

[NOTE: This article was originally written for the Domestic Violence Report and was published at 14 Domestic Violence Report 65 (June/July 2009)]

TANF Reauthorization Round II – An Opportunity to Improve the Safety Net for Women and Children

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INTRODUCTION

Congress must soon take up the reauthorization of TANF, offering a fresh opportunity for advocacy to make TANF responsive to the mothers and children the program is intended to serve. Change is imperative. Millions of women and children are living in the most dire poverty because administrative barriers prevent them from accessing the TANF benefits for which they are eligible. Aid for those who are able to access benefits is shockingly inadequate. In all but a few states the amount of the TANF benefit is less than half the official poverty line.

TANF -- Temporary Assistance for Needy Families² -- replaced AFDC as the national family public assistance program in 1996. TANF gave states even broader administrative discretion than the very broad discretion they had enjoyed under AFDC. Crucially, Congress deliberately chose to omit in TANF the language of the AFDC statute that had created an enforceable right to aid for those meeting the state eligibility standards. This omission foreclosed most federal legal challenges to arbitrary state administrative practices, and sharply curtailed federal agency authority to regulate state administration of TANF.

TANF has been disastrous for low income women and children. The participation rate for eligible families has dropped by over half, and probably even by more for immigrant families. Benefit levels have fallen far below the official poverty line.

The advocacy community urged attention to TANF's flaws when Congress was considering TANF's initial reauthorization in the early 2000's. Unfortunately, TANF Reauthorization Round I advocacy failed to achieve its key goals due to strong opposition from the Bush Administration and tepid congressional support. Indeed, rather than improving the program, the 2005 TANF reauthorization legislation diverted scarce federal anti-poverty funds to unproven, potentially risky "marriage promotion" projects, and further incentivized exclusionary practices by requiring unrealistically high work program participation rates.

TANF must be reauthorized again by September 30, 2010. There is reason to hope that TANF Reauthorization II will have a more positive outcome. President Obama campaigned on a platform promising to cut poverty in half over the next decade, and Congress appears more sympathetic to real reform.

Despite this promise of hope, there is also a real concern that animus toward TANF participants may block reform. The federal economic stimulus legislation – the American Recovery and Reinvestment Act -- increased benefits for Food Stamp, Social Security, SSI and

Unemployment Compensation recipients, but did not increase benefits for TANF recipients even though no group was more needy or had such a high share of children, and no group was more likely to spend benefit increases quickly, one of the Act's underlying stimulus goals. Although the Act did make additional federal TANF funding available to states with rising TANF caseloads, Congress and the Obama Administration ignored the pleas by Legal Momentum and other groups that the legislation suspend at least until recovery has been achieved the five year time limit imposed by Congress on receipt of TANF benefits.

Real change will require a strong, focused and unwavering effort by the advocacy community. Legal Momentum has established the EndPovertyNow coalition and list serve to support and promote advocacy for real TANF change. We encourage you to join this coalition. Information on how to sign up for the list serve is included in an end note.³

This article first discusses the importance of TANF for women. It then explains some of the key TANF reauthorization issues and suggests an advocacy agenda to address them.

WHY TANF IS IMPORTANT FOR WOMEN

Government assistance in the event of lack of work, or in the event of illness, disability, or family care responsibilities that prevent employment, is a pivotal component of economic security for everyone, but especially so for women. Women are less likely to be employed than men and they earn much less than men when they are employed. Women are also forty per cent more likely to be poor than men.⁴

Due to their exceptionally high poverty rate of over thirty five per cent, an adequate safety net is particularly important for single parents. Most single parents are women and about ninety per cent of adult TANF recipients are single mothers.

TANF provides a lifeline for the many women who receive TANF who are domestic violence victims. The correlation between domestic violence, poverty and welfare has been increasingly well-documented. As research and experience confirm, women are the vast majority of victims of domestic violence and sexual assault.⁵ And though women of all socioeconomic groups are victims of domestic violence, low-income women are most likely to be abused⁶: studies show that 14 to 32 percent of welfare recipients are in abusive relationships⁷, and more than half the women in a study who were welfare recipients had been the victims of violence at some time.⁸

In 1994, Congress enacted the Violence Against Women Act (VAWA) in an effort to strengthen support and services for victims of violence. Nevertheless, all victims of domestic violence still face formidable obstacles when they leave a violent situation. But it is particularly difficult for low-income women to obtain economic self-sufficiency because they have fewer resources.

