

**Testimony of
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**House Ways and Means Subcommittee on Human Resources
“State TANF Spending and Its Impact on Work Requirements”
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Good afternoon Chairman Davis, Ranking Member Doggett, and distinguished members of the Subcommittee. Thank you for inviting me to testify on the impact of State TANF spending on TANF work requirements.

I am currently the Senior Vice President of ResCare Workforce Services. ResCare is a human services company with operations nationwide. We are dedicated to helping people achieve their highest level of self-sufficiency. However, today I wish to offer a few insights from my role as the former Deputy Director of the Office of Family Assistance, Administration for Children and Families, U.S. Department of Health and Human Services, the agency overseeing the Temporary Assistance for Needy Families (TANF) program. In particular, I am here to discuss a few specific TANF provisions—state spending requirements created during the welfare reform in 1996, known as “Maintenance of Effort” or “MOE” requirements, the counting of state and third-party spending toward MOE requirements, and the impact of that state spending on work participation rates.

The Creation of TANF and the Purpose of MOE

Work Requirements

A major focus of welfare reform was to support and encourage work. To ensure that states helped families enter the workforce, Congress established a work requirement obliging states to engage families in work and job preparation activities for 30 hours per week. To avoid financial penalties and receive their full block grant, states needed to have at least 50 percent of their work-eligible caseload meet these work requirements. In addition, states received credit toward meeting this new 50 percent requirement if they reduced their caseloads over time. The strategy was designed to increase the number of people in the workforce and reduce the number of families dependent on subsidies.

Maintenance of Effort

When welfare reform was enacted, there was concern that by making TANF a block grant states would lose their incentive to spend their own funds in the TANF program. To address this, Congress established a “Maintenance of Effort” or “MOE” requirement to ensure state spending continued. It also codified the Federal/State financial partnership, ensuring that both parties remained invested in helping families become self-sufficient.

According to the House Report¹ on the final welfare reform bill, the Committee noted:

“The family assistance block grant program provides states with broad new flexibility in the use of Federal funds to operate their statewide welfare programs. In general, there are few restrictions on the use of state funds. However, because the current welfare system requires state matching of Federal funds, some have expressed the concern that states should be forced to maintain a certain level of spending in order to receive full Federal funding. Thus the committee proposal requires states to maintain 75 percent of prior funding levels on related welfare programs over the early years of the block grant program. This level is designed to allow states that are successful in reforming welfare and moving families into work to achieve considerable savings, while also guaranteeing that a basic national safety net remains in place in every state.”

TANF Reauthorization in the Deficit Reduction Act

After welfare reform, TANF caseloads fell dramatically. Child poverty declined, unmarried birth rates fell, and many welfare recipients went to work. While this indicated the success of the program, it also meant that the substantial caseload declines eroded the 50 percent work requirements. As stated in testimony to this Subcommittee in March of 2007, due to this caseload decline, “in FY 2004 [the latest data available at the time testimony was given], 17 States and two Territories faced an effective overall participation rate of 0 percent, and nationally the adjusted target due to caseload reduction was only 6 percent.” So the success of the program and the unforeseen generosity of the credit, led many states to have no work requirement at all. The states that did have a work requirement needed only six people out of every 100 on average to meet the requirements to succeed.

Congress passed the Deficit Reduction Act of 2005 to address these issues and strengthen the work requirements to ensure states move more families from welfare to work. The bill “reset” the credit states received for reducing caseloads, so in future years work requirements would only be reduced if their caseloads fell from FY 2005 levels. Along with other changes, the new requirements meant most states had to significantly increase their efforts in engaging families in work. States would have needed, on average 40 people out of every 100 to meet their work requirements to succeed.

State Use of “Excess MOE” Credits

When the strengthened work requirements and other new policies became law, states began determining how they could satisfy the new requirements. As intended, many states reviewed their caseloads and worked harder to help families find work and leave welfare. However, states also found other creative ways to meet the Federal requirements. One way was a little-known provision from a 1999 Federal regulation which became known as “excess MOE” or Maintenance of Effort.

