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New TANF Law Provides Additional Funds for Katrina Relief: Key Improvements Still Needed

by Mark Greenberg

Congress has enacted the TANF Emergency Response and Recovery Act of 2005, P.L. 109-68. The law contains positive provisions that will make additional TANF funds available to states to help families affected by Hurricane Katrina. However, certain parts of the law will result in needless complexity and reduce the law's effectiveness. Senators Grassley and Baucus have introduced a bill to address concerns about several provisions of P.L. 109-68, and the Senate may be acting on the Grassley-Baucus modifications in the near future.

P.L. 109-68 provides Louisiana, Alabama, and Mississippi with access to additional TANF funds, representing 20 percent of their current block grants, and also gives all states access to the TANF contingency fund for 100 percent federal reimbursement for costs of nonrecurrent short-term cash benefits provided to families affected by Hurricane Katrina who have moved to the state. The proposed Grassley-Baucus modifications would increase total funding available in the three directly affected states, and would make the contingency fund available for any allowable TANF benefits and expenditures for families affected by the hurricane and that have moved to other states.

This document:

- summarizes P.L. 109-68 and notes questions about how to interpret several provisions;
- summarizes the changes being sought by Senators Grassley and Baucus;
- discusses why we recommend that Congress adopt the Grassley-Baucus provisions and several additional modifications.

What Does the TANF Emergency Response and Recovery Act Do?

The TANF Emergency Response and Recovery Act includes the following provisions.

- **Extends TANF funding for the next quarter for all states.** The law extends TANF funding for all states through December 31, 2005 and says that the next quarter's grants should be paid to states as soon as practicable after the law is enacted. (TANF funding continues to be provided through a series of short-term extensions while reauthorization remains pending; current funding had been scheduled to expire October 1.)

- **Provides additional funding in the form of loans, while waiving any penalty for nonrepayment, for Alabama, Louisiana, and Mississippi.** Each of these states qualifies for amounts up to 20 percent of their basic block grants: $18.7 million for Alabama, $32.8 million for Louisiana, and $17.4 million for Mississippi.

- **Provides all states with access to the TANF contingency fund for nonrecurrent short-term cash benefits provided to Katrina survivors.** Any state can qualify for 100 percent federal reimbursement from the TANF contingency fund for payments for nonrecurrent short-term cash benefits to families who had been living in a disaster state and moved to the state as a result of the disaster, provided that the state must determine that the family is not receiving TANF cash benefits from another state. The three disaster states also qualify under this provision when serving residents from another disaster state. The current-law requirement that states meet a higher maintenance of effort level to qualify for contingency funds is waived. Under this structure, states can qualify for up to 1/12 of 20 percent of their basic TANF grant each month for qualifying expenses as long as funding remains in the contingency fund. There is currently approximately $1.9 billion in the contingency fund.

- **Specifies that all states can use unspent prior-year TANF funds to provide any allowable TANF benefit or service for needy families affected by Hurricane Katrina.** This creates an exception to the otherwise-applicable provision that un-obligated prior-year funds can only be used for "TANF assistance" and its related administrative costs. It does not provide additional funds.

- **Provides that short-term nonrecurrent benefits to meet subsistence needs of families resulting from Hurricane Katrina will not be considered assistance for purposes of TANF work requirements or time limits through federal fiscal year 2006.**

- **Makes Louisiana, Mississippi, and Alabama eligible for penalty relief for a number of TANF penalties** if the Secretary determines that a failure to meet the applicable requirement resulted from Hurricane Katrina or reasonable conduct of the State in addressing needs of victims of Hurricane Katrina. Relief under this provision applies to all TANF penalties except mis-expenditure of funds and the requirement to meet TANF maintenance of effort requirements.

There are at least two key questions about how the law is intended to work.

For the three disaster states, what is the practical significance of receiving funding in the form of a loan with waiver of penalty for repayment, rather than a grant? The press release from the Ways and Means Committee describing its bill simply says: "Current law makes available additional TANF funds for states experiencing emergency needs. This provision converts the current loan fund, which no state has accessed, into a de facto contingency fund for emergency needs in LA, MS, and AL."[1] It may be that the law intends that there be a pro forma agreement with an understanding by all that the funds will not be repaid. Still, it remains unclear whether the three states will be required to sign a formal loan document, and then appear to default on the loan.

For all states, what is the practical significance of the fact that contingency fund reimbursement is limited to nonrecurrent short-term cash benefits? Under current federal

[1] http://waysandmeans.house.gov/news.asp?formmode=release&id=336

regulations, one set of benefits excluded from the definition of TANF assistance are nonrecurrent short-term benefits that:

- are designed to deal with a specific crisis situation or episode of need;
- are not intended to meet recurrent or ongoing needs;
- will not extend beyond four months [45 C.F. R. §260.31(b)].

