NEW AMERICA

ASSET BUILDING

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Leveraging Public Assistance to Promote Financial Inclusion

A New Approach For TANF

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The Asset Building Program incubates promising policy proposals and serves as a leading voice on innovative public policies to enable low- and middle-income families in the U.S and around the world to accumulate savings, access wealth-building financial services, develop financial capability, and build and protect productive assets across the life course. We aim to provide context and meaning to the assets perspective and ensure that this perspective is strategically and constructively inserted into a wide array of social policy discussions. Through informed analysis, expert commentary, innovative policy development, and promotion of an elevated public discussion, we advance solutions in a bipartisan fashion, based on effective ideas, policies, and programs, not politics. Among the signature ideas the program has developed include universal children's savings accounts, automatic access to flexible and small-dollar savings products, and The Saver's Bonus which provides a targeted incentive to contribute to savings products at tax time.

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Executive Summary

The Temporary Assistance for Needy Families program ("TANF") was designed to reduce dependence on the safety net and move more low-income families to employment and financial self-sufficiency. Yet since it was first introduced two decades ago, the program has neglected—and in some ways actively impeded—a key determinant of long-term financial independence: financial inclusion. To promote economic opportunity for families accessing public assistance, we need policy reforms that both remove access barriers and create entry points to the financial mainstream.

Safe and affordable financial products are foundational to financial inclusion. Unbanked and "underbanked" households—the vast majority of which are low-income—often rely on high-cost credit, predatory loans, check cashing establishments, and other products or processes that drain limited resources. Further, without any kind of formal account structure or ongoing banking relationship with a financial institution, it is far more difficult for these families to build savings, even low levels of which provide a crucial buffer against income shocks and traction necessary to transition successfully off of assistance

Though there have been a range of efforts to bolster financial inclusion in recent years, TANF provides a unique and compelling platform. First, TANF reaches a population that is particularly underserved: a 2006 study found that TANF households were 70 percent less likely than other low-income families to have a bank account. Second, through TANF, states are already connecting millions of families with some type of financial product. Too often, however, these state-issued products are laden with fees, significant use restrictions, and inadequate consumer protections. Leveraging this infrastructure to instead connect families with safe, affordable, and sustainable financial products would modernize TANF while helping to fulfill its goal of advancing beneficiaries' economic self-sufficiency.

Yet current TANF policies are pushing beneficiaries further to the financial margins. For example, in many states, TANF maintains remarkably low asset limits that have remained unchanged for

Since it was first introduced two decades ago, the program has neglected—and in some ways actively impeded—a key determinant of long-term financial independence: financial inclusion

decades. Research shows that these limits not only discourage saving, but also signal to TANF participants that simply owning a bank account could be a liability. Furthermore, while the shift from paper checks to Electronic Benefit Transfer (EBT) cards was a step in the right direction in terms of access and security, few states both offer and encourage direct deposit as a method of benefit disbursement, despite its well-established consumer benefits. In short, current TANF policy not only fails to support saving and financial inclusion, but also often actively discourages it.

Leveraging TANF to promote financial inclusion will require providing opportunities for more TANF households to enter the financial mainstream or improve existing banking relationships; reducing the fees and risks currently attached to other TANF payment methods; and dismantling policy frameworks that exclude or deter both TANF households and other low-income consumers from formal banking. This paper offers a range of policy recommendations for state and federal policymakers, including:

Raise or eliminate TANF asset limits

TANF has among the lowest asset limits of any means-tested program: in 2013, the median asset limit was $2000, while nine states restrict TANF families to $1000, levels insufficient to sustain a family through the financial disruptions commonly experienced by households who seek the assistance of the program To enable families to accumulate a modest pool of resources and counter the perception that simply having a bank account could jeopardize their TANF eligibility, states should substantially raise or eliminate their asset limits, while the federal government should require states to index these limits to inflation and/or establish an asset limit floor. Not only would these actions benefit the financial wellbeing of TANF recipients, research shows that states that have eliminated their TANF asset limits have experienced improved administrative efficiency and negligible impacts on caseload growth.

Establish direct deposit as the default for TANF disbursement

Compared to other methods of TANF disbursement, direct deposit to a bank account confers numerous advantages: recipients face no transaction fees for withdrawing funds; have access to a wider ATM network; receive regular statements of their transaction history; have the ability to pay bills online; benefit from federal consumer protections; and can deposit other funds or build savings in a safe structure. Furthermore, when a family transitions off of TANF, the account where they have been receiving deposits remains available for direct deposit of a paycheck and managing transactions.

However, even in states where direct deposit is available, many TANF recipients are unaware it is an option. States could bolster financial inclusion for their TANF households is by implementing direct deposit as the default method of delivery. To go a step farther, states could connect unbanked participants directly with safe, affordable bank accounts. The new Bank On National Account Standards provide a list of criteria that could be used to assess if a consumer's bank account meets a basic set of standards.

Temporary Assistance for Needy Families was created by the Personal Responsibility and Work Opportunity Act signed into law by President Bill Clinton in 1996. Photo credit: Social Security Administration (used as a Public Domain image).

Negotiate contracts with EBT/prepaid card issuers that prioritize consumers

Although a personal bank account may be the best option for many TANF households, those who cannot or choose not to open an account should not have to accept a sub-par government-issued financial product as a condition of receiving assistance. To protect consumers and make the best use of taxpayer dollars, states must negotiate contracts with benefit card issuers that prioritize adequate access to benefits, minimal fees and surcharges, and clear, straightforward information about how and where to withdraw assistance without a charge. At minimum, states should permit at least two free ATM withdrawals each month, and preferably more; eliminate fees for balance inquiries or viewing transaction history; establish standards for ensuring adequate access to surcharge-free ATMs; and provide clear and accessible information to participants about potential fees and how to locate surcharge-free ATMs.

Further recommendations for better access and protections

In addition to the above recommendations, policymakers should consider strengthening consumer protections for all products used to distribute TANF funds; bolstering protections against garnishment for TANF funds that are deposited to a bank account; clarifying that restrictions on EBT withdrawals do not apply to personal debit cards; and limiting the use of ChexSystems and other credit reporting agencies to screening for past fraud.

While policymakers often disagree on the ideal structure and scope of the social safety net, the stated goal of such programs is less controversial: to help families move out of poverty sustainably and attain financial self-sufficiency. Reforming TANF to remove the significant barriers to these objectives currently in place and recognize the importance of savings and access to basic financial tools for economic mobility would better align the program's design with its mission.

Introduction

Nearly twenty years ago, the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA") established the Temporary Assistance for Needy Families program ("TANF") – ending "welfare as we know it." TANF was ostensibly designed to reduce dependence on the safety net and move more families to employment and financial self-sufficiency. Yet throughout the past two decades, the program has neglected—and in some ways actively impeded—a key component of long-term financial independence: meaningful access to safe and affordable financial products. To promote economic opportunity for families accessing public assistance, we need policy reforms that both remove access barriers and create entry points to the financial mainstream.

Safe and affordable financial products are foundational to financial inclusion. Unbanked and "underbanked" households—the vast majority of which are low-income—often rely on high-cost credit, predatory loans, check cashing establishments, and other products or processes that drain limited resources; this phenomenon is part of a larger set of financial disadvantages often collectively referred to as the "high costs of poverty."[1] Further, without any kind of formal account structure or ongoing banking relationship with a financial institution, it is far more difficult for these families to save securely. Even small amounts of savings have been shown to play a critical role in helping families buffer against emergencies and avoid falling into a debt trap. Similarly, even minimal savings can foster a "future orientation" that allows families to look beyond immediate needs and envision achieving long-term goals like higher education.

Though there have been a range of efforts to bolster financial inclusion in recent years, TANF provides a unique and compelling platform. First, TANF reaches a population that is particularly underserved; while the majority of unbanked families are low-income, at least one study has found that TANF households are even more likely to be unbanked than other low-income households. Second, through TANF, states are already connecting millions of families with some type of financial product. Too

often, however, these state-issued products are laden with fees, significant use restrictions, and inadequate consumer protections. Leveraging this infrastructure to instead connect families with safe, affordable, and sustainable financial products would modernize TANF while helping to fulfill its goal of advancing beneficiaries' economic self-sufficiency.

Yet current TANF policies are pushing beneficiaries further to the financial margins. For example, in many states, TANF maintains remarkably low (and administratively burdensome) asset limits that have remained unchanged since the War on Poverty began fifty years ago. Research shows that these limits not only discourage saving, but also signal to TANF participants that simply owning a bank account could be a liability. Furthermore, while the shift from paper checks to Electronic Benefit Transfer (EBT) cards was a step in the right direction in terms of access and security, few states both offer and encourage direct deposit as a method of benefit disbursement, despite its well-established consumer benefits. In short, current TANF policy not only fails to support saving and financial inclusion, but also often actively discourages it.

Still, TANF has tremendous potential to serve as a vehicle for promoting these goals. Despite current policy's shortcomings, at the programmatic level, recent state and local innovations show how incorporating principles of financial inclusion and asset building into TANF delivery can help families overcome barriers to long-term economic security. This paper explores the complex and varied reasons why so many low-income households, and TANF households in particular, are unbanked; the statutory and administrative barriers to financial inclusion embedded within TANF, such as low asset limits, high EBT fees, and under-utilization of the direct deposit option; and the potential of several state and local efforts to connect TANF families with low-cost bank accounts, savings incentives, and adequate consumer protections. Building on this research, the final section offers recommendations for state and federal policy.

1

Low-Income Families and the Financial Mainstream

The concepts of financial exclusion and inclusion emerged in the 1990s as geographers were observing the impact of bank closures on physical access to banking services.[2] In a 1995 paper, researchers from the United Kingdom defined financial exclusion as “those processes that serve to prevent certain social groups from gaining access to the financial system.”[3] Further, the authors explained, “rich areas tend to get richer and poor areas poorer because of the way in which the financial system discriminates between people and communities on the basis of risk.”[4] Underlying this research was the hypothesis that financial inclusion is essential to social inclusion and economic development; as the authors concluded, applying a framework of “financial citizenship” could be key to promoting a more accessible financial services marketplace.[5]

During the same era, a growing body of research emerged demonstrating the importance of assets for withstanding income shocks, planning for the future, and maintaining household financial security. In *Assets and the Poor*, Michael Sherraden drew upon these principles to advocate for a new approach to welfare, which would extend beyond facilitating immediate consumption through income support to actively assisting families to develop savings and other assets.[6] At the heart of Sherraden’s theory was the idea of inclusiveness and more equitable support for wealth-building; as he wrote, “a new and more useful ideology of welfare would emphasize participation by all citizens and the need for the nation to develop all its people to the fullest extent possible.”[7] Further, demonstration projects that arose out of Sherraden’s work provided evidence for the claim that even people with very low incomes can and do save, if provided access to appropriate savings mechanisms and incentives.[8] Together, the introduction of the idea of financial inclusion and the asset building framework underscored the importance of connecting more low-income households with the financial mainstream.

