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CHANGING WELFARE “AS WE KNOW IT” ONE MORE TIME: ASSURING BASIC SKILLS AND POSTSECONDARY EDUCATION ACCESS FOR TANF RECIPIENTS

Janice Y. Law*

I. INTRODUCTION

Americans have long valued and espoused the ideal of upward mobility through determination and a willingness to work hard. Central to this ideal is a belief in opportunity. There is perhaps no opportunity held more dear or recited more frequently than educational opportunity. In its opening message, the 2006-07 Guide to Federal Student Aid, published by the U.S. Department of Education, acknowledged this optimistic belief: “In a nation where opportunity is open to all, education can be your most important first step. Education creates opportunities. No qualified student should be denied an education because the cost is too high.”¹

Indeed, research consistently reveals that higher levels of education are associated with increased earnings and lower rates of unemployment.² Despite this, most welfare recipients lack the education required to successfully compete in the labor market.³ In fact, close to half of welfare recipients under Temporary Assistance for Needy Families

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1. U.S. DEPT OF EDUC., FEDERAL STUDENT AID, FUNDING EDUCATION BEYOND HIGH SCHOOL: THE GUIDE TO FEDERAL STUDENT AID 2006-07, at v (2006), available at <http://studentaid.ed.gov/students/attachments/siteresources/StudentGuide.pdf>.

2. See discussion *infra* Part IV.A.

3. See *id.*

(TANF) lack a high school diploma.⁴ Thus, these recipients lack the qualifications that are necessary to gain and sustain meaningful employment.⁵

Although the preamble to the Deficit Reduction Act of 2005⁶ expresses the goal that TANF participants achieve “career development and wage progression,”⁷ steady work alone is generally insufficient for lower-skilled recipients to meet this goal. One study found that while low-income earners experience some earnings gains over time, only one-fourth or fewer permanently escape their low-wage status.⁸ Although many factors affect whether low-wage workers improve their earnings and move to higher-paying, better-skilled jobs, educational level is a critical consideration.⁹

Studies consistently link higher wages with strong skills and postsecondary credentials.¹⁰ Businesses pay nearly ten percent higher wages for each additional year of schooling beyond high school, and this premium is increasing over time.¹¹ Skills and credentials also improve the likelihood of

4. The latest data for fiscal year 2004 indicate that 54.6 percent of the total U.S. welfare population completed twelve years of education. Only four percent have more than twelve years of education. See U.S. DEP'T OF HEALTH & HUMAN SERVS., ADMINISTRATION FOR CHILDREN & FAMILIES, FISCAL YEAR 2004 CHARACTERISTICS AND FINANCIAL CIRCUMSTANCES OF TANF RECIPIENTS tbl.25 (2005), available at http://www.acf.hhs.gov/programs/ofa/character/FY_2004/tab25.htm.

5. See *id.*

6. Reauthorization of the Temporary Assistance for Needy Families Program, 71 Fed. Reg. 37,454 (June 29, 2006) (to be codified at 45 C.F.R. pt. 261). The Deficit Reduction Act of 2005 requires states to engage more TANF cases in productive work activities leading to self-sufficiency. See the U.S. Department of Health & Human Services Administration for Children & Families Fact Sheet for some of the Act's provisions that promote work and accountability. Welfare Reform: Deficit Reduction Act of 2005, available at <http://www.acf.hhs.gov/programs/ofa/drafact.htm>.

7. Reauthorization of the Temporary Assistance for Needy Families Program, 71 Fed. Reg. at 37,454.

8. See generally FREDRICK H. ANDERSSON, HARRY J. HOLZER & JULIA I. LANE, MOVING UP OR MOVING ON: WHO ADVANCES IN THE LOW-WAGE LABOR MARKET? 48-52, 72-77 (2005); NABEEL ALSALAM, MOLLY DAHL & THOMAS DELEIRE, CONG. BUDGET OFFICE, CHANGES IN LOW-WAGE LABOR MARKETS BETWEEN 1979 AND 2005 (Cameron Fletcher, ed., 2006), available at <http://www.cbo.gov/ftpdocs/76xx/doc7693/12-04-LaborForce.pdf>.

9. See discussion *infra* Part IV.

10. See *id.*

11. See LISA BARROW & CECILIA ELENA ROUSE, DO RETURNS TO SCHOOLING DIFFER BY RACE AND ETHNICITY? (Federal Reserve Bank of Chicago, Working Paper No. 2005-02, 2005) 1, available at <http://www.chicagofed.org/publications/workingpapers/wp200502.pdf> (citing

finding a higher-paying, better-skilled job initially and of wage growth over time.¹² One study projects that individuals with at least a bachelor's degree will fill nearly two out of three of the 18.9 million new jobs created between 2004 and 2014.¹³

The initial passage of welfare reform in 1996 virtually eliminated the decades-old practice of assisting low-income recipients obtain a college education. In particular, the federal law strongly discouraged states from incorporating postsecondary education into their welfare reform programs by focusing on "work first" policies.¹⁴

A "work first" approach suggests that it is best for individuals to enter the workforce (even at a lower-paying or part-time job) and work upwards.¹⁵ While this trend was already under way in the mid-1990s, passage of the 1996 welfare reform law hastened [the "work first" approach] by requiring states to move welfare recipients into work, thereby discouraging training and education programs.¹⁶ In reality, welfare recipients faced a mandate to "end dependence"¹⁷ and become "self-sufficient"¹⁸ without access to higher education opportunities.

Despite the pressure imposed by the federal law, a number of states have preserved college education as a component of welfare receipt.¹⁹ However, with the passage of

higher earnings with increased education by relying on data from the U.S. Decennial Census and the National Longitudinal Surveys).

12. See NAN POPPE, JULIE STRAWN & KARIN MARTINSON, *WHOSE JOB IS IT? CREATING OPPORTUNITIES FOR ADVANCEMENT* 9-10 (2003).

13. CTR. FOR WOMEN POLICY STUDIES, *THE CENTER'S COMMENTS ON FEDERAL REGULATIONS FOR THE REAUTHORIZED TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM (TANF)* (2006), <http://www.centerwomenpolicy.org/programs/poverty/CommentsonTANF2006.asp>.

14. See 42 U.S.C. § 607(c)(2)(D), (d)(8) (2006).

15. See AMY BROWN, MANPOWER DEMONSTRATION RESEARCH CORP., *WORK FIRST: HOW TO IMPLEMENT AN EMPLOYMENT-FOCUSED APPROACH TO WELFARE REFORM* 71 (1997), available at <http://www.mdrc.org/publications/129/full.pdf>.

16. JULIE STRAWN WITH ROBERT ECHOLS, CTR. FOR LAW AND SOC. POLICY, *WELFARE-TO-WORK PROGRAMS: THE CRITICAL ROLE OF SKILLS 2* (1999), available at http://www.clasp.org/publications/welfare_to_work_programs.pdf.

17. 42 U.S.C. § 601(a)(2) (2006).

18. § 602(a)(1)(A)(i).

19. See generally MARK GREENBERG, JULIE STRAWN & LISA PLIMPTON, CTR. FOR LAW AND SOC. POLICY, *STATE OPPORTUNITIES TO PROVIDE ACCESS TO POSTSECONDARY EDUCATION UNDER TANF* (2000) (describing state TANF policies with respect to postsecondary education).

welfare reauthorization in 2006, the federal government, for the first time, explicitly eliminated postsecondary education as an option in welfare programs and limited access to basic skills programs.²⁰

This comment examines the relevance and merits of postsecondary and basic skills education for low-income welfare recipients and the relationship between higher education, earnings and lasting employment. Part II traces the history of welfare reform. Part III identifies the limitations imposed by the current Deficit Reduction Act of 2005.²¹ Part IV analyzes the impact of postsecondary and basic skills education on welfare recipients' earning power.²² Part V proposes that Congress amend the current welfare statute to allow recipients to satisfy welfare work requirements through postsecondary and basic skills education programs, including English as a Second Language Programs, which are not explicitly included in the current statute.²³ Finally, Part VI concludes that welfare recipients will remain disadvantaged and dependent on assistance if the current federal TANF statute is not amended to include the proposed educational programs.²⁴

II. BACKGROUND—THE PASSAGE OF INITIAL WELFARE REFORM

This section examines the central programs in the history of welfare in the United States, in particular the former Aid to Dependent Children, Aid to Families with Dependent Children program²⁵ and the 1996 welfare reforms.²⁶

A. *Early Welfare Programs*

In the nineteenth century, pauperism was considered a moral failure²⁷ and a precursor to other deviant behavior.²⁸

20. See Reauthorization of the Temporary Assistance for Needy Families Program, 71 Fed. Reg. 37,454, 37,460 (June 29, 2006) (to be codified at 45 C.F.R. pt. 261).

21. See discussion *infra* Part III.

22. See discussion *infra* Part IV.

23. See discussion *infra* Part V.

24. See discussion *infra* Part VI.

25. See discussion *infra* Part II.A.

26. See discussion *infra* Part II.B.

27. See Joel F. Handler, *The Transformation of Aid to Families with Dependent Children: The Family Support Act in Historical Context*, 16 N.Y.U. REV. L. & SOC. CHANGE 457, 467 (1987-88).

Initially, to prevent the "deserving"²⁹ poor from becoming paupers, Congress limited relief to these individuals considered worthy of government assistance. Nonetheless, assistance was provided sparingly because public officials believed that dependence on government assistance would "interfere with" the labor system.³⁰ As a result, prior to the Great Depression, community almshouses, orphanages, and charities typically offered relief for the poor and the indigent.³¹

Later in the same century, there was a rise in categorical aid for categories of the poor who were considered "blameless."³² For instance, institutions were created for the blind, the deaf, the insane, and later, for orphans.³³

The first of the twentieth century categorical programs, Aid to Dependent Children (ADC), was established by states in 1911.³⁴ This program, popularly called "Mothers' Pensions,"³⁵ provided financial assistance to needy and dependent children.³⁶ Under ADC, women, mostly widowed and mostly white, raising children alone were provided financial benefits to enable them to remain home and care for their children.³⁷ In reality, the ADC program was a gesture only; the vast bulk of poor single mothers and their children

28. *Id.* at 467-68 n.42 ("Paupers, in the last century, were equated with criminals, delinquents, vice, corruption and drunkenness.").

