

Jamie Bryan Hall
Research Fellow, Quantitative Analysis
Center for Data Analysis
The Heritage Foundation

Rachel Sheffield
Research Fellow, Welfare and Family Policy
Center for Health and Welfare Policy
The Heritage Foundation

214 Massachusetts Avenue, NE
Washington, DC 20002

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

RE: Comments on Proposed Rule: Strengthening Temporary Assistance for Needy Families (TANF) as a Safety Net and Work Program (Docket No. ACF-2023-0010, RIN 0970–AC79)

Submitted via www.regulations.gov.

Dear Secretary Becerra:

We write to comment on the Notice of Proposed Rule Making (NPRM) for “Strengthening Temporary Assistance for Needy Families (TANF) as a Safety Net and Work Program” (Docket No. ACF-2023-0010, RIN 0970–AC79), pursuant to the notice and comment process outlined in and protected by 5 U.S.C. § 553(c). Specifically, we urge you to withdraw the proposed rule, for the following five reasons:

1. The proposed rule exceeds your statutory authority to regulate TANF.

42 U.S. Code § 617 reads, in full, “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.” Congress has not expressly granted you the authority to issue a rule to limit the states’ ability to define the term “needy” or to establish detailed standards for what constitutes a use of funds “reasonably calculated to accomplish a TANF purpose.” We agree with the sentiments expressed by Chairman Jason Smith and Work and Welfare Subcommittee Chairman Darin LaHood of the House Ways and Means Committee in their letter to you dated November 28, 2023. To proceed with the proposed rule would hinder efforts in Congress to achieve a lasting compromise and to provide both clarity and certainty to states regarding allowable uses of TANF funds, as well as invite costly litigation. Therefore, we urge you to withdraw the proposed rule.

2. Targeting state grants to pro-life centers for extra scrutiny is arbitrary and capricious.

The NPRM demonstrates a lack of understanding of and appreciation for the wide array of services provided by pro-life organizations known as pregnancy resource centers or crisis pregnancy centers, diminishing their efforts to prevent out-of-wedlock pregnancies (from the same woman in the future, if not in the instance that initially brings her into contact with the center) and ignoring their role furthering the other three statutory purposes of TANF. We agree with the comments of Senator Cindy Hyde-Smith in her letter to you dated December 1, 2023. To proceed with a rule that requires pro-life organizations to demonstrate a higher standard of effectiveness than is required of other organizations with differing ideologies in order to be eligible for TANF grants would render the rule arbitrary and capricious.

3. Limiting the term “needy” to include only families with income less than 200 percent of the federal poverty guidelines will further penalize marriage, undermining TANF’s statutory purpose to “encourage the formation and maintenance of two-parent families.”

Most adults on TANF are women, and most women on TANF are unmarried.¹ A single mother is required to report only her income, not the income of the child’s father, while a married couple is required to report both spouses’ income.² Reported income will generally rise significantly if a couple weds.³ If TANF benefits were to be disallowed entirely if a married couple’s joint income were to exceed any particular threshold, it will necessarily penalize and discourage marriage.

As it stands, states have the flexibility to determine which families qualify as “needy”. If a couple marries, states can choose to continue to provide benefits to that family. This can help ease the marriage penalties in other means-tested government programs, nearly all of which impose marriage penalties.

As a matter of policy, it would be reasonable for Congress to define “needy” single parents as envisioned in the proposed rule. However, if a single parent chooses to marry, the couple should not then be automatically disqualified from receiving TANF benefits if their joint income exceeds an arbitrary limit.

Requiring states to limit TANF benefits and services to only those households with incomes below 200 percent of the federal poverty line would effectively force states to increase marriage penalties in the TANF program, which directly conflicts with TANF’s goal of promoting marriage and encouraging two-parent families.

4. The Regulatory Impact Analysis for the proposed rule does not account for costs related to allowing mailers and printed materials to count as program costs rather than as administrative costs.

You should provide an estimated summary of annual impact for your proposal to “clarify the existing regulatory text about the allowability of costs associated with disseminating program information.” The proposed rule proposes to make explicit that disseminating program information counts as a program

¹ https://www.acf.hhs.gov/sites/default/files/documents/ofa/fy2023_tanf_caseload.pdf and https://www.acf.hhs.gov/sites/default/files/documents/ofa/fy2022_characteristics.pdf

² <https://www.heritage.org/welfare/report/child-poverty-has-been-cut-half-1996-welfare-reform>

³ <https://www.heritage.org/marriage-and-family/report/increasing-marriage-would-dramatically-reduce-child-poverty>

cost rather than as an administrative cost, and that states are thus not limited by the 15-percent cap on administrative expenses when using funds to disseminate program information.

Disseminating TANF program information has significant fiscal impact by increasing the number of people who enroll in the Supplemental Nutrition Assistance Program (SNAP). Under a policy called “broad-based categorical eligibility,” a person can qualify for SNAP simply by receiving a TANF brochure or other forms of TANF program information. Receiving program information counts as receiving a TANF program service, and by receiving a program service a person is considered categorically eligible for SNAP. People enrolled in SNAP through broad-based categorical eligibility are not subject to asset tests, meaning that broad-based categorical eligibility widens the pool of people who are eligible for SNAP. SNAP enrollment has increased dramatically since broad-based categorical eligibility was put into place under the Clinton Administration in the late 1990s.⁴

Broad-based categorical eligibility is widely used to enroll people in SNAP. In 2012, the U.S. Department of Agriculture estimated that nearly 70 percent of SNAP households were enrolled in SNAP by receiving information like a TANF brochure or calling a TANF hotline number.⁵ The Foundation for Government Accountability estimates that more than five million people are receiving SNAP who otherwise would not be eligible for the program. These five million recipients increase SNAP costs by approximately \$7 billion annually.⁶

Given the significant fiscal impact that distributing TANF program information has on SNAP enrollment, you should provide a financial impact estimate of this proposed change, as it could increase the amount of TANF information states distribute.

That you propose to clarify that program information dissemination is not subject to the administrative expenses cap suggests that you believe some states are unclear that they can spend more money on program information dissemination. If this is the case, some states may increase their dissemination of TANF materials if the rule is changed.

The proposed change may also increase the number of people enrolling in TANF or other means-tested programs, as it could increase the number of people who receive information about them. Potential cost increases in TANF enrollment and other means-tested programs should also be provided and considered.

5. The agency has not conducted the statutorily required Family Policymaking Assessment.

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Public Law 105-277), requires federal agencies to conduct a Family Policymaking Assessment before implementing any policy or regulation that may affect family well-being. In this case, the statutory requirement to “assess such actions with respect to whether ... the action strengthens or erodes the stability or safety of the family and, particularly, the marital commitment” and “the action increases or decreases disposable income or poverty of families and children” is highly pertinent.

⁴ <https://www.fns.usda.gov/snap/letter-regions-categorical-eligibility>

⁵ <https://www.usda.gov/sites/default/files/27601-0002-41.pdf> p. 36.

⁶ <https://thefga.org/research/closing-the-door-to-food-stamp-fraud-how-ending-broad-based-categorical-eligibility-can-protect-the-truly-needy/>

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For the five reasons we have outlined above, we urge you to withdraw the proposed rule.

Respectfully submitted,

Jamie Bryan Hall
Research Fellow, Quantitative Analysis
Center for Data Analysis
The Heritage Foundation

Rachel Sheffield
Research Fellow, Welfare and Family Policy
Center for Health and Welfare Policy
The Heritage Foundation⁷

⁷ Titles and affiliation are provided for identification purposes only. We submit this comment in our personal capacities only and not as employees of The Heritage Foundation.