seventh, eighth and ninth child, and we know that it is not being granted? After all, it is the state which, under the Act, has the right to prescribe the schedule of need.

(Mr. Liebmann) Yes, Your Honor.

(T. 34) (Judge Winter) And it is the state which has determined that a husband and wife and "X" number of children are entitled to, or should receive a minimum of $250; and that each child thereafter, in descending order up to the tenth, should receive "X" dollars more.

(Mr. Liebmann) Well, I think, Your Honor, that the state, apart from the question of need, was entitled to consider other factors, one of which was the real difficulty of limiting abuse of a welfare program, when you had total payments that were significantly higher than the wage rate.

I think that the regulation is, in part, a concession to administrative imperfection.

I think that is true. I think the people who are advocates of this sort of regulation feel that the best guarantee that every able-bodied person, or potentially able-bodied person, or semi-able-bodied person, will work is the harsh element of need.

But, apart from that, that brings me, I think, Your Honor, to the second ground that we have urged in support of this regulation.

I think Mr. Matera would be ready to concede that this arose earlier in the case, although not much of a point was made of it by the state earlier.

I do not want to make much of a point of it here, if for no other reason than it is an area of controversy (T. 35) that is highly charged emotionally. And that is the argument that the failure to give aid to families, or additional aid to children in families over a certain size, was designed to assure that persons of limited resources did not have an incentive to bear children that persons of less limited resources do not have.

The average wage-earner, the average member of the so-called middle class, does not have his income increased at all — I admit that the increases in income here are very slight — by reason of additional children.

There was a feeling, I suppose, on the part of some people that that was a ground for this particular classification.

(Judge Winter) All right. Now, how is that going to work? I mean how logically can that apply in the case of a dependent child who is a dependent child because there is one deceased parent and the surviving parent is physically incapable of working?

(Mr. Liebmann) I think, Your Honor, again, the answer to that is really found — I am quite willing to admit that this piece of legislation, like many, if not most, pieces of legislation, can operate illogically.

Unfortunately, legislation is not an exercise, or always an exercise, in perfect logic. It is a product of a process of political compromise.

(T. 36) (Judge Winter) But the political compromise must operate under the provisions of the Constitution, which says you cannot be totally illogical, so far as the equal protection clause is concerned.

Now, I am just trying to figure out how there is any logic, under the equal protection clause, to sustain what you say ought to be sustained as valid.

(Mr. Liebmann) Your Honor, I have been trying to address myself to that question.

I would say that I think the burden I have to carry on the motion for reargument, with respect to what the Court has already said, is, perhaps, somewhat less than that. Because the Court's statement, I think, is quite sweeping.

There is no qualification with respect to the state's applying this sort of regulation to people in the AFDC youth category, for example. There is no qualification of that kind.

There is no qualification with respect to the right of a state to apply it to people who have had significant numbers of children and who are being assisted in that way. Again, I do not lay much stress on that second ground, simply because, as I have said, it is a bitterly divisive subjects, and while the courts must deal with bitterly divisive subjects, I think the major importance of this case is on the less benefit point.

(T. 37) I have seen it seriously urged by many of the protagonists of the so-called welfare rights movement, which is really, I think, perhaps more highly organized, at least at its center, than this Court may realize, that, really, these welfare rights cases are, in a sense, only the opening wedge. And that what we really want and need is a system of family allowances, a system in which the objection that a wage-earner's compensation does not vary with the number of chilren is obviated by providing it for them, as well as for everyone else.

I think the problem one has when one says that the state cannot impose flat limits related to the wage scale on the total welfare payments is, in the long run, that the state cannot use these sometimes very harsh market forces as a form of economic discipline. It is ultimately going to be driven either to very complex and cumbersome administrative methods, some of which, I think, are perhaps embodied in the 1967 admendments, of trying to make sure that people work and taking all of their welfare payments away if they do not; or it may even be driven to some even more direct form of coercion or compulsion of labor.

I think, when one tries to look at it in a broad perspective, these cases are just one dot along the chain, as it were.

When you go back to the last century and read what (T. 38) was written about welfare payments in the age of laissez-faire, you see this deep concern, lest any payment operate as a detraction from the incentive to work.

I think no one disputes that that is carried to ridiculous lengths. At least I simply have no quarrel with many,

if not most, of the measures that have been taken to alleviate that.

But I think the point is that they were political measures arising out of the sense of injustice on the part of the elected representatives of the people. And what we here have is really a basic ideological, if you will, conflict.

It is not a conflict which, under the standards that, at least until very recently, were felt to be applicable to the state's prerogatives with respect to social legislation, is a conflict to be resolved by the courts.

If there is any reasonable ground, it can be urged on behalf of a regulation generally.

Now, Your Honor has pointed to a few perhaps extreme cases that can result. I think, probably on the average, although I am not a social worker and do not know, the stipulated cases are extreme cases. I am certain Mr. Matera did not choose his weakest cases when he brought this suit.

But we have to consider whether the regulation in the totality and, if you will, the average of its applications is totally irrational, in light of these basic elements (T. 39) that can enter into the state policy.

I would say simply that it is not, in a society in which just about all other forms of compensation are not related — are not related — to the number of dependents a person has. The one exception to that rule in our society, I think, is the military, where there are allowances for dependents. I think that is a significant exception, because in the military the government has a coercive power over people who are there.

I do not think you could run a free labor market on the basis of differential compensation for people on the basis of the number of their dependents. I think you have to wind up with some system for the allocation or direction or compulsion of labor.

What is claimed here, in its ultimate gradations, is that the state cannot design its social welfare programs in such

a way as to minimize interference with the labor market, having regard to all the bureaucratic imperfections that exist in the administration of any program.

* * * * * *

(T. 49) (Judge Winter) He makes a reference to the 1950 United States Code and Congressional Service.

(Mr. Matera) Yes, which we have read. It is similar to other legislative history which we examined. These particular pieces of legislative history talk about this particular provision being aimed at: one, providing benefits to all eligible individuals; and, two, providing these benefits promptly.

The state wishes to put all the emphasis on the fact that they will be provided promptly, and to give the whole meaning of that provision to that particular purpose.

(Judge Winter) Now, do you have any portion of the report that you think states the legislative intent with the same clarity that you have just summarized it?

(Mr. Matera) Your Honor, we would provide that to the Court.

(T. 50) (Judge Winter) Well, of course, I know that you are probably going to file a memorandum.

(Mr. Matera) Yes.

(Judge Winter) So that the record is clear, we refused your request to continue this case to give you additional time to prepare, primarily, I think, because I was about to start a term of court in Richmond; and then Judge Thomsen and Judge Harvey both have some commitments thereafter, particularly Judge Harvey, who, in the not too distant future, expects to start a protracted trial in another city.

In connection with denying that request for a postponement, we said that we would permit you to file a memorandum after the argument today.

Perhaps it would be better if you kept your copies, or your quotations, and what have you, and attached them to

that memorandum, rather than look for them now, if you do not have them at your fingertips.

I would be very curious — but I have not yet examined them myself — as to what the congressional reports say was the purpose of the 1950 remedy, and if they say that it, in effect, had two purposes, with the same clarity as you have expressed it; in other words, whether they support your statement.

(T. 51) (Mr. Matera) Yes, sir.

Your Honor, that more or less concludes the argument concerning interpretation of 609(a)(9) — 602(a)(9).

* * * * * *

United States District Court for the District of Maryland

EXCERPTS FROM
EXHIBIT A[1] TO MEMORANDUM OF PLAINTIFFS IN OPPOSITION TO DEFENDANT'S MOTION

(U. S. Code Congressional Service, 81st Cong., 2d Sess. (1950), Pgs. 3471, 3507)

Page 3471:

Social Security Amendments

* * * * * *

a specific requirement designed to make it clear that a State plan, in order to be approved, must provide that all individuals wishing to make application for assistance shall have an opportunity to do so and that assistance shall be furnished with reasonable promptness to all eligible individuals. This new requirement would take effect July 1, 1951.

The same addition has been made by sections 321 and 341 of the bill to sections 402 (a) and 1002 (a), respectively, of the Social Security Act, although in the latter case the new clause is numbered (11).

These amendments proposed by the bill are the same in substance as those proposed on the same subject by the bill as passed by the House except that the latter would have required the assistance to be furnished "promptly" instead of "with reasonable promptness" as proposed by your committee. The change was made in order to assure the States reasonable time to make investigations and complete any other action necessary to determine eligibility and extent of need for assistance.

* * * * * *

Page 3507:

* * * * * *

Opportunity to apply for and to receive assistance promptly

The House bill provided with respect to all categories of public assistance that all individuals wishing to make application for assistance, shall have opportunity to do so and that assistance shall be furnished promptly to all eligible individuals. The Senate amendment provided that all individuals wishing to make application for old-age assistance shall have opportunity to do so and that old-age assistance shall be furnished with reasonable promptness to all eligible individuals. The conference agreement follows the Senate amendment.

The requirement to furnish assistance "with reasonable promptness" will still permit the States sufficient time to make adequate investigations but will not permit them to establish waiting lists for individuals eligible for assistance.

* * * * * *

EXCERPTS FROM EXHIBIT A[2] TO MEMORANDUM OF PLAINTIFFS IN OPPOSITION TO DEFENDANT'S MOTION

(House Misc. Repts. VI, H. R. No. 1260-68, 81st Cong., H. R. No. 6000, Pg. 48 and H. R. No. 1300, Pg. 148)

House Report No. 6000, Page 48:

* * * * * *

D. Opportunity to apply for and receive assistance promptly

Shortage of funds in aid to dependent children has sometimes, as in old-age assistance, resulted in a decision not to take more applications or to keep eligible families on waiting lists until enough recipients could be removed from the assistance rolls to make a place for them. As noted in the discussion of this problem in the section on old-age assistance, this difference in treatment accorded to eligible people results in undue hardship on needy persons and is inappropriate in a program financed from Federal funds. The requirement that State plans must provide opportunity to apply to all persons wishing to do so and that assistance shall be furnished promptly to all eligible families is included in the proposed amendments to title IV of the Social Security Act.

