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PREPARED BY THE STAFF

OF THE

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UNITED STATES SENATE

RUSSELL B. LONG, *Chairman*

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1. Aid to the Aged, Blind, and Disabled

PRESENT LAW

Three categories of adults are eligible for federally supported assistance: persons 65 and over, the blind, and permanently and totally disabled persons 18 years and older. Each State establishes a minimum standard of living (needs standard) upon which assistance payments are based; any aged, blind, or disabled person whose income is below the State needs standard will be eligible for some assistance, although the State may not pay the full difference between the individual's income and the needs standard.

Generally speaking, all income and resources of the aged, blind, or disabled person must be considered in determining the amount of the assistance payment (though a portion of earnings may be disregarded as a work incentive). States also place limitations on the real and personal property an aged, blind, or disabled individual may retain without being disqualified for assistance. Federal law does not require States to pay the full difference between the income of an aged, blind, or disabled individual and the State's needs standard; many States limit the assistance that can be paid.

States may either have separate assistance programs for the aged, blind, and disabled, or may have a single combined program for all three groups.

Federal financial participation is based on one of two alternatives, at the State's option: (1) the Federal matching percentage for medicaid (ranging from 50 percent to 83 percent, depending on State per capita income) is applied to all expenditures for assistance payments; or (2) Federal matching is based on a formula applied to average assistance payments, up to certain limits. Under the second alternative, the State determines the average monthly payment. For aid to the aged, blind, and disabled, Federal matching applies only to the first $75; the Federal share is thirty-one thirty-sevenths of the first $37 plus the "Federal percentage" (ranging from 50 percent to 65 percent, depending on State per capita income) times the next $38 (or less). The Federal Government pays 75 percent of the cost of certain kinds of social and rehabilitative services which contribute to the ability of an aged, blind, or disabled person to live as independently as possible. The Federal Government pays 50 percent of the cost of program administration.

H.R. 16311

Under H.R. 16311, as it passed the House, the categories of persons eligible (the aged, blind, and disabled) would not be changed but the Secretary of Health, Education, and Welfare would set a national definition of "blind" and "severely disabled," and States would be required to have a single combined plan for all three groups. States would be required to provide a payment sufficient to bring an individual's total income up to at least $110 a month ($220 for a couple). In evaluating need for assistance, States would have to disregard resources of $1,500 (other than a home and certain other excluded property).

To arrive at the Federal share of welfare costs, the average monthly assistance payment would be calculated. The Federal Government would pay 90 percent of the first $65 and 25 percent of the remainder up to a limit set by the Secretary of Health, Education, and Welfare.

If the State continued to administer the welfare program, the Federal Government would pay 50 percent of the cost of program administration. The bill contains new authority which would permit the Secretary of Health, Education, and Welfare to enter into agreements with any State under which the Secretary would make the payments directly to the eligible individuals. Under such an agreement the Federal Government would pay all of the administrative costs.

ADMINISTRATION REVISIONS

In the administration's June revision of H.R. 16311, a number of changes were proposed in the provisions relating to welfare programs for the aged, blind, and disabled. Most of these changes related to taking the authorization for providing social and rehabilitative services for the aged, blind, and disabled out of the welfare program and putting them in a new title XX of the Social Security Act dealing with social services for needy persons. Other changes related to the treatment of earned income for welfare purposes and certain administrative provisions.

In its October revised revision, the administration withdrew its proposal for a separate social services title of the Social Security Act; in another major change, a definition of "severely disabled" is proposed in the revised revision. Material submitted with the revised revision includes an alternative proposal to make aged, blind, and disabled persons ineligible for participation in the food stamp program and instead to raise the guaranteed minimum income level to $130 for an individual and $230 for a couple.

ISSUES AND CONSIDERATIONS

1. Guaranteed minimum income and relationship with social security.—When the Social Security Act became law in 1935, it was anticipated that social insurance would provide a basic income to the elderly, while old-age assistance would decline as more and more persons became eligible for social security. Over the years, this anticipation has by and large been realized; the proportion of persons 65 and over receiving public assistance has declined from 23 percent in 1950 to 10 percent today. Generally speaking, public assistance has been considered a residual program, a source of income after all other sources have been taken into account. Each State has been allowed to set assistance levels it has deemed appropriate.

If a national guaranteed minimum income level is to be set for aged, blind, and disabled persons, at what level should this be set? Present State payment levels are such that only about 7 percent of aged social security beneficiaries also receive assistance. A guaranteed minimum income of $110 for a single individual will not substantially increase this percentage, but a minimum income of $220 for a couple might.

In the social security program, a wife's benefit is equal to 50 percent of her husband's benefit (if both are 65 when they begin receiving

benefits). In fact, in 41 States the standard of need for an aged couple is between 120 and 160 percent of the needs standard of an aged individual under present welfare programs.

When a question was raised at the hearings on H.R. 16311, Secretary Richardson was unable to explain why a couple on welfare should receive 200 percent of a single person's welfare payment while a couple receiving social security receives 150 percent of a husband's benefit. Close to half of the couples receiving social security benefits will be receiving less than $220 monthly—even after the 10-percent increase already approved by the committee.

The staff recommends that whatever level of minimum income the committee wishes to consider, the level for a couple be 150 percent of the level for an individual, thus conforming to the rule in social security (and which would be more in line with present practice in old-age assistance).

The Department of Health, Education, and Welfare estimates that a 10-percent social security benefit increase with a $100 minimum will save $439 million in public assistance expenditures ($279 million in Federal funds and $160 million in State and local funds). The increase in total assistance costs for different minimum income levels is shown in table 1 below. If aged, blind, anv disabled persons receiving welfare were made ineligible for participation in the food-stamp program, the costs in the table would be lowered.

