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STAFF DATA WITH RESPECT TO

AID TO FAMILIES WITH DEPENDENT CHILDREN

COMMITTEE ON FINANCE
UNITED STATES SENATE
RUSSELL B. LONG, *Chairman*

MAY 1, 1972

Prepared by the staff and printed for the use of the Committee on Finance

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(Clerk's Note: Although this pamphlet is entitled "Aid to Families with Dependent Children," several of the recommendations contained in it would affect aid to the aged, blind, and disabled as well; these recommendations are so noted where they occur.)

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AID TO FAMILIES WITH DEPENDENT CHILDREN

Introduction

The original Social Security Act of 1935 established our Federal-State grant programs which today provide assistance to the aged, blind, and disabled, and to needy families with children. Unlike the federally administered social security program, the welfare titles of the Social Security Act do not set benefit levels nor describe in detail methods of administering the welfare programs; instead, States establish their own assistance programs within the broad guidelines of the Federal law.

Within the past 5 years, however, the Federal-State relationships have undergone substantial change. Three factors have played an important role in the changing relationships.

1. The tremendous growth in the Aid to Families with Dependent Children rolls has created both a fiscal and administrative burden which many States find difficulty coping with.

2. A number of court decisions have had far reaching impact on all aspects of the welfare programs under the Social Security Act, sometimes using the very broadness of the Federal statute (intended to allow States more latitude) against the States by saying that what the Congress did not expressly permit it must not have intended to permit. This position was explicitly stated by the Supreme Court in *Townsend* v. *Swank* (opinion dated December 20, 1971), where it was said that "at least in the absence of congressional authorization for the exclusion clearly evidenced from the Social Security Act or its legislative history, a state eligibility standard that excludes persons eligible for assistance under federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause."

3. The Department of Health, Education, and Welfare has issued a series of regulations beginning in January 1969, whose effect has been to make it easier to get on welfare and harder to get off welfare, regulations which many States have vigorously, but unsuccessfully, opposed.

These pressures from without have led to the welfare programs not being under sufficient administrative control in a number of States. The recent quality control sample of the Department of Health, Education, and Welfare has shown a high rate of ineligibility, overpayment, and underpayment in aid to the aged, blind, and disabled as well as aid to families with dependent children. The Department has argued that the situation is hopeless and that only direct Federal administration of the welfare programs can result in proper and efficient administration.

On the other hand, it has been argued that Federal administration is not the only solution, and that the present Federal-State system could be made to operate much more effectively if States were given

more latitude to administer their programs and if certain provisions leading to tighter administration were written into the Federal law.

The suggestions contained in this pamphlet assume a continuation of the present Federal-State program of Aid to Families With Dependent Children. It is assumed that the suggestions would be effective immediately unless otherwise indicated.

Outline of the AFDC Program as Modified

The alternative proposal would reestablish the program of Aid to Families with Dependent Children (AFDC) as a Federally shared program under which the States could provide assistance to those needy families which do not include an employable parent.

Conditions of Eligibility

As under existing law, the Federal AFDC statute would limit eligibility to needy families containing at least one child who is under age 18 (or a full-time student under age 21), who is living in the home of his parent or other specified relative, and who has been deprived of support because of the death, absence from the home, or incapacity of a parent. In addition, a family would be eligible for AFDC if the mother is caring for another member of the household who is ill or disabled, even if there is no child under age 6. Unlike current law, there would be a prohibition against assistance under the AFDC program to any family which includes at least one employable parent (including any non-relative who has assumed the role of parent). In general any able-bodied father would be considered employable as would any able-bodied mother heading a family other than one who is caring for a child under age 6. Federal law would also spell out certain other requirements or limitations on eligibility. These are described in detail elsewhere in this print.

In addition to the Federal requirements, States would be authorized to establish such conditions of eligibility as they might determine to be appropriate to carry out the objectives of the program. For example, States would (as they do now) establish the amount of assets which a family may retain and still receive assistance. Similarly, States could condition eligibility on the fulfillment of certain other requirements not spelled out in Federal law. One such condition might be a requirement that the school-age children in an AFDC family actually attend school.

In general, then, the Federal AFDC law would define the outside limits of eligibility for which Federal funding would be available. States would not be required to provide assistance to all families falling within these limits but would, rather, be free to establish additional conditions or limitations on eligibility.

Level of Assistance and Federal Funding

The alternative proposal would continue the approach of present law under which each State determines the level of assistance which will be provided to needy families. Unlike present law, however, Federal funding would not be provided according to a flat percentage (50 to 83 percent depending upon the State) of whatever the State expends for assistance. Instead, the Federal government would pay 100 percent of whatever costs are involved in bringing families up to

a certain income standard ($2400 for a family of four or more) and pay no part of any costs above that standard. The Federal government would also reimburse the States fully for any additional cash assistance provided to families to offset the loss of food stamps. Families eligible for AFDC would not be eligible for food stamps or surplus commodities.

