

112TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT  
2d Session } 112-

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PROVIDING FOR CONGRESSIONAL DISAPPROVAL UNDER CHAPTER 8 OF TITLE 5, UNITED STATES CODE, OF THE RULE SUBMITTED BY THE OFFICE OF FAMILY ASSISTANCE OF THE ADMINISTRATION FOR CHILDREN AND FAMILIES OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES RELATING TO WAIVER AND EXPENDITURE AUTHORITY UNDER SECTION 1115 OF THE SOCIAL SECURITY ACT (42 U.S.C. 1315) WITH RESPECT TO THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM

SEPTEMBER --, 2012.—Ordered to be printed

Mr. CAMP, from the Committee on Ways and Means,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H. J. Res. 118]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the joint resolution (H. J. Res. 118) providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Office of Family Assistance of the Administration for Children and Families of the Department of Health and Human Services relating to waiver and expenditure authority under section 1115 of the Social Security Act (42 U.S.C. 1315) with respect to the Temporary Assistance for Needy Families program, having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

## I. SUMMARY AND BACKGROUND

### A. PURPOSE AND SUMMARY

The resolution, H.J. Res. 118, as ordered reported by the Committee on Ways and Means on September 13, 2012, expresses disapproval of the July 12, 2012 Department of Health and Human Services (HHS) rule<sup>1</sup> proposing to allow States to waive work requirements for welfare recipients under the Temporary Assistance for Needy Families (TANF) program. To achieve these purposes, the resolution states that Congress disapproves of the HHS rule and that it “shall have no force or effect.”

### B. BACKGROUND AND THE NEED FOR LEGISLATION

On September 11, 2012, Rep. David Camp (R-MI), Chairman of the Committee on Ways and Means and Rep. John Kline (R-MN), Chairman of the Committee on Education and the Workforce, along with Rep. Jim Jordan (R-OH) introduced H.J. Res. 118, a resolution to express Congress’ disapproval of the July 12, 2012 HHS rule proposing to allow States to waive the welfare work requirement.

Bipartisan, work-based welfare reform in the 1990s led to increased work and earnings, along with record declines in poverty and dependence on government cash welfare benefits among low-income families. The reforms ended waiver authority granted under the prior Aid to Families with Dependent Children (AFDC) program and instead offered States new flexibility in designing welfare programs in exchange for fixed federal funds and a requirement that welfare recipients engage in work and related activities. Despite this, the Administration claims in their July 12, 2012 HHS rule that they still possess the waiver authority available under the prior AFDC law, despite substantial changes to the Social Security Act made in the 1996 welfare reform law (P.L. 104-193, officially titled the “Personal Responsibility and Work Opportunity Reconciliation Act”) that both limited States’ waiver authority and created real work requirements.

The Administration rule would have the effect of allowing States to opt out of TANF work requirements for the first time since welfare reform’s passage in 1996. This is despite the fact that current TANF law allows State

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<sup>1</sup> HHS, TANF Information Memorandum, Transmittal No. TANF-ACT-IM-2012-03, July 12, 2012, available online at <http://www.acf.hhs.gov/programs/ofa/policy/im-ofa/2012/im201203/im201203.html>

waivers only related to State plan reporting requirements (which are a paperwork requirement authorized in Section 402 of the Social Security Act) and does not provide authority for the Administration to grant waivers related to the critical TANF work requirements in section 407 of the Social Security Act.

Supporting the view that HHS does not have the authority to waive TANF work requirements is TANF history, precedent, and even the Administration's own arguments about recent legislative activity involving TANF work requirements.

In passing the 1996 welfare reform law to end AFDC and create TANF, Congress redesigned every section of the prior AFDC program. Provisions applying to the earlier AFDC program were eliminated, new requirements were added, and specific restrictions were put in place to create a program of fixed funding to States with strong work requirements. One fundamental change to the TANF law was a restructuring of section 402, which previously had specified 45 mandatory requirements States had to implement subject to review and approval by HHS. Section 402 was fundamentally redesigned through welfare reform to specify only 7 mandatory reporting requirements that States must outline in a written report, and over which HHS had only the authority to review the plan for completeness instead of approving specific State policies as under the prior AFDC law.