TABLE 1.—*Cost of Alternative Guaranteed Minimum Income Levels for the Aged, Blind, and Disabled*

Guaranteed monthly minimum income level for an individual	Total increased welfare cost if minimum income level for a couple is—	
	200 percent that of an individual	150 percent that of an individual
$110	$323 million	$289 million.
$120	$563 million	$500 million.
$130	$837 million	$743 million.
$140	$1,148 million	$861 million.
$150	$1,498 million	$1,187 million.

2. Federal share.—Under present law, most States receive the same Federal matching under aid to the aged, blind, and disabled as they do under medicaid; this percentage is 50 percent for the large industrialized States. H.R. 16311 would instead provide 90 percent Federal matching for the first $65 in average monthly payments and 25 percent Federal matching for additional amounts (up to a limit, never made clear by the Department, to be set by the Department of Health, Education, and Welfare). Neither the administration's June revision nor its October revised revision would change this matching feature.

Senator Ribicoff's amendment No. 590 would gradually increase Federal matching until it reached 100 percent of the first $110 beginning in 1974.

In July 1970, payments to old-age assistance recipients in California averaged $108; the Federal Government paid $54 of this amount. If

H.R. 16311 had been law, the average payment would have been the same (since California's needs standard already exceeds $110, with full need met) but the Federal share would have been about $69—a $15 replacement of State funds by Federal funds, with no increase to the recipients. Similarly, old-age recipients in New York received average payments of $94 in July 1970; the Federal share of this was $47, but under H.R. 16311 it would have been about $66—a $19 replacement of State funds by Federal funds. It is for this reason that California and New York together would receive about $98 million (about three-fifths) of the total $166 million in fiscal relief to the States estimated by the Department in connection with aid to the aged, blind, and disabled.

There appears to be little ground for modifying the Federal matching that exists under present law for the aged, blind, and disabled. However, the issue of Federal matching is closely linked to action on the "savings clause" for States, discussed below.

3. Savings clause.—Though some States would realize substantial savings from the provisions of H.R. 16311 related to the aged, blind, and disabled, other States (generally, those with lower per capita incomes) would be required to spend more than under present law. H.R. 16311 as it passed the House and both administration revisions contain "savings clauses" linked to total State welfare payments (including payments to families on welfare). However, the "savings clauses" could simply be applied to welfare payments to the aged, blind, and disabled. These are some alternatives:

1. For 2 years, the Federal Government would pay the difference between (1) actual non-Federal expenditures in the year prior to enactment, and (2) non-Federal expenditures required under the bill. The 2-year limitation approach was included in H.R. 16311 as it passed the House.

2. For an indefinite period of time, the Federal Government would pay the difference between (1) actual non-Federal expenditures in the year prior to enactment, increased to the extent the cost of living has risen since then, and (2) non-Federal expenditures required under the bill. This is the approach of the administration revisions of H.R. 16311.

3. For an indefinite period of time, the Federal Government would pay the difference between (1) 90 percent of non-Federal expenditures in the year prior to enactment, increased to the extent the cost of living has risen since then, and (2) non-Federal expenditures required under the bill. This is the approach of one of the alternatives submitted by the administration with its October revised revision.

4. Set a flat limit on non-Federal expenditures for the aged, blind, and disabled equal to 100 percent or 90 percent of comparable expenditures in the year prior to enactment. In effect, such a provision would supersede the question of a Federal matching percentage.

For example, assume that the non-Federal share of welfare payments to the aged, blind, and disabled in a given State amounts to $10,000,000 in 1970, and that these expenditures rise to $10,800,000 in 1972, $10,900,000 in 1973, and $11 million in 1974. Assume also that the cost of living rises 5 percent by 1972, 7½ percent by 1973, and 10 percent by 1974, and that $100,000 of the total non-Federal cost in 1973 and 1974 resulted from a State increase in the payment levels. Table 2 below compares the effect of the alternative savings clauses for this hypothetical case.

TABLE 2.—*Alternative Savings Clauses*

[In thousands of dollars]

	Alternative 1	Alternative 2	Alternative 3	Alternative 4 (100%)	Alternative 4 (90%)
1970 base, actual	10, 000	10, 000	10, 000	10, 000	10, 000
1970 base adjusted for cost of living increase:					
1970 base in 1972		10, 500	9, 450	10, 000	9, 000
1970 base in 1973		10, 750	9, 675	10, 000	9, 000
1970 base in 1974		11, 000	9, 900	10, 000	9, 000
Expenditures taken into account:					
1972	10, 800	10, 800	10, 800	10, 800	10, 800
1973	10, 800	10, 800	10, 800	10, 800	10, 800
1974		10, 900	10, 900	10, 900	10, 900
Federal payments under savings clause:					
1972	800	300	1, 350	800	1, 800
1973	800	50	1, 125	800	1, 800
1974			1, 000	900	1, 900

4. Definition of "severely disabled".—Under present law, the definition of "permanently and totally disabled" is left to the discretion of the States. H.R. 16311 would require States to provide assistance to "severely disabled" needy persons, but the bill would leave the definition of this term up to the Secretary of Health, Education, and Welfare. The Ways and Means Committee indicated in its report that it expected the definition to follow the one appearing in the social security disability insurance program:

> Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to last for a continuous period of not less than 12 months. (Section 216(i)(2)(A) of the Social Security Act.)