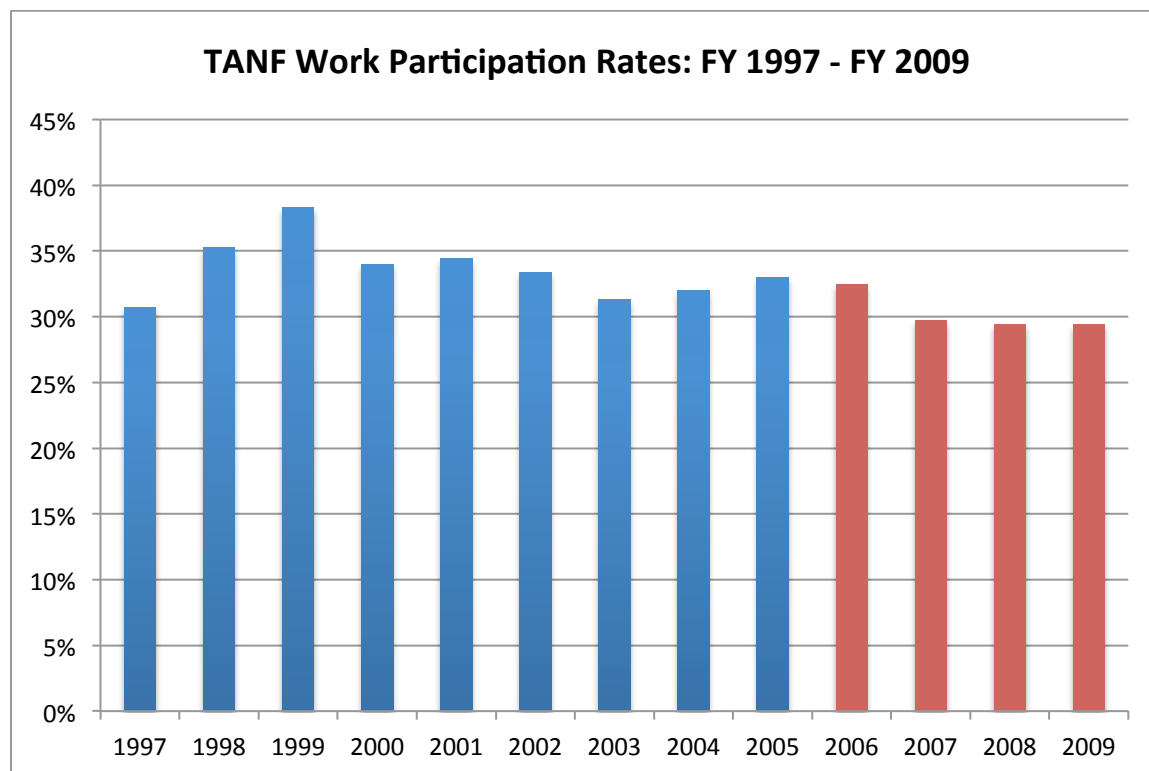
Under Federal law states must maintain a minimum level of state spending in the TANF program or “Maintenance of Effort.” After TANF was created, there were debates in the Administration

¹ House Report 104-651. Welfare and Medicaid Reform Act of 1996: Report of the Committee on Budget to Accompany H.R. 3734.

about some of the MOE provisions during the regulatory process and how they would function. In the 1999 final published regulations, the Department of Health and Human Services (HHS) included a new policy about state spending beyond the required MOE level, calling it “excess MOE.” Under this policy, a state that reported spending more than their required level would get credit that would lower their work rate, similar to how a state could earn credit toward their work rate by reducing their caseloads over time. In short, the idea was that if states spent more than required and therefore may have had a higher caseload than if they spent only the required amount, HHS would not count those “extra” cases against them. HHS developed a formula that would reduce a state’s work requirement in proportion to the excess MOE spending it reported.