Administration and Control of AFDC

As under existing law, the AFDC program would be administered by State welfare agencies or by local welfare agencies under the supervision of a State agency. The States would be expected to have greater control over their AFDC programs than is now the case, however, since the general authority of the Secretary of Health, Education, and Welfare to interfere with the States' methods of administration or to impose his regulations on the States would be restricted under the recommendations the staff proposes to make in a subsequent pamphlet.

MAJOR ISSUES

A. Welfare as a Right

In its action on the 1970 Social Security bill, the Committee noted that a number of court cases had been predicated on the judicial finding that welfare is a property "right" rather than the traditional view that it is a "gratuity" granted as a privilege by the Congress and subject to such eligibility conditions as Congress decides to impose.

In its 1970 report on the social security amendments, the Committee on Finance stated (page 357):

> It should be remembered that welfare is a statutory right, and like any other statutory right, is subject to the establishment by Congress of specific conditions and limitations which may be altered or repealed by subsequent congressional action. In fact, the Social Security Act, in section 1104 makes explicit what would be the case in any event, that "the right to alter, amend, or repeal any provision of this Act is hereby reserved to the Congress." Under Secretary Veneman testified before the Committee (p. 216 of the hearings), and Secretary Richardson agreed (p. 469 of the hearings) that there is no constitutional right for a person to draw welfare. The following colloquy took place between Senator Long and Under Secretary Veneman at the hearings:
>
> The CHAIRMAN. Do you believe that there is any constitutional right for a person to draw welfare money?
>
> Mr. VENEMAN. No, sir.
>
> The CHAIRMAN. I do not, either. I am glad we agree on that point.
>
> Mr. VENEMAN. There is a statutory provision, sir, that allows certain people to draw welfare payments.
>
> The "right to welfare" implies no vested, inherent or inalienable right to benefits. It confers no constitutionally protected benefit on the recipient. To the contrary, the right to welfare is no more substantial, and has no more legal effect, than any other benefit conferred by a generous legislature. The welfare system as we know it today has its legal genesis in the Social Security Act

and the statutory rights granted under, and pursuant to, that Act can be extended, restricted, or otherwise altered or amended—or even repealed—by a subsequent act of Congress (or of a State legislature). It is this ability to change the nature of a statutory right which distinguishes it from a property right or any right considered inviolate under the Constitution. The committee firmly restates this view of the nature of the "right" to a welfare benefit.

Staff Suggestion.—It is recommended that in recasting the statute it be made clear that any welfare payment is not a property right, and that the Committee reiterate its 1970 position in the Committee report.

B. Conditions of Eligibility for Welfare

One of the factors in the substantial growth of the welfare rolls in recent years has been a series of court decisions which have required States to make persons eligible for welfare who had previously been considered ineligible. In addition, some States have taken advantage of Federal law in ways neither intended nor expected by the Congress in order to put persons on the federally shared welfare programs who would otherwise be ineligible to receive these benefits, for example by classifying as "disabled" or "incapacitated" persons who would otherwise be eligible only for general assistance without Federal matching. This has ramifications going beyond the amount of the welfare payments themselves, since the recipients also become eligible to receive Federally matched social services and medical services under the Medicaid program. Suggested limitations on eligibility for purposes of Federal matching are discussed individually below.

1. Duration of Residence Requirement

a. Duration of Residence in a State

Under the present Federal statute the Secretary of Health, Education, and Welfare may not approve a State plan for Aid to Families with Dependent Children if it includes a duration of residence requirement of more than one year. In the programs of cash assistance for the aged, blind, and disabled, the present statute would permit, in addition to the requirement of one year's residence preceding the date of application, a requirement that the individual have resided in the State for five of the preceding nine years.

In April 1969, the Supreme Court ruled that the duration of residence requirement of the Connecticut and Pennsylvania AFDC programs constituted an action by those States which violated the equal protection clause of the 14th Amendment. The Supreme Court stated that the Federal statute "does not approve, much less prescribe, a one-year requirement" and went on to say that even if it were to assume "that Congress did approve the imposition of a one-year waiting period, it is the responsive *State* legislation which infringes constitutional rights." The court further declared that if somehow the constitutionality of the Federal law is involved that "insofar as it permits the one-year waiting-period requirement" it would be unconstitutional because "Congress may not authorize the States to violate the Equal Protection Clause."

This Supreme Court action in outlawing duration of residence requirements may have been one of the factors influencing many States

to cut back on their welfare payment levels or not to provide increases as they had in the past. A dissenting member of the Supreme Court noted that "of longer-range importance, the field of welfare assistance is one in which there is a widely recognized need for fresh solutions and consequently for experimentation. Invalidation of welfare residence requirements might have the unfortunate consequence of discouraging the Federal and State governments from establishing unusually generous welfare programs in particular areas on an experimental basis, because of fears that the program would cause an influx of persons seeking higher welfare payments." This Justice concluded that it was "particularly unfortunate that this judicial roadblock to the powers of Congress in this field should occur at the very threshold of the current discussions regarding the 'federalizing' of these aspects of welfare relief."

