

Testimony of Vicki Turetsky
Senior Staff Attorney
Center for Law and Social Policy

Senate Finance Committee

May 16, 2002

Center for Law and Social Policy
1015 15th Street, NW, Suite 400
Washington, DC 20005
(202) 906-8012 phone
(202) 842-2885 fax
www.clasp.org
vturet@clasp.org

Mr. Chairman and Members of the Committee:

Thank you for inviting me to testify. I am a Senior Staff Attorney at the Center for Law and Social Policy (CLASP). CLASP is a non-profit organization engaged in analysis, technical assistance and advocacy on issues affecting low-income families, including child support. I have worked in the child support and welfare field for twenty years, both as a state human services administrator and as an advocate for low-income families. CLASP places a special emphasis on understanding what is actually happening at the “ground level” through on-going dialogue with state and county administrators, grassroots organizations, and low-income mothers and fathers directly affected by the implementation of welfare reform efforts.

My testimony today will focus on needed reforms to child support distribution rules. CLASP strongly supports child support legislation sponsored by Senator Snowe and included in the tripartisan recommendations made by Senators Snowe, Breaux, Jeffords, Hatch, Lincoln, and Rockefeller to the Senate Finance Committee. I commend Senator Snowe for her steady commitment to enacting child support provisions that will directly increase the income of many low-income families, improve child well-being, and encourage low-income fathers who live apart from their children to remain involved.¹

In addition, my testimony raises concerns about a plan proposed by HHS to use child support funds to pay for marriage demonstration programs.

The Child Support Distribution Provisions Proposed by Senator Snowe Should Be Included in TANF Reauthorization Legislation.

- **Increased income helps strengthen families.**

One key part of any effort to build stronger families, improve child well-being, and strengthen marriage has to be increasing family income. The Minnesota Family Investment Program (MFIP), a welfare waiver demonstration program, broadened eligibility for assistance for two-parent families and allowed working families to combine higher earnings with cash assistance; MFIP produced substantial increases in employment, earnings, and income for long-term welfare recipients. Increasing the income of these families led to a series of important changes in family life and improvements in child well-being—a dramatic decline in domestic violence, increased marriage rates, increased marital stability, and reduced incidence of divorce.² In addition, MFIP and a number of other rigorously-evaluated welfare-to-work demonstration programs show that raising family income improves child outcomes, such as school performance. Simply putting parents to work is not enough to help children. If the goal is stronger families and improved child well-being, then increasing family income is an essential part of the effort.

- **Child support is an important source of family income when parents live apart.**

When the parents do not live together, child support can be a substantial and long-term source of income for low-income working families. Next to the mother’s earnings, child support is the second largest income source for low-income families receiving child support. When a single

parent with income at the poverty level receives child support but not cash assistance, her earnings typically are 48 percent of the family budget, child support is 35 percent, and income from other sources is 17 percent.³

Research indicates that single parents who receive regular child support payments are more likely to find work more quickly and to hold jobs longer than those who do not receive child support. When families receive regular child support, they are less likely to return to welfare.⁴ Receipt of child support is especially critical to help families stabilize their incomes in the first few months after they leave TANF. There also is evidence that child support is an alternative to cash assistance— families are less likely to use cash assistance when they receive child support.⁵

The likelihood that parents living apart from their children will pay child support has significantly improved since 1996. In 1996, Congress passed major reforms to the child support program, including computerized data matching, enforcement tools, and other improvements to the program. The 1996 welfare reform law recognized that child support is a significant source of income for working families, and a key to helping families become more independent from welfare.

Since implementation of the 1996 reforms, the child support collection rate has doubled. However, despite substantial improvements, child support is collected for only 44 percent of welfare leavers participating in the child support program. This percentage is roughly comparable to the proportion of welfare leavers that receive food stamps (33%-57%), Medicaid (41%-57%), and child care (one-third or less). Once a child support order has been put in place, about 66 percent of welfare leavers receive about \$2,000 in child support per year.