Domestic violence is, at its core, a system of power and control by the abuser over the victim. Domestic violence is most commonly associated with physical assaults and psychological abuse, and the threats of such harm to the victim, her family, friends, and property.

However, domestic violence also has significant implications for the victim's economic sufficiency.

Because of a lack of income, domestic violence victims are often faced with remaining in abusive relationships in order to have a place to live, or risking homelessness to ensure their safety and that of family members. While many abused women find temporary refuge in emergency shelters, they must quickly find permanent housing in order to remain safe. But due to the lack of safe, affordable options, many victims are forced to return to their abusers.

In order to escape violence and remain safe from their abusers, victims therefore need some source of financial support. Adequate financial support is particularly crucial in the time immediately following the abused woman's separation from the abuser, as abusers often escalate their violence after separation in an attempt to coerce the victim into reconciliation or to retaliate for their departure.⁹ The pattern of abuse often includes the abuser actively interfering with and sabotaging the victim's attempts to separate and attain economic independence.¹⁰

For some victims who have separated from their abuser, employment is a source of support. However, abusers often purposefully jeopardize a victim's ability to maintain employment -- such as through harassment at work, either in person or through telephone calls, texts, and emails. Studies indicate that between 35 and 56 percent of employed abused women surveyed were harassed at work by their abusive partners,¹¹ and that between one-fourth and one-half of domestic violence victims reported losing a job due, at least in part, to domestic violence.¹²

Sadly, for many victims employment is not a realistic potential source of immediate support due to reasons such as lack of child care, continued abuse, ill health, a poor or spotty employment history, lack of necessary skills, or the need for more time to look for employment. These victims are particularly vulnerable to coercion and control by the abuser. For these victims, the availability of TANF is crucial to allow them to start a new life free of violence.

A TANF REAUTHORIZATION ADVOCACY AGENDA BASED ON THE REALITIES OF WOMEN'S LIVES

As detailed below, TANF falls far short in many ways of adequately meeting the needs of the women and children TANF is intended to serve. TANF Reauthorization II provides an opportunity for Congress and the Administration to work together to improve the program.

Access Barriers

Program participation has declined precipitously and continuously under TANF. Cumulatively, monthly participation has fallen by more than half, dropping from an average of 4.4 million families in 1996 to 1.7 million families in September 2008.¹³ Sadly, the decline was due to decreased participation by eligible families not to decreased family poverty.¹⁴

The political climate surrounding TANF's enactment and implementation led states to define "welfare reform" as caseload reduction. Freed from the federal protective provisions that

had governed AFDC administration, state after state adopted restrictive practices that made it more difficult for financially eligible families to get and keep their TANF case open. The recent “Brave New Welfare” article in Mother Jones provides vivid examples of these extreme state practices and their harsh human consequence.¹⁵ Some TANF case workers reportedly told mothers that their children could be taken away from them if they applied for benefits, or that they would have to be surgically sterilized, or that they could not get benefits if they did not work even if they were disabled.¹⁶

Fewer than half of financially eligible families, perhaps only about a third, now receive benefits. The U.S. Department of Health and Human Services (HHS), which supervises state TANF administration, reported to Congress in 2008 that the participation rate had declined from 84% of eligible families in 1995, AFDC’s last full year, to 40% in 2005.¹⁷ The TANF participation rate is almost surely even lower than 40% today, as caseloads continued to fall after 2005 despite rising poverty and unemployment. And the participation rate for eligible immigrant families is probably even lower than for other families, as the portion of immigrant families receiving TANF declined by 60% from 1994 to 1999.

Not surprisingly, the sharp decline in the TANF participation rate has led to a sharp increase in the number of extremely poor female headed households. One recent study found that in 2004 over 1.7 million single mother families had a combined annual income from public assistance and work of less than \$3,000, a 56% increase since 1995 in this measure of extreme single mother family poverty.¹⁸

The inability to access benefits can prevent women from fleeing domestic abuse. There is an urgent need for new federal protective provisions to govern state TANF administration. The statutory right to sue to challenge arbitrary administration should be restored, and HHS should be given specific authority to regulate program administration. States should be required to allow families to apply without delay and to make application decisions promptly. States should also be required to offer assistance to applicants in obtaining verification, and to recipients in recertifying eligibility, prior to an application denial for failure to verify or to a case closing for failure to recertify. As one example, immigrants with pending domestic violence or human trafficking related immigration cases typically need assistance in obtaining verification through an alternate VAWA confidentiality “fax-back” system.