Yet over twenty years since these concepts emerged, financial *ex*clusion remains the norm for low-income families. Importantly, financial inclusion

does not refer simply to access to a bank account[9]; nevertheless, access to safe and affordable bank or credit union accounts is foundational. Yet according to the Federal Deposit Insurance Corporation (FDIC), nearly 10 million American households, or 8.2 percent, have neither a checking nor a savings account; among households making less than $15,000 a year, this figure rises to 28.2 percent.[10] An additional 20.1 percent of all households and 21.6 percent of households in this lower-income bracket are "underbanked," meaning they have a bank account, but regularly use alternative financial services such as check cashers and payday lenders. And the statistics are even more alarming for families participating in TANF; a 2006 study found that TANF households were 70 percent less likely than other low-income families to have a bank account.[11]

The reasons why many TANF households remained unbanked are complex and varied. For some, perceived lack of need for a bank account (i.e., lack of funds to deposit) is a key deterrent. In FY 2011, only 17.6 percent of TANF families had non-TANF income.[12] For those families, the average amount was $725 a month. Similarly, only ten percent of TANF households had countable assets, with an average balance of $220.[13] In some states, income limits for TANF eligibility can be as little as $215 monthly for a family of three,[14] while the average benefit was only $392 per month in 2010.[15]

> **A 2006 study found that TANF households were 70 percent less likely than other low-income families to have a bank account**

However, beyond cash flow, these households also face an array of structural barriers to safe and affordable banking. While some of these barriers are common to low-income households more broadly, others are embedded within TANF itself, as discussed in more detail in the following section. Further, concerns about formal banking among low-income consumers who are not receiving TANF are nevertheless often informed by the normalization of financial surveillance in the public assistance system. In other words, rules and policies within TANF matter not only for their direct impact on participants, but also because they have a "ripple effect"—and a related set of broader implications—on low-income communities' perceptions of, and relationships with, mainstream institutions.

a. Barriers to Banking for Low-Income Households

Many of the barriers TANF households face to getting banked are common to many low-income consumers, regardless of whether they are receiving public assistance. These barriers can be broadly categorized into two types: formal and informal exclusion. By formal exclusion, I am referring to financial institutions' policies that explicitly prevent certain individuals from enrolling in accounts or physically accessing services. By contrast, I am using the term informal exclusion in reference to practices and policies that often disproportionately burden lower-income consumers and/or communicate to them that they are not the customers the bank is seeking to serve.

i. Formal Exclusion: Inaccessible Bank Branches and Unaffordable Accounts

One of the most straightforward explanations for low levels of formal banking in many low-income neighborhoods is the inaccessibility of appropriate accounts and services. Low-income communities have long been underserved by traditional financial institutions, with many neighborhoods lacking access to full-service bank branches.[16] Some evidence indicates that this problem has only worsened in the wake of the recession; since 2008, lenders have closed nearly 2000 bank branches, 93 percent of which were located in postal codes with a median income below the national level of $52,762.[17]

Similarly, even when bank branches are accessible, the types of accounts and services they offer may not be suitable or appealing for lower-income consumers. For immigrant communities

in particular, language access and identification requirements may deter interaction with mainstream financial institutions, particularly when alternative financial services often intentionally accommodate these concerns.[18] More broadly, both checking and savings accounts often have a minimum balance requirement of several hundred dollars; consumers who cannot consistently meet this threshold are subject to monthly fees.[19] In 2013, the average balance required to avoid fees for a non-interest-bearing checking account was $668, while average fees for account maintenance rose to a record high of $5.54 per month. [20] Some banks also condition free checking on a customer enrolling in direct deposit of their paycheck or other regular payment, which can be a particularly burdensome requirement for the unemployed.

Meanwhile, between 2009 and 2013, free checking decreased from 76 percent of checking accounts to 38 percent.[21] Historically, "free" checking was largely funded by overdraft or non-sufficient funds (NSF) fees incurred by a small minority of customers—who were disproportionately lower-income, renters, and people of color.[22] These fees averaged around $35 each, and many banks permitted customers to accumulate multiple—even unlimited—fees per day.

In 2009, the Credit Card Accountability Responsibility and Disclosure Act (CARD Act), an amendment to Regulation E of the Electronic Fund Transfer Act, tightened overdraft service parameters by requiring that accountholders opt in to overdraft coverage for ATM and point-of-sale transactions, rather than being automatically enrolled.[23] These new rules went into effect in July 2010. For the heaviest overdrafters who did not opt into the overdraft program, this change resulted in average savings of $347 in reduced fees in the second half of 2010.[24]

Though consumers clearly benefited, banks lost revenue as a result of the new rules, and many elected to mitigate this loss by reducing or eliminating free checking.[25] However, despite a decrease in the proportion of customers enrolled in overdraft protection, approximately 27 percent of accounts still experienced at least one overdraft or NSF fee in 2011, and there remains considerable work to be done to make ongoing overdraft policies less harmful for consumers.[26] Furthermore, according to the FDIC, in the second quarter of 2013, U.S. commercial banks recorded a profit of $42.2 billion—an increase of more than 22 percent in comparison to Q2 2012.[27] In 2012 alone, consumers still amassed over $32 billion in overdraft fees.[28] In short, the new overdraft rules were a major step forward for low-income consumers—but this success was offset by banks' decisions to curtail their provision of free accounts in response.

ii. Formal Exclusion: ChexSystems and Credit Checks

A related institutional barrier to financial inclusion derives from consumer-reporting agencies that share information about individuals' banking history with client financial institutions seeking to assess their creditworthiness, such as ChexSystems. ChexSystems compiles data on "mishandled" checking and savings accounts, which banks use to deny new customers accounts. A recent *New York Times* investigation exposed the vast scope of the problem, finding that over one million consumers have been denied bank accounts for "past errors" as minor as a single bounced check.[29] Further, negative reports can stay in a database like ChexSystems for up to seven years.[30]

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In response to this widespread exclusion, some banks offer "second chance" checking accounts for customers who are barred from opening traditional accounts. However, few large, mainstream banks offer these types of accounts, and they generally are accompanied by significant fees and diminished functionalities since the customer is perceived as a credit risk (for example, a consumer may be able to open an account but will not be issued a debit

card).[31] As a result, ChexSystems remains one of the most significant barriers to bank account ownership among low-income consumers.

iii. Informal Exclusion: Distrust of Banks and History of Surveillance

Finally, many low-income consumers, particularly those who have had personal experience with public assistance of some kind, feel wary of banks. A recent survey of recipients of CalWORKs, California's TANF program, found that many preferred using cash or money orders due to "bad experiences with using checks or automatic payments from bank accounts," as well as the resulting overdraft fees.[32] As the author summarized:

> Past experiences with banks and credit unions have left these men and women with strong, negative feelings toward financial institutions and have led them to construct financial lives that avoid these institutions altogether.[33]

Many also felt that banks' fees were unreasonable and unpredictable, and expressed a preference for greater transparency.[34]

These experiences are borne out by the data. In 2011, according to a study by the Consumer Financial Protection Bureau, banks involuntarily closed six percent of consumer checking accounts that were open or opened that year—most often due to a negative balance caused by an overdraft fee.[35] Furthermore, evidence shows that many banks have deliberately designed their overdraft programs to maximize fees and mislead customers, while imposing financial penalties that are often disproportionate to the banks' costs.[36] And overdraft penalties are only one type of fee a customer can face; the average checking account in 2013 had thirty different fees attached to it, which many banks failed to clearly disclose.[37]

Additionally, some participants in the CalWORKs survey expressed concerns that all of their financial transactions were being monitored.[38] As discussed in more detail in Part II, programs like SNAP, TANF, Supplemental Security Income (SSI), and public housing have long required applicants to surrender tremendous amounts of personal and financial information as a condition of eligibility.[39] And in addition to the financial requests, the process of seeking public assistance often requires applicants to submit to numerous additional intrusions—finger imaging, drug tests, unannounced home visits[40]—that communicate to applicants that being poor equates to being suspicious.

The perception of being under constant surveillance, within a system that is already notoriously difficult to navigate successfully, leads many participants to be understandably reluctant to manage all of their money through formal institutions that can be easily monitored.[41] Further, even for low-income consumers who are not or are no longer receiving any type of public assistance, initial and widespread impressions of the mainstream financial marketplace, and their role within it, may persist and deter future formal banking relationships.

b. Barriers to Banking within TANF

Beyond these barriers that affect many low-income households and public assistance recipients more broadly, additional obstacles to banking are entrenched within TANF itself, as discussed in more detail in Part II. First, while some states offer direct deposit to a recipient's bank account as a method of distributing TANF assistance, few actively encourage direct deposit or establish it as the default method of disbursement. This is a missed opportunity to leverage the public assistance system to connect low-income consumers with the financial mainstream or bolster their existing banking relationships. Further, defaulting TANF consumers into an EBT card, even if they possess a bank account, reinforces the message that the traditional banking system is not designed to serve their needs.

Second, in nearly every state, applicants to TANF can become ineligible for benefits if they exceed a very low level of allowable savings, the amount of which they must demonstrate by providing

bank statements and other documentation of their available resources at initial application and recertification.[42] Qualitative studies have shown that some TANF families are deterred from maintaining a bank account because they fear that the account itself will make them ineligible for assistance.[43] Similarly, research suggests that some families who are eligible for public assistance nevertheless believe they are ineligible due to their bank account.[44]

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c. Consequences of Financial Marginalization

Regardless of the particular reasons an individual does not have a bank account, the consequences will likely be the same. Unbanked households often rely on fringe financial services and high-cost credit to pay bills and cash checks. The costs are significant, particularly for families already struggling to make ends meet; unbanked families can easily pay up to $15,000 over a lifetime in fees to check cashers and fringe bankers.[45] According to the Federal Reserve Bank of St. Louis, "[u]nbanked consumers spend approximately 2.5 to 3 percent of a government benefits check and between 4 percent and 5 percent of payroll check just to cash them."[46]

In recent years, prepaid cards have emerged as a popular and viable alternative for some unbanked consumers,[47] but currently available cards vary widely in terms of fees, capabilities, and consumer protections.[48] According to a 2011 study from Consumers Union, some cards would cost an average consumer over $600 a year if they weren't vigilant about avoiding fees, with overdraft charges often being the most costly.[49]

Moreover, without a bank account, families generally lack a safe structure for savings. Even low levels of savings can significantly increase a household's economic resilience by providing a buffer to protect against emergencies and other unexpected expenses. Though unbanked families may save informally, those with accounts are more than twice as likely to hold savings and more likely to add to savings on at least a monthly basis.[50]

Further, even minimal savings have been found to help foster a "future orientation" in the account holder, enabling him or her to think beyond day-to-day survival. For example, children with dedicated college savings accounts, regardless of the balance, are more likely to develop a "college-bound identity."[51] Similarly, children with savings accounts are six times more likely to attend college than their peers without accounts, controlling for other factors.[52] These findings about savings' impacts on higher education correlate with the effect of assets on economic mobility. For example, "someone with $10,000 in liquid savings... is 6.5 times more likely to have moved up and 5.5 times more likely to have made it to at least the middle [income quintile] compared with someone with only $1,000 in liquid savings."[53]

2

Statutory and Administrative Barriers to Financial Inclusion Within TANF

The Temporary Assistance for Needy Families program was established by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996—commonly referred to as "welfare reform." According to the legislation, the program has four key purposes: (1) to provide assistance to needy families with children so that they can live in their own homes or the homes of relatives; (2) to end dependence of needy parents on government benefits through work, job preparation, and marriage; (3) to reduce out-of-wedlock pregnancies; and (4) to promote the formation and maintenance of two-parent families.[54]

TANF replaced Aid for Families with Dependent Children (AFDC), and made several key changes to its administration and eligibility criteria. Most notably, PRWORA established TANF as a block grant, rather than an entitlement, meaning that states would receive a set amount of money each year according to a statutory formula, rather than on the basis of need or in accordance with macroeconomic conditions. As a result, states would no longer have access to sufficient funding to provide assistance to any families that met the program's eligibility criteria. States were also required to supplement the federal grant with their own "maintenance of effort" funds, at a level originally established by calculating 75 percent of each state's 1994 AFDC spending.[55]

