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Human Resources, Committee on Ways  
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**TEMPORARY ASSISTANCE  
FOR NEEDY FAMILIES**

**Workforce Participation  
Requirement Waivers**

Statement of Kay E. Brown, Director  
Education, Workforce, and Income Security



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**United States Government Accountability Office**  
Washington, DC 20548

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Chairman Reichert, Ranking Member Doggett, and Members of the Subcommittee:

I am pleased to have the opportunity to participate in today's discussion of waivers related to work participation provisions in the Temporary Assistance for Needy Families (TANF) block grant. TANF provides \$16.5 billion to the states each year to assist low-income families and requires states to meet work participation rates to ensure that a specific percentage of families receiving TANF include a member engaged in work activities that are defined by federal law. Under section 1115 of the Social Security Act, the Department of Health and Human Services (HHS) has the authority to waive compliance with certain provisions of that Act, including some related to TANF.<sup>1</sup> As you know, in its July 12, 2012, Information Memorandum,<sup>2</sup> HHS asserted that this authority includes the ability to waive TANF requirements related to definitions of work activities and the calculation of work participation rates. HHS informed states that it would use this waiver authority to allow states to test various strategies, policies, and procedures designed to improve employment outcomes for needy families.<sup>3</sup> The Information Memorandum sets forth requirements that must be met for a waiver request to be considered by HHS, including an evaluation plan, a set of performance measures that states will track to monitor ongoing performance and outcomes, and a budget including the costs of program evaluation. In addition, the Information Memorandum provides that states must seek public input on the proposal prior to approval by HHS.<sup>4</sup>

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<sup>1</sup>Codified at 42 U.S.C. § 1315.

<sup>2</sup>Transmittal No. TANF-ACF-IM-2012-03.

<sup>3</sup>On September 4, 2012, we held that this Information Memorandum constitutes a rule and is subject to the Congressional Review Act's requirement that it be submitted to Congress and the Comptroller General before taking effect. See B-323772, Sept. 4, 2012.

<sup>4</sup>Questions have been raised about the extent of HHS's authority under section 1115 and TANF with respect to the Information Memorandum; however, neither this testimony, nor our recently issued products, B-323772, Sept. 4, 2012 or [GAO-12-1028R](#), Sept. 19, 2012 address whether the Information Memorandum is a valid interpretation of statutes or regulations.

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My remarks today are based primarily on our September 2012 correspondence examining waivers related to TANF<sup>5</sup> and will address key findings from this correspondence on whether (1) HHS had granted any TANF waivers or previously indicated it had the authority to waive TANF work requirements, and (2) any states requested waivers of TANF work requirements or any other provision of TANF since 1996. To gather the information for that correspondence, we reviewed relevant federal laws and regulations, reviewed HHS documents, and interviewed HHS officials. We did not analyze whether HHS has the authority to issue waivers related to TANF work requirements. We conducted that work between August 2012 and September 2012 in accordance with all sections of GAO's Quality Assurance Framework that were relevant to our objectives. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data obtained, and the analysis conducted, provide a reasonable basis for any findings and conclusions.

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## Summary

We found that although many states requested and received waivers under the Aid to Families with Dependent Children (AFDC) program, no section 1115 waivers of TANF requirements have been granted by HHS since TANF's creation in 1996.<sup>6</sup> Since 2000, several states have expressed interest in the availability of waivers. For example, in 2001, one state asked HHS about waiving various requirements including the work participation requirement, due to an emergency situation caused by a terrorist attack. The Assistant Secretary for Children and Families or TANF program staff have generally responded that the requested waiver authority was not available. Between when HHS issued its July 12, 2012 Information Memorandum and September 6, 2012, eight states expressed interest in pursuing waivers, but no state had officially requested one.

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<sup>5</sup>GAO, *Worker and Family Assistance: Waivers Related to the Temporary Assistance for Needy Families Block Grant*, [GAO-12-1028R](#), (Washington, D.C.: September 19, 2012).

<sup>6</sup>The AFDC program preceded and was replaced by the TANF program.

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## Background

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which amended the Social Security Act, replaced AFDC with the TANF block grant, which was designed to give states the flexibility to provide both traditional welfare cash assistance benefits as well as a variety of other benefits and services to meet the needs of low-income families and children.<sup>7</sup> The TANF block grant provides states with a fixed amount of federal dollars annually and also includes state maintenance-of-effort (MOE) requirements, which require states to maintain a significant portion of their historic financial commitment to welfare-related programs.<sup>8</sup> TANF has four purposes: (1) provide assistance to needy families so that children may be cared for in their own homes or homes of relatives; (2) end dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (3) prevent and reduce out-of-wedlock pregnancies; and (4) encourage two-parent families. Within these goals, states have responsibility for designing, implementing, and administering their welfare programs to comply with federal guidelines, as defined by federal law and HHS.

