

September 19, 2011

Deborah A. Carroll
Administrator
Income Maintenance Administration
645 H Street, NE
Washington, DC

Re: Comments to Department of Human Services Notice of Proposed Rulemaking Regarding TANF Sanction Policy Published in the DC Register on August 19, 2011

Dear Ms. Carroll:

We are writing to submit our comments to DHS's Notice of Proposed Rulemaking Regarding TANF Sanction Policy published in the DC Register on August 19, 2011.

First, thank you for meeting with us on these proposed rules. It was exciting to hear the philosophy of the Department of Human Services about the TANF Redesign and heartening to hear the vision for the program. The TANF Redesign will begin to identify potential barriers to work and create an environment where multiple agencies can collaborate to support families. Also, we are pleased to hear your willingness to review these rules to ensure that they reflect and mirror the DHS vision for the TANF Program.

Below are our comments, many of which were discussed in detail during our recent meeting. When appropriate, we also included suggested language for you to review.

We suggest that a new section be drafted outlining the steps that DHS or its agents must take before a sanction is recommended or imposed. We were encouraged to hear that DHS hopes to impose sanctions only when necessary after significant outreach has been exhausted and instead to focus on ways to encourage participation. To that end, we suggest the following language to ensure that each customer is first assessed with the hope to identify any potential barriers to work and referred to any appropriate services to help them immediately or eventually move toward work.

Recommendation:

NEW SECTION

Prerequisites to Sanctions

Before any sanction can be recommended or imposed the following must occur:

- 1) The TANF Customer must be assessed and complete orientation after October 1, 2011;
- 2) The TANF Customer must be provided the opportunity to review his/her current IRP to assess whether it is appropriate;
- 3) The TANF Customer must be provided the opportunity to renegotiate his/her IRP;
- 4) DHS or its agents must conduct outreach to the Customer, and all outreach attempts must be documented in the Customer's file including, but not limited to, letters, notices, and phone calls; AND

- 5) DHS or its agents must be complete a home visit to the Customer's home to determine why the customer is not participating and must document the visit in the customer's file.

Before a full family sanction is recommended or imposed, DHS or its agents must attempt additional outreach, including, but not limited to, letters, notices, phone calls and at least one more home visit or attempted home visit.

Modify basic conditions for subjecting a family to sanctions

SECTION 5812.1

A non-exempt TANF customer (Customer) who, without good cause, fails to comply with his or her negotiated TANF Individual Responsibility Plan (IRP) as approved by the Director or his or her designee, or otherwise fails to meet his or her work requirement as set forth in D.C. Official Code § 4-205.19b and DC Official Code § 4-205.19d, shall be subject to sanctions by DHS.

Recommendation: We suggest cutting the language “or otherwise fails to meet his or her work requirement as set forth in DC Official Code.” It should be clear to customers that they will be allowed to negotiate an IRP and develop a plan based on their interests and needs before a sanction would be imposed. The development of the IRP contemplates a face-to-face interaction with the customer to confirm the requirements of the TANF program and create an individualized plan for success for that family. An IRP should include any work requirements for that customer, so a violation of the IRP should be enough for DHS or its agent to investigate whether a sanction is appropriate. Additionally, we ask that “shall” be changed to “may” in the last line of this section to be clear that DHS has the authority and discretion to impose or not to impose a sanction depending on the specific circumstances. Finally, we recommend that this language be adopted throughout these rules and be made consistent among the various sections of the regulations.

Sanction should be triggered by substantial non-compliance, rather than any instance of non-compliance and re-establishment of benefits should be tied to substantial compliance

SECTIONS 5812.1, 5812.2, 5812.3, and 5812.5

Sections 5812.1, 5812.2., and 5812.3 indicate that a client is subject to a sanction after falling out of compliance with his or her IRP or work requirements. The rule would make a family subject to sanctions even if the level of non-compliance is minimal. For example, a client who meets her work requirements fully for three weeks and then falls a few hours short in the final week would be subject to sanction under the proposed rule.

