



MEMORANDUM

TO: Office of Family Assistance
Administration for Children and Families
Department of Health and Human Services
330 C Street SW, 3rd Floor
Washington, D.C. 20201

FROM: Monique Stanton, President & CEO, Michigan League for Public Policy

DATE: November 27, 2023

RE: Proposed Rule: Strengthening Temporary Assistance for Needy Families (TANF) as a Safety Net and Work Program, RIN: 0970-AC97

Dear Office of Family Assistance,

The Michigan League for Public Policy is a nonpartisan policy institute dedicated to economic opportunity for all. It is one of the only state-level organizations that addresses poverty in a comprehensive way and analyzes the impact of state and federal budgets and policies on residents with low incomes through a lens of racial equity. Changes in Temporary Assistance for Needy Families (TANF) regulation have the opportunity to greatly affect our state's budget and the well-being of Michigan families with low incomes.

We are writing in response to the Department of Health and Human Services ("the Department") Notice of Proposed Rulemaking published in the Federal Register on October 2, 2023, entitled "Strengthening Temporary Assistance for Needy Families (TANF) as a Safety Net and Work Program." We support the changes outlined in the proposed rule but particularly the definition of "needy" families as those with income at or below 200% of the federal poverty level (FPL), establishment of a "reasonable person" test to determine when an expenditure is "reasonably calculated to accomplish a TANF purpose," and exclusion of third-party non-governmental spending as allowable maintenance of effort (MOE). We believe states should prioritize TANF spending on direct cash assistance and services to families with low incomes, that these changes further the Department's goal of ensuring state TANF spending is consistent with the statutory purposes of the program, and that they are within the Department's regulatory authority.

TANF was enacted in 1996 through the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) and replaced the Aid to Families with Dependent Children (AFDC) program, which had provided cash assistance to families with children experiencing poverty

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since 1935.¹ Under TANF, the federal government provides a fixed block grant to states, which use these funds to operate their own programs.² To receive these federal funds, states must also spend some of their own dollars, known as “maintenance of effort” (MOE) spending.³ States must then use federal TANF block grant funds and state MOE dollars to meet any of the four purposes set out in the 1996 law: (1) assisting families in need so children can be cared for in their own homes or the homes of relatives; (2) reducing the dependency of parents in need by promoting job preparation, work, and marriage; (3) preventing pregnancies among unmarried persons; and (4) encouraging the formation and maintenance of two-parent families.⁴ Under current law, states define what constitutes a “needy” family for the first and second purposes and do not have to limit assistance funded from the TANF block grant to needy families for the third and fourth purposes. With narrow exceptions for activities authorized under Healthy Marriage and Responsible Fatherhood grants, all spending counted towards the MOE requirement must be on “needy families.”

TANF is the primary cash assistance program for families with children when they face a crisis or have very low income. TANF can play a critical role in supporting families during times of need. Research shows that providing cash assistance to families experiencing poverty can improve a multitude of outcomes for children including better health and academic achievement,⁵ lower rates of familial involvement in the child welfare system,⁶ and better health and higher earnings in adulthood.⁷

However, currently TANF reaches far fewer families and provides less cash assistance to families than AFDC did, leaving more families in deep poverty.⁸ While some states use the broad discretion conferred by the statute to experiment with TANF funds in ways well calculated to support “needy” families, many states have shifted the funds that previously went directly to families to fund programs tenuously connected to the statutory purposes. For example, some states count as TANF spending the regular operation of the state child welfare system or drug courts—services already provided for by state agencies.⁹ This abuse of the TANF block grant comes at the expense of direct cash assistance or work supports for families who desperately need them. We believe this proposed rule is a positive step forward in ensuring that states utilize TANF funds to accomplish one of TANF’s statutory purposes. We share the Department’s

¹ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 104 Pub L. No. 193, § 103, 110 Stat. 2105, 2110 (1996).

² Center on Budget and Policy Priorities, Policy Basics: Temporary Assistance for Needy Families (last visited October 22, 2023), <https://www.cbpp.org/research/income-security/temporary-assistance-for-needy-families>

³ Id.