In their October revised revision of H.R. 16311, the administration proposed a definition of "severely disabled" individuals which differs from the disability insurance definition in two respects:

1. The substantial gainful activity would have to be "available to him within a reasonable distance from his residence."
2. Disabled individuals already receiving welfare but not eligible under this definition could continue (at the State's option) to receive welfare with Federal matching.

It should be noted that a major issue during congressional consideration of the 1967 Social Security Amendments concerned the definition of disability under the social security disability insurance program. One of the critical items in dispute was whether the definition of disability should be related only to employment opportunities available in the applicant's home area. After considerable debate, the issue was resolved in a way to emphasize that he must be unable to engage in any substantial gainful activity "regardless of whether or not such work exists in the general area in which he lives."

If the committee wishes to write a national definition of disability into Federal welfare law, the staff recommends that the language follow that found in the disability insurance program.

5. Definition of blindness.—H.R. 16311 would require States to provide assistance to needy blind persons, with the definition of blindness left up to the Secretary of Health, Education, and Welfare. In the hearing on the bill, Secretary Richardson recommended that the definition of blindness used in the disability insurance program be applied in the welfare program: "The term 'blindness' means central visual acuity of 20/200 or less in the better eye with the use of correcting lenses" (sec. 216(i)(1)(B) of the Social Security Act). It is recommended that this definition be written into the statute.

6. Earned income disregard.—As an incentive for aged individuals to work, present law permits States to disregard the first $20 earned by an aged welfare recipient monthly plus one-half of the next $60 in monthly earnings. H.R. 16311 would continue this optional provision; the administration's revised bill would make the earned income disregard mandatory. At the same time, the administration revision would permit the State to take into consideration only those work expenses necessitated by or related to the individual's age in determining need for assistance. The staff recommends that the House bill not be changed.

7. Secretarial discretion.—The House bill contains two areas of secretarial discretion which the staff recommends be deleted:

(a) Sec. 1602(a)(6) would permit the Secretary to mandate the "declaration system" of establishing eligibility for and the amount of assistance through the use of a simplified system. A study by the General Accounting Office cast serious doubts that testing of the simplified method by the Department of Health, Education, and Welfare showed an "acceptable" level of ineligible persons receiving benefits. An attempt to secure this authority in 1967 was rejected by the Congress, although subsequent regulations issued by the Department of Health, Education, and Welfare sought to require use of the "declaration method." It is recommended that the statute instead prohibit the use of the "declaration method."

(b) Sec. 1602(a)(16) would require States to "assure that, in administering the State plan and providing services thereunder, the State will observe priorities established by the Secretary and comply with such performance standards as the Secretary may, from time to time, establish." In view of the broad but unknown authority this provision would place in the Secretary's hands, it is recommended that it be deleted.

8. Social services for the aged, blind, and disabled.—H.R. 16311, like present law, requires States to offer appropriate social services to aged, blind, and disabled welfare recipients. In their October revised revision of the bill, the administration recommends that staff furnishing the services be required to be located in administrative units separate from the staff administering the cash payment program. There would appear to be little justification for requiring States to make this kind of rigid separation; it is recommended that the House bill not be changed.

9. Relative responsibility.—Under H.R. 16311 as it passed the House the parent of a blind or severely disabled child would be considered financially responsible for the child as long as the parents remain alive. In their revised revision of the bill the administration recommends that a State be allowed to consider a parent financially responsible for a blind or disabled child only if the child is under the age of 21. Senator Percy's amendment 904 (introduced as an amendment to H.R. 17550) would accomplish the same purpose. Such a change appears to the staff to be reasonable.

2. Foster Care

PRESENT LAW

When a child's home is unsuitable or when the child has no home in which he can receive care, welfare agencies arrange for foster care; that is, care in the home of another family.

As part of the 1967 Social Security Amendments, the Congress significantly increased the authorization for Federal support of foster care in two ways:

1. Federal matching for aid to families with dependent children payments to children receiving foster care was liberalized; and
2. The appropriation authorization for Federal grants for child welfare services, including foster care, was doubled, from $55 million to $110 million.

Despite these changes in the 1967 amendments, the cost of foster care payments is still largely borne by counties and municipalities. One of the major reasons for this is that appropriations for child welfare services have been at a $46 million level for the last 5 years despite the doubling of the authorization.

H.R. 16311

As it passed the House, H.R. 16311 made no modification in the provisions of present law. However, in the administration's June revision of the bill, they recommended that an additional $150 million be authorized and earmarked for Federal grants for foster care, as part of a proposed new title XX of the Social Security Act, dealing with social services. This proposal was deleted in the October revised revision.

ALTERNATIVE PROPOSAL

If the committee wishes to authorize an additional amount for foster care, it may wish to accomplish this in a different way. The committee might simply increase the authorization for Federal grants for child welfare services from $110 million to some higher amount. For example, a $200 million authorization would be $154 million higher than the amount included in the President's fiscal year 1971 budget. The advantage of not earmarking amounts specifically for foster care would be that States and counties could use the child welfare services grant money to expand preventive child welfare services with the aim of avoiding the need for foster care wherever possible.

3. Obligation of Deserting Parent

PRESENT LAW

Present law requires that the State welfare agency undertake to establish the paternity of each child receiving welfare who was born out of wedlock, and to secure support for him; if the child has been deserted or abandoned by his parent, the welfare agency is required to secure support for the child from the deserting parent, utilizing any reciprocal arrangements adopted with other States to obtain or enforce court orders for support. The State welfare agency is further required to enter into cooperative arrangements with the courts and with law enforcement officials to carry out this program. Access is authorized to both Social Security and Internal Revenue Service records in locating deserting parents.

