The JOBS for Success Act:
A Noble but Futile Attempt to Reform "Welfare Reform"

Peter Germanis[1]

June 16, 2018

Many conservatives believe the 1996 welfare reform law, particularly the creation of the Temporary Assistance for Needy Families (TANF) block grant with its work requirements has been an unprecedented success and is a model for reforming other safety net programs. While the 1996 law sent a symbolic message about the importance of work requirements and time limits, neither of these elements have been implemented in the way Congress intended. In fact, TANF is not "welfare reform" at all, but a flexible funding stream that has failed to provide an adequate safety net or an effective welfare-to-work program.

Ron Haskins, the architect of the 1996 law, now cautions, "Congress and the administration would be well advised to carefully consider ways TANF could be reformed to minimize the game playing that many states now use to avoid spending TANF dollars on core TANF purposes and to avoid the federal work requirement."[2] On May 24, 2018, the House Ways and Means Committee passed the "Jobs and Opportunity with Benefits and Services (JOBS) for Success Act" that attempts to address these very concerns.

The legislation recognizes that TANF has become a form of revenue sharing. It would require states to spend at least 25 percent of their federal JOBS grants and state maintenance-of-effort (MOE) funds on "core" activities, limit aid to families with incomes below 200 percent of poverty, prohibit states from further using federal funds to supplant existing state expenditures, and add other accountability measures. These reforms are a step in the right direction, but are too modest to ensure that TANF would become a meaningful cash assistance safety net and welfare-to-work program. Even a requirement to spend 100 percent on core activities and limit aid to families with incomes below 100 percent of poverty would not be enough to reverse the damage caused by the 1996 law, but it would at least be a real step in that direction.[3]

The legislation would also replace TANF's work participation rate requirement with a performance measurement system that assesses success based on meeting certain, negotiated employment-related outcomes and a requirement for "universal engagement." Unfortunately, because the bill fails to address TANF's underlying structural problems, stemming from the block grant structure and excessive state flexibility, many states are likely to game these requirements, rendering it another in a series of failed attempts to reform "welfare reform."

This paper is not intended to be a full assessment of the JOBS for Success Act. Its main purpose is to illustrate how easily states *could* game the universal engagement and performance accountability provisions by placing families with a work-eligible individual in a solely state funded program. This problem is not unique to this legislation; states would likely respond this way to any attempt to strengthen work requirements or impose other requirements within the block grant structure.

For one attempt to really "fix" TANF's problems, and not just treat their symptoms, see:

- *TANF is Broken! It's Time to Reform "Welfare Reform" (And Fix the Problems, Not Treat their Symptoms)*, pp. 79-86, July 25, 2015 draft, available at: https://petergermanis.com/wp-content/uploads/2020/09/TANF-is-Broken.072515.pdf.

The JOBS for Success Act

The JOBS for Success Act would make a number of reforms to TANF, but the three most significant would:

- Require states to spend 25 percent of their block grant and related MOE expenditures on "core" activities (defined as assistance, work activities, work supports and support services, case management, and non-recurring short-term benefits).
- Replace the work participation rate with a "universal engagement" requirement to ensure that all work-eligible individuals are assessed by a case manager and participate in activities designed to promote their employment, earnings, and other outcomes. The bill would retain TANF's current requirements pertaining to expected hours of participation, but would provide more flexibility in the activities permitted to count toward engagement. However, because there is no explicit penalty, this may be nothing more than a paper requirement.
- Hold states accountable for employment-related outcomes; failure to achieve specified outcome targets could result in financial penalties, as under current law for failure to meet the work participation rate requirements.

These provisions address some of TANF's more problematic features – the diversion of spending from core welfare reform purposes and the gaming of work requirements. According to a blog on the Ways and Means Committee web site:

> The JOBS for Success Act restores the promise of work from the bipartisan welfare reforms of 1996. Underscoring this objective, our legislation renames TANF to the Jobs and Opportunity with Benefits and Services (JOBS) program to reflect our commitment to the priority of work and what it does for families.
>
> By increasing transparency and holding states accountable, we ensure taxpayer dollars are used to support work. What is currently a participation-based system is transformed to focus on results – more parents getting and keeping a job.[4]

Politicians made similar promises after the last major TANF reauthorization – the Deficit Reduction Act of 2005 – which attempted to strengthen work requirements by closing various loopholes only to find that states discovered new ones.[5] If the JOBS for Success Act were to become law, the "loophole" of choice would be the solely state funded program – and it could be used to fully avoid the new universal engagement and performance accountability provisions. Indeed, it is likely to be used by many states to do just this, though perhaps not immediately. (The extent to which states game the new requirements depends on how they are implemented; in particular, if the benchmarks are easy to meet and the risk of a penalty is low, then the need to avoid them is minimized.)

Gaming the JOBS for Success Act's New Work-Related Requirements

TANF replaced several programs that provided matching grants to states with a fixed block grant and a requirement that states continue to invest their own funds. Under TANF's basic MOE requirement, states must spend 80 percent of what they spent in fiscal year (FY) 1994 under TANF's predecessor programs for cash assistance, emergency assistance, work activities, and welfare-related child care. This minimum percentage is reduced to 75 percent if states meet their work participation rate target(s).

Most states can easily meet their basic MOE requirement because the spending thresholds have not been adjusted for inflation and because states can count a wide range of third-party spending that is "reasonably calculated" to meet a TANF purpose, subject to certain restrictions.[6] Indeed, many states have found it advantageous to generate "excess MOE," i.e., to report spending above the basic MOE level because such spending can be used to increase the caseload reduction credit, which in turn lowers their work participation rate target(s). The JOBS for Success Act does away with the work participation rate requirements, so the need to report "excess MOE" for this purpose would no longer exist.

The fact that states can easily meet their basic MOE requirement is significant for another reason. When states have more expenditures than they need that could count as MOE, they can be selective about which expenditures they report to meet the basic MOE requirement (and thus are subject to TANF's rules) and which they don't. Some states have chosen not to claim expenditures for families receiving assistance that could count as MOE to avoid having them included in the work participation rate calculation. The excluded families are typically those that are not participating in a countable work activity (or do not have enough hours to count).

Most states have some experience with solely state funded programs – about half use them for their two-parent caseload to avoid its 90 percent work participation rate target. Some states place hard-to-serve individuals or those participating in activities that don't count toward the work participation rate. For example, in Illinois, in FY 2014, the average monthly number of families receiving assistance in a solely state funded program actually outnumbered the number of TANF families (24,349 in solely state funded programs vs. 20,050 in TANF).[7] The single largest of these programs was called "Single Parent Cases Not in A Countable Activity Paid with State Only Funds." The number of states relying on solely state funded programs to game federal work requirements, and their reliance on this strategy, would be greater, but for an array of other loopholes available, such as the caseload reduction credit (and its "excess MOE" provision) and token payments. (These strategies are discussed at length elsewhere.[8])

The JOBS for Success Act would replace the work participation rate with an outcome-based performance accountability system focused on measures of job entry, retention, and advancement. States would still be expected to collect and report detailed data on program participation, but penalties for failure to meet performance targets would be based on meeting negotiated employment-related outcome targets, rather than participation rates. States are likely to find the new approach administratively burdensome and it could put them at *increased* risk of a financial penalty.[9] Thus, many states are likely to look for ways to avoid the bill's new requirements were it to become law.

The most obvious loophole is the creation of a solely state funded program for the subset of families receiving assistance that include a work-eligible individual. The ease with which states can do this is illustrated by way of two state examples – Wisconsin and Texas. The examples use actual data for FY 2016 and examine how each state might have used the solely state funded strategy if the bill's requirements had applied at that time. The examples make a number of simplifying assumptions, described in more detail in the endnotes, though none materially affect the results or conclusions. Table 1 below starts with Wisconsin and walks through the calculation step by step.

Step 1. Calculate the amount spent on core activities. A central feature of the JOBS for Success Act is the requirement that 25 percent of TANF/MOE funds be spent on "core" activities. The table shows spending on each of the components of this requirement. In the column labeled "Before Shift," the table shows total spending on core activities in Wisconsin of $172,683,745.[10] (The assistance component shows the subtotals for federal spending and state MOE spending; this is important, because the solely state funded program will be created by shifting families with a work-eligible individual from an MOE-funded program to a solely state funded program.)

Step 2. Calculate the denominator for the core activities requirement. For this example, the denominator is the federal block grant[11] plus the basic MOE spending requirement (at the 80 percent level),[12] rather than actual MOE spending, as states would no longer have a reason to report "excess MOE."[13] The denominator for Wisconsin is $491,971,534.

