



IMMIGRANT LEGAL ADVOCACY PROJECT

Submitted via email: Alexandria.Lauritzen@maine.gov

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Department of Health and Human Services Office for Family Independence
109 Capitol Street Augusta, ME 04330-6841

RE: Immigrant Legal Advocacy Project Comments on TANF Rule #118P – Noncitizen Language

Dear Ms. Lauritzen,

The Immigrant Legal Advocacy Project, (ILAP), respectfully submits the following comments regarding TANF Rule #118P – Noncitizen Language, which seeks to clarify program requirements in Chapters I, II, IV and V of the Public Assistance Manual Temporary Assistance for Needy Families (TANF) for applicants and the Department as they relate to non-citizen eligibility. Significantly, the proposed process for checking eligibility of noncitizens in Maine (depending heavily on the Systemic Alien Verification for Entitlements, or SAVE, system) would **not** cover all groups of noncitizens in Maine who would be eligible for TANF (for example, asylum seekers who are applying through the Department of Justice immigration court system). In addition to recommendations to fix this omission, ILAP's comments also include recommendations around the good cause standard, the hardship extension standard, language and terminology, and ensuring that Maine takes additional steps to reduce barriers and make TANF accessible to noncitizens in need.

I. About ILAP and Interest in Proposed Changes:

ILAP is Maine's only statewide immigration legal services organization, serving low-income people across the state who would otherwise not have access to immigration legal services. ILAP's clients are predominantly people of color and include asylum seekers, immigrant children, farmworkers, survivors of domestic violence and human trafficking, and other vulnerable noncitizen populations. Through our practice over the last 30 years and our longstanding community partnerships, ILAP has deep understanding and expertise in the intersection between immigration status and documentation and access to public benefits, including prevalent current issues that lead to erroneous rejections of eligible noncitizens in Maine.

II. ILAP's Comments:

A. General Comments on Updates to Language and Terminology:

ILAP applauds DHHS for taking steps to update all references of "alien" to "noncitizen" in the TANF rules. The term "alien" is deeply dehumanizing and outdated and this update reflects the respect and dignity that all people in Maine deserve, regardless of their immigration status or national origin.

ILAP flags the following additional language and terminology updates needed in the Manual and throughout the rules:

- References to the Immigration and Nationality Service (INS) should be replaced with U.S. Citizenship and Immigration Services (USCIS). INS was replaced by the Department of Homeland Security (DHS) and USCIS is the agency within DHS that adjudicates immigration benefits. References to INS Forms should also be corrected to current USCIS Forms.
- All references to “USCIS number” should be replaced with “A number,” which is the name of the identification number an individual would have across the immigration system, whether applying through USCIS or the immigration courts.
- All references to “legal” permanent resident should be replaced with “lawful” permanent resident, the correct legal terminology and language.
- All references to “Afghani” should be replaced with “Afghan,” the correct term to describe a person who is from Afghanistan.
- ILAP also recommends that the all the federal agencies that administer the U.S. immigration system be added to the “Introduction and General Definitions” section of the Manual – most importantly, the Department of Homeland Security where USCIS is housed, and the Department of Justice, where the immigration court system is housed. The State Department also plays a role in the administration of specific benefits and may be helpful to clarify in the Manual.

B. The Proposed Immigration Status Verification Process Would Not Cover Common Immigration Statuses and Must Be Revised to Prevent Burden on Individuals and Inefficiency and Costs to the Agency:

Regarding verifying noncitizen eligibility for TANF, DHHS proposes “A data match with the United States Department of Homeland Security (DHS) is the controlling verification type.” (See Chapter II, page 8 in the Manual). Additionally, under “Processing Procedures,” the proposed rule states, “The status of any noncitizen must, ultimately, be verified through a data match with DHS.” (See Chapter II, page 29).

The U.S. immigration system is managed by multiple agencies including the Department of Homeland Security (where USCIS is housed) and the Department of Justice (where the immigration courts are housed). Noncitizens who are applying for immigration status through the Department of Justice will very often NOT show up in the SAVE database managed by the Department of Homeland Security, which the proposed rule heavily relies on. Therefore, the rule must be updated to include a process that would verify noncitizens seeking status through the court system in the Department of Justice.

For the administration of state-level benefits, as the most efficient, comprehensive, and low barrier process, ILAP recommends that DHHS use a self-verification system instead of relying on multiple federal databases and systems. This would give applicants the maximum amount of options in providing the paperwork they have to show their qualifying immigration status. A self-verification process would prevent agency staff from having to navigate multiple federal databases depending on the type of noncitizen applicants. Additionally, systems like SAVE are frequently delayed or out of date, resulting in erroneous denials.