Furthermore, compared to both AFDC and other contemporary components of the safety net, TANF imposes a particularly lengthy list of conditions to which participants must adhere to receive assistance. Financial eligibility standards are very stringent, while benefit levels in even the most generous states are below half the poverty level.[56] Participants are also subject to strict work requirements. To avoid a reduction to their block grant, states must ensure that a certain proportion of their caseload, as established by the Deficit Reduction Act of 2005, is engaged in work—this is known as the "work participation rate."[57] This requirement is typically thirty hours a week, though states can adjust it to forty; for TANF recipients with children under six, the requirement is twenty hours. For all families, the majority of work hours must be spent in "core" activities, such as subsidized

employment or community service, while job search only counts toward the work requirement for six weeks.[58] The federal lifetime limit on receipt of TANF is five years; however, many states establish lower limits, which can be as little as two years.[59]

Indeed, a key feature of TANF is that the states have considerable discretion in shaping their administration of the program. Compared to AFDC, TANF is more of a federal funding stream than a federal program. There is no federal requirement regarding the form of the benefit that families receive; states are not obligated to distribute any of their TANF grant in the form of cash assistance, although all currently devote at least a portion of their funds toward this purpose. However, since 1996, the proportion of families below the poverty line that TANF serves has decreased dramatically; only 25 percent of families in poverty received TANF assistance in 2012, compared to 68 percent in 1996.[60] Further, compared to AFDC, far less of the TANF block grant goes to cash assistance.[61]

These two features of contemporary "welfare"—stringent eligibility criteria and significant state policy discretion and variation—have notable consequences for how participants in the program relate to the financial mainstream. Importantly, states have discretion to both determine their own financial eligibility criteria, as well as the methods by which they distribute benefits. These choices vary significantly and have meaningful implications for financial inclusion.

a. Financial Eligibility: Asset Limits

Restrictions on the resources that public assistance recipients may have are a part of the system that predates the War on Poverty. The 1955 Handbook of Public Assistance Administration established a limit of $1,500 per individual AFDC recipient, which was increased to $2,000 in 1966.[62] In 1975, the Department of Health, Education and Welfare (later renamed the Department of Health and Human Services (HHS)) promulgated a regulation that increased the limit to $2,250, with a $1,200 vehicle exemption, but changed the relevant unit to the household.[63] However, in *National Welfare Rights Organization v. Mathews*, the D.C. Circuit found the regulation invalid, because its use of market value rather than equity value for evaluating resources "violate[d] the cardinal principle of AFDC that only resources actually available may be counted in determining whether the recipient is within the state's definition of a standard of need."[64] Further, the court held, the regulation "failed to articulate factual determinations" underlying the decisions about resource limits.[65]

Following the decision, the Secretary revised the limit to $2,000 in equity value, and established no limit on the maximum worth of an automobile.[66] However, in 1981, Congress passed the Omnibus Reconciliation Act of 1981 (OBRA), which decreased the asset limit per household to $1,000 (as an upper limit), and established a vehicle limit of $1,500 in equity value.[67] Prior to 1981, 32 states had exempted the full value of one vehicle per household and were compelled to reinstate a limit.[68] Although several district courts declared the vehicle restriction invalid,[69] as discussed in more detail below, the federal regulation establishing these limits stayed in place until PRWORA created TANF and gave states the discretion to establish their own financial eligibility criteria for the program.[70]

> **Liquid asset limits in AFDC/TANF have actually markedly decreased over the past six decades. The $1,500 per recipient limit in 1955 would equal over $13,000 in the current economy**

As this history reveals, liquid asset limits in AFDC/TANF have actually markedly decreased over the past six decades. The $1,500 per recipient limit in 1955 would equal over $13,000 in the current economy. [71] Today, TANF has among the lowest income and asset limits of any means-tested program. In 2013, the median asset limit for TANF was $2,000, while nine states continue to restrict

While higher income families benefit from substantial subsidies for building wealth, delivered primarily through the tax code, public policy actively discourages lower-income families from building or maintaining sufficient savings to cope with an emergency. This is a feature of the system's design that perpetuates economic marginalization and consequently undermines TANF's self-sufficiency and anti-poverty goals

TANF families to no more than $1,000, nearly twenty years since the AFDC era concluded. Unlike in SNAP, these limits are not indexed to inflation by law. Although one district court found that failing to adjust for inflation alone rendered the $1,500 vehicle limit "arbitrary and capricious,"[72] most courts have held that the HHS Secretary has broad authority to establish eligibility rules as he or she sees fit—and states have enjoyed similar latitude since welfare reform.[73]

As a result, beyond being remarkably low, TANF asset limits are also tremendously complex and oftentimes arbitrary.[74] States evaluate dozens of different categories of resources, ranging from bank accounts to Agent Orange settlement payments to retroactive, lump sum benefits. Depending on the state, assets such as retirement and education accounts, state tax refunds, life insurance policies, and funeral agreements may or may not be included in the calculation. As in AFDC pre-OBRA, most states now exclude at least one vehicle from their TANF asset test, though a few maintain a vehicle equity value limit (the difference between the retail value of the vehicle and what the purchaser still owes on the loan), which may be as low as $4,600.[75]

The consequences for financial inclusion are often subtle but significant. Most fundamentally, asset limits communicate to TANF families that saving money—a behavior that is otherwise viewed as a normative good—may warrant punishment. While higher income families benefit from substantial subsidies for building wealth, delivered primarily through the tax code,[76] public policy actively discourages lower-income families from building or maintaining sufficient savings to cope with an emergency. This is a feature of the system's design that perpetuates economic marginalization and consequently undermines TANF's self-sufficiency and anti-poverty goals.

The limitation on vehicle ownership is particularly damaging and creates substantial barriers to sustainable employment, as several courts have recognized.[77] These intuitions are supported by

empirical research; a 2006 study found that moving from the $1,500 vehicle exemption to a full vehicle exemption "increase[d] the probability of owning a car by 20 percentage points for low-educated single mothers relative to a comparison group."[78] Today's lowest TANF vehicle limit, $4,600, is almost as restrictive as the $1,500 limit in 1981, which would be $3,844 if adjusted for inflation.[79] Like the AFDC limit, this restriction creates a barrier to work and "forces single parents or recently unemployed parents into making what would otherwise be an irrational and uneconomic decision."[80] More long-term, policies that discourage vehicle ownership can prevent families from moving to safer or more affordable neighborhoods and create barriers to accessing medical care, better schools, or quality grocery stores. The negative impacts are therefore not simply immediate, but potentially multi-generational.

> **By both forbidding savings and deterring TANF households from even accessing the basic structures for managing their money, asset limits eliminate pathways that families and individuals could use to move toward sustainable self-sufficiency**

Finally, and most importantly for the focus of this paper, asset limits can deter TANF households from maintaining bank accounts or saving in formal structures. Previous studies have found that AFDC/TANF families fear that "the welfare computers know more about [their] finances than they themselves," and that keeping funds in a bank account, even with only a minimal balance, may subject a household to heightened scrutiny and risk of losing eligibility.[81] As one TANF recipient explained in a 2006 study, "[h]aving money in a bank account makes a big difference. If I had a bank account, and they knew how much I had in it, I know that would change what they give me."[82] By both forbidding savings and deterring TANF households from even accessing the basic structures for managing their money, asset limits eliminate pathways that families and individuals could use to move toward sustainable self-sufficiency. In other words, asset limits compel a trade-off between short-term needs and long-term security that requires (or at the very least influences) individuals to make financial decisions against their best interest.

In recent years, in recognition that asset limits create a tremendous administrative burden while deterring responsible financial behavior, an increasing number of states have begun to take advantage of their flexibility to raise or eliminate their TANF asset limits under PRWORA. Thus, while the courts have granted wide latitude to HHS to establish financial criteria for the program, state agencies themselves are increasingly acknowledging the tension between restrictive asset limits and their programmatic goals. States vary in their methods for implementing asset limit reforms: some are accomplished through administrative processes, while others require legislative changes. In 1997, Ohio became the first state to eliminate its TANF asset limit, and since then seven other states have followed, including six since 2009.[83] At the same time, in the Supplemental Nutrition Assistance Program (SNAP/Food Stamps), 36 states and DC have eliminated their asset limits, while another five have substantially raised them over the $2,000 limit, using a state policy option known as broad-based categorical eligibility. There has also been reform at the federal level; the 2008 Farm Bill exempted retirement and college savings accounts, including 529s, from consideration for SNAP eligibility.[84]

Though these state-level changes are promising, because they evidence that policymakers are realizing the incoherence of a system aimed at encouraging self-sufficiency that simultaneously blocks the means through which people can become self-sufficient, this piecemeal approach to reform will have a limited impact for several reasons. First, simply carving out additional exemptions adds complexity to the administration of these programs, and participants are unlikely to be aware of such specific and technical modifications

to the resource limits.[85] Furthermore, in the specific case of 529 college savings accounts and other tax-preferred savings vehicles, very few low-income families are using these vehicles to save, since most do not have tax liability and are therefore unlikely to reap the benefits of the tax-preferred structure.[86] Second, since many households participate in more than one assistance program, eliminating the asset limit in one program or one state will not affect many families' actual ability to save. Finally, having a patchwork of restrictions that vary significantly across states and programs does little to dispel the longstanding notion that accessing public assistance and building or maintaining savings are mutually exclusive. Without more comprehensive reform, asset limits will continue to relegate public assistance households to the margins of the financial system.

b. Benefit Delivery Options

A second way in which TANF can constrict financial inclusion is through state policy choices about the disbursement of assistance. Within the past few decades, the public assistance system has become increasingly digitized. The shift from paper checks and coupons to more technological platforms has yielded benefits for both states and consumers. Nevertheless, these new delivery mechanisms present their own shortcomings, which have significant implications for families' ability to access and use their benefits at minimal cost.

> **States' legislative and administrative choices about which payment distribution method to select as the "default" can have widespread and substantial consequences for financial inclusion**

Today, states disburse their TANF assistance through a range of different methods: branded electronic payment cards (EPC), such as the EPPICard; direct deposit to a checking account or privately selected prepaid card; Electronic Benefit Transfer (EBT) cards; and, rarely, traditional checks. Each of these options is accompanied by varying degrees of fees, functionality and consumer protections. Accordingly, states' legislative and administrative choices about which of these payment distribution methods to select as the "default" can have widespread and substantial consequences for financial inclusion. Further, the significant impact of these policy choices underscores the untapped potential of TANF delivery as a mechanism for connecting low-income families with the financial mainstream.

i. Electronic Benefit Transfer

The USDA initiated the first EBT pilot project in 1983, delivering food stamps via electronic payment to recipients in Reading, Pennsylvania.[87] Though the demonstration was initially more expensive than paper delivery, EBT's "popularity among benefit recipients and merchants, coupled with its cost-saving potential," laid the groundwork for experiments with other types of benefits, and Congress' endorsement of EBT as an alternative to paper coupons in the food stamp program in 1990.[88]

In 1996, PRWORA required all states to implement EBT for their food stamp programs by October 1, 2002.[89] In the interim, to curb administrative costs, many states explored using the same infrastructure to deliver other benefits, including TANF, general assistance (GA), SSI and refugee assistance.[90] Today, all but 11 states use EBT cards as a primary method of distributing TANF assistance.[91]

For states, the initial impacts of the shift to EBT were mixed, but largely positive. Some states reported that transitioning to EBT reduced administrative costs across the board. However, in others, such as Maryland, the cost per case month (CPCM) for food stamps declined markedly, while for AFDC (TANF's predecessor) and other non-food stamp programs the administrative costs rose (though the state still experienced a slight net decrease in costs).[92] One reason for this is that the ATM and point-of-

sale (POS) networks that EBT transactions rely on imposed new costs.[93]

For consumers, the introduction of EBT had significant advantages over paper checks (for TANF) or coupons (for SNAP).[94] Unlike checks, assistance disbursed via EBT was less likely to be lost or stolen, and recipients no longer had to wait several days for their checks to arrive in the mail or spend additional time (and money, particularly for those who do not have bank accounts at a financial institution) to cash them once they arrived. For participants in the food stamp program, the shift to EBT cards reduced stigma in the check-out line. EBT cards work just like debit cards, with consumers swiping the card and entering a PIN at a POS terminal at the cash register to make a purchase.[95] At larger retailers, customers using TANF also often have the option of getting cash back via POS transactions.