A New York statute enacted in 1971 would have established a 5-year emergency period during which the State would require a 1-year duration of residence to be eligible for welfare. The Supreme Court in *Wyman* v. *Lopez* on January 24, 1972 agreed with the Federal District Court's opinion that this statute was unconstitutional.

Committee Action in 1970.—In 1970 the Committee approved an amendment aimed at eliminating the constitutional question raised by the Supreme Court by making it an affirmative requirement of Federal law that State plans for cash public assistance (for families and for aid to the aged, blind, and disabled) under the Social Security Act include a requirement of one year's residence in the State as a condition of eligibility. (The Committee's amendments, however, would not have denied Federal matching to States, which by virtue of State law did not in fact impose a duration of residency requirement.) Thus under the amendment, one year's duration of residence in a State would, in effect, have been a nationally uniform condition of eligibility for assistance imposed by Federal law. Accordingly it was felt that with this structure, the question of State violation of the equal protection clause of the 14th Amendment would have been eliminated.

The Committee added to that requirement a further requirement that the State which a recipient leaves continue assistance payments to him, as long as he continued to be eligible for assistance (up to one year) unless the new State of residence assumed this responsibility before the end of that 12-month period.

Reaction to Committee Amendments.—State welfare administrators have been uniform in their opposition to the second part of the Committee's 1970 provision (mandating welfare payments by the State of origin) on the grounds that in many States, it would result in a higher benefit to welfare recipients migrating into the State than to welfare recipients who had been there all along. They also opposed this part of the provision on the grounds that it would be very difficult to administer. They recommended either not requiring any payment during that year or else requiring that the payment be the same amount as a recipient in that State would receive.

Staff Suggestion.—It is recommended that the Committee approve its 1970 amendment again but without requiring a payment by the State of origin.

b. Absence from a State

The Department of Health, Education, and Welfare found the Arizona welfare programs out of compliance in 1971 because the State

automatically terminated the welfare eligibility of recipients absent from the State for more than 90 days. The State's policy was contrary not to Federal law (which in no way would preclude the State from doing this) but to HEW regulations which provide that a temporary absence from the State with an intent to return after accomplishing the purpose of the absence shall not interrupt continuity of residence—that is, the right to continue receiving welfare payments (45 CFR 233.40).

The State challenged the HEW compliance ruling, but the U.S. Court of Appeals sided with HEW (*Arizona State Department of Public Welfare* v. *Department of Health, Education, and Welfare*, opinion dated September 14, 1971). The Court found the HEW regulation consistent with the Social Security Act, which did not define residency, and that it was legitimate for the Secretary to exercise his "broad rule-making powers" under section 1102 of the Social Security Act to define residency in such a way as to limit the States' permissible choice of residency requirements. The regulation defining residency, the Court held, was not inconsistent with the letter or spirit of the Social Security Act merely because it held the State to a higher standard.

Fannin bill.—S. 3204, introduced by Senator Fannin, contains a provision (Sec. 1 of the bill) making it statutorily clear that a State may terminate AFDC payments to an individual continuously absent from the State for at least 2 months.

H.R. 1.—The House bill (secs. 2011(f) and 2155(a)(4)(B)) makes an individual ineligible for welfare payments during any month in which the person is outside the United States the entire month; once an individual has been outside the U.S. at least 30 consecutive days, he must remain in the U.S. 30 consecutive days before he may again be eligible for welfare.

Staff Suggestion.—It is recommended that these provisions of the Fannin bill (for all welfare categories, however) and H.R. 1 be adopted.

2. *Eligibility for Other Benefits*

Present Law.—Under present law, the family of an unemployed father is ineligible to receive AFDC with respect to any week for which the unemployed father receives unemployment compensation. However, the law does not preclude receipt of AFDC for weeks in which a father is eligible for unemployment compensation but is not actually receiving it. Similarly, section 402(a)(7) generally requires States to take into account all income actually received by the family, but does not require that the recipients apply for all other kinds of benefits they might be eligible for.

H.R. 1.—Under the Family Assistance Plan established by H.R. 1 (Section 2152(g)(1)), a family would be ineligible for welfare benefits if it did not take all appropriate steps to apply for any annuity, pension, retirement, or disability benefit any family member was eligible for, including veterans' compensation and pensions; workmen's compensation payments; social security retirement, survivor, and disability insurance benefits; railroad retirement annuities and pensions; and unemployment insurance benefits.

Staff Suggestion.—It is recommended that applicants for and recipients of Aid to the Aged, Blind, and Disabled and Aid to Families with Dependent Children be required, as a condition of welfare eligibility, to apply for any other benefits which the are eligible for.