Low-income families eligible for child support are significantly more likely to receive child support if they have participated in the child support program. The child support program has particularly benefited the lowest income families, with never-married mothers experiencing a four-fold increase in their child support receipt rate since the program's inception. A growing body of research links effective child support programs to reduced poverty, welfare caseloads, divorce rates, and non-marital and teen birth rates.⁶

- **However, when low-income parents pay child support, their children often do not see the money.**

Families receiving TANF assistance are required to assign (or sign over) to the state their rights to child support. Child support distribution rules determine whether the state or the family keeps child support when it is collected. While the family is receiving TANF assistance, the state keeps most of the child support to reimburse welfare costs. State and federal governments share child support collections according to the state's Federal Medical Assistance Percentage (FMAP), with states having higher FMAP rates returning more child support to the federal government.

Even after families leave welfare, much of the child support that is collected for the family is kept by the state as recovered welfare costs. Slightly more than half of support retained by the government is collected for families who have left welfare, while the remaining half is collected for families currently receiving assistance. And about half of child support arrears collected on behalf of former TANF families are not paid to families, but instead are kept by the government.

In 2000, the child support program collected a total of \$17.9 billion in child support, with \$8.2 billion collected for current and former TANF families and the remainder collected for working families who never received welfare. Of the \$8.2 billion, federal and state governments kept \$2.4 billion as recovered welfare costs (\$1.23 billion for former TANF families and \$1.16 billion for current TANF families), or nearly a third of child support payments paid on behalf of current and former TANF families.

Most states allocate their share of collections to their state human services budget, using the revenues to meet their state Maintenance of Effort (MOE) obligation required to draw down federal funds under the TANF program. At least one-third of the states use some or all of their welfare collections to help pay for the state share of matching funds for the child support program.

- **Current child support distribution rules prevent low-income parents from using their own resources to support their children.**

Regular payment of child support is linked to increased paternal involvement and improved child outcomes. Children who receive child support are more likely to do better in school, have better health outcomes, and stay out of the juvenile justice system.⁷ While domestic violence is a serious problem for some families, many mothers report that they encourage their children's emotional relationship with their father and his family, and try to keep the father involved in their children's lives when feasible.

Yet child support rules that emphasize welfare cost recovery discourage low-income fathers from paying child support and staying connected to their children. Low-income mothers and fathers both know that unless they earn enough money to keep their children completely off of TANF, child support payments will be kept by the state as recovered welfare costs, and will not directly benefit their children. In a number of studies, mothers and fathers of children receiving TANF assistance say that the child support distribution rules undercut their ability to work together in the best interests of their children, and often drive fathers underground.⁸

For the most part, low-income mothers and fathers want to do right by their children. Yet low-income fathers and mothers who want to improve their children's lives, but can not fully support their children without some public help often find themselves in an untenable situation. Many TANF mothers and fathers repeatedly re-negotiate their financial arrangements. Sometimes she holds back on formal enforcement. Sometimes, he pays informal financial support for the children. Sometimes, he does not pay regular support, but makes irregular in-kind contributions, such as diapers, school clothes, and Christmas gifts. Sometimes, he pays out of both pockets -- he pays off the state a little and he pays her a little. Sometimes she settles for non-financial support. Sometimes, they fight about the money and the children. Sometimes, he enters the underground economy to avoid the formal child support system. Sometimes, he walks away.

The research indicates that low-income mothers and fathers sometimes agree to informal contributions that by-pass the formal child support system. Yet no one is well served when parents agree to under-the-table payments and avoid the formal child support system. If a TANF mother accepts informal support from the father, she is vulnerable to a welfare fraud prosecution. In addition, informal payments are made at the discretion of the father. Informal payments are

likely to be smaller and less regular, and there may be more disputes about the amounts paid. Payments are likely to decrease as the child gets older and the parents' relationship deteriorates. If a TANF father pays the mother informal support, his payment will not be credited through the formal system, and he will be liable for a growing arrearage balance.