Still, for TANF families, EBT also has its disadvantages. First, EBT cards have limited functionality. Not all ATMs accept EBT cards, and as discussed *infra*, the number of EBT-accessible ATMs is further diminishing due to federal restrictions. Some states have also moved to restrict the use of their EBT cards in other states.[96] Furthermore, EBT cards cannot generally be used for online bill-paying, and provide no mechanism for saving. Lastly, when TANF recipients no longer qualify for assistance, their EBT card is useless as a debit card; it cannot be reloaded. In other words, EBT cards are designed only to serve short-term needs, and do nothing to increase users' long-term financial capabilities or support their transition off of assistance.

Second, EBT cards are explicitly exempted from a range of consumer protections established for other types of electronic payments by the Electronic Funds Transfer Act (EFTA). EFTA, which was enacted by the Federal Reserve's Regulation E in 1980, gives consumers critical protections concerning electronic transfers of money, including protection against liability due to loss, theft, and unauthorized charges; dispute rights in the case of errors; a right to account information, including transaction history and balances; disclosure of terms and conditions and fees; a ban on credit conditioned on mandatory electronic repayment; and protection from overdraft programs imposed without consumer consent.[97]

In March 1994, EFTA was amended to extend to EBT cards, based on the reasoning that "all consumers using EFT services should receive substantially the same protection under the EFTA and Regulation E."[98] Yet just two years later, PRWORA reversed this decision, amending EFTA yet again to exclude EBT protection in response to "the urging of state and local officials, who expressed concern about the costs of compliance with the EFTA and Regulation E. In particular, these officials believed that federal provisions limiting a recipient's liability for unauthorized transfers could raise serious budgetary problems at the state and local level."[99] As a result, today, policies regarding consumer protection for EBT cards vary across states, and states must take proactive measures to extend safeguards to their public assistance households that are equivalent to those enjoyed by consumers primarily accessing private financial services. Advocacy groups have urged federal lawmakers to extend EFTA's protections to means-tested benefits, which was one objective of the Benefit Card Fairness Act introduced in the House in 2010—but the so-called "EBT exemption" remains.[100]

Finally, accessing TANF funds via EBT often subjects participants to significant ATM fees and surcharges. There are two types of costs that typically accompany accessing cash assistance via an ATM. The first is a transaction fee levied by the EBT contractor, which is paid either by the state or directly by TANF households. Many states subsidize a limited number of free withdrawals per month, though withdrawals after that can cost between forty cents and $1.75 each.[101] Additional fees may apply for checking the account balance at an ATM. The more substantial costs often come from the surcharges levied by out-of-network ATMs. In California, for example, these surcharges can amount to as much as $4.00 per transaction.[102] These costs add up quickly. In 2011, EBT cardholders in California paid over $20 million in fees and

surcharges to access their assistance,[103] while the state's TANF benefits averaged $460 a month per family.[104] In San Francisco County, this translated into over $81 in fees and surcharges per EBT household.[105]

For families struggling to get by, the consequences of these fees are very real. In May 2015, California Reinvestment Coalition (CRC), in partnership with the California Community Colleges CalWORKs Association and the Alameda County Social Services Agency, published results from a survey of EBT cardholders about their experiences with fees and surcharges. Respondents described struggling to pay rent and having to forego buying gas and other essentials due to these extra charges. Furthermore, the results indicated that fees not only compel tough choices between necessities, but also are exceedingly difficult to avoid. As one respondent described:

"Where I live, there are almost no free options. I can get money back at the grocery store, but then I have to pay for something I may not need. I have to take my money out in smaller chunks, just to get what I need, so that I can then put it in my bank account and pay my rent."[106]

Others indicated they had resigned to paying fees since it was so difficult or time-consuming to seek out a fee-free option, particularly for those with limited mobility or who rely on public transportation. Notably, the fees also reintroduce the very security risks the shift to EBT cards was partly designed to avoid: "[The fee] encourages me to get out only LARGE amounts since I'm being charged and then I am in fear of being robbed before I can get it deposited."

The challenges families face in accessing their benefits with their EBT cards are not unique to California—and unfortunately, federal policy has somewhat exacerbated the problem. In February 2012, Congress passed the Middle Class Tax Relief and Job Creation Act of 2012, which made several important changes to the accessibility of TANF assistance.[107] First, Section 4004 of the Act required states to "maintain policies and practices as necessary to prevent assistance... from being used in any electronic benefit transfer transaction in" liquor stores, casinos, or adult entertainment establishments.[108] This reform represented "the first federal TANF provision to legislate how and where TANF recipients receive their basic needs grants."[109] States were required to be in full compliance with this provision by February 22, 2014, or risk losing five percent of their TANF grant.[110]

Yet interpretation of the requirements and methods of implementation represent significant variation across the states. The Center on Law and Social Policy (CLASP) has identified three primary approaches for implementing the ATM restrictions: a centralized approach, wherein the state identifies and disables all ATMs in restricted locations; a retailer approach, in which the burden is on the listed establishments to restrict EBT access at their ATMs; and a consumer approach, in which individual consumers using EBT cards are responsible for avoiding ATMs at prohibited locations.[111] States' experiences thus far demonstrate how each of these methods creates its own burdens, liabilities and costs. In California, for example, which employed the centralized approach, the Department of Social Services manually identified and reviewed 55,000 ATMs, which required a significant commitment of staff resources.[112] Over 6,500 ATMs were ultimately disabled for EBT use.

> **In 2011, EBT cardholders in California paid over $20 million in fees and surcharges to access their assistance, while the state's TANF benefits averaged $460 a month per family**

However, as CLASP notes, the consumer prohibition, which is in effect in at least seven states, is particularly troubling for two primary reasons: first, because "it is difficult to imagine how a use ban could be systematically enforced in a non-stigmatizing and non-discriminatory

manner," and second, because it puts clients at risk of sanctioning or even prosecution for an "inadvertent error." Further, the details of the access restrictions vary by state, with some, for example, relying on more technical definitions of what constitutes a "liquor store," while others have expanded the restrictions beyond the federally listed establishments to include businesses like tattoo parlors and jewelry stores. And even more fundamentally, as many critics of the law have pointed out, many consumers who withdraw cash at a particular ATM are not spending their money within the same establishment. In some neighborhoods, and particularly in more rural areas and on tribal lands, the closest ATM may simply be one that is located in a prohibited location.

Finally, there may be broader implications for financial inclusion beyond a reduced ATM network. Due to the breadth of the language establishing the restriction, at least one state, Arizona, has eliminated its longstanding direct deposit option, citing the impossibility of monitoring TANF withdrawals from private bank accounts.[113] As discussed in the following section, direct deposit confers many advantages for TANF households. Arizona's revision of its policy required converting 1,700 households from the direct deposit option to an EBT card.[114] More recently, Kansas proposed an unprecedented limitation on EBT access as part of a set of restrictive reforms enacted in furtherance of Section 4004. According to a law passed in May 2015, households using EBT cards would be restricted from withdrawing more than $25 per day from an ATM, thus exposing them to both a $1.00 fee per transaction and any additional surcharge imposed by the ATM.[115]

The Kansas experiment was short-lived, however, largely thanks to another provision within Section 4004 that has thus far received inadequate attention.[116] To balance out the restrictions to access, the Act required states to make revisions to their TANF State Plans to:

> "[e]nsure that recipients of assistance provided under the State program funded under this part have access to using or withdrawing assistance with minimal fees or charges, including an opportunity to access assistance with no fee or charges, and are provided information on applicable fees and surcharges that apply to electronic fund transactions involving the assistance, and that such information is made publicly available."[117]

Again, the ambiguity of this language gives states significant discretion to determine what qualifies as "access" or "minimal fees or charges." Thus far, this determination seems to be on a case-by-case basis. The U.S. Department of Health and Human Services (HHS) found that the fees imposed by Kansas' law went too far. However, Arizona, for example, considers its current policies to provide adequate access to assistance, even though recipients do not get any free ATM transactions.[118] The state encourages its TANF consumers to get cash back from a POS transaction at a large store to avoid fees and charges, but there is no fee-free option at an ATM.

At the time of this writing, HHS had issued only minimal guidance, in the form of frequently asked questions, for consistently interpreting and implementing the new TANF rules.[119] In February 2014, HHS published a notice of proposed rulemaking and solicited comments on the feasibility of implementing Section 4004's restrictions.[120] However, while questions remain about the EBT blocking requirements, the new law also presents an opportunity for establishing stronger standards that give consumers better opportunities to access their cash grants at minimal cost, thereby preserving TANF funds for their intended purpose. The final section will discuss this important potential in more detail.

ii. Direct Deposit

Another option for delivering TANF assistance is direct deposit to an account at the recipient's bank or credit union (or, in some cases, to a privately selected prepaid card). Direct deposit confers numerous advantages: recipients do not have to

Figure 1: TANF Households by Disbursement Method

State	% EBT	% Direct Deposit	% Other
Oklahoma	n/a	3%	97% (EPPICard)
Minnesota	86%	~ 7%	~ 7% (checks)
Virginia	n/a	Unavailable	92% (EPPICard)
Wisconsin	n/a	16%	84% (checks)
Iowa	n/a	4%	4% (checks); 92% (EPC)
California	96.2%	3.3%	.5% (checks)
Illinois	Unavailable	0.2%	Unavailable
Colorado	99.3%	0.7%	n/a

Source: Survey of Select States by Author, 2014

spend extra time or money to cash their checks, there are no transaction fees for withdrawing funds, and recipients will generally have access to a wider ATM network. By nature of having a bank account, consumers also receive regular statements of their transaction history, have the ability to pay bills and make purchases online, benefit from federal consumer protections, and can deposit other funds or build savings in a safe structure. Finally, when a family transitions off of TANF, the account where they have been receiving deposits remains available for direct deposit of a paycheck and a range of other financial purposes.