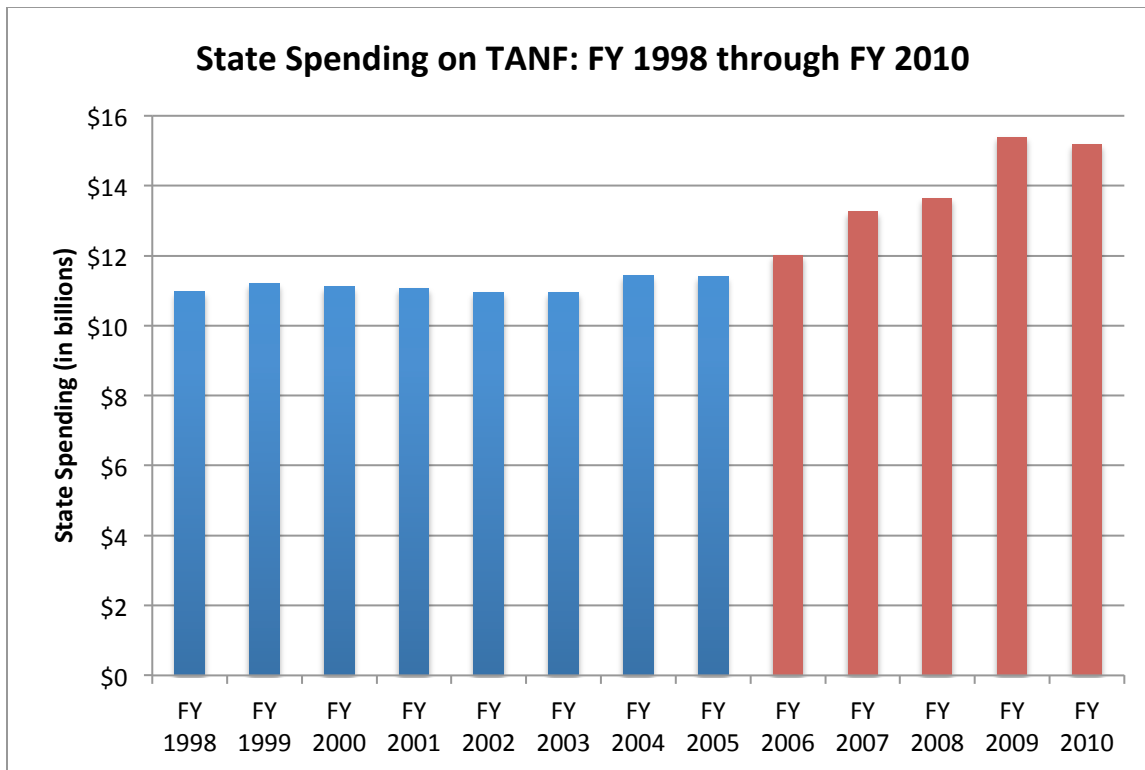
This provision was virtually unknown in 2006 when the DRA became law. At the time, only one state had used excess MOE credit to reduce work participation requirements. I was the Deputy Director of the office drafting regulations on the DRA at the time, and as the implementation of these regulations began, we soon saw the provision, which had lain dormant since TANF’s inception, become a much bigger issue. The following graphics illustrate what happened to the work rates and state spending.

First, in the chart below, work requirements were almost unchanged after DRA. In fact, they declined slightly from prior years (post-DRA years shaded red).



Source: TANF Work Participation Data, Administration for Children and Families

In the second chart, it appears state spending increased dramatically (post-DRA years shaded red).



Source: ACF-196 financial data reported annually by States

Impact of Excess MOE on Work Requirements

What caused this dramatic increase in what had been relatively stable spending in past years? Why would states suddenly report significant increases in spending? One reason is because using the excess MOE provision allowed them to meet their work rate without having to put a single person into a job or job preparation activities.

In the years after DRA passed, states began reporting increasingly higher levels of state spending leading to more excess MOE. In FY 2004, only one state reported spending more than 100 percent of their required MOE level. By FY 2009, 23 states were reporting spending more than 100 percent of the required level. This resulted in large excess MOE claims that reduced work rate requirements for many states. The larger the excess MOE, the greater the credit against the work rate, which results in fewer recipients needing to find work in order to avoid penalties.

One of the main components of the Deficit Reduction Act was to “reset” the credit to ensure states engaged more families in work activities. But the intended impact of the DRA appears to have been mitigated because of excess MOE. In FY 2004, there were 19 jurisdictions (17 states and two territories) that had no work requirement, a fact often cited as a reason for strengthening work requirements. But after the DRA, and because of this excess MOE provision, there were even more jurisdictions—22 (21 states and one territory)—that had no work requirement. Instead of more recipients working, work participation rates have declined since the DRA and more than half of all TANF recipients have not been required to work for any amount of time over an entire year. GAO pointed out in a September 2011 report that in FY 2009, 32 of the 45 states meeting work rates claimed at least some credit for excess MOE spending, and 17 would not have met

their work participation requirements without the credits, which would have resulted in penalties.

Counting State and Third-Party Spending as TANF MOE

State Spending on Related Programs

States expanded their examination of all state expenditures that might meet a TANF purpose and could be reported as TANF spending. This is legitimate under current program rules, although the state must attest that the spending they report is either for a new program created after FY 1995, or that the amount exceeds the FY 1995 spending levels (called the “new spending test”).

