

A Ride to Work: TEA-21 and PRWORA

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Introduction

When President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA),¹ proponents hailed it as “end[ing] welfare as we know it.”² The legislation focused on ending the concept of multigenerational welfare families—welfare as we know it. PRWORA limits the amount of time a person can collect benefits and mandates that a recipient work.³ Both goals are to be achieved through the renamed welfare program, Temporary Assistance for Needy Families (TANF).⁴ However, in their zeal to end welfare dependence, lawmakers and the President overlooked a very important component of getting and keeping a job—getting there. Recognizing this issue, Secretary of Transportation Rodney Slater stated, “Transportation is the ‘to’ in the Welfare to Work initiative.”⁵ The legislative findings of section 3037 of the Transportation Equity Act for the 21st Century (TEA-21) discuss some of the reasons transportation is such an integral issue in

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1. PRWORA, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified in scattered sections of 42 U.S.C.).

2. *Transcript of Clinton's Address to a Joint Session of Congress*, N.Y. TIMES, Feb. 18, 1993, at A20.

3. See PRWORA, 42 U.S.C. § 607 (Supp. III 1997) (detailing mandatory work requirements for those receiving Temporary Assistance for Needy Families (TANF) benefits). See also § 602(a)(1)(A)(ii) (requiring recipients to work when they are determined to be ready to work, or after twenty-four months of benefits, whichever is earlier); § 608(a)(1)(B) (forbidding states from using any TANF money to assist a family if an adult in the family has received assistance for sixty months).

4. Previously, the welfare program in the United States was called Aid to Families with Dependent Children (AFDC). See 42 U.S.C. § 601 (1994) (repealed 1996).

5. *TEA-21: Highlights Access to Jobs*, Chicago, Illinois, (last modified Nov. 5, 1998) <<http://www.fhwa.dot.gov/tea21/chicsum.htm>>.

welfare policy.⁶ One of the most condemning statements addressing the shortsighted lawmaking that produced welfare reform without transportation reform is found within TEA-21. "Many of the 2,000,000 Americans who will have their Temporary Assistance to Needy Families [TANF] grants terminated by the year 2002 will be unable to *get to jobs* they could otherwise hold."⁷

In 1998, transportation legislation was enacted which made it possible to bridge some gaps created by the welfare legislation.⁸ TEA-21 addresses the issue of "getting there." The Act makes grant money available to regional programs⁹ that transport welfare recipients and low-income individuals to jobs and job-related services that otherwise would be inaccessible.¹⁰ The problem was the timing. Given the mandated effective date of the TANF time limits (July 1, 1997),¹¹ and the deadline for transportation grant applications (December 31, 1998),¹² it was almost inevitable that some welfare recipients would never reap the benefits that the new transportation law was supposed to provide. The first applicants¹³ to have their transportation grant applications approved were to be notified in February 1999.¹⁴

6. See TEA-21, Pub. L. No. 105-178, § 3037(a), 112 Stat. 107, 387-88 (1998) (to be codified at 49 U.S.C. § 5309 note).

7. TEA-21 § 3037(a)(7) (emphasis added). Notice that, according to this finding, the only problem many of these two million Americans will have in finding work is getting there. This contradicts general societal assumptions about welfare recipients' unwillingness and inability to secure and maintain employment for many reasons. See *Dethroning the Welfare Queen: The Rhetoric of Reform*, 107 HARV. L. REV. 2013, 2015-23 (1994) (describing common myths about the welfare population).

8. See TEA-21 § 3037.

9. See Job Access and Reverse Commute Competitive Grants, 63 Fed. Reg. 60,168, 60,171 (1998). These regional programs include Metropolitan Planning Organizations (MPOs) which "are responsible for adopting transportation plans and improvement programs to address a region's unique transportation needs and working with states to include these priorities in statewide plans." *Id.* MPOs can function as transportation decision-making entities and can be responsible exclusively for an urban area or for an urban area and the surrounding suburban and rural areas. See *id.*

10. See TEA-21 § 3037(b)-(c) (defining the Access to Jobs projects and establishing the grant program).

11. See PRWORA, 42 U.S.C. § 601 note (Supp. III 1997) (setting the effective date of PRWORA as July 1, 1997); § 602(a)(1)(A)(ii) (setting a two-year limit on receipt of TANF funds before recipient must begin working).

12. See Job Access and Reverse Commute Competitive Grants, 63 Fed. Reg. at 60,168.

13. States, local governments, MPOs, public transit agencies and tribal organization are the applicants and the recipients of this grant money made available under the Access to Jobs (ATJ) program established by TEA-21. See Job Access and Reverse Commute Competitive Grants, 63 Fed. Reg. at 60,169.

14. See Job Access and Reverse Commute Competitive Grants, 63 Fed. Reg. at

Assuming recipients received their grant money the same day they got their acceptance, the first transportation grant recipients had five months to implement a program that would facilitate getting welfare recipients to work.¹⁵

Mass transit reform is integral to effective welfare reform, and application for grant money to increase transportation services for welfare recipients should not be optional. Even areas of the country with excellent public transit systems have experienced an increase in suburban jobs, most of which are not accessible by public transportation.¹⁶ The government wants people to work, and it wants them in jobs that will enable them to support their families.¹⁷ Therefore, to ensure that the families forced off welfare are not being forced into worse conditions, or possibly onto the street, the government should mandate that eligible areas apply for this transportation grant.¹⁸

This Article examines TEA-21 in the context of PRWORA and addresses the need for increased urban mass transportation systems that will enable welfare recipients to comply with PRWORA's time limit mandates. Part I details the history of welfare reform in the United States and the social effects of each attempt at reform, concentrating on the new requirements of PRWORA.¹⁹ It also examines the history of the federal government's involvement in urban mass transportation, with particular emphasis on TEA-21's new programs.²⁰ Part II explains the intended cooperation of TEA-21 and PRWORA for those

60,168.

15. The first TANF recipients had until July 1, 1999, to find a job before losing benefits. Assuming notifications made under the Access to Jobs (ATJ) program were sent out on February 1, 1999, grant recipients had five months to use the grant money to ensure that those losing welfare recipients were not hindered in their job searches by lack of transportation. As of April 1, 1999, however, no grant notifications had gone out. Telephone Interview with Office of Public Affairs, Federal Transit Administration (Apr. 1, 1999).

16. See TEA-21, Pub. L. No. 105-178, § 3037(a)(2), 112 Stat. 107, 387 (1998) (to be codified at 49 U.S.C. 5309 note) ("[E]ven in metropolitan areas with excellent public transit systems, less than half of the jobs are accessible by transit.").

17. This has been the goal of welfare reform legislation since the 1960s. See *infra* Part I.A. (describing welfare policy development). See also Ways and Means Committee Print WMCP: 104-15, *Summary of Welfare Reforms Made by Public Law 104-193* (visited Sept. 12, 1999) <<http://www.access.gpo.gov/congress/wm015.txt>>.

18. A grant procedure (which includes an application process) rather than a federal appropriation (which means simply sending the money to each eligible state or municipal area) allows each geographic area to better address its specific transportation needs while still retaining control over the program.

19. See *infra* notes 24-58 and accompanying text.

20. See *infra* notes 59-79 and accompanying text.

welfare recipients who live in socio-economically depressed urban areas.²¹ Part III suggests that TEA-21 is a much needed corollary to PRWORA, but may have come too late in welfare reform to have as great an impact as expected, at least for the first wave of people forced into low paying jobs in their neighborhoods.²² This Article concludes that TEA-21 should be utilized and implemented by every eligible state and municipal area as if it were another welfare requirement, not an optional program that could be used to perform transportation experiments.²³

I. The Road Behind Us

A. Welfare Policy Development

Welfare²⁴ began in this country as an effort to help widowed women with children keep their children and stay in the home with them.²⁵ The Social Security Act of 1935 made welfare a nationwide institution.²⁶ It brought together many aspects of varying state and local programs to provide children who were without a mother and/or a father in the home for various reasons with monetary support from the government.²⁷ Congress amended this welfare provision in 1961, and in an attempt to decrease poverty in America, made the money available to families, not just to children.²⁸ As a reflection of this shift in policy focus, the name of the program was changed from Aid to Dependent Children to Aid to Families with Dependent Children.²⁹

Despite continued requirements that those receiving government assistance in the form of welfare actively look for jobs,

21. See *infra* notes 80-151 and accompanying text.

22. See *infra* notes 152-160 and accompanying text.

23. See *infra* notes 161-163 and accompanying text.

24. This Article uses the term "welfare" to mean any financial assistance an individual or family receives from the government in the form of family aid. This specifically includes Aid to Dependent Children (ADC), AFDC and TANF.