Congress also created a section titled "waivers" within Title IV in section 415 of the Social Security Act to explain how waivers would function under TANF. One provision allowed temporary waiver programs in effect prior to the enactment of welfare reform to continue until their natural expiration date. A second provision allowed for waivers submitted before August 22, 1996 and approved by the Secretary of HHS by July 1, 1997 to begin, but expressly prohibited such waivers from having any effect on the new TANF work requirements. Section 415 did not contemplate waivers after the AFDC program ended, which occurred no later than July 1, 1997.

Driving home this point is the clear intention of the Committee on Ways and Means in 1996 regarding the question of whether TANF work requirements may be waived. Shortly after Congress approved the historic 1996 welfare reform law, the Ways and Means Committee issued a "Committee Print" in November 1996 summarizing the legislation (titled

“Summary of the Welfare Reforms Made by Public Law 104-193: The Personal Responsibility and Work Opportunity Reconciliation Act and Associated Legislation, WMCP 104-15). In the section describing waivers under the new law, the summary<sup>2</sup> said “*Waivers granted after the date of enactment may not override provisions of the TANF law that concern mandatory work requirements.*”

Further, after the passage of welfare reform and as required as part of the law, HHS issued regulations describing how certain provisions of TANF would be implemented. One section of these final 1999 HHS regulations<sup>3</sup> detailed how waivers granted under the prior AFDC program would continue to operate, and what States must do to continue their waivers until their expiration date. The HHS rule said States with waivers to test work requirements under the prior AFDC program “may delay implementing TANF requirements for work participation” but that “because all States will need to conform to all TANF rules once their waivers expire, we urge States to plan accordingly.” This final rule does not discuss future waivers, and by indicating that all States would eventually have to implement TANF work requirements, it is clear that HHS agreed that there existed no authority to waive work requirements in the future.

In the years following this 1999 determination, HHS continued to state in official documents that the agency could not waive TANF work requirements. For example, in the immediate aftermath of Hurricane Katrina in 2005, States contacted HHS to determine what flexibility may be available to them because of the disaster. In the official HHS guidance issued in response<sup>4</sup>, HHS cited a number of things States could do to assist those affected by the hurricane given the substantial flexibility in the TANF law. However, the guidance was unequivocal regarding HHS’ waiver authority, stating “we have no authority under current law to waive any of the TANF statutory requirements” and “we have no authority to waive any of the provisions in the Act.” Additional official HHS guidance regarding

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<sup>2</sup> Ways and Means Committee Print, Summary of Welfare Reforms Made By Public Law 104-93, available online at <http://www.gpo.gov/fdsys/pkg/CPRT-104WPRT27305/pdf/CPRT-104WPRT27305.pdf>

<sup>3</sup> Federal Register, Vol. 64, No. 69, April 12, 1999, Rules and Regulations, HHS, Administration for Children and Families (ACF), TANF Final Rule, available online at <http://www.gpo.gov/fdsys/pkg/FR-1999-04-12/pdf/99-8000.pdf>

<sup>4</sup> HHS, TANF Program Instruction, No. TANF-ACF-PI-2005-06, October 11, 2005, available online at <http://www.acf.hhs.gov/programs/ofa/policy/pi-ofa/2005/pi2005-6.htm>

disasters was issued in 2007,<sup>5</sup> which repeated word for word the same statements about waiver authority made in the 2005 HHS guidance.

After 16 years of welfare policy and practice to the contrary, the Obama Administration in July 2012 announced that for the first time in the history of the TANF program the agency now claimed to have authority to waive work requirements for welfare recipients. Importantly, the Administration's July 12 rule was not the result of any new legislation passed by Congress, nor connected to any TANF proposal submitted in a prior Administration budget document. No prior HHS Secretary, Republican or Democrat, has ever concluded that he or she had the authority to the TANF waive work requirements.

In her July 18, 2012 response<sup>6</sup> to a letter from Chairman Camp and Senate Finance Committee Ranking Member Hatch (R-UT) seeking the Administration rationale for its July 12 announcement, HHS Secretary Sebelius confirms the view that in earlier years State governors also believed that Federal law would need to be changed to create waiver authority: "For years, Republican and Democratic Governors have requested more flexibility in implementing welfare reform...In 2005, 29 Republican Governors requested '(i)ncreased waiver authority, allowable work activities, availability of partial work credit'..." This contention, and the fact TANF law was not changed in 2005 or subsequent years to allow for waivers of work requirements, simply reinforces the point that current law does not allow for waivers of welfare work requirements, and that Congress must change the law for such waiver authority to exist.