In keeping with TANF's goal of helping parents prepare for and find jobs, states are generally held accountable for ensuring that at least 50 percent of all families receiving TANF cash assistance and considered work-eligible include an individual who participates in one or more of the federally defined allowable work activities for the required number of hours each week.<sup>9</sup> The law also contains a provision known as the

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<sup>7</sup>Pub. L. No. 104-193, § 103(a), 110 Stat. 2105, 2112.

<sup>8</sup>TANF MOE provisions include specified state spending levels and general requirements on the use of funds. For example, these provisions generally require that each state spend at least 80 percent (75 percent if the state meets its work participation requirement) of the amount it spent on certain welfare and related programs in fiscal year 1994, before TANF was created. If a state does not meet its MOE requirements in any fiscal year, the federal government will reduce dollar-for-dollar the state's federal TANF grant in the following year.

<sup>9</sup>There are 12 work activities that may count toward meeting the specified work participation rate: unsubsidized employment, subsidized private sector employment, subsidized public sector employment, work experience (if sufficient private sector employment is not available), on-the-job training, job search and job readiness assistance, community service programs, vocational education training, job skills training directly related to employment, education directly related to employment (if the recipient has not received a high school diploma or certificate of high school equivalence), satisfactory secondary school attendance or in a course of study leading to a certificate of general equivalence, and providing child care services to others in community service.

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caseload reduction credit, which allows states to reduce the work participation rate they are required to meet based on reductions in the size of their TANF caseload. In addition, TANF regulations provide that states that spend more than their MOE requirements generally receive additional caseload reduction credits. Over the years, states have typically engaged about one-third of families in allowable work activities nationwide. States that do not meet their required work participation rates are at risk of being penalized through reductions in their block grant.

Prior to the creation of TANF in 1996, a large number of states applied for and received waivers related to various requirements of the AFDC program.<sup>10</sup> Between the years of 1987 and 1996, 46 states received approval to implement section 1115 waivers affecting their AFDC programs.<sup>11</sup> According to the Congressional Research Service, a total of 113 waivers were granted during this time period.<sup>12</sup> These waiver initiatives included placing time limits on the receipt of benefits and strengthening work requirements, among others. According to HHS, many of the policies and concepts included in state waiver requests were later incorporated into PRWORA. In addition, many states that received section 1115 waivers under AFDC were allowed to continue to operate their TANF programs under these waivers until their expiration, the last of which expired in 2007. No provision in law allowed these AFDC waivers to be extended.

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<sup>10</sup>For additional information related to section 1115 waivers, please see [GAO-12-1028R](#).

<sup>11</sup>When we refer to states, we include the District of Columbia.

<sup>12</sup>The majority of these waivers—83 from 44 states—were granted between the years of 1993 and 1996. Between 1987 and 1989 15 waivers were approved for 14 states and another 15 waivers from 12 states were approved between 1989 and 1993.

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## HHS Has Not Previously Granted Waivers Related to TANF Requirement

Since the creation of TANF, HHS has not granted any section 1115 waivers related to TANF. Based on our discussions with HHS officials and our review of HHS documents, we did not find any evidence that HHS stated that it has the authority to issue waivers related to TANF work requirements before the July 12, 2012 Information Memorandum. However, in an HHS document prepared in 2008 on program flexibilities available during times of disaster, HHS stated that section 1115 allows for waivers of state plan requirements in several programs, including TANF. HHS also said that section 1115 waivers are not disaster specific and are better for long-term situations due to approval time.

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## States have Expressed Interest in Various TANF Waivers

In the 16 years since TANF was created, several states have expressed interest in TANF waivers. Specifically, from 2000 through 2009, evidence shows that five states asked HHS about the availability of waivers under TANF. Generally, states were not asking for waivers to test new approaches through experimental, pilot, or demonstration projects, which would be necessary in order to get a waiver under section 1115; instead, they were asking to be excused from specific requirements.<sup>13</sup>

- Two states sent letters to HHS requesting waivers of various federal TANF requirements to address unanticipated circumstances each faced. First, in 2001, a state asked HHS about various waivers due to the emergency situation caused by the September 11 terrorist attacks. The state was concerned about meeting TANF requirements related to, for example, the use of funds, data reporting, cost allocation, and work participation. Second, in 2004, a state asked HHS about various waivers after its legislature provided a portion of the state's federal TANF block grant to two tribes operating their own TANF cash assistance programs. In both cases, states thought that the unanticipated circumstances could result in their noncompliance with certain federal TANF requirements. The Assistant Secretary for Children and Families responded to each state that he did not have authority to provide waivers. He did, however, offer to work with the states to address their concerns through other flexibilities allowed under the law.

