

NLWJC - Kagan

DPC - Box 063 - Folder-008

**Welfare-New Mexico Housing
Regulations**

Wp - New Mexico housing req

Andrea Kane

Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

Subject: Minnesota TANF policy

Cynthia, per my voice mails, Congressman Vento asked Cuomo to send a letter expressing his opinion on Minnesota's policy of reducing a family's TANF grant by \$100 if they were also receiving housing assistance. This was included in the state welfare reform law enacted last year, but apparently a legislative conference committee is revisiting the issue now. HUD drafted a letter back to Vento closely following the letter sent in October to Senatory Bingaman re: New Mexico's similar policy (although NM's was more sweeping). I've reviewed the letter and run it past HHS. It goes no farther than what was said in October, clearly stating that while this is permissible under the flexibility provided to states under TANF, Secretary Cuomo has concerns with the approach. I made a few suggestions, including putting in a plug for our housing vouchers, but otherwise think the letter is OK. HHS is also OK with it. Unless you have a concern, HUD will fax the letter to Vento in the morning.

DRAFT

HUD

Honorable Jeff Bingaman
United States Senate
Washington, DC 20510-3102

Dear Senator Bingaman:

Thank you for your letter of August 11, 1997, concerning the decision of the New Mexico Secretary of Human Services to count Federal housing subsidies as income for recipients of assistance under the Temporary Assistance for Needy Families (TANF) program. While such policies are allowable within the broad flexibility TANF provides to states, I share your grave concerns about this action. Our data systems indicate that approximately 8,000-10,000 New Mexico families receive both HUD housing assistance and AFDC.

As you know, on August 14, the New Mexico Human Services Department announced several modifications to their original policy decision to count housing assistance as income when calculating TANF benefits. As I understand it, the State created exemptions for those households exempted from the TANF work requirements -- the elderly, persons with disabilities, pregnant women and those with children under one year old. In addition, the State will provide all other families receiving housing assistance 60 days before ceasing cash assistance.

Even with these very limited exemptions, the vast majority of families receiving housing and cash assistance will still shortly face an untenable choice: keeping their housing assistance and foregoing their TANF grants -- their principal source of cash income; or giving up their housing assistance to retain eligibility for TANF grants and being forced to move from their homes or paying unaffordable portions of their limited incomes for housing. I am concerned about the physical disruption and emotional distress that such a policy has the potential to cause.

I also believe that this policy will have negative consequences for efforts to move families from welfare to work. A stable and affordable housing arrangement is a necessary foundation for many families' efforts to find and retain employment. Forcing families to forego income assistance or to move on short notice can only make it more difficult to make an already-difficult transition from welfare to work.

I am also concerned about the financial impacts of this policy on both the Department and on public housing agencies

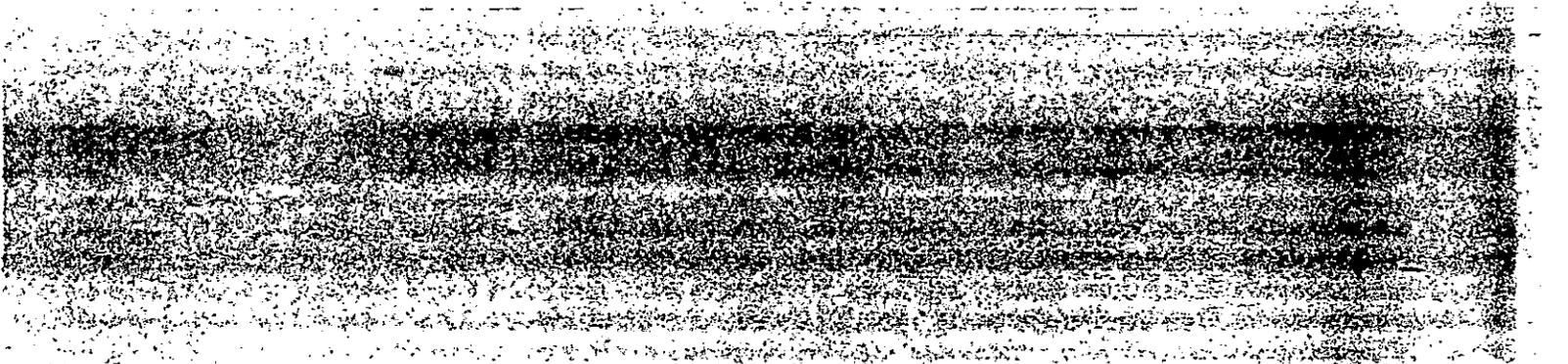
(PHAs) in New Mexico. If many families choose to retain their housing assistance and forego their TANF payments, their reduced incomes translate into higher housing subsidies. In the case of our Section 8 rental assistance programs, fewer families will be served. For public housing, PHAs will have less rental income and will be forced, at least in the short term, to delay planned expenditures on such items as maintenance and service programs designed to help families move from welfare to work. For HUD's privately-owned but federally subsidized housing developments, HUD's budget needs will rise in a time in which our budget has already been sharply reduced.

