



DEC 12 2007

Dear State TANF Agency Official:

As you know, the U.S. Department of Health and Human Services (HHS) Administration for Children and Families (ACF) is the Federal agency that administers the Temporary Assistance for Needy Families (TANF) program. The HHS Office for Civil Rights (OCR) enforces Federal civil rights laws that govern the TANF program.

In accordance with the Deficit Reduction Act of 2005 (DRA), HHS published an interim final rule that implemented changes to the TANF program on June 29, 2006. Following publication of the interim final rule, states raised questions related to compliance with civil rights laws, and, in particular, meeting the needs of TANF applicants and beneficiaries with disabilities. It should be stated here that neither the DRA nor the interim final rule changed anything related to a state's obligation to adhere to Federal civil rights laws. However, it has been some time since HHS has provided information related to those issues. Therefore we thought it would be appropriate to send the enclosed document entitled *Frequently Asked Questions: Meeting the Needs of TANF Applicants and Beneficiaries under Federal Civil Rights Laws*. Please note that TANF guidance developed by OCR in the past, including *Prohibition Against Discrimination on the Basis of Disability in the Administration of TANF* and *Civil Rights and Welfare Reform – An Overview and Technical Assistance for Caseworkers on Civil Rights Law and Welfare Reform*, remains in effect.

ACF and OCR are committed to providing technical assistance to ensure that TANF agencies meet their obligations to comply with Federal civil rights laws. As you know, compliance ensures that applicants and beneficiaries have an equal opportunity to participate in TANF programs and receive TANF benefits in an environment free of discrimination. We encourage you to review and circulate the Frequently Asked Questions throughout your agency. They address a number of important questions about serving TANF applicants and beneficiaries with disabilities and limited English proficiency.

If you have any questions, comments, or concerns, please contact Kenneth D. Johnson in OCR at (202) 619-0128, or your Regional Representative in ACF.

Sincerely,

Winston A. Wilkinson, J.D.  
Director  
Office for Civil Rights

Daniel Schneider  
Acting Assistant Secretary  
Administration for Children  
& Families

cc: Regional OCR and ACF Offices

Enclosure

# **Frequently Asked Questions**

## **Meeting the Needs of TANF Applicants and Beneficiaries Under Federal Civil Rights Laws**

### **Background**

The Deficit Reduction Act of 2005 (DRA) (Pub. L. 109-171) reauthorized and made changes to the Temporary Assistance for Needy Families (TANF) program. The U.S. Department of Health and Human Services (HHS) developed and published regulations implementing the DRA changes to TANF. Following these developments, states raised questions related to compliance with civil rights laws and, in particular, meeting the needs of TANF applicants and beneficiaries with disabilities. While neither the DRA nor the TANF regulations change how states are to comply with applicable Federal civil rights laws, these frequently asked questions and answers are designed to re-emphasize and clarify the obligations of states. They have been developed by HHS' Administration for Children and Families (ACF), which administers the TANF program for the Federal government, and HHS' Office for Civil Rights (OCR), which enforces certain Federal civil rights laws that govern TANF agencies. ACF and OCR jointly developed answers to the following frequently asked questions to assist states in implementing TANF programs consistent with relevant civil rights laws.

### **Questions and Answers**

#### ***1. What are the civil rights laws governing TANF agencies?***

TANF agencies receive funding from the Federal government. As such, they must comply with certain Federal civil rights laws that apply to entities that receive Federal funding. These laws include: (1) Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., and its implementing regulations at 45 C.F.R. Part 80 (Title VI); (2) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulations at 45 C.F.R. Part 84 (Section 504); and (3) the Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq., and its implementing regulations at 45 C.F.R. Part 91 (Age Discrimination Act).

TANF agencies are typically part of state or local governments. As such, they must comply with Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, and its implementing regulations at 28 C.F.R. Part 35 (ADA), which apply to state and local governments.

All of these Federal civil rights laws prohibit certain types of discrimination. Title VI prohibits discrimination on the basis of race, color, or national origin. Section 504 and the ADA prohibit discrimination on the basis of disability. The Age Discrimination Act prohibits discrimination on the basis of age.

**2. Did the DRA change the obligations of TANF agencies with respect to these civil rights laws?**

No. TANF agencies have the same legal obligations to comply with Title VI, Section 504, the ADA, and the Age Discrimination Act that they had prior to the DRA and its changes to TANF.