The Administration has also attempted to justify their claim of waiver authority by stating that they will approve only waivers that result in more welfare recipients entering the workforce. Specifically, the Administration stated that waivers will be approved only if they "move at least 20% more people from welfare to work compared with the state's past performance." However, this "20% more" policy did not appear in the initial July 12, 2012 Information Memorandum to States, only appearing after Congress objected to HHS' waiving of the work requirements. In addition, this "20% more" policy is not contained in any rule or guidance, but instead only in a

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<sup>5</sup> HHS, TANF Program Instruction, No. TANF-ACF-PI-2007-08, November 28, 2007, available online at <http://www.acf.hhs.gov/programs/ofa/policy/pi-ofa/2007/200708/PI200708.htm>

<sup>6</sup> Letter from HHS Secretary Kathleen Sebelius to Ways and Means Committee Chairman Dave Camp, July 12, 2012, available online at [http://waysandmeans.house.gov/uploadedfiles/hhs\\_response\\_7-18-12.pdf](http://waysandmeans.house.gov/uploadedfiles/hhs_response_7-18-12.pdf)

letter to Congress, which does not appear to be of any force. While public statements by Administration officials suggest that they will approve only waivers resulting in more work, no binding policy—or real details—exists to support these claims.

For these reasons, the Committee believes H.J. Res 118 is needed to ensure that TANF work requirements are not waived in whole or in part and that Congressional intent regarding the mandatory nature of welfare work requirements remains in force.

### C. LEGISLATIVE HISTORY

#### *Background*

H.J. Res. 118 was introduced on September 11, 2012, and was referred to the Committee on Ways and Means, in addition to the Committee on Education and the Workforce.

#### *Committee Action*

The Committee on Ways and Means marked up the resolution on September 13, 2012, and ordered the resolution favorably reported. The Committee on Education and the Workforce also marked up the resolution on September 13, 2012, and ordered the resolution favorably reported.

#### *Committee Hearings*

None specifically on H.J. Res. 118. On May 17, 2012, the Subcommittee on Human Resources held a hearing on State TANF Spending and Its Impact on Work Requirements.

## **II. EXPLANATION OF THE RESOLUTION**

### **PRESENT LAW**

The Public Welfare Amendments of 1962 (P.L. 87-543) established waiver authority within Section 1115 of the Social Security Act for public assistance programs, including the AFDC program that preceded TANF in helping fund cash assistance for needy families with children.

Though waivers under Section 1115 were allowed as early as 1962, they were not sought with much frequency until the late 1980s. Until that point, waivers were primarily related to program administration and service delivery. Between 1987 and 1989, during the Reagan Administration, 15 waiver applications for welfare reform were approved for 14 states; during the Administration of George H.W. Bush, another 15 applications from 12 states were approved. Until the enactment of the 1996 welfare law, the Clinton Administration continued to approve waivers of AFDC law. Between January 1993 and August 1996, a total of 83 waiver applications from 43 states and the District of Columbia were approved.

The 1996 welfare reform law (P.L. 104-193) replaced the prior AFDC program with the new TANF block grant. At the same time, the statute was reorganized and a new section 407 was added, titled “Mandatory Work Requirements.” Section 402, which today is the only section of TANF listed under the waiver “demonstration projects” authority in section 1115 of the Social Security Act, is titled “Eligible States; State Plan.” Section 402 generally defines the “written document” that States must submit to the Secretary of HHS each year describing how the State intends to achieve various TANF program purposes, among other purposes. As a result of these and other changes, present law does not provide for waivers of TANF work requirements. The Obama Administration's July 12, 2012 information memorandum claiming authority to waive work requirements would be the first time HHS has claimed to have such waiver authority since TANF was created in 1996, and if allowed to stand would permit HHS to circumvent statutory work requirements in section 407 of the law.

## REASONS FOR CHANGE

The Committee believes it is necessary to ensure the continuation and proper functioning of the work requirements that are the heart of the nation's successful efforts at promoting work for welfare recipients. Accordingly, H.J. Res. 118 disapproves of the Administration's July 12, 2012 rule waiving the work requirements, declaring that “such rule shall have no force or effect.”

