40TH YEAR OF CONTINUOUS PUBLICATION

Clearinghouse REVIEW

Journal of Poverty Law and Policy

March–April 2007
Volume 40, Numbers 11–12

Paternity

PROVE IT THROUGH VOLUNTARY ACKNOWLEDGMENT

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Sargent Shriver National Center on Poverty Law

Reforming State Rules on Asset Limits: How to Remove Barriers to Saving and Asset Accumulation in Public Benefit Programs

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More than a paycheck is required to escape poverty and become self-sufficient. The transition from getting by to getting ahead, from poverty to prosperity, usually involves accumulating savings and building assets.[1] Rather than discouraging and penalizing applicants and recipients who try to save, as states often do, state-administered public benefit programs should take advantage of the flexibility that federal law allows to encourage savings and asset accumulation. In this article I describe state options and advocacy strategies to eliminate or reduce barriers to saving and asset building for recipients of state-administered public benefit programs and discuss reforms that some states have adopted.

I. Asset Tests—Confusing, Inefficient, Counterproductive, and Inequitable

In determining eligibility for public assistance, most states impose both income and asset or resource tests to ensure that programs serve only those who truly need the benefits. In practice, however, asset tests are confusing, inefficient, counterproductive, and inequitable.[2]

Income and asset tests vary from program to program and from state to state, and few caseworkers, not to mention applicants or recipients, understand thoroughly what is allowed and what is not. For example, in Illinois a mother of two who meets income eligibility requirements has no asset limit for medical coverage, a $2,000 asset limit for nutrition assistance, and a $3,000 asset limit for cash assistance. Treatment varies with type of asset as well. In one study of Illinois public benefit recipients and low-wage workers participating in a financial education and individual development account (IDA) program, the lowest pretraining test scores were received on questions relating to public and work benefits, including asset limits.[3] In another study, ap-

[1]Michael Sherraden, Assets and the Poor: A New American Welfare Policy 294 (1991).

[2]Leslie Parrish, New America Foundation, To Save, Or Not to Save? Reforming Asset Limits in Public Assistance Programs to Encourage Low-Income Americans to Save and Build Assets (2005), available at www.newamerica.net/files/to%20save%20or%20not%20to%20save.pdf. On a related Shriver Center conference call, see page 697.

[3]Steven G. Anderson et al., School of Social Work, University of Illinois at Urbana-Champaign, Financial Links for Low-Income People (FLLIP): Final Evaluation Report (2004). Individual development accounts are matched savings accounts that enable low-income American families to save, build assets, and enter the financial mainstream. See http://128.252.132.4/csd/asset/idas.htm; see also www.cfed.org/focus.m?parentid=31&siteid=374&id=374.

plicants for cash assistance and agency workers alike showed lack of understanding of applicable asset limits.[4]

Acknowledging that recipients have certain basic needs and that not all assets are readily available to use for daily living expenses, states typically exempt from consideration certain assets such as a home used as a primary residence, a car, and defined benefit pension plans. Even with these exemptions, however, limits require caseworkers to inquire about, and applicants and recipients to disclose, personal information about household assets.

Research shows that very few low-income households have any assets.[5] Administering complex asset tests to a group largely without assets is not only inefficient but also counterproductive to state agencies' goals of self-sufficiency. Asset tests send the wrong message—that having assets creates problems. Many advocates can attest to incidents in which caseworkers advised applicants or recipients (often erroneously) that they may not have a savings or a retirement account or that having such an account would make them ineligible for benefits. Asset limits lower the net worth of potentially eligible low-income individuals and families and discourage savings, thus serving as a barrier to financial security and upward mobility.[6]

Asset tests "are often inequitable because they completely exclude some families, although [such families] have only slightly more economic resources than families eligible for benefits."[7] The tests are also inequitable in that they treat similar resources differently. For example, all states exclude defined benefit retirement savings, but most do not exclude 401(k) plans or individual retirement accounts (IRAs), even though all are retirement savings. Similarly, because they are required to do so by federal law, all states exclude savings for college, homeownership, or small-business capitalization by recipients participating in Assets for Independence–funded IDA programs, but many states do not exclude similar savings of recipients participating in other IDA programs or other college savings or homeownership programs. Arguably, imposing asset limits while disregarding liabilities or debts that effectively lower net worth is inequitable or economically unsound for states to do.[8]

II. State Authority to Reform Asset Rules in State-Administered Assistance Programs

States have authority to reform asset rules in state-administered assistance programs, including Temporary Assistance for Needy Families (TANF), Medicaid, the state children's health insurance program (SCHIP), and, to a lesser extent, the Food Stamp Program, to make the rules simple, efficient, and fair and to encourage saving and asset building.

A. TANF Cash Assistance

When it passed the Personal Responsibility and Work Opportunity Reconciliation Act in 1996 and authorized TANF block grants to states to administer cash assistance to low-income families with minor children, Congress gave states

[4]Rourke O'Brien, New America Foundation, Ineligible to Save? Asset Limits and the Savings Behavior of Welfare Recipients (2006).