Benefit Levels

Each state sets its own TANF benefit levels. While there are significant state differences, benefits are inadequate in every state even as judged by the official federal poverty guideline, which most advocates agree understates the real poverty line. (The 2009 monthly poverty guideline for a family of three is \$1,526). Between TANF’s creation in 1996 and July 2006, benefit levels declined in real value in all but four states.¹⁹ In July 2006, the TANF benefit for a family of three was less than half of the official poverty amount in all but three states²⁰, and the combined TANF and Food Stamp benefit was less than sixty nine per cent of the official poverty guideline in every state.²¹

TANF Reauthorization II should raise benefit levels. One possible approach would be a mandate (with additional federal funding) for states to raise their benefit levels at least to the amount needed to bring combined TANF and Food Stamp income to the official poverty level.

Work Rules

The federal TANF work rules are deeply flawed in several important ways. They threaten states with penalties for failing to achieve unrealistically high work program participation rates, and then through the “caseload reduction credit” create incentives for states to avoid or reduce the penalties by arbitrarily reducing their TANF caseload. They define countable work activities much too narrowly, excluding many educational and training activities that can provide a real pathway out of poverty. They allow “full family sanctions,” meaning the termination of the children’s share of the grant, as well as the mother’s, when a parent allegedly fails to comply. They fail to sufficiently assure that parents are not sanctioned when they are unable to meet work requirements for reasons such as lack of adequate child care or the need to obtain a protection order. They do not require states to offer employment to parents who are able to work but unable to find a job.

TANF Reauthorization II must reduce the instances in which the work rules inappropriately cause needy families to lose their benefits. The required participation rates must be made realistic and achievable. Full family sanctions should be prohibited. There must be a stronger guarantee against sanctions when adequate child care is not available or when victims of domestic violence are unable to work due to harassment and stalking by their abuser or their participation in criminal, protection order or custody cases. Before issuing a notice that benefits will be cut as a sanction for non-compliance with the work rules, states should be required to offer parents an opportunity to explain any alleged non-compliance.

TANF Reauthorization II must also expand education, training and employment opportunities that provide a real pathway out of poverty. All forms of legitimate education and training should be allowed, including elementary and secondary, ESL, literacy, higher education, vocational training, and training for non-traditional employment. States should be required to offer parents an employment opportunity (and any necessary child care) at which they can earn an amount at least equal to the poverty line amount for the family size.

Time Limits

Current federal TANF rules set a 60-month lifetime limit and allow states to set a shorter limit, as about a fourth of the states do. While some exemptions are permitted and while some states continue aid with state funds, each year thousands of needy families lose their benefits solely because they reach the time limit.

Even when the economy is strong, TANF parents face significant employment barriers -- the majority are single parents with a pre-school age child, two fifths have not completed high school, and many have serious health problems or are caring for an ill or disabled child. These barriers are even more severe for parents whose families reach the TANF time limit. The current

economic crisis makes it even less likely that parents who stop receiving TANF due to time limits will find a job.

TANF Reauthorization II should soften or repeal time limits. Possible ideas include:

- a total ban on time limits;
- a ban on time limits shorter than 60 months;
- a suspension of time limits when unemployment is above a specified percentage;
- mandatory waivers for groups such as victims, the disabled, and those caring for a disabled family member;
- not counting months of receipt in which the parent is employed; and
- not counting months of receipt in which the parent is in compliance with program rules.

Child Support Cooperation

Federal TANF rules mandate states to require mothers to cooperate in establishing paternity and pursuing child support as a condition of eligibility. Participation in paternity establishment and child support cooperation, while required of custodial parents, are frequently misperceived by non-custodial parents as the custodial parent turning them in to the justice system. While in theory there are “good cause” exemptions for women who can establish that seeking child support will put them or their children in danger, many TANF applicants are uninformed about the exemptions, and caseworkers may refuse to grant exemptions because of lack of training for caseworkers on issues of domestic violence.²²

TANF Reauthorization II should eliminate the mandatory cooperation requirement. Research indicates that child support pursuit is often a trigger to further violence. The decision on whether it is safe to pursue child support should rest with the custodial parent.