On July 31, 2012, Chairman Camp and Senate Finance Ranking Member Hatch (R-UT) asked the Government Accountability Office (GAO) to review the HHS Information Memorandum announcing waivers of work requirements to determine if it was a rule that should have been submitted

officially to Congress before taking effect<sup>7</sup>. On September 4, 2012, GAO reported to Congress that the HHS guidance was in fact a rule that must be submitted to Congress and that it is subject to review—and disapproval—under the Congressional Review Act.<sup>8</sup>

A significant body of evidence suggests that the work requirements included in the 1996 welfare reform law have been essential to improvements in work, earnings, poverty and welfare dependence in the wake of that legislation. Specifically, since the work-based 1996 welfare reforms were enacted: (1) The employment of single mothers increased by 15 percent from 1996 through 2000, and even after the recession it is still higher than before welfare reform<sup>9</sup>; (2) According to HHS' latest report on the TANF program, "earnings in female-headed families remained higher in 2009 than in 1996 despite various shifts in the economic climate since TANF's enactment"<sup>10</sup>; (3) Since it replaced the New Deal-era AFDC program in 1996, TANF has been successful at cutting welfare dependence as caseloads have declined by 57 percent through December 2011<sup>11</sup>; and (4) Child poverty fell dramatically after welfare reform and is still below the level in the early 1990s<sup>12</sup>.

These reforms received bipartisan support from Republicans and Democrats and were signed into law by President Clinton. The fact that the Administration has now sought to waive the TANF work requirements belies past bipartisan support for requiring work by welfare recipients, including from the following senior Democrats:

- “I proposed a concept of welfare to work in 1987, and I was pilloried by my colleagues on the Democratic side at the time for suggesting

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<sup>7</sup> Letter from Rep. Dave Camp and Sen. Orrin Hatch to Comptroller Gene Dorado at GAO, July 31, 2012, available online at [http://waysandmeans.house.gov/uploadedfiles/gao\\_tanf\\_waivers\\_letter.pdf](http://waysandmeans.house.gov/uploadedfiles/gao_tanf_waivers_letter.pdf)

<sup>8</sup> Letter from GAO Comptroller General Gene Dorado to Rep. Dave Camp and Sen. Orrin Hatch, September 4, 2012, available online at

<http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=307447>

<sup>9</sup> Congressional Research Service estimates based on Census Bureau data prepared for Ways and Means staff

<sup>10</sup> HHS, TANF Program, Ninth Report to Congress, 2012, available online at

[http://www.acf.hhs.gov/programs/ofa/data-reports/annualreport9/9th\\_report-to-congress\\_3-26-12.pdf](http://www.acf.hhs.gov/programs/ofa/data-reports/annualreport9/9th_report-to-congress_3-26-12.pdf)

<sup>11</sup> HHS, ACF, 2011 TANF Caseload Data, available online at [http://www.acf.hhs.gov/programs/ofa/data-reports/caseload/caseload\\_current.htm](http://www.acf.hhs.gov/programs/ofa/data-reports/caseload/caseload_current.htm)

<sup>12</sup> U.S. Bureau of the Census, Current Population Survey, Annual Social and Economic Supplements, Table 3, Poverty Status of People, by Age, Race, And Hispanic Origin: 1959 to 2011, available online at <http://www.census.gov/hhes/www/poverty/data/historical/hstpov3.xls>

that there be a mandatory work requirement for anyone receiving welfare.” (Then-Senator Joe Biden<sup>13</sup>, July 18, 1996)

- “In order for welfare reform to be successful, individuals must accept the responsibility of working and providing for their families. In the instances where benefits are provided, they must be tied to obligations. We must invest our resources on those who value work and responsibility. Moreover, we must support strict requirements which move people from dependence to independence. Granting rights without demanding responsibility is unacceptable.” (Current House Democrat Whip Steny Hoyer<sup>14</sup>, July 31, 1996)
- “Everyone agrees if you are able to work, you should be working. Every taxpayer should be angry and annoyed to find people slipping back on their responsibilities and not working.” (Congressman Charlie Rangel<sup>15</sup>, July 31, 1996)
- “The key always has been the linkage of welfare to work, within a definite time structure...” (Congressman Sander Levin<sup>16</sup>, July 31, 1996)

As a result, the Committee believes that disapproving the Administration’s rule waiving welfare work requirements is appropriate and that it will ensure the continuation of effective work requirements for adults collecting welfare benefits under the TANF program. Ultimately, this will promote more work, higher incomes, lower poverty, and more departures from welfare for independence and self-support, which are among the most important of the TANF program’s goals.