3. Families Where There Is a Continuing Parent-Child Relationship

Present Law.—Under present law, Aid to Families with Dependent Children is available to children who have been deprived of parental support by reason of the "continued absence from the home" of a parent. The so-called "man-in-the-house" or "substitute father" statutes of the States were attempts to define the term "parent" under the Aid to Families with Dependent Children program for eligibility purposes. The State statutes have been varied, some emphasizing cohabitation with the mother as being determinative of the parental relation, while others have required indications of a positive relationship of the man with the child.

On June 17, 1968, the Supreme Court ruled that a State could not consider a child ineligible for Aid to Families with Dependent Children when there was a substitute father 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 stated: "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."

The implication of this decision, as made clear by subsequent cases, was that a State could not deny Aid to Families with Dependent Children even in the situation where there was a stepfather with substantial income.

H.R. 1.—The House bill would in effect give statutory recognition to the court decisions by presuming (section 2155(d)) that the income of any individual other than the parent of the child or a spouse of the parent was not available for the use of the family. This means that a stepfather's income would be presumed available to the family, but that the income of another individual who had a continuing parental relationship with the child would not be considered available to the family unless this could be proven.

Finance Committee Action in 1970.—In an amendment to the 1970 Social Security bill, the Committee took a different approach, believing that a legal obligation to support was too narrow a base upon which to determine eligibility and income accountability for a welfare program for families. The Committee instead felt that the determination whether a man is a "parent" within the meaning of this term in section 406 of the Social Security Act should depend on the total evaluation of his relationship with the child, with the following being positive indications of the existence of such a parental relationship:

(1) The individual and the child 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.

The Committee amendment specifically stated that "such a relationship between an adult individual and a child may be determined to exist in any case only after an evaluation of the [above] factors * * * *as well as any evidence which may refute any inference supported by evidence related to such factors.*" (Emphasis added.)

Under the Committee provision, the use of this provision would have been optional with the States. If a State affirmatively exercised its option, however, it had to comply with this statutory method in determining the child-father relationship.

Staff Suggestion.—It is recommended that the Committee again approve the amendment it approved in 1970, making clear, however, that any natural parent or stepparent would meet these criteria.

4. Eligibility of Unborn Children

Under the Social Security Act, the term "dependent child" for purposes of Aid to Families with Dependent Children is defined as a needy child "deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent" and who is living with his mother or other relative.

Regulations of the Department of Health, Education, and Welfare permit Federal matching, even if the child has not yet been born. In January 1971, for example, when about 7 million children were receiving Aid to Families with Dependent Children, 53,400 or a little less than 1 percent of the total number of children had not yet been born. About two-fifths of these unborn children were in the State of California alone, where they constituted 2 percent of the recipient caseload.

In a case that came before the New York State Supreme Court in 1971, a woman who had been receiving welfare for her unborn child while pregnant sought a retroactive payment for the second child upon giving birth to twins. Fortunately, the court turned her down.

In defining the meaning of "child" under H.R. 1, the House Ways and Means Committee report (p. 184) states:

> Your Committee wants to make clear that an unborn child would not be included in the definition of a child. This will preclude the practice, now used in the AFDC program in some

States, of finding that an unborn child does meet the definition, thereby establishing a "family" even before the child is born.

Staff Suggestion.—The Committee may wish to consider limiting Federal participation in Aid to Families with Dependent Children to children who have actually been born. This would be consistent with the Committee's earlier decision to require the assignment of social security numbers to all assistance recipients.

5. Definition of "Incapacity" Under Aid to Families with Dependent Children

Present Law.—Under Aid to Families with Dependent Children, the Federal Government will match payments to families where the father is incapacitated. The definition of "incapacitated" is left up to the States.

Under a regulation issued by the Secretary of Welfare in Pennsylvania, incapacity is defined in a way that allows the State to classify virtually any general assistance recipient with children as incapacitated for purposes of Federal matching. The regulation states:

> The determination of incapacity is based on the simple fact of the existence of incapacity and not upon its cause, degree, duration or accompanying factors. It is not necessary to show an affirmative relationship between the incapacity of the parent and the lack of parental support or care. It is immaterial whether the parent was the chief breadwinner or devoted himself or herself primarily to the care of the child, or whether or not the parents were married to each other.
>
> To prove incapacity, there must be proof that a parent has an impairment, but it is not necessary to show that the impairment limits the parent's ability to support or care for the child. . . . The impairment must be proved. If the impairment can be seen, the worker's statement that he has seen it is proof of the existence of the impairment.

Staff Suggestion.—It is recommended that the term "incapacitated" be defined as "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment." This is the same definition as is used in determining disability under the social security disability insurance program (and the Committee has decided to use this definition for aid to the disabled), except that the definition suggested would also apply to short-term, temporary disability while social security benefits are available only to persons whose disability will last at least 12 months.