Some fathers of TANF children are themselves low-income and face many of the same employment barriers faced by many low-income mothers. For many low-income children, there is not enough money to go around. Low-income fathers are not going to be able to create stable environments for children--in or out of marriage--if they are unemployed, incarcerated or have substance abuse problems. These fathers need help maintaining employment, participating in job training, securing housing, and accessing substance abuse treatment before they can provide significant financial support for their children. If children are to benefit from the ongoing support and involvement of both parents, it is important to develop strategies to improve the limited economic prospects of low-income fathers. New funding for fatherhood programs included in TANF reauthorization should be squarely focused on the employment and training needs of low-income fathers.

- **Evidence from Wisconsin and Vermont child support pass-through demonstrations indicates that fathers pay more support when it is passed through to their children, and that children may benefit in other ways.**

Early findings from child support pass-through demonstration waiver projects conducted in Wisconsin and Vermont to pass through all current support to families receiving TANF assistance indicate that more fathers paid support, and fathers paid more, when they were in the full pass-through group. In Vermont, early results indicated that the state's pass-through policy increased the percentage of parents paying child support and the average amount of child support paid.⁹ In Wisconsin, researchers found a substantial difference in payments among parents who were new to the welfare system, and had not paid support under the old rules: among those cases in which the mother had not received AFDC during the prior two years, 58 percent of fathers in the full pass-through group paid child support, compared to only 48 percent of fathers in the partial pass-through group.¹⁰

There is evidence in the Wisconsin study that fathers were substantially less likely to work in the underground economy when all of the support was passed through to their children. Researchers also found that fathers established the paternity of their children more quickly. In addition, there was some evidence of higher informal support payments made by fathers in the full pass-through group, suggesting the formal and informal support are complements rather than substitutes.

Researchers in the Wisconsin study found intriguing suggestions in the data that passing through all child support may help families in a variety of ways. For example, the evidence suggests that for some subgroups, there was less serious conflict between the parents, families were able to secure better child care arrangements, children had fewer health problems, and teenagers did better in school and were more likely to stay out of trouble.

Wisconsin researchers found that there was no difference in overall government costs—the costs of passing through child support were offset by more support paid by fathers and reduced TANF use by mothers. And, the full pass-through was considerably easier for the state to administer. According to researchers, reported findings “are likely to understate” expected effects of a full

pass-through in Wisconsin and other states, in part because of limited caseworker and parent understanding of the experimental policy.

- **While the 1996 welfare reform law increased the amount of child support going to former welfare families, it resulted in a complex and difficult to administer set of rules.**

In 1996, the child support distribution rules were amended to allow former TANF families to keep more of the child support owed before the family went on welfare. The 1996 law modified the old AFDC requirement that families give up all rights to support owed before and during a family's stay on welfare. The basic approach adopted in the 1996 law is that support owed while the family is on welfare belongs to the government, while support owed while the family is not receiving welfare belongs to the family. However, there are two statutory exceptions to this basic approach, which have created enormous complexity in the system:

- *Federal tax offset exception.* The main exception is that support recouped from federal tax refunds due to noncustodial parents are kept by the state, even if collected after the family has left welfare. If the support is collected through a state tax offset, bank account seizure, or other collection method, the money goes to the family. But if the support is collected through a federal tax offset, the money is kept by the state. (If the family is currently receiving assistance, the state can keep the money regardless of collection method.) Support collected through the federal tax offset procedure totals more than half of the welfare arrears collected by the state.
- *Assignment of pre-assistance arrears.* Under the rules, the government has a claim on support that was owed before the family went on welfare. Families applying for welfare have to sign over their rights to support owed while they receive assistance, but also their rights to unpaid support owed from the months and years before they went on welfare. This means that families who tried to hold out the longest before going on welfare can lose all the support owed to them once they start receiving assistance. Requiring families to assign their pre-assistance arrears reduces the amount of support paid to families when they leave welfare. And if the family has to go back on welfare, even for a couple months, rights to any unpaid support reverts to the state.