Some states have also reported that direct deposit incurs lower administrative costs than EBT. Arizona, for example, has a tiered pricing schedule for their EBT contract, through which SNAP-only EBT households cost less for the state than SNAP and TANF EBT households. As one Arizona administrator described, prior to the decision to end the direct deposit option, it was "cheaper for the state to get as many on direct deposit as possible."[121] This account aligns with previous research; as of 2003, "under many state EBT contracts, vendors [were] paid a lower fee (or CPCM – cost per case month) for clients who receive cash benefits via direct deposit than for those who receive benefits via EBT."[122] In the same year in Missouri, each direct deposit case cost ten cents to maintain, compared to fifty-eight cents for each EBT case.[123] Similarly, under New York's most recent, nine-year EBT contract, the CPCM of direct deposit was twenty-two cents per TANF case, while the EBT option ranged from sixty-seven to ninety cents, depending on the size of the overall caseload.[124]

However, despite direct deposit's advantages, it is not an option in every state—and in states where it is available, the take-up rate tends to be quite low. A key issue may be awareness. Nearly three-quarters of respondents in the CRC survey indicated they were unaware that direct deposit was an option, while several reported withdrawing money through their EBT cards and then depositing it in their checking accounts.[125] Only a few states actively encourage TANF applicants to select direct deposit or establish direct deposit as the default method of disbursing assistance.[126]

Nearly three-quarters of respondents in the CRC survey indicated they were unaware that direct deposit was an option, while several reported withdrawing money through their EBT cards and then depositing it in their checking accounts

Furthermore, although direct deposit generally provides consumers with easier and less expensive access to their cash grants, under current law, placing these funds in bank accounts may make them more vulnerable to garnishment by creditors. Generally, TANF funds are exempt from garnishment under state law. However, when assistance is deposited directly into a bank account, it becomes more difficult to protect from garnishment because the funds may be commingled with other money. As a result, when a creditor submits a garnishment order, the recipient bank may freeze the entire account, often requiring recipients to undergo "protracted legal battles" to regain access to their funds.[127]

iii. Electronic Payment Cards

Finally, the latest frontier in public assistance disbursement is the electronic payment card (EPC), such as the "EPPICard." EPCs are branded, prepaid debit cards (generally Visa or Mastercard), which can be used wherever those cards are otherwise accepted.[128] The federal government has already begun distributing Social Security and Supplemental Security Income through EPCs, and most states do the same for Unemployment Insurance.[129]

Compared to EBT, EPCs provide access to a wider ATM network and generally enable online purchases.[130] Additionally, funds deposited onto an EPC are easier to protect from garnishment than those deposited to a bank account. Some research also indicates that EPCs are less expensive for states than the EBT system. Some EPC card issuers have offered the cards to states for free or at a low cost, since they expect to generate revenue through the "swipe" fees, also known as interchange fees, charged to retailers.[131] However, this is subject to change under new rules within the Dodd-Frank Wall Street Reform and Consumer Protection Act establishing interchange fee limits.[132]

Also, again, when it comes to TANF, EPCs lack the consumer protections of a traditional bank account. EPCs that distribute "needs-tested benefits in a program established under state or local law or administered by a state or local agency" are exempt from EFTA's Regulation E.[133] Although many government-issued EPCs used for TANF appear to adopt these standards voluntarily, there is no guarantee of consistency. Furthermore, some TANF recipients elect to have their assistance deposited to a privately-selected prepaid card, which often have similar benefits to government-issued EPCs, but vary more widely in terms of costs and protections.

Finally, fees for accessing funds through EPCs can be equivalent to those encountered by EBT users—and often fees are not adequately disclosed. Iowa's Visa-branded "Electronic Access Card," for example, issued by Wells Fargo, only permits one free ATM withdrawal per month; each additional withdrawal incurs a $1.35 transaction fee, plus potential out-of-network ATM surcharges.[134] Balance inquiries are fifty cents each.[135] In Oklahoma, an FAQ document about the MasterCard-branded TANF debit card, which is the default method of disbursement, avoids directly disclosing fees,[136] while a similar four-page document about South Dakota's Visa-branded "ReliaCard" notes only in fine print that "some fees may apply."[137]

The consumer benefits of EPCs deserve recognition, particularly as an increasing number of states are considering transitioning to an EPC system as their EBT contracts expire. Yet as the National Consumer Law Center has summarized, a "well-designed prepaid card will be better than a paper check, but it will rarely be better than direct deposit for workers who have a bank account that they use for their everyday expenses."[138]

3

State and Local Efforts

As outlined in Part II, states' substantial discretion in administering their TANF programs has yielded an inconsistent and consequently inequitable patchwork of eligibility criteria and benefit levels. Further, some of the impacts of states' policy choices are at cross-purposes with the program's anti-poverty goals. However, states are also taking advantage of the program's flexibility to develop innovative strategies and initiatives to make TANF work better for supporting families' long-term economic stability. By incorporating asset building and financial inclusion principles into their benefits delivery, these states illustrate TANF's unrealized potential to connect families with the financial mainstream and strengthen their financial capabilities—while providing evidence for policy changes at the federal level.

a. Connecting Families with Bank Accounts: Pennsylvania and Washington

In two states, public-private partnerships are directly addressing a key component of financial inclusion by connecting TANF families with free or low-cost basic bank accounts.

In Pennsylvania, the Center for Hunger Free Communities at Drexel University recently launched a highly innovative pilot program in Philadelphia that will provide TANF participants with matched savings accounts, financial education, and peer support and affinity groups. The "Building Wealth and Health Network," as the pilot is called, aims to "develop a peer-oriented, asset-building model that helps women break the cycle of poverty" in the short-term; the long-term objective is "to develop a model of public assistance that could transform the United States welfare system."[139]

The initial 18-month pilot will consist of a randomized control study with a total of ninety participants divided into three groups. Two groups will have access to the matched savings accounts and financial literacy classes, but only one will receive the peer-support component. The third group will be a control group. All the groups will receive baseline and biannual surveys, in order to assess effectiveness of the program. To be eligible, participants must commit to saving $5 per week, which will receive a 100% match, enabling families to save up to $520 per year. For the first

six months, funds in the accounts will be frozen, but afterwards their use is unrestricted. The Center is developing a unique 18-month curriculum designed for households with very little income, for the participant groups required to attend financial education courses.

The accounts themselves are made possible through a partnership with a local credit union, American Heritage, which has agreed to provide free savings accounts for each participant. The accounts have a $15 minimum balance requirement, though the credit union has agreed to let participants gradually accumulate this amount through weekly deposits. Participants have to complete an application, but the credit union is prepared to accommodate clients with less than perfect banking history; it already offers “Fresh Start” accounts for individuals in similar circumstances.[140] Additionally, the consent form for the accounts includes a notice about garnishment. Participants will receive ATM cards and have access to online banking. They will also have the opportunity to make deposits during their financial literacy classes, at which representatives from the credit union will be present. This design feature will help participants circumvent a structural barrier to financial inclusion: inadequate access to bank branches in low-income neighborhoods.

In Washington, an organization called the Prosperity Agenda has partnered with the Department of Commerce to connect participants in the state’s subsidized employment program, Community Jobs (CJ), with no-cost bank accounts and financial education. CJ provides participants in the state’s TANF program, WorkFirst, with up to six months of paid part-time, temporary employment, combined with intensive case management to resolve employment barriers and an additional ten hours a week on “activities to increase employability.”[141] Rather than a TANF grant, participants receive the minimum wage for their work hours, up to $796 per month.

The Community Jobs Asset Pilot Program emerged after the state legislature passed a bill in 2011 requiring state agencies to develop strategies “to increase opportunities for public assistance recipients to maintain bank accounts, with a goal of increasing recipient financial literacy and financial management skills and minimizing recipient costs association with automatic teller machine transaction fees.”[142] The pilot, which is currently underway at one rural site and one urban site, will educate participants about direct deposit and the benefits of having a bank account; identify and reduce participants’ barriers to banking through appropriate referrals; connect those who are interested with a no-fee bank account, which will receive direct deposit of their CJ wages; and provide financial education. Participants also have the option of selecting a well-designed prepaid card in lieu of a bank account, although bank accounts are presented as the primary and preferred option.

Both the Washington and Pennsylvania pilots are exciting and commendable first steps toward promoting financial inclusion through TANF. However, the impact of each is currently limited by resource constraints and policy barriers. For example, Pennsylvania maintains a TANF asset limit of $1,000 per household—the lowest limit in the nation. Even if the pilot program is successful in providing a mechanism for saving and instilling a savings habit, participants who continue to save beyond the pilot will quickly risk compromising their eligibility. This state policy choice undermines the potential of the pilot effort.

Similarly, in Washington, although the pilot itself is still in process, the differing experiences at the urban and rural sites already impart some important lessons about the types of resources necessary to craft a successful financial inclusion effort within a TANF program. Most notably, at the rural pilot, all of the case managers are also trained as financial coaches, which makes them much more confident in providing financial trainings and advice. There is also a dedicated AmeriCorps volunteer helping to manage the pilot. Furthermore, applicants at the rural location are provided with a group orientation with the CJ manager, who takes care to explain the benefits of the pilot and the relationship

between financial inclusion and overcoming other barriers. Finally, unlike the urban location, the rural location has access to a computer lab where participants can participate in financial literacy and management activities. Due to all of these factors, the rural pilot has experienced a higher take-up rate and is expected to reach the goal of a hundred participants before the pilot concludes.[143]

The Washington pilots also illustrate the challenges of connecting TANF participants to appropriate accounts on a large scale. Though pilot organizers originally envisioned automatically enrolling all CJ participants in free bank accounts provided by the state's EBT contractor, JP Morgan Chase, this feature exceeded the scope of the existing contract. Instead, once participants in the pilot complete the financial management classes, they are provided with a certificate to take to a financial institution participating in the Bank On program. Bank On is a national network of partnerships between state and local governments and financial institutions, designed to increase access to free or low-cost accounts among unbanked households. The original Bank On, which was in place at the time of the Washington pilot, met with mixed success due to varying degrees of buy-in and inconsistent account standards,[144] it may not have been the ideal solution for unbanked TANF households. However, a promising new phase of the initiative, dubbed Bank On 2.0, builds upon a set of best practices and stricter account standards, and is currently launching in cities throughout the U.S. Still, more fundamentally, behavioral economics instructs us that requiring individuals to take action and make a choice among banks and accounts will decrease participation compared to what it could be with automatic or on-site enrollment.[145]

In sum, the efforts in both Washington and Pennsylvania offer important lessons for state and federal policy—but both have been made possible largely through the dedication of local advocacy organizations and partnerships with mission-driven financial institutions. Taking these efforts to scale will require greater buy-in and resources from both government and the financial sector.

b. Facilitating Productive Client Choices: Vermont and Wisconsin

Several states have incorporated practices directly into their administrative code or procedures that facilitate financial inclusion and informed financial decision-making. Vermont, for example, informs clients that their "cash assistance will be deposited directly into your bank account through direct deposit. If you do not have a bank account, you will receive your cash assistance on an EBT card."[146] Similarly, in New Hampshire, the TANF state plan provides that "EBT is the default method of benefit issuance, unless the case head has a bank account that accepts direct deposit."[147] By providing direct deposit as the primary or default option, these states set families up to receive their assistance with fewer fees and greater capabilities.