In addition to delayed updates, an additional scenario that makes the SAVE system an unreliable option for verification is that asylum seekers may show up in the SAVE system who have not yet actually filed their application with the court system. For example, this frequently happens when an asylum seeker without representation notifies USCIS that they have filed an asylum application with the court system (required for asylum seekers to receive an appointment to have their biometrics checked) but they have not actually filed with the court system out of confusion or error. In this scenario, the SAVE system will sometimes show that a person has filed an asylum application when they actually have not.

If DHHS chooses to use federal database systems to verify immigration status for state-level benefits – which is *not* required by statute – one of the most common situations it will face is that asylum seekers with a defensive posture (meaning they are applying through the Department of Justice and not the Department of Homeland Security), will very often not show up in the SAVE system (which is managed by the Department of Homeland Security).

Accordingly, DHHS workers will need to use the following steps to verify noncitizen status:

1. Start with the SAVE system;
2. If the noncitizen is not in the SAVE system, the DHHS worker must check the immigration court system by calling 1-800-898-7180. After calling the hotline, the DHHS worker will be prompted to enter the applicant's A number to get information about their immigration status;
3. If the applicant does not show up in the SAVE system or in the court system (the 1-800 number), the DHHS worker must give the applicant the opportunity to present other evidence on their qualifying immigration status (to account for errors or delays in the federal verification systems).

In line with the above issues, language in the Manual that lists permissible Supplemental Verification for noncitizens (Chapter II, page 24) is limited to only DHS options and must be updated to reflect verification through the immigration court hotline. Typically, asylum applicants in the court system do not receive receipts of their applications (without additional steps that would typically require an attorney's guidance). There may be additional scenarios where applicants in Maine may not have documents from DHS and expanding sources and types of evidence will help prevent erroneous denials.

Furthermore, given tremendous processing delays at USCIS, oftentimes the most current document a noncitizen applicant might have is expired (this is a particularly common scenario for people with Temporary Protected Status). Accordingly, ILAP recommends that Supplemental Verification language in Chapter II strike all references to "unexpired" and just request the most "current version" of the document the applicant has received. The Manual should require and provide guidance to DHHS workers on how to check the corresponding USCIS webpage, Federal Register, or other sources to verify automatically extended documents. While certain applicants may be able to point to the source of autoextensions, given the lack of immigration legal services available in Maine and complexity of multiple levels of documentation from USCIS, this burden should not fall on noncitizen applicants as it would likely lead to erroneous denials of benefits.

Chapter II, page 26, which discusses "Special Conditions for State Funded TANF/PaS" must also be updated to reflect a verification system that is inclusive of noncitizens applying for status through the immigration court system.

C. Eligibility for Cuban and Haitian Entrants Should Not be Limited to 36 Months:

ILAP recommends that DHHS maintain current policies around Cuban and Haitian Entrants and not limit benefits eligibility to 36 months. The proposed 36-month language adds restrictions and is different from the definition in the current version of the TANF manual, which references section 501(e) of the Refugee Education and Assistance Act for the definition of Haitian and Cuban entrants and does not include that 36 month language. TANF benefits are a lifeline for people working to get on their feet and build more stable futures for themselves and their families. Investing in families ultimately provides vast benefits to entire communities and to Maine and DHHS should err on the side of maximizing assistance where it has discretion.

D. Requirement of Application for a Social Security Number is an Unreasonable Burden on Vulnerable Noncitizens in Need of Assistance:

ILAP urges DHHS to take all steps to remove barriers to noncitizens seeking vital public benefits needed to survive and find stability and security. For example, noncitizens should not be required to show proof of applying for a social security number in order to be eligible for TANF. For noncitizens – particularly people who are newly arrived and are facing the steepest language, cultural, and other barriers – navigating the immigration system in and of itself is an immense hurdle. Given the lack of immigration legal assistance in Maine, many are forced to try to do this alone. The requirement of proof of a Social Security application is deeply burdensome for those already navigating unfamiliar bureaucratic systems that are typically not in their first language. Accordingly, ILAP recommends that DHHS take all measures, including removing the Social Security requirement for noncitizens, to make accessing TANF benefits as low barrier as possible.