For example, some states began new child care or after school programs, pre-kindergarten classes, or state-funded Earned Income Tax Credit programs after welfare reform became law. Although most had not decided to report this spending as MOE in the past, the strengthened work requirements in the DRA caused many states to look for and report these expenditures as part of the TANF program.

One state reviewed its expenditures across 44 state programs and secured enough excess MOE to avoid a work participation rate penalty in 2007. While just under \$90 million (over 200+ percent of minimum MOE requirement) in TANF spending was needed to avoid the penalty, the state actually identified additional “untapped” TANF spending of over \$1.7 billion.

Third-Party Spending

In 2004, while I was working at HHS on TANF policy, our agency was asked to clarify whether third-party cash or in-kind spending could count as state spending in the TANF program. Because of existing regulations, it was determined that these expenditures could be claimed as MOE. At the time, this was not seen as monumental, as it simply reiterated the way third-party spending could be counted in TANF and many other programs. States looked at excess MOE as a way to account for these services and the claiming of third-party spending has increased substantially.

Let me provide two examples of how a state would claim third-party expenditures as TANF MOE:

1. Food bank: A nonprofit decides to open a new food pantry in the state. The food bank primarily serves low-income families, many with children. Seeking to increase the state’s TANF MOE, the state contacts the nonprofit and sets up an agreement under which certain food bank expenditures are counted as TANF spending. The state believes this service meets one of the purposes of the TANF program. The food bank estimates the value of the food provided to families to be \$2 million over the year. They also estimate that half of the food boxes given out went to families with children. As a result, the state could now report to the Federal government \$1 million in TANF MOE spending, provided by the food bank.
2. Volunteer hours: An urban school district has recently set up an after school program for elementary school children staffed by volunteers from the community. Because the purpose of the program is to keep kids constructively engaged and to teach life skills, the

state determines this activity meets one of the TANF purposes. The state signs an agreement with the district to monetize the value of volunteer time provided. The district determines that volunteers donated over \$1 million in volunteer time to the program, and the state reports this \$1 million as TANF MOE spending.

As you can see, claiming of third-party spending can be quite broad, and can include many things that most would likely not label as “spending” in the traditional sense. In addition, the potential sources from which to collect third-party spending is vast and these sources will likely expand as new programs are created and more current programs are discovered.

While the claiming of third-party spending has undoubtedly increased since the passage of DRA, HHS has recently blocked some states from what they believed were beyond the bounds of the TANF program. In one case, a state calculated the value of free emergency medical care provided to low-income families and claimed this as state TANF spending. HHS rejected the state’s claim, noting that the costs represented foregone revenue, not TANF spending. HHS also disagreed with the methodology used to estimate the amount and did not allow the claim.

In another case, a state estimated the value of oil spill compensation payments to families made by a private company, and then sought to claim these dollars as TANF MOE spending. HHS also rejected this claim, saying both that the payments did not qualify as TANF spending and that the estimation methodology did not meet established guidelines for “reasonable estimates.”

Concerns About State Spending

What are the concerns with these provisions?

- a. Work rates are undermined - spending more means lowering or removing work requirements
- b. Counting spending in other areas (state pre-k, pregnancy prevention, youth after-school activities, etc.) may supplant real TANF dollars
- c. Counting expenditures that are not really cash outlays as though they are may divest the program without it appearing like funds are being lost

Conclusion

In closing, let me point out that none of these practices are illegal. None of them are questionable according to current policy. States cannot be blamed for working within the rules and regulations to meet Federal requirements. However, based on my experience in overseeing the TANF program and implementing the Deficit Reduction Act regulations, I believe that this combination of factors has resulted in weaker work requirements, less investment in TANF families, and fewer families becoming self-sufficient.

In the fall of 2008, HHS agreed that this excess MOE provision should be eliminated and proposed doing so. However, the policy has continued.

I appreciate the Subcommittee’s interest in this issue, and I hope that all members of this Subcommittee—and this panel—can work together to ensure that TANF achieves its intended

results. TANF has previously been cited as one of the most effective social reforms in our nation's history. I hope that it will continue to be seen as a critical Federal/State partnership that is successful in helping more and more low-income families move from welfare to work.

I look forward to answering any questions you might have.