CLASP
The Center for Law and Social Policy

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

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 Center for Law and Social Policy (CLASP) submits these comments 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 and particularly the definition of "needy" families as those with incomes at or below 200 percent of the federal poverty line (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.

The Center for Law and Social Policy (CLASP) is a national, nonpartisan nonprofit advancing anti-poverty policy solutions that disrupt structural and systemic racism and sexism and remove barriers blocking people from economic security and opportunity. We work at the federal and state levels, supporting policy and practice that makes a difference in the lives of people living in conditions of poverty. CLASP works to develop and implement federal, state, and local policies (in legislation, regulation, and implementation) that reduce poverty, improve the lives of people with low income, and create pathways to economic security for everyone. That includes directly addressing the barriers people face because of race, ethnicity, gender, disability, and immigration status. Through high-quality analysis grounded in data and on-the-ground experience, effective advocacy, a strong public voice, and hands-on technical assistance, CLASP develops and promotes new ideas, mobilizes others, and provides guidance to government leaders and advocates to help them implement strategies that improve the lives of people across America. CLASP works to amplify the voices of directly impacted workers and families and help public officials design and implement effective programs.

These comments draw on CLASP's deep expertise related to TANF and ways that states have used the block grant both to provide assistance to families with children with low incomes and in other ways that are not aligned to the purposes of TANF. CLASP has worked on TANF policy since it was first enacted, including providing detailed comments on the original regulations and providing intensive technical assistance to states and advocates over the years since.

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 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] The MOE level is set at 75 percent or 80 percent of the amount that each state had spent on AFDC prior to the creation of TANF.

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]

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

[2] Elizabeth Lower-Basch and Ashley Burnside, *TANF 101: Block Grant,* Center for Law and Social Policy, July 2022. https://www.clasp.org/publications/report/brief/tanf-101-block-grant/.

[3] Lower-Basch and Burnside.

[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-following-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.*, "Family and child 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.

However, TANF reaches far fewer families and provides less cash assistance to families than AFDC did, leaving more families in deep poverty. The Center on Budget and Policy Priorities (CBPP) has calculated that in 2020, for every 100 U.S. families with children living in poverty only 21 received TANF assistance, down from 68 when lawmakers created TANF.[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. This abuse of the TANF block grant comes at the expense of direct cash assistance or work supports for families who desperately need them. In FY 2020, states only spent 22.3 percent of TANF and MOE funds on basic assistance (i.e., ongoing cash), down from 71 percent in FY 1997.[9]

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

1) **The proposed definition of "needy" as households at or below 200 percent 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 percent of the federal poverty level (FPL) or 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 percent FPL when applying state-established standards.[11] As discussed in the NPRM, the original TANF rule allowed states flexibility in defining needy, but reserved the option to revisit that decision if states made choices that undermined the purposes of the program. Based on the evidence of the past 25 years, some states have indeed abused that flexibility in ways that undermine the intent of the program. Because the word "needy" is referred to in both the statutory purposes of the program, and in the definition of "eligible families,"—and is thus needed to assess whether states should be penalized for misuse of funds or failure to meet the MOE requirements—it is well within the Department's regulatory authority to limit these abuses.

As the Department notes, the proposed ceiling on the definition of "needy" is broad enough to allow TANF funded assistance and services to reach the 35 percent of children in the United

[8] Aditi Shrivastava and Gina Azito Thompson, *TANF Cash Assistance Should Reach Millions More Families to Lessen Hardship*, Center on Budget and Policy Priorities, February 2022, https://www.cbpp.org/research/family-income-support/tanf-cash-assistance-should-reach-millionsmore-families-to-lessen.

[9] Lower-Basch and Burnside.

[10] NPRM at 67700.

[11] *Id*.