29. *See id.* at 468. Those who would not be encouraged to move along deviant paths were considered "deserving," while the "able-bodied" were not. *See id.*

30. *See* MICHAEL B. KATZ, IN THE SHADOW OF THE POORHOUSE: A SOCIAL HISTORY OF WELFARE IN AMERICA 42 (10th ed. 1996) (quoting anonymous observer).

31. *See* MOLLY MCKAY, U.C. HASTINGS PUB. LAW RESEARCH INST., THE IMPACT OF BLOCK GRANTING AFDC (2004), available at <http://w3.uchastings.edu/plri/spr96tex/adfcblo.html>.

32. Joel F. Handler, *Symposium: The Legacy of Goldberg v. Kelly: A Twenty Year Perspective: "Constructing the Political Spectacle": Interpretation of Entitlements, Legalization, and Obligations in Social Welfare History*, 56 BROOK. L. REV. 899, 909 (1990) [hereinafter *Handler Symposium*].

33. *Id.*

34. *See generally* U.S. DEP'T OF HEALTH & HUMAN SERVS., AID TO FAMILIES WITH DEPENDENT CHILDREN: THE BASELINE (1998) (providing an overview of the program and statistical information on program characteristics as it existed prior to enactment of PRWORA) [hereinafter *BASELINE*]. *See also* *Handler Symposium*, *supra* note 32, at 909.

35. *Handler Symposium*, *supra* note 32, at 909-10.

36. *See* U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 4, at 4.

37. *See* *BASELINE*, *supra* note 34.

remained unsupported by the state.³⁸

The Great Depression provided the impetus for a national framework to provide assistance to the poor and in 1935, the Social Security Act nationalized welfare.³⁹ Title IV of this Act, ADC, consolidated numerous local and state programs.⁴⁰ In 1961, Congress amended welfare law, granting benefits to the family as a whole, not merely to the individual child.⁴¹ ADC was subsequently renamed Aid to Families with Dependent Children⁴² (AFDC).

In the 1960s, the number of individuals relying on welfare increased steadily, prompting legislators to place a new emphasis on the need to increase recipients' responsibilities.⁴³ In particular, recipients were expected to fulfill work requirements as a condition to receiving government assistance.⁴⁴ Yet, before the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), every state except three—Michigan, Nevada, and Oregon—permitted welfare recipients to satisfy work requirements through postsecondary education under the Job Opportunities and Basic Skills Training Program (JOBS).⁴⁵

Notably, under AFDC, basic and remedial education, education in English proficiency, and postsecondary education were statutorily authorized activities.⁴⁶ Although some states limited access to higher education to two years, most allowed welfare recipients sufficient time to pursue a four-year degree.⁴⁷ In fact, many welfare recipients availed themselves of this option. By fiscal year 1992, some eighteen

38. See *Handler Symposium, supra* note 32, at 910.

39. Lindsay Mara Schoen, Note, *Working Welfare Recipients: A Comparison of the Family Support Act and the Personal Responsibility and Work Opportunity Reconciliation Act*, 24 *FORDHAM URB. L.J.* 635, 639 (1997).

40. *Id.*

41. See *id.* at 640.

42. See *id.*

43. *Id.*

44. *Id.*

45. STAFF OF H. COMM. ON WAYS AND MEANS, 104TH CONG., 1996 GREEN BOOK: BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS 409 (Comm. Print 1996).

46. Reauthorization of the Temporary Assistance for Needy Families Program, 71 *Fed. Reg.* 37,454, 37,460 (June 29, 2006) (to be codified at 45 C.F.R. pt. 261).

47. *Id.* at tbl. 8-4.

percent of all JOBS participants were enrolled in college.⁴⁸ Among those participants who had completed high school or its equivalent, over one-third (thirty-six percent) were enrolled in a postsecondary program.⁴⁹

B. *The Passage of PRWORA in 1996*

In 1996, President Bill Clinton overhauled the nation's welfare system and fulfilled his campaign pledge to end "welfare as we know it."⁵⁰ In late August, Clinton signed the Personal Responsibility and Work Opportunity Act (PRWORA) into law. This sweeping federal legislation replaced the sixty-year-old AFDC program with the new TANF block grant program. PRWORA emphasized "work first"⁵¹ by imposing a sixty-month lifetime limit on welfare receipt.⁵² Moreover, the federal law strongly encouraged states to rescind access to higher education for welfare recipients.⁵³

Nonetheless, PRWORA considered education to be a countable work activity in a limited manner. In particular, the legislation focused on job search and paid employment instead of education.⁵⁴ Under PRWORA, states could count a TANF recipient's thirty weekly hours of job-related education or vocational training as his or her full participation for only one year.⁵⁵ This option existed for a maximum of thirty percent of the state's caseload.⁵⁶

48. AVIS A. JONES-DEWEEVER & BARBARA GAULT, INST. FOR WOMEN'S POLICY RESEARCH, RESILIENT AND REACHING FOR MORE: CHALLENGES AND BENEFITS OF HIGHER EDUCATION FOR WELFARE PARTICIPANTS AND THEIR CHILDREN 6 (2006).

49. *Id.*

50. Remarks on Signing the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and an Exchange with Reporters (Aug. 22, 1996) [hereinafter Remarks on PRWORA], <http://www.presidency.ucsb.edu/ws/index.php?pid=53218>.

51. See BROWN, *supra* note 15, at 5-6.

52. See 42 U.S.C. § 608(a)(7) (2006) ("No Assistance for More Than 5 Years"). Five years is the maximum time limit; states may impose shorter time limits. See § 608(a)(7)(E).

53. See § 607(c)(2)(D), (d)(8).

54. See generally § 607.

55. See § 607(c)(2)(D), (d)(8). After one year, the recipient is required to take part in other countable work activities for the first twenty hours of each week. See *id.* at (c)(1)(A). For the remaining ten hours, states were provided some flexibility in defining countable activities, some of which allowed postsecondary education. *Id.*

56. See § 607(c)(2)(D).

Generally, under the TANF statute, states were advised to use funds in any manner “reasonably calculated to accomplish”⁵⁷ the purposes of TANF. Those purposes were: (1) assisting needy families so that children can be cared for in their own homes; (2) reducing dependency of needy parents by promoting job preparation, work, and marriage; (3) preventing out-of-wedlock pregnancies; and (4) encouraging the formation and maintenance of two-parent families.⁵⁸ Thus, by implementing time limits on benefits, reform aimed to end dependence on government cash assistance by promoting job preparation and work. Notably, PRWORA did away with basic and remedial education, education in English proficiency, and postsecondary education, which were previously provided under AFDC.⁵⁹ In a recent publication, the Department of Health and Human Services (HHS) explained that “Congress purposely concentrated the TANF work activities on those focused on employment.”⁶⁰

The PRWORA legislation fundamentally changed intergovernmental relationships. It handed states broad flexibility to establish eligibility requirements and to construct their own assistance programs while freezing the level of federal funding.⁶¹ Previously, under AFDC, welfare recipients were able to receive cash assistance while participating in long-term training programs.⁶² The passage of TANF, however, marked the end of federal entitlement to assistance in exchange for state policy-making authority and flexibility.⁶³ For instance, California seized on this discretion by permitting TANF recipients to meet work obligations through various unpaid activities.⁶⁴

57. 42 U.S.C. § 604(a)(1) (2006).

58. See § 601(a)(1)-(4).

59. See Reauthorization of the Temporary Assistance for Needy Families Program, 71 Fed. Reg. 37,454, 37,460 (June 29, 2006) (to be codified at 45 C.F.R. pt. 261).

60. *Id.*

61. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. §§ 601-619 (2000).

62. See generally KATZ, *supra* note 30.

63. See § 601(a).

64. See, e.g., CAL. WELF. & INST. CODE § 11322.6 (West 2006). Under the California statute, welfare-to-work activities may include, but are not limited to: (1) unsubsidized employment, (2) work experience, which means public or private work that shall help provide basic job skills, enhance existing job skills in a position related to the participant's experience, or provide a needed community service that will lead to employment, (3) on-the-job training, (4)

Despite the devolution of authority, a majority of state TANF laws make paid employment the ultimate goal of work requirements.⁶⁵ By doing so, states interpret "work" much more narrowly.⁶⁶ Many states have abandoned programs offering postsecondary education to welfare recipients for fear of federal financial aid reprisal.⁶⁷ As a result, the number of welfare recipients enrolled in college plummeted from 172,176 in 1996 to only 58,055 in 1998.⁶⁸

Work was the core of the public policy consensus underlying the sweeping legislative reform in 1996.⁶⁹ The legislation, however, lacked specificity regarding the foundational category of "work."⁷⁰ In mid-2006, while Congress made virtually no changes to the original 1996 TANF statute, it directed HHS to issue regulations specifying, for the first time, the activities that meet TANF's statutory definition of "work."⁷¹

work-study, (5) self-employment, (6) community service, (7) adult basic education, (8) job skills training directly related to employment, (9) vocational education and training, (10) job search and job readiness assistance, (11) education directly related to employment, (12) and satisfactory progress in secondary school or in a course of study leading to a certificate or general educational development, (13) mental health, substance abuse, and domestic violence services, and (14) other activities necessary to assist an individual in obtaining unsubsidized employment. *Id.*

65. HHS's Reauthorization of the TANF Program explicitly states this goal. *See* Reauthorization of the Temporary Assistance for Needy Families Program, 71 Fed. Reg. 37,454, 37,455 (June 29, 2006) (to be codified at 45 C.F.R. pt. 261); *see also* Noah Zatz, *Welfare to What?*, 57 HASTINGS L.J. 1131, 1143-63 (2006) (discussing different state approaches to implementation of TANF's work requirements).

66. *See, e.g.*, ARIZ. ADMIN. CODE § R6-10-101(64) (2006); CAL. WELF. & INST. CODE § 11322.6 (West 2006); ILL. ADMIN. CODE tit. 89, § 112.70, .78 (2006) (excluding from state work activities care for the children of other TANF recipients); *see also* MD. ANN. CODE art. 88A, § 44A (2006) (excluding high school or GED preparation); OKLA. ADMIN. CODE § 340:10-2-1(3)(B)(ii)-(iii) (2006) (excluding employment-related education or high school or GED coursework for non-high school graduates); 22 VA. ADMIN. CODE § 40-35-10, 100(D), (E) (2006) (excluding any form of training or education as a "work activity," but allowing some forms of education to supplement work).