Step 3. Ensure that the state is spending at least 25 percent of TANF/MOE funds on core activities. Assistance is one of the key components of the 25 percent requirement; if the state did not spend at least 25 percent on core activities, shifting assistance spending to a solely state funded program would not be possible. Wisconsin spent 35.1 percent of its TANF and MOE funds (using the denominator in step 2) on core activities *before* the shift.[14]

Step 4. Calculate the amount of assistance spending for families with a work-eligible individual. In FY 2016, the average monthly TANF/MOE caseload in Wisconsin was 19,017 families, including 7,386 with a work-eligible individual.[15] The annual cost of assistance for families with a work-eligible individual is estimated by multiplying the average monthly caseload by the average monthly TANF grant[16] by 12. This results in an estimated $33,857,424 in assistance expenditures. If the state spends at least this much of its MOE on assistance and has enough "excess MOE" (step 5), this amount could be reclassified as a solely state funded program.

Step 5. Determine whether the amount of "excess MOE" is greater than the amount needed for the solely state funded program. In FY 2016, Wisconsin's basic MOE requirement (at the 80 percent level) was $178,075,532; the state exceeded this amount by $81,036,443, presumably to enhance its caseload reduction credit. The state could reduce its reported MOE by up to this amount and still meet its basic MOE requirement. This is the maximum amount the state could shift to a solely state funded program (absent identifying any new expenditures that qualify as MOE). This amount easily exceeds the amount needed to create the solely state funded program.

Step 6. Make the shift and ensure that the state still meets the core activities spending requirement. In the column labeled "After Shift," the total amount of spending for assistance (and the MOE subtotal) is reduced by the cost of the solely state funded program. This amount will reduce the percentage spent on core activities and could place the state at risk of not meeting the 25 percent core activities requirement. In this example, the amount is reduced to 28.2 percent.

Table 1
Gaming the Universal Engagement and Performance Accountability Requirements: The Solely State Funded Loophole
(Wisconsin, 2016$)

	Before Shift	**After Shift**
Assistance	$84,060,943	$50,203,519
Federal	$8,151,738	$8,151,738
Maintenance-of-Effort (MOE)	$75,909,205	$42,051,781
Work Activities	$34,526,873	$34,526,873
Work Supports	$1,891,642	$1,891,642
Support Services	$11,782,002	$11,782,002
Non-Recurring Short-Term Benefits	$38,783,634	$38,783,634
Case Management	$1,638,651	$1,638,651
Total Spent on Core Activities	$172,683,745	$138,826,321
Denominator (Block Grant + Basic MOE)	$491,971,534	$491,971,534
% Spent on Core Activities	35.1%	28.2%
Families Receiving Assistance	19,017	11,631
Families w/ Work-Eligible Individual (WEI)	7,386	0
% Families with a WEI	38.8%	0%
Assistance Spent on Families w/WEI	$33,857,424	$0
Potential Excess MOE (80% MOE req.)	$81,036,443	$47,179,019

Sources and assumptions: see endnotes.

With the stroke of a pen, Wisconsin could have avoided the bill's new requirements by simply rearranging how it funds assistance for a subset of its assistance caseload – families with a work-eligible individual.

Table 2 below repeats the same calculations for Texas. Like Wisconsin, Texas can shift its entire caseload of families with a work-eligible individual to a solely state funded program and avoid the bill's new universal engagement and performance outcomes requirements. Unlike Wisconsin, Texas already has experience with the solely state funded "loophole" – it funds its entire two-parent caseload this way.[17]

Table 2 Gaming the Universal Engagement and Performance Accountability Requirements: The Solely State Funded Loophole (Texas, 2016$)		
	Before Shift	**After Shift**
Assistance Federal Maintenance-of-Effort (MOE)	$142,202,822 $93,945,511 $48,257,311	$109,426,442 $93,945,511 $15,480,931
Work Activities	$85,078,490	$85,078,490
Work Supports	$3,716,122	$3,716,122
Support Services	$0	$0
Non-Recurring Short-Term Benefits	$3,695,334	$3,695,334
Case Management	$0	$0
Total Spent on Core Activities	$234,692,768	$201,916,388
Total Spending (Block Grant + Basic MOE)	$737,697,556	$737,697,556
% Spent on Core Activities	31.8%	27.4%
Families Receiving Assistance	29,567	20,896
Families w/ Work-Eligible Individual (WEI)	8,671	0
% Families with a WEI	29.3%	0%
Assistance Spent on Families w/WEI	$32,776,380	$0
Potential Excess MOE (80% MOE req.)	$153,929,206	$121,152,826

Sources and assumptions: see endnotes.