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<sup>13</sup>Two states also asked HHS in 2003 if it would extend waivers that had been approved under AFDC. However, HHS Secretary Thompson indicated in his responses to these states that there was no provision of law that would permit HHS to extend such waivers.

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- Three other states asked HHS more informally through email about waivers of particular TANF provisions. Specifically, states asked about waivers related to the limit on the maximum percentage of TANF families participating in vocational education that count toward a state's work participation rate, the use of TANF funds for purposes other than the four purposes prescribed in federal law, and the eligibility of certain populations for TANF cash assistance. To each of these states, HHS TANF program staff generally responded that the requested waiver authority was not available.

In addition to responding directly to individual states about waiver issues, HHS discussed these issues when it provided general information to help answer states' questions about TANF under disaster conditions. Two TANF policy documents issued by HHS in 2005 and 2007 discussed various aspects of administering TANF for families affected by disasters, including, for example, application procedures and work requirements. In these documents, HHS stated that all applicable programmatic requirements apply to a family that is provided TANF-funded cash assistance, and the Department does not have authority to waive any of the provisions. HHS also discussed certain flexibilities allowed under TANF that states might use to assist these families.<sup>14</sup>

States also expressed their interest in waivers under TANF and other related programs in a 2005 letter to the Congress on TANF reauthorization. Specifically, 28 states expressed support for a Senate reauthorization bill that included increased waiver authority to coordinate across multiple programs serving low-income families, including TANF, as well as certain amendments to TANF work requirements.<sup>15</sup> However, when TANF was reauthorized through the Deficit Reduction Act of 2005, this waiver authority was not included in the act.

In 2011, some states expressed interest in TANF waivers when HHS solicited ideas on areas in which increased administrative flexibility could lead to improved TANF outcomes. Specifically, HHS held conversations with TANF officials from all states in response to the President's February

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<sup>14</sup>See TANF-ACF-PI-2005-06, *Subject: Using Federal TANF and State Maintenance of Effort Funds for Families Affected by Hurricane Katrina* and TANF-ACF-PI-2007-08, *Subject: Using Federal TANF and State Maintenance of Effort Funds for Families in Areas Covered by a Federal or State Disaster Declaration*.

<sup>15</sup>S. 667, 109<sup>th</sup> Cong. §§ 114, 109 (2005).

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2011 Memorandum directing executive agencies to work closely with state, local, and tribal governments to identify administrative, regulatory, and legislative barriers in federally funded programs that prevent the efficient use of tax dollars to achieve results for constituents. Following these conversations, HHS documents show that six states expressed interest in TANF waivers, with five of those states specifically indicating their interest in waivers related to TANF work requirements, and the sixth asking about TANF waivers in general.<sup>16</sup> In response, HHS officials generally indicated that the Department was in the process of reviewing its TANF waiver authority.

Since HHS issued the July 12, 2012 Information Memorandum indicating the Secretary's willingness to exercise section 1115 waiver authority related to TANF work requirements, HHS documents show that eight states have expressed interest in pursuing these waivers. As of September 6, 2012, no state had formally submitted a request for a waiver related to TANF work requirements to HHS.

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Chairman Reichert, Ranking Member Doggett, and Members of the Subcommittee, this concludes my statement. I would be happy to answer any questions you might have.

For questions about this testimony, please contact Kay E. Brown at (202) 512-7215 or [brownke@gao.gov](mailto:brownke@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals who made key contributions to this testimony include David Barish, James Bennett, Alex Galuten, Gale Harris, Kathy Leslie, and Almeta Spencer.

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<sup>16</sup>HHS officials indicated that during the conversations, a major focus of state comments was state interest in various modifications to the TANF work requirements. Further, in follow-up comments submitted by states to HHS, 26 states expressed interest in various modifications to the TANF work requirements. This is consistent with the findings of our 2010 report on TANF work requirements, in which we discussed challenges states had implementing the changes made to the TANF work requirements by the Deficit Reduction Act of 2005. See GAO, *Temporary Assistance for Needy Families: Implications of Recent Legislative and Economic Changes for State Programs and Work Participation Rates*, [GAO-10-525](#) (Washington, D.C.: May 28, 2010).



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