## EXPLANATION OF PROVISION

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<sup>13</sup> U.S. Congressional Record, 104<sup>th</sup> Congress, Vol. 142, No. 106, July 18, 1996, available online at <http://www.gpo.gov/fdsys/pkg/CREC-1996-07-18/pdf/CREC-1996-07-18-senate.pdf>

<sup>14</sup> U.S. Congressional Record, 104<sup>th</sup> Congress, Vol. 142, No. 115, July 31, 1996, available online at <http://www.gpo.gov/fdsys/pkg/CREC-1996-07-31/pdf/CREC-1996-07-31-house.pdf>

<sup>15</sup> U.S. Congressional Record, 104<sup>th</sup> Congress, Vol. 142, No. 115, July 31, 1996, available online at <http://www.gpo.gov/fdsys/pkg/CREC-1996-07-31/pdf/CREC-1996-07-31-house.pdf>

<sup>16</sup> U.S. Congressional Record, 104<sup>th</sup> Congress, Vol. 142, No. 115, July 31, 1996, available online at <http://www.gpo.gov/fdsys/pkg/CREC-1996-07-31/pdf/CREC-1996-07-31-house.pdf>

The provision states that Congress disapproves the Administration's July 12, 2012 rule waiving TANF work requirements and that "such rule shall have no force or effect."

### EFFECTIVE DATE

The provision becomes effective upon enactment.

### III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee on Ways and Means in its consideration of the resolution, H.J. Res. 118.

The resolution, "H.J. Res. 118, providing for congressional disapproval of the Administration's July 12, 2012 waiver of welfare work requirements," was ordered favorably reported without amendment to the House of Representatives by a roll call vote of 18 yeas to 14 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Camp.....	X			Mr. Levin.....		X	
Mr. Herger.....				Mr. Rangel.....		X	
Mr. Johnson.....	X			Mr. Stark.....		X	
Mr. Brady.....	X			Mr. McDermott.....		X	
Mr. Ryan.....				Mr. Lewis.....			
Mr. Nunes.....	X			Mr. Neal.....		X	
Mr. Tiberi.....	X			Mr. Becerra.....		X	
Mr. Reichert.....	X			Mr. Doggett.....		X	
Mr. Boustany.....	X			Mr. Thompson.....		X	
Mr. Roskam.....	X			Mr. Larson.....		X	
Mr. Gerlach.....	X			Mr. Blumenauer.....		X	
Mr. Price.....	X			Mr. Kind.....		X	
Mr. Buchanan.....	X			Mr. Pascrell.....		X	
Mr. Smith.....	X			Ms. Berkley.....		X	
Mr. Schock.....	X			Mr. Crowley.....		X	
Ms. Jenkins.....	X						
Mr. Paulsen.....	X						
Mr. Marchant.....	X						
Mr. Berg.....							
Ms. Black.....	X						
Mr. Reed.....	X						

## VOTES ON AMENDMENTS

No amendments to the resolution were offered.

### **IV. BUDGET EFFECTS OF THE RESOLUTION**

#### A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the resolution, H.J. Res 118 as reported: The Committee agrees with the estimates prepared by the Congressional Budget Office (CBO), which are included below.

#### STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES BUDGET AUTHORITY

The resolution as reported is in compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives. Further, the resolution involves no new or increased tax expenditures.

#### B. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 17, 2012*

Hon. DAVE CAMP,  
*Chairman, Committee on Ways and Means,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN:

## **V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE OF REPRESENTATIVES**

### **A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS**

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee concluded that it was appropriate and timely to enact the sections included in the resolution, as reported.

### **B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES**

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the resolution contains no measure that authorizes new or additional funding compared with the current law baseline, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

### **C. INFORMATION RELATING TO UNFUNDED MANDATES**

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (Pub. L. No. 104-4).

The resolution does not impose a Federal mandate on the private sector. The resolution does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

### **D. APPLICABILITY OF HOUSE RULE XXI 5(B)**

Clause 5(b) of rule XXI of the Rules of the House of Representatives provides, in part, that “A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present.” The Committee has carefully reviewed the sections of the resolution, and states that the resolution does not involve any Federal income tax rate increases within the meaning of the rule.

### **E. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS**

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the resolution, and states that the provisions of the resolution do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

CHANGES IN EXISTING LAW MADE BY THE RESOLUTION, AS REPORTED

H.J. Res. 118 makes no changes to current law.

