

---

# Temporary Assistance for Needy Families Program Instruction

---

U.S. Department of Health and Human Services  
Administration for Children and Families  
Office of Family Assistance  
Washington, DC 20201

No. TANF-ACF-PI-2016-04

Date: November 16, 2016

---

**TO:** State agencies (hereafter, states) administering the Temporary Assistance for Needy Families (TANF) Program and other interested parties

**SUBJECT:** Guidance on the application of the “new spending test.”

**REFERENCES:** Section 409(a)(7)(B)(i)(II) of the Social Security Act and 45 CFR Part 263.5.

**PURPOSE:**

This Program Instruction provides information to TANF agencies to clarify the appropriate application of 409(a)(7)(B)(i)(II)(aa) of the Social Security Act (the Act) and 45 CFR 263.5(b), commonly known as the “new spending test,” which limits a state’s ability to count state maintenance-of-effort (MOE) expenditures for certain programs that existed in fiscal year (FY) 1995 to the amount that exceeds the FY 1995 expenditures.

**BACKGROUND:**

MOE expenditures are qualified state expenditures generally made to or on behalf of eligible families, meaning a family that includes, at a minimum, a child living with a parent (or caretaker relative) or a pregnant woman who meets the state’s criteria for financial need. Congress included the MOE requirement in the TANF program to ensure that states maintain their own financial commitment to needy families. Section 409(a)(7)(B)(i)(II) of the Act and 45 CFR 263.5(b) include a provision known as the “new spending test,” which is intended to further this goal.

Under 409(a)(7)(B)(i)(II)(bb) of the Act and 45 CFR 263.5(a), a state may include as MOE all state or local expenditures that were previously authorized and allowable under the Aid to Families with Dependent Children (AFDC) program (the former Title IV-A that preceded TANF) and related programs, if the state or local program operated in FY 1995, as long as the spending meets one of the purposes of TANF. Under 409(a)(7)(B)(i)(II)(aa) of the Act and 45 CFR 263.5(b), referred to as the “new spending test,” if the state or local program operated in FY 1995 but was *not* previously authorized and allowable under the AFDC or related programs, then a state may only count the amount of spending that exceeds the FY 1995 level of expenditures.

The new spending test was intended to address situations where states had existing state or local programs at the time TANF was enacted, when states became responsible for a MOE requirement. The MOE requirement, set forth in section 409(a)(7) of the Act, requires a state to spend at least 80 percent of what the state had spent in 1994 for a set of programs repealed at the time TANF was enacted; if a state meets TANF work participation requirements, the MOE requirement falls to 75 percent. Congress set state MOE requirements based on state spending for Title IV-A matching programs in FY 1994, not based on overall state spending for low-income assistance. While

Congress wanted states to have flexibility in satisfying MOE requirements, there was also a concern that states should not be permitted to search through the state budget to find existing programs, count those programs toward MOE, and withdraw other funding from assistance to low-income families. In the preamble to the original TANF Final Rule (Federal Register of 4/12/99, p. 17835, col. 3), the Administration for Children and Families (ACF) explained that Congress intended the new spending test to prevent states from substituting existing expenditures in pre-existing programs for assistance to needy families and claiming such expenditures as MOE. The explanation of Congressional intent centered on whether expenditure levels had increased, hence the term, “new spending test.” Thus, the general principle established was that if a state program existed in FY 1995, a state should be allowed to count toward MOE only those expenditures in the program in excess of the FY 1995 level.

We have become aware that at least one state has recently stopped applying the new spending test to expenditures previously subject to the new spending test. The state held that if a state changes the name of a program or the eligibility criteria, the program is a new program, different from the one that existed in FY 1995, and thus the new spending test does not apply and the state may count all of the program’s expenditures as MOE. In order to help states accurately report the expenditures they may count as MOE, ACF is issuing this Program Instruction to clarify the purpose and application of this test. This is particularly important where a program involves significant expenditures because if a state does not apply the new spending test correctly, it may be at risk of failing to meet its MOE requirement or Contingency Fund MOE requirement.

**POLICY:**

ACF considers a TANF MOE-funded program whose central purpose is the same as it was in FY 1995 not to be “new” for the purposes of the “new spending test.” This means that incidental changes, name changes, funding level, hours of operation, service additions, or other changes that do not alter the central function or purpose of a program do *not* trigger the ability of the state to include the total program expenditures as MOE.

The state has the responsibility to demonstrate that a program is fundamentally “new” for the purposes of the new spending test. This means that if a program existed in FY 1995, a state must put forth a strong case that a program is in fact a new program.

We are reminding auditors to pay particular attention to this provision in their review of state TANF programs. We expect states to apply the new spending test correctly and reflect the correct application of the test in all relevant reports.

**INQUIRIES:** Please direct inquiries to the TANF Program Manager in your region.

/s/

Susan Golonka  
Acting Director  
Office of Family Assistance