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ADMINISTRATION OF WELFARE PROGRAMS

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

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ADMINISTRATION OF WELFARE PROGRAMS

THE DEVELOPING PATTERN OF RECENT YEARS

Various studies conducted by the Department of Health, Education, and Welfare, the General Accounting Office and the States in the past few years have shown that in many States, the welfare programs are not under proper administrative control—as evidenced by the unacceptably high rate of ineligibility, overpayments and underpayments. As a matter of fact, the actions of the Department of Health, Education, and Welfare and the courts in recent years when added together seem to form a broad avenue making it very easy for an individual—ineligible as well as eligible—to find his way onto welfare, and a mystic maze making it very difficult for the welfare agency to get him off of welfare even if ineligible. This pattern of regulations and court action is outlined below:

1. *Use of "simplified declaration" method pushed.*—The Department of Health, Education, and Welfare has required that eligibility for aid to the aged, blind, and disabled be based solely on the individual's statements, without routine verification and investigation of this information. The Department initially wished to require use of the simplified declaration method in Aid to Families with Dependent Children also, but limited its requirement to testing on a sample basis, while encouraging the States strongly to adopt the declaration method for this program (26 States have done so). Even where the simplified declaration method is not used, the Department of Health, Education, and Welfare regulations (45 CFR 206.10 (a)(12)) require that in determining initial and continuing eligibility:

> Applicants and recipients will be relied upon as the primary source of information in making the decision about their eligibility . . . Verification of circumstances pertaining to eligibility will be limited to what is reasonably necessary to ensure the legality of expenditures under this program. . . . The agency takes no steps in the exploration of eligibility to which the applicant or recipient does not agree. It obtains specific consent for outside contacts, gives a clear explanation of what information is desired, why it is needed, and how it will be used. . . . When information available from the applicant or recipient is inconclusive and does not support a decision of eligibility, the agency explains to the individual what questions remain and how he can resolve or help to resolve them, what actions the agency can take to resolve them and the need for their resolution if eligibility is to be established or reconfirmed. If the individual is unwilling to have the agency seek verifying information, the agency, unable to determine that eligibility exists, denies or terminates assistance.

2. *Impact of increase in applications on traditional method of determining eligibility.*—In a study of the declaration method conducted in 1971, the General Accounting Office found that even where the welfare agency was supposed to be using a traditional method of determining eligibility (that is, with routine verification and investigation of information), the crush of the tremendous increase in applications for Aid to Families with Dependent Children resulted as a practical matter in the use of a "simplified declaration" method simply because the agency was too overburdened handling applications to carry out its usual verification procedures.

3. *Welfare payments are estimated.*—The social security benefit an individual receives in a given month is based on his entitlement during the prior month. By way of contrast, welfare payments are based on estimated entitlement during the current month. While this is no problem if an individual has no source of income other than the welfare payment, it means that in most cases the welfare payment will be at least slightly wrong if the recipient has another source of income during the month, such as earnings. Thus, in many cases overpayments and underpayments may result simply from changing circumstances, because entitlement is based on estimated income during the current month.

4. *Hearing required before assistance can be reduced or terminated.*—In 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 or reduced before a recipient was afforded an evidentiary hearing, on the constitutional grounds that this would violate the due process clause. The Health, Education, and Welfare regulations (45 CFR 205.10) go much further than the court, requiring agencies to help recipients to request hearings and to tell them of their right to appeal and that welfare payments will continue during the appeal.

5. *Payments must continue during appeal at State level.*—In a recent court case in New Jersey (*Serritella* v. *Engelman,* opinion dated February 24, 1972), a Federal District Court held that the welfare payment must not only be continued without reduction during the evidentiary hearing at the local level, but must also be continued without reduction during a subsequent appeal at the State level.

6. *Recouping overpayment when recipient is not at fault.*—The regulations of the Department of Health, Education, and Welfare (45 CFR 233.20(a)(3)(ii)(*d*)) do not permit a State to reduce current welfare payments because of prior overpayments unless the recipient willfully withheld information about income or resources.

7. *Recouping welfare benefits when recipient is at fault.*—The court went even further than the HEW overpayment regulations in *Bradford* v. *Juras,* when a Federal District Court in Oregon ruled on July 12, 1971 that a State may not reduce current welfare payments when an overpaid AFDC recipient *willfully* withholds information but has no resources apart from the current assistance grant.

8. *Miranda warning required in fraud investigation.*—A new dimension was added to welfare fraud investigation in a recent

New Jersey State Superior Court decision (*New Jersey* v. *Graves*, April 2, 1971), in which an AFDC recipient had failed to tell the welfare agency that her husband had returned home. The welfare agency investigated and was told by the recipient of her husband's return, without the investigator first advising her of her right to remain silent. This warning was required, the court stated, because:

> When defendant was subjected to interrogation by a representative of the fraud division and in the presence of the supervisor of that division, the interrogation had reached an accusatory stage in which she was the target. It is important, also, to note that the circumstances surrounding the investigation contained clear elements of psychological duress, as evidenced by defendant's testimony that she did not notify the welfare board of her husband's return because she was "afraid," presumably of losing some of her benefits.