These measures, however, have failed to stem the explosive growth of the welfare rolls in the past 3 years, a growth largely consisting of families in which there either never was a father or in which the father has deserted the family or is otherwise separated from the mother. In 1969, 44 percent of the families receiving aid to families with dependent children had fathers who either were not married to the mother (28 percent) or who deserted the family (16 percent).

SENATE ACTION IN 1967

In 1967, the Senate approved a committee amendment (dropped in conferenee) to create a Federal liability where the deserting parent fails to support his family. The committee report stated:

> In addition to the procedure for locating deserting parents by use of the Internal Revenue Service's master file, the bill provides for the establishment of a Federal liability of the parent who is not in compliance with a court support order for the portion of the AFDC payments being made with respect to his child that is attributable to the Federal contribution, and for the collection of this liability by the Internal Revenue Service through its tax collection procedures.
>
> These provisions apply where a court support order has been issued and the parent resides in a different State than the one in which the child resides.
>
> If such an order has been issued, and the father is not in compliance, or in good faith partial compliance, the State agency is to attempt to obtain compliance with the order to the extent of the father's ability. In attempting to obtain compliance, the State agency is expected to inform the father that in the event he does not comply, his liability to the United States under the new procedure will be established and collected by the Internal Revenue Service.
>
> If the State agency is unable to secure compliance, it will report the name of the father to the Department of Health, Education, and Welfare, along with information bearing upon the ability of the parent to furnish support. The State will make an assessment of the ability of the parent to make support payments, using criteria developed by the Secretary. The criteria will take into account the income of the parent and his current obligations.
>
> If the Department of Health, Education, and Welfare determines that the State's judgment that a parent is capable of making

payments is correct, it will certify to the Internal Revenue Service the amount which the parent is able to pay, and the amount so certified will become a liability of the parent to the United States. (Neither the establishment nor the payment of such liability will affect the obligation of the parent under the court's support order.) The amount certified may not exceed the Federal contribution (determined on a general percentage basis for the State) of the aid payments being made because of the dependent child, or the amount the father would be required to pay under the court order, whichever is less. Upon receipt of a certification from the Department of Health, Education, and Welfare, the Internal Revenue Service is to assess and collect the amount certified in the same manner as it does income taxes withheld and employment taxes (except that the interest and penalties do not apply); that is, by the issuance of a notice and demand for payment and the use of the regular tax collection procedures, including levy and distraints if payment is not received within 10 days.

The amendment authorizes the payment of the costs involved to the Internal Revenue Service in aiding in the location of the fathers and for the Service's cost in the collection of the Federal liability. The expense to the Internal Revenue Service of these procedures is to be reimbursed by the Department of Health, Education, and Welfare.

H.R. 16311

H.R. 16311 purports to go further than the provisions of existing law. In addition to retaining the provisions outlined above, section 464 of H.R. 16311 provides that an individual who has deserted or abandoned his spouse, child, or children shall owe a monetary obligation to the United States equal to the total amount of family assistance benefits, plus the Federal share of any State supplementary payments, paid to the spouse or child during the period of desertion or abandonment. The liability of a deserting parent would be reduced by the amount of any payment he made to his family during the period of desertion.

In those cases where a court has issued an order for the support and maintenance of the deserted spouse or children, the obligations of the deserting parent would be limited to the amount specified by the court order.

To the extent these amounts are not collected directly from the individual involved, the amount due the United States under these provisions could be collected only from any amounts otherwise due the deserting parent by any officer or agency of the United States or under any Federal program. This would include income tax refunds (if any), social security benefits, or family assistance payments to the deserting father.

Under the House bill, desertion or abandonment would have a much broader meaning than under State law. Physical absence from the home and a specific intention to desert would no longer need to be demonstrated. Instead a liability would be created to the extent that an individual's failure to use his income and resources to support his

spouse, child, or children, requires that family assistance payments (and supplementary payments where applicable) be made to support them.

NATIONAL CONFERENCE ON UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT

The National Conference on Uniform Reciprocal Enforcement of Support, composed of State and local officials administering the interstate family support program under State laws, urged the Committee on Finance to modify the provision so that it would:

1. Impose an obligation on a legally responsible relative to reimburse the Federal Government to the extent of his ability for the amount expended by the Federal Government for support of his dependents;
2. Make such obligation concurrent with obligations to reimburse State and local governments for their expenditures for this purpose;
3. Make all governmental units to which such obligations are owed necessary parties to any legal proceedings brought by any of them to enforce such obligations; and
4. Require an apportionmnent of any support order entered by any court among all such parties in proportion to their expenditures in any such case.

ADDITIONAL PROPOSALS

The committee may wish to consider going further than the House bill.

It is likely that the only Federal obligation that will exist for many low-income deserting parents will be the social security benefits they will become entitled to when they retire. The threat of losing social security benefits many years in the future may not serve as a sufficient deterrent to a parent intending to desert. The committee may wish to permit the collection of this obligation by lien or garnishment. The deserting father would be excused from this requirement only if he were already satisfying court requirements for support payments.

It should be noted, however, that in many instances a deserting father undertakes new familial responsibilities in his new location. States have sometimes been reluctant to prosecute for support payments to a wife and children in another State if the effect would simply be to create another dependent woman and child in the deserting parent's new State of residence.

Officials from Milwaukee, Wis., in testimony before the committee urged that it be made a Federal offense for a father to leave a State to abandon his family.

During the hearing on the welfare bill, Secretary Richardson was asked his opinion about direct Federal action in desertion cases. He replied:

"We would support legislation which made it a Federal crime to cross State lines for the purpose of evading parental responsibility. The only real problems that arise here—and I cannot speak to these—involve the responsibility that would thereby be put on the Justice Department and U.S. attorney's offices.