67. *See, e.g.*, N.Y. SOC. SERV. § 336-a(1) (Consol. 2006); MONT. ADMIN. R. 37.78.103(59) (2006); WIS. STAT. ANN. § 49.147(5m) (West 2006).

68. GREENBERG ET AL., *supra* note 19, at 33. The study was conducted by the Center for Law and Social Policy.

69. *See, e.g.*, Remarks on PRWORA, *supra* note 50, at 1325-26.

70. *See* 45 C.F.R. § 261.30 (2006) (codified as amended at 42 U.S.C. § 607(d)(1)-(12) (2006)) (listing the twelve work activities specified under section 407(d) of the Social Security Act).

71. *See* 42 U.S.C. § 607(d)(1)-(12) (2006).

C. Federal Structure of TANF Work Requirements

In order to receive federal funding, each state must comply with federal TANF “participation rate” requirements.⁷² Since 2002, federal law has required fifty percent of all families with an adult receiving TANF assistance and ninety percent of two-parent families to meet federal work requirements.⁷³ These requirements establish the percentage of the total TANF caseload that must be “engaged in work.”⁷⁴ In order to count toward meeting the required participation rate, an adult TANF recipient must be engaged in one or more “work activities” specified in the TANF statute for a minimum number of hours per week.⁷⁵ If the state fails to meet the percentage, it loses a significant amount of federal funding for its TANF program.⁷⁶

The TANF statute lists twelve work activities countable toward the work participation rate.⁷⁷ At least twenty hours of work must come from the “core” set of work activities defined as: (1) unsubsidized employment; (2) subsidized private sector employment; (3) subsidized public sector employment; (4) work experience; (5) on-the-job training; (6) job search and job readiness assistance; (7) community service programs; (8) vocational educational training; and (9) providing child care services to someone participating in community service.⁷⁸ Recipients may complete any remaining hours from this core set or from an additional set of work activities consisting of: (1) job skills training directly related to employment; (2) education directly related to employment for non-high school graduates; and (3) high school or GED coursework for non-high school graduates.⁷⁹

Under the federal law, work is defined broadly to include subsidized employment, “workfare” services,⁸⁰ and activities that are related to future employment.⁸¹ Nonetheless, there

72. See § 607(b)(1)(A), (b)(2)(A), (c)(1)(A).

73. See § 607(a)(1)-(2).

74. § 607(c).

75. See § 607(c), (d)(1)-(12) (listing the core set of activities that qualify as work).

76. See § 609(a)(3)(A).

77. See 42 U.S.C. § 607(d) (2006).

78. *Id.*

79. See *id.*; see also 42 U.S.C. § 607(c).

80. Those that allow recipients to continue receiving welfare benefits in place of an ordinary paycheck.

81. These include job search and employment-related education or training

are important limitations. For instance, TANF provides for "individual responsibility plans . . . for moving the individual immediately into private sector employment."⁸² Professor Noah Zatz⁸³ noted the emphasis on a "pervasive, albeit informal, message that welfare recipients should be seeking a paycheck in order to avoid a welfare check."⁸⁴ For instance, names of state programs illustrate references to work and invoke unsubsidized employment.⁸⁵ More formally, TANF explicitly excludes all forms of non-vocational postsecondary education, underscoring the government's emphasis on immediate paid employment, rather than promoting higher post-welfare wages and the possibility of long-term self-sufficiency.⁸⁶

D. State Implementation of TANF Work Requirements

Until 2007, federal law not only recognized a myriad of permissible work activities, it allowed states to interpret these categories to satisfy employment requirements for welfare assistance.⁸⁷ Although HHS has now issued regulations defining the activities that count toward the work participation rate requirements,⁸⁸ it is too early to assess the impact these new regulations will have on current state practices. Thus, the different ways in which states have implemented work requirements during TANF's first decade remain important because they provide a comparison for future recommendations and reforms.

and basic high school or GED coursework.

82. 42 U.S.C. § 602(a)(1)(A)(ii) (2006).

83. Acting Professor of Law, University of California at Los Angeles. Professor Zatz studies and teaches work and welfare-related issues in the United States.

84. Zatz, *supra* note 65, at 1142.

85. For example, California's "CalWorks" program, the Connecticut program, "JOBS FIRST," and Washington's "WorkFirst" program. See U.S. DEPT OF HEALTH & HUMAN SERVS., STATE TANF PROGRAM NAMES (2002), <http://www.acf.hhs.gov/programs/ofa/tnfnames.htm> (listing the names of all states' welfare programs).

86. See *generally* PAMELA FRIEDMAN, WELFARE INFORMATION NETWORK, TANF REAUTHORIZATION AND POSTSECONDARY EDUCATION OPTIONS FOR WELFARE RECIPIENTS, REAUTHORIZATION NOTES (2001), *available at* <http://www.financeproject.org/Publications/tanFReauth-postsecedureauthorization.htm>.

87. See Temporary Assistance for Needy Families Final Rule, 45 C.F.R. § 260.31(a)(7)(c)(2) (2005).

88. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. §§ 601-619 (2006).

In the first TANF decade, states have taken advantage of federal latitude in determining how they define work. Many states have focused on promoting self-sufficiency through employment, but they have done so by different methods. For instance, some states emphasize immediate employment.⁸⁹ Others encourage preparation for future employment through activities such as on-the-job training⁹⁰ and college education.⁹¹ Yet, others focus on meeting family or community needs.⁹²

Furthermore, many states include postsecondary and other forms of education in their definitions of work.⁹³ By doing so, these states have partially rejected the “work first” approach.⁹⁴ State implementation of these policies have

89. See *supra* text accompanying notes 65-71.

90. See, e.g., CAL. WELF. & INST. CODE § 11322.6(e) (West 2006); IOWA CODE ANN. § 239B.8(2)(d) (West 2006); N.M. STAT. ANN. § 27-2B-5(A)(5) (West 2006).

91. See, e.g., ARIZ. REV. STAT. ANN. § 46-299(B) (2006); ARK. CODE ANN. § 20-76-402(a)(7) (2001); CAL. WELF. & INST. CODE § 11322.6(m) (West 2006); FLA. STAT. ANN. § 445.024(1)(g) (West 2006); ME. REV. STAT. ANN. tit. 22, § 3790 (2006); MO. ANN. STAT. § 208.040(5)(2) (West 2006); MONT. CODE ANN. § 53-4-212(2)(u) (2006); NEB. REV. STAT. § 68-1721(2) (2003), *amended by* 2007 Neb. Laws Legis. B. 351 (2007); N.H. REV. STAT. ANN. § 167:85(g) (2006), *amended by* 2007 N.H. Laws Ch. 349 (S.B. 226) (codified as amended at N.H. REV. STAT. ANN. § 167:85(h)(1)-(4) (2006)); VT. STAT. ANN. tit. 33, § 1122 (2001); W. VA. CODE ANN. § 9-9-7(a) (West 2006); WYO. STAT. ANN. §§ 42-2-103(b)(iv)(C), 42-2-109(a) (2007).

92. See, e.g., N.Y. SOC. SERV. § 332(1)(c) (Consol. 2006); W. VA. CODE ANN. § 9-9-3(f), (p) (2006); see also OHIO REV. CODE ANN. § 5107.60(C) (West 2006) (treating as “community service” an adult caretaker’s “involve[ment] in the minor child’s education on a regular basis.”).

93. See, e.g., ARK. CODE ANN. § 20-76-402(a)(7) (2006); CAL. WELF. & INST. CODE § 11322.6(m) (West 2006); FLA. STAT. ANN. § 445.024(1) (West 2006); 305 ILL. COMP. STAT. ANN. § 5/9A-9(h) (West 2001); ME. REV. STAT. ANN. tit. 22, § 3790 (2005); MO. ANN. STAT. § 208.040(5)(2) (West 2006); MONT. CODE ANN. § 53-4-212(2)(u) (2006); NEB. REV. STAT. § 68-1721(2) (2003), *amended by* 2007 Neb. Laws Legis. B. 351 (2007); N.C. GEN. STAT. ANN. § 108A-27.9(c)(4) (West 2005); N.H. REV. STAT. ANN. § 167:85(g) (2006), *amended by* 2007 N.H. Laws Ch. 349 (S.B. 226) (codified as amended at N.H. REV. STAT. ANN. § 167:85(h)(1)-(4) (2006)); N.Y. SOC. SERV. § 336-a(1) (Consol. 2006); OHIO REV. CODE ANN. § 5107.58 (West 2006); R.I. GEN. LAWS § 40-5.1-9(c)(2)(i)(F)-(I) (2006); S.D. CODIFIED LAWS § 28-7A-22 (2003); TENN. CODE ANN. § 71-3-154(g)(10) (2004); VT. STAT. ANN. tit. 33, § 1122 (2001); W. VA. CODE ANN. § 9-9-7(a) (West 2006); WYO. STAT. ANN. §§ 42-2-103(b)(iv)(C), 42-2-109(a) (2007); 16-5000-5100 DEL. CODE REGS. § 3006.6 (Weil 2005); KAN. ADMIN. REGS. § 30-4-64(b)(3) (2007); 921 KY. ADMIN. REGS. § 2:370(12) (2007); MICH. ADMIN. CODE r. 400.3601(b)(ii) (2007); see also N.J. STAT. ANN. § 44:10-34, -57 (West 2007) (allowing postsecondary education only when combined with another work activity); WIS. STAT. ANN. § 49.147(5m) (West 2006) (same).

94. See BROWN, *supra* note 15, at 2. Senator Phil Gramm expressed his views on this approach, saying: “Work does not mean sitting in a classroom. Work means work Ask any of my brothers and sisters what ‘work’ meant

continued the debate over the value of immediate employment versus enhancement of long-term employment prospects.⁹⁵ Specifically, on the one hand, "work first" proponents argue that flexible categories of work, including education, weaken the goal of employment by allowing welfare recipients to defer job search and employment,⁹⁶ whereas, those who construe "work" broadly to include education emphasize the increased potential for earnings, employment, and overall well-being.⁹⁷

E. Welfare Reauthorization Ten Years Later: Regulations Pursuant to the Deficit Reduction Act of 2005

On February 8, 2006, President George W. Bush reauthorized TANF by signing the Deficit Reduction Act (DRA) of 2005.⁹⁸ On June 29, 2006, as required by the DRA,⁹⁹

on our family's dairy farm. It didn't mean sitting on a stool in the barn, reading a book about how to milk a cow. 'Work' meant milking cows." Work Opportunity Act of 1995, H.R. 4, S. 1120, 104th Cong. (1st Sess. 1995) (as passed by Senate Sept. 19, 1995), 141 CONG. REC. S13788 (1995).