The 1996 distribution provisions were intended to get more money in the hands of former welfare families. However, the statutory exceptions are the uneasy result of legislative compromise between contradictory program goals of strengthening families and recovering welfare costs. As a result, the distribution rules are extremely complicated and costly to computerize and administer, requiring states to track several different payment types, depending upon status, time period, and collection method—"assigned" current support; "never assigned" current support; "permanently assigned" arrears; "temporarily assigned" arrears; "conditionally assigned" arrears; "unassigned pre-assistance" arrears; "unassigned during-assistance" arrears; "never-assigned" arrears. (See attached chart).¹¹

One expert, Policy Studies, Inc., estimates that 6-8 percent of all child support program costs--up to \$360 million per year--are attributable to maintaining existing distribution rules. Problems with automating complicated distribution rules have been cited by many federal and state administrators as a contributing cause of computer systems delays and costs. The new rules require disproportionate training and staff time devoted to administering the rules, correcting errors, and explaining hard-to-understand decisions to parents. Because the rules are so difficult to explain and administer, they erode confidence in the program's fairness and accuracy.

The complexity of the distribution rules result in some states improperly keeping child support that belongs to families. The HHS Office of Inspector General (OIG) found that in half of the six study sites, about 30 percent of custodial parents experienced delays in getting child support or were underpaid their support. Eleven of 51 states survey by the OIG cited difficulties accurately transferring child support payments to families who have left TANF cash assistance.¹² The distribution rules heighten the vulnerability of states to audit problems and litigation.

- **While the 1996 welfare law gave states the option to pass through child support to TANF families, the requirement that states pay the federal share of collections has limited state flexibility.**

Before 1996, states were required to pay the first \$50 in collected child support to families receiving welfare benefits. Known as the "\$50 pass-through," the child support income was disregarded, or not counted, in calculating the amount of welfare benefits paid to the family. That meant that families received their full welfare check along with the first \$50 of child support. Because the pass-through was paid before federal and state shares of support were calculated, the cost of passing through support was shared between the federal government and states.

The 1996 welfare reform law eliminated the federal pass-through requirement. Under the 1996 law, states retained the option to pass through support to families receiving TANF assistance. However, states, and not the federal government, now bear the entire cost of any support passed through to families. This is because states must repay a fixed percentage of collections to the federal government, whether or not the state passes through any support to families. In other words, the federal share is paid first, and states must finance any pass-through with their remaining state share. Less than half of states have chosen to continue or increase the pass-through on those terms. (See attached chart)¹³

The pass-through financing problem is particularly acute for states with low per capita incomes and high FMAP rates. These states have to send back a larger share of child support to the federal government under the FMAP formula, and their state share of support is too small to cover the costs of a pass-through without adding new state dollars. Three-fourths of states with an FMAP rate of 70 percent or higher have discontinued the pass-through, while three-fourths of states with a lower FMAP rate continued their policy.

- **The Snowe distribution package (S. 918) would get more support to families, would give states the flexibility to simplify distribution, and should be included in TANF reauthorization legislation.**

The legislation sponsored by Senator Snowe would allow states to get more income directly into hands of low-income families. The support paid by fathers should go to their children, not the government.

Legislation sponsored by Senator Snowe (as well as identical legislation sponsored by Senator Kohl), is widely supported by states and advocates, and should be included in TANF reauthorization legislation. The Snowe provisions would put the authority in place to allow states to enact distribution reforms when they can afford to do so. The Committee should adopt the intact Snowe provisions, because they contain the essential elements needed to allow states to move forward:

- *More support to families who have left TANF.* The Snowe provisions would simplify the rules for families who no longer receive TANF assistance. The proposal would allow states to pay all support to former TANF families by (1) eliminating the requirement that families assign pre-assistance arrears and (2) giving states the option to eliminate the federal tax offset exception.
- *Pass-through to TANF families.* The Snowe provisions would require the federal government to fully participate in the costs of passing through child support to TANF families, by providing that the federal government waive its share of child support collections to the extent that a state decides to pass through the support to families and disregards the support in determining TANF assistance.
- *Funding flexibility.* The Snowe provisions would authorize states to use TANF block grant or maintenance of effort funds to pay for child support collections that the state would provide to families to help states replace lost revenues used to fund the TANF or child support program.
- *Implementation flexibility.* The Snowe provisions would allow states to implement any or all of the distribution provisions early.
- *Bar on collecting Medicaid birthing costs.* The Snowe provisions would bar the recovery of birth-related costs covered by the Medicaid program through the child support program.
- **Child support distribution options should not be financed with new fees imposed on families who have never received TANF assistance.**

The Administration proposes to fund changes to the child support distribution rules through a \$25 annual service fee charged to families who never received assistance and have a successful collection. Under the Administration's proposal, the \$25 annual fee would be charged in

addition to other fees and charges already in place. The Committee should not adopt the fee proposal.