The FVO

TANF’s Family Violence Option (FVO) allows states the option to waive on a case by case basis parental compliance with TANF rules such as time limits, deeming rules in the case of immigrant victims²³, child support cooperation, and work requirements, when compliance would make it more difficult to escape domestic violence or unfairly penalize victims. As of July 2004, all but three states (Idaho, Oklahoma, Virginia) had adopted the FVO (41 states) or an equivalent policy (6 states).²⁴

Systematic information about state FVO administration is virtually non-existent. However, there is substantial anecdotal evidence that TANF caseworkers often fail to screen for violence or to offer waivers and service referrals when violence is identified. A post-TANF enactment survey of New York TANF applicants found that most were not screened and that most who identified themselves as victims were not referred for services.²⁵

TANF Reauthorization II should improve the FVO. Possible ideas include:

- making the FVO a requirement, not an option;

- mandatory minimum standards for screening, service referral, and caseworker DV training;
- mandatory waivers of program requirements whenever compliance would make it more difficult to escape or recover from violence or increase the risk of violence;
- a prohibition on sanctions or penalties for parental non-compliance without prior consideration of whether violence is a contributing factor to the non-compliance.

Marriage and Fatherhood Promotion

TANF Reauthorization I added \$150 million a year in federal funding for projects that promote marriage or responsible fatherhood. Legal Momentum and other advocate groups argued against such funding on the grounds of lack of evidence of any positive impact, the potential risk to domestic violence victims, the diversion of funds from proven anti-poverty approaches, the threat of privacy intrusion, and the potential encouragement of discrimination against unmarried parents and against mothers. In response to this advocacy, Congress added a requirement for these projects to consult with domestic violence experts and specified that participation must be voluntary. The consultations do generally seem to have occurred although it is difficult to assess their impact.

TANF Reauthorization II should end TANF marriage promotion funding and transfer the funds to proven anti-poverty measures, as there is still no evidence that marriage promotion projects have positive effects, and still many reasons to fear that they may have negative effects. Funding for “responsible fatherhood” promotion should either be ended, or converted to funding for “responsible parenthood” promotion and used only for projects that treat men and women equally.

Immigrant Eligibility

TANF is vitally important to immigrant women because they experience poverty at a much higher rate than native born women. In 2007, the poverty rate for adult immigrant women was 17.1% compared to the 11.7% rate for adult native born women.²⁶ The 1996 immigration reform legislation and the 1996 legislation creating TANF narrowed immigrant eligibility for TANF and other public benefits. With only limited exceptions, legally present immigrants who entered the United States after August 22, 1996 can not receive TANF until they have resided in the U.S. for at least five years. The TANF statute also gives states the option to narrow eligibility for legally present immigrants even further.

The TANF statute also specifies that state TANF officials must report to the Department of Homeland Security anyone known by them to be unlawfully in the U.S.

Legal immigrant participation in TANF fell 60% between 1994 and 1999, a larger participation decline than for the native born.²⁷ The sharp decline was due to a variety of factors, including confusion about eligibility, fears that seeking help might lead to deportation, and more restrictive state TANF administration.

TANF Reauthorization II should eliminate all restrictions on legally present immigrant access to TANF. Legally present immigrants should be eligible to the same extent as U.S.

natives. The Homeland Security reporting requirement should also be eliminated. Immigrant parents must be allowed to apply for benefits for themselves and their children without fear that this will lead to deportation.

Immigrant Victims of Violence

Some immigrant victims are eligible for TANF under current law without regard to the general restrictions on immigrant eligibility. For example, battered immigrant women may qualify for TANF once they have a pending or approved VAWA application or a pending or approved application for a family sponsored visa.

However, under current law, many immigrant victims of domestic violence, sexual assault, and human trafficking can not qualify for TANF. TANF Reauthorization II should require that all states make TANF available to these victims to the same extent TANF is available to native born victims.