95. See Matthew Diller, *Working Without a Job: The Social Messages of the New Workfare*, 9 STAN. L. & POL'Y REV. 19 (1998).

96. See generally BROWN, *supra* note 15.

97. See Rebekah J. Smith, Luisa S. Deprez & Sandra S. Butler, *The Miseducation Of Welfare Reform: Denying The Promise of Postsecondary Education*, 55 ME. L. REV. 211, 219-20 (2003).

98. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 106-169, 113 Stat. 1858 (1999).

99. See Reauthorization of the Temporary Assistance for Needy Families Program, 71 Fed. Reg. 37,454 (June 29, 2006) (to be codified at 45 C.F.R. pt. 261). Regarding the justification for the new interim final rule, the Rules and Regulations of the Reauthorization of the Temporary Assistance for Needy Families Program state:

The law also directs the Secretary of Health and Human Services to define work activities and determine who is a work-eligible individual, and these provisions are critical to the timely implementation of work requirements. In particular, without Federal definitions for work activities, States could define some activities so broadly that they render the new work provisions meaningless, thereby delaying implementation of meaningful reform. Moreover, such a practice would perpetuate existing disparities in State definitions and undermine the equitable treatment of States. In addition, States would be required to establish work participation verification procedures regarding activities that regulations were published. Thus, issuing regulations regarding all aspects of work requirements simultaneously is necessary to implement the intent of the law and promote the public interest. Under an interim final rule, States would know how to plan their programs and take necessary steps to implement the new requirements.

the Department of Health and Human Services (HHS) issued regulations (Interim Final Rules) regarding the statutory changes enacted.¹⁰⁰ This legislation reauthorizes the TANF program through fiscal year 2010¹⁰¹ and aims to “[help] more low-income families enter the workforce and succeed at work.”¹⁰² HHS issued these regulations on an interim final basis, meaning they are effective until HHS revises them.¹⁰³ As a result, states must make the appropriate changes to bring their programs into conformity with the new federal regulations.¹⁰⁴

Most importantly, the DRA regulations define, for the first time, the activities “countable” toward the work participation rate requirements and describe how states must monitor and verify the hours that TANF recipients participate in the program.¹⁰⁵ Specifically, the interim final regulations separate work activities into mutually exclusive categories.¹⁰⁶ Under the category of “vocational education training,” participants are limited to activities that “give individuals the knowledge and skills to perform a specific occupation.”¹⁰⁷ In particular, vocational educational training¹⁰⁸ now means “organized educational programs that are directly related to the preparation of individuals for employment in current or emerging occupations requiring training other than a baccalaureate or advanced degree.”¹⁰⁹ Further, the regulations mandate that vocational educational training participants be supervised no less frequently than daily.¹¹⁰

Although some existing state vocational educational training programs allow postsecondary education leading to

Id. at 37,454-55.

100. *See generally* Reauthorization of the Temporary Assistance for Needy Families Program, 71 Fed. Reg. at 37,454-83.

101. *Id.* at 37,454.

102. *Id.* at 37,455.

103. *Id.* The Deficit Reduction Act of 2005 stipulates that, with one exception, states must comply with the HHS regulations by October 1, 2006. *Id.*

104. *See id.*

105. *Id.* at 37,457-62.

106. *See* Reauthorization of the Temporary Assistance for Needy Families Program, 71 Fed. Reg. 37,454, 37,457, 37,461 (June 29, 2006) (to be codified at 45 C.F.R. pt. 261).

107. *Id.* at 37,460.

108. Vocational educational training cannot exceed twelve months. *See id.*

109. *Id.*

110. *Id.*

baccalaureate or advanced degrees,¹¹¹ the HHS regulations now preclude these practices.¹¹² HHS noted that while AFDC authorized basic and remedial education, education in English proficiency, and postsecondary education, all of which may help prepare individuals for employment, "they are generally not considered vocational education . . . and Congress purposely concentrated the TANF work activities on those focused on employment."¹¹³ The regulations explain that "the TANF program was not intended to be a college scholarship program for postsecondary education."¹¹⁴ Thus, the new regulations include only two scenarios. First, the regulations allow education directly related to employment in the case of a recipient who has not received a high school diploma¹¹⁵ or a certificate of high school equivalency. Second, the regulations permit educational attendance at a secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate.¹¹⁶

III. IDENTIFICATION OF THE PROBLEM: LIMITING POSTSECONDARY AND BASIC SKILLS EDUCATION FOR WELFARE RECIPIENTS

The newly-promulgated regulations represent a marked departure in TANF policy. By prohibiting welfare recipients from participating in postsecondary education programs and limiting basic skills education, the federal program contravenes decades of research illustrating the relationship between education, increased earnings and sustainable employment.¹¹⁷ In doing so, the regulations deemphasize the

111. See, e.g., CAL. WELF. & INST. CODE § 11322.6 (West 2006).

112. See Reauthorization of the Temporary Assistance for Needy Families Program, 71 Fed. Reg. 37,454, 37,476 (June 29, 2006) (to be codified at 45 C.F.R. pt. 261) (citing 45 C.F.R. § 261.2(i) (2006)), which mandates:

Vocational educational training (not to exceed 12 months with respect to any individual) means organized educational programs that are directly related to the preparation of individuals for employment in current or emerging occupations requiring training other than a baccalaureate or advanced degree. Vocational educational training must be supervised on an ongoing basis no less frequently than daily.

113. Reauthorization of the Temporary Assistance for Needy Families Program, 71 Fed. Reg. at 37,460.

114. *Id.*

115. See 45 C.F.R. § 261.2(k) (2006).

116. See *id.* at § 261.2(l).

117. See discussion *infra* Part IV.

importance of education for individual advancement and limit the competitiveness of the economy.¹¹⁸

This concern is particularly poignant in light of the economic and employment trends in future decades.¹¹⁹ By curtailing educational opportunities, the current program deprives poor welfare recipients of the opportunity to maximize their educational and earning potentials. To ensure that welfare recipients are afforded an opportunity to permanently escape poverty, Congress should revise the current statute to again allow low-income recipients to satisfy work requirements by engaging in postsecondary and basic skills education programs.

IV. ANALYSIS

To illustrate the importance of access to education, this section analyzes the impact of postsecondary and basic skills education on welfare recipients' earning power. In particular, Part B underscores the positive interaction between education and earnings through the examples of the California CalWORKs program and the extensive basic skills tutoring program at Chaffey College.¹²⁰ On the other hand, the case of *Kosmicki* illuminates the pessimistic reality of current TANF restrictions on education and time limits.¹²¹

118. Assistant Secretary of Labor for Employment and Training, Emily Stover DeRocco stated in a speech to WIRED Town Hall on February 22, 2006:

For most of the last century, no more than a high school education was required in our economy. Almost anyone with a high school diploma could find a job that would allow them to support a family, own a home, and build a career. Today, high school serves only as the prerequisite to further education Whether it is an 18-year-old student entering a four-year university or a 50-year-old worker displaced from the manufacturing sector entering a community college to learn new skills, our citizens need access to the education and skills development that our role in the global economy demands.

Emily Stover DeRocco, Assistant Sec'y of Labor for Employment and Training, U.S. Dep't of Labor, Address at the WIRED Town Hall (Feb. 22, 2006), available at

<http://www.doleta.gov/whatsnew/Deroccospeeches/WIRED%20Town%20Hall%20Speech.pdf>. WIRED stands for Workforce Innovation in Regional Economic Development, which is a program of the Department of Labor.

119. See *infra* notes 196-98 and accompanying text.

120. See discussion *infra* Parts IV.B.1., IV.B.5.

121. See discussion *infra* Part IV.B.3.

A. *A Lifelong Interaction: Education, Earnings, and Welfare*

Studies suggest that welfare-to-work programs that include substantial access to education and training are the most successful in helping parents work more and increase earnings over time.¹²² This is largely due to the strong link between education and success in the labor market.¹²³ Under TANF, both participation in and spending on education programs have declined. Less than one percent of federal TANF funds were devoted to education and training in 2000 and only five percent of TANF recipients participated in these activities in the same year.¹²⁴

Generally, basic skills and educational credentials are essential for professional success, particularly if individuals are to progress to higher-paying and lasting employment. Lack of basic skills means reading and mathematics skills below the eighth-grade level.¹²⁵ "Data on the impact of PRWORA show that while many TANF recipients [find] work, most of these jobs are unstable and do not pay enough to bring families out of poverty."¹²⁶ Under TANF, employed welfare recipients earn low wages that grow modestly over time largely because their lack of education and basic skills place and keep them in low-wage jobs and industries.¹²⁷ After losing a job, these individuals are more likely than other welfare recipients to remain unemployed and on welfare or return to welfare.¹²⁸

A lack of basic skills and education credentials is one of the most common barriers to employment faced by welfare recipients.¹²⁹ Compared to thirty-four percent of full-time employees,¹³⁰ sixty percent of all welfare recipients, and

122. See KARIN MARTINSON & JULIE STRAWN, CTR. FOR LAW AND SOC. POLICY AND THE NAT'L COUNCIL OF STATE DIRS. OF ADULT EDUC., *BUILT TO LAST: WHY SKILLS MATTER FOR LONG-RUN SUCCESS IN WELFARE REFORM 1*, 23 (2003), http://www.clasp.org/publications/BTL_report.pdf.

123. See *id.*

124. See POPPE ET AL., *supra* note 12, at 29-30.

125. See BROWN, *supra* note 15, at 73.

126. See Smith et al., *supra* note 97, at 217.

127. See MARTINSON ET AL., *supra* note 122, at 23.

128. See *id.* at 5.

129. See KRISTA K. OLSON & LADONNA PAVETTI, THE URBAN INST., *PERSONAL AND FAMILY CHALLENGES TO THE SUCCESSFUL TRANSITION FROM WELFARE TO WORK* (1996), <http://www.urban.org/publications/406850.html>.