States that live at or below this threshold,[12] but will prevent the use of funds to benefit higher income households who were not the contemplated beneficiaries of the program. Direct assistance is often the best way to improve outcomes for low-income families.[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 percent FPL[14]

The Department asks for input on strategies for minimizing administrative burden in the implementation of this proposed ceiling on the term "needy." We urge the Department to specify that states still have the opportunity to mix TANF or MOE funds with other funding sources in order to provide services that are available to families at a higher income threshold. For example, many states use TANF funds to help pay for the refundable portion of state earned income tax credits. Depending on the structure of the state tax system, it is possible that a portion of the expenditures go to families with incomes above 200 percent of the FPL; the Department should make clear that states can still claim the portion of expenditures that go to families under this threshold as TANF spending.

In some cases, such as food pantries or domestic violence shelters, it may be undesirable or harmful for providers to collect income information about each family served. The Department should make clear that it is acceptable for states to use a reasonable methodology to allocate the portion of spending that can be claimed for TANF or MOE purposes without requiring individual income eligibility determinations.

CLASP believes that a 200 percent 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. We acknowledge that some of our state partners in higher cost of living states have expressed concerns about this limit, reasonably arguing that in their states families with incomes above 200 percent FPL can indeed struggle to meet their basic needs. If the Department finds this argument persuasive, we urge that the limit only be raised in states that can both show that the cost of living is higher and that they are effectively reaching families with the lowest incomes through their cash assistance program.

2) Adoption of a "reasonable person" standard will help prevent the use of TANF funds that are not "reasonably calculated to accomplish a TANF purpose"

By statute, both TANF and MOE spending must be "reasonably calculated" to meet one of the purposes of TANF. However, in practice, states have only needed to claim that an activity was aimed at one of the purposes of TANF, and there has been no standard for assessing the reasonableness of this claim. States have used TANF for an extraordinarily wide range of

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[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] Diana Azevedo-McCaffrey and Ali Safawi, *To Promote Equity, States Should Invest More TANF Dollars in Basic Assistance,* Center on Budget and Policy Priorities, January 2022, 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.

services and have not been held accountable for inappropriate uses of funding. In practice, many states have supplanted funding for services that states would otherwise have had to pay for, such as the regular operation of the state child welfare system or drug courts.[15] States can then use the general revenue that has been freed up for other purposes completely unrelated to TANF, or for tax cuts. One expert on TANF notes that "in many states, it [TANF] has become a slush fund used to supplant state spending and fill budget holes."[16]

CLASP therefore strongly supports the Department's attempt to provide guardrails to ensure that TANF funds are not used for activities that a "reasonable person" would not believe to be reasonably calculated to accomplish a TANF purpose. The NPRM sets out a five factor test 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 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.[17] In addition to these factors, the rule states that 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.[18]

CLASP further recommends the Department should pay attention to whether the populations in the research or previous expenditures were comparable to the groups for whom the state is proposing to provide TANF-funded programs or services. For example, research supports the intuitive idea that both need-[19] and merit-based financial aid[20] have more of an impact on college persistence of students with low-incomes than more affluent students. Similarly, college attendance in turn has been shown to delay childbearing and reduce the total number of children born for women from comparatively disadvantaged social backgrounds, but not for more advantaged women.[21]

Transparency on application of criteria

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[15] Jenni Bergal, "States Raid Fund Meant for Needy Families to Pay for Other Programs," Stateline, July 2020, https://stateline.org/2020/07/24/states-raid-fund-meant-for-needy-families-to-pay-for-other-programs/.

[16] Peter Germanis, *Expanding Work Requirements in Non-Cash Welfare Programs: TANF is NOT a Model, but a Cautionary Tale*, October 2018. https://petergermanis.com/wp-content/uploads/2021/02/TANF-No-Model.pdf.

[17] NPRM at 67703.

[18] *Id*.

[19] Sigal Alon, "Who Benefits Most from Financial Aid? The Heterogeneous Effect of Need-Based Grants on Students' College Persistence*," *Social Science Quarterly* 92 (July 26, 2011): 807–29, https://doi.org/10.1111/j.1540-6237.2011.00793.x.

[20] Breyon J Williams, "Who Does Aid Help? Examining Heterogeneity in the Effect of Grant Aid on Achievement," March 2019, http://ipl.econ.duke.edu/seminars/system/files/seminars/2212.pdf .