Recommendation: While it is reasonable to expect participants to meet their IRP and work requirements fully, a sanction is a severe penalty that should be limited to clients who are substantially out of compliance. The rule should be modified to make clients subject to sanction – at each of the sanction tiers – based on “substantial non-compliance” and then offer definitions of this term.

The rule could define substantial non-compliance in any month to include a client who:

- a) fails to participate in any work activities or IRP tasks for at least two weeks in a month;
- b) fails to meet more than 75 percent of the work hours for four weeks in a row; or

- c) fails to show meaningful effort toward other elements of the IRP throughout one month.

To the extent that DHS does not wish to create rules that would allow clients to avoid sanction through ongoing, but partial, compliance, a further rule could define substantial non-compliance to include multiple months of partial compliance. For example, an additional rule could be as follows:

- d) In addition to the previous criteria, a client who fails to meet work requirements fully for two consecutive months is to be considered out of compliance for the second month.

Similarly, Section 5812.5 requires four consecutive weeks of compliance to cure a level one sanction. This suggests full compliance for each of four weeks and would mean that a client who falls one or two hours short in just one week would not be able to cure her or his sanction.

Recommendation: This rule should allow clients to cure a Level One sanction with “substantial compliance” with the IRP or work requirements, as follows:

“Substantial compliance is defined as meeting at least 75 percent of required work hours in a given week, or otherwise making meaningful effort toward other elements of the client’s IRP.”

Create two tiers of Level One sanctions to create a more meaningful “wake-up call” for clients who need to understand the importance of compliance with an IRP

SECTION 5812.3

The Level One sanction under the proposed rule is the same as the current sanction policy, under which the adult is not considered when determining a family’s benefit level. Under the proposed rule, the Level Two sanction would be a one-month full-family sanction.

We are concerned that this structure could unnecessarily lead many clients to receive a full-family sanction. A recent DHS white paper on TANF notes that many clients currently are under an individual sanction, the same as the proposed new Level One sanction, and that families typically remain under sanction for long periods.

If the proposed rule is adopted, it is likely that many clients will fail to come into compliance following a Level One sanction, as currently occurs. Even if informed of the potential Level Two sanction, many are likely to fail to comply under a Level One sanction. This could lead many clients to receive a full-family sanction.

Given the importance of avoiding full-family sanctions when possible, the new sanctions process would be improved if it included a new sanction level prior to a full-family sanction. In our experience, TANF households most frequently seek assistance not when they receive notices about impending sanctions, but when they realize that less money than they expected has been deposited onto their EBT cards. A reduced benefit level could serve as a “wake-up call” to get the attention of non-compliant clients before cutting the family off entirely from cash assistance.

Recommendation: This additional sanction could be included within the Level One Sanction. We recommend that if a Customer does not reach substantial compliance with his or her IRP and does not demonstrate good cause or qualify for an exemption from work requirements in the month

following the current Level One sanction, that sanction remain in place for an additional month, followed by a new partial sanction equal to 50 percent of the family's full pre-sanction benefit level. The 50 percent sanction would last two months, and then a full-family (Level Two) sanction would be imposed. This would lengthen slightly the proposed duration between a Level One and Level Two sanction, from 90 days in the proposed rule to four months (approximately 120 days).

Reinstate benefits for a Level One sanction in the same month that families come back into compliance, if that occurs within the first half of the month.

SECTION 5812.5

Under the proposed rule, a family must come back into compliance for four consecutive weeks to cure a Level One Sanction, and benefits would then be restored in the following month. However, if a family comes back into compliance early in a given month, a family could wait nearly a month before benefits are reinstated. This could be addressed by modifying the rule to reinstate benefits within the same month in cases when compliance occurs in the first half of the month.