130. See HANS P. JOHNSON & SONYA M. TAFOYA, PUB. POLICY INST. OF CAL., *THE BASIC SKILLS OF WELFARE RECIPIENTS: IMPLICATIONS FOR WELFARE REFORM*, at vi (1999). This report is the fourth in a series of studies undertaken

eighty-one percent of recipients without recent work experience, have low basic skills.¹³¹ In 2002, HHS reported that close to half of TANF recipients do not have a high school diploma,¹³² and thus lack the qualifications that are necessary for gainful employment in the future. More than one third of TANF recipients have completed ten years or less of school.¹³³

Given their lack of skills and education, recipients who left welfare for work under the initial 1996 TANF law have generally fared poorly in the labor market. About fifty-two percent of those who left welfare in 1999 had incomes below the poverty level.¹³⁴ Many of these individuals are poor because their hourly wages are low and because they are not working full-time or year-round.¹³⁵

Furthermore, welfare recipients experience little wage growth over time, primarily because individuals with low skills and education credentials face limited opportunities for upward mobility.¹³⁶ For instance, in a national study that tracked women for ten years after leaving welfare, researchers found that while earnings increased significantly in the first five years, thereafter they hit a plateau, averaging

by the Public Policy Institute of California to analyze PRWORA. *Id.* at iii. The authors use data from the National Adult Literacy Survey to assess the basic skills of adults on welfare and the likelihood that welfare recipients will be able to find and hold full-time jobs. *Id.* at iii. The National Adult Literacy Survey, a nationally representative survey conducted in 1992, includes a test of basic skills. *Id.* at vi. It assessed the ability of respondents to perform tasks encountered in daily living and in the workplace. *Id.*

131. *Id.* at 21.

132. See U.S. DEP'T OF HEALTH AND HUMAN SERVS., TEMPORARY ASSISTANCE FOR NEEDY FAMILIES: CHARACTERISTICS AND FINANCIAL CIRCUMSTANCES OF TANF RECIPIENTS, FISCAL YEAR 2002, TABLE A: COMPARISON OF TANF RECIPIENT CHARACTERISTICS BETWEEN FY 2001 AND FY 2002, available at <http://www.acf.hhs.gov/programs/ofa/annualreport6/chapter10/chap10.htm#adults>.

133. See *id.*

134. PAMELA LOPREST, THE URBAN INST., HOW ARE FAMILIES THAT LEFT WELFARE DOING? A COMPARISON OF EARLY AND RECENT WELFARE LEAVERS 4, tbl. 1 (2001), <http://www.urban.org/UploadedPDF/anfb36.pdf>. The report uses data from the National Survey of America's Families conducted in 1997 and 1999. *Id.* at 1. It examines whether a more recent group of welfare recipients who left welfare between 1997 and 1999 appears more disadvantaged or less job-ready than an early group of leavers, who left between 1995 and 1997, by comparing barriers to work and economic outcomes between the two groups. See *id.*

135. See *id.*

136. MARTINSON ET AL., *supra* note 122, at 7.

about \$13,000 in the tenth year after leaving welfare.¹³⁷ Even for those who do advance in the workplace, education and basic skills are more important than experience in determining wages and wage increases.¹³⁸ Each year of schooling beyond high school increased wages by about seven percent.¹³⁹ Other studies have found a similar link between postsecondary education and wages.¹⁴⁰ Among women who remain with the same employer, those without a high school diploma see annual wage increases of 0.7 percent.¹⁴¹ Those with a high school diploma experience wage increases of 1.4 percent.¹⁴² Most significantly, the annual wages of those with a college degree increase slightly over five times the rate of those without a high school diploma, at 3.6 percent.¹⁴³

Not only do welfare recipients face limited opportunities for upward mobility, these individuals also have trouble advancing because most jobs available to them are inherently unstable.¹⁴⁴ In particular, findings illustrate that three at-risk groups—individuals who remain on welfare and unemployed, individuals who leave TANF without finding work, and individuals who leave TANF but return to welfare—have low education credentials and skill levels. With respect to individuals in the first and second groups, TANF recipients who are not working have significantly

137. *Id.*

138. *Id.*

139. SUSANNA LOEB & MARY CORCORAN, J. OF POLICY ANALYSIS AND MGMT., WELFARE, WORK EXPERIENCE, AND ECONOMIC SELF-SUFFICIENCY 18 (2001). In this paper, the authors estimate how wages grew with work experience between 1978 and 1992 for a national sample of women from the National Longitudinal Survey of Youth. *Id.* at 1. The authors compared women who never received welfare with both short and long-term welfare recipients to determine to what extent the rates of wage growth with work experience differ among the groups. *Id.*

140. MARTINSON ET AL., *supra* note 122, at 7, 28 n.19.

141. *Id.* at 8.

142. *Id.*

143. *Id.*

144. For instance, an Illinois study in the mid-1990s found:

Welfare recipients, who encounter multiple labor market barriers, face a job market that has little use for their qualifications. Recipients who are able to secure employment often do so at the low end of the labor market in jobs that are unstable and low paying. This explains, in part, why recipients tend to move from job to job and in and out of the welfare system.

VIRGINIA L. CARLSON & NIKOLAS C. THEODORE, ILL. JOB GAP PROJECT, ARE THERE ENOUGH JOBS? WELFARE REFORM AND LABOR MARKET REALITY 14 (1995).

lower education levels than those who are working, despite the fact that both are on welfare.¹⁴⁵ For the third group of welfare recipients, about one fifth of those who leave TANF return to cash assistance.¹⁴⁶ On the whole, those individuals have low education levels. Of those who left welfare and returned, thirty-eight percent had less than a high school education, compared with twenty-seven percent of those who were working and off TANF.¹⁴⁷

Census reports over the last decade illustrate that “greater educational attainment spells greater socioeconomic success for individuals and the country. For every progressively higher level of education, earnings are higher.”¹⁴⁸ Postsecondary education increases wages enough to decrease the need for families to rely on welfare.¹⁴⁹ Specifically, women who finish high school or who obtain any postsecondary education significantly reduce their chances of repeat dependency.¹⁵⁰ Additionally, recipients with post-high school education have a forty-one percent lower chance of returning to welfare than do non-high school graduates.¹⁵¹ Sociologist Kathleen Harris concluded, “education is more important in maintaining welfare exits than is contact with the labor force prior to entering welfare.”¹⁵² Studies of both male and female recipients confirm this trend.¹⁵³

145. Andrew Cherlin & Robert Moffitt, *Disadvantage Among Families Remaining on Welfare* (Feb. 28-Mar. 1, 2002) (on file with author).

146. MARTINSON ET AL., *supra* note 122, at 10.

147. *Id.*

148. U.S. CENSUS BUREAU, *POPULATION PROFILE OF THE UNITED STATES 9-1 (2000)*, available at <http://www.census.gov/population/pop-profile/2000/profile2000.pdf>.

149. Several studies confirm that welfare participants who take advantage of postsecondary education improve their wages as well as their job stability. *See generally*, REBEKAH J. SMITH, LUISA S. DEPREZ & SANDRA S. BUTLER, *PARENTS AS SCHOLARS: EDUCATION WORKS, OUTCOMES FOR MAINE FAMILIES AND IMPLICATIONS FOR TANF REAUTHORIZATION (2002)*, available at <http://www.mejp.org/PDF/pas.pdf> (reporting that many participants of Maine’s Parents as Scholars program earn higher wages and benefits after graduating from college and leave welfare permanently); *see also* ANITA MATHUR WITH JUDY REICHLE, JULIE STRAWN & CHUCK WISELEY, *CTR. FOR LAW AND SOC. POLICY, FROM JOBS TO CAREERS: HOW CALIFORNIA COMMUNITY COLLEGE CREDENTIALS PAY OFF FOR WELFARE PARTICIPANTS 37 (2004)*.

150. Kathleen Mullan Harris, *Life After Welfare: Women, Work, and Repeat Dependency*, 61 AM. SOC. REV. 407, 416 (1996).

151. *Id.*

152. *Id.*

153. *See* FREDRIK ANDERSSON, HARRY J. HOLZER & JULIA I. LANE, U. S. DEPT’ OF HEALTH AND HUMAN SERVS., *THE INTERACTIONS OF WORKERS AND*

Thus, if welfare recipients are to improve their skills, find jobs, advance to better-paying, higher-skilled employment, and move out of poverty, it is necessary that these recipients acquire basic skills and education.

B. The Importance of Postsecondary Education Programs and the Preclusion of Four-Year Postsecondary Education

This section highlights the affirmative interaction between education and earnings at both a basic skills and a higher, postsecondary level. In particular, the examples of the California CalWORKs program, the case of *Kosmicki v. Nebraska* and the extensive basic skills tutoring program at Chaffey College in California illustrate the importance of access to education and the problems related to the current statutory limits.

1. California CalWORKs Example

Currently, the Deficit Reduction Act (DRA) allows the pursuit of occupational-oriented postsecondary education below the baccalaureate level. This includes associate degrees, certificate occupation programs and non-credit workforce or vocational training.¹⁵⁴ These programs are available through community colleges or other institutions. However, the duration currently allowable (twelve months) should be increased to allow for completion of an associate degree. The following provides a glimpse of the California plan, which mandates work concurrent with education, and the impact it has had on recipients.

California provides a unique case study regarding access to higher education for low-income populations for two reasons. First, the state has in place a community college system that routinely serves as a bridge to the state's four-year institutions.¹⁵⁵ Second, the state has historically

FIRMS IN THE LOW-WAGE LABOR MARKET 9 n.6 (2002), available at <http://aspe.hhs.gov/hsp/workers&firms03/report.pdf>; see also MARTINSON ET AL., *supra* note 122.

154. Reauthorization of the Temporary Assistance for Needy Families Program, 71 Fed. Reg. 37,454, 37,460 (June 29, 2006) (to be codified at 45 C.F.R. pt. 261).

155. See, e.g., ANDREA CONKLIN BUESCHEL, THE MISSING LINK: THE ROLE OF COMMUNITY COLLEGES IN THE TRANSITIONS BETWEEN HIGH SCHOOL AND COLLEGE, A REPORT FOR THE BRIDGE PROJECT: STRENGTHENING K-16 TRANSITION POLICIES 25 (2003).

demonstrated a commitment to expanding access to higher education for welfare recipients.