⁴ 42 USC § 601(a)(1)-(4)

⁵ National Academies of Sciences, “Child Poverty Rate Could Be Cut in Half in Next Decade Following Proposals in New Expert Report,” February 28,

2019, <https://www.nationalacademies.org/news/2019/02/child-poverty-rate-could-be-cut-in-half-in-next-decade-folling-proposals-in-new-expert-report#:~:text=WASHINGTON%20%E2%80%93%20In%20light%20of%20the%20many%20costs,and%20earnings%20among%20adults%20living%20in%20low-income%20families.>

⁶ Clare Anderson *et al.*, “Child and Family Well-being System: Economic and Concrete Supports as a Core Component,” Chapin Hall at the University of Chicago, March

2023, <https://www.chapinhall.org/wp-content/uploads/Economic-Supports-deck.pdf>.

⁷ William E Copeland *et al.*, “Long-term Outcomes of Childhood Family Income Supplements on Adult Functioning” JAMA Pediatr. 2022 Oct; 176(10): 1020–1026,

<https://jamanetwork.com/journals/jamapediatrics/fullarticle/2795568>

⁸ In fiscal year 2020, states spent just 22 percent of TANF funds on basic assistance, down from 71 percent in 1997, TANF’s first year.

<https://www.cbpp.org/research/income-security/increases-in-tanf-cash-benefit-levels-are-critical-to-help-families-meet-0>

⁹ See <https://stateline.org/2020/07/24/states-raid-fund-meant-for-needy-families-to-pay-for-other-programs/>

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hope that implementation of the proposed rule will lead to greater prioritization of funds for direct cash assistance and well-designed work supports.

The proposed definition of “needy” as households at or below 200% FPL will direct TANF funds to people who need them most while maintaining considerable state flexibility.

The Department is proposing that, for purposes of allowable TANF expenditures and misuse of funds penalties, state definitions of “needy” may not exceed 200% of the federal poverty guidelines.¹⁰ This change would require that state definitions of “needy” with respect to all federal TANF and state MOE expenditures that are subject to a required needs standard must be limited to individuals in families with incomes at or below 200% FPL when applying state established standards.¹¹ As the Department notes, this definition is broad enough to allow TANF funded assistance and services to reach the 35% of children in the United States that live at or below this threshold,¹² but will prevent the use of funds on higher-income households who were not the contemplated beneficiaries of the program.

While TANF funds in Michigan generally go to programs to support needy families, there are a few glaring examples of substantial amounts of TANF dollars going to middle or even higher-income individuals. For example, \$54 million dollars of TANF funding goes to scholarships for middle-income college attendees in Michigan. This amount is equal to half of all TANF-MOE dollars spent on cash assistance in the state. Michigan only spends 8% of its total TANF-MOE expenditures on cash assistance. This leaves many needy households struggling to pay their bills and maintain their families. It is our hope that establishing this ceiling on the definition of “needy” will help reign in some of these spending outliers and increase direct assistance to families in need.

Direct assistance is often the best way to improve outcomes for families with low incomes.¹³ According to the Welfare Rules Database, as of 2021, no state has established an initial income eligibility standard for TANF cash assistance that would provide benefits to households with countable income above 200% FPL.¹⁴ Where states do provide critical assistance to families above 200% FPL through “generally allowable” means such as the refundable portion of state earned income tax credits, states can still claim spending on families under this threshold as TANF spending. Ultimately, a 200% FPL standard is well-conceived to maintain state flexibility above that which existed in the AFDC program, yet still require states to direct funds to needy families intended to be served under the statute.

Adoption of a “reasonable person” standard will help prevent the use of TANF funds that are not “reasonably calculated to accomplish a TANF purpose.”

The Department provides a range of factors that will be used to consider whether a reasonable person would be satisfied that an expenditure is reasonably calculated to accomplish a TANF purpose. The Department will consider factors including: (1) evidence that the expenditure actually accomplished a TANF purpose; (2) evidence that prior expenditures by the state or another entity for the same or a substantially similar program or activity actually

¹⁰ NPRM at 67700

¹¹ Id.

¹² https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pov/pov-01.html#par_textimage_30 See Table Below 200 percent of poverty All Races

¹³ See

<https://www.cbpp.org/research/income-security/to-promote-equity-states-should-invest-more-tanf-dollars-in-basic>

¹⁴ See <https://wrd.urban.org/wrd/tables.cfm>. See also NPRM at 67701.

