



**NATIONAL IMMIGRATION LAW CENTER**

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November 30, 2001

Wade Horn, PhD, Assistant Secretary  
Administration for Children and Families, U.S. Department of Health and Human Resources  
TANF Reauthorization Ideas  
Office of Family Assistance  
5<sup>th</sup> Floor East  
Aerospace Building  
370 L'Enfant Promenade, SW  
Washington, DC 20447

**RE:** Comments on Reauthorization of the Temporary Assistance for Needy Families (TANF)  
Program Authority, 66 Fed. Reg. 52773 (October 17, 2001)

Dear Mr. Horn:

On behalf of the undersigned organizations, the National Immigration Law Center (NILC) is submitting comments in response to the U.S. Department of Health and Human Service's notice for public comment on TANF reauthorization published on October 17, 2001. NILC is a non-profit legal support agency that specializes in the intersection of immigration, employment and public benefits laws. The organization provides technical assistance, training and publications to attorneys, community-based organizations, health care and social service providers and government agencies on policies that affect low-income immigrants.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the "welfare law") restricted low-income immigrants' eligibility for programs that were created to help the working poor. The welfare law not only denied immigrants' eligibility for critical services, but also deterred eligible U.S. citizen and immigrant family members from securing these services. The powerful demographic changes emerging from the 2000 Census highlight the need to address immigrant issues in the TANF reauthorization debate: immigrants comprise 11 percent of the U.S. population and 20 percent of the nation's low-wage workers. More than one in five children in the U.S. live in immigrant families, and one-fourth of all poor children live in immigrant families. Although immigrants have high workforce participation rates<sup>1</sup> and contribute to key sectors of the nation's economy, they are more likely than other Americans to hold jobs that provide low wages and few benefits. Almost 43 percent of noncitizens work at jobs paying less

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<sup>1</sup> In 2000, foreign-born men 16 years old and older had a higher labor force participation rate (79 percent) than native-born men (74 percent). See U.S. Census Bureau, *Coming to America: A Profile of the Nation's Foreign Born* (Washington, DC: U.S. Census Bureau, 2000).

than \$7.50 an hour<sup>2</sup>, and only 26 percent of noncitizens below 200 percent of the poverty level have job-based health insurance<sup>3</sup>.

Despite their low wages and lack of job-based benefits, low-income immigrants participate in public benefit programs at much lower rates than citizens. According to the Urban Institute, in 1999 the benefit program participation rate of low-income immigrants with children was two-thirds that of citizens.<sup>4</sup> Working immigrant families are also more likely to be uninsured (22 percent of immigrant families versus 10 percent of U.S. citizen families) and more likely to be food insecure (37 percent of immigrant families versus 27 percent of U.S. citizen families).

Immigrants are embedded in our history, culture, identity and future. Immigrant issues therefore must play a central role in designing TANF policies to support economic mobility for the country's low wage families. We urge you to adopt the recommendations set forth below, which will assist states in meeting the goals of the TANF program.

### **Restore Eligibility to Lawfully Residing Immigrants**

A central paradox of the 1996 welfare law is that although its goal was to provide incentives and support to help people move into the workforce, it has had the opposite effect on working immigrant families by restricting their eligibility for programs that could support their upward mobility. The immigrant provisions of the 1996 law singled out even long-time resident, tax-paying immigrants for restrictions on health care, food stamps, TANF – including non-cash services, such as child care, transportation and job training, and other core programs that support low-wage working families. Because the restrictions were enacted in the 1996 welfare law, TANF reauthorization is an opportunity to redress these misguided policies.

Immigrants pay taxes and deserve access to the programs that their tax dollars support. These support services are critical to working poor immigrant families, who often lack health insurance, adequate food, transportation and child care that enables them to support their families. The National Academy of Sciences reports that the U.S. reaps a \$50 billion surplus from taxes paid by immigrants to all levels of government. In New York, \$13.3 billion (69 percent) of the \$19.3 billion in taxes paid by immigrants goes to the federal government in the form of income taxes, Social Security taxes, and unemployment insurance.

Because immigrants are so profoundly integrated into our communities, their exclusion from support systems and safety net programs has a major effect on public health and economic development. Immigrant restrictions on federal programs hamper economic mobility for 20 percent of the low wage population, impede measures to fight diseases, frustrate efforts to develop the local economy, and stretch the resources of non-profit and religious organizations. These restrictions also impose an unfair burden on state and local governments, who do not get a return on the taxes that immigrants in their communities pay disproportionately to the federal government.

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<sup>2</sup> Michael Fix, (Urban Institute tabulation of Current Population Survey, November 2001).