25. As phrased, "in the home" means out of the workforce. See IRWIN GARFINKEL & SARA S. McLANAHAN, *SINGLE MOTHERS AND THEIR CHILDREN: A NEW AMERICAN DILEMMA* 97-98 (John L. Palmer & Isabel V. Sawhill eds., 1986); MICHAEL B. KATZ, *IN THE SHADOW OF THE POORHOUSE* 127-28 (1986); Lindsay Mara Schoen, *Working Welfare Recipients: A Comparison of the Family Support Act and the Personal Responsibility and Work Opportunity Reconciliation Act*, 24 *FORDHAM URB. L.J.* 635, 638 (1997) (citing REPORT OF NEW YORK STATE COMMISSION ON RELIEF FOR WIDOWED MOTHERS (1914)).

26. See Social Security Act of 1935, 42 U.S.C. § 602 (1964) (repealed 1996).

27. See GARFINKEL & McLANAHAN, *supra* note 25, at 102.

28. See KATZ, *supra* note 25, at 266-67.

29. See 42 U.S.C. § 601 (1994) (repealed 1996); Schoen, *supra* note 25, at 636-42 (providing a detailed history of welfare policy development).

the number of poor people eligible for and receiving welfare benefits increased every year.³⁰ With more and more women entering the work force, the original notion of the government as breadwinner became an idea of the past.³¹ At the same time, deserted and never-married mothers gradually became the group whose numbers on the welfare rolls increased most dramatically.³²

Congress passed another amendment in 1967 aimed at containing the increases.³³ The Work Incentive Program (WIN) mandated participation in work programs for all able-bodied recipients, men and women.³⁴ WIN required every welfare recipient to register with the Department of Labor (DOL),³⁵ but it was not possible for the DOL to find all recipients jobs.³⁶ The sanctions written into WIN were supposed to ensure the cooperation and participation of those receiving welfare benefits.³⁷ The under-funded DOL, however, rarely enforced those penalties, and registering with the DOL soon became just a registration process, nothing more.³⁸ Congress passed WIN II³⁹ to tighten the regulations and sanctions surrounding AFDC, but in the end it was no more successful than WIN.⁴⁰

The 1981 amendments to the Social Security Act⁴¹ created more work requirements for welfare recipients, including mandatory public service jobs.⁴² The amendments allowed working recipients to keep a smaller percentage of their paychecks and gave each state more power to design its own particular

30. See GARFINKEL & MCLANAHAN, *supra* note 25, at 107; KATZ, *supra* note 25, at 266-67; Schoen, *supra* note 25, at 640.

31. See GARFINKEL & MCLANAHAN, *supra* note 25, at 117; JOEL F. HANDLER, *THE POVERTY OF WELFARE REFORM* 29 (1995).

32. See Joel F. Handler, *The Transformation of Aid to Families with Dependent Children: The Family Support Act in Historical Context*, 16 N.Y.U. REV. L. & SOC. CHANGE 457, 481 (1987-88).

33. The Social Security Amendments of 1967 were also called the Work Incentive Program (WIN). See 42 U.S.C. § 602 (1976) (repealed 1996)

34. See Schoen, *supra* note 25, at 641.

35. See Social Security Amendments of 1967 § 602.

36. See MILDRED REIN, *DILEMMAS OF WELFARE POLICY: WHY WORK STRATEGIES HAVEN'T WORKED* 49-50, 144 (1982).

37. See *id.* at 144.

38. See *id.*

39. See WIN II, 42 U.S.C. § 633 (1982) (repealed by Family Support Act (FSA), Pub. L. No. 100-485, § 202(a), 102 Stat. 2343, 2377 (1988)). See REIN, *supra* note 36, at 79.

40. See REIN, *supra* note 36, at 79.

41. See Social Security Amendments of 1981, 42 U.S.C. §§ 601-615 (1982) (repealed 1996)

42. See REIN, *supra* note 36, at 154-55.

system of benefits.⁴³

The Family Support Act (FSA)⁴⁴ changed the direction of welfare reform somewhat by creating the Job Opportunities and Basic Skills Training Program. (JOBS).⁴⁵ The goal of this reform was to enable more welfare recipients to get better-paying jobs through education and training, thereby decreasing not only the current rolls, but also the possibility of re-entry into the welfare system.⁴⁶ The self-sufficiency and independence FSA sought to foster were not sufficiently widespread to decrease the number of people receiving welfare benefits.⁴⁷ Lawmakers had hoped to increase incentives and opportunities for people to get off welfare,⁴⁸ however, the number of people receiving government aid continued to rise despite all the welfare reforms of the past sixty years.⁴⁹

In 1996, under mounting political pressure, President Clinton signed the third welfare reform bill that the 104th Congress sent to him.⁵⁰ The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) affects the food stamp program, child care, school lunches, child support payments and the direct cash subsidy formerly known as AFDC.⁵¹ The name change, from Aid to Families with Dependent Children to the current Temporary Aid to Needy Families,⁵² signifies the shift in focus of this new legislation. The reformed welfare program changes the distribution of federal money from an entitlement program to a block grant to the states.⁵³ Another marked distinction between

43. See *id.*

44. See FSA, 42 U.S.C. §§ 602, 1305 note (1994) (repealed 1996).

45. See FSA § 682.

46. See HANDLER, *supra* note 31, at 77; Judith M. Gueron, *Welfare and Poverty: Elements of Reform*, 11 YALE L. & POL'Y REV. 113, 117 (1993).

47. See HANDLER, *supra* note 31, at 46. Between 1988 and 1992, the number of AFDC recipients grew from 10.9 million to 13.6 million. *Id.*

48. See *id.* at 79-80.

49. See *id.* at 46.

50. See Greg J. Duncan & Gretchen Caspary, *Welfare Dynamics and the 1996 Welfare Reform*, 11 NOTRE DAME J.L. ETHICS & PUB. POL'Y 605 (1997) (stating that "Clinton vetoed the first two welfare reform proposals on the grounds that they were 'too harsh on children.'").

51. See PRWORA, Pub. L. No. 104-193, 110 Stat. 2105 (amending 7 U.S.C. § 2011 (1994) as to food stamps; 42 U.S.C. §§ 9801 (1994) as to child care; 42 U.S.C. § 1757 (1994) as to school lunches; 42 U.S.C. § 654 (1994) as to child support; and 42 U.S.C. § 601 (1994) as to AFDC).

52. See PRWORA, 42 U.S.C. § 601 note (Supp. III 1997).

53. See § 601(b) (removing the entitlement provision by providing that "[t]his part shall not be interpreted to entitle an individual or family to assistance under any State program funded under this part."); § 603(a)(1)(A) (creating block grants to states to address their social welfare needs by providing that "[e]ach eligible

FSA and PRWORA is the attention paid to those recipients who are participating in an education program. PRWORA does not make allowances for pursuance of higher degrees, but places strong emphasis on the tests of General Educational Development (GED) and job-related vocational training.⁵⁴

In addition to expecting increased responsibility from welfare recipients, Congress added a very significant "incentive" to get people off welfare. PRWORA includes time limits that dictate how long a person can receive government benefits. The Act contains a lifetime limit of sixty months of receiving welfare benefits⁵⁵ and a twenty-four month limit before a recipient must engage in work for at least twenty hours a week or participate in another qualifying activity.⁵⁶ Therefore, current welfare recipients must find a job with which they can support their families in two years. In addition, PRWORA mandates that states enforce participation rates⁵⁷ in work activities.⁵⁸ The goal is to strongly encourage

State shall be entitled to receive from the Secretary, for each of fiscal years 1996, 1997, 1998, 1999, 2000, 2001, and 2002, a grant in an amount equal to the State family assistance grant."); § 603(a)(1)(B) (defining state family assistance grant).