9. *Supreme Court attitude on protecting State fiscal interest.*—In a recent case (*Townsend* v. *Swank*, opinion dated December 20, 1971) the Supreme Court did not permit the State of Illinois to distinguish for welfare purposes between students attending vocational schools and students attending other kinds of schools. Particularly significant in the opinion handed down was the court's comment that "a State's interest in preserving the fiscal integrity of its welfare program by economically allocating limited AFDC resources may not be protected by the device of adopting eligibility requirements restricting the class of children made eligible by Federal standards [that is, those eligible under Federal statute and regulations]. That interest may be protected by the State's 'undisputed power to set the level of benefits.' " Thus the court took the position that the only way a State could restrict welfare expenditures was by an across-the-board cut affecting needy persons it considered worthy of assistance as well as other persons the State would have preferred to consider ineligible for assistance.

The suggestions discussed below are intended to restore the welfare programs to administrative integrity by lifting some of the burdens imposed by the courts and the Department of Health, Education, and Welfare, and by providing substantial improvements in administrative procedures.

MAJOR ISSUES

A. Determining Eligibility

1. "Declaration Method" of Determining Eligibility

Generally speaking, the usual method of determining eligibility for public assistance has involved the verification of information provided by the applicant for assistance through a visit to the applicant's home and from other sources. For persons found eligible for assistance, redetermination of eligibility is required at least annually, and similar procedures are followed.

Regulations issued by the Department of Health, Education, and Welfare on January 17, 1969, required States to test a simplified method for the determination of eligibility for welfare in selected areas of the State. The simplified or "declaration method" provides for eligibility determinations to be based to the maximum extent pos-

sible on the information furnished by the applicant, without routine interviewing of the applicant and without routine verification and investigation by the case worker. The regulations requiring testing of the declaration method arbitrarily stated that a three percent level of ineligibility would be considered "acceptable."

A. Aid to the aged, blind, and disabled.—New regulations issued in 1970 required States to use the simplified declaration method in welfare programs for the aged, blind, and disabled beginning July 1, 1970. The new regulations were justified on the basis that testing of the declaration method showed conclusively that it did not result in an unacceptable level of ineligibility.

The committee asked the General Accounting Office to look into the testing of the method to see if the results were truly conclusive. In its report, the 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.

B. Aid to Families with Dependent Children.—In 1971, at the Committee's request, the General Accounting Office reviewed the testing that had been done of the "simplified declaration" method, this time in the program of Aid to Families with Dependent Children. The General Accounting Office study concluded that welfare centers supposedly using the simplified method started out by using this method in its purest form but soon modified it by conducting personal interviews and by verifying certain eligibility factors:

> Without exception, the directors of the centers using the simplified method stated that the centers should not rely completely on applicants' statements as a basis for making eligibility determinations. The directors emphasized that, although they believed that most applicants were honest, eligibility workers had an obligation to assure themselves that their decisions were based on a reasonable amount of evidence that applicants qualified.

The General Accounting Office found that:

1. AFDC caseloads in the centers using a simplified method increased disproportionately (compared to centers using the traditional method of determining eligibility) when the centers first began using the simplified declaration method, that is, before they modified it to include some verification;
2. Caseloads in the simplified method centers increased disproportionately when it was required that the provision of services be completely separated from the determination of eligibility;
3. The rate at which applications were disallowed dropped

significantly immediately after adopting the simplified method but tended to level off once the simplified method was modified to include personal interviews and verification of certain eligibility factors; and

4. Where local welfare departments made special reviews of the eligibility of recipients of assistance qualified under a simplified method, they found that a high percentage of these recipients were ineligible, could not be located, or refused to cooperate. Where data was available—regardless of the method used to determine eligibility—the ineligibility rates either exceeded the 3-percent tolerance level established by HEW or contained many cases where eligibility was questionable.

Study of ineligibility rates.—In January 1972, the Department of Health, Education, and Welfare released a study showing that six percent of a sample of AFDC recipients and five percent of a sample of aged, blind, and disabled individuals receiving welfare were ineligible.

H.R. 1.—Though the House bill gives the Secretary of HEW some latitude in determining eligibility, the Ways and Means Committee report states clearly that committee's attitude about the "simplified declaration" method:

> Your committee believes that maintaining the integrity of the program requires that eligibility for benefits under this program must be established by suitable and convincing evidentiary materials, such as birth certificates. *There will be no simple declaration process.* (House Report, p. 161; emphasis in original.)

With regard to verifying information supplied by welfare applicants and recipients, the House report (page 190) states:

> The possibility or probability of a validation check as explained in the interview will be a deterrent to program abuse. Validation will be performed under a continuing eligibility control program. It is expected that such an eligibility control program will consist of complete verification of a scientifically selected sample of applications. The verification would involve checking every element of eligibility in great detail. For example, each birth certificate would be checked against the public record it purports to represent. Earnings would be checked directly with employers, and so on. In addition, the Secretary would validate certain eligibility items on each application as experience demonstrated to be necessary. The verification and review would be performed by specifically trained employees operating out of a separate eligibility control unit.

Staff Suggestion.—It is recommended that the declaration method of determining eligibility be statutorily precluded. In the event the Committee chooses not to preclude the use of the "simplified declaration" it may wish to consider allowing the States the option of not using it. This latter approach was adopted by the Committee in 1970.

It is also recommended that States be explicitly authorized in the statute to examine the application or current circumstances and promptly make any verification from independent or collateral sources necessary to insure that eligibility exists. The Secretary could not by regulation limit the State's authority to verify income or other eligibility factors.