Recommendation: Modify rule 5812.5 to say: The Level One sanction shall be lifted beginning the first day of the first month following four (4) consecutive weeks of compliance with sub-section 5812.1, if the compliance is completed on the 11th of the month or later. The Level One sanction shall be lifted retroactive to the first day of the current month following four (4) consecutive weeks of compliance with sub-section 5812.1, if the compliance is completed prior to or on the 10th of the month.

Give clients the opportunity to request renegotiation of their IRP prior to any sanction, and clarify both the timing and impact of the re-negotiation

SECTION 5812.3

This section gives DHS the authority to allow customers facing a possible sanction to renegotiate their IRP "if DHS determines that the Customer has provided DHS with substantial new information that will maximize their potential for success." This appears to mean that clients can have their IRP renegotiated if the current IRP is inappropriate and modifications to the IRP would be better tailored to the client's needs. This is an important provision given the new client assessment process and the new universal engagement model. There are likely to be many clients for whom the initial IRP is not well matched to their needs.

This section is lacking in clarity in several ways, however. It notes that DHS may allow a customer to renegotiate, but it is not clear whether all clients will be informed of this choice and given the right to request a renegotiation. In addition, the proposed rule appears to allow such a renegotiation only in the context of a Level One sanction but not in the case of a Level Two or Level Three sanction. Finally, it is not clear whether the renegotiation would be allowed before or after the sanction (or both), and whether renegotiation of the IRP after a sanction has been imposed results in nullifying a sanction or sampling curing the sanction. The last point is important because the new rule has a tiered sanctions process under which the penalty for non-compliance depends on the number of prior instances of non-compliance.

Recommendations: We recommend the following:

- a) TANF clients shall be able to seek a new IRP, based on evidence that a modified IRP would better match their needs, before or after any sanction (Level One, Two or Three).
- b) TANF clients shall be notified of the right to present such evidence prior to imposition of a sanction.
- c) If an IRP is renegotiated prior to imposition of a sanction, and if the modification addresses a factor that contributed to non-compliance, then the sanction shall be nullified and not considered when determining the level of any future sanction.
- d) If an IRP is renegotiated after a sanction is imposed, based on an ongoing condition that could have been included in a client's initial IRP, a client's first request for renegotiation shall nullify the sanction. For any subsequent renegotiations, the IRP modification shall not nullify the sanction, although it shall be considered as re-establishing compliance for a Level One sanction under section 5812.5.
- e) If an IRP is renegotiated after a sanction is imposed based on a condition that arose since development of the IRP, and that condition contributed to non-compliance, the sanction shall be terminated and nullified.

The current language in this section, such as the terms "customer has provided" and "substantial new information," should be revised as well. These terms could create unnecessary burdens of proof. "Substantial new evidence" is undefined and could be read to allow renegotiation in only a limited number of cases. A renegotiation should be allowed if DHS and the client agree that the new information suggests that a revision in the IRP would be beneficial to the client's progress. As noted above, the rule can state that a renegotiated IRP nullifies a sanction only if the revision addresses a factor that contributed to non-compliance.

Maintain TANF services during a full-family sanction

SECTION 5812.10

This section of the proposed rule indicates that a TANF client facing a full-family sanction under Level Two or Level Three would have his or her TANF case terminated and would need to re-apply for eligibility. This could add unnecessary administrative burdens and could make it harder than needed for clients to re-connect with TANF. An alternative would be to retain TANF eligibility but zero-out benefits for the specified time.

If a TANF case is closed, a client would lose eligibility a child care voucher. For a TANF client who is working or in training, the loss of child care assistance could compound the adverse impact of the sanction. Many TANF households could qualify for child care subsidies in other categories, such as having a child with a disability or being a teen parent in secondary school.¹ Such households would have to reapply for child care vouchers under these alternative eligibility categories, which would require them to re-gather the documentation required to apply for the voucher and have their applications processed by DHS and OSSE staff. Some may lose their spots in day care centers while they wait for new vouchers. In addition, it is likely that Medicaid eligibility would have to be re-classified, which requires IMA and DHCF staff time. If the client later returns to TANF, these

¹ A list of child care eligibility groups can be found on page 5 of http://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/DC_Eligibility_Determination_Policies_for_Subsidized_Child_Care.pdf.

services would have to be changed back, and a new TANF application would have to be made and processed.

