required some modifications of proposals that somewhat lessen the potential for harms.

B. The Call for HHS Standards

In March 1993, the Center on Social Welfare Policy and Law (Center) on behalf of an organization of welfare recipients submitted to the HHS Secretary detailed recommendations for Section 1115 standards that called for a well-defined review process with public comments on applications and HHS consideration and response to the comments. The recommendations also sought compliance

with generally accepted procedures for protection of human subjects in experimentation, strict limits on projects that posed any risk of harm to beneficiaries, and assurances that an adequate evaluation plan would be in place before project start-up. HHS acknowledged their receipt but did not respond to the recommendations.

In August 1993, HHS issued draft Section 1115 principles that had been produced in consultation with state representatives but not with recipients or their advocates and that failed to address most of the critical issues for program beneficiaries. /11/ A Center protest received a pro forma response. In September 1994, HHS published in the Federal Register a statement of its Section 1115 general policies and procedures /12/ that was again produced after consultation with state representatives but not with recipients or their advocates. The purported policies are inadequate because HHS asserts that they are not legally binding; they do not contain substantive criteria for project approval, including standards for assessing the risk of harm to beneficiaries; and they contain provisions for public comment that do not allow sufficient time for meaningful comment. /13/

C. Litigation Developments

The Ninth Circuit, holding that HHS's actions failed to meet Administrative Procedure Act (APA) standards for agency decisionmaking, invalidated HHS's 1992 approval of a waiver authorizing California to make across-the-board AFDC cutbacks. /14/ The court concluded that the record contained "a stunning lack of evidence" that HHS had considered various relevant factors that had been raised in plaintiffs' objections to the project, and ordered that the matter be remanded to HHS for consideration of those factors. As this article was going to press, HHS had under consideration the state's renewed request for approval of the project with modifications.

The Supreme Court has granted certiorari to review the Ninth Circuit's decision in Green v. Anderson. /15/ The Ninth Circuit affirmed the district court's decision to grant plaintiffs a preliminary injunction against a California policy, for which HHS granted a waiver in 1992, that sets AFDC payments for new residents at the lower of the California benefit level or that of their former state for their first year of residence (see box). A pending case challenges a similar Wisconsin policy and HHS's 1992 waiver for the project. /16/ That case raises claims under the federal constitution, the APA, and 42 U.S.C. Sec. 3515b relating to the protection of human subjects in experimentation.

Two other pending cases challenge HHS waiver decisions as contrary to the APA and Section 3515b. A New Jersey case challenges HHS's 1992 waiver authorizing the state's child exclusion policy. /17/ That policy denies an AFDC grant increase upon the birth of a child conceived while the family was on AFDC but gives families subject to the exclusion a greater earnings disregard than would otherwise apply. In Michigan, a court initially agreed with plaintiffs that a waiver which allowed the state to provide benefits to children in two-parent families even if the principal wage-earner works more than 100 hours a month did not apply to the mandatory filing unit rule. /18/ Michigan has been using the waiver to deny aid to some families with members who were previously receiving aid. HHS subsequently granted additional waivers to allow the challenged practice, and plaintiffs are challenging HHS's decision. /19/

III. Growth of EBT Systems

By the end of 1994, the number of states operating electronic benefit transfer (EBT) systems to deliver food stamp and/or cash assistance benefits to recipients in at least a portion of the state had grown to 12 and at least another 30 states were seriously exploring this option. Under EBT systems, welfare checks and food stamp coupons are replaced by an account from which recipients can draw down their benefits using a plastic debit card and personal identification number at merchant point-of-sale devices and/or automated teller machines. /20/

If the goal of Vice President Al Gore's Federal EBT Task Force is met, a nationwide EBT system, operating under a uniform set of guidelines, will be in place by 1999. Toward that end, at least one multistate prototype system, involving Alabama, Arkansas, Florida, Georgia, Missouri, North Carolina, and Tennessee, is scheduled to be implemented by March 1996. The vision for this national EBT model, as set out in a May Task Force document, /21/ raises a number of concerns that will need to be addressed at both the national and state levels.

Among the aspects of the report that raise concerns are proposals that the number of free ATM transactions for recipients of state-administered cash benefits be severely limited and that merchants be given complete freedom to determine whether to impose any limitations on the number or amount of cash-back transactions at point-of-sale devices. The report also takes the position that retailers will generally be responsible for equipping their stores to handle EBT transactions, leaving unanswered the question of what will happen when small neighborhood stores are unable or unwilling to bear this cost. Finally, the report takes the position that, rather than having a uniform set of federal standards, the procedures for handling such critical functions as client enrollment in EBT, card issuance, client training, problem resolution, and card replacement are all to be left to state discretion.