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2. *Accounting Period for Computing Entitlement to Welfare*

Problem.—Under current law as interpreted by Department of Health, Education, and Welfare regulations and the courts, it has become almost impossible to adjust welfare payments to current income in any timely manner. This has been permitted to occur primarily because the law itself is extremely vague with regard to the time over which income is counted for the purpose of computing entitlement to welfare payments and the timing and procedure for reporting such income.

In the Department of Health, Education, and Welfare's income maintenance experiments, it has been found that the income accounting period upon which welfare entitlement is based is one of the most significant factors in the cost of a welfare program. The background paper on the experiments which the Department submitted to the Committee concluded:

> Certain administrative details can be among the most important determinants of the character and impact of an income maintenance program. Chief among these is the definition of an accounting period for determining eligibility for benefits. For example, the use of an annual accounting period will result in an income maintenance system far different from that which employs a monthly accounting period (which is similar to that being employed in the current welfare system) both in terms of cost, equity and work incentives. A brief analysis of the data obtained from the Seattle Income Maintenance Experiment showed that caseloads may be doubled when one uses a monthly accounting period rather than an annual accounting period. Of a random sample of 100 male-headed families in Seattle with incomes below $15,000 annually, only 19% were eligible for payments on the basis of an annual accounting period, whereas with a monthly accounting period another 23% became eligible.
>
> Furthermore, families that are similarly situated in terms of income over a short period (such as a month) may have quite disparate incomes over a long period (such as a year) and vice versa. Take for example two four-person families with total annual earned income of $4,320 (the FAP breakeven point) but one family earns it over an entire 12 months period while the other earns all of it during a six month period. Under an annual accounting period neither family would receive any benefit payments since both are over the FAP breakeven point. However under a monthly accounting system the former family would still receive no payments but the latter family would receive $800 worth of benefits as a result of the way in which its earned income was distributed. Thus the monthly accounting system will not treat families who earned the same annual income in an equitable manner, if their incomes are unevenly distributed.
>
> (Committee Print "Income Maintenance Experiments: Material Submitted by the Department of Health, Education, and Welfare," p. 10.)

H.R. 1.—The House bill provides that a family's eligibility for benefits and the amount of its benefits would be tentatively determined for each calendar quarter on the basis of the best estimates of income for that quarter and income received in the most recent three quarters. Actual benefits would be determined after the end of the quarter on the basis of income actually received in that quarter and income from the previous three quarters. Whenever an application for family assistance payments was made, the applicant would be required to furnish information on all income for the past three calendar quarters. When countable income (that is, the portion of income that would not be disregarded under the provisions of the bill) in any of the three prior quarters exceeded the maximum quarterly benefit for the family for the quarter involved, and has not been previously used to offset benefits, this excess would have to be added to countable income in the current quarter and the total income would then be applied to reduce benefits in the current quarter. The excess from the current quarter would be counted first, then the most recent quarter, and so on. The purpose of this carryover provision would be to treat families with seasonal employment in the same manner as those with the same amount of annual income, but spread over the year.

Proposal.—Most of the difficulties (relating to inequitable treatment between different families, incorrect payments, and consequent higher costs) could be eliminated by a clear definition of income accounting and reporting procedures. Such a move would not only improve the equity and administrative efficiency of the AFDC system, but studies have indicated that it could have a substantial impact on current and future AFDC costs and caseloads. The staff recommends income accounting and reporting procedures with the following elements:

1. Entitlement to welfare in any given month would be based on income and other factors of eligibility in the previous month; however, for individuals who had received welfare at any time during the previous five years, income during prior months would be taken into account (as it would under H.R. 1) so that persons with substantial prior income would not be eligible for welfare simply because of lack of income in the prior month. This means that there would be no income carryover provision for individuals applying for welfare the first time.
2. Recipients would report the prior month's income and changes in circumstances which would determine both entitlement and payment for the current month. This would reduce the problem of either over- or underpayments except in cases of deliberate fraud.
3. Monthly income reporting and check issuance would be handled by mail, with paystubs or other information provided. All information would be subject to verification. Penalties would be specified for failure to report (as in H.R. 1; see below, "Fines and Penalties").
4. A personal interview, in the nature of a redetermination of eligibility, would also be required twice a year for continued eligibility in addition to the initial interview at the time the new reporting system is instituted.

3. *Biennial Reapplication*

Present Law.—Under present regulations of the Department of Health, Education, and Welfare, States are supposed to redetermine the eligibility of each case at least once every 6 months, However, this is largely a pro forma requirement, handled routinely by mail.

H.R. 1.—Under the Family Assistance Program established by H.R. 1, every family which had received benefits for 24 consecutive months would have to reapply and be eligible for benefits at the time of reapplication in order to continue receiving benefits.

Staff Suggestion.—It is recommended that biennial reapplication be required under the AFDC program in addition to the redetermination every 6 months.

4. *Recoupment of Overpayments*

Regulations of the Department of Health, Education, and Welfare preclude the recapture of previous overpayments, regardless of amount, "unless the recipient has income or resources currently available in the amount by which the agency proposes to reduce payment; except that where there is evidence which clearly establishes that a recipient wilfully withheld information about his income or resources, such income or resources may be considered in the determination of need to reduce the amount of the assistance payment in current or future periods." (45 CFR 233.20(a)(3)(ii)(*d*)). This means that only income actually available may be considered when recouping overpayments.