* * * * * *

House Report 1300, Page 148:

* * * * * *

Requirement relating to opportunity to apply for assistance and receive it promptly

The provisions of section 3 (a) of the Social Security Act are also amended by the bill by the addition of a new clause (9). This clause would add a specific requirement designed to make it clear that a State plan, in order to be approved, must provide that all individuals wishing to make application for assistance shall have an opportunity to do so and that assistance shall be furnished promptly to all eligible individuals. This new requirement would take effect July 1, 1951.

The same addition has been made by sections 321 and 341 of the bill to sections 402 (a) and 1002 (a), respectively, of the Social Security Act, although in the latter case the new clause is numbered (11).

* * * * * *

EXHIBIT B[1]

Monthly Report of Employable Cases
Receiving Financial Assistance

August 1968

Program	Current month	Same month previous year	Percent change
General Public Assistance			
Number of Families Assisted	116	294	— 60.5
Average Grant per Family	$ 83,58	$ 78.63	+ 6.3
Aid to Families with Dependent Children			
Number of Families Assisted	166	361	— 54.0
Recipients involved	958	2,019	— 52.6
Average Grant per Family	$203.60	$196.46	+ 3.6
Average Grant per Recipient	$ 35.28	$ 35.13	+ .4

9/19/68

EXCERPTS FROM
EXHIBIT B[2] TO MEMORANDUM OF PLAINTIFFS IN OPPOSITION TO DEFENDANT'S MOTION

(Maryland State Department of Public Welfare, Public Assistance Rule 200, Proposed New Section)

Public Assistance Rule 200, Proposed New Section:

IX. *Referral for Work or Training* — Registration for employment and acceptance of suitable employment is a specific requirement for the receipt of AFDC where depri-

vation is due to unemployment of the father (III-D-d) and for the receipt of GPA-E (III-K-2-c). Any other member of an assistance unit determined appropriate for employment is to be referred for available employment counseling, registration or training.

The following sets forth the criteria for determining the appropriateness for referring a mother for work or training, and the requirements of the local department with regard to the Work Incentive Program (WIN).

* * * * * *

STATE DEPARTMENT OF PUBLIC WELFARE EXHIBIT E[1]

1969 Revised Budget Request and Allowance

	Caseload or Personnel		Average Grant		Total Funds		State Funds	
	Request	Allowance	Request	Allowance	Request	Allowance	Request	Allowance
Assistance, Excl. Standards Increase:								
OAA	7,800	7,300	64.15	61.59	6,004,440	5,395,284	1,111,637	955,208
Blind	340	340	84.89	84.89	346,351	346,351	66,755	66,755
APTD	14,290	13,290	78.15	76.77	13,401,162	12,243,280	3,213,501	2,903,812
Sub-total	22,430	20,930	73.38	71.61	19,751,953	17,984,915	4,391,893	3,925,775
AFDC	118,500	110,000	39.80	38.98	56,595,600	51,453,600	23,944,500	21,046,500
Board	10,000	10,000	85.40	83.72	10,248,000	10,046,400	8,880,900	8,679,300
GPA	6,200	6,200	82.10	81.51	6,108,240	6,064,344	5,192,004	5,154,692
GPA-E	320	320	78.63	78.63	301,939	301,939	150,970	150,970
Total Assistance	157,450	147,450	49.23	48.52	93,005,732	85,851,198	42,560,267	38,957,237
Increase Standards	157,450		14.50	-0-	27,394,371	-0-	26,593,665	-0-
Local Depts.-Gen'l. Admin.	2,760	2,164			23,616,715	19,713,330	12,824,587	10,708,963
" " -Spec. Prog.	631	443			5,218,388	3,745,564	1,391,338	977,367
State Dept.-Gen'l. Admin.	215	198			2,403,033	2,204,002	1,534,300	1,416,869
" " -Spec. Prog.					2,048,199	2,048,199	-0-	-0-
Grand Total					153,686,438	113,562,293	84,904,157	52,060,436
"Increase standards" breakdown:								
Food					3,506,369		3,303,069	
Rent					9,322,181		8,783,306	
Foster Care Rates					4,529,340		4,529,340	
AFDC Clothing					7,693,020		7,693,020	
Eliminate Max. Grants					1,393,560		1,393,560	
"Living With" Factor					775,625		719,594	
OASI beneficiaries, etc.					174,276		171,776	
					27,394,371		26,593,665	

WHP:B 2-14-68

STATE DEPARTMENT OF SOCIAL SERVICES
Fiscal Year 1970 Budget

EXHIBIT E[2]

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	OAA	BLIND	APTD	AFDC	FOSTER CARE	GPA	GPA-E	TOTAL
July 1968 Caseload	7,747	343	13,506	109,405	10,733	6,284	125	148,145
Budgeted Caseload - 1969	7,300	340	13,220	110,000	10,000	6,200	320	147,459
Projected Caseload - 1970	7,600	345	18,524	127,493	11,000	5,500	205	170,667
July 1968 Average Grant	60.70	83.22	77.86	38.38	82.35	83.33	89.13	
Budgeted - 1969 Average Grant	61.59	84.89	76.77	38.98	83.72	81.51	78.63	
Projected 1970 Average Grant	61.62	86.80	81.93	40.72	83.77	84.14	79.20	
Budget - 1969	5,395,284	346,351	12,243,290	51,453,600	10,046,400	6,064,344	301,939	85,851,198
Amt. needed as of July	5,642,915	342,534	12,618,926	50,337,567	10,611,292	6,283,749	133,695	86,020,678
Amt. for Increased Caseload	(107,075)	1,997	4,683,418	8,330,609	259,908	(783,969)	85,565	12,474,453
Amt. for Increased Cost	83,904	14,821	904,712	3,580,003	187,440	53,460	(24,428)	4,799,912
Total	5,619,744	359,352	18,212,056	62,298,179	11,057,640	5,553,240	194,832	103,295,043
Increased Food Allowance	100,352	5,341	280,083	3,625,901		104,940	3,050	4,119,667
Increased Foster Care Rates					4,403,520			4,403,520
Increased AFDC Clothing				8,276,846				8,276,846
Eliminate Maximum Grants				1,116,839				1,116,839
Eliminate Living With Factor	146,832	10,930	337,878	290,684		73,920		860,244
Disregard				1,468,719				1,468,719
WIN - Increased Earnings				(525,000)				(525,000)
Increased Rent	520,996	24,065	1,275,644	6,550,620		442,655	14,992	8,832,972
Increased Utilities	416,047	19,217	1,021,974	4,049,033		353,487	11,972	5,871,695
Increased Public Housing	37,360	1,764	92,220	460,200		27,326	260	620,400
	6,341,331	420,669	21,223,755	87,612,076	15,461,160	6,555,638	225,806	138,340,935
Average Grant	75.02	101.61	95.48	57.27	117.13	99.33	91.79	
State	1,460,811	146,362	3,093,093	52,398,772	12,157,464	5,670,627	112,903	80,040,037
Federal	4,560,000	207,000	11,114,400	33,658,152	1,748,544			51,288,096
Local	321,020	67,307	2,016,257	1,555,152	1,555,152	885,011	112,903	7,012,802

CPP:il 9-20-68

August 29, 1968

State Department of Social Services

1970 Fiscal Year Budget

1. Needed as of July, 1968 ..... $86,020.678

   Based upon caseload and average grant as of July, 1968

2. Increased Caseload 12,474,453

   Projected caseload based on two year trend in caseloads

3. Increased Cost 4,799,912

   Projected 1970 fiscal year average grant amount

4. Increased Food Allowance 4,119,667

   Based on Bureau of Labor Statistics for low cost food diet using February, 1968. Urban Retail Food Prices

   The change in the Rule Schedule would be as follows:

Size of Family	Current	Proposed	Increase
1 person	29	30	1
2 "	52	54	2
3 "	75	84	9
4 "	95	106	11
5 "	112	125	13
6 "	127	141	14
7 "	147	164	17
8 "	168	187	19
9 "	188	210	22
10 "	208	233	25
Each additional person over 10	20	23	3

5. Increased Foster Care Rates 4,403,520

Increased rates recommended by the Advisory Committee on Foster Care (1967)

Regular Care	up to 6 years	$ 69 to $ 80
	6 to 12 "	$ 75 to $105
	over 12 "	$ 89 to $125
Emergency Care		$ 85 to $115
Special Care	up to 6 years	$ 94 to $120
	6 to 12 "	$100 to $145
	over 12 "	$104 to $165
Purchase of	($ 9.00 per day)	$200 to $274
Special Care	($12.00 per day)	$200 to $365

6. Increase AFDC clothing and school supplies ..... $ 8,276,846

To place AFDC child of school age under the same standard for clothing and school supplies as currently applicable for Foster Care Children

Age 6 to 12 — Increase from $5.00 to $15.00

Age over 12 — Increase from $5.50 to $19.00

7. Eliminate living with factor: ..... $ 860,244

To eliminate the budget requirement of providing lower assistance to persons living with others as for assistance than to those persons living alone

8. Elimination of Maximum Grant ..... $ 1,116,839

To remove the current maximum grants of 250 and 240 per family. It is estimated that approximately 2537 families would be affected by removing this maximum

9.	Disregard	$ 1,468,719
	An estimated 2400 cases will have earnings in fiscal year 1970 averaging $93 per month. This will present a disregard of $51.00 per month per case.	
10.	Additional employed AFDC Cases	($ 525,000)
	It is estimated that through the Work Incentive Program an additional 350 persons will be employed at an average earnings of 217/month ($50/wk).	

United States District Court for the District of Maryland

STIPULATION OF FACTS

Come Now the Plaintiffs and Defendants by their undersigned attorneys and respectfully show to the Court the following agreement as to facts and issues in addition to the matters previously stipulated to in the pleadings and at oral argument:

1. On a number of occasions the Secretary of HEW has accepted for incorporation revisions of the maximum for incorporation into the approved Maryland Plan of Operation. Such incorporation is evidenced by State's Exhibit H entitled "Submittal and Report of Action On Public Assistance Plan Materials."