"Generally speaking, Federal law enforcement officials, I think, have felt that this ought to be a State responsibility. This system is, in effect, an interstate compact designed to enable the States to work together and to trace and get money payments from fathers. From the standpoint of our Department to make this a Federal crime would help to reduce the problem, we think, and to that extent we would be for it." (P. 690 of hearings.)

It is recommended that it be made a Federal misdemeanor for a father to cross State lines in order to avoid his family responsibilities.

4. Recent Court Decisions

In the past 3 years, a number of court decisions have been handed down which have had the effect of making major changes in welfare law. Since these changes have never been subjected to legislative consideration, the committee may wish to consider whether the result in the decisions is in harmony with its views regarding congressional intent.

DURATION OF RESIDENCE REQUIREMENTS PROHIBITED

Under present Federal statute, the Secretary of Health, Education, and Welfare is required to approve State public assistance plans which do not impose duration of residence requirements more stringent than (1) in the case of aid to families with dependent children, residence of at least 1 year prior to application for assistance, and (2) in the case of aid to the aged, blind, or disabled, residence during at least 5 of the previous 9 years and during the year preceding the application.

On April 21, 1969, the Supreme Court rules in three cases (*Shapiro* v. *Thompson* (394 U.S. 618), *Washington* v. *Legrant*, and *Reynolds* v. *Smith*), that it was unconstitutional for any State law to impose a duration of residence eligibility requirement for public assistance. Though the Court was aware of the statutory provisions of Federal law referred to above, it considered them as permitting rather than approving State duration of residence requirements. In any case, the Court argued that even if the Congress did approve the imposition of a duration of residence requirement, "it is the responsive State legislation which infringes constitutional rights * * * Congress may not authorize the State to violate the equal protection clause." This clause of amendment XIV to the Constitution prohibits a State from denying to any person within its jurisdiction the equal protection of the laws.

Possible legislative action.—The committee might wish to consider requiring all States to have duration of residence requirements (such as the 1-year period in the present aid to families with dependent children program) as part of their State law. At the same time, a clause could be added to financing provisions of the welfare law stating that in no case would Federal matching be denied solely because a State failed to meet the requirement of Federal law that duration of residence requirements be imposed. With such an amendment, State laws would not be violating the equal protection clause.

MAN-IN-THE-HOUSE RULE VOIDED

On June 17, 1968, the Supreme Court ruled in *King* v. *Smith* (392 U.S. 309) that a State could not consider a child ineligible for aid to families with dependent children when there was a substitute parent with no legal obligation to support the child. The Court decision was based on its interpretation of congressional intent as expressed in the Social Security Act and its legislative history. The decision states: "We believe Congress intended the term 'parent' in section 406(a) of the act * * * to include only those persons with a legal duty of support." In a similar vein, the Supreme Court in *Lewis* v. *Martin* (397 U.S. 552, decided April 20, 1970), denied the right of a State, in determining need for assistance, to assume that the income of a man assuming the role of spouse is available to the family.

In *Shapiro* v. *Solman*, the Supreme Court affirmed a lower court decision (300 F. Supp. 409) prohibiting a State from denying AFDC to a family when there is a stepfather in the house.

Possible legislative action.—The Court decision was based on an interpretation that Congress did not intend for the income and resources of a man in the house to be taken into account in determining a family's eligibility for welfare. H.R. 16311, in effect, writes the Court decision on the man-in-the-house rule into law. The committee may wish instead to permit States to take into account the presence of a man in the house in determining eligibility for welfare by specifying the kinds of circumstances under which an individual may be considered a man in the house.

The existence of any of the following circumstances between any child and any individual not related to him could be considered as positive indications that there exists between them a continuing parent-child relationship:

(1) They are frequently seen together in public;

(2) The individual is the parent of a half-brother or half-sister of the child;

(3) The individual exercises parental control over the child;

(4) The individual makes substantial gifts to the child or to members of his family;

(5) The individual claims the child as a dependent for income tax purposes;

(6) The individual arranges for the care of the child when his mother is ill or absent from the home;

(7) The individual assumes responsibility for the child when there occurs in the child's life a crisis such as illness or detention by public authorities;

(8) The individual is listed as the parent or guardian of the child in school records which are designed to indicate the identity of the parents or guardians of children;

(9) The individual makes frequent visits to the place of residence of the child; and

(10) The individual gives or uses as his address the address of such place of residence in dealing with his employer, his creditors, postal authorities, other public authorities, or others with whom he may have dealings, relationships, or obligations.

HEARING REQUIRED BEFORE ASSISTANCE CAN BE TERMINATED

On March 23, 1970, the Supreme Court ruled in two cases (*Goldberg* v. *Kelly* (397 U.S. 254) and *Wheeler* v. *Montgomery* (397 U.S. 280)) that assistance payments could not be terminated before a recipient is afforded an evidentiary hearing. The decision was made on the constitutional grounds that termination of payments before such a hearing would violate the due process clause. The Court argued that welfare payments are a matter of statutory entitlement for persons qualified to receive them, and that "it may be realistic today to regard welfare entitlements as more like 'property' than a 'gratuity.' * * * The constitutional challenge cannot be answered by an argument that public assistance benefits are 'a "privilege" and not a "right." ' "

Both Under Secretary Veneman, when Secretary Finch testified before the committee in April (p. 216 of hearings), and Secretary Richardson (p. 469 of hearings) agreed that there is no constitutional right for a person to draw welfare.