E. Specific Language Should Be Added Around Good Cause Reflecting Common Scenarios Noncitizens Face:

Given tremendous processing delays at U.S. Citizenship and Immigration Services, noncitizen applicants commonly have complied with all steps in their immigration process but are delayed in receiving documentation from the federal agency. ILAP strongly recommends DHHS reflect this common scenario in the TANF rules around the good cause standard. For example, in Chapter I, page 9, an additional category of good cause should be added: **“Delays from the federal government have resulted in noncitizens not having documentation despite complying with all aspects of their immigration process.”** The rules currently allow good cause for delays from the Social Security Administration and should be updated to include delays from immigration agencies - a common situation noncitizens face.

F. Hardship Extensions Should Be Available to Noncitizens Related to Common Obstacles Faced While Navigating the Immigration System:

As currently written, DHHS affirmatively excludes delays in the U.S. immigration system and common barriers in navigating the system as qualifying for a hardship extension. (See Chapter I, page 21 in the Manual: “A family may be eligible for an extension of up to six months when the family has experienced an emergency situation, other than citizenship or alien status, which is beyond the control of the family and prohibits them from engaging in employment.”). ILAP strongly recommends that the language “other than citizenship or alien status” be stricken from the rules.

Navigating the U.S. immigration system is deeply complex and time consuming. In Maine, we face the additional challenge of being an immigration legal services desert, with ILAP being the only organization providing statewide immigration legal services for those who cannot afford attorneys. When short term needs provided by TANF are pitted against long term needs (security and stability from immigration status), noncitizens in Maine are forced into impossible situations. Vulnerable noncitizens feel pressured to file their applications quickly and by themselves without an attorney or they are driven into the hands of fraudsters who pretend to be able to assist with immigration applications in order to steal from, extort, and abuse them. These barriers in the system and delays in federal immigration processing are wholly beyond the control of noncitizen applicants - it is crucial that hardship extensions be available to them to prevent them from facing the serious additional harm of rushing an immigration application without qualified legal assistance.

Hardship extensions may make the difference in allowing a noncitizen family to have the time needed to successfully pursue their immigration case. In the case of people pursuing humanitarian relief such as asylum, this literally can translate to life-or-death outcomes.

In addition to striking the above-referenced language, DHHS should affirmatively add language clarifying that hardship extensions are available for noncitizens based on challenges in the immigration system.

For example, the following language could be added:

“Delays While Navigating the U.S. Immigration System - A family may be eligible for an extension of up to 6 months when the family is pursuing their immigration case but experiencing obstacles such as, but not limited to, lack of access to legal counsel and delays in processing from the federal government.”

G. Additional Measures Regarding Accessibility for Noncitizens will Reduce Burdens on Both Individuals and the Agency:

The rules should require and specify that all materials and information be provided to noncitizens who do not speak English in their primary language. Ensuring that applicants receive accessible information at all stages of the process is crucial in ensuring that at-risk families can meet basic needs as soon as possible, due process is protected, and erroneous denials and resulting fair hearings and other steps are minimized, saving the agency time and resources.

Examples where language access is essential for due process and reducing administrative burdens:

Chapter I, page 4 of the Manual:

“Orientation to TANF programs begins with the initial interview. During the initial interview of the application process, the Department shall provide applicants **in their primary language** with information about coverage, conditions of eligibility and rights and responsibilities including information, both orally and in writing, of the availability of services for victims of domestic violence.

Chapter I, page 7 of the Manual:

“(6) Applicant Notification: a) Notification of approval is in writing **in the applicant’s primary language** and contains the following...”

Chapter I, page 11 of the Manual:

“(2) The Department must:

- a) Notify the recipient and/or their representative of the results of the review using timely and adequate notice procedures, **including that notices are provided in the recipient’s primary language.**
- b) If the recipient cannot supply or has difficulty in obtaining the required verification, Department staff shall assist them.

NOTE: At least once a year, the Department shall inform recipients of the criteria that must be met to remain eligible beyond 60 months. **Recipients shall be informed via written notices in their primary language.**

(3) Redeterminations must take place at least every 12 months.”

Chapter I, page 13 of the Manual:

“The Department must provide the recipient with timely and adequate notice **in their primary language** when the action is to discontinue or reduce the payment.”

Chapter I, page 21-22 of the Manual:

“No later than 120 days prior to the end of a family’s 60th month of receiving TANF/PaS, the Department shall send written notice to the family **in their primary language** of the opportunity to request a pre-termination conference.”

Chapter II, page 45 of the Manual:

“b) Meeting Requirements:

In the participant’s primary language, the Department or Department’s representative will:

- i. Present a notice...”

III. Conclusion:

Thank you for your consideration of our comments. Please contact ILAP’s Policy Director, Lisa Parisio, at lparisio@ilapmaine.org for any questions or additional information.

Sincerely,



Susan Roche
Executive Director
Immigrant Legal Advocacy Project