2. That, on the basis of State's Exhibit H, when the revisions of the maximum grant regulation were submitted to the Secretary of HEW, the Secretary never notified the state that its revisions did not conform to the requirements of the Social Security Act, Section 402 (a), 42 U.S.C. Section 602(a).

3. That the significance, if any, of the incorporation of the amendments to the Plan of Operation, as reported on

Form FS-553, is detailed in the Handbook of Public Assistance Administration issued by the Department of Health, Education and Welfare to State agencies, as Part VII, section 1100, pages 1-15 and 57-63 which are annexed hereto.

4. That the Secretary's release of October 1962 entitled "State Maximums and Other Methods of Limiting Money Payments to Recipients", evidenced by State's Exhibit F, is an informational annual release containing comparisons of different methods of limiting money payments utilized in the various states.

5. That Defendant's Exhibit D, the Interim Policy on Need-Requirements for State Public Assistance Plans, is self-explanatory, and is an implementation of Section 402 (a)(23) of the Social Security Act, as amended by the 1967 Amendments.

6. That, apart from the significance, if any, of plan amendment incorporations, the above mentioned informational release and the Interim Policy, no statement by HEW of either approval or disapproval of maximum grant regulations has come to the attention of the parties.

(Signatures omitted.)

United States District Court for the District of Maryland

SUPPLEMENTAL MEMORANDUM OF DEFENDANTS IN SUPPORT OF MOTION FOR REARGUMENT

Since argument and filing of memoranda on the Motion for Reargument, certain additional materials, difficult of obtention, relating to the validity of the challenged regulation under the Social Security Act have come to the attention of counsel. In view of the continued pendency of the Motion for Reargument, counsel for defendants deem it their obligation to bring to the attention of the Court, without further comment, the following materials

relating to the legislative history of the 1950, 1962 and 1967 amendments of the Social Security Act:

1950 Amendments (adding 42 U.S.C.A., § 602 (a) (9)) Cohen, *Factors Influencing the Content of Federal Public Welfare Legislation,* 1954 Social Welfare Forum 199, 205, 209.

1962 Amendments (adding 42 U.S.C.A., § 606 (b) (2) (B)) Public Law 87-543, § 108, U. S. Cong. & Admin. News 1962-1, at 236.

Senate Committee Report on § 108, 1962-1 U. S. Cong. & Admin. News at 1955-56.

Conference Committee Report on § 108, 1962-1 U. S. Cong. & Admin. News at 1980-81.

Cohen and Ball, The Public Welfare Amendments of 1962, 20 Public Welfare 191, at 229-30.

1967 Amendment (adding 42 U.S.C.A., § 602 (a) (23)) Hearings before the House Committee on Ways and Means. 90th Congress, 1st Session, on President's Proposals for Revision in the Social Security System, Part I, pp. 13, 18, 26-27, 59-60 (re unadopted proposal requiring full need to be met).

Conference Report on Social Security Amendments of 1967, pp. 62-63.

1967 Amendment (adding 42 U.S.C.A., § 1396 (b) (f) (1) (B) Public Law 90-248, § 220, 1967 U. S. Cong. & Admin. News 4667-69.

House Committee report on Sec. 220, pp. 118-19.

Forwarded also, for the court's convenience, are the Government Printing Office copies of the full text of the House Senate and Conference Committee reports on the 1967 amendments, together with the text of such amendments and a monograph issued by the Bureau of Family Services of the Department of Health, Education and Welfare entitled Public Assistance under the Social Security Act (1966), describing federal-state relationships and plan amendment approval procedures.

(Signatures and Certificate of Service omitted.)

EXCERPTS FROM ATTACHMENTS TO SUPPLEMENTAL MEMORANDUM OF DEFENDANTS IN SUPPORT OF MOTION FOR REARGUMENT.

From Cohen, Factors Influencing the Content of Federal Public Welfare Legislation—

page 205 *(Public Welfare Legislation):*

The Committee on Economic Security recommended that the Federal Government contribute one third of the costs of ADC (as compared with one half of the costs of OAA). There were no limitations on the amount to be paid by the Federal Government per child (as compared with $15 per month for OAA). The proposed total Federal appropriation was a closed-end appropriation of $25 million a year, and if this sum was inadequate the amount was to be prorated among the states (as compared with a closed-end appropriation of $125 million for OAA). The bill provided, among other things, that the state plan, to be approved by the Federal Government, must furnish "assistance at least great enough to provide, when added to the income of the family, a reasonable subsistence compatible with decency and health." The bill recognized that there would be waiting lists in that it provided that a state would have to file an annual statement of the number of children on the waiting list to receive assistance. The bill did not define what "assistance to children" meant.

The House Ways and Means Committee retained the one-third matching for ADC and at the same time approved the more favorable one-half matching for OAA. But the House committee wrote into the legislation (at the suggestion of Congressman Vinson who later became Chief Justice of the United States) a limitation on the Federal share of matching of $18 a month for the first child and $12 for each additional child. These figures were obtained by review of the Federal pensions provided for widows and children under veterans legislation of which the Ways and Means Committee at that time had jurisdiction. But, whereas the veterans schedule then provided $30 for two children where there was no widow and increased the amount to $46 where there was a widow, the

committee did not include any payment for the mother under ADC. It was not until 1950 — fifteen years later — that this defect was corrected.

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page 209 *(Public Welfare Legislation):*

Several amendments recommended by the Social Security Administration were enacted without any opposition or debate. Others were vigorously opposed, and some were defeated and others modified. One which was accepted without opposition was the requirement for the abolition of any waiting lists. This requirement is now in the law and is a striking development in view of the fact that the first proposal in 1935 seemed like great progress when it provided for recognizing waiting lists and getting a statistical count of the number on such lists. In my opinion, the 1950 amendment was not attributable to any program of social action developed by social workers. It probably was due to the strong feeling of "equity" in the legal mind of the lawyer members of Congress and to the belief that waiting lists could give rise to discrimination and preferences which should be avoided.

Now I shall illustrate a different process, one where Congress takes the initiative. It is the situation in which a specific amendment was written into the law by the House committee. This was the so-called "NOLEO" (notification to law enforcement officers) amendment under which the state must provide for prompt notice to appropriate law enforcement officials in any case in which aid is furnished to a child who has been deserted or abandoned by a parent. Congress then, as now, had pending before it proposals to make desertion across state lines a Federal crime, just as certain other interstate actions such as kidnaping, white slave traffic, and transporting stolen automobiles are Federal crimes. This proposal raised many serious questions as to the role of the Federal Government in family problems. The NOLEO amendment, devised by Fedele Fauri, then a staff adviser to the Committee on Ways and Means, was an attempt to find a constructive means of aiding support of families without imposing conditions on

the recipient other than need. Congress, in initiating and adopting the amendment, was responding to public opinion and at the same time attempting to work out something constructive without infringing on state rights or broadening the area of Federal control over family matters or changing the basic principles of the ADC program. * * *

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From Cohen and Ball, The Public Welfare Amendments of 1962, 20 Public Welfare 191, at 229-230—

pages 229-230 *(Public Welfare Amendments):*

Senate Finance Committee Action

At the time that H.R. 10606 passed the House, the Senate Finance Committee had scheduled early hearings on the tax revision bill and was accordingly not able to take up the welfare bill immediately. It did hold public hearings on May 14, 15, 16, and 17 and then executive sessions on June 6 and 7. The Committee made a number of amendments in the bill.

1. It concluded that the requirement that a state provide minimum services prescribed by the Secretary in order to qualify for any Federal participation under a program was too drastic a requirement and modified this to provide that if the state did not make the minimum prescribed services available, its present participation and administrative costs would be reduced by one-half, i.e., to 25 percent, but that Federal participation in assistance payments would not be affected.

2. The Committee adopted language clarifying the language in the House bill as to the relationship between state public welfare agencies and state vocational rehabilitation agencies with more explicit language as to the circumstances under which services could be provided and under which reimbursement could be made.

3. The Committee adopted the formula in the House bill for increases in payments to the aged, blind and disabled. They made the $4 increase effective on October 1, 1962, rather than on July 1, 1962. The temporary $1 in-

crease which was scheduled to expire June 30, 1962, was extended through September 30, 1962.

4. An amendment was adopted to the section on protective payments which would permit a state to use such payments for those cases, which under the state's usual standards, would have their needs met in full even though the operation of some other feature, such as a statutory maximum, prevented all recipients of ADC from having needs met in full.

5. The Committee eliminated section 107 (a) of the House bill, the one which would have permitted voucher payments and any other action authorized under state law.

6. The Committee adopted an amendment exempting payments for work on community work and training programs under title IV from Federal income tax and withholding liability.

7. The Committee deleted the provision in the House bill which would have expanded foster care under the ADC program to include Federal participation in payments for otherwise eligible children who were placed in private child-care institutions.

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President's Proposals for Revision in the Social Security system

Hearings
before the
Committee on Ways and Means
House of Representatives
Ninetieth Congress
First Session
on
H.R. 5710

March 1, 2, and 3, 1967

(page 13):

Welfare of Children

Message
from
The President of the United States
transmitting
Recommendations for the Welfare of Children

February 8, 1967. — Referred to the Committee of the Whole House on the State of the Union and order to be printed

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(page 18):

Social Security Increases for Children

Two weeks ago, I proposed legislation to bring the greatest improvement in living standards for those covered under social security since that historic act was passed in 1935.

While this program extends primarily to the older Americans, it also covers a child if the family breadwinner, who is under social security, dies, retires, or becomes disabled.

Today, more than 3 million children receive social security payments. Their average benefit is only $52 a month.

To provide more adequate payments to these children, I recommend legislation to enlarge their benefits—with an average increase of at least 15 percent.