[5]The Assets and Opportunity Scorecard shows that lower-income households tend to have few or no assets or even negative net worth. See www.cfed.org/go/scorecard.

[6]Henry Chen & Robert Lerman, Urban Institute, Do Asset Limits in Social Programs Affect the Accumulation of Wealth? (2005), available at www.urban.org; Gordon McDonald et al., The Effect of Asset Tests on Saving, available at www.retirementsecurityproject.org; Parrish, *supra* note 2. Some researchers conclude that asset limits do not affect savings behavior. See Eric Hurst & James P. Ziliak, National Bureau of Economic Research, Working Paper No. 18487, Do Welfare Asset Limits Affect Household Saving? Evidence from Welfare Reform (2004). These conclusions are questionable, given that the research did not take into account whether applicants or recipients were even aware of the asset rules or rule changes. The data do indicate a need to educate persons about asset limits. The FLLIP study in Illinois showed that significantly more participants applied for and received public and work benefits and increased savings and assets after completing a financial education course with a segment on public and work benefits. Anderson et al., *supra* note 3.

[7]Chen & Lerman, *supra* note 6.

[8]Telephone Conversation with Louise Hayes, Staff Attorney, Community Legal Services of Philadelphia (Feb. 9, 2007). Although inquiring about liabilities as well as assets and using net worth in determining eligibility under asset limit tests would be more fair, doing so would further exacerbate administrative burdens and costs to state welfare agencies.

significant discretion to establish program rules.[9] States may set their own asset limits, exempt categories of assets, or eliminate asset limits altogether.

The Act also *requires* states to exempt assets held in certain TANF-funded IDAs for homeownership, postsecondary education, or small-business development.[10] In 2000 the exemption was extended to IDAs funded under the Assets for Independence Act.[11] States may also exempt IDAs that need not be exempt under TANF or the Assets for Independence Act.[12]

B. Food Stamps

Although states have less discretion than they do under TANF, states have some flexibility in setting Food Stamp Program rules. The 2002 Farm Bill gave states a new option to align asset rules across assistance programs by excluding certain types of assets from their Food Stamp Program asset tests if they exclude these assets from their TANF cash assistance or family Medicaid coverage. States may define which assets are "readily available" so that, for example, savings that trigger a penalty for withdrawal are not counted. The Farm Bill provision appears to apply to IRAs, according to the U.S. Department of Agriculture's proposed regulations. If the final regulations confirm this, states may exclude IRAs from the Food Stamp Program asset test if they also exclude IRAs in their TANF cash assistance or family Medicaid program.[13]

Proposed federal Food Stamp Program rules allow states to exempt IDA funds held for postsecondary education, home purchase, and business start-up.[14] States may implement these exemptions while final rules are pending.[15] States that provide a TANF benefit (which need not be cash assistance) to Food Stamp Program applicants or recipients may consider them "categorically eligible" for food stamps without regard to Food Stamp Program asset rules.[16]

C. Medicaid and SCHIP

Although income limits apply, states need not impose asset limits as Medicaid eligibility criteria.[17] Persons with excess income or assets may be eligible for benefits after they have incurred a certain level of medical expenses. In their SCHIPs, which offer health care coverage at no cost or at low cost to children and pregnant women regardless of parents' eligibility for Medicaid, states are not required to impose asset limits, and most do not.[18] Some states, such as Illinois, also help in paying premiums of employer or private health insurance plans through this program.[19]

III. The Politics of Asset Rule Reform

The arguments in favor of eliminating the asset test for public benefits eligibility are compelling. After all, who would oppose a policy that both saves money for the state and encourages saving on the

[9] 42 U.S.C. § 604(a) (2007).

[10] *Id.* § 604(h)(4).

[11] *Id.* § 604(h).

[12] Zoë Neuberger et al., The Retirement Security Project: Protecting Low-Income Families' Savings (2005), available at www.retirementsecurityproject.org/pubs/File/AssetTestReport.final.pdf. See also www.cbpp.org/pubs/assets.htm.

[13] See Zoë Neuberger et al., *Barriers to Saving*, Communities and Banking (Summer 2006), available at www.bos.frb.org/commdev/c&b/2006/summer/barrierstosaving.pdf.

[14] Amy-Ellen Duke, Center for Law and Social Policy, Clearing a Path to Savings: Removing Federal Barriers in Public Assistance programs (2006), available at www.newamerica.net/events/2006/to_save_or_not_to_save

[15] Stacy Dean, Center on Budget and Policy Priorities, States' Vehicle Asset Policies in the Food Stamp Program 4 (2006), available at www.cbpp.org/7-30-01fa.pdf.

[16] Sharon Parrott & Stacy Dean, Center for Budget and Policy Priorities, Aligning Policies and Procedures in Benefit Programs: An Overview of the Opportunities and Challenges Under Current Federal Laws and Regulations (2004).

[17] 42 U.S.C. § 1396a(a)(17) (2007); www.cms.hhs.gov/MedicaidEligibility/.