> **By providing direct deposit as the primary or default option, these states set families up to receive their assistance with fewer fees and greater capabilities**

Wisconsin takes a similar approach in its TANF program, "Wisconsin Works," or "W-2." Wisconsin is unique in that it currently does not distribute TANF assistance via EBT cards, though the state is in the process of moving towards implementation of an electronic method of delivery. Meanwhile, 84 percent of households receive their W-2 benefits via paper check, while the remaining 16 percent receive their assistance through direct deposit to a bank account or participant-owned prepaid card.[148]

Yet despite being among the last to transition from paper checks, Wisconsin is among the most proactive in championing direct deposit and educating recipients about the costs and benefits of prepaid cards. The W-2 manual enumerates the benefits of direct deposit, including more "safe and timely" payments and the avoidance of check cashing fees.[149] Further, the manual instructs agencies to discuss various options with families

who have negative banking history, including "opening a limited account with a debit card only option that does not allow expenditures in excess of available funds," and connecting these families with resources "to repair their standing with banks."[150] Lastly, for clients who choose to have their W-2 assistance deposited directly to a privately selected prepaid card, the state requires that eligibility workers discuss potential fees with the participant.[151]

Still, even with all of these supportive practices in place, only a portion of Wisconsin's banked TANF families have their assistance directly deposited. Approximately 27 percent of W-2 households have bank accounts, but only 16 percent select direct deposit.[152] This disparity speaks to the complexity of barriers to banking and the need for larger structural reforms to make mainstream bank accounts work better for low-income households.

c. Extending Consumer Protections to TANF Families: California

Adequate consumer protections, such as the right to have stolen funds replaced, are crucial to giving substance to efforts to increase access to assistance. Yet as previously described, federal protections for families' TANF benefits are weak to non-existent. To extend these basic consumer rights to TANF households, states have to take proactive legislative measures.

California provides an example of the type of proactive approach. In 2012, the state legislature passed a law to protect EBT cardholders from theft.[153] In 2013, the state took another step forward by enacting legislation that would extend EFTA's protections to TANF families choosing to have their benefits deposited onto a privately-selected prepaid card.[154] Finally, in 2014, the California legislature passed a bill that would establish an array of consumer protections and services for TANF households, including the ability to report a stolen card and view transaction histories online; information about how to avoid fees and surcharges, including by selecting direct deposit; and a notification system for EBT outages.[155]

California already provides a greater number of transaction fee-free withdrawals than most states, and these additional measures exemplify the range of options available to states for ensuring that TANF households have access to equivalent information and services as consumers outside of the public assistance system.[156]

d. Broadening TANF's Definition of Self-Sufficiency

Each of these state and local examples signals the promise of the public assistance system, and TANF in particular, to serve as a mechanism for financial inclusion. However, given the nearly singular focus on work participation rates (WPR) for assessing TANF's success,[157] states have little incentive to enact these types of measures on a broader scale unless: 1) states have sufficient evidence that proactively supporting financial inclusion will increase their TANF households' ability to obtain and keep employment, or 2) initiatives to support financial inclusion can count towards a state's WPR.

To the first point, emerging research supports the claim that access to modest savings and basic financial services supports self-sufficiency, job placement and retention—and thus furthers TANF's primary objectives.[158] For example, under both current TANF policy and prior AFDC rules, employment in even a low-wage job often abruptly disqualifies a household from cash assistance, while the program itself prohibits recipients from developing a small pool of savings to ease their transition ; consequently, "newly employed welfare recipients have difficulty accumulating a cushion of savings to deal with expenses such as clothes needed for a job, car insurance and repairs, and emergency child care."[159] Requiring TANF families to remain in a state of perpetual economic vulnerability decreases the likelihood that their transition to employment will be sustainable.

Second, the WPR metric has been subject to significant criticism by scholars and advocates, primarily because, as the name suggests, it only tracks *participation* rather than effectiveness

and outcomes, and largely excludes education and training opportunities that would increase a participant's long-term earning potential and likelihood of long-term self-sufficiency. Further, the WPR imposes substantial administrative costs on states, diverting time that caseworkers could devote to actually improving participants' prospects and circumstances; in Minnesota, one study of employment counselors found that "they spent 53 percent of their TANF time... on documentation activities, rather than actually helping customers find and keep jobs."[160]

In July of 2012, the U.S. Department of Health and Human Services published an Information Memorandum regarding waivers of the standard TANF work requirements under Section 1115 of the Social Security Act.[161] In particular, the memo explained that HHS was interested in enabling states "to test alternative and innovative strategies, policies, and procedures that are designed to improve employment outcomes for needy families." To date, no state has successfully applied for a Section 1115 waiver since PRWORA was enacted.[162] However, the waiver itself, and the current administration's expressed willingness to back more innovative efforts to support employment outcomes, presents an opportunity for additional large-scale exploration of how financial inclusion efforts could be integrated into TANF programming, as well as further study of how these efforts influence job access and retention.

4

Recommendations for State and Federal Policy

Transforming TANF into a mechanism for financial inclusion will require action at both the state and federal level. Although states have significant discretion to make policy choices that would support access to financial services and ensure appropriate safeguards, input, oversight, and reform at the federal level will be essential for creating a more equitable policy landscape and consistent set of consumer-oriented standards.

State Recommendations

i. Raise or Eliminate Asset Limits

Reconceptualizing TANF as a program that supports financial inclusion and asset building is a long-term process, but a prerequisite for this shift is the removal of explicit restrictions on saving. As previously described, placing a low limit on a family's savings and requiring them to submit to intensive scrutiny of all their resources prevents these households from building a small pool of savings to support their resiliency, results in creating households that are ill-equipped to making a smooth or lasting transition out of assistance, and deters participation in the financial mainstream by casting a bank account as a liability.

States have the authority to raise, eliminate, or modify what is counted towards their TANF asset limits, and each option would be a notable improvement on the status quo in most parts of the country. Increasing asset limits to a moderate level, such as $10,000, technically permits families to build or maintain a modest savings cushion to help them weather emergencies and transition sustainably off of assistance. Similarly, excluding certain categories of assets, such as retirement and educational accounts, permits families to retain savings for certain long-term purposes even while receiving temporary assistance. However, neither of these options would noticeably mitigate the administrative burden of evaluating assets.[163] Furthermore, significant paperwork requirements alone have been found to deter some eligible households from applying and make it more difficult for eligible applicants to be approved.[164] Lastly, as previously noted, few low-income families are saving in tax-preferred restricted accounts because they have little financial incentive to do so. While

well-intentioned, the addition of detailed lists of exceptions to asset rules adds to the complexity and confusion around asset limits rather than significantly bolstering opportunities to save.

> **Although states have significant discretion to make policy choices that would support access to financial services and ensure appropriate safeguards, input, oversight, and reform at the federal level will be essential for creating a more equitable policy landscape and consistent set of consumer-oriented standards**

A more comprehensive reform effort would entail the elimination of TANF asset limits nationwide. The experience of states that have already made this policy choice indicates that it will not result in a significant increase in caseload, particularly since TANF recipients are subject to time limits and strict work requirements.[165] More fundamentally, eliminating asset limits is key to the long-term process of transforming the public assistance system into one that supports and facilitates saving, rather than actively discourages it.

ii. Establish Direct Deposit as Default

One way that states could bolster financial inclusion for their TANF households is by implementing direct deposit as the default method of delivery. Behavioral economics has demonstrated that defaults matter. In the retirement context, for example, automatically enrolling workers in a workplace retirement plan, with the option to opt out, has dramatically increased participation and reduced racial and income-based participation disparities.[166] Moreover, in the CRC survey, nearly 80% of respondents reported that "help setting up direct deposit into a bank or credit union account would be "very helpful" or "helpful" to avoid fees."[167]

There is precedent for establishing direct deposit as the default policy for a government benefit. Vermont provides an example in the TANF context. For Unemployment Insurance, the Department of Labor has recommended "payment of benefits by direct deposit rather than debit cards for individuals with bank accounts," and urged states to "offer the opportunity to elect direct deposit as soon as possible during the claims process."[168] A 2013 report from the National Consumer Law Center found that states' decisions about these practices had a significant impact:

> "[T]he differences in direct deposit rates among states seem primarily to be due to how hard or easy the state makes it for workers to choose direct deposit. States that actively encourage enrollment in direct deposit upon application have high direct deposit rates. States that put hurdles in front of workers have lower rates. For example, Arizona's rock bottom direct deposit rate [16 percent] is clearly due to the fact that the state does not give workers the initial choice of direct deposit. Workers are automatically enrolled in the prepaid card whether they want it or not. After they receive their card, they must take the initiative to find and fill out a form to set up direct deposit. The form must be sent in by mail; it cannot be completed online or over the phone."[169]

At core, the same principles can apply to distribution of TANF assistance. However, since many TANF applicants are unbanked—likely a much higher proportion than UI applicants, since UI is not a means-tested benefit—a default direct deposit policy alone will have limited impact. To supplement this intervention, state agencies could seek to help interested TANF families overcome barriers to banking and connect them with safe, affordable accounts.[170]

One way to accomplish this would be by requiring the EBT contracting financial institution, via the EBT contract, to provide free or low-cost basic bank accounts to all TANF participants at enrollment. Another strategy would be for states to provide

financial coaching to participants to ensure that if they do have a bank account, it is affordable and serving their needs, rather than burdening them with significant monthly fees or overdraft "protection." The new Bank On National Account Standards, which build on the FDIC's "Safe Accounts" model, can provide a list of criteria for determining if a consumer's bank account meets a basic set of standards.[171]

iii. Negotiate contracts with EBT and prepaid issuers that prioritize consumers

Third, states must negotiate contracts with EBT and EPC issuers that prioritize adequate access to benefits, minimal fees and surcharges, and clear, straightforward information about how and where to withdraw assistance without a charge. Administering an EBT or EPC system invariably entails significant costs, but states should avoid passing these costs onto recipients who are already under financial distress.

At minimum, states should provide a fast, simple process for selecting direct deposit, both at initial application and at any subsequent point; permit a minimum of two free ATM withdrawals each month (consistent with bi-weekly paychecks), and preferably more; eliminate fees for balance inquiries or viewing transaction history; establish standards for ensuring adequate access to surcharge-free ATMs; and provide clear and accessible information to participants about potential fees and how to locate surcharge-free ATMs.[172]

iv. Strengthen protections of electronically deposited TANF benefits from garnishment

States can take action to provide stronger protections from garnishment for TANF assistance. Although most states currently exempt TANF benefits from garnishment, banks that receive garnishment orders may nevertheless freeze the accounts, thereby jeopardizing families' access to their limited funds and imposing another deterrent to selecting direct deposit or interacting with the financial mainstream.[173]

In 2013, new federal regulations were enacted to strengthen garnishment protections for federally administered benefits: Social Security, SSI and veterans' benefits. The new regulations "requir[e] financial institutions that receive such a garnishment order to determine the sum of such Federal benefit payments deposited to the account during a two month period, and to ensure that the account holder has access to an amount equal to that sum or to the current balance of the account, whichever is lower."[174] In other words, banks cannot indiscriminately freeze any account for which they receive a garnishment order, and determine subsequently that some funds in the account were exempt; instead, they must begin by ascertaining if some portion of the balance is exempt and confirm that it remains available to the consumer.

Although limited to federal assistance, the new federal regulations may incidentally bolster protections for state-administered benefits, since banks will be newly required to conduct an account review that could facilitate discovery of exempted state deposits. Nevertheless, states could significantly reinforce these protections by formalizing similar requirements for TANF and other state-administered benefits (such as Unemployment Insurance). Currently, many states provide disclaimers to TANF recipients that although their assistance is exempt from garnishment, in the event that it *is* garnished or their entire account is frozen, they will need to seek legal assistance.[175] These types of disclaimers are necessary for ensuring that consumers are fully informed, but they also convey the message that TANF households cannot rely on existing consumer protections to be enforced. This unreliability may deter banking relationships and consequently contribute to further financial marginalization.

v. Limit the Use of ChexSystems to Screening for Past Fraud

Lastly, states can take a proactive role in urging financial institutions to more narrowly tailor their use of ChexSystems and similar credit databases to the goal of fraud prevention. Currently, ChexSystems

disproportionately excludes low-income consumers from mainstream banking services, though often as a result of simple mistakes rather than the intentional fraud or misconduct these databases are ostensibly designed to prevent. Further, low-income consumers are more likely than their higher-income counterparts to be victims of identity theft, and stand to be doubly victimized if this experience serves to prevent them from opening a bank account.