6. Eligibility of Aliens for Welfare

Present Law.—Under the Social Security Act, the Secretary of Health, Education, and Welfare may not approve a State plan of aid to the aged, blind, or disabled which imposes as a condition of eligibility for welfare "any citizenship requirement which excludes any citizen of the United States" (sections 2(b)(3), 1002(b)(2), 1402(b)(2), and 1602(b)(3)). There is no similar clause in the Federal title relating to Aid to Families with Dependent Children. Thus all the welfare titles of the Social Security Act would permit a State to exclude noncitizens from welfare benefits, although the law does not say so explicitly.

H.R. 1.—For the new program of Federal aid to the aged, blind, and disabled, H.R. 1 would limit eligibility to an individual who "is a resident of the United States, and is either (i) a citizen or (ii) an alien lawfully admitted for permanent residence" (section 2014(a)(1)(B)). There is no similar provision under the Family Assistance Program, although no individual residing outside the United States for more than 30 consecutive days could be considered a family member for welfare purposes (section 2155(a)(B)).

Court Cases.—The Supreme Court on June 14, 1971 (*Graham* v. *Richardson*) ruled that a State could not condition welfare benefits either upon the applicant being a U.S. citizen or, if an alien, on his having resided in the United States for a specified number of years. Such eligibility requirements were held to violate the Equal Protection clause of the 14th Amendment. As far as the explicit provisions of the Social Security Act were concerned, the Court concluded that they did not affirmatively authorize, much less command, the States to adopt duration of residency requirements or other eligibility restrictions applicable to aliens, but instead merely directed the Secretary not to approve a State plan which excluded U.S. citizens from eligibility. Although the Federal Government admittedly had broad constitutional power to determine what aliens should be admitted to the United States, the period they could remain, and the terms and conditions of their naturalization, the Court felt that the Congress nevertheless did not have the power to authorize the individual States to violate the Equal Protection Clause.

Staff Suggestion.—It is recommended that this matter be handled in the same manner as the issue of duration of residency requirements. That is, States would be mandated in Federal law to require as a condition of eligibility that an individual be a resident of the United States and either a citizen or alien lawfully admitted for permanent residence or a person who is a resident under color of law. (However, any duration of residency requirement would apply to aliens as well as to citizens.)

7. Benefits for Strikers and Persons Discharged for Misconduct

Present Law.—The Social Security Act permits a State to provide benefits to a needy child whose father is unemployed, provided that the father is currently registered with the employment office and is not receiving unemployment compensation. Both the Federal law and the regulations of the Department of Health, Education, and Welfare are silent on the question of benefits to strikers and persons discharged for misconduct.

H.R. 1.—Under the House bill, an individual who registered for work under the Family Assistance Plan could not be required to accept employment if "the position offered is vacant due directly to a strike, lockout, or other labor dispute" (section 2111(c)(2)(A)).

In hearings on the Family Assistance Plan, Senator Fannin asked Secretary Richardson if he would recommend excluding strikers from benefits under the bill. Secretary Richardson replied:

> I haven't personally had an opportunity, Senator, to focus directly on that question. But I think I would be quite hesitant to do this. An individual must be working at what is a low-wage

level or his family wouldn't be eligible for family assistance payments at all. If he then goes on strike, it is a situation that he may not control. A decision to strike is a collective decision often made nationally, and his wages are cut off at that point. I would not favor, in every strike case, the individual who is out of work because of the strike thereby automatically forfeiting whatever supplementation he was already getting.

Recent Court Action.—In a recent case in the U.S. District Court of Maryland (*Francis* v. *Davidson*, opinion dated January 28, 1972) the Court stated that Maryland could not disqualify a family from Aid to Families with Dependent Children on the grounds that the father's unemployment was due to a strike or discharge for cause because this condition of eligibility was in conflict with the HEW regulation which provided that if a State provides benefits to families in which the father is unemployed, it must have a definition of "unemployed father" which includes a father who is employed for less than a stated number of hours. The Court felt there was nothing in the regulation which permitted a State plan to deny welfare benefits on the ground that the father of a needy child was unemployed because he had been discharged for cause or because he was on strike; such a father is clearly unemployed. The Court added that the fact that HEW had itself, by approving the Maryland plan, given approval to the violation of its own regulation in no way relieved Maryland of the requirement that its program be administered in accordance with the HEW regulation. Although great weight is ordinarily given to the interpretation by an administrative agency of its own regulations, the Court noted that once an agency has promulgated a regulation, even in an instance where it is not required to do so, that agency is bound to follow the regulation, particularly where the regulation uses unambiguous and mandatory language. A man out of work because he was discharged for cause or because he was on strike is unemployed; in granting the Secretary of HEW the power to make regulations, the Congress said nothing about fathers unemployed because they were involved in labor disputes. Although the Secretary could have excluded such fathers from the program he chose not to.