54. See § 607(d)(5), (8)-(11).

55. See § 608(a)(7)(A).

56. PRWORA provides that a state must:

Require a parent or caretaker receiving assistance under the program to engage in work (as defined by the State) once the State determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance under the program for 24 months (whether or not consecutive), whichever is earlier.

§ 602(a)(1)(A)(ii). The term "work" is defined in PRWORA as follows:

A recipient is engaged in work for a month in a fiscal year if the recipient is participating in work activities for at least the minimum average number of hours per week . . . during the month, not fewer than 20 hours per week of which are attributable to an activity described in paragraph (1)-(8) or (12) of subsection (d) . . .

§ 607(c)(1)(A). The term "work activities" is defined in PRWORA as follows:

(1) unsubsidized employment; (2) subsidized private sector employment; (3) subsidized public sector employment; (4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available; (5) on-the-job training; (6) job search and job readiness assistance; (7) community service programs; (8) vocational educational training (not to exceed 12 months with respect to any individual); (9) job skills training directly related to employment; (10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency; (11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and (12) the provision of child care services to an individual who is participating in a community service program.

§ 607(d).

57. See § 607. The participation rates increase each year from 1997 through 2002; section 607(a)(1) requires states receiving grants under section 603 to have

states to develop plans that get people off welfare. However, before TEA-21 and the Access to Jobs (ATJ) program, transportation was not included as a necessary component of moving welfare recipients into the workforce.

B. Transportation Policy Development

The federal government has been involved in mass transportation since 1964.⁵⁹ The Urban Mass Transportation Act (UMTA)⁶⁰ provided subsidies to finance up to two-thirds of the cost of mass transportation equipment and facilities.⁶¹ The National Mass Transportation Assistance Act of 1974⁶² increased the amount of federal money available,⁶³ and the Surface Transportation Act of 1978⁶⁴ allowed fare revenue to replace local subsidies.⁶⁵ The Intermodal Surface Transportation Efficiency Act

25% of their families who received assistance satisfy the mandatory work requirements in 1997; in 1998, 30% of the families receiving assistance are required to be meeting the mandatory requirements; in 1999, 35% of families have to be meeting the requirements; in 2000, 40% of the families who receive assistance must meet the mandatory work requirement; in 2001, the number increases to 45%; and in 2002 and after, 50% of families receiving aid must meet the work requirements. The minimum participation rates for two-parent families start at 75% in 1997 and increase to 90% required participation in 1999 and after. § 607(a)(1).

The mandatory work requirements start at 20 hours per week in 1997 and increase to 30 hours per week in 2000. See § 607(c)(1)(A). Recipients must work the specified number of hours to continue to be eligible for the TANF assistance they receive from the state. See *id.* Suitable work activities are defined in section 607(d)(1)-(12).

Section 607(i) provides for committee review in 1999 by the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate of state implementation of these requirements. "Based on such hearings such Committees may introduce such legislation as may be appropriate to remedy any problems with the State programs operated pursuant to this section." § 607(i).

58. See *supra* note 56 (defining qualifying work activities).

59. See Brendon Hemily & Michael D. Meyer, *The Future of Urban Public Transportation: The Problems and Opportunities of a Changing Federal Role*, 12 *TRANSP. L.J.* 287, 288 (1982) (detailing the history of the federal government's transportation involvement.).

60. See UMTA, 49 U.S.C. § 1601 (1970).

61. See Henry Lowenstein, *The Need for Limitations on Federal Mass Transit Operating Subsidies*, 12 *TRANSP. L.J.* 265, 266 (1982).

62. See National Mass Transportation Assistance Act of 1974, 49 U.S.C. § 1604 (1976), Pub. L. No. 93-503, 88 Stat. 1565 (amending UMTA, 49 U.S.C. § 1602 (1970)).

63. See National Mass Transportation Assistance Act of 1974 § 1603 (providing states with more money for transportation projects); DONALD V. HARPER, *TRANSPORTATION IN AMERICA: USERS, CARRIERS, GOVERNMENT* 374-75 (1978).

64. See Surface Transportation Act of 1978, 23 U.S.C. § 101 (1994); Pub. L. No. 95-599, 92 Stat. 2689.

65. See *id.* § 1602(5)(f) (1994).

of 1991 (ISTEA)⁶⁶ appropriated up to 18.3 billion dollars per year for transportation grants.⁶⁷ ISTEA addressed the need for transportation services to elderly, disabled and economically disadvantaged individuals.⁶⁸ However, in the Act's list of factors that a metropolitan planning organization (MPO)⁶⁹ should consider when developing transportation policy for an urban area, only one factor even addresses the economically disadvantaged.⁷⁰ Section 1024(f)(13) suggests the consideration of the "overall social, economic, energy, and environmental effects of transportation decisions," however, that section can also be read to focus on factors other than those that affect the economically disadvantaged.⁷¹

In 1998, the Transportation Equity Act for the 21st Century (TEA-21)⁷² established two new programs designed to move workers in urban areas to jobs in the suburbs. The Access to Jobs (ATJ) program is specifically aimed at low-income people and those making the transition from welfare to work.⁷³ The Reverse Commute program targets all urban residents regardless of economic level or situation, and attempts to ease accessibility to suburban areas.⁷⁴ TEA-21 authorizes \$750 million dollars for Job Access and Reverse Commute grants over the next five years.⁷⁵

66. ISTEA, Pub. L. No. 102-240, 105 Stat. 1914 (codified as amended in scattered sections of 23 U.S.C. & 49 U.S.C.).

67. See ISTEA, 23 U.S.C. § 104 note (1994).

68. See 49 U.S.C. § 5501(b)(3)(8) (1994).

69. See 23 U.S.C. § 134(b)(1) (1994). ISTEA provides for the creation of metropolitan planning organizations (MPOs):

To carry out the transportation planning process required by this section, a metropolitan planning organization shall be designated for each urbanized area of more than 50,000 population by agreement among the Governor and units of general purpose local government which together represent at least 75 percent of the affected population (including the central city or cities as defined by the Bureau of the Census) or in accordance with procedures established by applicable State or local law.

23 U.S.C. § 1024(b)(1) (1994).

70. See 23 U.S.C. 134(f) (1994).

71. 23 U.S.C. § 1024(f)(13) (1994). This factor puts priorities in reverse order. "The overall . . . effects of transportation decisions" seems to imply a consideration of the impact of a plan after the fact rather than a consideration of current transportation needs and ISTEA's potential for problem-solving in advance of making a decision. *Id.*

72. TEA-21, Pub. L. No. 105-178, 112 Stat. 387 (1998) (to be codified at 49 U.S.C. §§ 5302, 5309 note).

73. See TEA-21 § 3037(b)(2)(B).

74. See § 3037(b)(2)(C). Reverse Commute programs will not be addressed in this Article.

75. See § 3037(l)(2) (stating that not more than \$10 million dollars can be used for Reverse Commute programs).

The awards of federal money are based on a competitive grant selection process,⁷⁶ and evaluation of the applications includes addressing specific considerations.⁷⁷ In addition to considering utilization of existing transportation providers, long-term financing strategies, community input and the percentage of the area's population that is receiving welfare, TEA-21 also requires coordination of a state's transportation plan with a state's welfare-to-work plan.⁷⁸ The state entity charged with implementing the new PRWORA requirements, specifically TANF, must be coordinated with and consulted in the development of an Access to Jobs grant application.⁷⁹

II. The Intended Intersection of TEA-21 and PRWORA

The goal of PRWORA and related welfare reform legislation

76. See § 3037(d) ("Each qualified entity seeking to receive a grant under this section for an eligible project shall submit to the Secretary an application in such form and in accordance with such requirements as the Secretary shall establish."); § 3037(g) ("The Secretary shall conduct a national solicitation for applications for grants under this section. Grantees shall be selected on a competitive basis.").