Possible legislative action.—The committee may wish to require that States reach decisions on all appeals matters within 60 days, and to require the repayment of amounts which it is determined a recipient was not entitled to recieve. Any amounts not repaid could be considered an obligation of the recipient to be withheld from any future assistance payments to which the individual may be entitled.

DENIAL OF WELFARE FOR REFUSAL TO ALLOW CASEWORKER IN HOME

In August 1969, a U.S. district court in New York in the case of *James* v. *Goldberg* (303 F. Supp. 935) ruled, on constitutional grounds, that New York State could not terminate welfare payments to a recipient who refused to allow a caseworker in her home. The decision stated: "This court cannot with deference to the fourth amendment excuse the absence of a search warrant without a showing by those who seek exemption from the constitutional mandate that the exigencies of the situation make that course imperative. * * * No such showing has been made herein." This case will be argued before the Supreme Court next term.

Possible legislative action.—The committee may wish to require that a full-scale investigation of the income, resources, and family circumstances be conducted in any case where an individual refuses to allow a caseworker in the home after permission has been requested in advance.

REFUSAL TO NAME PUTATIVE FATHER NOT GROUNDS FOR DENIAL OF WELFARE

In August 1969, the U.S. district court in Connecticut ruled in the case of *Doe* v. *Shapiro* (302 F. Supp. 761) that a mother's refusal to name the father of her illegitimate child could not result in denial of aid to families with dependent children. The applicable State regulation was held to be inconsistent with the provision in Federal law that AFDC be "promptly furnished to all eligible individuals" on the grounds that the State regulation imposed an additional condition of eligibility not required by Federal law.

This interpretation of congressional intent would appear inconsistent with the provision of law (section 402(a)(17)(A) of the Social Security Act) requiring the State welfare agency "in the case of a child born out of wedlock who is receiving aid to families with dependent children, to establish the paternity of such child * * *"

Possible legislative action.—The committee may wish to clarify congressional intent by specifying that the requirement that welfare be furnished "promptly" may not preclude a State from seeking the aid of a mother in identifying the father of a child born out of wedlock.

5. Regulations of the Department of Health, Education, and Welfare

A number of regulations promulgated by the Department of Health, Education, and Welfare on January 17 and 18, 1969, appear to run counter to the spirit of the legislative history of the 1967 Social Security Amendments. The committee may wish to consider whether these regulations conform to the committee's understanding of the legislative intent.

DECLARATION METHOD OF DETERMINING ELIGIBILITY

Regulations issued on January 17, 1969, by the Department of Health, Education, and Welfare required States to test a simplified method for the determination of eligibility for welfare in selected areas of the State. An attempt to provide this authority in legislation was defeated in 1967. Subsequently it was claimed by the Department of Health, Education, and Welfare that the Secretary could do this under the provision of the Social Security Act which authorizes him to "publish such rules and regulations, not inconsistent with this act, as may be necessary to the efficient administration of the functions" he is charged with under the act (sec. 1102 of the Social Security Act).

In May of this year, Secretary Finch announced that the results of this testing were so conclusive that he was issuing regulations to require States to use the simplified declaration method in welfare programs for the aged, blind, and disabled beginning July 1, 1970.

General Accounting Office study.—The General Accounting Office looked into the testing of the declaration method which Secretary Finch had found supported nationwide use of the new method. General Accounting Office found that:

1. The simplified declaration method required by the new Health, Education, and Welfare regulations in fact was pretested almost nowhere; most States actually used oral interviewing or other forms of verification of the information supplied by the applicant;
2. Five-sixths of the total cases tested were simply redeterminations of the eligibility of persons who had previously been subjected to the usual (nondeclaration) application procedures, and thus might not be indicative of the manner in which the simplified method will operate; and
3. The sample size under the testing was so small that there is a substantial probability that the ineligibility level exceeded Health, Education, and Welfare's arbitrary 3-percent "acceptable" level.

Possible legislative action.—The committee may wish to specify in the law that the Secretary's general regulatory authority may not be construed as permitting him to require States to use a simplified declaration method.

WORK INCENTIVE PROGRAM

Several regulations issued by the Department of Health, Education, and Welfare concerning the work incentive program place limitations on the effectiveness of that program in achieving the purpose intended by the Congress. These areas were brought to the attention of Secretary Finch when he appeared before the committee in April, and it was promised that the regulations would be rewritten. To date this has not been done. In fact, the "clarification" of the regulations which was transmitted to State welfare agencies (reproduced on pp. 207–308 of the committee print on the administration's June revision of H.R. 16311) raises further questions about the interpretation by the Department of Health, Education, and Welfare of present law.

(*a*) *Comprehensive plan leading to employment.*—The Health, Education, and Welfare regulations require that within a year following approval for financial assistance, a plan must be developed for each family on aid to families with dependent children. The plan must be developed in cooperation with the family, and the family shall have the right to accept or reject a plan.

Possible legislative action.—It is recommended that the statutory language make clear the congressional intent that a family does not have the right to veto an employability plan (though it could be developed with their cooperation).

(*b*) *Child care services.*—Health, Education, and Welfare regulations state that "child care services, including in-home and out-of-home services, must be available or provided to all persons referred to and enrolled in the work incentive program and to other persons for whom the agency has required training or employment. Such care must be suitable for the individual child, and the parents must be involved and agree to the type of care to be provided."

Possible legislative action.—The Department of Health, Education, and Welfare stated in June that the regulation will be rewritten to say that a parent should be given a choice of type of child care if more than one type is available, but the parent will not have a veto over all child care if suitable care is available. The regulation has not yet been rewritten. It is recommended that the Health, Education, and Welfare suggestion be made statutory.