Elements of Consideration.—By paying benefits to individuals involved in a labor dispute, a State injects the Federal Government into the dispute by providing substantial Federal funds to strikers; the Federal share of such welfare payments is at least 50 percent. A dramatic case in point occurred in Michigan where the number of AFDC recipients in families with an unemployed father increased 75,000 between October and December 1970 during the General Motors strike, with the Federal Government underwriting 50 percent of the payments that went to the strikers. If the District Court decision in Maryland is upheld, welfare benefits to strikers may become mandatory unless the Congress sets a different policy statutorily.

Staff Suggestion.—It is recommended that Federal matching not be available for benefits paid to strikers. In the case of persons discharged for misconduct, it is recommended that Federal matching not be available for a period of 60 days following their discharge.

8. Cooperation of Mother in Identification of Father

Present law.—The Congress has written into the Social Security Act a provision 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."

Despite this clear legislative history, a U.S. district court in August 1969 (*Doe* v. *Shapiro*, 302 F Supp. 761), ruled 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.

The dissenting opinion stated:

> Unless the principle of personal parental responsibility is to be abandoned, as an obsolete cornerstone for gauging welfare eligibility, a full disclosure is a necessary and implied governmental prerogative, which requires the applicant to disclose all relevant information. Absent this personal responsibility and cooperativeness between the applicant-mother and the government, the effectiveness of the program would be seriously challenged because she is the sole source of this information; and without it the system designed to establish paternity could not function. * * *
>
> Congress created this system which required only the identity of the father to allow enforcement officials with the assistance of the Internal Revenue Service and the social security files, to locate an absconding father. It is one of the very few occasions when the information in those records is statutorily made available for use outside the agencies' official business. Could it be that Congress contemplated this elaborate system would be paralyzed by an uncooperative applicant-mother who could still successfully insist that she be paid her full monetary allotment?

The Committee's answer in 1970 was an emphatic "No." Under the Committee provision, the intent of the Congress that States must attempt to establish the paternity of a child born out of wedlock was reaffirmed by providing that the requirement that welfare be furnished "promptly" shall not preclude a State from seeking the aid of a mother in identifying the father of the child.

Staff Suggestion.—It is recommended that the Committee approve again its 1970 action providing 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 the child.

9. Eligibility of Drug Addicts and Alcoholics

H.R. 1.—Under the House-passed bill, any family member excused from the work registration requirement because he is disabled and whose disability results in whole or part from drug abuse or alcohol abuse is eligible for welfare benefits only if he is "undergoing any treatment that may be appropriate for such abuse at an institution or facility approved for purposes of this section by the Secretary (*so long as such treatment is available*)." (Section 2152(g)(2); emphasis added.)

The House report contains the following statement:

> Your committee believes that those people who are disabled, in whole or in part, as a result of the use of drugs or alcohol should not be entitled to benefits under this program unless they undergo appropriate, available treatment in an approved facility, and the bill so provides. Your committee, while recognizing that the use of drugs or alcohol may indeed cause disabling conditions, believes that when the condition is susceptible to treatment, appropriate treatment at Government expense is an essential part of the rehabilitation process of people so disabled. (H. Rept. on H.R. 1, p. 149.)

Despite this statement in the report, there is no provision in the bill assuring that any treatment, at Government expense or otherwise, will actually be available.

Staff Suggestion.—It is recommended that the Committee exclude alcoholics and drug addicts from eligibility for any Federally shared welfare payments and deal with their condition under a program specifically designed for rehabilitation and active treatment.

10. Eligibility of Children Absent from the Home

Compliance of Arizona with Requirements of Social Security Act.—On September 14, 1971, a U.S. Court of Appeals agreed with an earlier decision of the Department of Health, Education, and Welfare that the Arizona State plan for Aid to Families with Dependent Children was out of compliance with the Social Security Act. One of the faults found with Arizona's State plan was the requirement that a relative have legal custody of a child living with the relative, when the parent of the child is an AFDC recipient, in order for the relative to be eligible for AFDC.

Fannin bill (S. 3204).—Section 3 of the Fannin bill would allow a State to deny aid to a child of a parent receiving Aid to Families with Dependent Children if the child is not living in the same household as the mother and his brothers or sisters but instead is living with another relative. The purpose of this provision of the Fannin bill is to prevent a situation in which an AFDC mother can enable a relative to become eligible for welfare by lending the relative one of her children.

Staff Suggestion.—It is recommended that the Committee approve this provision of the Fannin bill.

C. Welfare Benefits Under Aid to Families With Dependent Children

1. Eliminating "Special Needs Allowances"

Present Law.—In determining eligibility for and the amount of assistance given to a family, a State establishes a needs standard. A number of States provide for "special needs allowances" for various special items. These special needs allowances have proven difficult to administer, have encouraged abuse by recipients, and have often been inequitable in their effect among equally needy families.

In several court cases (*Johnson* v. *White*, U.S. District Court, Connecticut; and *Rhode Island Fair Welfare Rights Organization et. al* v. *The Department of Social and Rehabilitation Services*, U.S. District

Court, Rhode Island, opinion dated July 27, 1971), States have been prevented from eliminating special needs allowances in favor of a uniform grant system. The court decisions were based on the grounds that such a change would conflict with section 402(a)(23) of the Social Security Act, added in 1967, which required States to bring their needs standards up to date by July 1, 1969.