[21] Jennie E. Brand and Dwight Davis, "The Impact of College Education on Fertility: Evidence for Heterogeneous Effects," *Demography* 48, no. 3 (July 7, 2011): 863–87, https://doi.org/10.1007/s13524-011-0034-3.

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 employment services for needy parents - clearly fall within the plain language of the statutory purpose.[22] Other expenditures – such as the now notorious volleyball stadium at the University of Southern Mississippi[23] – are clearly not allowable. However, there are some areas of spending where it is not immediately obvious whether the outlined criteria will be met.

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.[24] To reduce the time and effort needed for states to request the Department's views on particular spending, we recommend that the Department maintain a public, online list of expenditures that have been found to satisfy the "reasonable person" standard outlined in the rule and the evidence that was submitted in support of them. While the Department notes that seeking prior approval of expenditures is not required under the proposed rule,[25] 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 substantially the same and for similar populations.

The Department should similarly make publicly available a list of expenditures that it does not believe meet this standard (building on the examples provided in the preamble to the NPRM) and any state justifications that have been found to fall short of the named standard. This will reduce effort for both states and the Department, and also allow external parties to assess the quality of the evidence that has been offered.

These lists should also be incorporated into the guidance provided to the auditors who conduct the single state audits, which are the primary basis for findings of misuse of funds.[26]

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[22] NPRM at 67703.

[23] Ashton Pittman and William Pittman, "In-Depth: How Brett Favre Got $6 Million in Welfare For A Volleyball Stadium," *Mississippi Free Press*, September 17, 2022, https://www.mississippifreepress.org/27465/in-depth-how-brett-favre-secured-6-million-in-welfare-funds-for-a-volleyball-stadium.

[24] NPRM at 67704.

[25] *Id.*

[26] 42 CFR 262.1 "What Penalties Apply to States?"

Examples of activities likely not allowable under the new criteria

The preamble to 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.[27] We discuss a few of them here.

Child welfare investigations

For example, the Department notes that under this new standard some child welfare system activities states currently count toward MOE spending would likely 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. 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. By contrast, child welfare activities primarily aimed at preventing children from having to be removed from their homes, or supporting reunification with their parents or kin caregivers, would continue to be allowable. We agree with the Department's categorization of "parenting skills classes, family reunification efforts, supports for parents preparing for reunification, and providing concrete and economic supports to prevent removal from home" as reasonably related to TANF purpose (1).

Higher education

We agree with the Department's assessment that higher education for needy parents is directly related to purpose (2). There is a large body of evidence showing that post-secondary education can pay off for parents with low-income, including those receiving TANF cash assistance, by leading to lower rates of unemployment and higher earnings.[28] TANF can appropriately be used to pay for tuition assistance, child care, and other education and training supports for "needy families."

Crisis pregnancy centers

We strongly agree with the Department that "programs that only or primarily provide pregnancy counseling to women only after they become pregnant likely do not meet the reasonable person standard because the connection to preventing and reducing out-of-wedlock pregnancies is tenuous or non-existent." At least 7 states have been known to use TANF funds to support so-called "crisis pregnancy centers," which provide pregnant people with misleading information

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[27] NPRM at 67704-06.

[28] Randi Hall. *Expanding Education and Training Opportunities Under TANF*, CLASP, July 2016. https://www.clasp.org/wp-content/uploads/2022/04/07.201620Expanding20Education20and20Training20Opportunities20under20TANF.pdf.

designed to prevent them from seeking abortions.[29] Denial of wanted abortions can cause economic, physical, and emotional harm to both the people denied abortions and their children.[30] We acknowledge that providing pregnant people or parents of newborns with cash, baby supplies, or other material supports is consistent with TANF purpose (1). However, although crisis pregnancy centers (CPCs) often draw people in with promises of assistance, in reality a study of these centers found that in the overwhelming majority of cases, provision of these goods was contingent on the pregnant person's participation in "earn while you learn" classes or counseling, Bible studies, abstinence seminars, video screenings, or other ideological CPC programming."[31] Such programs are likely in violation of of the "charitable choice" regulations at 45 CFR 260.34(c) which prohibits TANF or MOE funds from being used for "inherently religious activities" and, even when such activities are privately funded, they must be offered "separately, in time or location" from the TANF-funded activities, and participation must be voluntary.