A Federal District Court in Oregon went even further than this regulation when it ruled (*Bradford* v. *Juras*, opinion dated July 12, 1971) that a State may not reduce current welfare payments when an overpaid Aid to Families with Dependent Children recipient *willfully* withholds information but has no resources apart from the current assistance grant. The court felt that recoupment from current assistance grants even when the recipient purposefully failed to report income violated the spirit and intent of the statute establishing Aid to Families with Dependent Children and that if the Congress had wanted to allow recoupment from current AFDC grants it would have included an explicit provision in the statute.

Staff Suggestion.—It is recommended that overpayments constitute an obligation of an individual to be withheld from any future assistance payments or any amounts owed by the Federal Government to the individual (with appropriate distribution to the State of the State share); in addition, overpayments could be collected through ordinary collection procedures.

5. *Appeals Process*

Hearing Required Before Welfare Payments May be Reduced or 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." ' "

The HEW regulations based on the court's decision (45 CFR 205.10) go much further than the court in spelling out the requirements for fair hearings. The tone and emphasis of the regulations is shown in these excerpts: "Agency emphasis must be on helping the claimant to submit and process his request, and in preparing his case, if needed. The welfare agency must not only notify the recipient of his right to appeal, it must also notify him that his assistance will be continued during the appeal period if he decides to appeal." The regulation continues: "prompt, definitive, and final administrative action will be taken within 60 days from the date of the request for a fair hearing, *except where the claimant requests a delay in the hearing*" (emphasis added).

Payments to Continue During Appeal at State Level.—In another recent court decision (*Serritella* v. *Engelman*, opinion dated February 24, 1972) a Federal District Court in New Jersey issued a preliminary injunction against New Jersey for its policy of reducing or terminating welfare benefits after an evidentiary hearing on the county level instead of continuing assistance without reduction until after a hearing at the State level. The Court based its decision on regulations issued by the Department of Health, Education, and Welfare. When the defense contended that the HEW regulations went much further than the due process standards of the 1970 Supreme Court decision, the Court explained that Section 1102 of the Social Security Act conferred plenary rule-making power upon the Secretary of HEW.

Committee Action in 1970.—The Committee in 1970 approved a provision requiring State welfare agencies to reach a final decision on the appeal of a welfare recipient within thirty days following the day the recipient was notified of the agency's intention to reduce or terminate assistance. The bill would also have required the repayment to the agency of amounts which a recipient received during the period of the appeal if it was determined that he was not entitled to them. Any amounts not repaid were to be considered an obligation of the recipient to be withheld from any future assistance payments to which the individual might be entitled. The Committee provision was designed to assure that the appeals procedure would be handled expeditiously by the States and also to assure that appeals would not be made frivolously.

Staff Suggestion.—The recommendation to modify the income accounting period for welfare eligibility purposes should have a substantial impact in decreasing the number of incorrect payments. In addition, it is recommended that the Committee again approve its 1970 provision, with the stipulation that the recipient has a right to appeal at a higher administrative level but that payments need not be continued once an initial adverse determination has been made on the local level at a hearing in which evidence can be presented. Amounts received which are determined to be overpayments would be recouped in the same manner as other overpayments.

6. 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."

On January 12, 1971, the Supreme Court in ***Wyman* v. *James*** reversed the lower court's decision, finding that the New York home visit procedure was a reasonable administrative tool serving a valid and proper purpose; it was not an unwarranted invasion of personal privacy but was basically concerned with the child and with any possible exploitation of the child.

Committee Action in 1970.—Responding to the district court decision in 1970, the Committee included a provision in the 1970 Social Security Amendments permitting the States to require as a condition of eligibility for welfare that a recipient allow a caseworker or other duly authorized person to visit the home. The Committee report stated:

> The committee bill permits the States, at their option, to require as a condition of welfare eligibility that recipients allow a caseworker to visit the home. In doing so, the committee is not endorsing the so-called "midnight raids," which have been generally considered objectionable as a means of enforcing welfare eligibility rules. The bill specifically requires that such home visits must be made at a reasonable time and with reasonable advance notice.
>
> However, the committee wants to make clear its belief that in "means test" programs, such as those under the public assistance titles of the Social Security Act, States should have the right to take reasonable steps to establish the facts relating to eligibility. If a State decides that visits by caseworkers to the homes of certain recipients are essential to the establishment of necessary facts, then it should be allowed to provide for these through its laws or regulations. The committee recognizes that there may well be circumstances under which the interests of the welfare recipient and of the Government may best be served by visits of the caseworker to the home.

Staff Suggestion.—It is recommended that the Committee codify the Supreme Court's decision in the statute by again approving its 1970 amendment.

7. Recent Disposal of Assets

Under present law, an individual with assets whose value exceeds the welfare eligibility level in a State may dispose of those assets purposely in order to qualify for assistance. For example, an elderly widow may give her assets to her children in order to qualify for assistance even though the children continue to make the assets available to her.

Staff Suggestion.—It is recommended that anyone who has voluntarily assigned or transferred property within one year prior to applying for public assistance, and who has received less than fair market value for the property, be ineligible for public assistance on the grounds that he has purposely pauperized himself in order to qualify.

B. Lightening the Federal Burden on the States

In addition to the items mentioned above, the suggestions below are designed to ease a portion of the Federal burden that has been placed on the States through the regulations of the Department of HEW which have no basis in law.