(*c*) *Referral of "appropriate" individuals for training and placement.*—The regulations require that unemployed fathers and dependent children over 16 not in school or working be referred to the Labor Department, and the regulations continue: "Any State which refers only these groups will have complied fully with Federal requirements for referring appropriate individuals. No referral will be made to the manpower agency for participation under a work incentive program of an individual * * * whose presence in the home is required because adequate child-care services cannot be furnished."

Possible legislative action.—Senator Talmadge's amendment No. 788 would make a number of modifications in the work incentive program, including a provision that would specify what types of individuals would be considered "appropriate" and the order of priority in which they would be referred for work and training. It is recommended that such a provision be included in the statute.

DEFINITION OF UNEMPLOYMENT

Under the Health, Education, and Welfare regulations, unemployment is defined in a way that requires States with unemployed father programs under AFDC to include "any father who is employed less than 30 hours a week"; the State may include "any father who is employed less than 35 hours a week."

Possible legislative action.—The committee may wish to define unemployment in a more restrictive way. For example, unemployment could be defined as "working less than 10 hours a week or earning less than $20 a week."

6. Limitation on Federal Grants for Social Services

BACKGROUND

In the budget submitted by the President last January, a limitation was proposed for inclusion in the Department of Health, Education, and Welfare Appropriation Act to limit Federal grants in fiscal year 1971 for social services and administrative expenses relating to welfare recipients, on a State-by-State basis, to 110 percent of the Federal grant in fiscal year 1970. This proposal was rejected by the House Appropriations Committee and was not considered in the House. The Senate Appropriations Committee has reported the Health, Education, and Welfare appropriations bill (H.R. 18515) with a provision in it limiting Federal payments to States in fiscal year 1971 for social services and administrative expenses associated with the welfare programs to 115 percent of comparable expenses in fiscal year 1970.

JURISDICTIONAL QUESTION

The administration's intention in proposing such a limitation is to close the "open end" on this appropriation so as to make it a controllable expense. They have sought the Finance Committee's acceptance of substantive legislation to achieve this purpose (in the proposed social services amendments included in the June revision of the welfare bill), but they have subsequently withdrawn the proposals. Since the limitation represents very important substantive legislation, the committee may wish to oppose it on the jurisdictional ground that any such limitation should be considered by the Committee on Finance.

IMPACT OF THE LIMITATION

According to the Department of Health, Education, and Welfare, 32 States and jurisdictions would lose Federal funds under the limitation. Included among those losing funds would be Connecticut ($1,163,000), Georgia ($5,478,000), Idaho ($293,000), Iowa ($699,000), Louisiana ($1,309,000), Nebraska ($239,000), Oklahoma ($1,793,000), Tennessee ($149,900), Virginia ($404,000), and Wyoming ($116,000). The full impact is shown on tables 3 and 4 below.

ELEMENTS OF CONSIDERATION

(1) The Department of Health, Education, and Welfare is not requesting a limitation on expenditures for welfare payments to recipients. According to recent newspaper articles, it is now estimated that Federal welfare costs will exceed the President's January budget by $1.5 billion. The growth in the welfare rolls has been staggering over the past year. In view of this increase, it would appear inconsistent to recommend a limitation on the Federal share of the cost of administration and services when these costs are directly linked to growth in the welfare rolls.

(2) If the Congress favors a closed-end program for social services (it would be difficult to justify closing the end on administrative costs), it would appear more appropriate that Federal grants be divided on the basis of a formula related to State welfare population or some similar criteria rather than arbitrarily linking this year's grant level to last year's level.

(3) If there is ever to be any hope of reducing dependency on welfare, it will have to come through the provision of jobs and related social services such as day care. To prevent the expansion of day care, for example, would end any realistic possibility of enabling welfare mothers to work.

Table 3.—Listing of States by percentage of fiscal year 1971 request for services, administration, and training allowed under 115 percent limitation

No reduction anticipated (22 States):
Alabama, Arizona, Arkansas, Colorado, Delaware, District of Columbia, Indiana, Kansas, Maine, Maryland, Minnesota, Mississippi, Missouri, Montana, Nevada, New Mexico, New York, North Dakota, Rhode Island, South Carolina, Utah, and Vermont.

90 to 99.9 percent of request (18 States):	*Reduction (thousands)*
Illinois	$3,717
Iowa	699
Kentucky	451
Louisiana	1,309
Massachusetts	998
Nebraska	239
New Jersey	816
North Carolina	659
Ohio	1,528
Oregon	532
Puerto Rico	87
South Dakota	181
Tennessee	1,499
Virgin Islands	4
Virginia	404
West Virginia	147
Wisconsin	427
Wyoming	116

80 to 89.9 percent of request (9 States):	*Reduction (thousands)*
Alaska	349
California	38,605
Connecticut	1,163
Florida	2,774
Guam	16
Idaho	293
Oklahoma	1,793
Texas	4,313
Washington	4,520
Less than 80 percent of request (5 States):	
Georgia	5,478
Hawaii	1,237
Michigan	15,680
New Hampshire	490
Pennsylvania	59,874

Source: Department of Health, Education, and Welfare.