The steps that the Department of Human Services took on August 14 were a welcome first step toward correcting the problems with the State's plan. However, I believe the remaining policy is still overly punitive to families receiving housing assistance and believe the State should take further steps to redress this inequity. I will continue to closely monitor the developments in New Mexico and consider how the Department can best respond.

I firmly believe that effective coordination between housing assistance and the TANF program can help families make the difficult transition from welfare to work. Such effective coordination, however, should not come at the expense of recipients of housing assistance.

Sincerely,

Andrew Cuomo



HHS

DRAFT

Not cleared
through HHS

The Honorable Jeff Bingaman
United States Senate
Washington, DC 20510

Dear Senator Bingaman:

This is in response to your letter regarding New Mexico's policy of counting Federal housing subsidies as income in determining eligibility for the Temporary Assistance for Needy Families (TANF) program. We have conferred with our colleagues in the Department of Housing and Urban Development, and share their concern that this may have a very disruptive impact on the lives of many families and children.

Under the TANF statute, each State has very broad flexibility to design its program, determine the conditions of eligibility, and determine the types and amounts of assistance that it will provide. Congress and the Administration both believed that increased State flexibility was an essential element of welfare reform. TANF holds States accountable for strict time limits, work participation rates, and data requirements, but the statute imposes few other limitations on the States for how they may operate their programs.

The statute requires each State to submit a plan that outlines how it will conduct its TANF program, but it does not specify the level of detail that must be included. HHS is required to certify that a State's plan is complete, i.e., that all the required certifications are made, and that other specific provisions are addressed.

You asked whether housing subsidies may be included as unearned income. Previously, under the Aid to Families with Dependent Children (AFDC) program, States were permitted to count in-kind (earned or unearned) income in determining eligibility. We required them to indicate whether they counted housing subsidies and other such income. Under the provisions of the TANF statute, States have more flexibility to choose which types of income they will count in determining eligibility for TANF, and are not prohibited from including housing subsidies.

The TANF statute requires States to make a summary of the plan available to the public. It also requires each State to certify that it has given local governments and private sector organizations at least 45 days to submit comments on the plan before a determination is made that the State's TANF plan is

Page 2 - Senator Bingaman

complete, and before Federal funds are provided to the State. However, the statute does not give HHS the authority to scrutinize the level of review that was made available to local governments, private sector organizations, or to the general public. We rely on the States to carry out these provisions.

We understand that there will be a public hearing in New Mexico on these issues on September 29. Also, our regional staff have recently met with senior State officials regarding this policy. You may be aware that the State has modified its earlier policy under certain circumstances, such as during the first 60 days of families' receipt of TANF assistance, and when families consist of totally disabled individuals or pregnant individuals. I hope this information is helpful to you. Please feel free to contact me again if I can assist you further.