1. Limiting HEW Regulatory Authority in Welfare Programs

Section 1102 of the Social Security Act permits the Secretary of Health, Education, and Welfare to "make and publish such rules and regulations, not inconsistent with this act, as may be necessary to the efficient administration of the functions" with which he is charged under the act. Similar authority is provided under each of the welfare programs. Particularly since January 1969, regulations have been issued under this general authority which have no basis in law and which sometimes have run directly counter to legislative history. Many States have attributed at least a part of the growth of the welfare caseload in recent years to these regulations of the Department of HEW.

At the same time that the Department has attempted to create new legislation through its regulations, it has made little effort to insure that the States comply with such provisions of the statute as the requirement that family planning services be offered every appropriate welfare recipient, that the States establish separate units to collect child support payments, or that States terminate welfare payments to individuals refusing without good cause to participate in work and training programs.

Examples of Legislative Use of General Regulatory Authority.—The courts have consistently upheld the Secretary's authority to issue regulations that are essentially legislative. Examples include:

1. Requiring States to use the "simplified declaration" method;
2. Requiring States to pay benefits to persons absent from the State more than 90 days; and
3. Requiring the continuation of unreduced welfare payments during the entire appeals process.

Staff Suggestion.—A number of decisions already made by the Committee as well as other suggestions in this pamphlet are designed to deal with problems raised by specific regulations issued by the Secretary. In addition, it is recommended that section 1102 of the Social Security Act be modified to limit the Secretary's regulatory authority under the welfare programs so that he may issue regulations only related to specific provisions of the Act and that the regulations may not be inconsistent with these provisions.

2. Making Establishment of Advisory Committees Optional

Regulations issued by the Department of Health, Education, and Welfare in 1969 require States to establish a welfare advisory committee for AFDC and child welfare programs "at the State level and at local levels where the programs are locally administered," with the cost of the advisory committees and their staffs borne by the States (with Federal matching) as part of the cost of administering the welfare programs. The Committee in 1970 approved an amendment to make the establishment of such committees optional with the States.

Staff Suggestion.—It is recommended that the Committee again approve its 1970 amendment.

3. Separation of Services and Eligibility Determination

A further example of legislation through regulation involves the separation of social services from the welfare payment process. On March 1, 1972 the Department of HEW issued a regulation requiring States to have completely separate administrative units handling the provision of social services and handling the determination of eligibility for welfare. The issuing of this regulation was justified on the grounds that the Family Assistance Plan would soon be enacted and it would require a separation of the State-administered services programs from the Federal welfare payment programs. It should be noted that the General Accounting Office in its study of the "simplified declaration" method found that "caseloads in the centers using a simplified method increased disproportionately when . . . they no longer required the same welfare agency worker to determine an applicant's eligibility and also provide social services."

Staff Suggestion.—There appears to be little justification for requiring States to make this kind of administrative separation and there are good arguments for not making separation at all—in particular, the fact that a good deal of casefinding occurs as part of the eligibility determination process. It is recommended that States not be required to separate the provision of social services from the determination of eligibility for welfare.

4. Furnishing Manuals and Other Policy Issuances

Regulations issued by the Department of Health, Education, and Welfare in October 1970 require States to make available current copies of program manuals and other policy issuances

> without charge to public or university libraries, the local or district offices of the Bureau of Indian Affairs, and welfare or legal services offices or organizations. The material may also be made available, with or without charge, to other groups and to individuals. Wide availability of agency policy materials is recommended.

In addition, the regulations state that:

> Upon request, the agency will reproduce without charge the specific policy materials necessary for an applicant or recipient, or his representative, to determine whether a fair hearing should be requested or to prepare for a fair hearing; and will establish policies for reproducing policy materials without charge, or at a charge related to cost, for any individual who requests such material for other purposes (45 CFR 205.70(b)).

Staff Suggestion.—It is recommended that States not be required to furnish these materials without charge, but that States be permitted to require that the material be made available only at cost.

5. Eliminate Statutory Requirement of Individual Program of Services for Each Family

Present law requires States to develop an individual program of services for each family receiving AFDC. This has proven to be an unnecessary administrative burden, and H.R. 1 incorporates the Administration's recommendation that this requirement be deleted from the law.

Staff Suggestion.—It is recommended that the statutory requirement of an individual program of services for each AFDC family be deleted.

6. Requirement of Statewideness for Social Services

Present Law.—The Social Security Act requires that social services (including child care and family planning services) under the welfare programs be in effect in all political subdivisions of a State in order for the State to obtain Federal matching funds. This requirement of Statewideness has sometimes delayed the provision of these services.

H.R. 1.—The House bill contains a provision permitting the Secretary to waive the requirement of Statewideness for services.

Staff Suggestion.—It is recommended that the House provision be approved.

7. Use of Federal Funds To Undermine Federal Programs

One of the often-stated aims of the Legal Services program of the Office of Economic Opportunity is:

> The use of the judicial system and the administrative process to effect changes in laws and institutions which unfairly and adversely affect the poor. (Page 534 of the Narrative Justifications presented by OEO at the Senate fiscal year 1971 Appropriations Hearing on July 20, 1970.)

In carrying out this broad, highly subjective, and basically legislative function, certain Legal Services activities have been aimed directly at undermining the welfare programs—which are, of course, established by duly enacted Federal laws.

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 from circulation.

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 against the government.

In response to a question by the Chairman of the Committee when the Office of Economic Opportunity appeared before the Committee during the 1970 hearings on the welfare bill, information was provided stating that one or more OEO legal services projects were 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 rules, requiring a hearing before assistance can be terminated, and prohibiting denial of welfare for refusal to name the putative father (the reply appears in part 2 of the 1970 hearings, pp. 969–970).