TABLE 4.—*Estimated Federal share of State and local expenditures for Income Maintenance Administration, Social Services, and State and local training, as furnished by the States in May 1970*

[Dollars in thousands]

	Fiscal year 1970 estimate	Fiscal year 1970 estimate times 115 percent	Fiscal year 1971 estimate	Fiscal year 1971 allowance under 115-percent limitation	Estimated reduction	Allowance as percent of 1971 estimate
United States	$833,081	$958,043	$1,077,836	$927,425	$150,411	
Alabama	7,297	8,392	8,170	8,170	0	100
Alaska	1,748	2,010	2,359	2,010	349	85
Arizona	3,181	3,658	3,632	3,632	0	100
Arkansas	3,500	4,025	3,600	3,600	0	100
California	251,039	288,695	327,300	288,695	38,605	88
Colorado	9,683	11,135	10,801	10,801	0	100
Connecticut	6,145	7,067	8,230	7,067	1,163	86
Delaware	948	1,090	1,034	1,034	0	100
District of Columbia	6,101	7,016	6,278	6,278	0	100
Florida	15,280	17,572	20,346	17,572	2,774	86
Georgia	12,651	14,549	20,027	14,549	5,478	73
Guam	102	117	133	117	16	88
Hawaii	1,780	2,047	3,284	2,047	1,237	62
Idaho	1,605	1,846	2,139	1,846	293	86
Illinois	33,375	38,381	42,098	38,381	3,717	91
Indiana	6,419	7,382	6,545	6,545	0	100
Iowa	6,898	7,933	8,632	7,933	699	92
Kansas	6,672	7,673	7,222	7,222	0	100
Kentucky	7,019	8,072	8,523	8,072	451	95
Louisiana	14,514	16,691	18,000	16,691	1,309	93
Maine	4,141	4,762	4,267	4,267	0	100

Maryland	16, 275	18, 716	18, 555	18, 555	0	100
Massachusetts	14, 638	16, 834	17, 823	16, 834	998	94
Michigan	25, 586	29, 424	45, 104	29, 424	15, 680	65
Minnesota	8, 408	9, 669	8, 609	8, 069	0	100
Mississippi	5, 250	6, 038	5, 343	5, 343	0	100
Missouri	18, 425	21, 189	19, 630	19, 630	0	100
Montana	2, 712	3, 119	2, 986	2, 986	0	100
Nebraska	4, 391	5, 050	5, 289	5, 050	239	95
Nevada	1, 636	1, 881	1, 776	1, 776	0	100
New Hampshire	992	1, 141	1, 631	1, 141	490	70
New Jersey	21, 181	24, 358	25, 201	24, 385	816	97
New Mexico	5, 768	6, 633	6, 346	6, 346	0	100
New York	122, 579	140, 966	120, 285	120, 285	0	100
North Carolina	7, 476	8, 597	9, 256	8, 597	659	93
North Dakota	2, 557	2, 941	2, 812	2, 812	0	100
Ohio	19, 500	22, 425	23, 953	22, 425	1, 528	94
Oklahoma	7, 936	9, 126	10, 919	9, 126	1, 793	84
Oregon	8, 398	9, 658	10, 190	9, 658	532	95
Pennsylvania	32, 897	37, 832	97, 706	37, 832	59, 874	39
Puerto Rico	5, 955	6, 848	6, 935	6, 848	87	99
Rhode Island	3, 972	4, 568	3, 267	3, 267	0	100
South Carolina	4, 428	5, 092	4, 523	4, 523	0	100
South Dakota	2, 146	2, 468	2, 649	2, 468	181	93
Tennessee	11, 481	13, 203	14, 702	13, 203	1, 499	90
Texas	17, 994	20, 693	25, 006	20, 693	4, 313	83
Utah	3, 755	4, 318	4, 331	4, 318	13	100
Vermont	1, 569	1, 804	1, 423	1, 423	0	100
Virgin Islands	188	216	220	216	4	98
Virginia	6, 885	7, 918	8, 322	7, 918	404	95
Washington	21, 802	25, 072	29, 592	25, 072	4, 520	85
West Virginia	8, 522	9, 800	9, 947	9, 800	147	99
Wisconsin	16, 462	18, 931	19, 358	18, 931	427	98
Wyoming	1, 219	1, 402	1, 518	1, 402	116	92

Source: Department of Health, Education, and Welfare.

7. Use of Federal Funds to Undermine Federal Programs

BACKGROUND

It has come to the committee's attention that a number of activities supported by the Office of Economic Opportunity have been aimed at undermining the welfare programs as they existed in the past.

For example, a document entitled "Know Your Welfare Rights" prepared by the Tulare County Legal Service Association (paid from Federal poverty funds) stated: "If you don't want to work there is no reason why welfare can force you to work, no matter what your welfare worker says." The pamphlet was subsequently withdrawn.

In response to a question by the chairman when the Office of Economic Opportunity appeared before the committee during the hearings on the welfare bill, information was provided stating that one or more OEO legal service projects was involved in each of the major cases affecting welfare law in recent years. These decisions involved the prohibition of duration of residence requirements, voiding the man-in-the-house rule, requiring a hearing before assistance can be terminated and prohibiting denial of welfare for refusal to allow a case-worker in the home, prohibiting denial of welfare for refusal to name the punitive father (the reply appears in pt. 2 of hearings, pp. 970–971).

Recently the Center of Social Welfare Policy and Law at Columbia University, funded by the Office of Economic Opportunity, published a book entitled "How to Commence Welfare Litigation in a Federal Court, Including Model Annotated Papers." This publication is explicitly designed to assist legal services attorneys who wish to commence welfare litigation in a Federal district court.

POSSIBLE LEGISLATIVE ACTION

The committee may wish to consider adding a section to the general provisions of the Social Security Act specifying that no Federal funds may be used to pay, directly or indirectly, the salaries of any individual who in any way participates in action designed to nullify congressional statutes or policy under the Social Security Act.