[18] 42 U.S.C. § 1397bb.

[19] Covering All KIDS Health Insurance Act, 25 Ill. Comp. Stat. 170 (2006).

part of low-income people? Nonetheless, the prospect of eliminating the rule makes many politicians nervous. Illinois offers an instructive example.

In November 2004, under a Democratic administration, the Illinois Department of Human Services proposed changes that would have abolished asset limits in cash assistance programs and exempted all vehicles as assets in the Food Stamp Program.[20] Illinois had enjoyed an encouraging environment for innovative asset building and asset protection for many years. In 1998, under the Republican administration of Gov. George Ryan, the department eliminated asset tests for medical assistance. In 2001 it approved, for public assistance recipients and low-wage workers, a financial education and IDA program that counted financial education as a TANF "work activity" and exempted from asset limits all funds in department-approved IDAs.[21]

Following those changes, the department secured approval from the Joint Legislative Committee on Administrative Rules and from Gov. Rod Blagojevich (a Democrat)for rule changes that exempted retirement accounts as assets in TANF, general assistance, and the Food Stamp Program.[22] Department leaders and advocates believed that the groundwork had been laid to take the next step and eliminate cash assistance asset limits entirely. The benefits of this change, argued advocates and department officials, were simplification, consistency among programs, improvement in low-income household stability through encouragement of savings, abandonment of a policy that was obsolete because of time limits and work requirements, and administrative savings to the state of some $150,000. The Joint Committee raised no objection.

The proposed rule change had to be finalized within one year.[23] The governor's Office of Management and Budget raised several questions, which the department answered. As the deadline approached, attention in the governor's office was directed elsewhere, including to the announcement of the All Kids Healthcare Initiative and the governor's reelection campaign. Budget office staff advised that the "timing" was bad for adopting the asset rules.[24] Despite unanimity among those who worked with benefit programs daily, the proposed rules did not become final within the statutory time period. Officially the department stated that the rules were not adopted due to budget concerns. Advocates are hopeful that Illinois will reconsider asset limit reform.

The lesson? What is obvious to advocates and state welfare agency personnel about the benefits of asset limit reform may not be so obvious to those who look at policy changes through a political lens. How one addresses these political issues can make or break efforts toward redefining asset limits.

IV. State Elimination or Reform of Asset Rules

A growing number of states have, through legislation or administrative rule changes, reformed or eliminated asset rules in public assistance programs. These changes have occurred under both Republican and Democratic administrations and with bipartisan support. Advocates and state policymakers can use these examples to foster asset limit reform in their own states.

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[20] 28 Ill. Reg. 14397–98 (Nov. 5, 2004).

[21] See Steve Wrone, *Financial Education and Asset-Building Opportunities for Low-Income Communities*, 37 Clearinghouse Review 272 (July–Aug. 2003); Dory Rand, *Financial Education and Asset-Building Programs for Welfare Recipients and Low-Income Workers: The Illinois Experience*, 38 Clearinghouse Review 49 (May–June 2004).

[22] 29 Ill. Reg. 5486 (TANF), 5498 (general assistance), 5508 (food stamps) (April 15, 2005), http://lifegoeson.com/departments/index/register/register_volume29_issue16.pdf.

[23] Ill. Admin. Code tit. I, § 100.400(b) (1994).

[24] Conversation with Office of Management and Budget staff member (Nov. 2005).

A. Elimination of the Asset Test in TANF Cash Assistance

At least two states, Ohio and Virginia, have eliminated the asset test entirely in their cash assistance programs.

1. Ohio

Ohio was the first state to abolish asset limits in TANF; it did so in 1997.[25] One of Ohio's most conservative and longest-serving legislators, Rep. Bob Netzley (a Republican), proposed the abolition. Proponents argued that

- in light of welfare reform's emphasis on work, caseworkers should focus on helping people find employment and maintain their connection to the labor force;
- workers need cars and savings to obtain and retain jobs, deal with emergencies, and advance in the labor market; and
- the state's responsibility is to support work efforts through policies such as work requirements, earned income disregards, and car ownership programs.[26]

Although Ohio budget analysts predicted a small increase in the TANF caseload as a result of eliminating the asset test, no caseload increase or political fallout occurred. In fact, Ohio caseloads remained at record low levels (70 percent below 1992 peak levels) as of late 2005, despite increases in the TANF benefit level in both 1997 and 2005. Ohio received federal TANF high-performance bonuses ($28.1 million in 2004 and $14.7 million in 2005) for labor force attachment.[27]

2. Virginia

In 2003 the Virginia State Board of Social Services adopted administrative rules that eliminated asset limits in the TANF and family and child medical programs, evaluated only liquid assets in the Food Stamp Program, and eliminated the TANF lump-sum rule, which made recipients ineligible for cash assistance after receiving a lump-sum payment such as retroactive Supplemental Security Income (SSI) benefits or a personal injury settlement.[28] The Virginia Department of Social Services proposed the TANF changes during Gov. Mark Warner's Democratic administration. The state board of the Department of Medical Assistance Services promulgated the regulatory changes relating to Medicaid for families and children.

