



U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS
1139 LONGWORTH HOUSE OFFICE BUILDING
Washington, DC 20515

November 28, 2023

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Re: Strengthening Temporary Assistance for Needy Families (TANF) as a Safety Net and Work Program [RIN 0970-AC99]

Dear Secretary Becerra,

We write to request the Office of Family Assistance (OFA), Administration for Children and Families' (ACF) withdraw its proposed rule, issued October 2, 2023, to amend regulations in the TANF program. The proposed rule goes well beyond previous regulatory actions and statutory authority granted to the Department, mirrors legislative proposals currently under consideration by our Committee, and lessens the impact of TANF reforms included in the recently passed bipartisan *Fiscal Responsibility Act* (P.L. 118-5).

Instead, we call on the Administration to work with the Committee to develop a bipartisan proposal with legislative changes to strengthen accountability in TANF.

TANF is a key federal program in the fight against poverty. It provides \$16.5 billion in federal funding to states for direct cash assistance and non-assistance activities to further four statutory purposes:¹

- Provide assistance to needy families so that children can be cared for in their own home or in the home of relatives;
- End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- Prevent and reduce incidence out-of-wedlock pregnancies; and
- Encourage the formation of two-parent families.

As the authorizing Committee with legislative jurisdiction over TANF, we share many of the Administration's concerns that TANF is not focused on achieving these statutory purposes. As Work and Welfare Subcommittee Chairman LaHood stated at a July hearing, "current TANF law lacks basic financial safeguards...it's time to reclaim TANF funds to ensure dollars are

¹ 42 U.S.C 601

intentionally focused on removing barriers to work, reducing dependency, and growing the capacity of individuals to realize their full potential.”²

However, changes in the proposed rule are in clear violation of Congressional restrictions placed on the Department’s ability to regulate. When TANF was created with bipartisan support and signed into law by President Clinton in 1996, the overarching goal and stated purpose in statute was “to increase the flexibility of States.”³ Likewise, the Committee report emphasized the importance of state flexibility seven times and stated that TANF’s purpose is “to increase state flexibility in providing assistance to needy families...”⁴ To protect this purpose, Congress explicitly limited the ability of the Executive branch from issuing regulations for the TANF program:

*Sec. 417 Limitations on Federal Authority.*⁵

No officer or employee of the Federal Government may regulate the conduct of States under this part or enforce any provision of this part, except to the extent expressly provided in this part.

The Administration itself has acknowledged such limitations. In President Biden’s budget for Fiscal Year 2024 ACF proposed new statutory authority to collect more comprehensive data on TANF to improve monitoring of non-assistance expenditures and activities, including to develop an improper payment rate for TANF, as required by the Payment Integrity Information Act of 2019.⁶ The agency has repeatedly stated it otherwise lacks the authority to make this change.⁷

Specifically, in its discussion of how the agency will implement proposed changes to determine if a TANF expenditure is “reasonably calculated to accomplish a TANF purpose,” the Administration singles out crisis pregnancy centers and preemptively suggests these would no longer be allowable should the proposed rule become final. Unlike the rule’s discussion of other TANF-funded activities, the agency suggests these expenditures would be disallowed irregardless of a state’s ability to provide justification that such activity meets one of the four TANF purposes.⁸ We strongly oppose such a change which would disproportionately impact pro-life states and impede on state flexibility.

We are also concerned that the Administration is acting to lessen the impact of the recently passed bipartisan *Fiscal Responsibility Act* (P.L. 118-5). Specifically, this rule would create a new “significant progress” criterion that would reduce penalties for states that fail to meet the work participation requirement. This directly contradicts and undermines the substantive reforms

² “Where is all the Welfare Money Going? Reclaiming TANF Non-Assistance Dollars to Lift Americans Out of Poverty,” Committee on Ways and Means, Subcommittee on Work and Welfare, July 12, 2023.

³ 42 U.S.C. 601

⁴ H.R. Conference Report No 104-15 (1996)

⁵ 42 U.S.C. 617

⁶ Fiscal Year 2024 Administration for Children and Families, Justification of Estimates for Appropriations Committees, Department of Health and Human Services.

⁷ “HHS Lacks Adequate Information to Assess Risk and Assist States in Managing Improper Payments,” Government Accountability Office, GAO-04-723.

⁸ 88 FR 67705

Congress enacted in May, on a bipartisan basis, to restore the integrity of state work participation rate requirements by closing loopholes.

In addition to the landmark bipartisan changes enacted in May, this Committee has clearly demonstrated its intent to continue its work on TANF:

- On June 16, 2023, the Committee sent a detailed letter to ACF requesting information on the agency's efforts to promote accountability and safeguard TANF funds.⁹ In this letter, signed by all Republican members of our Committee, we specifically asked for more information on possible limitations your agency faces in TANF oversight. In her response, Assistant Secretary Contreras indicated her willingness to work with the Committee to improve TANF, "we look forward to working with the Committee on this and other areas to improve the TANF program's effectiveness in accomplishing our shared goal of alleviating poverty and creating opportunities for economic well-being for all families."¹⁰
- On July 12, the Committee held a hearing on: "Where is all the Welfare Money Going? Reclaiming TANF Non-Assistance Dollars to Lift Americans Out of Poverty."¹¹ At this hearing, members heard from witnesses about recent headlines from Mississippi, where auditors flagged at least \$77 million in misused TANF funds from 2017 to 2020.¹² In addition, witnesses identified problems in current law that open the door for diversion of funds away from TANF's core purposes and creates an environment ripe for waste, fraud, and abuse. This hearing demonstrated growing consensus on the need for accountability reforms in TANF spending.
- On September 25, 2023, the Committee requested the Government Accountability Office conduct an in-depth review of TANF spending¹³ including: a review of state budgeting and expenditure reporting practices; populations served by the program; performance metrics used by states to assess the effectiveness of non-assistance spending; a status of federal and state audits and any penalties taken by the agency; and a review of state transfers and direct spending on child care and child welfare.

Despite Assistant Secretary Contreras' stated desire to work with the Committee, we are disappointed that the Administration has decided to legislate through executive action rather than work with Congress on legislative solutions.

This proposed regulatory action provides evidence that there is an opportunity for bipartisan action. We invite you to acknowledge our shared goal to implement lasting bipartisan legislative

⁹ Ways and Means Republicans Demand Answers on Welfare Fraud in Mississippi Scandal Involving Millions in Misspent Temporary Assistance for Needy Families (TANF) Fund, June 16, 2023.

¹⁰ Letter from U.S. Department of Health and Human Services, Administration for Children and Families, Assistant Secretary, January Contreras, to Chairman Jason Smith and Members of the Committee, July 11, 2023.

¹¹ "Where is all the Welfare Money Going? Reclaiming TANF Non-Assistance Dollars to Lift Americans Out of Poverty," Committee on Ways and Means, Subcommittee on Work and Welfare, July 12, 2023.

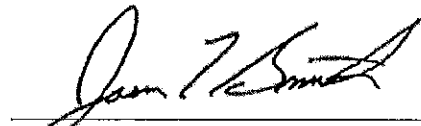
¹² "Auditor's Office Questions Over \$90 Million in Spending of Welfare Grants and Other Funds," Mississippi Office of the State Auditor, May 4, 2020.

¹³ "Smith, LaHood Call on Government Watchdog to Investigate Uses of TANF Funds," September 25, 2023.


reforms to strengthen TANF as a safety net and work program -- and to encourage such action from your Democrat counterparts in Congress. This is consistent with your own testimony before our Committee during the 117th Congress, in which said you would welcome the opportunity to work with Congress on TANF reauthorization and reforms.¹⁴

By working together, we can provide the certainty that states need to lift families out of poverty.

Sincerely,



Jason Smith
Chairman
Committee on Ways and Means



Darin LaHood
Chairman, Work and Welfare Subcommittee
Committee on Ways and Means

¹⁴ "Hearing on the President's Proposed Fiscal Year 2023 Budget," Committee on Ways and Means, April 2022.