Prior to the Federal JOBS legislation under AFDC, California had already established several programs designed to expand access to higher education for disadvantaged populations. These included the Expanded Opportunity Program and Services (EOPS),¹⁵⁶ the Cooperative Agencies Resources for Education program (CARE),¹⁵⁷ and the Greater Avenues to Independence program (GAIN).¹⁵⁸ Together, these programs granted welfare recipients access to higher education for up to two years (GAIN), and provided low-income students and parents with financial and academic assistance, counseling and other support services.¹⁵⁹

Following the initial passage of TANF in 1996, California created the California Work Opportunity and Responsibility to Kids (CalWORKs) program for welfare parents.¹⁶⁰ In creating CalWORKs the state legislature allocated \$81 million to the California Community Colleges Chancellor's Office to establish programs at the state's 108 community colleges for current and former welfare recipients.¹⁶¹ In addition, the law established state-specific work participation requirements¹⁶² and imposed a five-year lifetime limit on state-funded aid for adults.¹⁶³ From 2001 to 2002, 47,118 students received services through the CalWORKs Community College Program.¹⁶⁴ This amounts to twelve percent of the state's adult CalWORKs recipients.¹⁶⁵

156. CHARLES PRICE, TRACY STEFFY & TRACY MCFARLANE, HOWARD SAMUELS STATE MANAGEMENT AND POLICY CTR. OF THE CITY UNIV. OF N.Y., CONTINUING A COMMITMENT TO THE HIGHER EDUCATION OPTION: MODEL STATE LEGISLATION, COLLEGE PROGRAMS, AND ADVOCACY ORGANIZATIONS THAT SUPPORT ACCESS TO POSTSECONDARY EDUCATION FOR PUBLIC ASSISTANCE RECIPIENTS 17 (2003). EOPS was founded in 1969. *See id.*

157. *Id.* CARE was founded in 1982. *Id.*

158. *Id.* GAIN was founded in 1985. *Id.*

159. *Id.*

160. *Id.* CalWORKs was created in 1997. *Id.*

161. DAVID J. FEIN & ERIC BEECROFT, COLLEGE AS A JOB ADVANCEMENT STRATEGY: FINAL REPORT ON THE NEW VISIONS SELF-SUFFICIENCY AND LIFELONG LEARNING PROJECT 7 (2006), available at http://www.abtascociates.com/reports/New_Visions_Final.pdf.

162. *See* Cal. Dep't of Soc. Servs., CalWORKs Welfare to Work Program, http://www.dss.cahwnet.gov/cdssweb/Welfare-to_172.htm (last visited Sept. 16, 2007).

163. *See* FEIN ET AL., *supra* note 161 at 5.

164. *See id.* at 7.

165. *See id.*

CalWORKs allows participants to attend a California community college (CCC) for up to 24 months to meet work requirements.¹⁶⁶ However, the recipient's welfare-to-work plan may include attendance at a CCC only if the county welfare department agrees that it will help lead the recipient toward unsubsidized employment and the college affirms the recipient's satisfactory progress.¹⁶⁷ Further, the CalWORKs student must participate in a minimum of thirty-two hours of education a week or combine education with other work activities to satisfy the weekly requirement.¹⁶⁸

In practice, the thirty-two hour weekly requirement often means that students attending college, even full-time, must complete twenty additional hours of welfare-to-work activities each week.¹⁶⁹ Such activities may include work-study, employment, on-the-job training, and community service.¹⁷⁰ In 2000, twenty-eight percent of California's adult welfare population enrolled in at least one course at a CCC.¹⁷¹ Data from 1999 show the majority of CalWORKs students remained employed while in school.¹⁷² Despite the challenges of maintaining work and education, researchers are optimistic about the access afforded to welfare recipients in California and the success recipients achieved after exiting programs.¹⁷³

Among female students, the more education a CalWORKs student obtained in community college, the greater her increase in earnings.¹⁷⁴ Earnings also increased substantially for CalWORKs students after college, even for those who entered community college without a high school diploma.¹⁷⁵ While CalWORKs students earned considerably

166. See CAL. WELF. & INST. CODE § 11322.6(m) (West 2006).

167. ANITA MATHUR WITH JUDY REICHLER, JULIE STRAWN & CHUCK WISELEY, CTR. FOR LAW AND SOC. POLICY, CREDENTIALS COUNT: HOW CALIFORNIA COMMUNITY COLLEGE CREDENTIALS PAY OFF FOR WELFARE PARTICIPANTS 1 (2002).

168. *Id.*

169. See MATHUR ET AL., *supra* note 149, at 9.

170. See CAL. DEP'T OF SOC. SERVS., 2003 TANF STATE PLAN 3-4 (2003), available at <http://www.cdss.ca.gov/pdf/2003stplan.pdf>.

171. See MATHUR ET AL., *supra* note 149, at 9.

172. See MATHUR ET AL., *supra* note 167, at 5.

173. See *id.* at 6-7.

174. See MATHUR ET AL., *supra* note 149, at 19-20. This report studied employment rates and earnings of female CalWORKs students and non-CalWORKs female students. *Id.*

175. *Id.* at 7, 19.

less than other female students with the same credentials, CalWORKs students who left school between 1999-2000 had greater increases in median annual earnings for the 7-year period starting from the year before college to the second year after graduation compared to non-CalWORKs students.¹⁷⁶ For example, CalWORKs students who earned an associate degree experienced a 403 percent increase in median annual earnings from the time they entered college to the second year removed from school.¹⁷⁷ In contrast, other women students who graduated with similar credentials realized a 100 percent increase in median annual earnings during the same time frame.¹⁷⁸ Further, after two years in the labor market, CalWORKs students who left community college narrowed their earnings gap with other students who left during the same time period.¹⁷⁹

In California, community colleges have played an especially critical role in welfare reform efforts. As one study found, community college attendance can “provide a return on investment in a few short years of attendance - from increased tax revenues generated by higher earnings and sustained employment and from government savings due to less reliance on welfare.”¹⁸⁰ Welfare participants who complete college coursework remain employed for more quarters of the year and increase their earnings substantially in the first two years after exiting a college program compared to pre-college attendance and those who do not complete their degrees.¹⁸¹ In another study comparing the employment and earnings of TANF recipients and other women students who exited CCCs in 1999 and 2000, researchers reported that while only twenty-one percent of female CalWORKs students held full-year employment prior to entering college, this rate doubled in the first and second years following graduation.¹⁸² The same study found that

176. *Id.* at 22-23, fig.14.

177. *Id.* at 23.

178. *Id.*

179. *Id.*

180. MATHUR ET AL., *supra* note 149, at 35. *Cf.* Andrew S. Gruber, Comment, *Promoting Long-Term Self-Sufficiency for Welfare Recipients: Post Secondary Education and the Welfare Work Requirement*, 93 NW. U.L. REV. 247, 269-71 (1998) (arguing that part-time college attendance decreases welfare recipients' chances of success by limiting the amount of support that is available to them).

181. *See* MATHUR ET AL., *supra* note 149, at 16-17, figs.6 & 7.

182. *Id.* at 16.

CalWORKs women increased their earnings substantially after college.¹⁸³ Two years out of school, the median annual earnings of CalWORKs recipients with associate degrees increased a staggering 403 percent compared with earnings prior to entering college.¹⁸⁴ Those with vocational associate degrees gained approximately twenty-five percent in their median annual earnings compared to those without a vocational associate degree.¹⁸⁵

Importantly, CalWORKs students have required approximately 3.5 years or more to complete an associate degree,¹⁸⁶ longer than both the traditional timeframe and current welfare limits. This is often because recipients need to develop their basic reading and math skills *before* they can participate and succeed in community college courses.¹⁸⁷ Unfortunately, few programs within the CalWORKs system allow successful completion in the allotted timeframe. In light of the current HHS regulations, CalWORKs participants who began an associate program while on welfare will face a decision to leave school before the program is completed or become ineligible for cash assistance. If CalWORKs participants are allowed to pursue a postsecondary degree, they need to be given more time to complete an associate degree.

2. Allowing Access to Baccalaureate Degrees

Under the initial TANF rules of 1996, several states have accepted that individuals with baccalaureate degrees have higher earnings than those with high school credentials and associate degrees and are more likely to be economically self-sufficient in the long run.¹⁸⁸ In doing so, these states have allowed qualified TANF recipients to meet participation

183. *See id.* at 19-20.

184. *Id.* at 20. In real dollars, earnings increased from \$3916 to \$19,690. *Id.*

185. *Id.* at 21. The increase amounts to about \$4000 more the second year after school. *Id.*

186. *Id.* at 14.

187. *See* MATHUR ET AL., *supra* note 149, at 14. Many also require ESL coursework. *Id.*

188. *See, e.g.,* REBECCA LONDON, THE ROLE OF POSTSECONDARY EDUCATION IN WELFARE RECIPIENTS' PATHS TO SELF-SUFFICIENCY 7, 11 (2004), available at <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1004&context=cjtc> (indicating that welfare recipients who graduate from college have a lower rate of return to aid and a lower rate of post-welfare poverty than those who do not attend college and those who attend but do not graduate from college). *Id.*

requirements by attending college.¹⁸⁹ In California, both the current welfare eligibility statute¹⁹⁰ and its proposed amendment¹⁹¹ recognize “vocational education and training,” which includes college and community college education, adult education, regional occupational centers, and regional occupational programs.

According to the Department of Labor’s Employment and Training Administration, workers age eighteen and over with a bachelor’s degree not only earn more annually,¹⁹² but also have a lower unemployment rate.¹⁹³ The U.S. Census Bureau reports that adults with postsecondary education earn more than their less-educated counterparts.¹⁹⁴ In 2003, median yearly earnings for high school graduates were approximately \$26,000, compared to \$32,000 for associate degree recipients and \$42,000 for bachelor’s degree recipients.¹⁹⁵

Further, ninety percent of the fastest growing jobs in the United States require some level of postsecondary education.¹⁹⁶ Studies by the Bureau of Labor Statistics indicate that sixty-three percent of the 18.9 million new jobs created between 2004 and 2014 will be filled by individuals holding at least a baccalaureate degree.¹⁹⁷ According to the Department of Labor, between 2004 and 2012, twenty-four of

189. See *supra* text accompanying note 91 for a list of states that allow TANF recipients to meet participation requirements by attending college.

