

# NM center on law and poverty

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October 2, 2008

Sidonie Squier, Director  
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Administration for Children & Families  
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Director Squier:

The New Mexico Center on Law & Poverty (“the Center”) objects to the proposed amendment to repeal 42 C.F.R. § 261.43(b) and offers the following as comments to the amendment, published by the Administration for Children & Families (ACF) in the Federal Register on August 8, 2008.

42 C.F.R. § 261.43(b) allows states to increase their caseload reduction credit when they make Maintenance of Efforts (MOE) expenditures beyond the amounts required of them. This provision, known commonly as the “excess MOE rule,” offers states important flexibility in structuring their TANF and state assistance programs to best meet the particular needs of their populations, providing states with an incentive to fund programs that will have the best chances of helping needy families get off—and stay off—of TANF.

HHS justifies its proposed rule change by claiming that the excess MOE rule is “no longer necessary,” and is inconsistent with Congress’s intent in passing the Deficit Reduction Act of 2005 (DRA). The Center disagrees with both justifications, and urges HHS to withdraw its proposed amendment.

Far from rendering the excess MOE rule “unnecessary,” the current economic downturn makes the rule even more critical to states serving those families impacted most by the souring economy. The effect of repealing the excess MOE rule will be to penalize states for their inability to get additional TANF recipients to work, at a time when the economy makes it even harder to do so. The unemployment rate in New Mexico increased by 1.2% between August

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2007 and August 2008,<sup>1</sup> and is likely to get worse given the increased layoffs anticipated in many sectors critical to the New Mexico economy. In addition, because Hispanics comprise nearly half of New Mexico's population, the fact that they tend to be hit harder by slowing job markets puts New Mexican families at even greater risk of economic instability.<sup>2</sup>

At a time like this, states like New Mexico need the flexibility to continue investing their MOE funds in programs that help low-income families maintain their fragile economic positions. Excess MOE funds in New Mexico go to a number of programs that support needy New Mexican families, many of whom, while working, continue to struggle to escape poverty. MOE funds go, for example, to the Low Income Comprehensive Tax Rebate (LICTR), an important income support for which 90-95% of New Mexicans living in poverty apply.<sup>3</sup> MOE funds also serve to help poor families with child care so that adult household members can invest in training and other work-related activities; to fund the GRADS program, which helps teen parents graduate from high school with the skills necessary for economic independence; and to fund a number of other programs critical to helping low-income New Mexicans achieve and maintain self-sufficiency.

The proposed amendment removes a major incentive that states have to invest in these important programs, and threatens states with millions of dollars in penalties for failing to put additional TANF households in the narrow category of "work activities" required by the federal government. In doing so, the amendment does not further the intent of the DRA, which is silent on the excess MOE provision, despite the fact that Congress *did* directly address several other specific TANF provisions. On the contrary, the proposed amendment, in the context of a failing economy and constricting state budgets, will only serve to force states to cut spending on important work-supportive programs in favor of focusing solely on avoiding federal penalties. Such a shift in priorities promises to result in higher TANF caseloads, not lower ones—a result that clearly undermines the intent of the DRA.

The Center appreciates the opportunity to comment on these proposed regulations, and urges the Administration to consider the negative impact of repealing the excess MOE rule and withdraw its proposed amendment.

Sincerely,

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Legal Director

Celeste Boyd  
Staff Attorney

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<sup>1</sup> NM Department of Workforce Solutions, Press Release: Monthly News Release - Employment & Unemployment - September 25, 2008, <http://www.dws.state.nm.us/dws-Mnews.html>.

<sup>2</sup> Alejandro Lazo, Hispanics Hit Hard As Workers Lose Hours, *Washington Post*, September 1, 2008; Page E1, <http://www.washingtonpost.com/wp-dyn/content/article/2008/08/31/AR2008083101467.html>

<sup>3</sup> NM Human Services Department, TANF Caseload Reduction Report, FY 2008.