<sup>3</sup> Leighton Ku and Shannon Blaney, *Health Coverage for Legal Immigrant Children: New Census Data Highlight Importance of Restoring Medicaid and SCHIP Coverage* (Washington, DC: Center on Budget and Policy Priorities, October 2000).

<sup>4</sup> Michael Fix, Wendy Zimmerman and Jeffrey Passel, *The Integration of Immigrant Families in the United States* (Washington, DC: Urban Institute, July 2001).

Immigrant restrictions strain state and local government resources, causing particularly difficult problems in a time of recession. The welfare law allows states to provide state-funded benefits to immigrants who lost federal eligibility. However very few states have fully restored services, and some states provide services only to certain groups of immigrants, such as children or seniors. The result is that immigrant-headed households in states where eligibility was not restored face greater hardship than in those states that created a safety net. An Urban Institute study found that children in immigrant families where there is no safety net face greater hardships than children in U.S. citizen families in obtaining adequate health care, nutrition, and housing.<sup>5</sup> Similarly, a recent study by George Borjas found that food insecurity rose significantly among immigrant-headed households in states with no safety net.<sup>6</sup>

Restrictions in the welfare law have deterred eligible U.S. citizen and immigrant family members from securing critical services. Eighty-five percent of immigrant families include at least one U.S. citizen, typically a child. Recent studies have documented the impact on these children. Between 1994 and 1998, for example, the number of citizen children in immigrant households receiving food stamps decreased by over one million – a 75 percent drop. In contrast, participation by citizen headed households declined by only 23 percent during the same period.<sup>7</sup> One-third of all children who are eligible for Medicaid, but are not enrolled, are children in immigrant families.<sup>8</sup> Although some barriers have been ameliorated through improved federal policy guidance, the “chilling effect” on access to services has not been fully overcome.

The welfare law also created new and potentially insurmountable burdens on family members who sponsor immigrants, and on immigrants whose sponsors can no longer help support them due to changed circumstances. Under immigrant sponsor deeming, the income and resources of the sponsor are presumed to be available to the immigrant, and are added to the immigrant’s income in determining financial eligibility. This often renders the immigrant ineligible for services as “over-income”. Moreover, even when the sponsors and immigrant’s incomes have both dropped and the immigrant is financially eligible, immigrants are often reluctant to accept services because their sponsors are required to pay back the cost of any services the immigrant receives. The harsh new rules do not take into account the possibility that the sponsors may experience unforeseen events – such as the loss of a job, a disabling injury or illness.

In the TANF and SSI programs, the length of sponsor deeming was extended until the immigrant becomes a citizen or works for approximately ten years. In TANF, deeming applies not only to the cash payment, but also to all non-cash supportive services, including child care, transportation, training and other social services. An immigrant cannot accrue credit for work performed while receiving food stamps or other supportive service available to low-wage workers. Moreover, the 1996 law imposed the deeming fiction for the first time in the health care context – in the Medicaid and SCHIP programs. The assumption that sponsors can cover all health care needs until an immigrant becomes a citizen ignores both the lack of affordable health insurance and the prohibitive cost of paying for this care out of pocket. When immigrants cannot receive care, the health of the entire workforce is compromised. These barriers to health care delay re-entry into employment for workers who become sick or injured. Because

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<sup>5</sup> Hardship is greater for children of immigrants than for children of U.S. natives in three areas: food, housing, and health care. See Randy Capps, *Hardship among Children of Immigrants: Findings from the 1999 National Survey of America’s Families* (Urban Institute, February 2001).

<sup>6</sup> George J. Borjas, *Food Insecurity and Public Assistance* (May 2001).

<sup>7</sup> USDA Food Stamp Program Quality Control Data for 1994 and 1998.

<sup>8</sup> Leighton Ku and Shannon Blaney, *Health Coverage for Legal Immigrant Children: New Census Data Highlight Importance of Restoring Medicaid and SCHIP Coverage* (Center on Budget and Policy Priorities, October 2000).

immigrants are a vital part of the low-wage economy, their exclusion from health coverage and other supportive services threatens the community's financial health.

***Recommendation:***

Restore lawfully residing immigrants' eligibility for support services, including TANF, SSI, food stamps, Medicaid, SCHIP and housing, and reinstate the sponsor deeming rules in place prior to the passage of the 1996 law.