190. CAL. WELF. & INST. CODE § 11322.6(m) (West 2006).

191. Assemb. B. 2466, 2005-06 Reg. Sess. (Cal. 2006), *superseded by* Assemb. B. 314, 2006-07 Reg. Sess. (Cal. 2007).

192. See U.S. DEPT OF LABOR FACT SHEET, WHY AMERICA NEEDS AN EDUCATED AND PREPARED WORKFORCE (2007), *available at* <http://www.doleta.gov/budget/1%20Why%20America%20needs%2007.pdf> (stating “workers aged 18 and over with a bachelor’s degree today earn an average of \$51,206 a year, while those with a high school diploma earn \$27,915 . . . and those without a high school diploma average \$18,734.”). *Id.*; see also FRIEDMAN, *supra* note 86.

193. See U.S. DEPT OF LABOR FACT SHEET, *supra* note 192 (illustrating that workers with a four-year degree and higher have an average unemployment rate of 2.7%, while high school graduates have a 5.0% rate and those who have not completed high school have an unemployment rate of 8.5%).

194. These are the earnings of workers aged twenty-five to sixty-four. See U.S. CENSUS BUREAU, CURRENT POPULATION SURVEY 2004, SOCIAL AND ECONOMIC SUPPLEMENT, TABLE 9, EARNINGS IN 2003 BY EDUCATIONAL ATTAINMENT OF WORKERS 18 YEARS AND OVER, BY AGE, SEX, RACE ALONE, AND HISPANIC ORIGIN 7 (2004), *available at* <http://www.census.gov/population/socdemo/education/cps2004/tab09-1.pdf>.

195. See *id.*

196. U.S. DEPT OF LABOR FACT SHEET, *supra* note 192.

197. *Id.*

the fastest growing occupations will be filled by individuals with postsecondary education.¹⁹⁸

The current HHS policy against postsecondary education is detrimental to those individuals nearing completion of a degree. In many states that have counted postsecondary education as an activity under welfare, it is likely participants started programs under previous TANF regulations. In other cases, a student nearing completion of her studies may experience such financial hardship that necessitates TANF assistance. Individuals in these situations illustrate the problems associated with the twelve-month time limit on vocational educational training.

3. *Kosmicki v. Nebraska*

Illustrating the problems with the current HHS time limits by preventing recipients from obtaining postsecondary degrees, in *Kosmicki v. Nebraska*,¹⁹⁹ the Nebraska Supreme Court rejected a welfare recipient's request to satisfy welfare requirements by completing a four-year college degree toward which she already completed significant credits.²⁰⁰ The court ruled that the purpose of the Nebraska Welfare Reform Act's²⁰¹ work requirements was to promote self-sufficiency within the state-mandated two-year time limit on TANF assistance.²⁰² Further, the court treated as undisputed the lower court's finding that the recipient failed to demonstrate that her goal of pursuing a bachelor's degree was consistent with achieving self-sufficiency within two years because she could not complete it before her benefits terminated due to the time limit.²⁰³

The Nebraska court's reasoning highlights the conflict between the definition of work under TANF policies and the seemingly arbitrary time limit. In *Kosmicki*, if Nebraska's limit was extended, application of the same criteria for work would have allowed the recipient to complete her college

198. See U. S. DEP'T OF LABOR, FASTEST GROWING OCCUPATIONS 2004-14 (2005), available at <http://www.bls.gov/emp/emptab21.htm> (providing data in tabular form which indicates that the majority of jobs require *some form* of postsecondary education).

199. *Kosmicki v. Nebraska*, 652 N.W.2d 883 (Neb. 2002).

200. See *id.* at 887-89.

201. NEB. REV. STAT. §§ 68-1708 to 68-1734 (2007).

202. See *Kosmicki v. Nebraska*, 652 N.W.2d at 889-91.

203. See *id.* at 890.

degree. Congress should revise the current TANF statute to allow recipients such as Kosmicki to complete their degrees because the resultant earnings increase will greatly affect their ability to permanently leave welfare.²⁰⁴

4. *The Importance of Basic Skills*

In this century, Americans are increasingly living and working in a global economy built on a foundation of information and communications technologies.²⁰⁵ This global economy provides advantages to people who possess not only educational credentials, but also strong basic and complex skills.²⁰⁶ As such, not only are basic skills such as reading, writing, and the ability to speak English valued, additional skills such as the ability to think critically, to solve problems, and to use technology are also ever more necessary.²⁰⁷

This global economy has also made individual and family responsibilities even more demanding.²⁰⁸ Managing employment and health benefits, handling credit, loans, and mortgages, and planning for insurance or retirement require basic knowledge about these matters.²⁰⁹ As a society, citizens should not ignore their rights and responsibilities in local communities, in states, and in the nation.²¹⁰ Participation in our system, however, requires a knowledgeable and involved citizenry. Thus, every citizen should understand the basic principles that underlie different policies and proposals in order to participate fully and effectively in our democratic ideal.

All workers need strong interpersonal and technical skills to succeed and participate in society today. As one study aptly stated, "the playing field is much bigger and more complex than before. It is, however, a level playing field only for those who have a good education and the strong basic skills people need to succeed."²¹¹ For welfare recipients, the

204. See discussion *supra* Parts IV.A-B.2.

205. JOHN COMINGS, STEPHEN REDER & ANDREW SUM, NAT'L CTR. FOR THE STUDY OF ADULT LEARNING AND LITERACY, BUILDING A LEVEL PLAYING FIELD: THE NEED TO EXPAND AND IMPROVE THE NATIONAL AND STATE ADULT EDUCATION AND LITERACY SYSTEMS 1 (2001).

206. *Id.*

207. See *id.*

208. See *id.* at 1, 14-15.

209. See *id.*

210. See *id.* at 1, 18-19.

211. COMINGS, ET AL., *supra* note 205, at 2.

importance of skill-building and learning cannot be seen as another program with few economic benefits. Rather, welfare should be considered an economic development program that will have positive impacts on both personal and societal levels.

Despite evidence of the growing need for adult literacy and the strong links between literacy and earnings,²¹² welfare programs have deemphasized adult basic education and other skill-building strategies in favor of immediate workforce attachment strategies.²¹³ Currently, the DRA preamble states that basic skills education counts as vocational educational training when it is of limited duration and a necessary or regular part of the training.²¹⁴

However, basic skills and language barriers preclude TANF recipients with the lowest skills and/or limited English proficiency from employment opportunities or place them in low-wage jobs with little opportunity for advancement. In fact, 66.7 percent of welfare recipients scored in the 25th percentile or lower on the Army Forces Qualifying Test, a test measuring basic skills.²¹⁵ The limited time frame and required link between training and immediate employment are problematic.

According to results of the 2002 Basic Skills Survey conducted by the Academic Senate for California Community Colleges, most of the sixty-one reporting colleges indicated that over half of their incoming students required instruction in basic skills reading, writing, or math.²¹⁶ Yet, according to these colleges a surprisingly small percentage of these students actually enroll in the basic skills courses that they

212. *See supra* text accompanying notes 205-07.

213. *See, e.g.*, JULIE STRAWN, CTR. FOR LAW AND SOC. POLICY, *BEYOND JOB SEARCH OR BASIC EDUCATION: RETHINKING THE ROLE OF SKILLS IN WELFARE REFORM 1* (1998).

214. *See* Reauthorization of the Temporary Assistance for Needy Families Program, 71 Fed. Reg. 37,454, 37,460 (June 29, 2006) (to be codified at 45 C.F.R. pt. 261).

215. INST. FOR WOMEN'S POLICY RESEARCH, *JOB TRAINING AND EDUCATION FIGHT POVERTY 1* (2002) (citing 1996 study conducted by the Urban Institute), available at <http://www.iwpr.org/pdf/d444.pdf>.

216. ACADEMIC SENATE FOR CAL. COMMUNITY COLLEGES & CHANCELLOR'S ADVISORY COMM., *A SURVEY OF EFFECTIVE PRACTICES IN BASIC SKILLS: THE ACADEMIC SENATE FOR CALIFORNIA COMMUNITY COLLEGES 19* (2003), available at <http://www.academicssenate.cc.ca.us/Publications/Papers/Downloads/BasicSkills2003.doc> [hereinafter *EFFECTIVE PRACTICES IN BASIC SKILLS*].

need.²¹⁷ The same study further reported that in a cohort of students from 1995 to 2001, all of whom had a stated educational goal, students who completed at least one basic skills course earned an associate degree or a certificate at a higher percentage²¹⁸ than students who did not take a basic skills course.²¹⁹ Thus, basic skills instruction aids students in acquiring skills and reaching their goals.²²⁰

Many community colleges have just begun developing the capacity to substantiate the effectiveness of their practices. Currently, data and recommendations regarding the effectiveness of basic skills efforts are specific to each community college.²²¹

5. *A Case Study: Chaffey College*

The most complete effort of data collection and analysis was undertaken at Chaffey College, located in the city of Rancho Cucamonga, California. The program is a striking example of the critical role basic skills play in achieving educational goals. Further, the programs available to students at Chaffey College not only illustrate the importance of basic skills classes, they also provide a successful educational model for welfare programs.

Chaffey College provides an extensive tutoring program in its three College Success Centers: Math, Reading/ESL, and Writing Centers.²²² Although these centers target students in basic skills classes, students in advanced courses are also permitted to take advantage of the Center's services.²²³ In addition to these discipline-specific centers, four Multidisciplinary College Success Centers serve all students.²²⁴ These Success Centers serve two functions: (1) to provide instructional support services and (2) to provide student support services to individual students.²²⁵

According to the data collected, students who

217. *Id.*

218. 17.4 percent. *Id.*

219. 13.1 percent. *Id.*

220. *See id.*

221. *See id.* at 14-26 (surveying programs at California community colleges that exemplify the effectiveness of each college's basic skills curricula).

222. EFFECTIVE PRACTICES IN BASIC SKILLS at 20.

223. *Id.*

224. *Id.* at 20-21.

225. *Id.* at 21.

participated in the program by enrolling in a basic skills class and using a Success Center were twenty-three percent more likely to complete a higher-level course successfully than students who did not participate.²²⁶ When they compared basic skills students who accessed a Student Success Center with basic skills students who did not, Chaffey researchers found that first-time college students were more likely to complete their basic skills course than those who did not use a Center.²²⁷ Thus, one cannot underestimate the importance of basic skills in helping students achieve educational goals.