77. Section 3037(f) outlines the relevant factors for consideration as follows:

(1) the percentage of the population in the area to be served by the applicant that are welfare recipients; (2) in the case of an applicant seeking assistance to finance an access to jobs project, the need for additional services in the area to be served by the applicant (including bicycling) to transport welfare recipients and eligible low-income individuals to and from specified jobs, training and other employment support services, and the extent to which the proposed services will address those needs; (3) the extent to which the applicant demonstrates— (A) coordination with, and the financial commitment of, existing transportation service providers; and (B) coordination with the State agency that administers the State program funded under part A of the title IV of the Social Security Act; (4) the extent to which the applicant demonstrates maximum utilization of existing transportation service providers and expand transit networks or hours of service, or both; (5) the extent to which the applicant demonstrates an innovative approach that is responsive to identified service needs; (6) the extent to which the applicant—(A) in the case of an applicant seeking assistance to finance an access to jobs project, presents a regional transportation plan for addressing the transportation needs of welfare recipients and eligible low-income individuals; and (B) identifies long-term financing strategies to support the services under this section; (7) the extent to which the applicant demonstrates that the community to be served has been consulted in the planning process; and (8) in the case of an applicant seeking assistance to finance a reverse commute project, the need for additional services identified in a regional transportation plan to transport individuals to suburban employment opportunities, and the extent to which the proposed services will address those needs.

Id.

78. Section 3037(i)(2) provides that "[t]he eligible access to jobs projects financed under this section shall be part of a coordinated public transit-human services transportation planning process." See also § 3037(a)(1)-(9).

79. See § 3037(i)(2).

is to decrease the number of families receiving government assistance in all forms.⁸⁰ PRWORA lists ten findings, which serve as the foundation and justification for this legislation as an amendment to the Social Security Act.⁸¹ The first nine are:

(1) Marriage is the foundation of a successful society. (2) Marriage is an essential institution of a successful society which promotes the interests of children. (3) Promotion of responsible fatherhood and motherhood is integral to successful child rearing and the well-being of children. (4) In 1992, only 54 percent of single-parent families with children had a child support order established and, of that 54 percent, only about one-half received the full amount due. Of the cases enforced through the public child support enforcement system, only 18 percent of the caseload has a collection. (5) The number of individuals receiving aid to families with dependent children (in this section referred to as "AFDC") has more than tripled since 1965. More than two-thirds of these recipients are children. Eighty-nine percent of children receiving AFDC benefits now live in homes in which no father is present. . . . (6) The increase of out-of-wedlock pregnancies and births is well documented. . . . (7) An effective strategy to combat teenage pregnancy must address the issue of male responsibility, including statutory rape culpability and prevention. The increase of teenage pregnancies among the youngest girls is particularly severe and is linked to predatory sexual practices by men who are significantly older. . . . (8) The negative consequences of an out-of-wedlock birth on the mother, the child, the family, and society are well documented. . . . (9) Currently 35 percent of children in single-parent homes were born out-of-wedlock, nearly the same percentage as that of children in single-parent homes whose parents are divorced (37 percent). While many parents find themselves, through divorce or tragic circumstances beyond their control, facing the difficult task of raising children alone, nevertheless, the negative consequences of raising children in single-parent homes are well documented.⁸²

Three of these findings address some aspect of the current state of welfare dependency in our country,⁸³ while the other six address the importance of marriage, responsible parenting and the negative impact of single-parent homes on the lives of children.⁸⁴ The list of findings concludes with number ten, which states:

(10) Therefore, in light of this demonstration of the crisis in

80. All forms include: direct cash subsidies, food stamps, Medicaid, etc. This has been the goal of welfare reform legislation since the 1960s. See *supra* Part I.A.

81. See 42 U.S.C. § 601 (1994 & Supp. III 1997).

82. PRWORA, Pub. L. No. 104-193, § 101, 110 Stat. 2105, 2110-11 (codified at 42 U.S.C. § 601 note (Supp. III 1997)).

83. See § 101(5), (8), (9).

84. See § 101(1)-(4), (6), (7).

our Nation, it is the sense of the Congress that prevention of out-of-wedlock pregnancy and reduction in out-of-wedlock births are very important Government interests and the policy contained in part A of title IV of the Social Security Act (as amended by [Pub. L. No. 104-193,] section 103(a) of this Act) is intended to address the crisis.⁸⁵

Increasing the number of people actively engaged in wage earning activities, while an implied goal of this legislation, is not mentioned as an "important Government interest." The congressional findings included in this legislation portray a Congress very concerned with family formation and maintenance, while giving very little acknowledgment to work as the foundation of this desired family consistency. Work and job preparation are identified as one goal of a state program in the purpose section of PRWORA.⁸⁶ However, the other three purposes⁸⁷ address concerns similar to those detailed in the findings.⁸⁸ While all the findings and all but one of the purposes of this legislation address concerns other than work, a state's eligibility for a PRWORA block grant rests on its submission of a plan that demonstrates how the state will accomplish six goals, half of which specifically address work guidelines.⁸⁹

Therefore, it is not clear that PRWORA is specifically welfare-to-work legislation. Rather, it is more focused on the perceived social ills of single parenthood and illegitimacy.⁹⁰ The

85. § 101(10).

86. See 42 U.S.C. § 601(a)(2) (aiming to "end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage").

87. Other purposes listed in Section 601(a)(1) are to:

(1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; . . . (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and (4) encourage the formation and maintenance of two-parent families.

Id.

88. See PRWORA, Pub. L. No. 104-193, § 101(1)-(10), 110 Stat. 2105, 2110-12 (codified at 42 U.S.C. § 601 note (Supp. III 1997)).

89. An eligible state under section 602 is one that has a plan that includes: A written document that outlines how the State intends to do the following: . . . (i) Conduct a program . . . that provides assistance to needy families . . . and provides parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient. (ii) Require a parent . . . receiving assistance under the program to engage in work . . . (iii) Ensure that parents . . . receiving assistance under the program engage in work activities in accordance with section 607.

42 U.S.C. § 602(a)(1)(A)(i)-(iii) (Supp. III 1997).

90. See PRWORA, Pub. L. No. 104-193, § 101(5)(C), (6)(A), (B), 110 Stat. 2105, 2110-12 (codified at 42 U.S.C. § 601 note (Supp. III 1997)) (detailing the increases

assumption implicit in this line of lawmaking logic is that married couples are less likely to need government money to survive and feed their children. If the government encourages marriage before procreation, parents will not have to choose between work and child care, and welfare will not be as pervasive because two parents will be able to support a family whether both are working or one is staying home with the children. Additionally, encouraging family maintenance and stability enables legislators to make more severe cuts in government aid. America looks much less sympathetically upon two-parent families on welfare, especially if they are comprised of two able-bodied adults, than it does on the stereotypical young, undereducated, single mother.

This scheme makes perfect sense from the insulated tower of public policy. The political force behind the 1994 Republican takeover of both houses of Congress⁹¹ signaled the country's approval of welfare reform as promised in the Contract with America.⁹² However, personal responsibility and work opportunity can be relevant only if you are able to travel to a job at which you can earn enough money to support your family.⁹³ Other than some ambiguous statutory language,⁹⁴ PRWORA is silent on meeting the transportation needs of those being encouraged to be responsible.

TEA-21, as a whole, is a massive public works law and the

in out-of-wedlock births); § 101(4), (5), (9) (detailing the increases in homes with only one parent).

91. The 1994 mid-term congressional elections resulted in a Republican majority in both the U.S. House of Representatives and the U.S. Senate. See Alfred J. Tuchfarber et.al, *The Republican Tidal Wave of 1994: Testing Hypotheses About Realignment, Restructuring and Rebellion* (visited Oct. 15, 1999) <<http://www.ipr.uc.edu/apsarel.htm>>.

92. See *The Contract With America* (visited Sept. 12, 1999) <<http://www.contract-grandchildren.com/kamerl.htm>> (giving the background and a summary of the Contract with America). The Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847, did not actually include any provision concerning welfare reform. See also PBS Newshour Online, *Contract With America Scorecard* (visited Sept. 12, 1999) <<http://www.pbs.org/newshour/bb/congress/scorecard.html>>; PBS Newshour Online, *The Personal Responsibility Act (Welfare Reform)* (visited Sept. 12, 1999) <http://www.pbs.org/newshour/bb/congress/cwa/welfare_reform.html> (providing more background on the Contract With America).

93. Admittedly, moving a family off of government aid entails a great deal more than simply proximity to an economically advantageous workplace. Space and time constraints, however, demand that issues such as education, disability, language barriers, social skills, etc., be saved for another article.