**3. What are a TANF agency's obligations with regard to not discriminating on the basis of race, color, or national origin?**

TANF agencies are required to ensure that their programs do not discriminate against people on the basis of their race, color, or national origin. A TANF agency may violate Title VI if it: (1) excludes a person or people from program participation based on race, color, or national origin; (2) denies benefits or services to a person or people based on race, color, or national origin; or (3) provides different or lesser benefits to a person or people based on race, color, or national origin. For example, a TANF agency may violate Title VI if, on the basis of a person's race, color, or national origin, it provides different job or training activities, applies sanctions differently, or allows/disallows exemptions or extensions of TANF time limits.

**4. What are a TANF agency's obligations with regard to serving applicants and beneficiaries with limited English proficiency?**

Another way that Title VI may be implicated is in the way a TANF agency serves people with limited English proficiency (LEP). Under Title VI regulations, to avoid discrimination on the basis of national origin, TANF agencies must take reasonable steps to provide meaningful access for people with LEP. Since every TANF agency serves a different population, TANF agency obligations to people with LEP may vary. Federal guidance has set forth the following four factors that recipients of Federal financial assistance, including TANF agencies, may use in determining their responsibilities to provide meaningful access for people with LEP: (1) the number or proportion of people with LEP eligible to be served or likely to be affected by the program or service; (2) the frequency of contact that the program or service has with people with LEP; (3) the nature and importance of the program, activity, or service; (4) the costs and resources available to the program or service. Depending on the results of a TANF agency's analysis of these factors, it may be necessary for the agency to provide interpreter services to people with LEP or translate certain documents into languages other than English to ensure that the TANF agency provides meaningful access for LEP persons.

Example:

~A TANF agency that serves a substantial LEP population has determined that interpreter services are needed when questioning LEP applicants about critical eligibility issues. In lieu of providing competent and timely interpreter services, the TANF agency advises the applicants to bring friends or relatives to serve as

interpreters during these appointments. This is an example of conduct that may violate Title VI's obligation to take reasonable steps to provide meaningful access.

**5. *Who is considered a person with a disability under Section 504 and the ADA?***

Section 504 and the ADA define the terms "handicap" or "disability" with respect to an individual to mean a physical or mental impairment that substantially limits one or more of the major life activities of such an individual. Included in the definition are people who have a record of such an impairment, or are regarded as having such an impairment.

The definition of disability under Section 504 and the ADA differs from that typically used to determine eligibility in programs that provide cash assistance based upon disability such as the Federal Supplemental Security Income and Social Security Disability Insurance programs. This definition may also be different from that used by some states to determine whether an individual may be exempt from certain program rules in TANF. For more information on the definition of disability under Section 504, see 45 C.F.R. § 84.3; under the ADA, see 28 C.F.R. § 35.104.

**6. *What are a TANF agency's obligations with regard to not discriminating on the basis of disability?***

Under Section 504 and the ADA, TANF agencies must: (1) ensure equal access to people with disabilities; (2) reasonably modify policies, practices, and procedures for people with disabilities where necessary; and (3) ensure that methods of administration do not discriminate on the basis of disability.

**7. *How can a TANF agency ensure equal access to people with disabilities?***

A TANF agency ensures equal access to TANF applicants and beneficiaries with disabilities by delivering services that are: (a) appropriate in view of their particular physical or mental impairment; and (b) provide an equal opportunity to benefit from the agency's job placement, education, skills training, employment, and other TANF activities.

In ensuring equal access to people with disabilities, TANF agencies should have comprehensive and effective screening and assessment tools in place. TANF agencies should offer to conduct an initial screening of each applicant and beneficiary to identify those individuals with possible disabilities, and inform applicants and beneficiaries that their participation in screening and disclosure of disability is voluntary. This screening should be conducted by trained staff, using validated screening tools. If there is an initial indication that an individual has a disability that may impact his/her ability to successfully complete or benefit from a current or proposed program assignment, the TANF agency should give the individual an

opportunity for a more comprehensive assessment that is conducted by qualified professionals.

Example:

~A TANF agency offers free screening for disabilities to all TANF applicants and beneficiaries. The TANF agency conducts screening for disabilities only upon receipt of the program participant's written, informed consent. If screening indicates a potential disability, the TANF agency offers a free diagnostic assessment conducted by a qualified clinical diagnostician. The results of the diagnostic assessment are documented in a report that identifies the nature of the disabilities, describes the effect of such disabilities on the individual's ability to benefit from and participate in TANF activities, and includes a description of the accommodations and/or modifications that may be necessary to help the individual fully participate in the TANF program. This individualized report guides the TANF agency's provision of services to the TANF beneficiary.

***8. How can a TANF agency reasonably modify its policies, practices, and procedures for people with disabilities?***

Sometimes people with disabilities are unable to participate in or benefit from a TANF program without modifications to policies, practices, and procedures. Under Section 504 and the ADA, TANF agencies must reasonably modify policies, practices, and procedures to avoid discrimination on the basis of disability, unless the modification would fundamentally alter the nature of the service, program or activity.