V. PROPOSAL: ADOPTING A BROADER VIEW OF WELFARE

Given the higher earning potential and likelihood of escaping welfare for individuals who obtain basic skills and advanced degrees,²²⁸ this section presents two recommendations to the current TANF statute.²²⁹ First, HHS should allow states to include postsecondary education as a welfare-to-work activity and extend the current time limits from twelve to sixty months, the full duration of allowable lifetime assistance. Second, the category of "vocational educational training" should include programs that increase basic and English language skills. With these revisions, welfare recipients will gain the education and skills necessary for active and sustainable employment in the future.

A. *The Opportunity for Postsecondary Education*

Postsecondary education plays an important role in improving the economic condition of welfare recipients. Therefore, HHS should ease the current restrictions and allow states to include postsecondary education as a welfare-to-work activity. In particular, the current federal limit allowing training to be counted toward work rates for only twelve months is insufficient. Welfare recipients require more time to pursue an advanced degree.²³⁰ Given the higher earning potential of individuals who obtain associate and baccalaureate degrees,²³¹ HHS should support the completion

226. *Id.* at 25.

227. *Id.*

228. See discussion *supra* Part IV.

229. See discussion *infra* Part V.A-B.

230. See discussion *supra* Part IV.B-C.

231. See discussion *supra* Part IV.A-C.

of such programs and extend the current time limit from twelve months to sixty months, the full duration of allowable lifetime assistance. Further, in light of the five-year lifetime limit on cash assistance, it is crucial for welfare recipients to participate in programs that will afford them the opportunity to become permanently self-sufficient. Five years invested towards a college degree, rather than five years of potentially irregular, unpromising, and low-wage employment, will benefit the recipient, her family, and society in the long run.

Some analysts note that welfare recipients "interested in higher education are generally a self-selected and highly motivated group."²³² This suggests that the correlation between postsecondary education and long-term self-sufficiency is less the result of the value of a college education and more the result of an individual's personal qualities and goals. The value of personal motivation in achieving self-sufficiency cannot be accurately measured, nor can it be disputed or discounted. Nonetheless, the value of personal motivation in success does not justify a welfare policy that precludes college attendance. Steering any motivated welfare recipient away from the opportunity to attend college may have the counterproductive effect of decreasing her chances for long-term self-sufficiency.

Opponents also express concern that changes designed to increase participation in postsecondary education would undermine the work-first approach by weakening the drive toward employment.²³³ Further, they argue, these changes would increase short-term assistance costs by increasing the number of recipients who remain on TANF.²³⁴ Some of these opponents suggest that it would be more appropriate to support low-income parents seeking postsecondary education through work-study programs, scholarships, and low-cost loans.²³⁵

It is true that, at first, costs to states for tuition and assistance will be higher than under the current policy if HHS adopts these proposed changes.²³⁶ However, state expenditures and TANF rolls may decline as more adults

232. BROWN, *supra* note 15, at 73.

233. See FRIEDMAN, *supra* note 86.

234. *Id.*

235. *See id.*

236. *See id.*

obtain higher-payer jobs and achieve longer-term and independent sufficiency.²³⁷

Arguably, the most persuasive argument against allowing welfare recipients to satisfy TANF work requirements by attending college is that it is unfair. Why should welfare recipients have the opportunity to obtain a postsecondary education and degree and receive cash assistance for doing so, while individuals with slightly greater resources have the added burden of working while attending school?

Allowing welfare recipients to obtain a postsecondary education more effectively ensures that their receipt of welfare benefits is temporary. This result benefits not only the individual recipient, but society as a whole. Most would agree that it is preferable for recipients to leave welfare because they no longer need assistance, rather than forcing them off welfare as a result of the five-year lifetime limit. If a recipient is able to complete her education, she will dramatically reduce the chances of requiring government assistance in the future.²³⁸

Further, welfare recipients should not be steered away from college simply because these near-poor individuals cannot afford to do so, or find it as difficult to do so without outside assistance. Rather than precluding welfare recipients from obtaining postsecondary degrees, the government should assist near-poor individuals afford college through grants and aid. In this country, education spawns opportunity.²³⁹ As such, it is illogical to discourage college education because of financial need. If the government continues to preclude welfare recipients from postsecondary education, it is sending the message that college availability and the opportunity for long-term self-sufficiency do not apply equally to all.

Consequently, HHS should allow postsecondary education for a greater duration than the currently-limited twelve months. Specifically, HHS should permit

237. *See id.*

238. *See supra* notes 174-86 and accompanying text.

239. President William J. Clinton said that "education has always been the heart of opportunity in this country. And it is the embodiment of everything we must do to prepare for the 21st century. Nothing will do more to open the doors of opportunity to every American and prepare them for unimagined new work and careers." President William J. Clinton, Radio Address of the President to the Nation (May 17, 1997).

postsecondary education from a two-year community college program or education that leads to a baccalaureate degree to count as vocational educational training. Thus, 45 C.F.R. § 261.2(i)²⁴⁰ should allow for the following: Vocational educational training (not to exceed ~~12-60~~ months with respect to any individual) means organized educational programs that are directly related to the preparation of individuals for employment other than a ~~baccalaureate or an~~ advanced post-baccalaureate degree. By doing so, increased education will provide long-term opportunities for welfare recipients.²⁴¹

B. Access to Basic Education and English as a Second Language Programs

English as a Second Language (ESL) Programs are not explicitly a part of vocational educational training. However, they should be included. ESL is especially important given the growth in immigration and the role that immigrants play in many areas of the workforce. For example, in 1980, ESL participants comprised seventeen percent of all adult education enrollees.²⁴² This percentage grew to forty-eight percent in 1998.²⁴³ Recent studies have found that parents with English language and basic skill deficiencies seldom complete traditional adult basic education, ESL or GED programs that would qualify them for immediate entry into training programs that would lead to credentials.²⁴⁴ By integrating skills training with English language instruction, programs can increase the likelihood that ESL students will enter and complete training that can yield better jobs and higher earnings.²⁴⁵

Notably, vocational education programs designed for lower-skilled or limited English proficiency adults may last up to a year or longer.²⁴⁶ These programs teach core skills and competencies necessary to be employable. For example,

240. See *supra* note 112.

241. See discussion *supra* Part IV.A-B.3.

242. See RAY UHALDE, MARLENE SELTZER, PAMELA TATE & REBECCA KLEIN-COLLINS, TOWARD A NATIONAL WORKFORCE EDUCATION AND TRAINING POLICY 16 (2003).

243. See *id.*

244. EVELYN GANZGLASS, CTR. FOR LAW AND SOC. POLICY, STRATEGIES FOR INCREASING PARTICIPATION IN TANF EDUCATION AND TRAINING ACTIVITIES 8 (2006).

245. See *id.*

246. See *id.*

Washington's Integrated Basic Education and Skills Training (I-BEST) program pairs adult basic education or ESL instructors with professional technical instructions in the classroom to teach literacy and work skills concurrently.²⁴⁷ Evaluation of this program found that students gained English skills at the same rate as students in traditional ESL courses, but were five times more likely to earn college credits and fifteen times more likely to complete workforce training than traditional ESL students during the same amount of time.²⁴⁸

By placing a time limit on the receipt of adult basic education and ESL, the HHS regulation fails to ensure that limited or non-proficient adults gain the skills required for employment. In many cases, it may be appropriate to provide basic skills or ESL training to recipients in order to help them meet the requirements of daily life or the minimum qualifications necessary for entry into an employment training program. Thus, the basic skills instruction in these cases is unconnected to employment. In such cases, HHS should consider allowing these recipients to participate in programs even if the participation is not "countable" toward the federal requirements.

Accordingly, HHS should include adult basic education and ESL in the definition of vocational educational training, even if they do not prepare recipients for a specific job or job training program immediately. HHS should also eliminate the requirement that basic skills education count only if it is of a limited duration. Congress should revise the Reauthorization of the Temporary Assistance for Needy Families statute²⁴⁹ as follows: We recognize that there may be instances in which basic skills education is embedded within a vocational educational training activity. Such basic education and English as a Second Language instruction may be counted as vocational educational training as long as it is ~~of limited duration and is~~ a necessary or regular part of the vocational educational training. . . . Our definition of vocational education training ~~narrows the scope of what~~

247. *See id.*

248. *See id.*

249. *See* Reauthorization of the Temporary Assistance for Needy Families Program, 71 Fed. Reg. 37,454, 37,461 (June 29, 2006) (to be codified at 45 C.F.R. pt. 261).

~~counts for this activity to~~ includes programs that prepare participants for a specific trade, occupation, or “vocation” as well as programs that increase workplace-related basic or English language skills. These revisions will allow limited and non-proficient adults to gain the skills required for both daily life and employment.

VI. CONCLUSION

The debate over welfare and its reform frequently revolves around a central and controversial question: to what extent should welfare-to-work programs emphasize education and training versus immediate job placement? This comment does not suggest the elimination of work requirements for welfare recipients. Rather, it advocates policies that allow welfare recipients to participate in activities that offer long-term self-sufficiency, such as postsecondary and basic skills education.²⁵⁰ As discussed, the current policy prohibiting college attendance²⁵¹ defies evidence that a college education is crucial for low-income and poor families.²⁵² Higher education, particularly a four-year degree, will give recipients the greatest opportunity to escape long-term dependence.²⁵³ At a minimum, welfare recipients should not be precluded from enrolling in postsecondary education programs.

The irony of the current federal policy is that the theory of investing in human capital through education is shared and advocated in our society, except when applied to the welfare population. If the aim of policymakers is to reduce poverty, and not just the welfare rolls, excluding higher education as part of that approach would be short-sighted. At the end of TANF’s current cash eligibility period, a four-year degree would provide the means for more stable, quality employment as well as a better opportunity to achieve lifetime self-sufficiency.²⁵⁴ Five years invested towards a college degree rather than five years of irregular, low-wage, low-prospective employment creates significantly more optimistic and sustainable opportunities and outcomes.

250. See discussion *supra* Part V.

251. See Reauthorization of the Temporary Assistance for Needy Families Program, 71 Fed. Reg. at 37,460.

252. See discussion *supra* Part IV.

253. See *id.*

254. See discussion *supra* Part IV.C.