Sincerely,

Donna E. Shalala
Secretary

JEFF BINGAMAN
NEW MEXICO

703 HART SENATE OFFICE BLDG.
WASHINGTON, DC 20510-3102
(202) 224-5521
IN NEW MEXICO—1-800-443-8668
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senator_bingaman@bingaman.senate.gov

United States Senate

August 11, 1997

The Honorable Andrew Cuomo
Secretary of Housing and Urban Development
HUD Building
451 Seventh Street SW
Washington, DC 20410

Dear Secretary Cuomo:

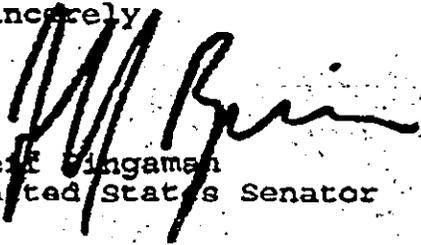
It has come to my attention that the New Mexico Secretary for Human Services has announced his intentions to count federal housing subsidies as income for New Mexico TANF recipients. This strikes me as an unfair ruling that will place citizens in the position of being forced to choose between keeping their welfare benefits or having adequate housing.

New Mexico's plan for Temporary Assistance for Needy Families (TANF) was cleared to take effect July 1, 1997. The New Mexico TANF plan mentions how income will be calculated for beneficiaries. However, federal housing subsidies were not detailed specifically in the New Mexico TANF plan deemed complete by the Health Care Financing Administration. The New Mexico Secretary's regulation has just come to the attention of the public. As I understand it, there were no public hearings before this specific ruling took effect.

I urge you to investigate this new rule immediately. Additionally, please advise me as to the number of welfare recipients in New Mexico who receive federal housing assistance. Please let me know the Administration's interpretation of whether housing subsidies were intended to be included under the federal TANF rules addressing "unearned income."

I look forward to your response and a timely analysis of this situation. I am making a similar request of Secretary Shalala and urge your two departments to look at this matter jointly where possible.

Sincerely,


Jeff Bingaman
United States Senator

JFB/dw



Cynthia A. Rice

09/10/97 06:05:23 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP

cc:

Subject: New Mexico State Supreme Court

The New Mexico State Supreme Court apparently chucked the state's TANF plan today; unclear why or what it means for the housing issue. We'll be getting more info shortly.



WR - New Mexico

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF POLICY DEVELOPMENT AND RESEARCH

FROM: *PA* Paul A. Leonard
Deputy Assistant Secretary
for Policy Development

DATE: August 20, 1997

TELEPHONE NO: 202-708-3896

FAX NO: 202-708-0309

TO: Cynthia Rice

TELEPHONE NO: 456-2216

FAX NO: 456-7431

NUMBER OF PAGES INCLUDING COVER SHEET: 3

NOTE:

I would like to get your thoughts on this letter as soon as possible.

Thanks.

Cynthia/Diana -

I kind of like this letter. We need to know what HHS wants to do and/or how it wants to respond. (I see Benjamin sent the same letter to Malala). (By the way, what's the Aug 14 action referred to in Cuomo's letter?)

Ejec

DRAFT

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United States Senate
Washington, DC. 20510-3102

Dear Senator Bingaman:

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2

incomes translate into higher housing subsidies. In the case of our Section 8 rental assistance programs, fewer families will be served. For public housing, PHAs will have less rental income and will be forced, at least in the short term, to delay planned expenditures on such items as maintenance and service programs designed to help families move from welfare to work. For HUD's privately-owned but federally subsidized housing developments, HUD's budget needs will rise in a time in which our budget has already been sharply reduced.

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Sincerely,

Andrew Cuomo

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NEW MEXICO

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United States Senate

August 11, 1997

The Honorable Andrew Cuomo
Secretary of Housing and Urban Development
HUD Building
451 Seventh Street SW
Washington, DC 20410

Dear Secretary Cuomo:

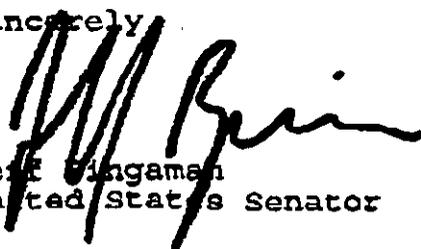
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Sincerely,



Jeff Bingaman
United States Senator

JFB/dw

▶ **Jeffrey A. Farkas**
08/12/97 03:45:37 PM
.....