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accomplished a TANF purpose; (3) academic or other research indicating that the expenditure could reasonably be expected to accomplish a TANF purpose; (4) whether the actual or expected contribution of the expenditure to accomplishing a TANF purpose is reasonable in light of the extent of that expenditure; and (5) the quality of the reasoning (as outlined below) underlying the state's explanation that the expenditure accomplished or could be expected to accomplish a TANF purpose.¹⁵ In addition to these factors, the Department would also examine a state's budgeting practices for multifaceted programs to ensure that only the portions of a program, benefit, or service that are reasonably calculated to accomplish a TANF purpose are allocated to TANF.¹⁶

The Department also describes types of evidence that it will find most persuasive in proving a relationship between the TANF spending and the statutory purposes. This evidence ranges from evaluation using a "rigorous evaluation design (such as randomized controlled or high-quality quasi-experimental trials)" that has "demonstrated favorable impacts on the outcome(s) of interest" to "qualitative or descriptive research suggests the activity favorably affects the outcome(s) of interest sufficiently that a reasonable person would consider the expenditure reasonably calculated to accomplish a TANF purpose."¹⁷ The proposed rule also includes, for each of the four TANF statutory purposes, a description of some existing types of state TANF funded programs that would "clearly fall within the plain language of the purpose" and others that likely would not.¹⁸

The reasonable person standard articulated by the proposed rule provides substantial additional clarification regarding how the Department will evaluate whether TANF spending is "reasonably calculated to accomplish a TANF purpose" and should curtail spending by states that is clearly divorced from the intent of the program. For example, the Department notes that under this new standard some child welfare system activities states currently count toward MOE spending would no longer be allowable because they do not have "a close connection" to TANF purpose (1) - to assist needy families so that children may be cared for in their own homes or in the homes of relatives. Certain activities like child welfare investigations would not be countable under the rule because, as the Department correctly points out, such investigations "by their very nature" are intended to learn whether a child should be removed from the home.

In Michigan, over \$125 million TANF dollars go toward college scholarships, compared to the \$108 million that goes toward actual cash benefits to needy families. These scholarship programs, however beneficial they may be, do not fit any of the four TANF purposes under a reasonable person standard. There are other good programs that utilize TANF funds but do not fit within its scope. Michigan spends TANF dollars to partially fund smaller mentorship and academic programs. While these programs may not have a large impact on the budget, it shows that Michigan and other states have deviated from the original intent of the TANF and utilize the funds to cover budget gaps in other programs. The Michigan League for Public Policy supports the establishment of a reasonable person test in the hope that funds will be diverted from these disqualifying expenditures and given to families in need as originally intended.

As the Department notes, "[i]n many instances, the analysis will be entirely straightforward" because certain expenditures—such as cash assistance for needy families or

¹⁵ NPRM at 67703

¹⁶ Id.

¹⁷ NPRM at 67704

¹⁸ NPRM at 67704-06

employment services for needy parents—clearly fall within the plain language of the statutory purpose.¹⁹ However, there are other categories of valuable TANF spending that should satisfy the standard outlined in the proposed rule, but because they are not explicitly uplifted as allowable, some uncertainty about the application of the new reasonable person standard could remain. For example, the Department noted that under this new standard some child welfare system activities states currently count toward MOE spending would no longer be allowable because they do not have “a close connection” to TANF purpose (1) - to assist needy families so that children may be cared for in their own homes or in the homes of relatives. Certain activities like child welfare investigations would not be countable under the rule because, as the Department correctly points out, such investigations “by their very nature” are intended to learn whether a child should be removed from the home.

The Department makes further clarifications permitting pre-K and child care TANF spending, stating “A reasonable person could conclude that providing these services would help parents with low incomes work, and therefore end their dependence on government benefits.” However, the proposed rule continues to state year-round afterschool programs are unlikely to continue to receive funding. Some of these programs, such as mentorships and academic specific programs, would be unlikely to pass a reasonable person test. On the other hand, it is rare that a parent’s work schedule lines up directly with a child’s school schedule. This often leaves low-income parents making compromises with their available work hours, limiting employment opportunities. Therefore, it seems many of these programs could qualify under TANF purpose (2). Given the rising costs of child care, further clarification surrounding what qualifies as child care to enable work participation versus non-qualifying afterschool programs may be needed to avoid unnecessary administrative burden.