Like Ohio's, Virginia's elimination of asset tests was part of a broader state welfare reform package that simplified earned income disregards, disregarded student earnings, simplified the determination of self-employment, and aligned processing time with other assistance programs. When the rules were proposed, Virginia provided cash assistance to families with countable resources of up to $1,000, one vehicle, and up to $5,000 in an account for the purposes of "self-sufficiency." The Department of Social Services estimated that eliminating the asset test would "increase the assistance provided by $127,200 for 40 families and provide $323,050 savings in administrative staff time annually."[29]

The department argued that asset-test elimination would streamline and simplify program rules, align TANF with other assistance programs, improve service delivery, and reduce the administrative burden on the agency, applicants, and recipients.[30] Mark Golden,

[25]Ohio Rev. Code Ann. § 5107.10(C) (LexisNexis), http://onlinedocs.andersonpublishing.com/oh/1pExt.dll?f=templates&fn=main-h.htm&cp=PORC.

[26]Interview with Joel Rabb, Bureau Chief for Program Integrations and Coordination, Ohio Department of Job and Family Services (Nov. 8, 2005).

[27]Ohio Department of Job and Family Services 2005 Annual Report, available at http://jfs.ohio.gov/ocomm_root/2005AnnualReport.pdf.

[28]22 Va. Admin. Code § 40-295-50 (2003), http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+22VAC40-295-50.

[29]Virginia Department of Planning and Budget, Economic Impact Analysis, Code of Virginia, Volume 22, Section 40-295-50 (2003).

[30]Proposed Regulation Agency Background Document (amendments to Code of Virginia, Volume 22, Section 40-295-50) 2 (2003).

the department's manager of economic assistance and employment, explained that asset tests were no longer necessary because

- welfare reform's time limits and work requirements made them obsolete;
- people use their resources before applying for benefits;
- making people get rid of resources, only to encourage them to build resources back up, is counterproductive;
- allowing assets puts greater emphasis on employment and self-sufficiency; and
- eliminating the asset tests has little impact on the caseload (only 1,200 of 60,000 applications, or 0.5 percent, were denied due to excess assets).[31]

The Virginia Department of Planning and Budget believed that the proposed change posed a fiscal risk and suggested that the state retain the asset test but achieve administrative savings by enforcing the test only through random verification.[32] Nonetheless, the rules were adopted as proposed, and all eligibility workers attended training sessions on the new rules.

Since enactment of the new rules, Virginia has not seen a significant caseload increase.[33] Virginia's TANF caseload declined by 36 percent between 1997 and 2005.[34]

B. Reform of Asset Rules in TANF

Several states that have not eliminated the asset test have nonetheless reformed their asset rules by increasing the amount of cash resources that recipients may have and by exempting certain forms of assets entirely. TANF cash assistance asset limits in most states range between $2,000 and $3,000.[35] Until recently, only a few states had asset limits of more than $5,000.

1. Colorado

In 2006 Colorado passed legislation that raised TANF asset limits from $2,000 to $15,000 and exempted retirement, education, and health savings accounts and one vehicle per household.[36] Sen. Paula Sandoval and Rep. Betty Boyd (both Democrats) were lead sponsors of Senate Bill 134, which originally called for elimination of the TANF asset test.[37]

The coalition that supported the bill produced S.B. 134 fact sheets and talking points to use when contacting elected officials, and it produced witnesses to testify at a committee hearing. Several nonprofit organizations posted information about the bill on their websites. The coalition also engaged a consultant to monitor the bill and to help address opposition concerns.

The Legislative Council staff estimated the costs of S.B. 134 to be $198,000 for Colorado Works, the state's TANF program, and $135,000 for the Food Stamp Program in the 2006–2007 fiscal year. Six of seven witnesses at a hearing before the Senate Health and Human Services Committee testified in support; the committee approved the bill unanimously, and the Senate passed it by a vote of 33 to 2.[38]

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31 Mark Golden, Asset Policy in Virginia, Presentation at Center for Social Development State Policy Conference (April 21, 2005).

32 Virginia Department of Planning and Budget, *supra* note 29.

33 Golden, *supra* note 31.

34 Joint Legislative Audit and Review Commission, Review of State Spending (2006), available at http://jlarc.state.va.us/Meetings/December06/Spendbrf.pdf.