**Prohibit State Discrimination against Two-Parent Families and Eliminate Work Participation Rules that Penalize Two-Parent Families**

A welfare study in Minnesota found that two-parent working-poor families receiving cash assistance benefits and work supports were more likely to wed or stay married.<sup>9</sup> However, federal law currently imposes a 90 percent work participation rate on two-parent families (versus 50 percent for all families). This means that 90 percent of a state's two-parent families on TANF must participate in work activities, making it harder for a state to serve these families. Because the work participation requirement is so high, states look for ways to avoid penalties for not meeting the work requirement. Some states have taken two-parent families out of their federal TANF program and have stretched their own limited resources to provide assistance with state funds; other states refuse to serve these families at all. States are currently able to deny assistance to two-parent families. More than one-third of the states provide more restrictive rules for two-parent families than for single-parent families. These restrictions on serving two-parent families disproportionately affect immigrants, since immigrant families receiving TANF services are 2.6 times more likely to be headed by two-parents than U.S.-born recipients.<sup>10</sup>

***Recommendation:***

Eliminate restrictions on two-parent eligibility and the separate two-parent family work participation rate. Current rules create disincentives for states to provide assistance to two-parent families. Such disincentives conflict with the goal of supporting and encouraging two-parent families.

**Increase English Proficiency and Improve Employment and Earnings for Limited English Proficient (LEP) Persons**

Currently, almost 18 percent of persons in the United States over the age of five speak a language other than English at home, and almost 8 percent are LEP.<sup>11</sup> Immigrants who are proficient in English earn more than immigrants with limited English proficiency or those who do not speak English at all. A study by MassINC found that employed immigrants in Massachusetts who are fluent in English earn 33 percent more than immigrants with limited English speaking skills.<sup>12</sup> A similar study in Los Angeles by the Economic Roundtable found that former welfare recipients who were English proficient earned a higher wage than former welfare recipients who did not speak English or who were LEP.<sup>13</sup>

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<sup>9</sup> Minnesota Department of Human Services, Minnesota Family Investment Program Longitudinal Study: One Year After Baseline, December 2000; Minnesota Department of Human Services, Minnesota Family Investment Program Longitudinal Study: Report on Recipient Sample Six Months After Baseline, February 2000.

<sup>10</sup> Karen Tumlin and Wendy Zimmerman, What Does Workfirst Mean for Immigrants? A Look at Immigrants on Welfare in Three Cities. (Urban Institute, Draft November 2001)

<sup>11</sup> U.S. Census 2000 Supplementary Survey Summary Tables.

<sup>12</sup> MassINC, The Changing Workforce: Immigrants and the New Economy in Massachusetts (November 1999).

<sup>13</sup> Mark Drayse, Daniel Flaming, and Peter Force, The Economic Roundtable, The Cage of Poverty, September 2000.

While many states allow some TANF recipients to participate in English as a Second Language (ESL) courses, full participation is limited in many states. Under current law, ESL is not explicitly listed as a work activity for purposes of meeting a state's work participation rate requirements. The allowable activities that would include ESL – such as job skills, training, and education related to employment – have limitations on the extent to which they can count toward the federal work rate. These restrictions limit states' flexibility to place LEP persons in intensive and vocational ESL courses.

Under current law, limited English speakers have an equal right to participate in all facets of TANF. But this is an empty right unless a state's program is designed to meet the needs of participants who do not yet speak English.<sup>14</sup> Identifying the English proficiency of TANF applicants and recipients will help states better assess the educational and training needs of their client population. Applicants and recipients who do not speak English are often placed in orientation and training classes in English, and may be at a higher risk of being sanctioned.<sup>15</sup> This practice not only wastes state and federal resources, but does not move the recipients closer to job readiness. Each state should be required to identify the extent to which its skills assessment, training, job placement and supportive services meet the needs of the state's limited English speaking recipients.

**Recommendations:** (1) Include ESL as a countable work activity with no limitations on the extent to which it can count toward the federal work rates. (2) Provide grants to states and localities for research, technical assistance, and demonstration projects to promote and fund best practices in the following areas: improving employment and earnings outcomes for LEP persons, increasing English proficiency of LEP persons, ensuring linguistic and cultural access in all facets of the TANF program. (3) Amend the TANF data reporting requirements to include "primary language" as a required data element in the state reports to HHS. HHS guidance on Title VI of the Civil Rights Act of 1964 already requires states to identify the language needs of each LEP person. Including this data in the quarterly reports to HHS will assist states in monitoring their effectiveness in serving the Limited English Speaking as well as meeting their civil rights obligations.

**Conform the TANF Child Care Rules to the Child Care Development Fund (CCDF) Rules**  
Participation in child care funded by CCDF is determined based on the eligibility of the child. However, states may set rules for TANF-funded child care based on either the eligibility of the child or the parent. Although the rules for the programs may differ, TANF funds transferred to CCDF are governed by CCDF rules. States that determine participation in TANF-funded child care based on the eligibility of the parent exclude many working immigrant families. Conforming the TANF child care rules to the CCDF rules would promote uniformity, simplify administration, and increase access to a crucial supportive service for low-income working families.

