

Temporary Assistance for Needy Families

Program Instruction

U.S. Department of Health and Human Services
Administration for Children and Families
Office of Family Assistance
Washington, DC 20447

No. TANF-ACF-PI-2007-08

Date: November 28, 2007

TO: State Agencies and Tribes Administering the Temporary Assistance for Needy Families (TANF) Program under Title IV-A of the Social Security Act, and Other Interested Parties.

SUBJECT: Using Federal TANF and State Maintenance-of-Effort (MOE) Funds for Families in Areas Covered by a Federal or State Disaster Declaration

PURPOSE: This will summarize policy and provide guidance with respect to the current TANF program on the use of TANF funds to enable States and Tribes administering approved Tribal TANF programs to serve families in a State or area(s) in a State covered by a Federal or State disaster declaration.

We first provided this information in Program Instruction, TANF-ACF-PI-2005-06, dated October 11, 2005, *Using Federal TANF and State MOE Funds for Families Affected By Hurricane Katrina*. Since issuance of this PI, we have received questions about families affected by other Federal or State declared disasters occurring in a State or part of a State. We have informally advised that the information in TANF-ACF-PI-2005-06 could be applied to other declared disaster situations so a State could more expeditiously serve families affected by the disaster. This PI announces that the policy and guidance provided herein may apply in serving families affected by a Federal or State disaster declaration in a State or part of a State.

We want to encourage States and Tribes to take necessary action to address the immediate needs of the dislocated families affected by a Federal or State declared disaster. Our goal is to help them integrate as quickly as possible into local communities, preferably with family, relatives or friends. We want to assure you that we will take all steps within our authority to ensure that there are no negative consequences associated with a State or Tribe's compassionate response to an unfortunate situation.

GUIDANCE: This Program Instruction presents items to consider with respect to the current TANF program as you address the needs of families affected by a Federal or State-declared disaster. The purpose of this Program Instruction is to inform States and Tribes how they may use TANF funds *on a short-term basis* in response to a Federal or State declared disaster. The streamlined or abbreviated determination and

verification processes addressed herein are triggered by the Federal or State disaster declaration and may continue for up to four consecutive months. If a State or Tribe believes that it needs to use TANF funds in this manner for longer than four consecutive months, then it must request an extension in writing from the applicable Regional TANF Program Manager. The Regional TANF Program Manager will consult with the Office of Family Assistance prior to granting any extension.

General Information

In general, Federal TANF funds and State MOE funds may be used in “any manner that is reasonably calculated” to accomplish one or more of the TANF purposes:

1. To provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
2. To end the dependence of needy parents on government benefits by promoting job preparation, work and marriage;
3. To prevent and reduce out-of-wedlock pregnancies; and
4. To encourage the formation and maintenance of two-parent families.

Our funding guide *Helping Families Achieve Self-Sufficiency* provides additional guidance: “Activities, benefits, or services that are reasonably calculated to accomplish a TANF purpose are those that directly lead to (or can be expected to lead to) achievement of a TANF purpose. ... This includes activities whose relationship to a purpose may not be obvious, but for which there is evidence that it achieves a purpose.”

States and Tribes have broad discretion to decide what services and benefits to offer and to set different eligibility standards for various types of benefits. States and Tribes (that receive MOE funds from the State) may also fund their TANF programs with a combination of Federal and State MOE funds. While both are very flexible, the two sources of funds have somewhat different rules and restrictions. Under TANF purposes 3 and 4, States may use segregated Federal TANF funds to help clients who are not financially needy with different benefits and services, as long as the activity does not constitute “assistance” as defined in 45 CFR 260.31 or 45 CFR 286.10.

But, clients must be financially needy to receive (a) federally funded assistance, regardless of the TANF purpose the assistance is reasonably calculated to accomplish; (b) federally funded benefits or services under purposes 1 or 2; and (c) most MOE-funded benefits, services, or assistance

Federally funded assistance and most MOE-funded benefits, services or assistance may only be provided to a financially needy family that consists of, at a minimum, a child living with a relative, or consists of a pregnant woman. The family must meet the quantified income and applicable resource criteria established by the State or Tribe for that particular benefit.¹

¹ Limited exception in 45 CFR 263.2(a)(4)(ii): States may use MOE funds to provide certain pro-family non-assistance benefits and services to an individual or family regardless of financial need or family composition if the activity is reasonably calculated to accomplish TANF purpose 3 or 4. Tribes receiving MOE funds from the State may do the same, if allowed by the State.

Eligibility and Payment Determinations:

We have no authority under current law to waive any of the TANF statutory requirements.

It is important to recognize that families affected by a Federal or State declared disaster may have left behind or lost important and vital documents. Therefore, we encourage States and Tribes to consider streamlining the application process to expedite eligibility and payment determinations. This streamlined process would be in lieu of the normal course of evidence gathering to substantiate that a family meets all applicable eligibility and payment factors. States and Tribes may simply settle for a signed declaration of facts on a streamlined application form. Or, States and Tribes may still choose to retain their standard application processes and verification procedures for determining eligibility for and payment of benefits.

For example, we have defined "needy" to mean "financially deprived" and, therefore, "financially eligible" according to the State or Tribe's quantified income and resource (if applicable) standards to receive a particular benefit or group of benefits. For families affected by a Federal or State declared disaster, States and Tribes may deem the affected families "needy" – i.e., to have met the established financial eligibility criteria for receipt of the particular benefit.

Tribal TANF programs are limited to serving a specific population residing within its geographic service area as indicated in the Tribe's approved TANF plan. This limitation cannot be waived. However as stated above, the Tribe may choose to settle for a signed declaration of facts on a streamlined application form that the affected family lives in the Tribe's service area and is a member of the Tribe's service population.

Requirement to Participate in the Income and Eligibility Verification System (IEVS):

The IEVS requirement under section 1137 of the Social Security Act (Act) applies to any applicant or recipient receiving assistance or non-assistance benefits under the TANF program where income or citizenship and alienage are a condition of eligibility. Sections 1137(a) and (b) of the Act require States to have in effect a computer matching system that uses an applicant or recipient's Social Security number (SSN) to screen for income and assets toward verifying eligibility or benefit amounts. States conduct the requisite data exchanges with the Internal Revenue Service, State Wage Information Collection Agencies, Social Security Administration and the U.S. Citizenship and Immigration Services (USCIS) within the Department of Homeland Security. When a "hit" occurs which shows information that differs from the case record information, then the State must independently verify or follow-up on the information. We are not holding States to the time-frame specified in 45 CFR 205.56(a)(1) for follow-up action on information received from a data match – i.e., generally within 45 days. In the meantime, section 1137(c) prohibits States from denying, terminating, suspending or reducing any benefits of an individual until the agency has independently verified the information. Also, States may not delay, deny, or discontinue any benefits if the evacuee does not know, does not have, or cannot remember his/her SSN. The individual may need to obtain a replacement SSN card from the Social Security Administration. Pursuant to section 1137(d) of the Act and 8 U.S.C. 1642, States must verify that a non-citizen is in satisfactory immigration status – i.e., is a qualified alien.² States should ask for a declaration of

² Qualified aliens are the only non-citizens who are eligible for a Federal TANF public benefit. See 8 U.S.C. 1641 for the list of qualified aliens. Qualified aliens, nonimmigrants under the Immigration and

status and documentation of immigration status.³ However, if the person is unable to provide documentation of immigration status, section 1137(d)(2)(B) of the Act allows States to accept “such other documents as the State determines constitutes reasonable evidence indicating a satisfactory immigration status.” States could, for example, determine that the declaration required by section 1137(d)(1)(A) of the Act that an individual is a citizen or national of the U.S. or that the individual is in satisfactory immigration status is reasonable evidence under the current emergency circumstances created by the declared disaster. States may include the declaration on the application form. Alternatively, under section 1137(d)(4)(A)(i) a State could provide an extended period of time to a non-citizen applicant to produce the requisite immigration documentation on the grounds that the person will need to seek replacement documentation from the USCIS. In the meantime, the State may not delay, deny, reduce, or terminate the individual’s TANF benefit per section 1137(d)(4)(A) of the Act. States may also accept a claim on the declaration that the individual is a citizen or national of the U.S. without further verification

Therefore, the IEVS requirement should not prevent States from adopting a streamlined application process to expedite eligibility and payment determinations.

The requirement to participate in IEVS does not apply to Tribes. Regardless, title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 as amended only allows citizens, nationals of the U.S. and certain non-citizens to receive a Federal public benefit or a State or local public benefit using MOE funds (e.g., “assistance”). Essentially the same streamlined process applicable to States may apply for Tribes. In an emergency situation created by the declared disaster, Tribes may take a declaration from the affected individual asserting s/he is a citizen or national of the U.S. or, if not a citizen or national, has an immigration status that qualifies him/her to receive a public benefit. The Tribe may choose to accept a claim on the declaration that the individual is a citizen or national of the U.S. without further verification. If the individual is a non-citizen, the Tribe may give the applicant an extended period of time to present requisite immigration documentation, since the individual may need to seek replacement documentation from the USCIS.

Payments from FEMA and/or the American Red Cross:

The Federal Emergency Management Agency (FEMA) under the authority of section 408 of the Robert T. Stafford Disaster Relief and Emergency Act (42 USC 5174) and Title 44 of the Code of Federal Regulations may provide financial assistance and, if necessary, direct services to eligible individuals and households under the Individuals and Household Program (IHP) when disasters take place. According to the FEMA statute at 42 USC 5155(d) and implementing regulations at 44 CFR 206.110 (f), any money received from the IHP “is not to be counted as income or a resource in determining eligibility for welfare, income assistance, or income-tested benefit programs that the Federal government funds.” Therefore, States and Tribes MUST disregard all of the money received by disaster victims under FEMA’s IHP program in determining eligibility for and payment of a federally funded TANF benefit. We also recommend disregarding this money in determining eligibility for and payment of a MOE-funded benefit.

Nationality Act, and individuals paroled into the U.S. for less than a year are the only non-citizen groups that are eligible for a State or local MOE-funded public benefit.

³ See 62 Fed. Reg. 61344 (Nov. 17, 1997) for specific guidance.

The American Red Cross (ARC) may also provide financial assistance and other emergency relief (e.g., shelter, food, clothing, health, and mental health services) to families affected by a declared disaster. While there is no express statutory disregard that mandates exclusion of any of the possible benefits an individual could receive from the ARC, we recommend that States disregard all cash payments, as well as any in-kind or noncash benefits provided by the ARC in determining eligibility for and payment of a federally funded TANF benefit or MOE-funded benefit.

Residency Requirement:

The “residency” requirement is a State option. States may have a temporary residency policy. States may also relax or waive their residency requirement for affected families arriving in the State from another State as a result of a declared disaster. Title IV-A of the Act does not preclude a State from providing assistance or other benefits to eligible families or eligible individuals who have arrived from another State, even on a temporary basis. If the family received assistance from another State or Tribal TANF program, then the new State or Tribal TANF program should contact the other State or Tribal TANF program to learn the facts -- e.g., for purposes of deciding onset of any assistance or for purposes of the 5-year time limit for receipt of federally funded assistance.

We also wish to remind States of the U.S. Supreme Court decision in *Saenz v. Roe* (526 U.S. 489 (1999)), which overturned California’s durational residency policy limiting new residents for the first year they lived in California to the benefits they would have received in the State of prior residence. The Court ruled that such differential treatment was unconstitutional.

Refer below for additional discussion regarding application of the temporary absence provision in section 408(a)(10) of the Act.

As previously mentioned, a Tribe operating an approved Tribal TANF program may only provide benefits and services to its service population living within its geographic service area. This may include members of the service population who have temporarily relocated to the Tribe’s geographic service area because they have been displaced or evacuated from their homes as a result of a declared disaster.

Short-Term Non-Recurring Benefits:

We suggest that States and Tribes first consider providing “non-recurrent, short term” benefits outlined in 45 CFR 260.31(b)(1) and 45 CFR 286.10(b)(1), which exclude from the definition of “assistance” benefits designed to deal with a specific crisis situation or episode of need, not intended to meet recurrent or ongoing needs, and will not extend beyond four months. Because such benefits are not “assistance,” they are not subject to a variety of TANF requirements such as work participation, time limits, child support assignment, and detailed data reporting.

Other “Non-Assistance” Benefits and Services:

Because the needs of many affected families and evacuees could be comprehensive, States may consider offering a wider range of services or benefits to address their crisis than those currently offered in the State plan. (For example, affected families may need a cell phone temporarily to communicate with family and friends. Also, displaced or evacuated families and individuals may need counseling to help with the stress of displacement, separation from family members and other loved ones, and acclimation to their new location.) If a State decides to offer new benefits or

services that are not covered by the State plan, it should feel free to implement those changes immediately to address the current crisis. A State may also change the eligibility criteria for any current services or benefits. We will accept the State plan amendment reflecting such changes, when the State has the opportunity to submit it to us.

Tribal TANF funds may only be used to provide the benefits and services described in the Tribe's approved TANF plan. In order to properly amend their plan, Tribes must submit an amendment for approval in order to use Tribal TANF funds for any new benefits or services. In the event of a Federal or State declared disaster, we will expedite approval of a plan amendment if the Tribe chooses to offer a wider range of services or benefits to address the needs of affected families within the Tribe's geographic service area who are part of the Tribe's service population.

TANF-Funded Assistance – States:

All applicable programmatic requirements apply to a family that is provided TANF-funded assistance (Federal TANF funds, commingled Federal/MOE funds, or State TANF MOE funds). See the TANF regulations at 45 CFR 260.31(a) for the definition of "assistance." We have no authority to waive any of the provisions in the Act. Nevertheless, certain programmatic requirements allow some flexibility.

1. Section 407(e) of the Act and the implementing regulations at 45 CFR 261.14 require a State to reduce the family's assistance payment pro rata or to terminate such assistance if an individual in the family receiving assistance has refused to engage in work activities – unless good cause or another exception as determined by the State applies. For families affected by a declared disaster, the State may consider such families to have good cause for not participating in work activities. Alternatively, the State may adopt a policy to except families affected by a declared disaster from participating in work activities for a particular period of time. However as a general rule, we cannot exempt such families with a work-eligible individual from the work participation rates. The statute and implementing regulations require us to include in the denominator of the calculation all of the families receiving TANF-funded assistance during the month that include a work-eligible individual (defined in 45 CFR 261.2(n))
2. Section 408(a)(10)(A) of the Act allows States to continue federally funded TANF assistance (includes commingled funds) for a child who is temporarily absent from the home in which s/he resides with his/her caretaker relative. States determine the period of temporary absence. This period may range from 30 days to not more than 180 consecutive days. During the temporary period, the child is considered to be residing with the parent or other caretaker relative.⁴ Once the temporary absence period has expired, the child's absence from the home is considered significant. Section 408(a)(10)(A) of the Act prohibits States from using Federal TANF funds (including commingled funds) to provide assistance to minor children who are absent from the home for a significant period. However, section 408(a)(10)(C) of the Act allows States to establish such good cause exceptions for exceeding the temporary absence period established by the State, if such exceptions are provided for in the State's TANF plan.

⁴ It is not reasonable to determine that a child is temporarily absent from the home if the child has been adjudicated or otherwise determined to require placement out of the home for longer than the State's established temporary period. In these situations, the absence is for a significant period, and assistance may not be provided once the child has left the home.

Some children affected by a declared disaster may have been inadvertently separated from or missing from their parent or other caretaker relative. For example, the evacuee residing in the State may only be the parent(s) or other caretaker relative. In these situations, States may choose to provide assistance based on the presumption that the family will be reunited in the very near future. Hence, States may consider the child temporarily absent from the caretaker relative's home as long as the absence does not exceed the period established by the State. The State may choose to provide assistance to the caretaker relative and the absent child (if the State so elects). Thereafter, if the child has not been reunited with his/her family, then the State may elect to extend the period of temporary absence for good cause – e.g., due to safety or sanitation concerns resulting from the declared disaster.

States establish their own reasonable time frames to define temporary absence when using segregated State TANF MOE funds or separate State MOE funds to provide assistance, benefits, and services to or on behalf of eligible families. We have recommended that States use the provisions in section 408(a)(10) as their guide.

Section 408(a)(10) of the Act only applies to a child who leaves the home, not to the caretaker relative. For example, the children are staying with a relative in State A so that they can attend school. The relative applied for and receives assistance on behalf of the children only. The children's mother has remained in State B affected by a declared disaster, to salvage the home and assist other relatives affected by the hurricane. The statute neither prohibits nor requires State A to continue to provide assistance for the absent caretaker relative. The State is free to develop its own policy -- e.g., (a) consider the parent temporarily absent from the home and "continue" his/her assistance; or, (b) consider the parent to be temporarily absent from the home, but not meeting his/her needs until s/he actually returns to the home of the relative where her children now live.

Penalties:

While we do not have general authority to waive TANF requirements or penalties, the Secretary may not impose a penalty on a State or a Tribe operating an approved Tribal TANF program that has "reasonable cause" for failing to meet several TANF requirements, as delineated below:

➤ TANF Penalties Applicable to States:

1. Use Federal funds in accordance with Federal law (section 409(a)(1) of the Act and 45 CFR 262.1(a)(1) and (2));
2. Submit required reports (section 409(a)(2) of the Act and 45 CFR 262.1(a)(3));
3. Satisfy minimum participation rates (section 409(a)(3) of the Act and 45 CFR 262.1(a)(4));
4. Participate in the Income and Eligibility Verification System (IEVS) (section 409(a)(4) of the Act and 45 CFR 262.1(a)(5));
5. Comply with various paternity establishment and child support enforcement requirements (section 409(a)(5) of the Act and 45 CFR 262.1(a)(6));

6. Comply with the 5-year time limit on receipt of federally funded assistance (section 409(a)(9) of the Act and 45 CFR 262.1(a)(9));
7. Maintain assistance to an adult single custodial parent who cannot obtain child care for a child under the age of six (section 409(a)(11) of the Act and 45 CFR 262.1(a)(11); and
8. Reduce assistance to recipients refusing without good cause to work (section 409(a)(14) of the Act and 45 CFR 262.1(a)(14)).

➤ Applicable Tribal TANF Penalties:

1. Use Federal funds in accordance with Federal law (section 412(g) of the Act and 45 CFR 286.195(a)(1) and (2)); and,
2. Satisfy minimum participation rates (section 412(g) of the Act and 45 CFR 286.195(a)(3)).

The regulations at 45 CFR 262.5(a)(1) and 45 CFR 286.225(a)(1) provide that we will not impose a penalty against a State or Tribe if we determine that the State has reasonable cause for the failure. One of the factors for which we would grant reasonable cause is natural disasters and other calamities (e.g., hurricanes, earthquakes, fire) whose disruptive impact was so significant as to cause the State or Tribe's failure to meet the requirement.

MOE Requirement:

In Policy Announcement TANF-ACF-PA-2004-01 dated December 1, 2004 and the subsequent regulation at 45 CFR 263.2(e), we clarified that States may count toward their MOE requirement in-kind or cash expenditures by non-Federal sources in the State other than the State or local government. This includes expenditures for allowable costs by other non-Federal third parties (e.g., a non-profit organization, corporation, or other private party), cash donations by non-Federal third parties that are expended for benefits and services to or on behalf of eligible family members, as well as the value of third party in-kind contributions. The guidance and the regulation at 45 CFR 263.2(e) give further detail for counting such expenditures. This includes the need for the State to have a written agreement between the State and the party allowing the State to count the expenditure toward its MOE requirement. Accordingly, State records must include an agreement between the State and the party permitting this.

INQUIRIES: Please direct any inquiries to the TANF Program Manager in your Region.

Kathleen Bradley for Sidonie Squier

Sidonie Squier
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