35 Neuberger et al., *supra* note 12, at 19.

36 Colo. Rev. Stat. § 26-2-706(2)(b) (2007).

37 See www.leg.state.co.us/clics2006a/csl.nsf/fsbillcont3/65311596E9F4CD51872570E40080DC6A?open&file=134_01.pdf.

38 For a description of the committee hearing, see www.progressnowaction.org/page/community/blog/heathermcgregor.

The House committee, after a hearing at which many community advocates testified in support of S.B. 134, passed the bill with no changes by a vote of 10 to 2. When the bill reached the full House, however, the governor and Jefferson County welfare officials were concerned that completely eliminating the asset test might make eligible for TANF someone with significant assets. Rep. Kevin Lundberg (a Republican) complained that "[S.B.] 134 expands the welfare program in Colorado by significantly increasing the assets allowed for welfare recipients. To create a graduated system of the more the assets, the less support from the welfare program, this might be a positive program that would encourage people to become more self-sufficient, but this simply expands the welfare rolls."[39] However, the consensus was that the current asset limit of $2,000 was too low and discouraged self-sufficiency by requiring people to cash out savings, even in the face of tax penalties.[40] The Senate approved an amended bill expanding asset limits and exemptions, and Gov. Bill Owens (a Republican) signed it into law on April 24, 2006. The new law went into effect in six months later.

2. Illinois

All states exempt traditional defined benefit retirement accounts (pensions) from asset tests, but most do not exempt defined contribution retirement accounts such as 401(k) plans or IRAs. Noting that exempting retirement accounts would simplify the asset test in the Food Stamp Program, the Illinois Department of Human Services issued a proposed rule for public comment in November 2004 to exempt a wide range of retirement accounts from consideration as assets in the cash assistance program and the Food Stamp Program.[41]

The Sargent Shriver National Center on Poverty Law submitted comments in favor of the proposed rule. Complex asset rules that vary with programs are wasteful, increase administrative burdens, and tax limited resources, and asset rules that penalize individuals for saving money inhibit families' long-term self-sufficiency and financial stability, the Shriver Center pointed out.[42] In fact, the department had supported the goals of Financial Links for Low-Income People (FLLIP), coordinated by the Shriver Center, to encourage saving and asset building and gave TANF recipients "work activity" credit for participating in the FLLIP financial education classes.

With no fanfare or controversy, the Joint Committee on Administrative Rules approved the rules, which became final as of April 2005. The rules for TANF and general assistance provide that "[p]ension plans are exempt from consideration as an asset, including accounts owned solely by an individual, such as an Individual Retirement Account (IRA), 401 K or Keogh Plan."[43]

3. California

Last year California passed Assembly Bill 2466 exempting retirement and educational accounts from consideration as assets for recipients (but not applicants) in CalWORKs (California Work Opportunity and Responsibility to Kids), the state's TANF program.[44] Assembly members Lynn Doucher (a Republican) and Juan Arambula (a Democrat) sponsored the bill, which was supported by many advocates and signed into law by Gov. Arnold Schwarzenegger (a Republican) on September 29.

At a hearing before the Senate Health and Human Services Committee, pro-

[39]See www.kevinlundberg.com/TheIssues/Archives/2006Session_/2006FreedomWatch/Index.html.

[40]Lutheran Advocacy Ministry Colorado, www.lam-co.org/issues.php?nav=poverty.

[41]Department of Human Services, Notice of Proposed Amendment, Part 121 Food Stamps Subpart C, 121.57 and 58, 28 Ill. Reg. 10540–41 (July 30, 2004) (exempt assets section), available at www.cyberdriveillinois.com/departments/index/register/register_volume28_issue31.pdf.

[42]Letter from Dory Rand to Gov. Rod Blagojevich (Oct. 5, 2005).

[43]Ill. Admin. Code tit. 89, §§ 112.54, 112.150 (TANF), 114.250 (general assistance), and 121.57 (food stamps) (2005).

[44]Cal. Welf. & Inst. Code § 11155.6(a)(1).

ponents testified that the bill would promote wealth building among low-income families; that California had a high rate of asset poverty; that the current option to save up to $5,000 was underutilized; that asset limits inhibited independence, self-sufficiency, and financial responsibility; that exempting retirement savings rewarded work and decreased the likelihood of reliance on public assistance in old age; and that exempting education accounts promoted higher education and reduced the intergenerational cycle of poverty.

The Senate Appropriations Committee analysis projected "unknown but probably moderate costs for small increases in eligible families."[45] The bill was changed to apply only to recipients because the administration wanted to show support for individuals receiving CalWORKs but to limit the budget impact.

The California law exempts "the principal and interest in a 401(k) plan, 403(b) plan, IRA, 457 plan, 529 College Savings Plan, and Coverdell" education savings accounts. Following Illinois's lead, it also allows county welfare departments to include financial management education as an approved "job search and job readiness" activity in CalWORKs participants' welfare-to-work plans.[46] Although some advocates were disappointed that applicants remain subject to asset limits for similar types of savings, many feel that the bill is a step in the right direction and opens the door for further reform.

4. Other State Reforms

Several states have acted to exempt education savings accounts from consideration as assets under TANF. Colorado, California, and Pennsylvania have exempted "529" college savings plans.[47] Beneficiaries of 529 plans may be adults or children. Other states have exempted Coverdell Plans and other types of education accounts.

The Shriver Center and Oakland Livingston Human Service Agency, two community partners in the Savings for Education, Entrepreneurship, and Downpayment (SEED) Initiative to test universal children's savings account programs, have received confirmation from state agencies in Illinois and Michigan that funds held in 529 plans as the savings vehicle for SEED participants will be treated as exempt for purposes of TANF, food stamps, and Medicaid and SCHIP.[48] Other states have exempted funds held in other types of SEED accounts, such as regular savings accounts.[49]

Some states, including Virginia and Illinois, have eliminated the lump-sum rule. This is especially important for persons with disabilities who receive lump-sum SSI payments.[50]

Some states exempt funds in children's savings accounts if earned by the child. States may also exempt a certain level of contributions that are not from the child's earned income. For example, Illinois exempts all of a child's earnings deposited into a children's savings account and up to $50 per quarter deposited from other sources.[51]

[45]*Staff Analysis of Fiscal Impact: Hearing Before the Calif. Senate Health and Human Services Comm.* (June 27, 2006), available at www.leginfo.ca.gov/pub/05-06/bill/asm/ab_2451-2500/ab_2466_cfa_20060623_172343_sen_comm.html.

[46]Cal. Welf. & Inst. Code § 11322.6(n).

[47]26 U.S.C. § 529 grants favorable tax treatment to funds saved in these accounts and used for qualified postsecondary education or training expenses and imposes penalties on earnings withdrawn for unqualified uses. See Parrish, *supra* note 2; Neuberger et al., *supra* note 12. For more information on 529 college savings plans, see www.savingforcollege.com. For more information on implementing 529 exemptions, see Margaret Clancy & Leslie Parrish, Reforming 529 College Savings Plans to Better Reach Low-Income Families (2006), available at www.gwbweb.wustl.edu/csd/SEED/Reforming_529s.pdf.

[48]Memorandum from Jennifer Brooks and Amy-Ellen Duke to Bob Coulson, Colorado Department of Human Services (Feb. 17, 2005), available at www.cfed.org/focus.m?parentid=31&siteid=2166&id=2206.

[49]See www.cfed.org/imageManager/_documents/Growing_Knowledge-April_2006.pdf.

[50]22 Va. Admin. Code § 40-295-50 (2003).

[51]Ill. Department of Human Services Policy Manual 07-01-16-i: Children's Savings Accounts, available at www.dhs.state.il.us/ts/cfsmm/OneNet.aspx?Item=14847.

At least thirty-one states exempt assets in IDAs.[52]

C. Food Stamps

States have exercised their discretion to exempt certain assets from consideration under the Food Stamp Program. California, Colorado, Illinois, Ohio, and Virginia exempt retirement accounts.[53] At least forty states have exercised the option to exclude at least one vehicle, and twenty states exclude all vehicles.[54]

Because states have less flexibility under current Food Stamp Program rules than under TANF and Medicaid, the exemptions are sometimes narrower. For example, Illinois adopted in 2005 an administrative rule change that exempts all retirement accounts for cash assistance programs but does so for food stamps only if a penalty is imposed for withdrawal.[55] Under proposed Food Stamp Program rules, however, states may exempt IRAs even when there is no penalty for withdrawal if they exclude IRAs under TANF or Medicaid.[56]

By adopting categorical eligibility rules for Food Stamp Program applicants and recipients who receive a TANF-funded benefit, several states eliminated the need to apply a separate Food Stamp Program asset test.[57]

D. Medicaid and SCHIP

Most states have no asset limits for receiving children's Medicaid and SCHIP benefits. Five states have children's Medicaid limits of $1,000 to $5,000. Only three states have SCHIP asset limits: Idaho ($5,000), Texas ($5,000 if income exceeds 150 percent of the federal poverty level), and Oregon ($10,000). For family Medicaid, at least twenty-one states have no asset test; most states exclude the first vehicle as an asset; and about half the states exclude all or some retirement accounts.[58]

V. Strategies for Asset Limit Reform

Experience suggests that advocates of asset limit reform must do their research. Familiarity with reform in other states can be very helpful in making a case for reform in your own state. Find information on current state asset limits.[59] Consider whether the asset limit reasonably allows recipients and applicants sufficient net worth to sustain them for at least three months during a loss of income, or whether the rules promote persistent asset poverty that keeps a person living on the edge.[60] Financial planners often advise keeping at least three to six months of living expenses readily accessible as an emergency fund.

Consider whether the asset rules allow a person to advance beyond a poverty or basic self-sufficiency level to more secure financial footing and prosperity. Think of the cost of buying an average home and the amount needed for a down payment, the cost, including maintenance, of a reliable used car to get to work, the cost of college tuition or starting a business, the need to save for retirement in addition

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[52]E-mail from Gena Gunn, Center for Social Development, to Dory Rand (Feb. 12, 2007); see also Center for Social Development, *IDAs and Public Assistance Asset Limits: What States Can Do to Remove Penalties for Saving*, 1:2 IDA State Policy Briefs (2003), available at www.cfed.org/publications/Vol%201%20No%202%20-%20Public%20Assistance%20Asset%20Limits.pdf.

[53]Karen Edwards et al., Center for Social Development and New America Foundation, State Asset Building Policy Options (2006).