**Recommendation:** Clarify that states may follow CCDF eligibility rules when spending TANF funds directly on child care.

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<sup>14</sup> A study of Hmong TANF participants in Wisconsin found that language barriers made communication with TANF caseworkers difficult: 70 percent of the surveyed participants could not communicate with their caseworkers, and 90 percent had difficulty understanding written materials they received from their welfare agencies and had to rely on children, relatives, friends and others for translation. See Shawn Fremstad, *Immigrant Families and TANF Reauthorization* (Washington, DC: Center on Budget and Policy Priorities, preliminary draft, May 2001).

<sup>15</sup> In Massachusetts, a study that surveyed a sample of families whose cases were closed after hitting the state's 24-month time limit found that 7.6 percent were lawfully present immigrants and 17.6 percent were limited in their ability to speak English. See Massachusetts Department of Transitional Assistance, *After Time Limits: A Study of Households Leaving Welfare Between December 1998 and April 1999*. (November 2000).

## CONCLUSION

The current economic trends, exacerbated by the events of September 11, disproportionately affect immigrant workers, who are concentrated in the types of services and businesses most harmed by the crisis.<sup>16</sup> Efforts to invest in the low-wage workforce must address the particular barriers and skills of the immigrant workers and their families, including those who are not currently employed. Among these barriers are the sweeping restrictions imposed by the 1996 welfare law, and TANF structures that fail to provide adequate opportunities for these individuals. The overwhelming unpopularity of the current restrictions is underscored by a 1998 nationwide poll conducted by the W.K. Kellogg Foundation, in which 77 percent of Americans felt that lawfully present immigrants should have the same access to a safety net as U.S. citizens. The need to resolve the disparity between welfare reform's intent and its effect on working immigrant families will be a critical component of a successful TANF policy.

Sincerely,

Susan Drake, Executive Director  
National Immigration Law Center

1. American Bar Association
2. Asian & Pacific Islander Institute on Domestic Violence
3. Asian American Legal Defense and Education Fund
4. Asian and Pacific Islander American Health Forum
5. Asian Health Coalition of Illinois
6. Asian Law Alliance
7. Asian Pacific American Legal Center
8. Association of Asian Pacific Community Health Organizations
9. Catholic Charities of the Archdiocese of Miami
10. Catholic Charities, Oklahoma
11. Center for Community Change
12. Center for Pan Asian Community Service, Inc.
13. Center for Public Policy Priorities
14. Center for Women & Families
15. Centro Campesino
16. Church Avenue Merchants Block Association, Inc.
17. Coalition for Humane Immigrant Rights of Los Angeles
18. Community-University Health Care Center
19. Florida Immigrant Advocacy Center
20. Florida Legal Services
21. Hmong National Development
22. Hotel Employees & Restaurant Employees International Union, Mississippi
23. Immigrant Legal Resource Center
24. Immigrant Legal Resource Center.
25. Jewish Family Services
26. Jewish Federation of Metropolitan Chicago
27. Khmer Health Advocates

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<sup>16</sup> See, e.g. Mary Beth Sheridan, "Wall Street to Washington, Layoffs Shatter Lives" Washington Post (October 31, 2001)(describing the particular difficulties experienced by displaced immigrant workers, and citing Census figures indicating that one in five U.S. food service workers and one in four workers in the cleaning industry is foreign born).

28. Law Center for Families
29. Massachusetts Immigrant & Refugee Coalition
30. National Center on Poverty Law
31. National Council of La Raza
32. National Health Law Program
33. National Immigration Forum
34. National Immigration Project of the National Lawyers Guild
35. National LEP Advocacy Task Force
36. Nebraska Appleseed Center for Law in the Public Interest
37. New Jersey Immigration Policy Network
38. Nova Southeastern University- Shepard Broad Law Center
39. NOW Legal Defense
40. Organization: Association of Maternal and Child Health Programs
41. Public Justice Center
42. Refugee & Immigration Services of South Bend
43. Refugee & Immigration Services, Roanoke, VA
44. Refugee and Immigration Services, Catholic Diocese of Richmond
45. Refugee Ministry, Presbytery of San Jose
46. The Massachusetts Law Reform Institute in Boston
47. The New York Immigration Coalition
48. UCLA Center for Health Policy Research
49. University of Illinois at Chicago, College of Nursing
50. Washington Lawyers' Committee for Civil Rights and Urban Affairs
51. Wm. E. Morris Institute for Justice