In addition, these states are in violation of the requirement in the same regulations to offer comparable services – worth the same amount – to individuals who object to the religious provider, and to notify all of the applicants or recipients of such services that they have the right to alternative services. We urge the Department to make clear to states that if TANF or MOE funds are being used to provide diapers, cash, or other benefits through crisis pregnancy centers, recipients have a right to receive these same benefits with similar ease without being subject to proselytization.

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

Each state must meet a maintenance-of-effort (MOE) requirement under TANF by having "qualified state expenditures" of at least 80 percent of the amount the state spent on a specified set of programs in FY 1994, before TANF was enacted, or 75 percent if the state satisfies its federal work participation requirement for the fiscal year.[32] 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.[33] 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

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[29] Bryce Covert and Josh Israel. "The States That Siphon Welfare Money to Stop Abortion," *ThinkProgress,* October 3, 2016. https://archive.thinkprogress.org/tanf-cpcs-ec002305dd18/.

[30] "The Harms of Denying a Woman a Wanted Abortion: Findings from the Turnaway Study," UCSF, Accessed 11/30/2023 from: https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf.

[31] The Alliance State Advocates For Women's Rights & Gender Equality. *Designed to Deceive: A Study of the Crisis Pregnancy Center Industry in Nine States*. The Alliance. (2021). https://alliancestateadvocates.org/wp-content/uploads/sites/107/Alliance-CPC-Study-Designed-to-Deceive.pdf.

[32] 42 U.S.C. 609(a)(7)(B)(ii).

[33] 42 U.S.C. 609(a)(7)(B)(i).

State" including cash donations from non-Federal third parties and the value of third party in-kind contributions," if certain requirements were met.[34] 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.[35] 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.[36] 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 reporting counting such expenditures at least once between FY 2007 and FY 2015.[37] We note that many of the states who counted such expenditures during this period did so in order to draw down additional funds from the TANF Emergency Fund during the Great Recession.[38] For example, states that operated subsidized employment programs were able to count the employers' costs of training and supervising participants towards the state share of these programs.

However, at this point, we are aware of several states that are now or have in the past claimed significant amounts of private charitable expenditures as MOE, replacing state contributions. For example, Utah reports counting $3.8 million in third party expenditures in 2023 toward its $24.9 million MOE requirement.[39] In 2012, Georgia claimed $83.5 in third party funds towards its MOE requirement, nearly half of its total MOE claimed.[40]

We believe preventing states from counting non-governmental spending toward its MOE will result in more state and local spending to meet MOE requirements and more total spending for allowable services under TANF designed to assist needy families. Moreover, reporting indicates that in some cases, third-party spending that has been claimed towards MOE has been used to

[34] 71 FR 37454, 37470, June 29, 2006.

[35] NPRM at 67706.

[36] *Id*.

[37] 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.

[38] Liz Schott, *Opportunities under the TANF Emergency Fund Created by the Federal Recovery Act,* Center on Budget and Policy Priorities, July 2009. https://www.cbpp.org/research/opportunities-under-the-tanf-emergency-fund-created-by-the-federal-recovery-act.

[39] Josh Pittman, *Review of TANF Programs and Expenditures,* Utah State Legislature, Legislative Fiscal Analyst, January 2023. https://le.utah.gov/interim/2023/pdf/00000782.pdf.

[40] Claire S. Richie, *Georgia TANF Funds Sink to New Low*, Georgia Budget and Policy Institute, September 2012, https://gbpi.org/wp-content/uploads/2012/09/Georgia-TANF-Funds-Sink-to-New-Low09202012-policy-report-final.pdf We were not able to locate more recent data on Georgia's claiming of third party MOE.

support services of faith-based providers, without secular alternatives being made available,[41] which is a violation of the charitable choice regulations.[42]

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

4) We support allowing states to count an eleventh holiday, recognizing the new federal holiday of Juneteenth.