The Wisconsin and Texas examples are interesting because of the role the states' politicians (Speaker Ryan and Ways and Means Chairman Brady, respectively) play in the welfare reform debate. They also happen to work out well for the point that is being made, because both states funded a considerable share of their assistance costs with MOE funds and both have reported MOE expenditures well in excess of their basic MOE requirement. These conditions did not apply everywhere. However, even where states fund assistance primarily with federal dollars and/or have little or no "excess MOE," it may be relatively easy to adjust funding streams or find additional state expenditures that could be claimed as MOE to then permit the creation of a solely state funded program.

Advantages of the Solely State Funded Program Option

Solely state funded programs would be the rational choice for many states for four reasons.

First, the caseload of families with a work-eligible individual has plummeted since TANF's creation (particularly if one excludes those cases added with token payments to artificially inflate the work rate). This means the cost of creating a solely state funded program is relatively low.

Second, the penalty for failure to meet the new performance outcomes targets could be as high as 5 percent of the block grant the first year (rising to up to 21 percent for repeated failures). Some states spend less on assistance for families with a work-eligible individual than the potential penalty they would face.

Third, the cost of implementing the new case management, universal engagement, and performance outcomes requirements could be significant. States can completely avoid these costs by shifting families to solely state funded programs were none of these rules apply.

Fourth, when states serve families through a solely state funded program, they can adopt whatever participation and outcome rules fit their needs the best, rather than having a particular set of rules forced on them from the federal government.

There are provisions in the bill that mitigate against this type of gaming. The 25 percent core activities requirement and the ban on future supplantation with federal funds are perhaps the two most important. However, the 25 percent threshold is low and states might find new ways to fill it, e.g., by reclassifying refundable tax credits as non-recurring short-term benefits as they did with the Emergency Contingency Fund[18] or artificially reducing the size of the solely state funded program by reclassifying some portion of the payments families receive as diversion payments (and thus counting them as non-recurring short-term benefits).

The solely state funded program "loophole" is not unique to the JOBS for Success Act. Any attempt to strengthen the existing work participation rate structure that does not address the block grant structure and excessive state flexibility will likely to lead to the same result.

Conclusion

The JOBS for Success Act raises important questions about TANF's effectiveness, but it does not "fix" the problems, it merely treats their symptoms. Perhaps most important, it does little to reestablish the cash assistance safety net that was shredded by a combination of its unreasonable work requirements and a fixed block grant.

[1] The views in this document reflect my own as a citizen and do not reflect the views of any organization I am now or have ever been affiliated with. By way of background, I am a conservative and have worked on welfare issues for the Heritage Foundation, the American Enterprise Institute, and the White House under both President Reagan and President George H.W. Bush. This paper assumes the reader has a basic understanding of the TANF program, but for those readers who want more context and background, see Peter Germanis, *TANF is Broken! It's Time to Reform "Welfare Reform" (And Fix the Problems, Not Treat their Symptoms)*, July 25, 2015 draft, available at: https://petergermanis.com/wp-content/uploads/2020/09/TANF-is-Broken.072515.pdf.

[2] Ron Haskins, "TANF at Age 20: Work Still Works," *Journal of Policy Analysis and Management*, Winter 2015, available at: https://petergermanis.com/wp-content/uploads/2020/09/Haskins2015Age.pdf.

[3] Even spending 100 percent on core activities represents a reduction in funding of over one-third due to the failure to adjust for inflation, particularly given the fact that the number of poor families with children and families eligible for TANF cash assistance was about the same in 2016 as in 1996.

[4] U.S. House of Representatives, Committee on Ways and Means, "Reforming Welfare and Expanding Opportunity for Low-income Families," June 8, 2016, available at: https://waysandmeans.house.gov/reforming-welfare-and-expanding-opportunity-for-low-income-families/.