[54]Dean, *supra* note 15.

[55]Ill. Admin. Code tit. 89, § 121.75 (2005).

[56] Neuberger et al., *supra* note 13, at 36–37.

[57]Advocates are encouraged to contact Stacy Dean at the Center on Budget and Policy Priorities for more information about categorical eligibility: dean@cbpp.org.

[58]Neuberger et al., *supra* note 12.

[59]*Id*. at 40 (Appendix C: Where to Find Information on State Asset Policies).

[60]CFED's Assets and Opportunity Scorecard documents the level of asset poverty in each state. Persons who lack sufficient net worth to survive are considered "asset poor."

to social security, the need to save for an adult or child's college education or training, out-of-pocket health care costs, and other big-ticket items.[61] The lower the asset limit and the fewer the exemptions, the more onerous the asset rule.

Advocates should also anticipate certain questions and be prepared with firm answers. Will asset reform make the state appear "soft on welfare?" Answer: No. Few applicants and recipients have assets anyway, and strict work requirements and time limitations reduce the risk that people will "game the system." Will asset reform cause caseloads to increase significantly? Answer: No. Experience in other states that have reformed or eliminated asset tests teaches that caseloads do not increase as a result.

A. Gather Information on Impact of Proposed Changes

Determine the impact of proposed changes in asset limits. The state agency should be able to determine from its database how many applicants and recipients were denied or cut off benefits due to assets that exceeded current rules. Go back several years to show that few people are likely to become eligible as a result of rule changes. If the agency is unwilling to share the information, advocates can file a Freedom of Information Act request.[62] Find out the total current caseload, number of child-only cases, and caseload decline since welfare reform.

Solicit the agency's help in estimating the cost of administering the current rules and the estimated cost savings from proposed changes. If you cannot obtain the agency's estimate, look to estimates from states with similar programs and caseloads.

Based on the number of applicants and recipients denied benefits under current rules, project the number and cost of persons who will become eligible under the new rules. If caseload increases are projected, distinguish between costs that the state would bear (e.g., TANF) and costs that the federal government would bear (e.g., food stamps).[63]

Describe how the new rules are consistent with state policies and goals to promote work, self-sufficiency, financial responsibility, and upward mobility.

B. Develop and Build on Relationships with State and County Agencies

Advocates who have a working relationship with the agencies that administer the assistance programs should contact agency leaders to discuss proposed changes in asset limits. If you decide to pursue reform via administrative rule change, you will need the agency's cooperation in proposing and advancing rules. If the agency that administers state-funded IDAs or financial education is not the same agency that administers assistance programs, seek the IDA agency's advice and support. If you do not have a direct relationship with the agency, collaborate with an organization that does.

Request a meeting to discuss the asset rules and possible changes, and bring to the meeting the information and arguments you have gathered and a list of questions. Explain the problems that the rules cause and the source of authority to change them, and ask the agency's opinion and advice on how to proceed. Gather information about the likely impact, including administrative savings and any projected costs. Ask advice on which allies to recruit. Seek consensus on how public the asset reform efforts should be.

Track the progress of the bill or proposed rule and submit public comments, repeatedly making the case for raising or eliminating asset limits or exempting additional assets. Even when the topic is tangential, submit comments that allude to problems posed by asset limits. For example, if you have an opportunity to comment on service delivery or delays in processing applications or renewals, cite

[61] For a helpful calculation of a low-income person's retirement needs, see Neuberger et al., *supra* note 12, at 12.

[62] Freedom of Information Act, 5 U.S.C. § 552 (2007).

[63] The federal government pays 100 percent of food stamp program benefits and divides administrative costs with the states (see 7 U.S.C. § 2020 (2007).

the administrative burden of verifying assets for all persons when so few have any countable assets.

If the agency is opposed to the reform of administrative rules on assets, the agency is unlikely to submit or push for rule change, and your only recourse may be legislation. You will have an uphill battle if the affected agency opposes a bill.

C. Develop and Build on Relationships with the Executive Branch

Newly elected officials sometimes create transition teams to suggest policy proposals. Use any opportunity to participate in a governor's transition team to suggest the reform of rules on asset limits. State policy advocates frequently work with the governor's policy and budget staff. Experienced staffers can often lend an insider's view of the executive's likely position on such reform and possible conflicts with other issues. Consult informally with contacts among the policy team and budget office to identify concerns and potential opposition, and determine whether an administrative or legislative route makes more sense. This can be accomplished through a simple phone call or e-mail or through a more formal letter or meeting.

D. Develop and Build on Relationships with Legislators

Whether you proceed via administrative rule change or legislation, you will probably need at least some legislators as allies. Often a state board or committee of legislators must approve administrative rule changes. Determine which legislators sit on that board, and contact those with whom you have a good relationship. Even if you do not know any members of the administrative rules committee, you can consult with your district representatives, sponsors of bills on which you have worked, caucus leaders, and human services committee leaders. If you take the administrative route, doing much legislative outreach may not be necessary. A better strategy may be to let the agency quietly propose rule changes without attracting much attention.