The Administration's proposal to impose a new fee on families who have never received TANF assistance places an unequal burden on low-income working families whose financial circumstances may be indistinguishable from former TANF families. Nearly 80 percent of families participating in the child support program have incomes below 250 percent of poverty. Families who would be subject to the fee include those who have been diverted from cash assistance, but receive child care or other services. Many families who do not receive TANF benefits may receive Medicaid, Food Stamps, SSI, or other needs-based benefits. Other low-income families may be eligible for TANF assistance, but do not apply. In addition, the administrative costs of implementing the fee and reprogramming child support computers will significantly offset revenues.

The HHS Proposal to Use Child Support Funds to Pay for Marriage Demonstration Programs Raise Serious Questions.

- **The status of an HHS proposal to tap into child support funds to pay for marriage programs is unclear.**

HHS documents indicate a plan to initiate 15 marriage demonstration projects with \$22 million in federal and state child support funds under a section 1115 waiver. The documents include a "Request for Task Order" for technical assistance and evaluation research, and a draft concept paper called "Administration for Children and Families Healthy Marriage and Responsible Fatherhood Community Demonstration Initiative." A March 7, 2001 email circulated to outside technical assistance providers requested them to submit a capability statement to HHS by March 22. The request for capability statement seems to be the first step in soliciting proposals from vendors to provide project technical assistance and evaluations.

The marriage demonstration plan appears to be an attempt to open the door to using child support funds to sustain marriage programs operated by community-based and faith-based organizations. The marriage demonstrations would "invest in broad-based, community-level coalitions to engage in comprehensive intervention strategies" to promote and maintain healthy marriages, family formation and responsible fatherhood, and would feature a "saturation approach" at the community level.

While the documents state that the Administration for Children and Families (ACF) plans to use child support funds to initiate a set of marriage programs, they also state that "the demonstrations will integrate marriage, family formation and fatherhood into ACF programs, such as Child Support Enforcement, Head Start, Community Services Block Grant, Child Care, Runaway and Homeless Youth Services, and Temporary Assistance to Needy Families."

- **The HHS proposal to use child support funds for marriage programs raises serious legal concerns.**

There does not appear to be statutory authority to spend federal and state child support funds on marriage programs. Congress authorized the child support program to help single parents collect child support. The statutory purpose of the child support program is quite narrow and specific, authorizing the use of child support funds:

“For the purpose of enforcing the support obligations owed by non-custodial parents to their children and the spouse (or former spouse) with whom such children are living, locating non-custodial parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children...for whom assistance is requested[.]” [42 U.S.C. 651]

Any waivers approved by HHS using child support funds must be consistent with the statutory purposes of the child support law. These statutory purposes do not include marriage promotion or family formation. Under the waiver statute, section 1115 of the Social Security Act, HHS may only waive certain requirements of the child support program, and may not use its waiver authority to spend child support funds on purposes not otherwise authorized by Congress.

- **The waiver plan raises serious questions about the role of Executive Branch officials in redirecting funds that Congress appropriated for the child program.**

In its TANF reauthorization proposal, the Administration proposed \$1.5 billion over five years to fund marriage programs. While Congress is considering the Administration’s request, HHS appears to be making a unilateral decision to go forward, using child support funds to pay for marriage programs. By appearing to go beyond the Congressionally-authorized uses of child support funds, the marriage proposal raises a troubling analogy to the Administration’s “superwaiver” proposal, which would allow Executive Branch officials to override statutory provisions related to a range of programs for low-income families and other domestic programs, and to redirect funds from one program to another.¹⁴

- **The waiver plan raises serious questions about how the demonstration would be designed and managed.**