Record Type: Record

To: Kenneth S. Apfel/OMB/EOP, Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP
cc: Barry White/OMB/EOP, Francis S. Redburn/OMB/EOP
Subject: New Mexico TANF Reg. Counts HUD Assistance as Cash Income

Barry suggested that I forward the following to you.

----- Forwarded by Jeffrey A. Farkas/OMB/EOP on 08/12/97 03:44 PM -----

▶ **Jeffrey A. Farkas**
08/12/97 03:32:32 PM
.....

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: New Mexico TANF Reg. Counts HUD Assistance as Cash Income

This issue came up earlier in the year when HUD wanted to include a statement in a letter to Congress saying that the Administration would seek a fix preventing States from lowering TANF benefits to individuals who also receive housing assistance (the lower TANF benefit means that TANF recipients pay a smaller amount of rent to the housing authority, lowering the housing authority's revenue). The DPC objected to the HUD language and it was dropped. As described below, New Mexico seems to be going further than other States have proposed. HUD may come back with options for a Secretarial statement and/or a statutory change, probably in pending housing legislation. We'll keep an eye out for it.

----- Forwarded by Jeffrey A. Farkas/OMB/EOP on 08/12/97 03:19 PM -----

**FRANCIS S.
REDBURN**
08/12/97 03:15:38 PM



Record Type: Record

To: Michael Deich/OMB/EOP
cc: See the distribution list at the bottom of this message
Subject: New Mexico TANF Reg. Counts HUD Assistance as Cash Income

Sen. Bingaman is asking Sec. Cuomo and Sec. Shalala to investigate a New Mexico state TANF regulation, effective last week, that is causing HUD-assisted households to be dropped from the TANF rolls. HUD led a conference call this afternoon, in which we participated, including its

field staff and the Senator's staff in New Mexico, to discuss options for responding.

The regulation counts HUD housing assistance as cash income. For a family of three in Albuquerque, the average housing subsidy is \$467, which exceeds the \$389 income cutoff for TANF eligibility; therefore, a family receiving both forms of assistance must choose either to drop the housing subsidy or become ineligible for TANF. A quick survey in the county that includes Albuquerque by NAHRO found that 60 HUD-assisted families already had dropped TANF upon income recertification by the PHA. Altogether, HUD estimates 8,000 households in New Mexico have until now received both welfare and housing subsidies; a high proportion are Hispanic.

To date, HUD knows of a few other States that have included a limited offset of housing assistance in their payment calculations for TANF; but none has taken such an extreme action as New Mexico. From a State's perspective, the large size of the housing payment and the horizontal inequity between those who receive such payments and TANF recipients who receive no housing assistance is one motive for the offset. It also frees TANF resources for other eligible uses.

New Mexico participants suggested that there is still a possibility that the State will modify its regulation in the face of editorial criticism and objections from both Senators.

Sec. Cuomo may be briefed later today on the issue. HUD staff will present at least two options: (1) having him make a public statement saying that the New Mexico decision, even if not in violation with the TANF statute, is in conflict with the intent of welfare reform and harmful (with the intent of getting New Mexico to back off); and/or (2) seeking a statutory change, probably via the pending public housing legislation. Senator Bingaman's staff have asked HUD whether the Administration would support a possible amendment to the public housing bill (which may be taken up in the Senate after recess) that would address the problem.

When HUD raised the issue of a possible legislative change to limit or prohibit the practice of offsetting during clearance of the public housing reform legislation a few months back, DPC staff objected and HUD dropped the proposal. I have advised Hal DeCell that, for either option, OMB, HHS, DPC, and others will need an opportunity to review in advance.

HUD field staff are meeting with Senator Bingaman this afternoon.

Message Copied To:

Alan B. Rhinesmith/OMB/EOP
James F. Jordan/OMB/EOP
Katherine L. Meredith/OMB/EOP
Hang T. Tran/OMB/EOP
Theodore Wartell/OMB/EOP
Patricia E. Romani/OMB/EOP
Jeffrey A. Farkas/OMB/EOP

Message Sent To: