



December 1, 2023

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

Submitted via: <https://www.regulations.gov/>

**Re: Regulatory Information Number (RIN) 0970-AC99
Notice of Proposed Rulemaking (NPRM) on Strengthening Temporary Assistance for
Needy Families (TANF) as a Safety Net and Work Program**

Dear Office of Family Assistance:

The Child Welfare League of America (CWLA) is submitting these comments regarding the Department of Health and Human Services (HHS) proposed rule (Notice of Proposed Rule Making or NPRM), to update various requirements under the Temporary Assistance for Needy Families (TANF) block grant, Title IV-A of the Social Security Act.

CWLA is a coalition of hundreds of private and public agencies that since 1920 has worked to serve children and families who are vulnerable. Our expertise, leadership and innovation on policies, programs, and practices help improve the lives of millions of children across the country. Our impact is felt worldwide.

We appreciate the opportunity to submit our feedback and recommendations on the proposed changes to the TANF block grant. TANF is important to child welfare for three reasons: its role in providing support to relative caregivers, its significant financial support to wrap-around child welfare services, and its potential to address child poverty, which research has shown is a risk factor in abuse and neglect.

Overview

TANF, like its predecessor, the Aid to Families with Dependent Children (AFDC) program, provides an important source of support to children who live with relatives and other caregivers through the child-only grant. In FY 2020, 457,000 families were receiving child-only grants,¹ a

¹ U.S. Department of Health & Human Services, Administration for Children and Families, Office of Family Assistance, Temporary Assistance for Needy Families (TANF): Fiscal and Calendar Year 2020; Total Number of



total that has decreased since 2015 when there were 649,000 child-only families.² Approximately half of these families include a parent not covered by TANF assistance while relative caregivers are included in the remaining half.

These child-only grants allow some relative caregivers to provide care for a loved one without having that child enter the formal child welfare system, which may be appropriate for some families. It's an important alternative for many families trying to maintain family connections for the children involved. Perhaps the greatest challenge here is the drain on funding - as TANF loses its value due to inflation and past reductions to the block grant, it becomes more difficult to provide adequate support to relative caregivers while also addressing the needs of single and two parent families through basic assistance.

TANF is also important because it provides important wraparound services by funding important family support, family preservation and other preventive services. In FY 2020 over \$1.2 billion in child welfare services were drawn from TANF and spent in this way. This does not include child-only grant funding or the other vital human services supports funded through the TANF block grant, including supplemental child care funding, Head Start supplemental funding, state supplements to the Earned Income Tax Credits or other services. All these services should be viewed as initiatives to prevent child maltreatment and to prevent foster care placements.

That said, TANF plays a significant role in other parts of the child welfare system. TANF funds flow into some foster care placements because the law allows some states to spend TANF funds in the same way they spent funds through the AFDC program before 1996 when TANF replaced AFDC. In this way, TANF supplements some of these out of home placements, a critical support given that Title IV-E foster care and kinship care assistance continues to be eroded due to the ongoing eligibility link to the July 1996 AFDC eligibility requirements. This will continue to happen given inflation, unless Congress chooses to address this link and increase funding. Currently less than 40 percent of the foster care population is now covered through Title IV-E.

In federal fiscal year (FY) 2020, at least 15 states spent more than 15 percent of their TANF funds directly on child welfare services. These funds are in addition to child-only relative care services.

TANF has been largely ineffective in significantly reducing child poverty to date. When AFDC was converted into the TANF block grant in 1996, over 65 percent of families who are poor were receiving cash assistance through AFDC. In recent years that percentage has shrunk to less than one in four poor families receiving cash assistance. "Because expenditures in the TANF program have fallen so dramatically, the cash component of the program currently contributes very little to poverty reduction. Eliminating TANF would increase the child poverty rate by about one-half

No Parent Families. Retrieved from:

https://www.acf.hhs.gov/sites/default/files/documents/ofa/fy2020_tanf_caseload_opar_0.pdf

² U.S. Department of Health & Human Services, Administration for Children and Families, Office of Family Assistance, Temporary Assistance for Needy Families (TANF): Temporary Assistance to Needy Families Twelfth Report to Congress Fiscal Years 2014 and 2015. Retrieved from:

https://www.acf.hhs.gov/sites/default/files/documents/ofa/12th_annual_tanf_report_to_congress_final.pdf



of one percentage point.”³ While we believe that TANF can reduce some deep poverty (families at one-half the federal poverty level), if TANF is to live up to its potential to reduce poverty for children and families, it will be necessary to implement changes that refocus the program on poverty reduction and increase efficacy and access for families in need of support.