One size does not fit all in regard to modifications. TANF agencies should assess the needs of each applicant or beneficiary with a disability and make reasonable modifications tailored to meet those needs.

Modifications may be needed in the: (1) TANF application process; (2) procedures related to notifying TANF applicants and beneficiaries of their rights; (3) requirements of TANF programs; (4) policies and practices concerning exemptions, extensions and sanctions; and (5) policies and practices that aid individuals in sustaining TANF program participation.

Examples:

~A TANF agency requires face-to-face eligibility interviews. Due to a disability, a person is unable to physically access the TANF office for an eligibility interview. As a reasonable modification, the TANF agency could meet with the client at an accessible location, or conduct this eligibility interview over the phone.

~A TANF agency has education and training programs, and has instituted time limits for completing the programs. A client with a learning disability has difficulty completing the education and training program within the required time limit. As a

reasonable modification, the TANF agency could grant an extension to the time limit if the extension would not fundamentally alter the nature of the program.

**9. Is a TANF agency legally obligated to provide a reasonable modification even if it results in the state not being able to count a person with a disability in its Federal work participation rate?**

Yes. Section 504 and the ADA require nondiscriminatory treatment of people with disabilities by TANF agencies. By focusing on what applicants and beneficiaries with disabilities need in order to move from government dependency to self-sufficiency, TANF agencies can ensure compliance with civil rights laws. If a TANF client with a disability needs a reasonable modification and providing the modification means that the state will not be able to count the person in its Federal work participation rate, the state is still obligated to provide the reasonable modification.

Example:

~ The TANF statute only allows a state to count people in its Federal work participation rate that participate in work activities for at least a minimum average of 30 hours per week. A TANF client has a disability that limits his/her ability to participate in work activities for more than 15 hours per week. Even though the state may not be able to count this client in its Federal work participation rate, Section 504 and the ADA may require the state to continue serving the client.

**10. How can a TANF agency ensure that its methods of administration do not discriminate on the basis of disability?**

To ensure that its methods of administration are not discriminatory, a TANF agency may develop and implement *official written policies* related to meeting the needs of people with disabilities, as well as *actual practices* (i.e., ways of ensuring that TANF agency staff are knowledgeable about policies) to meet the needs of people with disabilities.

Examples:

~A TANF agency has clearly written policies that describe in detail how to respond when a TANF client needs a reasonable modification.

~A TANF agency implements training for TANF agency employees, contractors, and vendors on working effectively with TANF applicants and beneficiaries with disabilities.

~A TANF agency periodically monitors its policies and procedures in regard to meeting the needs of TANF applicants and beneficiaries with disabilities. Such monitoring determines whether existing screening and assessment tools are adequate,

whether the assistance provided is meeting the needs of individuals with disabilities in moving toward self-sufficiency, whether staff is knowledgeable about policies and procedures and how to implement them, and whether sources of and arrangements for assistance are current and viable.

***11. What other information is available to help TANF agencies meet their civil rights obligations for applicants and beneficiaries?***

For further information on TANF agency civil rights compliance and meeting the needs of TANF applicants and beneficiaries with disabilities or limited English proficiency, please contact the HHS Office for Civil Rights (see <http://www.hhs.gov/orc/contact.html>), or your regional TANF program manager in the HHS Administration for Children and Families, Office of Family Assistance (see [http://www.acf.hhs.gov/acf\\_about.html#offices](http://www.acf.hhs.gov/acf_about.html#offices)).

The following resources may be helpful to TANF agencies in meeting their civil rights obligations for applicants and beneficiaries.

~OCR Guidance: *Civil Rights Laws and Welfare Reform – An Overview and Technical Assistance for Caseworkers on Civil Rights Law and Welfare Reform*, located at <http://www.hhs.gov/ocr/overview1.htm>.

~*Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient People*, located at <http://www.hhs.gov/ocr/lep/revisedlep.html>.

~OCR Guidance: *Prohibition Against Discrimination on the Basis of Disability in the Administration of TANF*, located at <http://www.hhs.gov/ocr/prohibition.html>. This OCR guidance also includes examples of promising practices that, if effectively implemented, would assist TANF agencies in complying with Section 504 and the ADA.

~OCR Resolution Agreement with the Massachusetts Department of Transitional Assistance: a comprehensive agreement to ensure that TANF applicants and beneficiaries with learning disabilities receive comprehensive and effective screening and assessment. <http://www.hhs.gov/ocr/tanf/summary.html>.

~*Video Presentation: OCR Guidance on TANF and Disability*, may be viewed at <http://www.hhs.gov/ocr/tanf/>.