94. See PRWORA § 604(a)(1) ("A state to which a grant is made under section 603 may use the grant . . . in any manner that is reasonably calculated to accomplish the purpose of this part.").

largest commitment to transportation the government has ever made.⁹⁵ Title III of the Federal Transit Act of 1998 encompasses many Federal Transit Administration programs.⁹⁶ Section 3037 introduces Job Access and Reverse Commute Grants.⁹⁷ Section 3037(b)(2)(B) defines an Access to Jobs project as "a project relating to the development of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment."⁹⁸ Unlike the considerations outlined in ISTEA,⁹⁹ the TEA-21 considerations form the foundation of a federal transportation policy that could actually succeed in benefiting those it sets out to help. The required collaboration between the MPO and the state welfare agency has the potential to ensure that those people who must get jobs before their welfare benefits run out are able to get jobs that will enable them to provide for their families. Given the state of the economy in the United States,¹⁰⁰ there appears little reason why welfare recipients can not find well-paying jobs, which would provide the incentive to stop relying on welfare and start relying on themselves.

Transportation is one of the largest impediments to this move from dependence to independence.¹⁰¹ Being qualified for a job and being offered that job are not the only factors welfare recipients have to consider while conducting a job search. Proximity to home

95. See Lisa Wormser, *Two for TEA: Intermodal Surface Transportation Efficiency Act*, PLANNING, Aug. 1998, at 10:

Authorized at \$217 billion, TEA-21 is the nation's largest ever public works law, with even greater financial clout than ISTEA thanks to an annual minimum allocation of federal transportation funds. Just over \$200 billion is guaranteed through 2003: \$165 billion for highway and multimodal surface transportation, \$35 billion for transit, and the rest for highway safety and motor carrier freight programs.

Id.

96. TEA-21, Pub. L. No. 105-178, Title III, 112 Stat. 107 (1998).

97. See *id.* § 3037 (to be codified at 49 U.S.C. § 5309 note). Reverse Commute programs will not be addressed in this Article.

98. § 3037(b)(2)(B).

99. See *supra* notes 66-71 and accompanying text (discussing ISTEA).

100. See Bureau of Labor Statistics, *Economy at a Glance* (visited Oct. 17, 1999) <<http://stats.bls.gov/eag.table.html>>. In September 1999, the average hourly earnings were \$13.37 and the U.S. unemployment rate was 4.2%. *Id.* See also *Jobless Rate Steady at Low 4.2%; Floyd Keeps New Jobs Down*, STAR TRIB. (Minneapolis), Oct. 9, 1999, at B1 (noting that the 4.2% unemployment rate for September was a 29-year low).

101. See April Kaplan, *Transportation and Welfare Reform*, (visited Sept. 9, 1999) <<http://www.welfareinfo.org/transita.htm>> ("According to the Community Transportation Association of America, JOBS [Job Opportunities and Basic Skills Training Program] studies have concluded that the lack of affordable transportation presents a barrier even more serious than the lack of child care.").

can be a welfare recipient's biggest concern.¹⁰² Without a vehicle, that person is likely to be completely dependent on public transportation for everything from grocery shopping and conferences at school to doctor's appointments and visiting relatives.¹⁰³ The user possesses no ability to control public transportation, and employers are not under any obligation to be flexible regarding late buses or canceled routes.

Consequently, when forced to get a job, most welfare recipients are likely to search in areas near their homes, areas to which they can walk or take a reasonably reliable bus route. A cursory glance at the economics of our country's urban centers quickly demonstrates what employment opportunities exist. Companies are unlikely to locate their facilities in economically depressed areas for many reasons, and governmental attempts at encouraging companies to choose these locations have not been widely successful.¹⁰⁴ Due to a lack of willingness to invest in poor, urban centers, most job opportunities consist of minimum wage or slightly above minimum wage positions in the service, clerical and sales sectors.¹⁰⁵

The fairly recent trend by employers of keeping the majority of their hourly workers under forty hours per week is also a consideration for those moving from welfare to work.¹⁰⁶ This trend means that even though a former welfare recipient may have a steady income and, therefore, not need welfare payments, at under forty hours per week, he or she is not eligible for any benefits from the employer. Compound that with the difficulty of finding affordable, clean and safe low-income housing, and it becomes increasingly clear why welfare has been such an attractive

102. *See id.*

103. The situation assumed here is one of a person without a vehicle or access to any transportation other than public mass transit.

104. *See* Marguerite L. Spencer, *Tearing Down Walls and Building Lives: A Systematic Approach to Welfare Reform*, 17 *LAW & INEQ. J.* 201, 206-07 (1999).

105. *See* Shawn Fremstad, *MFIP's First Year: A Review of Data on Job Quality, Sanctions, and Time Limits*, ISSUES MINN. LEGAL SERVICES COALITION, July 1, 1999, at 1.; Shawn Fremstad, *Is MFIP Working?: An Early Look at Job Quality, Access to Training, Sanctions and the Potential Impact of the 60 Month Time Limit*, Aug. 3, 1999, at 2-3 (unpublished article provided by the Legal Services Advocacy Project) (citing Minnesota Department of Economic Security, information on jobs and wages of MFIP participants produced for Representative Betty McCollum, February 18, 1999, cumulative data for time frame of January 1, 1998, through November 30, 1998) MFIP, the Minnesota Family Investment Program, is Minnesota's welfare program started in January, 1998.

106. *See* Bureau of Labor Statistics, *Economy at a Glance* (visited Oct. 17, 1999) <<http://stats.bls.gov/eag.table.html>>. In September 1999, the average U.S. employee worked 34.4 hours per week. *Id.*

alternative for so many people.¹⁰⁷ It is not possible to support a family of any size on the income one person earns from a minimum wage job.¹⁰⁸ If the government is really serious about "ending welfare as we know it," either the jobs have to come to the people, or the people have to get to the jobs. TEA-21 is a positive and realistic governmental attempt at making welfare reform not only a possibility, but also a reality.

Access to Jobs (ATJ) is a fundamental recognition on the part of legislators that taking a family off welfare requires more than telling a welfare recipient to get a job and that it takes more than a minimum wage job to support a family. The indicia of this acknowledgment are threefold: A) the congressional findings in section 3037,¹⁰⁹ B) the factors for consideration in awarding ATJ grants,¹¹⁰ and C) the intended cooperation between the recipients of ATJ grants and social services providers under the TANF grant.¹¹¹

A. Findings

Congressional findings in section 3037¹¹² demonstrate the

107. See generally Marguerite L. Spencer, *Tearing Down Walls and Building Lives: Systematic Approach to Welfare Reform*, 17 Law & Ineq. J. 201 (1999) (mentioning housing as one of several problems for low income individuals); Benjamin L. Weiss, *Single Mothers' Equal Right to Parent: A Fourteenth Amendment Defense Against Forced-Labor Welfare "Reform"*, 15 Law & Ineq. J. 215 (1997) (noting the difficulties welfare recipients face when attempting to find affordable housing).

108. According to the U.S. Census, the poverty level for a family consisting of one adult and two children is \$13,133, and the poverty level for one adult and three children is \$16,588. See U.S. Census Bureau, *Poverty Thresholds: 1998* (visited Sept. 9, 1999) <<http://blue.census.gov/hhes/poverty/threshld/thresh98.html>>. Minimum wage is currently \$5.15 an hour. Assume \$7.10 an hour for 35 hours per week, the employee's net income is \$209.49 per week, \$837.96 per month or \$10,055.52 per year. The mean TANF grant in Minnesota in November 1998 for families with one eligible adult was \$628.72 per month or \$7,544.64 per year. Telephone Interview with Suzanne Gaines, Minnesota Welfare Reform Coordinator (March 29, 1999) (quoting from Minnesota Department of Human Services, MFIP Monthly Report, Nov. 1998 Data (March 1999)). The average monthly gross earnings in January 1999 in Minnesota for MFIP single-parent participants with earnings was \$696.65, which results in annual earnings of \$8,364. See Fremstad, *MFIP's First Year*, *supra* note 105, at 1. This level of earned income would bring a family of three without welfare to only 60% of the poverty level (\$13,880 in 1999). *Id.*