The Department recognizes that “states will value clarity as to whether particular expenditures may be considered reasonably calculated to accomplish a TANF purpose” and invites states to request the Department’s views on particular expenditures before proceeding.²⁰ States use TANF funding on a wide range of expenditures. To reduce the administrative costs of states requesting the Department’s views on particular spending, the Department should consider maintaining a list of expenditures that have been found to satisfy the “reasonable person” standard outlined in the rule. While the Department notes that seeking prior approval of expenditures is not required under the proposed rule,²¹ maintaining such a list will increase the confidence of state administrators to proceed with substantially similar spending to the types already deemed allowable in other states, and reduce the need for each state to seek approval for expenditures that are virtually the same. Further, the Department should consider expanding on the list of TANF expenditures that it currently assesses as not allowable under the reasonable person standard articulated in the proposed rule and explain the evidence or justifications that it does not consider valid. These lists may not be exhaustive, but growing the record regarding the Department’s views on particular types of spending under the reasonable person standard will give states more notice and certainty as to the types of TANF expenditures that the Department considers allowable, and obviate the need to seek the Department’s views before proceeding.

Excluding spending from non-governmental third parties as countable MOE will ensure states themselves are investing in programs that meet TANF purposes.

¹⁹ NPRM at 67703

²⁰ NPRM at 67704

²¹ Id.

Each state must meet a MOE requirement under TANF by having “qualified state expenditures” of at least 80% of the amount the state spent on a specified set of programs in FY 1994, before TANF was enacted, or 75% if the state satisfies its federal work participation requirement for the fiscal year.²² The MOE requirement is not adjusted for inflation, and therefore has significantly declined in real terms since TANF was enacted. The statute specifies that the “qualified state expenditures” a state may count toward its MOE requirement in a given fiscal year are “the total expenditures by the state during the fiscal year” that meet one or more of the purposes of TANF and serve eligible families.²³ In the Department’s interim final rule, promulgated after the Deficit Reduction Act of 2005 (DRA), the Department clarified that qualified state expenditures could include those “borne by others in the State” including cash donations from non-Federal third parties and the value of third party in-kind contributions,” if certain requirements were met.²⁴ Now, in the proposed rule, the Department is revising this language to forbid cash donations from non-governmental third parties or the value of third-party in-kind contributions” from counting toward states’ MOE requirement.²⁵ As the Department explains in the proposed rule, some states have used third-party MOE contributions to substitute for a significant portion of their MOE requirement, thereby undermining the statutory intent that states continue to pay a meaningful portion of TANF costs, as they did under AFDC.

It is difficult to assess the full extent to which this new definition of qualified state expenditures will impact the operation of states’ TANF program. States do not report on the source of MOE so the Department cannot determine how much of its MOE requirement each state is fulfilling using third-party, non-governmental spending.²⁶ Instead, the Department relies on a GAO survey published in 2016, in which 16 states reported counting third-party, non-governmental expenditures toward their required spending level in FY 2015, with 29 states counting such expenditures at least once between FY 2007 and FY 2015.²⁷ The same GAO survey also found that of the 16 states counting non-governmental expenditures toward their MOE in FY 2015, 12 of them were using the expenditures on food assistance, often by food banks.²⁸ For example, one state reported working with a food bank to count the value of the food the organization was providing to families deemed needy under the state’s TANF rules.²⁹ While we would support states dedicating additional resources to food assistance, we agree with the Department that it is not appropriate for states to count the efforts of charitable organizations like food banks toward the state’s own requirement to provide funding for programs and services to needy families under TANF. We believe preventing states from counting non-governmental spending toward its MOE will result in more government spending to meet MOE requirements and more total spending for allowable services under TANF designed to assist needy families.

²² 42 U.S.C. 609(a)(7)(B)(ii)

²³ 42 U.S.C. 609(a)(7)(B)(i)

²⁴ 71 FR 37454, 37470, June 29, 2006.

²⁵ NPRM at 67706

²⁶ Id.

²⁷ NPRM at 67707 citing GAO, *Temporary Assistance for Needy Families: Update on States Counting Third-Party Expenditures toward Maintenance of Effort Requirements*, February 2016, available at: <https://www.gao.gov/assets/gao-16-315.pdf>

²⁸ GAO, *Temporary Assistance for Needy Families: Update on States Counting Third-Party Expenditures toward Maintenance of Effort Requirements*, February 2016, pg. 12, available at: <https://www.gao.gov/assets/gao-16-315.pdf>

²⁹ Id. at 13.