Treatment of Public Housing Bonus.—In 1971 a provision was included in a bill extending the authority of the Secretary of Housing and Urban Development with respect to interest rates on insured mortgages (Public Law 92–213, approved December 22, 1971). The amendment which became section 9 of the Public Law in effect amends the welfare law to prevent any welfare agency from reducing welfare payments if there is a reduction in the cost of public housing rent for welfare recipients.

Staff Suggestion.—It is recommended that this potential for abuse be eliminated by requiring States, after a transition period, to establish a needs standard adjusted only for family size and (if the State so desires) adjusted for family composition and to reflect differences in shelter costs in different areas of the State (though States could continue to pay for shelter on an actual expense basis).

It is also recommended that the section 402(a)(23) requirement not be included in the AFDC statute.

It is recommended that the welfare amendment in Public Law 92–213 be repealed.

2. Federal Share of Welfare Payments to Families

Present Law.—Under the present program of Aid to Families with Dependent Children, each State establishes a minimum standard of living (needs standard) upon which welfare payments are based; any family in which the father is dead, absent, or incapacitated (or, at the State's option, unemployed) whose income is below the State's needs standard for a family of that size will be eligible for some assistance, although the State need not pay the full difference between the individual's income and the needs standard.

Monthly AFDC payments to a family of four with no other income range between $60 and $335. The amounts by State are shown on table 1 at the end of this pamphlet.

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 welfare payments; or (2) Federal matching is based on a formula applied to average assistance payments up to certain limits. Under the second alternative the average monthly AFDC payment in the State is calculated. Federal matching applies only to the first $32; the Federal share is five-sixths of the first $18 plus the "Federal percentage" (ranging from 50 percent to 65 percent, depending on State per capita income) times the next $14 (or less).

H.R. 1.—The House bill would establish a Federal welfare program for families with nationally uniform levels of assistance as shown below:

Number of family members	The Federal Government would pay 100% of the amount needed to bring the family's countable income up to—
Two	$1,600
Three	2,000
Four	2,400
Five	2,800
Six	3,100
Seven	3,400
Eight or more	3,600

Families eligible for benefits under the Federal welfare program would not be eligible to participate in the food stamp program.

States could, if they wished, make assistance payments which would supplement the Federal benefits and assure families higher levels of income. As of December 1971, 29 States paid more than $2,400 to a family of four with no other income; in all but 9 States (Alabama, Arizona, Arkansas, Delaware, Louisiana, Mississippi, Nevada, Oklahoma, and South Carolina), the value of food stamps plus the amount of the welfare payment is more than $2,400. While there would be no direct Federal matching of State supplementary payments, a savings clause in H.R. 1 would in effect result in the Federal Government paying all costs in excess of the State 1971 welfare expenditures that are needed to assure that welfare recipients have their welfare income maintained at the current level, adjusted upward for the loss of eligibility to participate in the food stamp program. For Puerto Rico, Guam, and the Virgin Islands the benefit levels would be based on the relationship between the per capita income in these areas to the per capita income of the State with the lowest per capita income.

Staff Suggestion.—It is recommended that the Committee modify Federal matching as follows:

Number of Family Members	The Federal Government will pay 100% of the amount necessary to bring the family's countable income up to—
Two	$133 monthly ($1,600 annually).
Three	$167 monthly ($2,000 annually).
Four or more	$200 monthly ($2,400 annually).

Under this suggestion States would be free (as under present law) to set whatever payment level they desired. These amounts would be modified in Puerto Rico, Guam, and the Virgin Islands as under H.R. 1.

If the Committee feels it desirable for all States to bear some portion of the cost of the program, the Committee may wish to consider providing that in any case the Federal share not exceed 90% of the cost of AFDC payments in a State.

It is also recommended that welfare recipients not be eligible for food stamps or surplus commodities but that States be reimbursed the full cost of adjusting assistance levels to make up for the loss of entitlement to food stamps.

It is estimated that this suggestion would involve an additional Federal cost of $1 billion. The bulk of this would represent replacement of State and local funds by Federal funds.

3. Earned Income Disregard

Present Law.—Under present law States are required, in determining need for Aid to Families with Dependent Children, to disregard the first $30 earned monthly by an adult plus one-third of additional earnings. Costs related to work (such as transportation costs) are also deducted from earnings in calculating the amount of the welfare benefit.

Two problems have been raised concerning the earned income disregard under present law. First, Federal law neither defines nor limits what may be considered a work-related expense, and this has led to great variation among States and to some cases of abuse. Secondly, some States have complained that the lack of an upper limit on the earned income disregard has the effect of keeping people on welfare even after they are working full time at wages well above the poverty line.