In another EBT development, in February the Federal Reserve Board (the Fed) adopted final regulations that generally extend Regulation E consumer protections with respect to liability limits for losses and error resolution procedures, among other client safeguards, to EBT systems, despite the objections of many government officials and others. /22/ However, bowing to pressure from state and federal agencies, the Fed gave agencies until March 1997 to implement the provision. While this delay is supposed to afford time for the federal agencies to conduct demonstration projects in New Jersey and New Mexico to determine the impact of applying Regulation E to EBT, those who are opposed to the decision are using this time actively to pursue legislative amendments and court challenges to prevent Regulation E from ever taking effect.

The Center continues to be active in the federal EBT forums and to monitor EBT activity at the federal and state levels. Center staff are available to provide assistance to advocates confronting the issues that EBT raises at the local level.

IV. Other AFDC Developments

A. Litigation

The U.S. Supreme Court has granted certiorari to review the Ninth Circuit's decision in Edwards v. Healy, /23/ which held on the authority of its earlier decision in Beaton v. Thompson /24/ that the state could not combine in one AFDC unit children with the same caretaker who are not siblings. The Ninth Circuit's decisions conflict with decisions of the Second and Eighth Circuits. /25/

Litigation is continuing with mixed results against the $1,500 limit on the excludable value of an automobile. /26/ While there have been decisions upholding HHS's promulgation of the $1,500 limit in the only two circuits to decide the issue so far, /27/ several district courts have enjoined the regulation as arbitrary and capricious. /28/ Appeals are pending in the First, Sixth, and Ninth Circuits. /29/ Cases are also pending in district courts in at least four other states. /30/ Meanwhile, as part of the Administration's welfare reform package, HHS is soon expected to issue a Notice of Proposed Rulemaking to raise the limit to $3,500.

B. Administrative Developments

A November 2, 1993, HHS action transmittal instructs states that, effective January 1, 1994, a nonrecurring lump-sum SSI retroactive payment made to an AFDC recipient who is not currently SSI eligible shall not be counted as income or a resource for AFDC purposes in the month paid and the following month. /31/ The new policy applies to any retroactive SSI lump sum for a closed past period made to an AFDC recipient who is not currently SSI eligible, including those issued pursuant to Zebley v. Sullivan. /32/ The new policy means that the AFDC lump-sum rule does not apply to such payments.

HHS changed its policy to allow an otherwise eligible relative to receive AFDC when the only child in the family receives federal, state, or local foster care benefits. /33/ The new policy provides that the presence of the foster care child qualifies the caretaker relative for AFDC for his or her own needs. The child's income and needs cannot be considered in determining the caretaker's payment. The caretaker must be treated as any other AFDC-eligible caretaker for purposes of JOBS, AFDC child care, and the Transitional Child Care program. HHS also indicates that the presence in the home of a child receiving adoption assistance can similarly qualify the caretaker relative for AFDC.

In a new instruction, HHS has informed the states that, in seeking recovery of overpayments made to assistance units whose members no longer constitute a single assistance unit, the states must first seek to recover from the caretaker relative of the overpaid assistance unit or the caretaker relative's current assistance unit. /34/ If the overpaid caretaker can be located and the state can effectuate legal process, the state must proceed to collect the overpayment from the caretaker rather than from other members of the overpaid assistance unit. HHS, however, has not changed its interpretation, contained in the federal regulations, that the AFDC statute permits recoupment of overpaid benefits from all members of the overpaid unit. /35/ Therefore, if the caretaker relative is unavailable due to death or disappearance, then, according to HHS, the state must seek recovery from other members of the overpaid assistance unit or their current assistance units. Notwithstanding HHS's position, a North Carolina appellate court held that only the caretaker relative is an overpaid individual under the federal statute and that recoupment from an assistance unit not containing the overpaid individual is not permitted. /36/ Litigation is also pending on this issue in Florida and Ohio. /37/

In a change of policy, HHS has instructed states to treat temporary disability insurance and temporary workers' compensation payments as earned rather than unearned income when such payments are (1) employer funded; (2) made to an individual who remains employed during recuperation from a temporary illness or injury pending the individual's return to the job; and (3) specifically characterized under state law as temporary wage replacements. /38/ The agency analogized these payments with sick pay, which has long been considered earned income on the basis that it is provided by an employer to an employee during a temporary period of illness and is a continuation of income at less than or at the same rate a regular wages.