It is not yet clear whether HHS will interpret the law's language to have the same meaning as is in current regulations. Absent federal interpretation, it seems reasonable to take this language to mean that states can provide help for at least up to four months. It is possible that HHS will provide clarification or Congress will act to broaden reimbursable expenditures within the next four months.

Note that under current law, nonrecurrent short-term benefits are excluded from *all* assistance-related requirements, including work requirements, time limits, child support assignment and cooperation requirements, and data collection requirements. There is no indication that Congress sought to narrow the current-law treatment of nonrecurrent short-term benefits when enacting this law.

How Would the Grassley-Baucus Bill Modify the TANF Emergency Recovery and Response Act?

On September 15, the same day that the Senate approved the TANF Emergency Recovery and Response Act, Senators Grassley and Baucus (the chair and ranking minority member of the Finance Committee) introduced S. 1716, the Emergency Health Care Relief Act of 2005. S. 1716 would make a number of changes intended to address concerns raised by the new law. Senator Landrieu of Louisiana also expressed a number of concerns about provisions of the law, and Senators Grassley and Frist expressed their intent to pursue improvements in conference with the House after the Senate acted on S. 1716.[2]

On September 22, Senators Grassley and Baucus further revised their proposed modifications by filing a "substitute amendment" for S. 1716. In addition to including a number of health and unemployment insurance provisions, the Grassley-Baucus provisions would do the following.

- Alabama, Louisiana, and Mississippi (described as the "direct impact states") would be allowed to access contingency funds in the amount of 5 percent of their family assistance grants each month for any allowable TANF benefits and services.

- All other states would be eligible to receive contingency funds for any allowable TANF benefit or service for families who moved to their states from a direct impact state as a result of the hurricane, subject to a cap of 5 percent of their TANF family assistance grants each month, and provided that for any family applying for benefits or services on or after October 28, 2005, the state must make a determination that the family is not receiving cash benefits under any other state's program.

- Availability of the contingency fund for affected Katrina families would be extended to territories in addition to states.

[2] See Congressional Record, September 15, 2005, S10149, available at: http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2005_record&page=S10149&position=all

- Receipt of contingency funds under the Katrina provisions would not affect eligibility or amount of contingency funds that a state might qualify for under the standard contingency fund rules.

- The cap on total contingency fund payments for the period between August 29, 2005 and September 30, 2006 would be removed.

- Reimbursements for costs incurred on or after August 29, 2005 would be allowed.

- The amount of loans available without penalty for nonrepayment for the three direct impact states would be expanded from 20 percent to 40 percent of their family assistance grants.

- Hurricane Katrina emergency benefits would not be subject to TANF time limits, work, and child support assignment and cooperation requirements. The bill defines such benefits as any allowable TANF benefit or service provided to families deemed needy by a state or tribe based on their statement, circumstance, or inability to access resources, and who (1) have moved from a direct impact state to another as a result of the hurricane, and the state has determined they are not receiving TANF cash benefits in any other state, or (2) reside in a direct impact state, and the state designates the benefit or service as a Hurricane Katrina emergency benefit.

- State child support programs would not be automatically required to open a child support case for Katrina emergency benefit applicants (as would be the case if they were applying for TANF assistance), but these families could apply separately for child support services without paying a fee.

- For Hurricane Katrina emergency benefits, in lieu of standard TANF data collection requirements, states would be required to report on monthly basis (1) the total amount of expenditures, and (2) the total number of families receiving such benefits. If a state were unable to report this information, it would be required to report on the total amount provided for cash, child care, and other Katrina benefits and services.

- HHS would be required to submit to Congress, on a monthly basis, a compilation of state data reports.

Congress Should Adopt the Grassley-Baucus Provisions and Additional Modifications

The Grassley-Baucus provisions would improve the TANF Emergency Recovery and Response Act in several ways.

Funding should be available for any allowable TANF expenditure, and not limited to nonrecurrent short-term cash benefits. In some cases, states will have legitimate reasons for wanting to provide a benefit in a non-cash form. For example, the state may want to provide food or housing vouchers or make a payment directly to a landlord. And, hopefully, states will be offering employment services to evacuees. In addition, as noted, there is an unresolved question as to whether states can provide nonrecurrent benefits for more than four months. Eliminating the restriction would give states flexibility to provide benefits and services based on the actual needs of affected families.

A broader exclusion of Katrina benefits from time limit, work, and child support requirements is important. "Standard" TANF requirements will often be wholly inappropriate for families who have been dislocated, traumatized, may be unable to locate other family members, may have lost their homes and are in unstable temporary housing.