Senate Action in 1970.—The Committee and Senate bills in 1970 dealt with both of these problems by modifying the earnings disregard formula and by allowing only day care as a separate deductible work expense (with reasonable limitations on the amount allowable for day care expenses). Under the 1970 bill, States would have been required to disregard the first $60 earned monthly by an individual working full time ($30 in the case of an individual working part time) plus one-third of the next $300 earned plus one-fifth of amounts earned above this. This differential between full time and part time employment was designed to encourage those who were able to move into full time jobs.

Staff Suggestion.—It is recommended that the Committee again approve its 1970 provision, to be effective until the new employment program is initiated.

Once the new employment program is initiated it is recommended that this earned income disregard terminate and that in its stead earnings be treated the same way as they would under the employment program. Under that program, earnings at the rate of up to $300 per month are treated as though they were earnings of $200 a month. It is envisioned that Aid to Families with Dependent Children recipients who wish to work part time would register for a fixed number of hours of employment per week; earnings of up to about

$1.75 an hour (including the special 10 percent government payment) would be treated as though they were earnings of $1.20 an hour for purposes of reducing welfare payments; earnings above about $1.75 an hour would be counted in the same way as the States counted earnings above $300 of participants in the employment program.

4. Emergency Assistance

Present Law.—Under existing law, emergency assistance may, at the option of the States, be provided to needy families in crisis situations, and it may be provided either Statewide or in part of the State. Emergency assistance programs have been adopted in about half the States, and they receive 50 percent Federal matching. Under the law, assistance may be furnished for a period not in excess of 30 days in any 12-month period in cases in which a child is without available resources; the payments, care, or services involved are necessary to avoid destitution of the child or to provide living arrangements for the child; and the destitution or need for living arrangements did not arise because the child or relative refused without good cause to accept employment or training for employment. Assistance could be in the form of money payments, payments in kind, other payments as the State agency may specify, or medical care or any other type of remedial care for the child or other member of the household in which the child is living, and other services as may be specified by the Secretary.

Senate Action in 1970.—The Committee and the Senate in 1970 approved an amendment (1) requiring that all States have a program of emergency assistance to migrant families with children; (2) requiring that the program be Statewide in application; and (3) providing 75 percent Federal matching for emergency assistance to migrant families.

Staff Suggestion.—It is recommended that the Committee approve its 1970 provision relating to migrant families.

TABLE 1.—**AID TO FAMILIES WITH DEPENDENT CHILDREN:** MONTHLY AMOUNT FOR BASIC NEEDS UNDER FULL STANDARD AND LARGEST AMOUNT PAID TO **FAMILY OF 4,** BY STATE, DECEMBER 1971

	Monthly amount for basic needs	Largest amount paid for basic needs
Alabama	$230	$81
Alaska	400	300
Arizona	266	173
Arkansas	281	106
California	314	261
Colorado	235	235
Connecticut	335	335
Delaware	287	158
District of Columbia	326	245
Florida	223	134
Georgia	226	149
Hawaii	268	268
Idaho	272	241
Illinois	273	273
Indiana	355	175
Iowa	300	243
Kansas	290	226
Kentucky	264	193
Louisiana	204	104
Maine	349	168
Maryland	311	200
Massachusetts	283	283
Michigan	293	293
Minnesota	309	309
Mississippi	277	60
Missouri	338	130
Montana	225	206
Nebraska	302	226
Nevada	321	176
New Hampshire	314	314
New Jersey	324	324
New Mexico	203	179
New York	336	313
North Carolina	200	172
North Dakota	300	300

TABLE 1.—**AID TO FAMILIES WITH DEPENDENT CHILDREN:** MONTHLY AMOUNT FOR BASIC NEEDS UNDER FULL STANDARD AND LARGEST AMOUNT PAID TO **FAMILY OF 4,** BY STATE, DECEMBER 1971—Continued

	Monthly amount for basic needs	Largest amount paid for basic needs
Ohio	$258	$200
Oklahoma	222	189
Oregon	280	224
Pennsylvania	301	301
Rhode Island	255	255
South Carolina	198	103
South Dakota	300	270
Tennessee	217	129
Texas	197	148
Utah	320	224
Vermont	319	319
Virginia	279	261
Washington	282	270
West Virginia	265	138
Wisconsin	255	217
Wyoming	283	227

Source: Department of Health, Education, and Welfare.

TABLE 2.—STATES AND JURISDICTIONS USING THE "SIMPLIFIED DECLARATION" METHOD IN DETERMINING ELIGIBILITY FOR AID TO FAMILIES WITH DEPENDENT CHILDREN, JANUARY 1972

Alaska
Colorado
Delaware
District of Columbia
Florida
Hawaii
Iowa
Kansas
Kentucky
Maine
Maryland
Minnesota
Montana
Nebraska
Nevada
New Hampshire
New York
North Dakota
Oregon
Rhode Island
South Dakota
Utah
Washington
West Virginia
Wyoming
Virgin Islands

Source: Department of Health, Education, and Welfare.

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