V. Suter v. Artist M. and the Right to Sue

Since the Supreme Court's 1970 decision in Rosado v. Wyman, /39/ the right to sue to enforce federal statutory and regulatory requirements in cooperative federal-state programs had seemed firmly established. However, the Court's 1992 decision in Suter v. Artist M. /40/ raised fears of a sharp curtailment of the right to sue. On the one hand, Suter cited approvingly the Court's precedents making 42 U.S.C. Sec. 1983 presumptively available as a cause of action in suits claiming violations of federal requirements. On the other hand, Suter did not recite the analytic framework the Court had applied in those Section 1983 precedents. Additionally, dicta in Suter suggested that perhaps in programs such as AFDC and Medicaid where the governing federal statute says that the state must have a "state plan" for the program which includes certain provisions, individuals might not have the right to have their state comply with those provisions, but only the right to have the provisions included in the written state plan.

The Court has not revisited Section 1983 availability since Suter. Most of the lower courts which have done so have concluded that Suter made no major change and that Section 1983 remains broadly available as a cause of action in suits claiming violations of federal requirements. While some federal district courts have read Suter as sharply limiting Section 1983 availability, none of the federal courts of appeal has yet clearly embraced this view, and some have clearly rejected it. /41/ A number of the courts of appeal have not yet addressed Suter's impact.

In 1992, in response to the fears raised by Suter, Congress passed a Social Security Act provision intended to prevent any sharp curtailment of the right to sue to enforce federal requirements in "state plan" programs authorized by the Social Security Act. That provision was in legislation vetoed by then President Bush for other reasons. The same provision passed Congress in October 1994, and President Clinton signed it into law.

The Center with the cooperation of other national support centers is monitoring developments with respect to Suter's impact on the "right to sue," has prepared extensive material on this issue, and is available to provide assistance if the right to sue is questioned. Advocates should inform the appropriate national support center if the right to sue is questioned in one of their cases.

Green v. Anderson

Plaintiffs in Green v. Anderson /42/ contend that California's scheme of lowering benefits for new residents has the purpose and effect of deterring and penalizing the right to travel and is therefore unconstitutional under Shapiro v. Thompson. /43/ California claims that the lower benefit does not constitute a penalty or deterrence on the right to travel or, in the alternative, that the Court should consider Shapiro in light of California's budget situation. Shapiro is one of the few constitutional victories welfare recipients have ever won in the Supreme Court.

The California statute at issue in Green is part of a recent resurgence of durational residency requirements. In Jones v. Milwaukee County, /44/ a divided Wisconsin Supreme Court upheld a 60-day residency requirement for receipt of GA, holding that the requirement did not penalize the right to travel. In contrast, the Minnesota Supreme Court, /45/ a federal district court in Indiana, /46/ and a state court in New York /47/ have all held GA durational residency requirements unconstitutional.

Wisconsin was also granted a federal waiver by the Bush Administration to impose AFDC durational residency requirements. A challenge to the Wisconsin policy is pending. /48/ The Clinton Administration has denied waivers for durational residency requirements requested by Illinois and Wyoming, citing concerns about the constitutionality of such measures.

Footnotes

/1/ H.R. 4605, 103d Cong., 2d Sess. (1994); S. 2224, 103d Cong., 2d Sess. (1994) (Clearinghouse No. 50,145D). The Senate bill is printed in pt. II of the Congressional Record for June 21, 1994 along with the Administration's explanation of its provisions. For a detailed summary of the plan, see Center on Social Welfare Policy and Law (Center), The Administration's Welfare Reform Proposal, The Work and Responsibility Act of 1994, Two Years and What? (July 21, 1994) (available from the Center's New York office).

/2/ H.R. 4414, 103d Cong., 2d Sess. (1994).

/3/ H.R. 4767, 103d Cong., 2d Sess. (1994).

/4/ These time limits without any provision for employment or aid to supplement low wages at the end are sometimes referred to as "drop dead" limits.

/5/ H.R. 3500, 103d Cong., 2d Sess. (1994).

/6/ H.R. 4318, 103d Cong., 2d Sess. (1994).

/7/ 42 U.S.C. Sec. 1315.