The Women Immigrant Safe Harbor Act (WISH), which was introduced in the last Congress as part of the Violence Against Immigrant Women Act, would substantially broaden victim eligibility for TANF and other benefit programs. For example, WISH would assure that immigrant victims who are in the process of obtaining legal immigration status as domestic violence, sexual assault, human trafficking or victims of other mostly violent crimes (all VAWA, T and U-visa victims) will be eligible to receive TANF. Legal Momentum is interested in identifying advocates and attorneys with immigrant victim clients who would benefit from the passage of WISH. Those interested in assisting in this effort should e-mail IWP@legalmomentum.org.

Federal Funding

TANF is funded as a “block grant,” in which states receive a fixed amount of federal funding that does not depend on the amount of state program expenditures. By contrast, AFDC funding was “matching” funding and states received federal funding equal to a specified percentage of their total program expenditures.

The basic federal block grant funding has been \$16.5 billion a year since TANF was created. In order to receive their full federal block grant allotment, states must contribute to the state TANF program a specified percentage of what they were spending on AFDC.

As TANF caseloads have declined, states have switched more and more of their TANF funding to child care and other social services, as permitted by federal TANF rules. If caseloads rise, states generally must choose either to reduce benefit levels or to cut the amount allocated for other very much needed services. Fortunately, the American Recovery Act **CITE** provided some additional funding on a temporary basis for states with rising caseloads.

Funding amounts and funding approaches are crucial TANF Reauthorization II issues. Any new measures that will increase cost, such as the mandates recommended here for adequate benefit levels and for new earnings opportunities, should be accompanied by new funding.

Also, many advocates favor switching back to the matching approach, believing that the block grant approach encourages states to purge their cash assistance caseloads in order to be able to use more of their TANF funds for other purposes.

Child Exclusion/Family Cap

As of July 2007, fifteen states had child exclusion (also known as family cap) policies under which a child's needs are ignored when calculating the family's grant if the child is born into a family that is receiving TANF.²⁸ These policies are premised on the belief that women have children in order to get higher TANF grants. There is no evidence to support this belief, and it is absurd on its face given that the TANF increment for an additional child typically is less than \$100 a month.

Child exclusion policies reduce a family's benefit even though the full regular benefit is already less than poverty level. TANF Reauthorization II should ban these policies.

Two Parent Families

As of July 2007, seven states prohibited benefits for two parent families with a full time worker even if earnings are below the state's financial eligibility level.²⁹ There is no rational basis for such exclusion. TANF Reauthorization II should ban these policies.

CONCLUSION

It is crucial that the advocate community seize the opportunity presented by TANF Reauthorization Round II to urge the adoption of new policies to make TANF more responsive to low income women and children.

¹ The authors are all Legal Momentum staff members. Legal Momentum, www.legalmomentum.org, founded in 1970 as NOW Legal Defense and Education Fund, is the nation's oldest legal advocacy organization dedicated to advancing the rights of women and girls. Contact Timothy Casey, tcasey@legalmomentum.org, for further information about the matters discussed in this article.

² Title IV-A of the Social Security Act, 42 U.S.C. § 601 et. seq., is titled "Block Grants To States For Temporary Assistance For Needy Families."

³ To join the EndPovertyNow list serve: 1) send an email with "join" in the subject line to tcasey@legalmomentum.org; or 2) (a) go to <http://groups.google.co.uk/group/endpovertynow?hl=en-GB> (b) select "sign in and apply for membership" (c) sign in to your Google account or create a Google account if you don't already have one.

⁴ Adult women were 42% more likely to be poor than adult men in 2007. Legal Momentum, "READING BETWEEN THE LINES Women's Poverty in the United States, 2007," August 2008, available at <http://action.legalmomentum.org/site/DocServer/poverty-report2007.pdf?docID=4221>.

⁵ Callie Marie Rennison, Intimate Partner Violence, 1993 – 2001, Bureau of Justice Statistics Crime Data Brief, February 2003, NCJ 197838; Centers for Disease Control and Prevention., "Adverse Health Conditions and Health Risk Behaviors Associated With Intimate Partner Violence – United States, 2005," Mortality and Morbidity Weekly Report 2008, Vol 57:113-117.

⁶ Id.

⁷ Jody Raphael and Richard M. Tolman, "Trapped By Poverty, Trapped By Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare" (Ann Arbor, Mich. and Chicago, Ill.: Project for Research on Welfare, Work and Domestic Violence, April 1997).