DISSENTING VIEWS



CONGRESSIONAL BUDGET OFFICE  
U.S. Congress  
Washington, DC 20515

Douglas W. Elmendorf, Director

September 17, 2012

Honorable Dave Camp  
Chairman  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

The Congressional Budget Office has prepared the enclosed cost estimate for H.J. Res. 118, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Office of Family Assistance of the Administration for Children and Families of the Department of Health and Human Services relating to waiver and expenditure authority under section 1115 of the Social Security Act (42 U.S.C. 1315) with respect to the Temporary Assistance for Needy Families program.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jonathan Morancy, who can be reached at 226-2820.

Sincerely,

A handwritten signature in cursive script that reads "Douglas W. Elmendorf".

Douglas W. Elmendorf

Enclosure

cc: Honorable Sander M. Levin  
Ranking Member



CONGRESSIONAL BUDGET OFFICE  
COST ESTIMATE

September 17, 2012

**H.J. Res. 118**

**A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Office of Family Assistance of the Administration for Children and Families of the Department of Health and Human Services relating to waiver and expenditure authority under section 1115 of the Social Security Act (42 U.S.C. 1315) with respect to the Temporary Assistance for Needy Families program**

*As ordered reported by the House Committee on Ways and Means  
on September 13, 2012*

**SUMMARY**

H.J. Res. 118 would disapprove the rule submitted by the Department of Health and Human Services (HHS) on July 12, 2012, that modifies the waiver authority with respect to work requirements in the Temporary Assistance for Needy Families program (TANF). H.J. Res. 118 would invoke a legislative process established by the Congressional Review Act (Public Law 104-121) to disapprove the new waiver authority rule. If H.J. Res. 118 is enacted, the rule would have no force or effect.

CBO estimates that enacting the resolution would reduce direct spending by \$59 million over the 2013-2022 period. (The resolution would not affect revenues.) Pay-as-you-go procedures apply because enacting the legislation would affect direct spending.

CBO does not expect that implementing the resolution would have any significant effect on spending subject to appropriation.

The joint resolution contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

## ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of House Joint Resolution 118 is shown in the following table. The costs of this legislation fall within budget function 600 (income security).

	By Fiscal Year, in Millions of Dollars											2013-	2013-	
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2017	2022		
<b>CHANGES IN DIRECT SPENDING</b>														
Estimated Budget Authority	-5	-6	-6	-6	-6	-6	-6	-7	-7	-7	-28	-59		
Estimated Outlays	-5	-6	-6	-6	-6	-6	-6	-7	-7	-7	-28	-59		

Note: Components may not sum to totals because of rounding.

## BASIS OF ESTIMATE

For the purposes of this estimate, CBO assumes that the legislation will be enacted near the beginning of fiscal year 2013.

On July 12, 2012, HHS released Information Memorandum No. TANF-ACF-IM-2012-03. That memorandum encouraged states to come up with new ways to meet TANF goals, and it stated that the Administration for Children and Families (ACF), which administers TANF, would provide states waivers through section 1115 of the Social Security Act so that states could implement those proposals. Enacting H.J. Res. 118 would prevent that memorandum from taking effect.

Under the memorandum, CBO expects that penalties for states that don't meet the work requirements specified in the Social Security Act would be reduced because states would have more options to meet such requirements. Thus, CBO estimates that enacting the resolution would reduce direct spending by \$59 million over the 2012-2022 period, as some states would pay increased penalties to the federal government (which are recorded in the budget as an offset to direct spending) for failing to meet the work requirements.

## PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

**CBO Estimate of Pay-As-You-Go Effects for H.J. Res. 118 as ordered reported by the House Committee on Ways and Means on September 13, 2012**

	By Fiscal Year, in Millions of Dollars												2012-	2012-
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2017	2022	
<b>NET INCREASE OR DECREASE (-) IN THE DEFICIT</b>														
Statutory Pay-As-You-Go Impact	0	-5	-6	-6	-6	-6	-6	-6	-7	-7	-7	-28	-59	

Note: Components may not sum to totals because of rounding.

**INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT**

For large entitlement programs like TANF, UMRA defines an increase in the stringency of conditions as an intergovernmental mandate if the affected governments lack authority to offset the costs of those conditions while continuing to provide required services. If H.J. Res. 118 were enacted, CBO expects that some states would fail to meet work requirements of the program and would therefore be assessed penalties that would total \$59 million over the 2013-2022 period. However, states would continue to be able to make changes to TANF, for example adjusting eligibility criteria or the structure of programs, to avoid or offset such costs. Because the TANF program affords states such broad flexibility, voiding the memorandum would not be considered an intergovernmental mandate as defined by UMRA. H.J. Res. 118 also contains no private-sector mandates.

**PREVIOUS CBO ESTIMATE**

On September 17, 2012, CBO transmitted a cost estimate for H.J. Res 118 as ordered reported by the House Committee on Education and the Workforce. The resolution language in both versions is identical and the estimated budgetary effects are the same.

**ESTIMATE PREPARED BY:**

Federal Costs: Jonathan Morancy

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# Congress of the United States

## U.S. House of Representatives

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September 17, 2012

### Dissenting Views on H. J. RES. 118

We oppose H. J. RES. 118 because the bill is based on a widely discredited claim and because it would stymie innovative approaches to moving more people from welfare to work. Moreover, this bill is a distraction from what Congress should be focused on – helping the economy grow and creating jobs.

On July 12, 2012 the Department of Health and Human Services (HHS) issued a memorandum under its authority under Section 1115 of the Social Security Act to entertain requests from states to conduct demonstration projects under the Temporary Assistance for Needy Families (TANF) program. The HHS notice clearly and repeatedly states that all demonstration projects must be focused on improving employment outcomes. In a letter to the Chairman of the Committee on Ways and Means, HHS Secretary Sebelius stated, “the Department is providing a very limited waiver opportunity for states that develop a plan to measurably increase the number of beneficiaries who find and hold down a job. Specifically, Governors must commit that their proposals will move at least 20% more people from welfare to work compared to the state’s past performance.”

In short, any demonstration project would have to be designed to increase employment, would be subject to rigorous evaluation, and would be terminated if it failed to meet employment goals. It is also important to note that nothing in the waiver authority would change the current five-year federal time limit on TANF benefits or the fixed funding levels now provided to states under the TANF program.

Despite this clear focus on increasing employment, Republicans have claimed the waiver initiative would eliminate work requirements for welfare recipients. A variety of independent fact checkers have forcefully declared this claim is dishonest, using such phrases as “pants on fire” false. Even the lead Republican staffer in charge of drafting the 1996 welfare law, Ron Haskins, has said, “there is

no plausible scenario under which it really constitutes a serious attack on welfare reform,” and “on the merits, waivers are justified.”

The Administration proposed the demonstration authority after consultations with state officials who believed they can do a better job of moving welfare recipients into work if provided additional flexibility. For example, Governor Herbert of Utah, a Republican, informed HHS that his State was interested in being evaluated on the basis of the state’s success in placing welfare recipients into employment, and that this approach “would require some flexibility at the state level and the granting of a waiver.” Other states highlighted how much time, money and effort was dedicated to meeting federal paperwork requirements, especially after changes included in the Deficit Reduction Act of 2005. For example, one study in Minnesota found that TANF employment counselors spend more time documenting activities than they spend on providing direct services to help people find work.

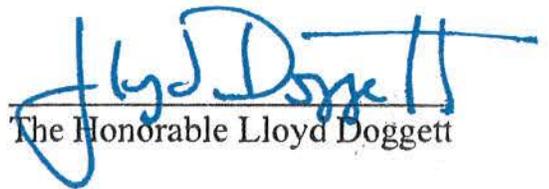
Contrary to the majority’s assertion that HHS does not have the authority to permit demonstration projects, the non-partisan Congressional Research Service (CRS) has found that the current HHS waiver initiative is “consistent” with prior practice. The CRS review found that dozens of waivers for demonstration projects have been approved in the past when their subject matter has been referenced in Section 402 of the Social Security Act (just as the Secretary now proposes). CRS also found nothing in the law that bars the Secretary from providing waivers related to employment activities in the TANF program.

The majority’s current effort to prevent flexibility through waivers seems in direct conflict with their past support for waivers. For example, in 2005, Republicans brought legislation to the House floor that included a much broader waiver authority than now being permitted by HHS. Under that bill (HR 4241), HHS could have waived both work requirements and time limits under the TANF program if “necessary and appropriate for conduct of the demonstration project.” The Congressional Research Service confirms that this legislation, and two prior Republican bills, “would have had the effect of allowing TANF work participation standards to be waived.”