[5] The DRA recalibrated the base year for the caseload reduction credit (from FY 1995 to FY 2005), added families in separate state programs to the work rate calculation, and changed the group required to participate from families with a "TANF adult" to families with a "work-eligible individual" (adding non-recipient parents whose children receive assistance); states responded by shifting to new loopholes – generating "excess MOE" to inflate the caseload reduction credit, shifting families to solely state funded programs, and making "token payments" to families with an individual working full-time but otherwise with no connection to the cash assistance caseload to artificially inflate the work rate.

[6] See Gene Falk, The Temporary Assistance for Needy Families (TANF) Block Grant: A Primer on TANF Financing and Federal Requirements, Congressional Research Service, December 14, 2017, available at: https://fas.org/sgp/crs/misc/RL32748.pdf.

[7] Illinois Department of Human Services, "TANF Caseload Reduction Credit Report FY 2015," December 2, 2014, available at: https://www.dhs.state.il.us/page.aspx?item=41152.

[8] Peter Germanis, "The Failure of TANF Work Requirements: A *Much Needed* Tutorial for the Heritage Foundation and the American Enterprise Institute," August 7, 2016, available at: https://petergermanis.com/wp-content/uploads/2021/02/The-Failure-of-TANF-Work-Requirements.pdf.

[9] Most states have developed strategies to game TANF's work participation rate requirements; an outcomes-based accountability system could also be gamed, but the results of such gaming would be more uncertain because there are fewer loopholes and outcomes are more sensitive to other factors, such as economic conditions and the demographic characteristics of the caseload. The degree of risk also depends on the details of the performance measurement system and the penalty structure developed for states that fail to meet negotiated targets.

[10] The amounts listed here come from TANF financial data report for FY 2016; see: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance, "TANF Financial Data – FY 2016," February 1, 2018, available at: https://www.acf.hhs.gov/sites/default/files/ofa/tanf_financial_data_fy_2016_121817.pdf. The line for "assessment/service provision" is used as a proxy for the cost of case management. The estimates here do not reflect possible shifts states may adopt to expand spending on core activities, e.g., counting refundable tax credits as non-recurring short-term benefits, as many did to qualify for Emergency Contingency Funds.

[11] The bill requires that a state spend 25 percent of each grant award on core activities. Since states have some ability to carryover funds and save some in a rainy day fund, it may be many years before a final reconciliation is made. This example just assumes that the federal spending requirement is a straight 25 percent of the block grant each fiscal year. For Wisconsin, the block grant is $313,896,002; for Texas it is $486,256,752.

[12] For states that meet the performance requirements the MOE requirement would be 75 percent of historic spending. For states that fail or avoid them, the requirement would be 80 percent of historic spending. These examples assume the latter. For Wisconsin, the basic MOE requirement would be $178,075,532; for Texas it would be $251,440,804.

[13] Indeed, reporting more MOE than needed to meet the basic MOE requirement would raise the amount a state would need to spend on core activities.

[14] The bill may require 25 percent for federal and MOE funds separately; these examples assume the state can make any shifts necessary between federal and MOE spending to account for this possibility.
[15] U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance, "TANF Work Participation Rates – Fiscal Year 2016, Table 3A, September 7, 2017, available at: https://www.acf.hhs.gov/sites/default/files/ofa/wpr2016.pdf.
[16] There are many factors that affect the value of the benefit, e.g., family size, the presence of earnings, and whether a work or other sanction has been applied. It is not possible to estimate the amount of assistance spent on families with a work-eligible individual from publicly available data, so the average monthly benefit multiplied by 12 is used to estimate the annual cost. In Wisconsin, this is $381; in Texas it is $315. U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance, *Characteristics and Financial Circumstances of TANF Recipients Fiscal Year (FY) 2016*, October 26, 2017, available at: https://www.acf.hhs.gov/sites/default/files/ofa/fy16_characteristics.pdf.
[17] See, for example, the ACF-202 caseload reduction credit report for the state of Texas at: https://hhs.texas.gov/sites/default/files//documents/about-hhs/records-statistics/research-statistics/methodology-caseload-reduction-report.pdf.
[18] The Emergency Contingency Fund was a temporary funding stream enacted during the Great Recession. States could receive additional federal funds if they increased their spending in FYY 2009 and FY 2010 (relative to a base period) on assistance, non-recurrent short-term benefits, and/or subsidized employment.