/8/ See Center, Overview of the Law Governing Waiver of Federal Requirements Applicable to State AFDC Programs (Feb. 1993) (Center Pub. No. 170).

/9/ See Center, Report on AFDC Sec. 1115 Waiver Activity Since February 1993 (Sept. 1994) (Center Pub. No. 169-2).

/10/ See Center, Report on AFDC Sec.1115 Applications Submitted to HHS from January 1992 -- January 1993 (Feb. 1993) (Center Pub. No. 169-1).

/11/ See HHS August 18, 1993 press release and accompanying statement (Clearinghouse No. 49,535).

/12/ 59 Fed. Reg. 49249 -- 51 (Sept. 27, 1994).

/13/ See Center, Comments on September 1994 HHS Statement with Respect to Principles Applicable to Approval of Sec. 1115 Projects (Oct. 4, 1994).

/14/ Beno v. Shalala, 30 F.3d 1057 (9th Cir. 1994) (Clearinghouse No. 48,727).

/15/ Green v. Anderson, 811 F. Supp. 516 (E.D. Cal.1993), aff'd, 26 F.3d 95 (9th Cir. 1994), cert. granted, sub nom. Anderson v. Green, No. 94-197, 63 U.S.L.W. 3291 (U.S. Oct. 7, 1994) (Clearinghouse No. 48,733).

/16/ V.C. v. Whitburn, C.A. No. 94-C-1028 (E.D. Wis. complaint and request for preliminary injunction filed Sept. 13, 1994) (Clearinghouse No. 50,478).

/17/ K.C. v. Shalala, C.A. No. 93-5354 (NHP) (D.N.J. complaint filed Dec. 1, 1993) (Clearinghouse No. 49,519). The case also involves other claims against HHS as well as various claims against the state.

/18/ 42 U.S.C. Sec. 602 (a)(38).

/19/ Castillo v. Miller, No. 93-CV-102750BC (E.D. Mich. denial of defendant's motion to dismiss Dec. 15, 1993) (second amended and first supplemental complaint filed Apr. 15, 1994) (Clearinghouse No. 49,392). The amended complaint also includes claims against the state.

/20/ For a more in-depth discussion of how EBT systems work and their potential pluses and minuses, see Barbara Leyser & Adele M. Blong, The Use of Electronic Benefit Transfer Systems to Deliver Federal and State Assistance Benefits, 27 Clearinghouse Rev. 406 (Aug. -- Sept. 1993).

/21/ Federal Electronic Benefits Transfer Task Force, Creating a Benefit Delivery System That Works Better & Costs Less: An Implementation Plan for Nationwide EBT (1994).

/22/ 59 Fed. Reg. 10678 -- 83 (Mar. 7, 1994). Regulation E, 12 C.F.R. Sec. 205, implements the Electronic Fund Transfer (EFT) Act, 14 U.S.C. Secs. 1693 et seq., and establishes the basic rights, liabilities, and responsibilities of consumers of EFT services (including bank-card users and those who elect direct-deposit mechanisms) and of institutions that offer such services.

/23/ Edwards v. Healy, 12 F.3d 154 (9th Cir. 1993), cert. granted sub nom. Anderson v. Edwards, 62 U.S.L.W. 3827 (U.S. Sept. 26, 1994).

/24/ Beaton v. Thompson, 913 F.2d 701 (9th Cir. 1990).

/25/ Bray v. Dowling, 25 F.3d 135 (2d Cir. 1994), petition for cert. filed, No. 94-5845 (U.S. Aug. 29, 1994) (Clearinghouse No. 48,027); Wilkes v. Gomez, 32 F.3d 1324 (8th Cir. 1994) (Clearinghouse No. 49,341).

/26/ See 45 CFR Sec. 233.20(a)(3)(i)(B)(2).

/27/ Champion v. Shalala, 33 F.3d 963 (8th Cir. 1994); Falin v. Shalala, 6 F.3d 207 (4th Cir. 1993), cert. denied, 114 S. Ct. 1551 (1994).

/28/ Lamberton v. Sullivan, No. CIV-91-609-TUC-JMR (D. Ariz. Apr. 28, 1994) (Clearinghouse No. 48,257); Brown v. Shalala, Civ. No. C-92-184-L (D.N.H. July 21, 1993), appeal filed, No. 93-2369 (1st Cir. Dec. 1993) (Clearinghouse No. 49,046); Hazard v. Sullivan, No. 91-0193 (M.D. Tenn. July 21, 1993), appeal filed sub nom. Hazard v. Shalala, 827 F. Supp. 1348 (6th Cir. 1993) (Clearinghouse No. 47,792); We Who Care v. Sullivan, 756 F. Supp. 42 (D. Me. 1991) (Clearinghouse No. 46,026). Contra Gamboa v. Rubin, 1993 WL 738386 (D. Haw. Nov. 4, 1993), appeal filed, No. 94-15302 (9th Cir. Jan. 26, 1994) (Clearinghouse No. 48,422).