Improving Child Assistance

Enacted during the 1930's, the "Aid to Families with Dependent Children" (AFDC) program is a major source of help for the poor child. Under AFDC, Federal financial aid is provided to States to help needy families with children under 21.

There are serious shortcomings in this program:

Only 3.2 million children received benefits last year.

Twelve million children in families below the poverty line received no benefits.

Thirty-three States do not even meet their own minimum standards for subsistence.

Seven States offer a mother and three children $120 a month or less.

Only 21 States have taken advantage of a 1962 law, expiring this year, allowing children with unemployed parents to receive financial assistance. Only 12 States have community work and training programs for unemployed parents to give them the skills needed to protect their family and earn a decent living. A number of States discourage parents from working by arbitrarily reducing welfare payments when they earn their first dollar.

To remedy these deficiencies and give the poorest children of America a fair chance, I recommend legislation to—

Require each State to raise cash payments to the level the State itself sets as the minimum for subsistence, to bring these minimum standards up to date annually, and to maintain welfare standards at not less than two-thirds the level set for medical assistance.

Provide special Federal financial assistance to help poorer States meet these new requirements.

Make permanent the program for unemployed parents, which expires this year.

Require each State receiving assistance to cooperate in making community work and training available.

Require States to permit parents to earn $50 each month, with a maximum of $150 per family, without reduction in assistance payments.

* * * * * *

(pp. 26-27)

(The Chairman) On February 20, 1967, the Chair, at the request of the administration, introduced the bill which

contains the administration proposals, H.R. 5710 in order to make it generally available to the public for study.

Without objection, there will be included at this point in the record a copy of that bill.

(The bill, H.R. 5710, follows:)

[H.R. 5710, 90th Cong., First Sess.
Introduced by Mr. Mills on February 20, 1967]

A BILL To amend the Social Security Act to provide an increase in benefits under the old-age, survivors, and disability insurance system, to provide benefits for additional categories of individuals, to provide health insurance to the disabled, to improve the public assistance program and programs relating to the welfare and health of children, to revise the income tax treatment of the aged, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Social Security Amendments of 1967".

Table of Contents

Title II—Public Welfare Amendments

Part 1—Public Assistance Amendments

Part 2—Medical Assistance Amendments

Part 3—Child-Welfare Services Amendments

(b) Effective July 1, 1967, section 402(a)(7)(A) of such Act is amended to read as follows: "(A) the State agency may disregard not more than $50 per month of earned income of each dependent child and of any relative claiming aid to families with dependent children, but not in excess of $150 per month of earned income of such dependent children and relatives in the same home."

(c) Effective July 1, 1969, section 402(a)(7)(A) of such Act (as amended by subsection (b) of this section) is further amended by striking out "may disregard not more than" and inserting in lieu thereof "shall disregard".

Requirements for Meeting Full Need

Sec. 202. (a) Section 2(a)(10) of the Social Security Act is amended by striking out "and" and at the end of subparagraphs (B) and (C) and by adding after subparagraph (C) the following new subparagraph:

> "(D) provide (i), effective July 1, 1969, for meeting (in conjunction with other income that is not disregarded under the plan and other resources) all the need, as determined in accordance with the standards applicable under the plan for determining need, of eligible individuals (and such standards shall be no lower than the standards for determining need in effect on January 1, 1967), and (ii), effective July 1, 1968, for an annual review of such standards and (to the extent prescribed by the Secretary) for up-dating such standards to take into account changes in living costs;"

(b) Section 402(a) of such Act is amended by striking out "and" at the end of clause (13) and by inserting before the period at the end thereof after clause (13) the following new clause "; (14) provide (A), effective July 1, 1969, for meeting (in conjunction with other income that is not disregarded, or set aside for future needs, under the plan and other resources) all the need, as determined in accordance with standards applicable under the plan for determining need, of individuals eligible to receive aid to families with dependent children (and such standards shall be no lower than the standards for determining need in effect on January 1, 1967), and (B), effective July 1, 1968, for an annual review of such standards and (to the extent prescribed by the Secretary) for up-dating such standards to take into account changes in living costs".

(c) Section 1002(a) of such Act is amended by striking out "and" at the end of clause (12) and by inserting before the period at the end thereof after clause (13) the following: "; and (14) provide (A), effective July 1, 1969, for meeting (in conjunction with other income that is not disregarded under the plan and other resources) all the need, as determined in accordance with standards applicable under the plan for determining need, of eligible individuals (and such standards shall be no lower than the standards for determining need in effect on January 1, 1967), and (B), effective July 1, 1968, for an annual review of such standards and (to the extent prescribed by the Secretary) for up-dating such standards to take into account changes in living costs".

(d) Section 1402(a) of such Act is amended by striking out "and" at the end of clause (11) and by inserting before the period at the end thereof after clause (12) the following: "; and (13) provide (A), effective July 1, 1969, for meeting (in conjunction with other income that is not disregarded under the plan and other resources) all the need, as determined in accordance with standards applicable under the plan for determining need, of eligible individuals (and such standards shall be no lower than the

standards for determining need in effect on January 1, 1967), and (B), effective July 1, 1968, for an annual review of such standards and (to the extent prescribed by the Secretary) for up-dating such standards to take into account changes in living costs".

(e) Section 1602(a) of such Act is amended by striking out "and" at the end of paragraph (16), the period at the end of paragraph (17) and inserting "; and" in lieu thereof, and by adding after such paragraph (17) the following new paragraph:

> "(18) provide (A), effective July 1, 1969, for meeting (in conjunction with other income that is not disregarded under the plan and other resources) all the need, as determined in accordance with standards applicable under the plan for determining need, of eligible individuals (and such standards shall be no lower than the standards for determining need in effect on January 1, 1967) and (B), effective July 1, 1968, for an annual review of such standards and (to the extent prescribed by the Secretary) for updating such standards to take into account increases in living cost."

Income in Determining Eligibility

Sec. 203. (a) Section 2(a)(10)(A) of the Social Security Act is amended by inserting before the semicolon at the end thereof the following: "and (iii) effective July 1, 1969, the State agency shall not consider such individual's (or his family's) income (that is not disregarded under the plan) a basis for finding that he is not in need, if such income is less than 66⅔ percent of the amount of income established for individuals (or their families) under subsection (f) (1) of section 1903 in determining whether payments pursuant to such section may be made for expenditures for medical assistance with respect to such individuals (or families) and for such purposes the provisions of paragraph (3) of such subsection (f) shall apply".

(b) Section 402(a)(7) of such Act is amended—

(1) by striking out "and" at the end of clause (B) thereof; and

(2) by inserting before the semicolon at the end thereof the following: ", and (D) effective July 1, 1969, the State agency shall not consider such individual's (or his family's) income (that is not disregarded, or set aside for future need, under the plan) a basis for finding that he (or the family) is not in need if such income is less than 66⅔ percent of the amount of income established for individuals (or their families) under subsection (f)(1) of section 1903 in determining whether payment pursuant to such section may be made for expenditures for medical assistance with respect to such individuals (or families) and for such purposes the provisions of paragraph (3) of such subsection (f) shall apply".

(c) Section 1002(a)(8) of such Act is amended—

(1) by striking out "and" at the end of clause (B) thereof; and

(2) by inserting before the semicolon at the end thereof the following: ", and (D) effective July 1, 1969, the State agency shall not consider such individual's (or his family's) income that is not disregarded under the plan a basis for finding that he is not in need is less than 66⅔ percent of the amount of income established for individuals (or their families) under subsection (f)(1) of section 1903 in determining whether payments pursuant to such section may be made for expenditures for medical assistance with respect to such individuals (or families) and for such purposes the provisions of paragraph (3) of such subsection (f) shall apply".

(d) Section 1402(a)(8) of such Act is amended—

(1) by striking out "and" at the end of clause (B) thereof; and

(2) by inserting before the semicolon at the end thereof the following: ", and (D) effective July 1, 1969, the State agency shall not consider such individual's (or his family's) income (that is not disregarded under the plan) a basis for finding that he is not in need if such income is less than 66⅔ percent of the amount of income established for individuals (or their families) under subsection (f)(1) of section 1903 in determining whether payments pursuant to such section may be made for expenditures for medical assistance with respect to such individuals (or families) and for such purposes the provisions of paragraph (3) of such subsection (f) shall apply".

(e) Section 1602(a)(14) of such Act is amended—

(1) by striking out "and" at the end of subparagraph (C);

(2) by adding "and" at the end of subparagraph (D); and

(3) by adding after subparagraph (D) (as amended by paragraph (2) of this subsection) the following new subparagraph:

"(E) effective July 1, 1969, the State agency shall not consider such individual's (or his family's) income (that is not disregarded under the plan) a basis for finding that he is not in need if such income is less than 66⅔ percent of the amount of income established for individuals or families under subsection (f)(1) of section 1903 in determining whether payments pursuants to such section may be made for expenditures for medical assistance with respect to such individuals (or families) and for such purposes the provisions of paragraph (3) of such subsection (f) shall apply".

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(page 79):

Committee on Ways and Means

U. S. House of Representatives

Ninetieth Congress

First Session

Section-by-Section Analysis
And Explanation of Provisions of
H.R. 5710

The "Social Security Amendments of 1967"

As Introduced on February 20, 1967

Prepared and Furnished by
The Department of Health, Education,
and Welfare

(page 81):

Contents

19. Financing the President's proposals.
20. Adequate support for needy children.
21. Child welfare services.
22. National dental health program for children.
23. Expanded comprehensive health service programs for children in low-income areas.
24. Increased benefits for children under social security.
25. Pilots projects to find and test improved methods of meeting health needs of children.
26. Work incentive program.
27. Finding and treating health problems of needy children under medical assistance (title XIX) program.

(pages 118-119)

20. Adequate Support for Needy Children

Background

A family of four with an income of $3,100 or less is living in poverty, as defined by the Social Security Administration and the Office of Economic Opportunity. A family at this level or below is considered to be too poor to provide for its basic human needs in the United States today.