In New York, the state Attorney General recently pushed banks operating within the state to adopt new policies governing their use of ChexSystems that would only screen for past fraud, rather than assessing present credit risk. In response, Capital One devised new standards in partnership with the Attorney General's office, which it agreed to implement nationwide.[176] This reform will provide a path to the financial mainstream for hundreds of thousands of Americans, and sets a precedent for future state-based advocacy to secure more equitable access to banking services for their residents.

b. Federal Recommendations

i. Index Asset Limits to Inflation and Establish an Asset Limit Floor

Though much of the recent momentum around asset limit reform has taken place at the state level, federal action is still essential to creating a more equitable asset limit landscape. Short of eliminating TANF asset limits, Congress could take a significant step toward modernizing the program's eligibility criteria by establishing an asset limit floor and requiring that asset limits be indexed to inflation.

President Obama's FY2011 budget included a legislative proposal to establish a "national asset limit floor of $10,000 for working age, non-disabled individuals." This limit would apply to SNAP, TANF and the Low Income Home Energy Assistance Program, although it would exclude SSI. While the limitations of a floor as opposed to elimination have been previously described, the Obama proposal or a similar reform would nevertheless support several important objectives: it would encourage moderate savings rather than penalize it; it would allow families accessing temporary supports to develop or maintain a sufficient emergency fund; and it would establish common standards for eligibility criteria across several programs that serve similar populations.

ii. Establish Best Practices for EBT Contracts

Ultimately, states will need to take the lead in negotiating EBT and EPC contracts that prioritize consumers. However, this can be a difficult task when states have limited capacity to research other states' choices, and often remain unaware that others have negotiated more advantageous terms. To both increase states' bargaining power and establish basic standards for fees and access, the Consumer Financial Protection Bureau, in partnership with the Department of Health and Human Services, could publish a set of best practices for EBT contracts. These practices could include many of the elements described in the previous section. The CFPB could also encourage more states to partner with financial institutions to connect TANF households with free or low-cost bank accounts.

iii. Extend Regulation E to All Cards Holding TANF Assistance

Third, both EBT cards and all prepaid cards to which TANF assistance is deposited should be covered by Regulation E, which implements the Electronic Funds Transfer Act. The CFPB has the authority to extend Regulation E to prepaid cards, including the EPPICard and other EPCs used by states to administer TANF.[177] Amending EFTA to remove the "EBT exemption" would require legislative action. These changes are important for ensuring that all TANF families, regardless of the methods of benefit delivery available to them, have the same rights with respect to disclosures, dispute, recredit and transaction information.

iv. Clarify That Section 4004 Does Not Apply to Bank Accounts

Finally, the Department of Health and Human Services should clarify that Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012, which prohibits TANF recipients from accessing their assistance at certain ATMs, does not apply to the direct deposit of TANF assistance into a recipient's bank account or privately selected prepaid card. Applying Section 4004's restrictions to private bank accounts would be essentially impossible to enforce, while "[d]iscontinuing direct deposit as an option for TANF recipients would be an unintended consequence of Section 4004, and would be directly in conflict with the broader TANF goals of promoting work and self-sufficiency."[178] Further, implementing a rule that would essentially disable the direct deposit option for TANF would be at odds with the federal government's policies regarding other assistance programs, and thus further single out and marginalize TANF households.[179] HHS was scheduled to publish a final rule on the implementation of the new TANF restrictions in March 2015, though it was not yet publicly available at the time of this paper's drafting.[180]

Conclusion

While policymakers often disagree on the ideal structure and scope of the social safety net, the stated goal of such programs is less controversial: to help families move out of poverty sustainably and attain financial self-sufficiency. TANF, a program ostensibly designed to help support poor individuals and families while they navigate this process, operates in a way that is directly contrary to the goals of the social safety net. TANF's current policies impose significant barriers to these objectives and often embody outdated anti-poverty strategies that fail to recognize the importance of savings and access to basic financial tools for economic mobility. An approach that accounts for research findings over the last two decades on the important role that savings and financial inclusion can play in supporting families moving out of economic marginality would more readily advance the goals of TANF and other social assistance programs. Such an approach would not only help families meet their immediate needs but also enable them to build a path toward the financial mainstream; this pathway would more readily put long-term financial independence within reach.

Notes

1 *See, e.g.*, Barbara Ehrenreich, Nickel and Dimed: On (Not) Getting By in America (2001).

2 Eur. Comm'n, Financial Services Provision and Prevention of Financial Exclusion 9 (2008), *available at* http://www.bristol.ac.uk/geography/research/pfrc/themes/finexc/pfrc0807.pdf.

3 Andrew Leyshon & Nigel Thrift, *Geographies of Financial Exclusion: Financial Abandonment in Britain and the United States*, Royal Geographical Society (1995), at 314.

4 *Id.* at 315.

5 *Id.* at 336.

6 Michael Sherraden, Assets and the Poor: A New American Welfare Strategy (1991).

7 *Id.* at 189.

8 *See, e.g.*, Michael Sherraden, Ctr. for Soc. Dev., Individual Development Accounts: Summary of Research 4 (2002).

9 For purposes of this paper, I'll use the term "financial inclusion" broadly to refer to access to a range of financial products and services, including low-cost credit, that enable full economic capability and participation—and the accompanying consumer protections that make access to these products meaningful. I've chosen to slightly broaden this definition beyond the initial conception of the term because access to a bank account alone can still impose many of the same costs, burdens and risks as being unbanked if the account is accompanied by significant fees or does not provide adequate remedies to have funds replaced in the event of a loss. Similarly, the Center for Financial Inclusion defines "financial inclusion" as: "A state in which all people who can use them have access to a full suite of quality financial services, provided at affordable prices, in a convenient manner, and with dignity for the clients. Financial services are delivered by a range of providers, most of them private, and reach everyone who can use them, including disabled, poor, rural, and other excluded populations." See *Financial Inclusion Glossary*, Ctr. for Fin. Inclusion, http://www.centerforfinancialinclusion.org/publications-a-resources/financial-inclusion-glossary.

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13 *Id.*

14 David Kassabian et al., Urban Inst., Welfare Rules Databook: State TANF Policies as of July 2011 70 (2012).

15 *TANF Recipients* (2013).

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18 Nat'l Council of La Raza, Latino Access & Financial Inclusion in California (2013).

19 Pamela Chan, New Am. Found., Beyond Barriers: Designing Attractive Savings Accounts for Lower-Income Consumers (2011).

20 BankRate, 2013 Checking Survey (2013).

21 *Id.*

22 *See* Chi Chi Wu, Nat'l Consumer Law Ctr., Restoring the Wisdom of the Common Law: Applying the Historical Rule Against Contractual Penalty Damages to Bank Overdraft Fees 8 (2013), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2258704; Leslie Parrish, Ctr. for Responsible Lending, Consumers Want Informed Choice on Overdraft Fees and Banking Options 3 (Apr. 16, 2008), http://www.responsiblelending.org/overdraft-loans/research-analysis/final-caravan-survey-4-16-08.pdf.

23 12 C.F.R. § 1005.17(b) (2011).

24 Consumer Fin. Protection Bureau, CFPB Study of Overdraft Programs 39 (2013) (hereinafter *Overdraft Programs*).

25 *Overdraft Rules Mean Consumers Will Pay Up, or Get Out*, Forbes, Feb. 23, 2012, http://www.forbes.com/sites/thestreet/2012/02/23/overdraft-rules-mean-consumers-will-pay-up-or-get-out/. An additional influence on banks' decisions to reduce or eliminate free checking was the so-called Durbin

Amendment, a provision of Dodd-Frank that limited the interchange or "swipe" fees that large banks could charge for purchases by debit cards. *See, e.g.*, Todd Zywicki, et al., *How To Help The Unbanked? Repeal The Durbin Amendment,* Forbes, Aug. 4, 2014, http://www.forbes.com/sites/realspin/2014/08/04/how-to-help-the-unbanked-repeal-the-durbin-amendment/.

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33 *Id.*

34 Recent critiques of efforts to "bank" all lower-income consumers also emphasize the different standards of customer service between mainstream banks and check cashing establishments; *see, e.g.*, Lisa J. Servon, *The Real Reason the Poor Go Without Bank Accounts*, Atlantic, Sept. 11, 2013, http://www.citylab.com/work/2013/09/why-poor-choose-go-without-bank-accounts/6783/ (arguing that many low-income consumers make a conscious, informed choice to patronize check cashers due to closer relationships between customers and tellers, as well as high fees at mainstream banks). This contrast may be understood as another manifestation of "informal exclusion."

35 *Overdraft Programs* (2013) at 5.

36 *See* Wu (2013) at 2-6.

37 Quentin Fottrell, *The Hidden Fees Eating up your Bank Balance*, MarketWatch, Aug. 8, 2013, http://www.marketwatch.com/story/average-checking-account-has-30-fees-2013-08-08.

38 *See* O'Brien (2012) at 6.

39 *See generally* Michele Estrin Gilman, *The Class Differential in Privacy Law*, 77 Brook. L. Rev. 1389 (2012).

40 *See, e.g.*, Wyman v. James, 400 U.S. 309 (1971) (holding that requiring a home visit by a caseworker as a condition of receiving AFDC does not violate the Fourth Amendment); Sanchez v. Cnty. of San Diego, 464 F.3d 916 (9th Cir. 2006) (affirming Wyman's holding that home visits by caseworkers are not "searches," and that even if they are, they are "reasonable").

41 *See, e.g.*, John Gilliom, Overseers of the Poor: Surveillance, Resistance and the Limits of Privacy 80-82 (2001).

42 Recertification commonly occurs every six to twelve months, but in some states or for certain populations can be as frequently as every quarter. For a discussion of how short and varying eligibility periods affect access to the social safety net. *See* Sharon Parrott & Liz Schott, Ctr. on Budget & Policy Priorities, How States Can Align Benefit Renewals Across Programs Options for Simplifying And Aligning Eligibility Reviews (2005), http://www.cbpp.org/files/4-27-05prosim.pdf.

43 *See* Rourke O'Brien, *Ineligible to Save? Asset Limits and the Savings Behavior of Welfare Recipients*, 16 J. Cmty Prac. 183 (2008).

44 *See* Jin Huang et al., *Household Assets and Food Stamp Program Participation among Eligible Low-income Households*, (Ctr. for Soc. Dev., Working Paper No. 10-28, 2010) (finding that bank account ownership, regardless of the balance of the account, has a significant negative association with participation in SNAP); *see also* Susan Bartlett et al., Econ. Research Serv., Food Stamp Program Access Study, tbl. B-2 (2004) (finding that 73.8 percent of eligible non-participants in SNAP who believed they did not qualify for the program had bank accounts, compared to 62.2 percent of those who believed they were eligible).

45 Stegman & Faris (2005) at 384.

46 Martha Perine Beard, *Reaching the Unbanked and Underbanked*, 20 Central Banker 6 (2010), https://www.stlouisfed.org/publications/pub_assets/pdf/cb/2010/CB_winter_10.pdf.

47 *See, e.g.*, O'Brien (2012) at 5 (finding that some CalWORKs recipients found prepaid cards to be "easy to use [and] easy to understand," particularly because of the transparent and predictable fees).