In pursuit of this goal of addressing poverty, this NPRM would enact changes in seven areas. CWLA focuses our comments on three broad and significant areas: the establishment of a ceiling on the term “needy;” clarifying when an expenditure is “reasonably calculated” to accomplish one or more of the four TANF purposes; and provisions to exclude as an allowable TANF maintenance-of-effort (MOE) expenditures cash donations from non-governmental third parties and the value of third-party in-kind contributions.

“Needy” Families

“This proposed rule would amend § 260.30 to add a definition of “needy.” 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 percent of the federal poverty guidelines.[11] A state may use a definition of needy that is at any level at or below 200 percent of the federal poverty guidelines, but a state definition of “needy” could not exceed 200 percent of the federal poverty guidelines under this proposed change.”

The TANF block grant is intended to target “needy” families and under the existing provisions the term needy has not been defined allowing maximum flexibility to the states. Under the new NPRM, ACF proposes that, for purposes of allowable TANF expenditures and misuse of funds penalties, states would have the flexibility to set their own definition of needy so long as it is at or below 200 percent of the poverty line, and it would align the income limit with the statutory limit required of funding transfers from TANF to the Social Services Block Grant. As indicated, this would set an annual income of \$49,720 for a family of three in the 48 contiguous states and the District of Columbia in 2023 using the federal poverty guidelines in 2023.

CWLA supports this provision as an effort to better focus the limited resources of the 1996 block grant that has experienced reductions in funding and erosion through over 27 years of inflation and a lack of reauthorizations and evaluations since 2005.

The commentary on the proposed NPRM indicates that some “child welfare” spending exceeds this 200 percent ceiling; we don’t see this as threatening the current funding of approximately \$1.9 billion in TANF funds now being spent on the categories of Family Support and Preservation, Family Reunification Services, Adoption Services, and “additional” Child Welfare Services. These funds are necessary to supplement similar funding sources including the Social Services Block Grant (SSBG) and the Title IV-B block grants. All three sources are losing funding through budget freezes and cuts such as sequestration. All three funding streams are

³ National Academies of Sciences, Engineering, and Medicine. 2019. A Roadmap to Reducing Child Poverty. Washington, DC: The National Academies Press. P. 213 footnote. <https://doi.org/10.17226/25246>.



important to carrying out the provision of services in these service categories. As the Family First Prevention Services funding continues to develop, these TANF funds are an important source of some of the services that cannot be paid for through either Title IV-E prevention and Title IV-E placement (i.e. foster care, kinship care and adoptions) services. Due to the lack of adequate funding for the continuum of child welfare services, from primary prevention to intervention to permanency for children and families, we think this will not eliminate actual child welfare services but clarify that TANF is a critical part of family support.

This proposed threshold is reasonable and requires states to target families with low incomes for their TANF-funded services, which aligns with the original intent of the program. **We would caution HHS, however, that we would not want to see programs that do not require individual eligibility determination to be harmed by this ceiling.** To minimize any unintended consequences because of these regulations for populations served by programs that might provide youth services, teen pregnancy prevention (even though they may qualify under the purposes of the act), and other generally targeted populations these programs should not be required to unnecessarily screen families or children for income eligibility. HHS may want to consider additional flexibility to meet this 200 percent poverty threshold by allowing certain neighborhood and services areas to categorically meet the income ceiling.

We also strongly recommend that this 200 percent threshold be based on annually updated poverty data and not limited to the 2023 standard.

Reasonably Calculated to Accomplish a TANF Purpose:

“The Department has concluded that it is necessary to articulate a general standard for determining whether an expenditure is reasonably calculated to accomplish a TANF purpose. In accordance with the “reasonably calculated” language of the statute, we propose in this rule to describe the applicable standard as a ‘reasonable person’ test.”