More than 3 million children in families dependent on public assistance live below the poverty level. In figuring public assistance payments, each of the 50 States makes its own definition of minimum need. Although a few States define need at or above the poverty level, no State pays as much as that amount.

Moreover, 33 States provide less support for needy children than the standards the States themselves have set as necessary to meet basic human needs. The record for these 33 States is shown in the table below, which shows actual support for needy children as a percentage of the State's own minimum standard:

States	Percent
Oregon, California, New Mexico, Idaho	90-99
Colorado, South Dakota, West Virginia, Ohio, Virginia, Wyoming, Washington	80-89
Kentucky, Michigan, Iowa, Utah	70-79
Georgia, Tennessee, Texas, Vermont, Louisiana, Delaware	60-69
Maine, Arkansas, Arizona, Missouri	50-59
Nevada, South Carolina, Indiana, Nebraska	40-49
Alaska, Alabama, Florida	30-39
Mississippi	20-29

In seven States — Alabama, Arkansas, Florida, Georgia, Mississippi, South Carolina, and West Virginia — a family consisting of a mother and three children receiving assistance must live on less than $120 a month.

Low levels of financial aid make it difficult or impossible for dependent families to buy the basic necessities for their children: decent food, clean, warm housing, medical care, clothing. Low levels of aid tend to keep families and children dependent.

The proposal

The President proposes legislation to require the States to meet their own standards of what is needed to support a child by July 1969.

The Social Security Act would be amended to require States to meet minimum need as each State itself defines it (see table attached) in its AFDC program.

States would also be required to bring their standards of need up to date by July 1, 1969, and to update them annually thereafter. Even though about half the States updated their minimum standards this year, most States have not been doing so annually.

The amendment would also require States to maintain their standards of need at a level not less than two-thirds of the income level set for medical assistance eligibility. That is, if a family of four is eligible for medical assistance with an income up to $3,800, for example, then the mini-

mum income standard for AFDC payments could not be less than $2,533.

Aid to families with dependent children: Percent that highest monthly amount payable for basic needs for family of specified composition and living in rented quarters represents of total monthly cost standard for basic needs of such family, by State, January 1965[1]

State	Family consisting of mother (35), boy (14), girl (9), and girl (4), and living in rented quarters[2]		
	Total monthly cost standard for basic needs (I)	Highest monthly amount payable for basic needs[3] (II)	Percent col. II is of col. I (III)
Alabama	$177.00	$ 67.26	38.0
Alaska	376.00	140.00	37.2
Arizona	232.00	134.00	57.8
Arkansas	124.00	71.00	57.3
California	229.40	215.00	93.7
Colorado	173.00	141.62	81.9
Connecticut	230.35	230.35	100.0
Delaware	214.00	149.00	69.6
District of Columbia	166.00	166.00	100.0
Florida	201.00	78.00	38.8
Georgia	181.35	109.00	60.1

[1] Includes data for 53 States; data not available for Guam.

[2] The specified type of family is assumed to need amounts for rent and utilities that are at least as large as the maximum (or other) amounts reported by the State for these items. The family is also assumed to have no income other than assistance.

[3] For the specified type of family represents the smallest of the following: (1) The amount of the State's usual legal or administrative maximum on money payments to recipients; (2) an amount resulting from the application of a percentage or flat reduction to the amount of determined need; or (3) the amount of the total cost standard for basic needs (for States with usual legal or administrative maximums above the total cost standard for basic needs and for States without such maximums).

State	Family consisting of mother (35), boy (14), girl (9), and girl (4), and living in rented quarters		
	Total monthly cost standard for basic needs	Highest monthly amount payable for basic needs	Percent col. II is of col. I
	(I)	(II)	(III)
Hawaii	197.20	197.20	100.0
Idaho	209.10	201.10	96.2
Illinois	187.36	187.36	100.0
Indiana	223.87	110.00	49.1
Iowa	253.70	190.28	75.0
Kansas	185.09	185.09	100.0
Kentucky	193.00	136.64	70.8
Louisana	164.75	108.00	65.6
Maine	222.00	124.00	55.9
Maryland	167.50	167.50	100.0
Massachusetts	221.20	221.20	100.0
Michigan	223.00	160.00	71.7
Minnesota	202.27	202.27	100.0
Mississippi	175.62	50.00	28.5
Missouri	188.95	110.00	58.2
Montana	216.75	216.75	100.0
Nebraska	261.50	130.00	49.7
Nevada	259.75	120.00	46.2
New Hampshire	183.00	183.00	100.0
New Jersey	245.80	245.80	100.0
New Mexico	195.50	185.72	95.0
New York	255.65	255.65	100.0
North Carolina	152.50	152.50	100.0
North Dakota	233.00	233.00	100.0
Ohio	165.00	142.50	86.4
Oklahoma	163.00	163.00	100.0
Oregon	198.75	185.24	93.2
Pennsylvania	163.40	163.40	100.0
Puerto Rico	82.26	27.15	33.0

State	Family consisting of mother (35), boy (14), girl (9), and girl (4), and living in rented quarters: Total monthly cost standard for basic needs (I)	Highest monthly amount payable for basic needs (II)	Percent col. II is of col. I (III)
Rhode Island	167.55	167.55	100.0
South Carolina	148.25	72.00	48.6
South Dakota	225.50	180.40	80.0
Tennessee	160.45	100.00	62.3
Texas	153.95	98.00	63.7
Utah	227.40	176.00	77.4
Vermont	213.65	140.00	65.5
Virgin Islands	104.00	104.00	100.0
Virginia	187.00	162.50	86.9
Washington	238.30	209.70	88.0
West Virginia	143.97	122.37	85.0
Wisconsin	225.75	225.75	100.0
Wyoming	229.80	200.00	87.0

SUPPLEMENTAL OPINION ON MOTION

WINTER, Circuit Judge:

After the filing of our opinion in this case, defendants filed a multi-faceted motion, purportedly under Rules 52(b) and 59, *Fed. R. Civ. P.*, in which they ask, alternatively, that we amend our findings of fact and judgment, grant a new trial, or receive additional evidence and alter or amend the judgment. Basically, the new or additional facts that defendants want us to consider are not in the nature of newly-discovered evidence; and no compelling excuse is offered as to why they were not previously brought to our attention.[1] Understandably, plaintiffs vigorously question

[1] The facts, themselves, are not in dispute. They were stipulated to be true in open court at the hearing on the motion; others were the subject of a post-hearing written stipulation.

defendants' right to proceed, and they cite persuasive authority in support of their position.

The case is an important one. Proof has been offered to establish that twenty-seven states have maximum grant regulations similar to that of Maryland; other litigation questioning their validity is pending in other courts. In an effort to arrive at a correct decision, we should give full and complete consideration to all relevant materials. We prefer, therefore, to deal with the motion on its facts and the merits of the contentions it presents, rather than on the procedural grounds urged by the plaintiffs.

As will appear from what is said hereafter, the motion is granted in part and denied in part.

I.

In regard to the question of the proper construction to be placed on the Social Security Act of 1935, as amended, and whether the Maryland maximum grant regulation conflicts therewith, defendants point out that Maryland has had a maximum grant regulation in some form continuously since January 1, 1947. It is asserted that the Secretary of Health, Education and Welfare (HEW) has "approved" the Maryland regulation, as well as its counterpart in some twenty-seven other states, and that this "approval" is entitled to great weight, if, indeed, it is not conclusive, in deciding whether the regulation conflicts with any provision of the Act. The text of the maximum grant regulations in other states is not before us; nor is any evidence of how they are applied. Finally, it is contended that the legislative history of clause 9 of § 402[2] indicates that it has a more restrictive

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[2] Clause 9 is the portion of § 402, 42 U.S.C.A. § 602, which requires that a State AFDC plan *must* include a provision:

> "(9) * * * effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have the opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals * * *."

Since the 1968 amendments, clause 9 has become clause 10 of § 402 .

meaning than the one we ascribed to it, so that there is no conflict between it and the regulation.

We accept the correction that the Maryland maximum grant regulation is not new and that it has its counterpart elsewhere. We find that HEW has never expressly disapproved the regulation; whether it has approved it is another matter, as is the legal effect of what has been done. We state first, drawing on the parties' stipulation, what HEW has and has not done.

HEW has at no time issued any regulations dealing specifically with the problem of maximum grant regulations, nor has it circulated any reasoned decisions or statements detailing its position. Indeed, there is no indication whatever that any of the arguments urged in this proceeding or adopted in our previous opinion have been presented to HEW. The sole contacts which HEW has had with the regulation in issue, so far as we are informed by the parties, are as follows: (1) at various times HEW has "incorporated" revisions of the maximum grant regulation into Maryland's previously approved AFDC plan; (2) HEW issued, in October, 1962, a booklet entitled "State Maximums and Other Methods of Limiting Money Payments to Recipients," which details, *inter alia,* the AFDC maximum grants in the respective states employing such regulations; (3) an Interim Policy Statement of May 31, 1968, specifies that a state AFDC plan must provide by July 1, 1969, for increases in any maximum grants in order to reflect changes in living costs.

From the foregoing, we distill the obvious, namely, that HEW implicity considers maximum grant regulations not to be violative of the Act. In view of the fact, however, that there is no indication from administrative decision, promulgated regulation, or departmental statement that the question of the conformity of maximum grants to the Act has been given considered treatment,[3] we believe that

[3] Some corroboration for this statement is found in the implicit assumption in the discussion of maximum family grants, Note, *Welfare's "Condition X,"* 76 Yale L. J. 1222, 1232-33 (1967).

the various actions and inactions on the part of HEW are not entitled to substantial, much less to decisive, weight in our consideration of the instant case.