Unlike a normal waiver project, the plan appears to give states little control over the marriage projects. According to the documents, HHS does not plan to publish an announcement of its demonstration plans to states, since selections will not be based on a competitive solicitation. Instead, HHS plans to target certain states, with “input from state leaders.” The documents specify that HHS will design the program and select community and faith-based organizations to receive demonstration funds, but they do not specify how a competitive selection process would be used at the local level. The documents state that decision-making authority over the project is placed with a “coalition” of community-based and faith-based organizations, local, state and federal agencies, rather than the state agency accountable for the use of child support funds. Similarly, authority over the project appears diffused at the federal level, with a committee of Administration for Children and Families program offices responsible for project oversight, rather than the federal Office of Child Support Enforcement.

- **The waiver plan opens the door to paying for marriage programs with child support funds, raising serious concerns about future funding competition between child support and marriage activities.**

Although the child support program is funded through an open-ended funding stream at the federal level, state child support programs have difficulty securing adequate matching funds at the state level. Consequently, the child support program has been chronically underfunded. This funding pressure will likely be exacerbated as state child support programs move to reform their distribution rules, and replace lost child support revenues. If states are encouraged to pay for marriage programs with child support funds, child support program performance could quickly begin to suffer. The research shows that child support performance and funding levels are directly related.¹⁵

Thank you for this opportunity to testify. Please let us know if we can provide any additional information.

¹ Since most custodial parents are mothers and most non-custodial parents are fathers, this testimony uses the term mother interchangeably with custodial parent and father with non-custodial parent. The situation can be, and sometimes is, reversed. About 15 percent of custodial parents are fathers.

² MDRC, *Encouraging the Formation and Maintenance of Two-Parent Families: Experimental Evidence on Welfare Reform*, 2000.

³ Sorensen and Zibman, *Child Support Offers Some Protection Against Poverty*, Urban Institute, 2000.

⁴ Formoso, *Child Support Enforcement: Net Impacts on Work & Welfare pre- & post-PRWORA* (Washington State, 2000)

⁵ Sorensen and Zibman, 2000.

⁶ Sorensen and Zibman, 2000; Sorensen and Halpern, *Child Support Enforcement is Working Better Than We Think*, Urban Institute, 1999; Garfinkel, et al., *Child Support Enforcement: Incentives and Well-being*, Joint Center for Poverty Research, 2000.

⁷ Barnow et al., *The Potential of the Child Support Enforcement Program to Avoid Costs in Public Programs: A Review and Synthesis of the Literature* (2000).

⁸ Meyer and Cancian, *W-2 Child Support Demonstration Evaluation, Report on Nonexperimental Analyses: Fathers of Children in W-2*, Vol. II, Institute for Research on Poverty, March 2002; Knox and Redcross, *Parenting and Providing: The Impact of Parents' Fair Share on Paternal Involvement*, MDRC, 2000.

⁹ Bloom, et al, WRP: Implementation and Early Impacts of Vermont's Welfare Restructuring Project, MDRC 1998.

¹⁰ Daniel R. Meyer and Maria Cancian, *W2 Child Support Demonstration Evaluation: Phase I: Final Report* (Madison, Wisconsin: University of Wisconsin, Institute for Research on Poverty, April 2001).

¹¹ See Turetsky, *Reauthorization Issues: Child Support Distribution Accounting "Buckets,"* CLASP, 2002.

¹² HHS Office of Inspector General, *Distributing Collected Child Support to Families Exiting TANF*, OEI-05-01-00220, Oct. 2001.

¹³ For a list of state pass-through policies, see Paula Roberts, *State Policy re Pass-through and Disregard of Current Month's Child Support Collected for Families Receiving TANF-Funded Cash Assistance*, CLASP, 1999.

¹⁴ Greenstein and Fremstad, "Superwaiver" Would Grant Executive Branch And Governors Sweeping Authority To Override Federal Laws, May 13, 2002.

¹⁵ See, eg., Fishman, et al., *Preliminary Assessment of the Association between State Child Support Enforcement Performance and Financing Structure*, Lewin Group, 2000; Turetsky, *You Get What You Pay For: How Federal and State Investment Decisions Affect Child Support Performance*, CLASP, 1998.