E. Solicit Input from Advocates and Policy Groups

Remember the strength that numbers confer. Seek out other advocates, legislators, and coalitions likely to know about and support the reform of rules on asset limits. These other groups may have contacts with the state welfare agency, governor, or legislators; they could prove helpful in advancing reform. They can support the strategy through comment letters, phone calls, and other contacts.

Legal aid attorneys handling benefit cases are likely to have firsthand knowledge of how asset limits adversely affect clients. Legislators may have heard from constituents who were denied benefits and forced to spend retirement funds or emergency funds. Seventeen or more states now have asset or savings coalitions or state agencies whose mission is to expand financial security, savings, and assets.[64] You may even consider approaching your state bankers' association for support because reform could mean more deposits, especially if recipients opt for direct deposit of cash benefits into bank accounts.

F. Choose Between Legislative and Administrative Advocacy

Reform through a legislative approach may be more likely to stick. Legislative advocacy has the potential to generate more public interest and media coverage than a rule change. A legislative battle involves a lot more votes and energy than an administrative change. Then again advocates may not want to generate a lot of public discussion of asset limit redefinition in order to avoid arguments based on old stereotypes or claims that people will "game the system" if the state eliminates asset limits.

If you choose legislative advocacy, work with other advocates to draft a bill and target sponsors and supporters. Share your research and examples from other states, and suggest messages to use in support of asset test reform. Organize witnesses to testify at legislative committee hearings. Remember that passage

[64]Heather McCulloch, Promoting Economic Security for Working Families: State Asset-Building Initiatives (2005), available at http://content.knowledgeplex.org/kp2/cache/documents/106925.pdf.

by the legislature is only part of what you need; maintain pressure on the governor to sign your bill.

An administrative strategy can be very low-cost and "under the radar," but it requires support from the agency and the executive branch. Advocates in each state have to weigh whether to make an administrative change a public campaign. Sometimes too much attention can backfire.

If you choose administrative advocacy, request meetings with the director or policy staff of the relevant agency. Bring up the question of reforming the rules on asset limits when you discuss other benefits-related issues with the agency. Share research and examples from other states. Offer to help draft rules or comment on existing drafts. When new rules are proposed, submit public comments and generate additional support from other advocates and legislators.

Some groups may be constrained from participation in legislative advocacy due to "lobbying" restrictions on legal aid and other nonprofit organizations.[65] Advocating an administrative rule change does not fall within those restrictions and may offer a better alternative for groups subject to such restrictions.

G. Advocate Elimination or Reform of Asset Tests

Elimination of asset limits is the only way to reduce the administrative burden of implementing asset rules. Abolishing asset limits also sends a clear message that saving and building assets are encouraged. Complete elimination of asset rules may not always be politically feasible, however. In that case, advocates should aim for elimination while pursuing substantially raised asset ceilings for both applicants and recipients and exemption of additional categories of assets, in line with good public policy and state goals.

H. Educate the Public

In promoting the reform of rules on asset limits, consider using the following messages:

- Asset limits are confusing, inefficient, counterproductive, and inequitable.
- Asset limits send the wrong message and discourage saving.
- States have authority to reform asset rules.
- Other states have reformed asset rules.
- Reforming rules on asset limits is good public policy and consistent with state goals to encourage saving, promote self-sufficiency, and reduce dependence.
- Abolishing asset limits reduces administrative burdens and cost.

Public education is key. Communicate your reform message through the media, through presentations and policy briefings, at agency meetings, in legislative committee hearings, through websites, and through other less formal means.

Consider what steps will ensure that agency personnel, applicants, and recipients learn about any changes in asset rules. Offer to help the agency update caseworkers on the new rules via in-person training, materials, or other technical assistance. Where possible, conduct an evaluation after the law or rule takes effect to document any change in the caseload or other significant impact.

If benefit recipients participate in financial education, IDA programs, or other savings and asset-building activities, incorporate the rule change into course materials.[66] Share information on asset rules with other agencies serving low-income families.

Author's Acknowledgments

I would like to thank Zoe Neuberger, Lisa Reyes Mason, Leslie Parrish, and Mark Golden for their helpful comments and Patrick Hain and Meg Dunne for their research assistance. The Sargent Shriver National Center on Poverty Law's asset work is generously supported by CFED, Woods Fund of Chicago, Chicago Community Trust, Ford Foundation, Levi Strauss Foundation, Marguerite Casey Foundation, Kellogg Foundation, F.B. Heron Foundation, Chase Philanthropy, and Citigroup Foundation.

[65]Alliance for Justice, Permissible Election Activities Checklist, www.afj.org/nonprofit/electoral_activities_01.pdf.

[66]See, e.g., University of Illinois Extension, Your Money & Your Life: A Financial Education Curriculum for Limited Resource Audiences (2004) (CD-ROM), especially Chapter 7: Taking Advantage of Public Benefits, available at https://pubsplus.uiuc.edu/ACE-4-CD.html.

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