In adopting this view, we cast no doubt whatsoever upon the general doctrine that the views of administrative agencies entrusted with the administration of a statute are to be given due deference when issues of statutory interpretation arise. See, generally, Annot., *Administrative or Practical Construction of Statute as Precedent for Judicial Construction*, 84 L. Ed. 28 (1939). Nevertheless, whether administrative interpretation in the abstract is deemed to be "pertinent," to have "weight," to have "persuasive weight," or to be of such significance that it "ought not to be overruled without cogent reasons," *Anderson v. McKay*, 211 F. 2d 798, 805 (D.C. Cir.), *cert. den.*, 348 U.S. 836 (1954), the attitudes, practices and interpretations of an administrative agency are certainly not absolute rules of law but, at best, merely "helpful guides to aid courts in their task of statutory construction." *Sims v. United States*, 252 F. 2d 434, 438 (4 Cir. 1958), *aff'd*, 359 U.S. 108 (1959). The ultimate authorities on issues of statutory interpretations are the courts, *Volkswagenwerk v. FMC*, 390 U.S. 261, 272 (1968), which have the final responsibility to declare what a statute means. *Fishgold v. Sullivan Drydock & Repair Corp.*, 154 F. 2d 785, 790 (2 Cir.) (L. Hand, J.), *aff'd*, 328 U.S. 275 (1946). To the same effect, see, *e.g., Folsom v. Pearsall*, 245 F. 2d 562, 564-65 (9 Cir. 1957); *Commissioner v. Winslow*, 113 F. 2d 418, 423 (1 Cir. 1940). Where a conflict arises between the administrative and judicial constructions of a statute, the latter will necessarily prevail. *Deeg v. Lumbermen's Mut. Cas. Co.*, 279 F. 2d 491, 494 (10 Cir. 1960); *Cory Corp. v. Sauber*, 266 F. 2d 58, 61 (7 Cir. 1959), *rev'd on other grounds*, 363 U.S. 709 (1960); *Louisiana Pub. Serv. Comm'n v. SEC*, 235 F. 2d 167, 172 (5 Cir. 1956), *rev'd on other grounds*, 353 U.S. 368 (1957); Woods *v. Benson Hotel Corp.*, 177 F. 2d 543, 546 (8 Cir. 1949). See, 1 Davis, *Administrative Law Treatise*, § 5.06, at 326-328 (1958). In determining the proper weight to be accorded to an administrative decision, account must be taken of the consistency of the agency's interpretation with the under-

lying purposes of the statute which is being construed. *P. Lorillard Co. v. FTC*, 267 F. 2d 439, 443 (3 Cir.), *cert. den.*, 361 U.S. 923 (1959). In no event is a court "compelled to follow an administrative interpretation that it regards as inconsistent with the legislative purpose of the provision in issue." *In re Petition of Chin Thloot Har Wong*, 224 F. Supp. 155, 165 (S.D. N.Y. 1963).

Furthermore, it is clear that the thoroughness with which an administrative agency has dealt with a particular problem of statutory construction is a highly relevant factor in determining the weight to be assigned to the agency's resolution of the matter. Such weight will be dependent upon "the thoroughness evident in * * * [the agency's] consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). If the agency's construcion has resulted from an uncontested non-adversary proceeding, it has been said that the agency's interpretation is entitled to "relatively little weight." *SEC v. Sterling Precision Corp.*, 393 F. 2d 214, 220 (2 Cir. 1968). See, *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 290 (1946). Finally, to the argument that Congress has not stepped in to alter or amend HEW's apparent interpretation that Maryland's maximum grant regulation conforms to the Act, we are reminded of our Court of Appeals' admonition that "courts are properly chary of equating mere inaction with approval, in the absence of a solid foundation for the inference of conscious ratification [by Congress]." *Duncan v. Railroad Retirement Bd.*, 375 F. 2d 915, 919 (4 Cir. 1967).

If the unequivocal command that "aid * * * shall be furnished with reasonable promptness to *all* eligible individuals," were all that we must consider, we would not be disposed, in the light of the legal principles which we have set forth and of the limited nature of the administrative action taken by HEW in regard to maximum grant regulations, to assign controlling significance to HEW's apparent views. To the extent that these views hold that maximum grant regulations are consistent with the language and

purposes of the Act, we would decline to follow them. See, *King v. Smith*, 392 U.S. 309, 333, n. 34 (1968).

We turn to the argument that the legislative history of clause 9 demonstrates that it has a more restricted meaning than we have given it. Essentially, defendants' argument is that the portion of the Social Security Act Amendments of 1950, 64 Stat. 549, which added clause 9, on which we placed principal reliance in concluding that there was a conflict between the regulations and the Act, was addressed to a practice in Maryland and in other states of dealing with revenue crises in AFDC by instituting a freeze on the receipt of new AFDC applications, rather than to devise some other uniform or equitable way of reducing AFDC expenditures. The requirement of clause 9 — "that all individuals wishing to make application for aid to families with dependent children shall have the opportunity to do so" — was, so the argument runs, specifically directed to this practice. The "all eligible individuals" to whom aid must be furnished, the argument continues, are the applicants for aid referred to in the beginning of clause 9, and not the family members benefited by the application.

We reject defendants' second argument for the reasons set forth in footnote 9 of our original opinion. Although clause 9 may contemplate that the application for aid be made by a responsible adult, child-care institution, child-placement or child-care agency, it requires that the amount of aid granted be commensurate with the needs of all of those on behalf of whom an application is made. Defendants' argument is essentially that the command of the entire clause is met if the applicant, i.e., the responsible adult, is furnished some aid, even though the amount is less than that which the state has determined is the extent of need and appropriate benefit for the members of his family. If his needs as an individual are satisfied in whole or in part, the clause requires no more. The basic purpose of AFDC to provide support for "dependent children" makes the hollowness of this argument manifest.

We see nothing inconsistent between the claimed legislative intent as expressed in clause 9 and the liberal meaning

we have given it. If the evil to be corrected was the states' freezing consideration of new applications for aid, it would not be unreasonable for Congress to say that the application should be received, and considered, and that the amount of aid should be granted promptly to *all* who were eligible, lest some state devise some other subterfuge, such as receiving an application and considering it but postponing any benefits thereon or granting less than the benefits indicated thereon until it was financially more convenient to do so.

More importantly, closer scrutiny of the legislative materials relevant to the purposes of clause 9 satisfies us that we have not expanded its meaning beyond the initial legislative intent in its enactment. The basic purpose of clause 9 was explained in the report of the House of Representatives where the bill, H.R. 6000, which added clause 9, originated.[4] H.R. 6000 was not reported by the Senate until the following session, and, while the House version required

[4] The pertinent sections of the report read:

"D. Opportunity to apply for and receive assistance promptly

Shortage of funds in aid to dependent children has sometimes, as in old-age assistance, resulted in a decision not to take more applications or to keep eligible families on waiting lists until enough recipients could be removed from the assistance rolls to make a place for them. As noted in the discussion of this problem in the section on old-age assistance, this difference in treatment accorded to eligible people results in undue hardship on needy persons and is inappropriate in a program financed from Federal funds. The requirement that State plans must provide opportunity to apply to all persons wishing to do so and that assistance shall be furnished promptly to all eligible families is included in the proposed amendments to title IV of the Social Security Act."

* * * * * *

"Requirement relating to opportunity to apply for assistance and receive it promptly

The provisions of section 3(a) of the Social Security Act are also amended by the bill by the addition of a new clause (9). This clause would add a specific requirement designed to make it clear that a State plan, in order to be approved, must provide that all individuals wishing to make application for assistance shall have an opportunity to do so and that assistance shall be furnished promptly to all eligible individuals. This new requirement would take effect July 1, 1951."

H. R. Rep. No. 1300, 81st Cong., 1st Sess., pp. 48, 148 (1949).

a state to furnish aid "promptly," clause 9 was amended in the Senate to require a state to furnish aid "with reasonable promptness." This substitution in phraseology was thought to assure that a state would have sufficient time to make investigations. It was the only amendment; otherwise, the Senate sought to achieve the same objectives as the House.[5] It should be stressed that H.R. 6000 also expanded AFDC (which was theretofore a program solely of aid to children) to include the relative with whom any dependent child is living. The purpose of the expansion was described in the report of the House Committee.[6] The essential emphasis,

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[5] "Title III — Amendments to Public Assistance and Maternal and Child Welfare Provisions of the Social Security Act

Requirements of State Plans

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Requirements relating to opportunity to apply for and receive assistance

The provisions of section 3(a) of the Social Security Act are also amended by the bill by the addition of a new clause (9). This clause would add a specific requirement designed to make it clear that a State plan, in order to be approved, must provide that all individuals wishing to make application for assistance shall have an opportunity to do so and that assistance shall be furnished with reasonable promptness to all eligible individuals. This new requirement would take effect July 1, 1951.

The same addition has been made by sections 321 and 341 of the bill to sections 402(a) and 1002(a), respectively, of the Social Security Act, although in the latter case the new clause is numbered (11).

These amendments proposed by the bill are the same in substance as those proposed on the same subject by the bill as passed by the House except that the latter would have required the assistance to be furnished 'promptly' instead of 'with reasonable promptness' as proposed by your committee. The change was made in order to assure the States reasonable time to make investigations and complete any other action necessary to determine eligibility and extent of need for assistance."

S. Rep. No. 1669, 81st Cong., 2nd Sess.; 2 U. S. Code Cong. Ser. 3470-71 (1950).

[6] "XIV. Aid to Dependent Children

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"A. Inclusion of mother or other relative caring for child

In the present law, aid to dependent children is defined as payments with respect to a dependent child. No specific provi-

in this statement, on the needs of the dependent children, and the concept that aid to the relative with whom the children were living was necessary *so as not to diminish the realizable benefit to the children* belies the interpretation of clause 9 pressed by defendants.

Inexplicably, however, Congress, in the Social Security Amendments of 1967, P. L. 90-248, 81 Stat. 821, amended § 402 of the Act in a manner which may have a substantial effect on the apparent conflict between the regulation and the Act. The record, however, is insufficient for us to express any final conclusion.

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sion is made for the need of the parent or other relative with whom the child is living. Particularly in families with small children, it is necessary for the mother or another adult to be in the home full time to provide proper care and supervision. Since the person caring for the child must have food, clothing, and other essentials, amounts allotted to the children must be used in part for this purpose if no other provision is made to meet her needs. The maximum monthly amount of assistance in which the Federal Government will now share is $27 for one child in a family and $18 for each child beyond the first.