109. See TEA-21, Pub. L. No. 105-178, § 3037(a), 112 Stat. 107, 387-88 (1998).

110. See § 3037(f).

111. See § 3037(f)(3)(B).

112. In section 3037(a), Congress found that:

(1) two-thirds of all new jobs are in the suburbs, whereas three-quarters of welfare recipients live in rural areas or central cities; (2) even in metropolitan areas with excellent public transit systems, less than half of

need for the ATJ program, especially in light of the TANF time restrictions.¹¹³ “[T]wo-thirds of all new jobs are in the suburbs, whereas three-quarters of welfare recipients live in rural areas or central cities.”¹¹⁴ “[E]ven in metropolitan areas with excellent public transit systems, less than half of the jobs are accessible by transit.”¹¹⁵ These two findings, read together, make a very good case against welfare reform prior to economic reform.¹¹⁶ How can the government expect to establish successful welfare reform that moves people off welfare and into jobs when there are no jobs available that are accessible and with which one can support a family? With the exception of service, clerical and sales sector jobs, companies are unlikely to locate or relocate their businesses in low socio-economic areas.¹¹⁷ The jobs that are available typically are not full-time and do not pay much above minimum wage.¹¹⁸ Working for less than forty hours a week means that an employee is not eligible for benefits, which he or she probably did receive while on welfare.¹¹⁹ Working for approximately minimum wage, a single parent with one child receives almost more money and benefits on welfare than by working at a job in his or her

the jobs are accessible by transit; (3) in 1991, the median price of a new car was equivalent to 25 weeks of salary for the average worker, and considerably more for the low-income worker; (4) not less than 9,000,000 households and 10,000,000 Americans of driving age, most of whom are low-income workers, do not own cars; (5) 94 percent of welfare recipients do not own cars; (6) nearly 40 percent of workers with annual incomes below \$10,000 do not commute by car; (7) many of the 2,000,000 Americans who will have their Temporary Assistance to Needy Families grants . . . terminated by the year 2002 will be unable to get to jobs they could otherwise hold; (8) increasing the transit options for low-income workers, especially those who are receiving or who have recently received welfare benefits, will increase the likelihood of those workers getting and keeping jobs; and (9) many residents of cities and rural areas would like to take advantage of mass transit to gain access to suburban employment opportunities.

Id.

113. See § 3037(a)(7).

114. § 3037(a)(1).

115. § 3037(a)(2).

116. Why is it that two-thirds of new jobs are in the suburbs, and why do three-quarters of welfare recipients live in rural or central city areas? A single journal article is not an adequate forum to address the issues of race, poverty, education, jobs and government; therefore, these aspects of economic reform must be left for another article.

117. See § 3037(a)(1). See also Fremstad, *MFIP's First Year*, *supra* note 105, at 1.

118. See Fremstad, *MFIP's First Year*, *supra* note 105, at 1. See also *supra* note 106 and accompanying text.

119. Benefits such as child care (PRWORA, Pub. L. No. 104-193, Title VI, 110 Stat. 2105 (1996)); food stamps (PRWORA, Title VIII); and Medicaid coverage (PRWORA, Title I, § 114).

area.¹²⁰

Compounding the physical separation of people and jobs and the lack of adequate transit is the fact that "94 percent of welfare recipients do not own cars."¹²¹ Without a car, the opportunity to take a bus may not be enough to keep welfare recipients in the work force. There are many reasons, children being the most significant, why this is so. Consider, for example, the sick child at school, the parent-teacher conference in the middle of the day, and the early morning dental appointment. Getting to work on a bus can present difficulties not experienced by those who drive to work. Riding a bus all day and attempting to explain schedule delays and changes when arriving late to each appointment may be more than most people can handle. Again, the need for many other services, including reliable child care, cannot be fixed by one law that changes the length of time a person is eligible to receive government benefits.¹²²

The most disturbing finding listed in section 3037 specifically addresses the strong need for this legislation. "Many of the 2,000,000 Americans who will have their Temporary Assistance to Needy Families grants terminated by the year 2002 *will be unable to get to jobs they could otherwise hold.*"¹²³ Essentially, this admits that there will be families who will have their welfare benefits terminated while they lack the necessary means to support themselves in any other manner, and, although they could get and hold a job, there are either no jobs within walking distance or the jobs available in the area will not be sufficient to support a family. PRWORA should be the necessary impetus for states and MPOs to make applying for and receiving an ATJ grant imperative in areas where lack of transportation is a severe impediment to employment.

Poor urban and rural residents cannot be expected to get a job and get off welfare if no jobs are available in their area. As the government has not been successful in bringing the jobs to the unemployed, the next logical step is to attempt to bring the

120. See *supra* note 108 and accompanying text (discussing minimum wage and poverty levels)

121. TEA-21 § 3037(a)(5).

122. See *supra* note 93 and accompanying text. Admittedly, this is more a critique of the new welfare legislation and the lack of economic reform. If lawmakers look to the welfare bill in conjunction with this transportation bill and assume that all the problems have now been solved, they will be creating more problems for which they have no solutions.

123. § 3037(a)(7) (emphasis added).

unemployed to the jobs.¹²⁴

B. Factors

The factors that must be considered in the grant-awarding process¹²⁵ also show a commitment to innovative solutions for transportation needs of welfare recipients. The first factor that the Secretary of Transportation must consider¹²⁶ is "the percentage of the population in the area to be served by the applicant that are welfare recipients."¹²⁷ This consideration standing alone is evidence that Congress acknowledged the necessity of transportation for welfare recipients. The implication is that the funds allocated for ATJ grants will only be awarded to areas where a substantial percentage of the population consists of welfare recipients.¹²⁸ What is not clear as of yet is the exact numerical requirement necessary to satisfy this consideration. For example, could a low percentage of welfare recipients be offset by strong compliance with other factors? Or could a high percentage of welfare recipients serve as compensation for more tenuous applicability of other factors?

A grant application must show "the need for additional services in the area to be served by the applicant . . . to transport welfare recipients and eligible low-income individuals to and from specified jobs, training and other employment support services, and the extent to which the proposed services will address those needs."¹²⁹ This factor, although seemingly obvious and potentially easy to satisfy, when read in conjunction with factors (4) and (5)¹³⁰ may not be as simple as it first seems. The language relevant in factor (2) is "the need for additional services . . . and the extent to which the proposed services will address those needs."¹³¹ Factor (4) requires consideration of "maximum utilization of existing transportation service providers and expan[sion] of transit

124. See § 3037(a)(8).

125. See *supra* note 77 (outlining the factors to be considered in awarding grants as provided by section 3037(f)).

126. "In awarding grants under this section to applicants under subsection (d), the Secretary shall consider . . ." § 3037(f) (emphasis added).

127. § 3037(f)(1).

128. In fact, section 3037(b)(5) defines a welfare recipient as "an individual who receives or received aid or assistance under a State program funded under part A of title IV of the Social Security Act . . . at any time during the 3-year period before the date on which the applicant applies for a grant under this section," thereby acknowledging the common occurrence of re-entry into the welfare system.

129. § 3037(f)(2).

130. See § 3037(f)(4)-(5).

131. § 3037(f)(2).

networks or hours of service, or both.”¹³² Those two factors read together do not pose a problem. Essentially, a grant applicant should show a need and a solution, and the applicant should use existing services as much as possible to meet those needs.

The potential conflict arises when factor (5) is considered. This factor requires consideration of “an innovative approach that is responsive to identified service needs.”¹³³ The identified services needs are already spelled out, as well as an approach responsive to those needs in factor (2), and a potential solution is recommended in factor (4). If factor (5) is seen simply as a potential solution recommendation, then an applicant would not be held to innovation as the standard for awarding a grant. Additionally, “innovative approach” does not have to mean technological innovation, as nothing in section 3037 suggests technology forcing.¹³⁴ An innovative approach in one area of the country could be 24-hour bus service or the establishment of a security presence on public transportation to allay safety fears of potential customers. As long as the innovation factor is not held as a strict requirement, but is instead a suggestion to consider solutions that have not been tried before, it is an important and forward-thinking factor. The government should not be awarding grants simply to expand a bus system where there are clear difficulties with the system as it currently exists. Innovation is not a negative element of this transportation legislation, but it should not become a requirement that deters ATJ grant applications from communities that could be substantially benefited.

Factor (7) considers “the extent to which the . . . community to be served has been consulted in the planning process.”¹³⁵ This

132. § 3037(f)(4).

133. § 3037(f)(5).