Eliminating eligibility also would deny a parent's opportunity to participate in education or training through TANF. While it is likely that a client facing a sanction was not fully participating, there will be some who are sanctioned who were at least partially complying. And for others, the sanction may serve the intended effect of encouraging a client to participate in activities required under her or his IRP. This is most likely to be true for families facing a six-month full-family sanction.

These problems could be addressed if eligibility for TANF were maintained under a Level Two or Level Three sanction, with benefits reduced to zero (or to \$1 per month if zeroing out benefits would result in a closed case under the TANF computer system). Child care eligibility could be suspended for those who do not qualify for the subsidy as part of another priority or non-priority group. This process also would allow a client to renegotiate an IRP, even if that does not cure the sanction, and maintain contact with a case manager.

Recommendation: When a family faces a Level Two or Level Three sanction, the client's cash benefit would be reduced to zero or \$1, but the TANF case would remain open. The client would be required to go through orientation and assessment before cash benefits could be restored.

Shorten Level Three Sanction to Three Months

SECTION 5812.3(c)

The Level Three sanction under the proposed rule would eliminate a family's entire cash benefit for six months. This is intended to send a strong message that compliance with TANF work requirements and IRP are important.

Because the District has not imposed full-family sanctions to date, it is unclear what length of penalty is needed to send that message. We believe that a six-month duration may be longer than needed to convey this message and may create serious harm to families, which in turn may make it harder for families to re-engage at a future date with services that may help them move toward self-sufficiency.

A shorter period of full-family sanction – such as three months – would provide a loud wake-up call to perennially non-compliant customers that they need to comply with their IRP or seek a renegotiation of their IRP if it is inappropriate. It is unlikely that a six-month sanction would send a substantially stronger message than a three-month sanction. Any client who determines that he or she should make a stronger effort to comply is likely to come to that decision within three months of losing all cash aid.

By contrast, a six-month sanction could cause some clients to give up hope – especially if TANF eligibility is eliminated entirely and the adult is not able to participate in activities contained in the IRP. A six-month sanction is more likely to lead to hardship, such as homelessness, than a three-month sanction. Landlords might be willing to work with someone for a three-month stretch of nonpayment, but six months without payment of rent is long enough for people to be evicted.

Recommendation: The Level Three sanction should be modified to be a 3-month elimination of cash assistance benefits.

Include Additional Grounds for Fair Hearing Request

SECTION 5812.9

Section 5812.9 of the proposed regulations lists the grounds for fair hearings; however, the list is incomplete. For instance, TANF customers must be allowed to request fair hearings to determine whether sanctions were improper because the customer is exempt from work requirements due to a disability, domestic violence, or some other reason; DHS or a DHS vendor failed to perform the required steps before referring a customer for sanction; any noncompliance was insubstantial; or the customer should have been allowed to renegotiate his or her IRP.

Recommendations: Section 5812.9 should include the additional grounds for fair hearings listed above. Additionally, section 5812.9(c) should include broader grounds for appeal: in addition to raising due process violations, customers should be able to raise any violations of the DC Language Access Act, the ADA, or any other applicable DC or federal law.

The word “written” should be removed from sections (a)(1) and (3) to indicate that other forms of documentation may at times be acceptable. Section (a)(1) should also be amended so that documentation of good cause reasons for noncompliance may be submitted to vendors as well as to DHS.

We look forward to working with you during all phases of the TANF Redesign and are willing to meet with you if you have any questions or concerns.

Sincerely,

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Bread for the City

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