/29/ Brown, Hazard, and Gamboa, supra note 28.

/30/ Frederick v. Shalala, 1994 WL 487275 (W.D.N.Y. order denying preliminary injunction Sept. 1, 1994) (Clearinghouse No. 50,189); Hall v. Towey, 1994 WL 525922 (M.D. Fla. order dismissing Section 1983 claim June 7, 1994) (order denying preliminary relief Dec. 10, 1993) (Clearinghouse No. 49,552); Norful v. Shalala, C.A. No. 2:93civ344 (D. Vt. filed Nov. 10, 1993) (Clearinghouse No. 49,641); Applehans v. Beye, C.A. No. 92-N-2495 (D. Colo. filed Feb. 26, 1993) (Clearinghouse No. 49,079).

/31/ HHS Action Transmittal ACF-AT-93-20 (Nov. 2, 1993) (Clearinghouse No. 49,690).

/32/ Zebley v. Sullivan, 493 U.S. 521 (1990) (Clearinghouse No. 43,127).

/33/ HHS Action Transmittal ACF-AT-94-5 (Feb. 28, 1994) (Clearinghouse No. 50,075).

/34/ HHS Action Transmittal ACF-AT-94-11 (May 18, 1994) (Clearinghouse No. 50,180); HHS Action Transmittal ACF-AT-94-20 (Sept. 1, 1994).

/35/ 45 CFR Sec. 233.20(a)(13)(i)(B).

/36/ Campos v. Flaherty, 377 S.E.2d 282 (N.C. App. 1989) (Clearinghouse No. 44,633).

/37/ Brock v. Towey, Case No. 94-6395 (S.D. Fla. filed May 5, 1994) (Clearinghouse No. 50,198); Strickland v. Shalala, Case No. C2-93-765 (S.D. Ohio filed Aug. 1993) (Clearinghouse No. 49,324).

/38/ HHS Action Transmittal ACF-AT-94-12 (May 27, 1994) (Clearinghouse No. 50,220).

/39/ Rosado v. Wyman, 397 U.S. 397 (1970).

/40/ Suter v. Artist M., 112 S. Ct. 1360 (1992).

/41/ See, e.g., Wood v. Tompkins, 33 F.3d 600 (6th Cir. 1994) (Clearinghouse No. 50,236); Albiston v. Maine Comm'r of Human Servs., 7 F.3d 258 (1st Cir. 1993), (Clearinghouse No. 46,688); Marshall v. Switzer, 10 F.3d 925 (2d Cir. 1993) (Clearinghouse No. 48,744).

/42/ Green v. Anderson, 811 F. Supp. 516 (E.D. Cal.1993), aff'd, 26 F.3d 95 (9th Cir. 1994), cert. granted sub nom. Anderson v. Green, 63 U.S.L.W. 3291 (U.S. Oct. 7, 1994) (Clearinghouse No. 48,733) (No. 94-197).

/43/ Shapiro v. Thompson, 394 U.S. 618 (1969).

/44/ Jones v. Milwaukee County, 485 N.W.2d 21, reconsideration denied, 491 N.W.2d 771 (Wis. 1992) (Clearinghouse No. 44,197).

/45/ Mitchell v. Steffen, 504 N.W.2d 198 (Minn. 1993), cert. denied, 114 S. Ct. 902 (1994) (Clearinghouse No. 47,194).

/46/ Eddelman v. Center Township of Marion County, 723 F. Supp. 85 (S.D. Ind. 1989).

/47/ Aumick v. Bane, Index No. 22881/93 (N.Y. Sup. Ct. May 18, 1994) (Clearinghouse No. 48,951).

/48/ V.C. v. Shalala, C.A. No. 94-C-1028 (E.D. Wis. filed Sept. 13, 1994) (Clearinghouse No. 50,478). This case raises claims under the Constitution, the Administrative Procedure Act, and 42 U.S.C. Sec. 3515b relating to the protections of human subjects. The district court has reportedly denied a TRO.