1970 Committee Action.—In 1970, the Committee approved an amendment prohibiting the use of Federal funds to pay, directly or indirectly the compensation or expenses of any individual who in any way participates in action relating to litigation which is designed to nullify congressional statutes or policy under the Social Security Act. In its report, the Committee stated:

The Committee is unwilling to accept the implication of these activities: that the Legal Services lawyers are better qualified than the Congress to, in effect, determine national policy regarding the poor. The Committee draws a distinction between legal representation that involves assisting poor individuals with day-to-day problems in such areas as support payments, landlord-tenant relations, consumer issues, or even arbitrary actions of local welfare departments—and the type of advocacy that aims at undermining established institutions that were consciously created through acts of Congress. If the welfare statutes are inadequate, and there is little disagreement on this point, then the proper forum for improving them is the legislative branch of our Government, not the judicial.

Committee Decision.—On April 21, the Committee again approved the prohibition in its 1970 amendment. Under the Committee amendment this year, however, this prohibition may be waived by the Attorney General 60 days after he has provided the Finance Committee and the Ways and Means Committee with notice of his intent to waive the prohibition.

8. Appointment and Confirmation of Administrator of Social and Rehabilitation Services

The Social and Rehabilitation Service was established in 1967 by a reorganization within the Department of Health, Education, and Welfare. Its responsibilities at present are broad, encompassing the Federal welfare programs, medicaid, and programs in the areas of vocational rehabilitation, aging, and juvenile delinquency. The sums involved are huge; the bulk of the $14-billion 1972 budget for the agency is spent on the public assistance and medicaid programs.

At present, three agency heads in the Department of Health, Education, and Welfare with stature equivalent to that of the Administrator of the Social and Rehabilitation Service—the Commissioner of Social Security, the Commissioner of Education, and the Surgeon General of the Public Health Service—all are nominated by the President with the Senate's advice and consent.

Committee Action in 1970.—The Committee bill in 1970 would have ended the present anomaly by treating all four agency heads equally. The bill would have upgraded the stature of the Administrator of the Social and Rehabilitation Service by having the President select him and by giving him the support of the Senate that his colleagues now enjoy.

Staff Suggestion.—It is recommended that the Committee again approve its 1970 provision.

9. Requiring Participation in Employment Programs

Present Law.—Prior to the enactment of the Work Incentive Program as part of the 1967 Social Security Amendments, the Federal AFDC statute permitted Federal matching of AFDC payments made to recipients participating in a community work training program. Since the enactment of the WIN program, however, the Department of Health, Education, and Welfare has taken the position that the Federal Government will not share in AFDC payments to recipients who are required by State law to participate in an employment pro-

gram—unless the program either is part of the Work Incentive Program or is administered under the Economic Opportunity Act. The employment programs for AFDC recipients that have been permitted in California and New York have been funded as demonstration projects.

Staff Suggestion.—It is recommended that during the period between enactment of H.R. 1 and the effective date of the new Federal employment program, the community work training provisions in the law prior to the 1967 amendments be reenacted so that States wishing to have such programs in the interim could do so.

C. Tightening Up Administration

A number of additional measures suggested below are designed to tighten the administration of the welfare programs.

1. Use of Social Security Numbers and Other Means of Identification

The Committee has already agreed to a procedure designed to tighten up the issuance of social security numbers and to impose additional penalties for fraudulent use of social security numbers.

Committee Action in 1970.—The Committee bill in 1970 would have required applicants for and recipients of public assistance to furnish their social security numbers to State welfare agencies. These agencies, in turn, would have been required by the bill to use the recipients' social security numbers in the administration of assistance programs.

H.R. 1.—The Ways and Means Committee report anticipated extensive use of social security numbers in administering the welfare programs (House Report, p. 188):

> The social security number will be used to identify every recipient. Each family member will be so identified and those not having a social security number will be issued one at the time a benefit claim is filed. The social security number of one family member will be used as the primary control number for the family's claim with all other family member numbers cross-referred to this key number on all appropriate records. The proposed record system will be based on these control numbers and all of the data in the claims process will be retrievable and controlled in this manner.

Staff Suggestion.—It is recommended that the Committee again approve its 1970 amendment requiring the use of social security numbers in the administration of assistance programs. It would be expected that States would use social security numbers for case file identification, for cross-checking purposes and as an aid in the compilation of statistical data.

It is also recommended that States be authorized to use photographs and such other means of identification as they desire in administering the welfare programs, as well as setting penalties for misuse of these means of identification.

2. Fines and Penalties

Present Law.—The present Federal law makes no mention of fines or penalties for failure to report income to the welfare agency or for

fraudulently obtaining assistance payments. The matter is left up to State law.

Cases of grossly fraudulent acts have been brought to the Committee's attention which received little punishment, and other cases in which the punishment seemed unduly harsh in view of the offense.

H.R. 1.—The House bill would set as penalties for failure or delay without good cause in reporting income or other factors affecting eligibility at $25 for the first offense, $50 for the second offense, and $100 for the third and each succeeding offense (secs. 2031(e)(2) and 2171(e)(3)). Fraud would be punishable by a fine of not more than $1,000 (regardless of the amount fraudulently obtained), or imprisonment for not more than 1 year, or both (secs. 2032 and 2172).

Staff Suggestion.—It is recommended that the States be required to:

1. Penalize failure or delay without good cause in reporting income or other factors affecting eligibility with a $25 fine for the first month of failure to report, $50 for the second month, and $100 for the third and each succeeding month; or, if less, a fine equal to the amount of the overpayment resulting from failure to report;
2. Have a law penalizing fraud (as well as aiding and abetting fraud) with a fine of at least 50 percent of the amount of the overpayment (or, if less, $1,000) plus up to one year of imprisonment, or both (with the State free, however, to determine whether the fraud was a misdemeanor or a felony); and
3. Collect these fines in the same manner as overpayments are collected.

For example, if a recipient failed to report earnings for three months and this failure to report resulted in overpayments of $50 for each month, the full $150 in overpayments would be recovered and in addition a fine of $125 would be imposed ($25 for the first month and $50 for each of the next 2 months). In another example, if a mother failed to report the return of her husband for five months and received welfare payments of $150 a month for which she was completely ineligible, the full $750 in overpayments would be recovered and in addition she would be fined $375 ($25 for the first month, $50 for the second month, and $100 for each of the next three months). If convicted of fraud, she might also be subject to the further penalties described in paragraph 2 above.

3. *Reduction of Federal Matching in States With Ineligibility Rates Exceeding Three Percent*

The quality control procedures currently carried out by the States under Federal regulations are designed to check, on a sample basis, the amount of overpayments, underpayments, and ineligbility for welfare payments. On a national basis (with several large States failing to report), it was found that ineligibility for assistance exceeded five percent in the sample checked. Even with this small a sample, it is highly likely that actual eligibility exceeded three percent, the highest rate of ineligibility considered "acceptable" under the HEW regulations.

Staff Suggestion.—It is recommended that Federal matching be reduced when ineligibility rates exceed an acceptable level. Specifically, each time a State's quality control procedures show an ineligibility rate exceeding 5 percent in AFDC or aid to the aged, blind, and

disabled (4 percent beginning January 1975), a separate Federal matching reduction check would be made by Federal employees to determine the ineligibility rate among a new (and statistically reliable) sample. If this Federal check showed an ineligibility rate exceeding three percent, Federal matching for AFDC or aid to the aged, blind, and disabled would be reduced by the percent that the ineligibility rate exceeds three percent.

This suggestion assumes that State quality control procedures are appropriately carried out under Federal regulations. If this is not done, a Federal matching reduction check would be made even if the State quality control procedures showed an ineligibility rate of less than five percent.

4. Quality of Work Performed by Welfare Personnel

Under present law, each State selects its own welfare personnel—trains them as it sees fit, and administers the welfare program under its own rules of conduct. There is apparently little effort to encourage any uniformity of standards of performance for welfare workers either between the States or within a State. Thus, situations have been called to the Committee's attention where some welfare workers perform their duties in a very oppressive manner while others consider their principal function to simply involve the disbursement of as much public money to their "clients" as possible with little or no regard for the needs of the recipient for counseling and guidance. In many instances counseling and guidance may be far more helpful than money in rehabilitating a welfare family. Instinctively, welfare recipients become defensive and resist the former type of worker and the latter type offers them little hope of escape from the welfare cycle. Neither type is an asset to the system.

Staff Suggestion.—In an effort to try to upgrade the quality of work performed by welfare personnel, the Committee might want to consider directing the Secretary of the Department of Health, Education, and Welfare to study and report to the Congress by January 1, 1974, on ways of enhancing the quality of welfare work, whether by fixing standards of performance or otherwise. In making this study, the Secretary could draw on the knowledge and expertise of persons talented in the field of welfare administration, including those having direct contact with recipients, and he should also benefit from suggestions made by recipients themselves as to how the level of performance in the administration of the welfare system might be improved, with a view toward ending the wide variations in employee conduct which characterize today's system, and moderating the extremes to which some social workers go in performing their duties.

5. Offenses by Welfare Employees

Under present Federal law there is no provision particularly directed to the question of employee conduct in the administration of the welfare program. On the other hand, the Internal Revenue Code (Sec. 7214) contains a list of offenses the commission of any of which, by a tax employee, would bring into effect discharge from employment and penalties of (a) fines not to exceed $10,000, or (b) imprisonment for not more than five years, or both. The provision in the Internal Revenue Code also authorizes a court to award out of any fines imposed an amount up to one-half of the fine to be paid to the informer whose information resulted in the detection of the criminal offense. This law has contributed to the high quality of performance of Internal

Revenue employees and has been a factor in assuring relatively uniform standards of conduct.

Staff Recommendations.—The Committee may want to consider applying similar rules under the welfare laws. That could lead to an upgrading of the quality of performance by welfare workers in general and serve as the basis for standards of conduct which hopefully might narrow the wide variations in employee conduct which exist today.

Specifically, under this suggestion it would be a crime punishable by a fine of up to $10,000 or imprisonment of up to five years, or both, in the case of a welfare employee who is found guilty of:

(1) extortion or willful oppression under color of law; or

(2) knowingly allowing the disbursement of greater sums than are authorized by law, or receiving any fee, compensation, or reward, except as prescribed, for the performance of any duty; or

(3) failing to perform any of the duties of his office or employment with intent to defeat the application of any provision of the welfare statute; or

(4) conspiring or colluding with any other person to defraud the United States or any local, county or State government; or

(5) knowlingly making opportunity for any person to defraud the United States; or

(6) doing or omitting to do any act with intent to enable any other person to defraud the United States or any local, county or State government; or

(7) making or signing any fraudulent entry in any book, or making or signing any application, form or statement, knowing it to be fraudulent; or

(8) having knowledge or information of the violation of any provision of the welfare statute which constitutes fraud against the welfare system, and failing to report such knowledge or information to the appropriate official; or

(9) demanding, or accepting, or attempting to collect, directly or indirectly as payment or gift, or otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law, except as expressly authorized by law.

In addition to these penalties the employee involved shall be dismissed from office or discharged from employment.

D. Demonstration Projects to Reduce Dependency on Welfare

The Social Security Act (Sections 1110 and 1115) currently authorizes appropriations for research and demonstration projects in the area of public assistance and social services. Authority under these sections has been used to fund several guaranteed minimum income experiments and also a large number of projects related to providing social services to welfare recipients.

Staff Suggestion.—It is recommended that emphasis be placed under these programs on helping persons to become economically independent by requiring that one-third of the funds spent under these

two sections be spent on projects relating to the prevention and reduction of dependency on welfare.

E. Federal Eligibility Standards

In its discussions, the Committee has decided that the question of benefit levels for recipients with Aid to Families with Dependent Children should be left to the States. It has also been suggested that the regulatory authority of the Secretary should be limited to regulations that are related to specific provisions of the law and that are consistent with the intent of Congress.

The Family Assistance Program under H.R. 1 contains a number of Federal standards related to eligibility for family welfare benefits. Many of these matters have already been covered in this and earlier pamphlets; other provisions concerning eligibility in H.R. 1 are applicable to a federally-administered program but not a State-administered program.

If the Committee wishes to consider further Federal standards related to eligibility for family welfare benefits, it may wish to look into the following provisions of H.R. 1:

A. *Income.*—H.R. 1 (sec. 2153) defines income for family welfare purposes as including all earned and unearned income except—

(1) Earned income of a child who is a student, subject to limitations prescribed by the Secretary;

(2) Infrequent or irregularly received unearned income up to $60 per quarter and earned income up to $30 per quarter;

(3) An amount equal to the cost of child care expenses;

(4) Earned income at a rate of $720 per year plus one-third of the remainder;

(5) Assistance based on need furnished by Federal (except veterans' pensions), State and local governments and assistance from certain charitable organizations which are tax exempt;

(6) Training allowances and expenses;

(7) The tuition portion of scholarships, fellowships, and grants;

(8) Home produce consumed by the family;

(9) One-third of support and alimony payments from absent parents; and

(10) Foster care payments for noneligible individuals placed in the home of an eligible individual by a public or nonprofit child-placement or child-care agency.

B. *Resources.*—H.R. 1 limits eligibility to families with resources of less than $1,500. All resources, with these exclusions (to the extent found reasonable by the Secretary), are to be taken into account (sec. 2154):

(1) The home;

(2) Household goods and personal effects;

(3) Other property essential for self-support; and

(4) Insurance policies are counted as resources to the extent of cash surrender value, but are excluded if the face value of all policies is less than $1,500.

C. *Definitions:*

(1) Under H.R.1 a *family* is defined (sec. 2155 (a) and (c)) as two or more people related by blood, marriage, or adoption, living together in a home maintained by one of them, at least one of whom is a child who is in the care of and dependent upon one of the other members. A parent or parent's spouse temporarily absent from the home because of employment (including military service) is deemed to be living at home. A family headed by a college student regularly attending a college or university is excluded as a family. In determining whether an individual is related to another individual by blood, marriage, or adoption, appropriate State law is applied.

(2) A *child* is defined (sec. 2155(b)) as an unmarried person not the head of a household who is under 18, or under 22 and regularly attending school.

D. *Liens.*—H.R. 1 has no provision for liens.

Statistical Material

TABLE 1.—**AID TO FAMILIES WITH DEPENDENT CHILDREN:** INCOME ELIGIBILITY LEVEL FOR PAYMENTS AND LARGEST AMOUNT PAID TO **FAMILY OF 4,** BY STATE, DECEMBER 1971

	Income eligibility level for payments	Largest amount paid for basic needs
Alabama	$81	$81
Alaska	400	300
Arizona	266	173
Arkansas	210	106
California	314	261
Colorado	235	235
Connecticut	335	335
Delaware	287	158
District of Columbia	245	245
Florida	223	134
Georgia	158	149
Hawaii	268	268
Idaho	241	241
Illinois	273	273
Indiana	355	175
Iowa	243	243
Kansas	290	226
Kentucky	193	193
Louisiana	104	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	275	226
Nevada	176	176
New Hampshire	314	314
New Jersey	324	324
New Mexico	203	179
New York	313	313
North Carolina	172	172
North Dakota	300	300

TABLE 1.—**AID TO FAMILIES WITH DEPENDENT CHILDREN:** INCOME ELIGIBILITY LEVEL FOR PAYMENTS AND LARGEST AMOUNT PAID TO **FAMILY OF 4,** BY STATE, DECEMBER 1971—Continued

	Income eligibility level for payments	Largest amount paid for basic needs
Ohio	$258	$200
Oklahoma	189	189
Oregon	224	224
Pennsylvania	301	301
Rhode Island	255	255
South Carolina	198	103
South Dakota	270	270
Tennessee	217	129
Texas	148	148
Utah	224	224
Vermont	319	319
Virginia	261	261
Washington	282	270
West Virginia	138	138
Wisconsin	217	217
Wyoming	260	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.