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United States Government Accountability Office  
Washington, DC 20548

September 19, 2012

The Honorable Orrin G. Hatch  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable Dave Camp  
Chairman  
Committee on Ways and Means  
House of Representatives

Subject: *Waivers Related to the Temporary Assistance for Needy Families Block Grant*

The Temporary Assistance for Needy Families (TANF) block grant, administered by the U.S. Department of Health and Human Services (HHS), provides federal funding to states for both traditional welfare cash assistance as well as a variety of other benefits and services to meet the needs of low-income families and children.<sup>1</sup> In December 2011, 1.9 million low-income families nationwide received cash assistance through states' TANF programs. While states have some flexibility in implementing and administering their state TANF programs, there are numerous federal requirements and guidelines that states must meet. For example, under section 402 of the Social Security Act, in order to be eligible to receive TANF funds, a state must submit to HHS a written plan outlining, among other things, how it will implement various aspects of its TANF program.<sup>2</sup> More specifically, under section 402(a)(1)(A)(iii) of the Social Security Act, the written plan must outline how the state will ensure that TANF recipients engage in work activities.<sup>3</sup> Under section 407 of the Social Security Act, states must also ensure that a specified percentage of their TANF recipients engage in work activities as defined by federal law.<sup>4</sup> Compared with its predecessor program, Aid to Families with Dependent Children (AFDC), TANF increased the percentage of welfare recipients expected to prepare for work, imposed stronger sanctions against individuals who did not participate as required by states, and placed time limits on the receipt of cash assistance for many TANF recipients, among other changes.

In its July 12, 2012, Information Memorandum,<sup>5</sup> HHS notified states of HHS' willingness to exercise its waiver authority under section 1115 of the Social Security Act.<sup>6</sup> Under section

<sup>1</sup> See 42 U.S.C. § 601.

<sup>2</sup> Codified at 42 U.S.C. § 602.

<sup>3</sup> Codified at 42 U.S.C. § 602(a)(1)(A)(iii).

<sup>4</sup> Codified at 42 U.S.C. § 607.

<sup>5</sup> Transmittal No. TANF-ACF-IM-2012-03.

<sup>6</sup> Codified at 42 U.S.C. § 1315.

1115, HHS has the authority to waive compliance with the requirements of section 402 in the case of experimental, pilot, or demonstration projects which the Secretary determines are likely to assist in promoting the objectives of TANF.<sup>7</sup> In its Information Memorandum, HHS asserted that it has the authority to waive the requirement in section 402(a)(1)(A)(iii) and authorize states to “test approaches and methods other than those set forth in section 407,” including definitions of work activities and the calculation of participation rates.<sup>8</sup> 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>9</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.

In response to your request, we are providing information on any waivers related to TANF. To gather this information, we reviewed relevant federal laws and regulations, TANF policy documents available on HHS’s website, including TANF Policy Announcements, Program Instructions, and Information Memoranda, and documents provided to us by HHS. Specifically, we asked HHS to provide all documentation of state interest in TANF waivers since TANF’s creation, as well as HHS’s responses to such states, statements of prior HHS Secretaries on TANF waiver authority, and information on AFDC-granted waivers that continued after TANF was created. We also interviewed HHS officials. HHS provided documents that included letters signed at the levels of HHS Secretary and Assistant Secretary as well as email correspondence from program staff. We did not analyze whether HHS has the authority to issue waivers related to TANF work requirements. Rather, this report provides some background information on HHS and the issue of waivers related to TANF.

We conducted our work from August 2012 to September 2012 in accordance with all sections of GAO’s Quality Assurance Framework that are 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.

In response to your request for information on waivers related to TANF, we addressed the following questions:

**1. Since TANF was created in 1996, has HHS granted any TANF waivers or previously indicated it has the authority to waive TANF work requirements?**

Since the creation of TANF, HHS has not granted any section 1115 waivers related to TANF. Many states received section 1115 waivers under AFDC, and they were allowed to

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<sup>7</sup> Section 1115 also authorizes the Secretary to waive compliance with certain other requirements of the Social Security Act not related to TANF.

<sup>8</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 report nor our recently issued product, B-323772, Sept. 4, 2012, address whether the Information Memorandum is a valid interpretation of statutes or regulations.

<sup>9</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.

continue these until their expiration, the last of which expired in 2007.<sup>10</sup> No provision in law allowed these AFDC waivers to be extended.

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.

## **2. Have any states requested waivers of TANF work requirements or any other provision of TANF since 1996?**

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>11</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 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.
- 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

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<sup>10</sup> The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which created TANF, allowed states to continue these waivers until their expiration.

<sup>11</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.

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>12</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. 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 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>13</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.

### **Agency Comments**

We provided a draft of this correspondence to HHS for its review and comment. HHS provided technical comments, which we have incorporated as appropriate.

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As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this correspondence to the Secretary of Health and Human Services, appropriate

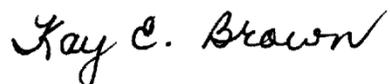
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<sup>12</sup> See TANF-ACF-PI-2005-06, *Subject: Using Federal TANF and State Maintenance of Effort Funds for Families Affected by Hurricane Katrina* and TANF-ACF-PI-2007-08, *Subject: Using Federal TANF and State Maintenance of Effort Funds for Families in Areas Covered by a Federal or State Disaster Declaration*.

<sup>13</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).

congressional committees, and other interested parties. The report is also available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me 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 correspondence. Other key contributors to this correspondence included Gale C. Harris and Rachel Frisk. Jessica Botsford, Alex Galuten, and Janet Mascia also contributed to this product.

A handwritten signature in black ink that reads "Kay E. Brown". The signature is written in a cursive style with a large, prominent "K" and "B".

Kay E. Brown  
Director, Education, Workforce,  
and Income Security Issues

(131199)

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