134. See Job Access and Reverse Commute Competitive Grants, 63 Fed. Reg. 60,168, 60,169 (1998):

Localities have wide flexibility in selecting which service strategies are appropriate for their region, including but not limited to: adding late night and weekend service, providing guaranteed ride home service, initiating shuttle service, extending fixed route mass transit services, providing demand responsive van service, sponsoring ridesharing and carpooling activities, and encouraging bicycling. Localities are encouraged to implement innovative approaches to service management such as the establishment of regional mobility managers or transportation brokerage activities, application of geographic information systems (GIS) tools, implementation of intelligent transportation systems including customer trip information technologies, the integration of automated regional public and human service transit information scheduling and dispatch functions, vehicle position monitoring systems and electronic fare cards.

Id.

135. § 3037(f)(7).

factor has the potential to create significant change regarding the efficiency of government programs. If the people who will benefit from a community's ATJ grant are consulted and asked to identify their needs, rather than the federal or state government telling people what they need, not only are people empowered, but government is strengthened. It is important that an election not be considered the consultation of the population to be served. A handful of state officials determining transportation policy will neither satisfy this factor nor alleviate the transportation burden felt by low-income families. Some of the possible approaches to meeting this consideration are: town, community or neighborhood meetings; phone and door-to-door surveys of those who currently use public transportation; job fairs which offer accessibility information; and community leaders who articulate the needs of the communities they represent. While the money available under ATJ grants "may not be used for planning or coordination activities,"¹³⁶ incorporating the resources and expertise of the business community, which is in desperate need of workers, and community organizations, which want their neighbors employed, will enable the consultation element to be satisfied and will lead to a more efficient solution to the transportation problem.

Finally, factor (6)(A)¹³⁷ suggests the consideration of a regional transportation plan, thereby acknowledging that the problem is broader than the city limits.¹³⁸ Section 3037 findings address rural and urban residents together as desiring access to suburban job opportunities.¹³⁹ While the transportation needs of these two geographically distinct populations may be similar, namely, both need more transportation opportunities, the solutions to their needs are different. Factor (6)(A) seeks to ensure that rural residents are not forgotten in the process of planning for new transportation programs.

C. Cooperation

The intended cooperation between the recipients of the ATJ grant and the TANF grant is embodied in factor (3)(B): "the extent to which the applicant demonstrates . . . coordination with the State agency that administers the State program funded under part A of title IV of the Social Security Act."¹⁴⁰ This factor directs

136. § 3037(e).

137. § 3037(f)(6)(A).

138. *See id.*

139. *See* § 3037(a)(9).

140. *See* § 3037(a)(3)(B).

ATJ grant money to be used to benefit those moving off welfare into the work force. Governmental efficiency will be a substantial, although admittedly not primarily intended, result of implementation of this factor. ATJ grants require a fifty-fifty match of funding from sources other than the Department of Transportation (DOT).¹⁴¹ Funding of the non-DOT segment can come from other federal programs such as TANF and Community Services Block Grants administered by Health and Human Services; Welfare to Work grants from the Department of Labor; and Community Development Block Grants and HOPE VI grants from Housing and Urban Development.¹⁴² This allowance should ensure applicant-prompted collaboration of these funding sources, resulting in reduced duplication of expenditures and services by these agencies. The time restraints¹⁴³ placed on recipients of TANF funds necessitate strong intra-governmental cooperation directed toward timely solutions.¹⁴⁴

Any proposed Job Access projects have to be detailed in a Regional Job Access and Reverse Commute Transportation

141. See Job Access and Reverse Commute Program, 63 Fed. Reg. 45,926 (1998) ("Finally, a financial partnership is encouraged among the stakeholders. The Job Access and Reverse Commute program requires a fifty-fifty match. This program is considered a catalytic funding upon which to assemble additional human service, transportation and private resources to meet job access transportation needs.").

142. See Job Access and Reverse Commute Competitive Grants, 63 Fed. Reg. 60,168, 60,170 (1998):

Transportation-eligible funding from Federal programs other than the Department of Transportation may be used as match. These include but are not limited to: Temporary Assistance for Needy Families (TANF), Community Services Block Grants (CSBG) and Social Services Block Grants (SSBG) administered by the U.S. Department of Health and Human Services; Welfare-to-Work (WtW) formula and competitive grants administered by the U.S. Department of Labor; Community Development Block Grants (CDBG) and HOPE VI grants administered by the U.S. Department of Housing and Urban Development. The prohibitions on the use of WtW funds for matching requirements under section 403(a)(5)(C)(ii) of the Social Security Act does not apply to Federal or state funds to provide transportation services. TANF and WtW grants, when used as match, may be expended only for new or expanded transportation services and cannot be used for construction or to subsidize current transit operating expenses. Such funds also must supplement rather than supplant other state expenditures or transportation.

Id.

143. See PRWORA, 42 U.S.C. § 602(a)(1)(A)(ii) (Supp. III 1997) (requiring work when a recipient is determined to be ready to work, or after twenty-four months of benefits, whichever is earlier); § 608(a)(1)(B) (forbidding states from using any TANF money to assist a family if an adult in the family has received assistance under any state program funded through the federal government for sixty months whether or not consecutive).

144. See *supra* notes 11-15 and accompanying text (explaining the conflicting timelines of TANF and ATJ grants).

Plan.¹⁴⁵ This plan must include the collaboration of both transit and human services entities.¹⁴⁶ “The purpose of collaboration is to develop a comprehensive regional approach to Job Access and Reverse Commute programs targeted at moving welfare recipients and low income people to jobs [regardless] of jurisdictional boundaries.”¹⁴⁷

The Regional Transportation plan must identify: where welfare recipients and low income people live; where the jobs and job-related services¹⁴⁸ are; what transportation services exist in the area; any existing gaps between where people live, where the jobs are, and what transportation is available; any projects that will fill those gaps; and which projects, given funding and implementation constraints, are of highest priority.¹⁴⁹ This plan

145. See Job Access and Reverse Commute Competitive Grants, 63 Fed. Reg. at 60,170.

146. See *id.*:

The planning process must include local transit agencies, the agencies administering TANF and WtW formula and competitive grants, welfare recipients and low-income people. The planning process also should include other stakeholders such as: *Regional planning officials; human service, private, non-profit and other appropriate transportation and support service providers; community residents and organizations; faith-based organizations; disability groups and representatives; local and state workforce development organizations including One-Stop Career Centers; recipients of TANF and WtW grants; public and assisted housing providers and community development agencies; employers and employer groups (such as transportation management organizations and Chambers of Commerce); Private Industry Councils; and political officials including mayors, county supervisors, state legislators, governors and other state and local officials.*

Id.

147. *Id.*

148. “Employment-related support services are services such as child care, job readiness, job training, and retention services.” *Id.* at 60,169.

149. See *id.* at 60,170-71:

The Regional Job Access and Reverse Commute Transportation Plan must:

- a. Identify the geographic distributions of welfare recipients and low-income people in the region;
- b. Identify the geographic distributions of employment centers and employment-related activities in the region;
- c. Identify existing public, private, non-profit and human service transportation services in the region;
- d. Identify transportation gaps between the geographic distributions of people, as specified in section a, and employment, as specified in section b, which are not currently served by the transportation services, as specified in section c;
- e. Identify activities and projects to address the gaps identified in section d. Each project or activity identification should include: (1) Proposed goals and objectives of the project or activity. (2) Estimated cost of the project or activity. (3) [E]xplanation of how the project or activity would maximize use of existing transportation service providers and how the project or activity would be integrated into existing transportation network[;]
- f. [Include a] list, in priority order for funding and implementation, of the activities and projects identified in section e.

Id.

serves as the cornerstone of the grant application and the basis for successfully obtaining the grant.

The goal of TEA-21 in developing ATJ grants is to make it possible for states to offer welfare recipients an additional tool in their efforts to enter the workforce and to become self-sufficient.¹⁵⁰ Having mandated time limits for receipt of welfare funds, the federal government has also taken a very important step in this legislation toward removing one of the barriers that will keep low-income people on welfare. With transportation comes independence and the ability to choose a job, rather than being constrained by a locality and essentially forced into a job. "DOT expects that the Job Access and Reverse Commute grant program will facilitate and be a catalyst for broadening the transportation planning process to better integrate employment and social equity considerations."¹⁵¹

III. Too Little, Too Late

Every state's implementation of the PRWORA regulations must have been in place on July 1, 1997.¹⁵² Because PRWORA mandates a two-year time limit for receiving TANF benefits before recipients must go to work,¹⁵³ July 1, 1999, was when the first group of current welfare recipients were forced to get a job or lose benefits. The deadline for the first grant applications under the ATJ program was December 31, 1998, and the first recipients of the grants were supposed to be notified in February 1999.¹⁵⁴ This means that the first states to receive ATJ grants had five months to ensure that the first group of people forced from welfare were employed such that they could support their families.¹⁵⁵

This timeline poses a significant problem for the MPO or state that receives the grants, the welfare recipient being forced to get a job and the social service agency administering TANF funds. These three parties have the greatest stake in ensuring that the ATJ grant is effectively utilized. The necessary changes will occur neither quickly nor simply.