⁸ Id.

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- ⁹ Martha R. Mahoney, "Victimization or Oppression? Women's Lives, Violence, and Agency", in "The Public Nature of Private Violence" 59, 79 (Martha Albertson Fineman & Roxanne Mykitiuk eds., 1994)
- ¹⁰ Adrienne E. Adams, Cris M. Sullivan, et al. "Development of the Scale of Economic Abuse." *Violence Against Women*, 14(5): 563 (2008); - U.S. Gen. Accounting Office, "Domestic Violence: Prevalence and Implications for Employment Among Welfare Recipients" (1998).
- ¹¹ See U.S. Gen. Acct. Office, "Domestic Violence Prevalence and Implications for Employment Among Welfare Recipients" 19 (Nov. 1998).
- ¹² *Id.*
- ¹³ TANF participation data is available on the web site of the U.S. Department of Health and Human Services Office of Family Assistance at http://www.acf.hhs.gov/programs/ofa/data-reports/caseload/caseload_current.htm.
- ¹⁴ See U.S. Department of Health and Human Services, "Indicators of Welfare Dependence Annual Report to Congress 2008," at Table IND 4a, available at <http://aspe.hhs.gov/hsp/indicators08/ch2.shtml#ind4>.
- ¹⁵ Stephanie Mencimer, "Brave New Welfare," *Mother Jones*, January/February 2009, available at <http://www.motherjones.com/politics/2009/01/brave-new-welfare>.
- ¹⁶ *Id.*
- ¹⁷ U.S. Department of Health and Human Services, "Indicators of Welfare Dependence Annual Report to Congress 2008," at Table IND 4a, available at <http://aspe.hhs.gov/hsp/indicators08/ch2.shtml#ind4>.
- ¹⁸ Rebecca Blank, "Improving the Safety Net for Single Mothers Who Face Serious Barriers to Work," 17 *The Future of Children* 183-197 (Fall 2007), available at http://www.futureofchildren.org/usr_doc/7_09_Blank.pdf.
- ¹⁹ Committee on Ways and Means U.S. House of Representatives, Background Material and Data on the Programs within the Jurisdiction of the Committee on Ways and Means 2008 (popular name "Greenbook"), at 7-49 – 7-50 (2008), available at <http://waysandmeans.house.gov/Documents.asp?section=2168>.
- ²⁰ *Id.*
- ²¹ *Id.* at 7-51 – 7-52.
- ²² See Legal Momentum (then named NOW Legal Defense and Education Fund) et al., "Dangerous Indifference New York City's Failure to Implement the Family Violence Option," 2000, available at <http://action.legalmomentum.org/site/DocServer/dangindif.pdf?docID=298>.
- ²³ Battered immigrants who have had affidavits of support filed on their behalf as part of their immigration application are deemed to have full access to the income and resources of their sponsor, and therefore to usually be financially ineligible for public benefits, even if they have absolutely no ability to access those funds in reality. See Emily Goldfarb, "Caught at the Public Policy Crossroads: The Impact of Welfare Reform on Battered Immigrant Women" (The Family Violence Prevention Fund.), Jan. 1999, at 5.
- ²⁴ Legal Momentum, "Family Violence Option State-by-State Summary," July 2004, available at http://action.legalmomentum.org/site/DocServer/fvo_statebystate.pdf?docID=351.
- ²⁵ Legal Momentum (then named NOW Legal Defense and Education Fund) et al., "Dangerous Indifference New York City's Failure to Implement the Family Violence Option," 2000, available at <http://action.legalmomentum.org/site/DocServer/dangindif.pdf?docID=298>.
- ²⁶ Calculated by Legal Momentum using the Current Population Survey Table Creator at http://www.census.gov/hhes/www/cpssc/cps_table_creator.html.
- ²⁷ Michael Fix and Jeffrey Passel, "The Scope and Impact of Welfare Reform's Immigrant Provisions," (Urban Institute, Feb. 2003), at 15.
- ²⁸ The Urban Institute, "Welfare Rules Databook: State TANF Policies as of July 2007," at 140-41 (December 2008), available at <http://anfdata.urban.org/databooks/Databook%202007%20Final%20Draft%20December%202008.pdf>.
- ²⁹ *Id.* at 126-27.