A higher cap on allowable funding is appropriate. The needs in the three direct impact states are enormous. For other states, the law limits reimbursement to actual expenses for Katrina families who are now in their states; given that TANF funding is otherwise flat, and never contemplated a disaster such as this, it is important that states be able to be confident that they will be fully reimbursed for costs they undertake to help Katrina families.

Additional improvements to Grassley-Baucus Bill are Needed

While the Grassley-Baucus bill substantially improves the law already enacted, Congress should consider four additional modifications.

The noncontingency fund resources provided to the direct impact states should be provided in grants, not loans. It remains unclear whether the requirement that funds be provided in the form of a loan without penalty for repayment will cause practical difficulties. For example, will each Governor have to sign a loan agreement with terms for repayment, and will the Governor be making a false statement if the agreement is signed without intent to repay? Will the nonrepayment count as a state default? To avoid these difficulties, the funds should be structured as a grant, not a loan.

The TANF immigrant restrictions should not apply to funding under the law. Under the TANF structure, states are barred from using federal TANF funds to provide benefits to legal immigrants during their first five years in the country, subject to limited exceptions. Such a restriction should not apply to these funds. Immigrant families dislocated by the hurricane have the same urgent needs as other families.

TANF teen parent restrictions should not apply to funding under the law. Under the TANF structure, states are barred from using TANF funds to provide assistance to teen parents who are not attending school and who are not living with a parent or in an approved adult-supervised arrangement, subject to limited exceptions. The hurricane dislocations have disrupted schooling and living arrangements and states providing temporary assistance should be able to use those funds to help teen parents and their children without being subject to the otherwise-applicable TANF requirements.

States should not be required to make a determination that families seeking help are not receiving cash benefits in any other state. The new law provides that in order for a state to use contingency funds to provide benefits to Katrina families that have moved from another state, the state must determine that the family is not receiving cash benefits in any other state. The proposed Senate modifications contain a similar provision, effective for applicants on or after October 28, 2005. While states will want to avoid duplicate participation, this provision in the law is problematic because there is no way for states to determine that a family is not receiving cash benefits in any other state, short of sending out an inquiry to every state. This problem is not resolved by delaying implementation for a number of weeks. Federal law already provides for a 10-year bar on receiving cash assistance for individuals convicted of having made a fraudulent statement or representation of residence in order to receive assistance simultaneously from 2 or more States. It would be better to either drop the bill's provision altogether, or narrow it to say that the state should not provide benefits if the state determines that the individual is receiving benefits in another state.

TANF Funds Available to States Under P.L. 109-68		
State	Funds for Disaster States[i]	Contingency Fund: Maximum Amount Available per Month[ii]
Alabama	$18,663,041	$1,555,253
Alaska		$1,060,151
Arizona		$3,707,000
Arkansas		$945,548
California		$62,230,296
Colorado		$2,267,612
Connecticut		$4,446,468
Delaware		$538,183
District Of Col.		$1,543,497
Florida		$9,372,335
Georgia		$5,512,362
Hawaii		$1,648,413
Idaho		$532,301
Illinois		$9,750,949
Indiana		$3,446,652
Iowa		$2,192,083
Kansas		$1,698,851
Kentucky		$3,021,461
Louisiana	$32,794,397	$2,732,866
Maine		$1,302,015
Maryland		$3,818,301
Massachusetts		$7,656,185
Michigan		$12,922,548
Minnesota		$4,466,415
Mississippi	$17,353,516	$1,446,126
Missouri		$3,617,529
Montana		$758,900
Nebraska		$967,143
Nevada		$732,946
New Hampshire		$642,021
New Jersey		$6,733,914
New Mexico		$2,101,719
New York		$40,715,510
North Carolina		$5,037,327
North Dakota		$439,997
Ohio		$12,132,804
Oklahoma		$2,466,893
Oregon		$2,798,742
Pennsylvania		$11,991,655
Rhode Island		$1,583,693
South Carolina		$1,666,130
South Dakota		$364,892
Tennessee		$3,192,063
Texas		$8,104,279
Utah		$1,280,487
Vermont		$789,220
Virginia		$2,638,086
Washington		$6,738,863

State	Funds for Disaster States[i]	Contingency Fund: Maximum Amount Available per Month[ii]
Wisconsin		$5,303,140
Wyoming		$363,024

[i] Provided in the form of a loan without penalty for nonrepayment.
[ii] Reimbursement for state expenditures for nonrecurrent short-term cash benefits, not to exceed 1/12 of 20 percent of state family assistance grant each month, and subject to funds remaining available in TANF contingency fund.