Presumptively, the MPO or state that receives the grant is

150. *Id.* at 60,168.

151. *Id.* at 60,171.

152. See PRWORA, 42 U.S.C. § 601 note (Supp. III 1997).

153. See § 602(a)(1)(A)(ii).

154. Job Access and Reverse Commute Competitive Grants, 63 Fed. Reg. at 60,168.

155. See *supra* notes 11-15 accompanying text (explaining the conflicting timelines of TANF and ATJ grants).

looking to implement the changes it proposed in the application as quickly as possible. In some cases, making the improvements is not so much a matter of just extending bus hours as it is consulting with the community, hiring more employees, developing new programs and policies, and attracting consumers to the new services. Getting the word out that new transportation services are available may not be easy, especially in rural areas. Grant applications can propose completely new programs or the complete restructuring of existing programs.¹⁵⁶ It is close to impossible for a new program to be up and running and ready to successfully accomplish its purpose in only five months. If these transportation grants had been included in the welfare legislation, and a new transportation program had been mandated for implementation by July 1, 1997, MPOs and states would have had two years to establish the transit program sufficiently to enable those welfare recipients in danger of losing their benefits in July 1999 to get to a job.

The welfare recipient who wants to work but needs transportation assistance is in a difficult situation as a result of this error in policy making. If that family was receiving welfare benefits when his or her state's program became effective,¹⁵⁷ July 1, 1999, was the end of the government's help if the recipient did not have a job. The situation from there is not very hard to imagine.

Consider a single mother of two school-aged children. Assuming she has no job, has no vehicle to drive to a good job¹⁵⁸ in the suburbs and is being dropped from government aid, she likely will take a job in her neighborhood. By taking this job, she loses her food stamp allotment and her Medicaid coverage. Because the job is not full time, she is not eligible for health care coverage through her employer, and she makes barely enough to make ends meet. She has little chance of advancement because the TANF administrator decided she has enough education to be employable, and since PRWORA severely cut the educational allowances for

156. *See id.* at 60,169.

157. Some states obtained waivers from the federal government to begin alternative welfare programs prior to the mandated July 1, 1997. *See, e.g.*, PBS Newshour Online, *Wisconsin Works?* (visited Oct. 15, 1999) <http://www.pbs.org/newshour/bb/welfare/welfare_5-21.html> (discussing the experimental welfare to work program carried out in two counties in Wisconsin since Jan. 1995) For people in these states, their benefits may have run out before July 1, 1999.

158. The assumption here is that a good job is one that is full time and pays a livable wage.

welfare recipients, she does not qualify to go back to school.

It does not take much to lose such a job. The whim of a supervisor, bad weather or a sick child will usually do it. What she lacks in her employment situation is stability, and most people who work in part-time service industry jobs are in the same position. Shortly, she will find herself without a job and again in need of government assistance. She did not make enough to be able to save enough to buy a car, so she is still dependent on public transportation. This on-again-off-again cycle would not have been as much of a problem under the AFDC welfare program, because there was no lifetime limit. However, under the TANF grants to states, in addition to a two year time limit on benefits before a recipient must start working, there is also a sixty month lifetime limit.¹⁵⁹ Starting from July 1, 1997, she can only receive benefits for a total of sixty months, and then there is nothing else the government will do for her.

If the federal government had mandated that every metropolitan area with a population over 200,000 submit an ATJ grant proposal, there could have been sufficient public transportation for her to make the trip out to the suburbs to a stable, better paying job. If Congress was truly concerned with putting adults to work and thereby creating stable family units, it would have recognized that transportation reform is an essential component of welfare reform, especially given today's concentrated poor, urban populations.

The social service agency responsible at the state level for dispersal of TANF grant funds is also going to experience problems. "According to the Community Transportation Association of America, JOBS program studies have concluded that the lack of affordable transportation presents a barrier even more serious than the lack of child care."¹⁶⁰ TANF administrators complying with the mandated regulations will have to tell some welfare recipients to take whatever job they can find because their time is running out. Because these administrators are the officials with the closest connection to welfare recipients, they will see first hand what an impact the lack of affordable, reliable, wide-reaching transportation has on these people. Many names will be removed from the file list in the TANF administrator's offices, but the larger problem will not be solved.

159. See *supra* note 143 and accompanying text.

160. April Kaplan, *Transportation and Welfare Reform* (visited Sept. 9, 1999) <<http://www.welfareinfo.org/transita.htm>>.

Conclusion

Congress should have included the Access to Jobs program in the 1996 Personal Responsibility and Work Opportunity Reconciliation Act. Considering the conditions in most urban and rural areas of the United States, it seems naïve to assume that mere time limits on welfare benefits will be the incentive needed for people to get jobs. What should people do if there are no full-time, well-paying jobs in their neighborhoods, and there is no public transportation to get to where the full-time, well-paying jobs are located? Putting the welfare and transportation provisions together would have better addressed this problem. Grant applicants would have had two years to work toward implementation of a transportation plan to accommodate welfare recipients who had two years to find suitable employment. As it happened, the applicant had less than five months.

Because the programs were not coordinated, the state welfare agency has an obligation to ensure that no one willing to and capable of work is kept from a job due to a lack of transportation. Despite the strict requirement included in the PRWORA legislation, there are opportunities for waivers and exceptions.¹⁶¹ States should evaluate those who were removed from the welfare rolls due to lack of employment in July 1999 and determine which would be eligible for reinstatement or waiver. Once the state or MPO has established a comprehensive transportation plan to alleviate welfare recipients' barriers to employment, then the clock on receipt of benefits should begin running. This proposal would not be a loosening of the recent tightening of the welfare system. It would be an acknowledgment by state lawmakers that the federal government may not have considered all the issues surrounding welfare reform before it legislated, and as states were left with quite a bit of autonomy in implementing TANF,¹⁶² there is room for states to improve on the basics that the federal government provided.¹⁶³ Ultimately, it is the states and the

161. "The state may exempt a family from the application of subparagraph (A) by reason of hardship. . . ." PRWORA, 42 U.S.C. § 408(a)(7)(C)(i) (Supp. III 1997).

162. Current welfare money is available in the form of grants, giving states the opportunity to design their own welfare programs, once they have shown compliance with the fundamental eligibility requirements, within federal parameters. See *infra* note 53 and accompanying text (discussing the welfare program's change from an entitlement system to a block grant system)

163. It is also important to recognize that transportation may not be an issue in every area of the country that is home to welfare recipients. In these communities, decreasing the welfare population may need to be more focused on other issues, such as housing, education, language acquisition, etc.

programs they design that determine how the federal welfare legislation will impact welfare recipients. Making transportation a priority is not contrary to the purpose of welfare revision legislation; therefore, there should not be any barriers to state execution of transportation plans in conjunction with welfare plans.

It is not too late for the forward thinking transportation legislation, TEA-21, to have a substantial impact on society and poor people's place in it. This will require fairly quick state action, which may end up being the downfall of a combined transportation-human services project. Waivers are available to the states for welfare recipients who will be unable to meet the mandated time constraints, and lack of transportation should be one category that would allow a state to exempt a recipient from the time limits. These proposals do not necessitate further federal or state legislation, they simply require administrative rulemaking that is compliant with the existing legislation. State executive leadership in this area will motivate the appropriate organizations or committees to begin the transportation grant application process, as well as policy-making regarding the welfare waivers. Ideally, this combination of transportation and welfare reform will impact society to such an extent that it would dramatically reduce the need for such sweeping legislation in the future. These reforms should create an infrastructure that will allow the poor to sustain themselves and their families and eliminate any need for ongoing government support.