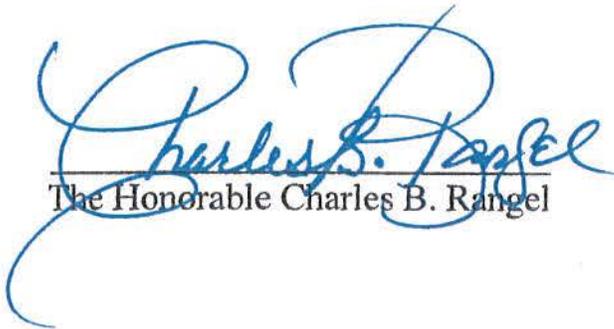
Based on false claims, H. J. RES. 118 appears more focused on politics than on policy. On that basis, and because it would impede progress in helping more welfare recipients move into work, we oppose this measure.



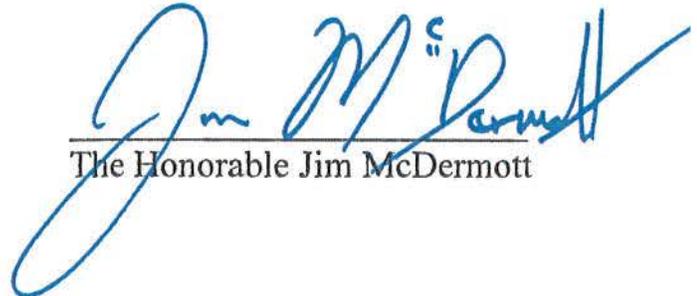
The Honorable Sander Levin



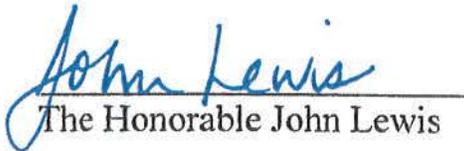
The Honorable Lloyd Doggett



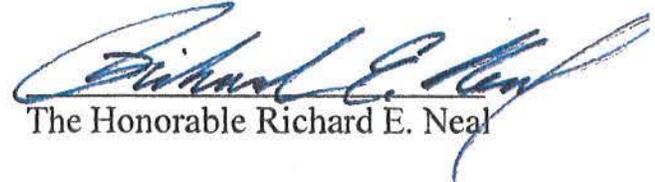
The Honorable Charles B. Rangel



The Honorable Jim McDermott



The Honorable John Lewis



The Honorable Richard E. Neal



The Honorable Xavier Becerra



The Honorable John B. Larson



The Honorable Earl Blumenauer



The Honorable Ron Kind



The Honorable Joseph Crowley



The Honorable Bill Pascrell, Jr.



The Honorable Mike Thompson



The Honorable Pete Stark

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. J. RES. 118

[Report No. 112-]

Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Office of Family Assistance of the Administration for Children and Families of the Department of Health and Human Services relating to waiver and expenditure authority under section 1115 of the Social Security Act (42 U.S.C. 1315) with respect to the Temporary Assistance for Needy Families program.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 11, 2012

Mr. CAMP (for himself, Mr. KLINE, and Mr. JORDAN) introduced the following joint resolution; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

SEPTEMBER --, 2012

Reported from the Committee on Ways and Means

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## JOINT RESOLUTION

Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Office of Family Assistance of the Administration for Children and Families of the Department of Health and Human Services relating to waiver and expenditure authority under section 1115 of the Social Security Act

(42 U.S.C. 1315) with respect to the Temporary Assistance for Needy Families program.

1       *Resolved by the Senate and House of Representatives*  
2 *of the United States of America in Congress assembled,*  
3 That Congress disapproves the rule submitted by the Of-  
4 fice of Family Assistance of the Administration for Chil-  
5 dren and Families of the Department of Health and  
6 Human Services relating to waiver and expenditure au-  
7 thority under section 1115 of the Social Security Act (42  
8 U.S.C. 1315) with respect to the Temporary Assistance  
9 for Needy Families program (issued July 12, 2012, as the  
10 Temporary Assistance for Needy Families Information  
11 Memorandum Transmittal No. TANF-ACF-IM-2012-  
12 03, and printed in the Congressional Record on September  
13 10, 2012, on pages S6047-S6050, along with a letter of  
14 opinion from the Government Accountability Office dated  
15 September 4, 2012, that the Information Memorandum is  
16 a rule under the Congressional Review Act), and such rule  
17 shall have no force or effect.