Because of the lack of specific provision for Federal participation in assistance to the mother or other relative and the inadequacy of the $27 and $18 maximums to cover the cost of essentials for the children and an adult as well, States have been forced to make a very large proportion of payments larger than the maximum amounts subject to Federal sharing. In December 1948 about one-half of all payments were above the maximums. More than three-fourths of all payments exceeded these amounts in 24 States. Often States have been unable to make payments that were at all realistically related to the need of the dependent children and the relative caring for them.

To correct the present anomalous situation wherein no provision is made for the adult relative and to enable States to make payments that are more nearly adequate, the bill would include the relative with whom the dependent child is living as a recipient for Federal matching purposes. The maximum amount of assistance for a relative in which the Federal Government would share would be $27. The maximums of $27 for one child in a family, and $18 for each additional child, would remain unchanged. Thus, for a relative and one dependent child the maximum amount of the payment subject to Federal sharing would be $54 instead of $27. For a three-child family, the maximum would be $90 instead of $63."

H. R. Rep. No. 1300, 81st Cong., 1st Sess., pp. 45-46 (1949).

The amendment, contained in § 213(b) of the Act, cited as Social Security Amendments of 1967, added a new clause to § 402(a), to be known as clause 23, which requires, as an additional condition, that a state AFDC plan must:

> "provide by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, *and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.*" (Emphasis supplied.)

Section 213(a) amended various other sections of the original Act to provide that recipients under various programs need not suffer a reduction in benefits if they had income up to $7.50 per month, instead of the previous ceiling of $5.00 per month, i.e., 42 U.S.C.A. §§ 302(a)(1)(A)(i) [state old-age and medical assistance plans], § 1202(a)(8)(C) [state plans for aid to blind], § 1352(a)(8)(A) [state plans for the permanently and totally disabled], and § 1384(a)(14)(D) [state plans for aid to aged, blind or disabled or for such aid and medical assistance for aged].

Section 213 of the amending Act was added to the House Bill by amendment in the Senate, later concurred in by the House.[7] As it shows on its face, § 213(b) was designed to increase benefits to keep pace with increased living costs. The references to it in the committee reports are no more informative.[8] Elsewhere in the extensive amendments to

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[7] See discussion in Conference Report No. 1030, 90th Cong., 1st Sess., 2 U. S. Code Cong. Ser. 3179, 3208 (1967).

[8] Clause 23 was added by § 213(b) of the amending Act. As passed by the Senate, the amending Act added clause 23 by § 213(a) and referred to clause 23 as clause 24. In the Senate Report, the following was said:

> "Paragraph (5) of section 213(a) of the bill amends section 402(a) of the Act by adding (after the new clause (23) added to such sec. 402(a) of the act by sec. 211(a) of the bill) a new clause (24) which requires a State plan for the dependent children program to provide that by July 1, 1969, and at least annually thereafter, the amounts used by the State to determine the

the original Act, benefits were increased generally,[9] the conditions attaching to AFDC benefits were liberalized to encourage AFDC recipients to make the transition to becoming self-supporting, and new protections to children in AFDC families and provisions to make more certain the fulfillment of parental responsibilities were added.[10]

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needs of individuals will be adjusted to reflect fully changes in living costs since such amounts were established, and that any maximums that the State imposes on the amount of aid paid to families will be proportionately adjusted."

Senate Report No. 744, 90th Cong., 1st Sess., 2 U. S. Code Cong. Ser. § 133 (1967).

The Conference Report which recommended concurrence in the Senate amendment contained no discussion of its purpose or need, beyond the barest description of its terms. Conference Report No. 1030, 90th Cong., 1st Sess., 2 U. S. Code Cong. Ser. § 209 (1967).

[9] See, *e.g.*, Senate Report No. 744, 90th Cong., 1st Sess., 2 U. S. Code Cong. Ser. 2834, 2835 [old-age, survivors, and disability insurance], 2836 [health insurance], 2838 [public assistance].

[10] Senate Report No. 744, op. cit. n. 8. At p. 2837, the general program in this report was thus summarized:

"Aid To Families With Dependent Children

The bill would make the following reforms in the aid to families with dependent children programs:

(1) For the purpose of providing greater incentives for appropriate members of families drawing aid to families with dependent children (AFDC) payments to obtain employment so that they need no longer be dependent on the welfare rolls the bill would—

(a) exempt a portion of earned income for members of the family who can work;

(b) establish a new work incentive and training program for individuals to be administered by the Department of Labor upon referral by the State welfare agency;

(c) require State welfare agencies to assure adequate child care arrangements for the children of working mothers;

(d) require the State welfare agencies to establish a social service plan for each AFDC family; and

(e) modify the optional unemployed fathers program to provide for a uniform definition of unemployment throughout the United States.

In order to enable the States to implement these requirements, the Federal Government would supply Federal matching for services (including child welfare and day care) which the States

In the context in which clause 23 was added, that is to say, having regard to the overall amendments to the AFDC program made by the amending Act, we find it difficult to say that §213(b) represented a considered judgment by Congress that it wished to validate all maximum grant regulations and that it wished to depart from the basic

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would be required to furnish. Federal matching would also be provided for training, supervision, materials, and other items and services needed in the work incentive program."

The provisions of existing law and proposed changes to liberalize the earnings exemptions of dependent children are described at p. 2861.

The overall changes in the AFDC program are summarized at pp. 2982-83, as follows:

"The plan which the committee has developed, with the advice and help of the Department of Health, Education, and Welfare and the Department of Labor amounts to a new direction for AFDC legislation. It follows that the basic outline of the bill passed by the House but incorporates certain desirable changes in the method of administration and program emphasis. The committee is recommending the enactment of a series of amendments to carry out its intent of reducing the AFDC rolls by restoring more families to employment and self-reliance.

The first series of amendments is designed to encourage and make possible the employment of adults in AFDC families. Three provisions are aimed at this purpose:

(1) the establishment of a work incentive program under the Department of Labor for the purpose of restoring members of AFDC families (including those with little or no work experience) to regular employment through counseling, placement services and training, and arranging for all others to get paid employment in special work projects to improve the communities in which they live;

(2) A requirement that all States furnish day-care services and other social services to make it possible for adult members of the family to take advantage of the work and training opportunities under the work incentive program; and

(3) A requirement that all States exempt part of the AFDC recipient's earnings to provide incentives for work in regular employment.

The second series of amendments would set up new protection for the children in AFDC families and would make more certain the fulfillment of parental responsibilities:

(1) A requirement that the States establish a comprehensive plan of social services for each AFDC child to assure

objectives of prior Congresses, reaffirmed by it, that benefits under AFDC be granted to *all* eligible individuals and that to the maximum extent feasible for their interest dependent children be kept in their own family units.[11] The brevity of the discussion of §213(b) in the legislative reports, as compared to the considered treatment of other amendments, leads to the reasonable assumption that Congress gave no real thought to the effect of maximum grant

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the child the maximum opportunity to become a productive and useful citizen;

(2) A requirement that State welfare agencies refer cases of child abuse or neglect to appropriate law-enforcement agencies and courts;

(3) A requirement that protective payments and vendor payments be made where appropriate to protect the welfare of the children;

(4) Federal payments for additional foster care situations under the AFDC program;

(5) A requirement to assure that fathers who desert or abandon their families will contribute to the support of their families by using available tax records and the enforcement power of the Internal Revenue Service. In addition, there would be a requirement that the States establish separate units to enforce the child-support laws, including financial help to the courts and prosecuting agencies to enforce court orders for support; and

(6) A program of emergency assistance to families with minor children for a temporary period.

(7) A more definitive and uniform program for the children of unemployed fathers.

The third series of amendments would make other changes in the program designed to deal with the expanding AFDC rolls.

(1) A requirement that all States establish programs to reduce the number of children born out of wedlock; and

(2) A requirement that all States offer family planning services to appropriate AFDC recipients."

[11] As part of the amending Act, Congress also amended § 401, 42 U.S.C.A. §601, in a technical respect not itself significant here. What is significant is that an amendment was made to the section containing the recital that a purpose of AFDC was "to help maintain and strengthen family life" without any alteration thereof. Presumably, family life is stengthened and maintained by holding a family together. Yet, as has been previously shown, the Maryland maximum grant regulation in its operation encourages the very opposite.

regulations in its oft-expressed basic legislative purposes, but simply concluded that if it was increasing benefits generally it should include a direction that maximum grants should be increased, also. Yet, clause 23 is unmistakable recognition by Congress that some states have maximum grant regulations, and, utilizing accepted canons of statutory construction, we are bound to give effect to this recognition.

The problem is what is the scope of Congressional recognition and implied approval of maximum grant regulations. The language of Congress in clause 23 is general and the Congressional intent expressed therein is uncertain. Manifestly, it cannot validate that which the Constitution does not permit. Equally important, it must be construed in the light of all other provisions of the Social Security Act, as amended, so as to achieve an harmonious whole. Even if clause 23 is treated as an implied amendment of clause 9, we do not know, and the parties have offered no proof to show us, what are the terms and provisions of the maximum grant regulations of other states and how they are applied. To be specific, we do not know if they are similar and are uniformly applied like that of Maryland to encourage the disbanding of large families so that Congressional recognition may be deemed an amendment of §402 of the Act, as well as a departure from the original legislative intent of clause 9 and the underlying purposes of the AFDC program to strengthen family life.

In short, clause 23 may well be properly construed to imply recognition by Congress of the concept of maximum grant regulations in the abstract without the additional implication that a congressional imprimatur has been placed upon every conceivable maximum grant regulation, no matter what its operative effects may be in furthering or retarding basic congressional policy. Thus, while Congress has indicated its view that a maximum grant regulation is not *per se* in conflict with the Act, prior to the 1967 amendments, as we have construed it, we cannot, on the present record, impute to Congress the intention to endorse specifically the Maryland regulation with its pernicious results, absent a statement of endorsement or cir-

cumstances of endorsement which speak with unmistakable clarity. In other circumstances, we would direct the parties to present additional proof to enable us to resolve this issue. We do not find this necessary in the instant case, however, because we are still satisfied that the regulation cannot hurdle the constitutional barrier of the equal protection clause.