It is clear Michigan underspends on basic assistance. As previously mentioned, more TANF dollars are spent on college scholarships than basic assistance. Similarly, just over 47% of all TANF-MOE spending goes toward youth services, Pre-K/Headstart and Child Welfare services. Many of these are valid expenditures, however, compared to the 13% spent on direct assistance and work supports, we see there is a clear imbalance within the program. This represents an inadequate investment in supporting families with low incomes on a path to self-sufficiency. It is our hope that the proposed rule changes will help shift some of our state's TANF-MOE spending toward basic assistance.

The Department's proposals (4) through (7) reduce administrative burden and provide additional clarity to states.

The proposed rule would add an eleventh holiday to the number of holidays that can count toward the work participation rate for work-eligible individuals in unpaid work activities.³⁰ The change realigns the provision with the federal holidays following the recognition of Juneteenth as a federal holiday, and will ensure that states' work participation rates are not impacted when TANF recipients honor this new federal holiday. Juneteenth celebrates the events of June 19, 1865, when over 250,000 enslaved people in Galveston, Texas received news of their emancipation, marking a significant milestone in American history and the continuing struggle for Black liberation and racial equity.³¹ We support the Department's effort to ensure states will not be penalized when TANF recipients recognize Juneteenth.

The Department is also proposing to allow greater flexibility to states in complying with data match requirements. To confirm a recipient's initial and ongoing eligibility for TANF-funded benefits, states must complete data matches using the Income and Eligibility Verification System (IEVS) data sources. Under 42 U.S.C. 1320b-7, states are required to participate in IEVS data matching to obtain: 1) Employer quarterly reports of income and unemployment insurance benefits from the State Wage Information Collections Agency (SWICA); 2) IRS earned income maintained by the Social Security Administration; 3) Immigration status data maintained by the Immigration and Naturalization Service; and 4) Unearned income from the IRS. Currently, states are allowed to request the Department's permission to use alternate data sources to meet any of the IEVS requirements so long as the alternate data is "as timely, complete, and useful as the data provided by the original source." The Department is proposing to modify this standard that it considers "very difficult to meet," and instead would no longer require that alternate sources be as "complete" as the original source. In particular, the Department recognizes the "minimal programmatic usefulness" of the IRS data match for unearned income given the often-limited resources of TANF households. We agree with the Department that modifying this standard will ease administrative burdens on states and allow states to explore whether alternate data sources are more useful and cost effective in satisfying IEVS data matching requirements despite being less "complete."

The proposed rule would also clarify the "significant progress" criteria following a work participation rate (WPR) corrective compliance plan (CCP). The Department will permit a reduction in the amount of a penalty if a state that had failed both the overall and two-parent work participation rates for a year corrected its overall rate but not the two-parent rate.³² As the

³⁰ NPRM at 67707

³¹ See

<https://www.whitehouse.gov/briefing-room/presidential-actions/2023/06/16/a-proclamation-on-juneteenth-day-of-observance-2023/#:~:text=On%20June%2019%2C%201865%20%E2%80%94%20months.people%20still%20held%20in%20bondage.>

³² NPRM at 67708

Department notes, two-parent households typically make up 10% or less of a state's total TANF caseload,³³ so enacting a full penalty when a state fails only its two-parent WPR following a CCP would be unduly punitive. This change will also mitigate the temptation for states to withhold TANF benefits to needy 2-parent families when states are at risk of failing to meet their work participation rate for all families.

Lastly, the Department also proposes to clarify the existing regulatory text about the allowability of costs associated with disseminating program information. The regulation at 45 CFR 263.0(b)(1)(i) currently provides that "providing program information to clients" is a program cost and not an administrative cost.³⁴ The Department proposes to remove this language and instead create a new subsection (iii) that isolates and highlights the point that administrative costs exclude the costs of disseminating program information.³⁵ We agree with the Department that highlighting this provision in the regulatory text will provide greater clarity for states.

Conclusion

We support the proposed rule and believe it is well-formulated to curtail misuse of TANF funds on services and programs that are not reaching "needy" individuals or that do not accomplish one of TANF's statutory purposes. The proposed rule will also prevent states from shifting their burden to provide for needy residents on to non-governmental third parties, and provide several valuable clarifications to ease administrative burdens on states. However, the Department has an opportunity to further clarify some key provisions to aid states in implementing these proposals and prevent unintended consequences on needy individuals.

Thank you for your attention to our comments. For further questions, please contact me.



Monique Stanton
President and CEO
Michigan League for Public Policy

³³ NPRM at 67708-09

³⁴ 45 CFR 263.0(b)(1)(i)

³⁵ NPRM at 67709