48 A "prepaid card" in this context refers to a reloadable prepaid debit card, which consumers can purchase for a small fee and deposit money onto by paying in advance. For an analysis and critique of the current prepaid card market. *See Examining Issues in the Prepaid Card Market: Hearing Before the Subcomm. on Fin. Inst. & Consumer Prot. of the S. Comm. on Banking, Hous., & Urban Affairs*, 112th Cong. (2012), (testimony of Lauren K. Saunders, Managing Attorney, Nat'l Consumer Law Ctr.), *available at* http://www.nclc.org/images/pdf/pr-reports/testimony-senate-banking-prepaid.pdf.

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55 R. Kent Weaver, Brookings Inst., The Structure of the TANF Block Grant 4, 6 (2002) http://www.brookings.edu/~/media/research/files/papers/2002/4/welfare%20weaver/pb22.pdf.

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57 42 U.S.C. § 607 (2012). For an interesting discussion of how TANF defines "work," see Noah Zatz, *Welfare to What?,* 57 Hastings L.J. 1131 (2006).

58 42 U.S.C. § 607(c).

59 Liz Schott & LaDonna Pavetti, Ctr. on Budget & Policy Priorities, Many States Cutting TANF Benefits Harshly Despite High Unemployment and Unprecedented Need (Oct. 3, 2011), http://www.cbpp.org/files/5-19-11tanf.pdf.

60 Floyd & Schott, *supra* note 56, at 1.

61 The proportion of TANF spending devoted to cash assistance has also declined markedly since PRWORA was enacted. *See* Ctr. on Budget & Policy Priorities, Chart Book: TANF 16 (Aug. 22, 2012) (finding that states used 29% of TANF funds to pay basic assistance in 2011, compared to 79% in 1997).

62 Nat'l Welfare Rights Org. v. Mathews, 533 F.2d 637, 643 (D.C. Cir. 1976); 45 C.F.R. 233.20(a)(3)(i)(A) (1974).

63 "The amount which may be reserved by an AFDC family of up to 4 persons, other than the reasonable value of a home as determined by the State agency, wedding and engagement rings, heirlooms, an automobile of a retail market value of $1200 or less...shall not be in excess of a market value of $2250." Coverage and Conditions of Eligibility in Financial Assistance Programs, 40 Fed. Reg. 12,507 (March 19, 1975) (to be codified at 45 C.F.R. pt. 233.20).

64 Nat'l Welfare Rights Org., 533 F.2d at 649.

65 *Id.*

66 Falin v. Sullivan, 776 F. Supp. 1097, 1099 (E.D. Va. 1991). In fact, the Secretary initially gave states the decision to use equity value or market value, but published a correction notice in 1979 clarifying that only equity value was permitted given established constructions of the phrase "available resources" in section 402(a)(7) of the Social Security Act. Hew Publishes Correction Notice Concerning Valuation of Resources in AFDC Program, Ctr. on Soc. Welfare Policy & Law, 13 Clearinghouse Rev. 92 (1979).

67 Omnibus Budget Reconciliation Act of 1981, Pub.L. No. 97-35, § 2302, 95 Stat. 357 (1981); Harrell R. Rodgers, Jr., The Cost of Human Neglect: America's Welfare Failure 84 (1982).

68 James X. Sullivan, *Welfare Reform, Saving, and Vehicle Ownership: Do Asset Limits and Vehicle Exemptions Matter?* 41 J. Hum. Res. 105 (2006).

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70 However, some states used waivers to modify asset limits in AFDC. *Asset Limits*, *supra* note 43, at 2.

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72 In Hazard v. Sullivan, the court found that by failing to adjust for inflation, "The regulation has now become a tool for denying applications, instead of the tool for protecting self-sufficiency — by allowing receipt of benefits and possession of an automobile — that it originally was intended to be." Hazard v. Sullivan, 827 F. Supp. 1348, 1352 (M.D. Tenn. 1993).

73 *See, e.g.*, Brown v. Sec'y of Health & Human Serv., 46 F.3d 102, 107 (1st Cir. 1995) (explaining that "OBRA delegates to the Secretary, and to no one else, the unqualified authority to prescribe the amount of the automobile resource exemption...Nowhere in the statute did Congress require the Secretary to ensure to all AFDC recipients the right to a "safe and reliable" vehicle, or to pay special attention to the other policy objectives urged by plaintiffs. Congress left it to the Secretary to decide what policies should be given priority when figuring the exemption.").

74 Several district courts found the $1,500 vehicle limit to be

"arbitrary and capricious" under the Administrative Procedure Act. Lamberton v. Shalala, 857 F. Supp. 1349 (D. Ariz. 1994) (finding the limit "arbitrary and capricious" because the Secretary over-relied on a single study, failed to consider intervening inflation, and ignored Congressional intent regarding self-sufficiency); *see also* Brown v. Sec'y of Health & Human Serv., 46 F.3d 102 (1st Cir. 1995) (overturning a district court decision that had found the limit invalid based partly on failure to adjust for inflation); We Who Care, Inc. v. Sullivan, 756 F. Supp. 42 (D. Me. 1991) (finding the limit invalid because the Secretary failed to provide sufficient information about the survey upon which she made her decision about the $1500 level).

75 Aleta Sprague & Rachel Black, New Am. Found., State Asset Limit Reforms & Implications for Federal Policy 5 (Oct. 31, 2012), http://newamerica.net/sites/newamerica.net/files/policydocs/SpragueBlackFinal10.31.12_0.pdf.

76 *See, e.g.*, Reid Cramer, Rachel Black & Justin King, New Am. Found., The Assets Report 2012: An Assessment of the Federal "Asset-Building" Budget (Apr. 2012), http://assets.newamerica.net/sites/newamerica.net/files/policydocs/AssetsReport2012.pdf.

77 For example, although the district courts' invalidations of the $1,500 vehicle limit were chiefly based on a procedural issue in the promulgation of the regulation, several opinions also noted how the restriction undermined AFDC's objectives. In *Lamberton v. Shalala*, for example, the District Court of Arizona found that the $1,500 AFDC limit "force[d] recipients to acquire less reliable vehicles" and thus "prevent[ed] or hinder[ed] self-sufficiency in aid beneficiaries." Lamberton v. Shalala, 857 F. Supp. 1349 (AZ Dist. Court, 1994).Similarly, in *Hazard v. Sullivan*, the District Court for the Middle District of Tennessee found that the vehicle limit had "become a tool for denying applications, instead of the tool for protecting [the] self-sufficiency" AFDC was intended to foster. Hazard v. Sullivan, 827 F. Supp. 1348, 1352 (M.D. Tenn. 1993).

78 Sullivan (2006) at 2.

79 For current state vehicle asset limits in SNAP and TANF, see Lifting Asset Limits in Public Benefit Programs, Corp. for Enterprise Dev. (Jan. 2014), *available at* http://scorecard.assetsandopportunity.org/2014/measure/lifting-asset-limits-in-public-benefit-programs. In the Food Stamp Program, the vehicle limit in 1979 was $4,500, and was found to exclude approximately 1.8 million individuals from eligibility. *See* Michael F. Sheehan & Roger D. Colton, An Economic Analysis of the HHS Rule Eliminating AFDC Benefits to Families with Motor Vehicle Assets Over $1,500 11-13 (1994), *available at* http://www.fsconline.com/downloads/Papers/1994%2012%20autoasst.pdf.

80 Sheehan & Colton (1994) at 7-8.

81 Gilliom (2001) at 80-81; *see also* O'Brien (2008) at 6.

82 O'Brien (2008) at 6.

83 *See* Sprague & Black (2012) at 6. Illinois (H.B. 2662) and Hawaii (H.B. 868) eliminated their TANF asset limits in 2013.

84 Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 4104, 122 Stat. 1651 (2008).

85 *See* O'Brien (2008) at 6-7 (finding that even in a state where the TANF asset limit had been eliminated, some applicants still feared a bank account could jeopardize their eligibility, while others estimated that the limit was as little as a few hundred dollars).

86 *See, e.g.*, Rachel Black & Mark Huelsman, New Am. Found., Overcoming Obstacles to College Attendance & Degree Completion 9 (Mar. 5, 2012), *available at* http://assets.newamerica.net/sites/newamerica.net/files/policydocs/Black_Huelsman_collegesavingsFinal.pdf.

87 Michael A. Stegman, Jennifer S. Lobenhofer & John Quinterno, Ctr. for Cmty. Capitalism, The State of Electronic Benefit Transfer (EBT) 5 (Dec. 2003), *available at* http://ccc.sites.unc.edu/files/2013/05/StateofEBT.pdf.

88 *Id.*; Food Stamp Program, Regulatory Review: Electronic Benefit Transfer (EBT) Provisions of the PRWOR Act of 1996, 64 Fed. Reg. 28,763 (May 27, 1999) (to be codified at 7 C.F.R. pt. 274).

89 Personal Responsibility and Work Opportunity Reconciliation Act of 1996 § 401, 42 U.S.C. § 601 (1997).

90 Stegman et al., (2003) at 7-9.

91 USDA Food & Nutrition Serv., Electronic Benefits Transfer (EBT) Status Report by State, http://www.fns.usda.gov/sites/default/files/snap/electronic-benefits-transfer-ebt-status-report-state.pdf (last modified Apr. 7, 2014).

92 Stegman, et al. (2003) at 15. A USDA evaluation of Maryland's EBT program found that its CPCM decreased from $3.89 to $3.85 when it began delivering food stamps, AFDC and two other benefits via EBT, for a total annual savings of $120,000 in 1993 dollars.

93 *Id.*

94 See, e.g., Michael Stegman & Robert Faris, *Welfare, Work, and Banking: North Carolina Financial Services Survey,* 27 Ctr. for Cmty. Capitalism 379 (2005), for evaluations of SNAP participants' generally positive experiences with the transition to EBT.

95 There are two types of EBT cards: magnetic stripe cards that store a limited amount of data about the cardholder and connect to a central database through telephone lines, or "smart" cards that store account information on a microchip embedded directly in the card.

96 *See, e.g.*, Minn. Stat. § 256.987 (2013) (restricting use of EBT cards to access TANF assistance

outside of Minnesota and bordering states). For SNAP, restricting EBT access from one state to the next is prohibited by the Electronic Benefit Transfer Interoperability and Portability Act of 2000, Pub. L. 106-171, § 3, 114 Stat. 3 (2000).

97 15 U.S.C. § 1693 (2010).

98 Electronic Fund Transfers, 62 Fed. Reg. 43,467 (Aug. 14, 1997). (to be codified at 12 C.F.R. pt. 205).

99 *Id.* at 43467-43468.

100 Benefit Card Fairness Act of 2010, H.R. 4552, 111th Cong. (2010).

101 On average, states permit two transaction fee-free withdrawals per month. However, some states do not permit any. Memorandum from Ctr. for Law and Soc. Policy to the Dep't. of Health & Human Serv. to U.S. Dep't of Health & Human Serv. (June 11, 2012), http://www.clasp.org/resources-and-publications/publication-1/CLASP-comments-to-HHS-on-EBT-blocking.pdf.

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103 *CCWRO Welfare News*, California Coalition of Welfare Rights Organizations, no. 2012-05, Mar. 12, 2012.

104 Michael Herald & Jessica Bartholow, W. Ctr. on Law & Poverty, Losing Ground Against Poverty 1,(May 24, 2011), http://www.wclp.org/Resources/WCLPContent/tabid/1088/smid/3613/ArticleID/813/Default.aspx.

105 *CCWRO Welfare News*, *supra* note 104.

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111 Memorandum from Ctr. for Law and Social Policy, *supra* note 102.

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