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.[43] 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 participants honor this new federal holiday. Juneteenth celebrates the events of June 19th, 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.[44] We support the Department's effort to ensure states will not be penalized when TANF programs and participants recognize Juneteenth.

5) We support flexibility in data match requirements

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 (now the U.S. Citizenship and Immigration Services); 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.

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[41] Eli Hager, *Utah Makes Welfare So Hard to Get, Some Feel They Must Join the LDS Church to Get Aid*, ProPublica, December 2021, https://www.propublica.org/article/utahs-social-safety-net-is-the-church-of-jesus-christ-of-latter-day-saints-what-does-that-mean-if-youre-not-one.
[42] 45 CFR 260.34.
[43] NPRM at 67707.
[44] The White House, *A Proclamation on Juneteenth Day of Observance, 2023*, June 2023, https://www.whitehouse.gov/briefing-room/presidential-actions/2023/06/16/a-proclamation-on-juneteenth-day-of-observance-2023/.

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 in satisfying IEVS data matching requirements despite being less "complete." However, we ask that the Department monitor the use of alternative data sources, and ensure that recipients have the opportunity to see and contest the data that is used to determine their benefits and to appeal if they believe that the data is inaccurate. In addition, we urge the Department to share lessons learned from states that use alternative data sources so that other states may benefit from this experience and adopt the data sources that provide the best balance of burden, accuracy and value in programmatic operations.

We also recommend that the Department provide states with flexibility not to use data matches for non-assistance benefits when they believe that such matches do not add value to the eligibility determination process.

6) We support the revised definition of significant progress

The proposed rule would also clarify the "significant progress" criteria following a work participation rate (WPR) corrective compliance plan (CCP). Under this rule, 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.[45] The authority to reduce a penalty based on the "degree of noncompliance" is explicitly provided by statute at section 409(a)(3)(C) of the Social Security Act.

This change addresses a situation where failure of the two-parent WPR could have a disproportionate impact on a state's penalty. As the Department notes, two-parent households typically make up 10 percent or less of a state's total TANF caseload.[46] Recognizing this, when a state fails only this rate, the overall penalty that can be imposed is adjusted pro-rata by the share of the caseload that is in the two-parent rate. However, under current policy, a state that is under a corrective compliance plan and comes fully into compliance for the all family's rate, but fails to meet the target under the two-parent WPR is ineligible for penalty relief. In some cases, this means that just a handful of families falling short of their required hours could cost the state millions in penalties. For example, in FY 2022, Wyoming fell short of meeting the required participation rate for two-parent families. However, only 15 two-parent families were included in the Wyoming work participation rate calculation, of whom 11 were counted as participating.[47]

This proposed change is both logical and fair. This change will also mitigate the incentive for states to withhold TANF benefits from needy two-parent families because of concerns about meeting the WPR. As such, it is consistent with TANF's purpose of "encouraging the formation and maintenance of two-parent families."

7) Clarity re disseminating program information.

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[45] NPRM at 67708.

[46] NPRM at 67708-09.

[47] Office of Family Assistance, *State Work Participation Rates - Fiscal Year 2022*, October 2023, https://www.acf.hhs.gov/ofa/data/work-participation-rates-fiscal-year-2022.

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.[48] 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.[49] 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 responsibility to provide for needy residents onto 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.

The NPRM proposes that these changes will become effective at the start of the next fiscal year after the rule is finalized. Given the timing of the NPRM, it is possible that the rule could be finalized close to the start of the federal fiscal year, when many state legislatures are out of session. For these reasons, we suggest that the changes should become effective at the start of the next fiscal year that is at least 90 days after the rule is finalized.

Thank you for your attention to our comments. For further questions, please contact Elizabeth Lower-Basch (elowerbasch@clasp.org) and Ashley Burnside (aburnside@clasp.org.)

Sincerely,

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[48] 45 CFR 263.0(b)(1)(i).
[49] NPRM at 67709.