II.

In regard to the question of whether Maryland's maximum grant regulation denies equal protection of the law, the evidence before us at the original trial was crystal-clear that the only reason why the maximum grant regulation was continued was financial, i.e., that the Governor and General Assembly of Maryland had failed to appropriate sufficient funds to finance the cost of AFDC, absent the operative effect of the maximum grant regulation in reducing expenditures. Now defendants assert that, at least initially, the maximum grant regulation was rationally supportable for constitutional purposes on the basis of the so-called "principle of less benefit." The thrust of the principle in the case at bar is that public assistance or welfare programs should not serve as an inducement to individuals to abandon useful employment, or to decline useful employment, or to abandon their families and the obligation to support them. Accordingly, the benefits derivable from such assistance should, in no event, be greater than the remuneration which could be achieved from gainful employment. In order to achieve this result, so the argument runs, the maximum grant is keyed to the minimum wage, so that an individual family receiving assistance would obtain no more than a family in which one member thereof was employed at the minimum wage level.

Specifically, under the principle of "less benefit," defendants assert that the maximum grant regulation serves a rational function in that it (a) discourages desertion of children by the wage earner or the wage earners of the family, (b) it provides an inducement to a surviving parent to seek employment, and (c) it encourages parents to limit the sizes of their families.

Even if we assume that the maximum grant regulation was adopted for the purposes that defendants assert,[12] and even if we accept the contention that the validity of the regulation under the equal protection clause may be saved by the original purposes for its promulgation, notwithstanding that those are not the purposes for its continuance, we find no merit in the argument that the less benefit principle may validate this regulation. We reach this conclusion because the regulation on its face is not limited to any subcategories of AFDC eligibles, but purports to apply, and is applied, to AFDC eligibles as a group. While the purposes which defendants assert may have a logical connection with one or more subcategories of AFDC eligibles, alone or in combination, they have no logical connection with the group as a whole; hence, the regulation is invalid on its face for overreaching. We turn to a consideration of the claimed rational functions which defendants assert.

AFDC is not limited to dependent children or families with dependent children deprived of parental support or care by reason of continued absence from the home. Discouragement of desertion as a rational basis for the maximum grant regulation can have application only to the continued absence subcategory of AFDC; it can have no application to dependency which arises because of death, unemployment, or physical or mental incapacity of the wage earner. The named plaintiffs Junius Gary and Jeanette Gary are examples of eligibles to whom this purpose has no logical application. Even when eligibility for AFDC is predicated upon continued absence from the home, dependent children and families with dependent children may still receive payments in excess of the maximum grant, if those children in number in excess of the cut-off point are placed with other relatives, a child-care institution, a child-placement or a child-care agency. A parent

[12] On the evidence before us the conclusion is equally tenable that the maximum grant regulation was adopted to make the entire AFDC program more palatable politically. Perhaps those purposes were inspired, however, by unarticulated notions of the "principle of less benefit."

who is willing to desert to give his children or his family eligibility for AFDC on this basis can hardly be presumed to voice stringent objection to further breakup of the family unit to gain advantage from this unusual aspect of the Maryland regulation. Thus, the maximum grant regulation not only subverts the statutory goal of preserving intact the family unit, but it is also ineffective to discourage eligibility by continued absence from the home.

The same is true with regard to the claimed purpose of inducing a surviving parent to seek employment, namely, that it is inapplicable to inability to work or lack of employment and is ineffective to achieve its purpose even in the subcategory to which it might be efficacious. Other considerations also come into play. The basic purpose of AFDC is to aid needy *children*, and to achieve this schedules of need based upon the cost-of-living have been established by the state. The principle of "less benefit" can have no application to those under the age when the state will permit them to work.[13] The evidence indicates that only a relatively small percenage of families (166 out of 2,537, or 6.5%) receiving AFDC payments are classified as having employable numbers. To what percentage of the 6.5% of total AFDC beneficiaries the maximum grant regulation is applicable is not disclosed. The evidence does show that the plaintiffs Junius Gary and Jeanette Gary, his wife, are receiving AFDC payments because of sickness and disability, and neither they nor the named plaintiff Linda Williams are employable. It is simply irrelevant to apply the "less benefit" principle of encouraging employment to individuals who could not, in any event, be gainfully employed.

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[13] Like every enlightened jurisdiction, Maryland regulates the employment of minors. Those under 14 are prohibited from engaging in any gainful employment. Those over 14 but under 16 may not be employed during school hours, with certain exceptions, or in certain occupations. All minors under 18 are prohibited from engaging in certain occupations and females over 16 but under 18 from engaging in certain occupations permissible for males. See, generally, 8B Ann. Code of Md., Art. 100, §§ 4, *et seq.*

These ages should be compared to the age limitations to qualify one as a "dependent child," i.e., under the age of 18, or, in the case of a student, under the age of 21. 42 U.S.C.A. § 606.

The state may have a legitimate interest in reducing its welfare rolls by encouraging those capable of so doing to seek and maintain gainful employment, but this goal can be furthered by such devices as work incentive programs, which are aimed precisely at aiding and encouraging those who are in fact employable,[14] or by limiting the application of the regulation to those to whom it may be said to have some logical relation.

Defendants' contention that the maximum grant regulation was also initially promulgated to encourage parents to limit the sizes of their families is diffidently pressed. This asserted purpose merits little discussion. If, indeed, this is a purpose, the regulation, again, invalidly overreaches. It is not limited to children born after AFDC eligibility is established and, from the evidence, it appears that in the case of the named plaintiffs at bar no children

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[14] We call attention to the provisions of § 407 of the Act, 42 U.S.C.A. § 607, which, beginning in 1961, expanded the definition of "dependent child" to include needy children deprived of parental support or care by reason of the unemployment of a parent. This section requires as part of the state's AFDC plan, in addition to the other conditions of §402 of the Act, that the state provide such assurances as will satisfy HEW that fathers of dependent children will be referred to the Secretary of Labor for participation under a work incentive program, and for providing vocational education to encourage the retraining of individuals capable of being retrained. Moreover, the state is permitted to deny AFDC to any child or eligible relative "if, and for so long as, such child's father is not currently registered with the public employment offices in the state * * *." § 407(b)(2)(C)(i).

It is significant that the 1968 Amendments in expanding the work incentive program also limited its application to "unemployed fathers" rather than "unemployed parents." The legislative history of the 1968 Amendments makes clear that the new work incentive program which they established was not intended to apply to "a mother who is in fact caring for one or more children of preschool age, if such mother's presence in the home is necessary and in the best interest of the children." Senate Report No. 744, 90th Cong., 1st Sess., 2 U. S. Code Cong. Ser. 2859, 2984 (1967). Plaintiff, Linda Williams is literally within that category. Thus, there is legislative recognition that the principle of less benefit was not intended to apply to her and others similarly situated.

have been born after the circumstances to produce AFDC eligibility occurred.[15]

Thus, in the case of the named plaintiffs at bar, it appears that the claimed purposes of the maximum grant regulation are either totally inapplicable or patently ineffective to accomplish their objectives, and consideration of the several bases of eligibility for AFDC within the group on whose behalf the named plaintiffs sue, indicates that the same is true of other categories, the substantiality of which is not disclosed. Because it cuts too broad a swath on an indiscriminate basis as applied to the entire group of AFDC eligibles to which it purports to apply, the maximum grant regulation cannot be sustained under the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

III.

We modify our previous opinion to the extent that we do not decide whether Maryland's maximum grant regulation conflicts with the Act, as amended. On the constitutional basis of our prior decision, however, we find no reason to reach a result different from that previously announced. We reiterate our previous conclusion that Maryland's maximum grant regulation transgresses the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

The Clerk is directed to enter a short order on the docket, granting in part, and denying in part, defendants' motion, as set forth in this opinion. In accordance with our previous instructions, plaintiffs have submitted a proposed form of decree. Defendants shall present their com-

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[15] The objective of family planning is part of the Act and treated with greater specificity and logic therein. By the 1968 Amendments, § 402 of the Act, 42 U.S.C.A. § 602, now requires, as part of the state's AFDC plan, that the state develop a program to achieve the objective of "preventing or reducing the incidence of births out of wedlock and otherwise strengthening family life," and for implementing this program by assuring that "in all appropriate cases family planning services are offered to them [applicants for AFDC] * * *." § 402(a)(15) of the Act, 42 U.S.C.A. § 602(a)(15).

ments thereon, and, if they be so advised, their suggested form of decree, within five days.

/s/ HARRISON L. WINTER,
United States Circuit Judge.

/s/ ROSZEL C. THOMSEN,
Chief Judge,
United States District Court
for the District of Maryland.

/s/ ALEXANDER HARVEY, II,
United States District Judge.

ORDER

In accordance with the opinions of the United States District Court for the District of Maryland dated December 13, 1968, and February 25, 1969, and the Court being of the view that from the facts and for the reasons stated therein plaintiffs are suffering and will suffer irreparable injury unless defendants are permanently restrained from enforcing the maximum grant regulations described therein.

It is hereby ORDERED, by the United States District Court for the District of Maryland, this 18th day of March, 1969, that the defendants be and they are hereby permanently enjoined from enforcing the maximum grant regulation applicable to all AFDC recipients generally set forth in the Maryland Manual of the Department of Social Services, Part II, Rule 200, Section VII, 1, against the plaintiffs named in this action and the class represented; provided that the effectiveness of this Order is stayed for a period of forty-five days.

/s/ HARRISON L. WINTER,
United States Circuit Judge.

/s/ ROSZEL C. THOMSEN,
Chief Judge,
United States District Court.

/s/ ALEXANDER HARVEY, II,
United States District Judge.