



Office of the General Counsel

3211 FOURTH STREET NE ■ WASHINGTON DC 20017-1194 ■ 202-541-3300 ■ FAX 202-541-3337

Submitted Electronically

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 Sir or Madam:

On behalf of the United States Conference of Catholic Bishops (USCCB), we respectfully submit the following comments on the proposed regulations, published by the Administration for Children and Families (ACF) of the Department of Health and Human Services at 88 Fed. Reg. 67697 (October 2, 2023), on strengthening Temporary Assistance for Needy Families (TANF).

Society has a responsibility to help meet the needs of those who cannot care for themselves, especially young children.¹ The TANF program is an important tool to help states target the areas of greatest need and provide funds to struggling families, assistance in finding and maintaining employment, and programming to support family stability. The USCCB has consistently advocated for welfare policies to protect human life and dignity, strengthen family life, encourage and reward work, preserve a safety net for the vulnerable, build public/private partnerships to overcome poverty, as well as invest in human dignity² and continues to advocate for significant public investments in TANF so that it can better serve families and individuals in need.³ The value of the TANF block grant has been eroded by inflation, limiting its impact since the program was established. While there are many important and worthy programs serving communities, it is important that the limited TANF funds are targeted to serve their intended

¹ *Moral Principles and Policy Priorities for Welfare Reform*, United States Catholic Conference, 1995, <https://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/upload/Moral-Principles-and-Policy-Priorities-for-Welfare-Reform.pdf>.

² *Moral Principles and Policy Priorities for Welfare Reform*.

³ *Testimony Before U.S. House of Representatives on TANF Re-Authorization*, Kathleen A. Curran, Policy Advisor, The United States Conference of Catholic Bishops, April 11, 2002, <https://www.usccb.org/resources/testimony-us-house-representatives-temporary-assistance-needy-families-program-tanf-re>; *Backgrounder on the Importance of the Social Safety Net*, USCCB Office of Domestic Social Development January 2020, <https://www.usccb.org/resources/backgrounder-importance-social-safety-net-january-2020>.

purpose and those who need them most. We appreciate the Department’s efforts to strengthen TANF and to ensure its funds are used to promote the well-being of vulnerable families and children.

Establishing a Ceiling on the Term “Needy”

We support the proposal to establish a ceiling on the term “needy” so that it may not exceed a family income of 200 percent of the federal poverty guidelines. A foundational principle of Catholic Social Teaching is the option for the poor and vulnerable, which teaches that a basic moral test for our society is how those who are most poor and vulnerable are faring. We are called to put the needs of “the least among us” first. Welfare policies should be judged on their effectiveness in alleviating poverty and on whether they will enhance the lives and dignity of poor children and their families.⁴ In order to help and sustain the most vulnerable among us, TANF funds should be targeted to poor families.

Clarifying When an Expenditure is “Reasonably Calculated to Accomplish a TANF Purpose”

We support much of the proposal to determine when an expenditure is “reasonably calculated to accomplish a TANF purpose” of 1) providing assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; 2) ending the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; 3) preventing and reducing the incidence of out-of-wedlock pregnancies and establishing annual numerical goals for preventing and reducing the incidence of their pregnancies; or 4) encouraging the formation and maintenance of two-parent families.⁵ The USCCB has long stated that any block grant welfare initiative must include adequate accountability and has insisted that states comply with TANF federal rules to help families escape poverty. The national dimensions and consequences of poverty require national standards, safeguards, and protections.⁶ Adopting a “reasonable person” standard will help ensure TANF funds are used to accomplish the goals of the program and better support families and children.

While we thus support the proposed rule’s efforts to ensure that TANF funds are used lawfully and appropriately to best serve families in need, we have serious concerns with the discussion in the preamble regarding pregnancy resource centers (PRCs). 88 Fed. Reg. 67705. Namely, HHS appears to target PRCs and prejudicially set them up to be stripped of TANF funds, based on flawed premises and misunderstandings. HHS names PRCs in the context of “pregnancy counseling” likely not fulfilling the third statutory TANF purpose of reducing out-of-wedlock pregnancies, and effectively suggests that states would have to overcome the evidentiary burdens of the proposed § 263.11(c) in order to provide any TANF funding to PRCs at all.

⁴ *Moral Principles and Policy Priorities for Welfare Reform; 2002 Testimony Before U.S. House of Representatives on TANF; Testimony Before U.S. House of Representatives on Re-Authorization of TANF*, Kathleen A. Curran, Policy Advisor, The United States Conference of Catholic Bishops, February 10, 2005, <https://www.usccb.org/resources/testimony-us-house-representative-re-authorization-temporary-assistance-needy-families>.

⁵ That we support much of the proposal to determine if a program meets these purposes does not imply that we necessarily support every program or practice that can so meet those purposes.

⁶ *Moral Principles and Policy Priorities for Welfare Reform; 2002 Testimony Before U.S. House of Representatives on TANF; Backgrounder on the Importance of the Social Safety Net*.

To be sure, certain PRCs or individual programs of a PRC may be ineligible for TANF funding; and this proposed rule does not automatically bar otherwise eligible PRCs from receiving funds. The framing in the preamble, however, risks mischaracterizing all PRCs and significantly understating the scope of their work. In doing so, it also risks setting up even the TANF-fulfilling work of PRCs for defunding, whether by HHS’s preemptively requiring exacting research that may not be readily available or by dissuading states from taking on a new paperwork burden in affording TANF funding to PRCs. Such a statutorily unsound restriction on TANF would be a detriment ultimately to the vulnerable clients whom TANF is intended to serve.

Contrary to the potential implications of the proposed rule’s discussion, many PRCs may readily fulfill the third statutory purpose of TANF. For example, a PRC may provide information or counseling about chastity or natural family planning, to help prevent future out-of-wedlock pregnancies. The broad range of services by some PRCs can fulfill the other purposes of TANF as well. For example, some provide transportation or child care for clients’ job interviews, contributing to the second TANF purpose “by promoting job preparation, work” Others provide parenting classes which, especially with respect to fathers, can serve the fourth purpose, to “encourage the . . . maintenance of two-parent families.”

In fact, approximately 3,000 PRCs serve about 2 million people per year, many with an array of needed services including sexual risk avoidance, prenatal, and parenting education; referrals for housing, food, adoption, and other services; baby clothes, supplies, and diapers; certain health services; and other career and personal support.⁷ Importantly, TANF funds in particular help to fulfill some of these needs. For example, a little over a month ago, Ohio designated tens of thousands of TANF dollars for, among other things, each of several PRCs that employ such resources for multifaceted pregnancy care, parenting classes, transportation aid (including to work and education settings), and more.⁸

The proposed rule’s targeting of PRCs also raises religious freedom concerns. In a section of the preamble otherwise discussing types of *expenditures* that may or may not be reasonably calculated to accomplish one of the four TANF purposes, ACF conspicuously flags PRCs as *entities* that conduct programs outside of a TANF purpose, seemingly suggesting they deserve special scrutiny as recipients of TANF funding.⁹ ACF is surely aware that – unlike the categories of providers of other services described as TANF-eligible – PRCs are generally religious in nature.¹⁰ The choice to single out PRCs in this manner calls to mind the Supreme Court’s admonition that the “Free Exercise Clause bars even subtle departures from neutrality on matters of religion.”¹¹

⁷ Moira Gaul and Jeanneane Maxon, “Lives Saved Impact at U.S. Pregnancy Help Centers,” *On Point*, Charlotte Lozier Inst., Iss. 83, June 23, 2022, <https://lozierinstitute.org/lives-saved-impact-at-us-pregnancy-help-centers/>; see also Gaul, “Fact Sheet: Pregnancy Centers – Serving Women and Saving Lives (2020 Study),” Charlotte Lozier Inst., July 19, 2021, <https://lozierinstitute.org/fact-sheet-pregnancy-centers-serving-women-and-saving-lives-2020/>.

⁸ Executive Order 2023-11D, “Directing Expenditure of Fiscal Year 2024 TANF Funds by the Ohio Dept. of Job and Family Services, Oct. 26, 2023, <https://governor.ohio.gov/media/news-and-media/governor-signs-executive-order-awarding-funds-to-help-families-in-need-and-encourage-workforce-development>.

⁹ 88 Fed. Reg. at 67704-05.

¹⁰ See, e.g., Brief for State Respondents in Opposition, *Nat’l Inst. of Fam. & Life Advoc. v. Becerra*, U.S. Nos. 16-1140, 16-1146, 16-1153 (May 24, 2017) (arguing that the Supreme Court should not grant certiorari on the Free Exercise Clause question presented in the petition for certiorari submitted by pregnancy resource centers).

¹¹ *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm’n*, 138 S. Ct. 1719, 1731 (2018) (cleaned up).

We insist that any final rule reconcile with the foregoing facts and make clear that PRCs are not especially likely nor presumed to be ineligible to receive TANF funding. Failure to rectify all of these concerns could give the appearance of arbitrary and capricious viewpoint discrimination based on misconceptions or animus against pro-life pregnancy resource centers.

Excluding as Allowable TANF Maintenance-of-Effort (MOE) Expenditures Cash Donations from Non-Governmental Third Parties and the Value of Third-Party In-Kind Contributions

We support excluding third-party, non-governmental spending as allowable maintenance-of-effort (MOE) spending requirements. When discussions around the creation of the TANF program occurred, the United States bishops clearly spoke out against states using welfare reform as an opportunity to reduce their commitment to providing a safety net for the vulnerable.¹² Partnerships between government agencies and community groups should be encouraged but must not be used by states to transfer their own responsibility to serve families in need. The TANF program must have adequate resources in order to reduce poverty and dependency. Like the overall value of TANF block grants, the MOE requirement has also significantly declined in value due to inflation. States must contribute a meaningful portion of TANF costs as they once did under the Aid to Families with Dependent Children (AFDC) program. Counting the efforts and contributions of outside organizations and programs toward the state's MOE requirement allows the state to contribute less to TANF, effectively taking away resources from families. The state must not evade its own essential role in helping attain the common good.¹³

Regulatory Impact and Conclusion

Protection and promotion of the family is a fundamental component of the teachings of the Church and policy priorities of the Catholic bishops. Proposed regulations implementing TANF, of all statutes, should be drafted with the specific aim of helping families. Therefore we urge the Department to conduct the family well-being analysis along the seven factors identified in Section 654 of the Treasury and General Government Appropriations Act of 2000 (Pub. L. 106–58), rather than offering only the unsupported conclusion that the proposed rule would not harm families. 88 Fed. Reg. 67718-19.

As the TANF program was created in 1996, the U.S. Catholic bishops issued “A Catholic Framework for Economic Life.” This document states that “society has a moral obligation, including governmental action where necessary, to assure opportunity, meet basic needs, and pursue justice in economic life.”¹⁴ The TANF program can help respond to this call. We welcome efforts to strengthen it and ensure families who lack resources, opportunity, and stability are given the tools they need to thrive.

¹² *Moral Principles and Policy Priorities for Welfare Reform*.

¹³ Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*, no. 168, 2004, https://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_comp_endio-dott-soc_en.html; United States Conference of Catholic Bishops, *A Place at the Table*, 2002, <https://www.usccb.org/resources/place-table>.

¹⁴ *A Catholic Framework for Economic Life*, U.S. Catholic Bishops, November 1996, <https://www.usccb.org/resources/catholic-framework-economic-life-0>.

Thank you for the opportunity to comment.

Respectfully submitted,

Michael F. Moses
Director, Legal Affairs

Daniel E. Balsarak
Assistant General Counsel and
Director, Religious Liberty