TANF has allowed broad flexibility in the use of federal TANF funds to address one or all four of the purposes of the TANF law. Under current regulation a state may use the grant “in any manner that is **reasonably calculated** to accomplish one or all of four purposes which are: (1) provide assistance to needy families so that children may be cared for in their homes or in the homes of relatives; (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and (4) encourage the formation and maintenance of two-parent families.

HHS will apply this reasonable calculation standard in determining whether it considers an expenditure of federal TANF funds as appropriate. In applying this new test some of the purposes may be more challenging than others. For example, cash assistance and child care would meet most people’s definition of assistance (especially in light of a “needy” family definition). Other areas such as the promotion of marriage and reductions in the incidence of out-of-wedlock births may be more challenging and controversial.



CWLA supports this new adjustment provided there is some additional flexibility to ensure greater equity for populations that have been marginalized and those who experience disproportionality and disparities in child welfare and other human services. We suggest that in some areas, such as teen pregnancy prevention and home visitation, the Health Resources and Services Administration’s (HRSA) **collection of evidence-based programs that meet an evidence base standard should automatically be eligible or covered under this new regulation.** If family preservation or reunification or other child welfare services are allowable under the Title IV-B programs, they too should automatically meet this test. Additionally, some human services may not meet an evidence-based standard, but they are vital to ensuring that children are able to remain at home; these may include meals and food banks, diaper banks or other innovations that emerged during the pandemic (internet and zoom-like services) and similar supports.

Finally, we would also propose that if a state is attempting a new program with some form of evaluation that states be allowed to test such programming. While we support better targeting of funding we also don’t want to see future administrations unnecessarily limit innovation.

Child-only Grants Consideration

As noted above, one of the important uses of TANF funding is for child-only grants, which provide a vital source of support and income for kinship and relative caregivers outside of the child welfare system. Although the proposed rule does not include changes to the child-only grants, **CWLA suggests that HHS include in the final rule specific instruction that child-only grants should not be subject to proposed changes.** It is particularly necessary to clarify that the adults receiving the grants would not be subject to the threshold of 200% of the federal poverty line or to a determination of whether the child/family qualifies as “needy.”

Exclude Third-Party, Non-Governmental Spending as Allowable MOE

“Under current rules, states may count non-governmental expenditures by non-profit organizations, corporations, or other private parties as contributions to state MOE. While these expenditures represent efforts made to serve low-income families in a state, they do not reflect the effort made by a state. In other words, they constitute expenditures that other organizations make, and a state reports them as MOE as if the state itself had made the expenditure. The Department proposes revising the MOE requirement to prohibit a state from counting third-party, non-governmental spending as its own, and to ensure that states themselves are investing in programs that meet TANF purposes, as was the original intent of the statute.”

HHS proposes to restore the original provisions of the 1996 TANF law by not allowing the counting of non-state funds (including in-kind services) as part of a state’s maintenance of effort (MOE) requirement.



CWLA supports this regulation to achieve greater state investment of their own dollars towards the TANF program to support children and families, as was Congress' intent in creating the MOE requirement. This change, enacted in 2004, allows states to count not just their funding to a non-profit agency, but they can count an equal amount of that agency's spending or in-kind services as part of the required state MOE. While some will argue this is an incentive for states to use their state TANF funds to provide funding to human service agencies, we believe it may be having the opposite effect. In effect, being able to count an agency's funding and/or services as part of the state's spending allows states to reduce their obligation.

Historically, but especially during the pandemic, non-profit agencies have been the backbone to human services. This is true of welfare, child welfare, child care and many other vital human services. We need to strengthen our support at the local, state, and federal level and we believe this will direct more state funding toward these services.

While federal funding has not kept pace with inflation neither has the required state MOE of 80 to 75 percent of welfare spending that existed in 1996. The 1996 TANF formula was frozen in time and state budgets are much higher in 2023 than they were in 1996. This discrepancy requires a legislative fix and **CWLA asserts that Congress should increase the overall federal funding level as the next step.**

Conclusion

We thank HHS for the opportunity to offer these comments and questions in response to the Notice of Proposed Rulemaking regarding changes to the TANF program. As the nation's oldest and largest membership coalition of child welfare service providers, and as a national advocacy and standard-setting organization, CWLA supports the effort to ensure that the limited dollars available are used to serve the families most in need. We look forward to working with the relevant federal, state, and local partners in implementing meaningful reform to better serve children and families.