



Written by [Michael Tennant](#) on September 7, 2012

Obama Admin. Welfare Waivers Violated Law, GAO Finds

Did the Obama administration, in waiving work requirements for welfare recipients, violate the law? According to the Government Accountability Office (GAO), Congress' investigative arm, the answer is yes.

In response to a request from Sen. Orrin Hatch (R-Utah), ranking member of the Senate Finance Committee, and Rep. Dave Camp (R-Mich.), chairman of the House Ways and Means Committee, the GAO [examined](#) whether the Department of Health and Human Services' (HHS) July 12 Information Memorandum concerning the Temporary Assistance for Needy Families (TANF) program violated the Congressional Review Act (CRA). The CRA requires federal agencies to submit all new rules to both houses of Congress and the Comptroller General, who heads the GAO, for review — and possible disapproval — prior to their taking effect. HHS did not submit its memorandum for review; it merely informally notified Congress on the very day the rule was issued.



Created in 1996, TANF provides block grants to states for various welfare programs. In return, it requires states to ensure that beneficiaries engage in certain work or work-related activities (such as job training). States wishing to participate in TANF must also submit written plans to HHS describing how they will implement the law's requirements.

The July HHS memorandum, however, stated that the department would waive these work requirements so that states could "test approaches and methods other than those set forth in" the law. This sort of blanket waiver differs significantly from the language in the law, which allows for such waivers only "in the case of experimental, pilot, or demonstration projects which the [HHS] Secretary determines are likely to assist in promoting the objectives of TANF," according to the GAO.

Questioned by the GAO as to why it did not submit the memorandum to Congress and the Comptroller General as required by the CRA, HHS argued that the memorandum "was issued as a non-binding document," and "HHS contends that guidance documents do not need to be submitted pursuant to the CRA," the GAO wrote. The department also suggested that its informal notification of Congress was sufficient to comply with the law.

"We cannot agree with HHS's conclusion that guidance documents are not rules for the purposes of the CRA and HHS cites no support for this position," the GAO observed. The office went into great detail



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concerning the text of the CRA, the intent of Congress in enacting it, and the history of its interpretation by both the GAO and the courts. The law's definition of a rule, the GAO remarked, citing a circuit court ruling, "has been said to include 'nearly every statement an agency may make.'" The GAO found that the memorandum ...

is a statement of general applicability and future effect, designed to implement, interpret, or prescribe law or policy with regard to TANF. Furthermore, it does not come within any of the exceptions to the definition of rule contained in the CRA. Accordingly, the Information Memorandum is a rule under the Congressional Review Act.

The Obama administration, therefore, was indeed required to submit the rule for review in advance. Its "informal notification," said the GAO, "does not meet the reporting requirements of the CRA."

The GAO did not express an opinion on "whether the Information Memorandum would be a valid exercise or interpretation of statutes or regulations." But the fact that the administration chose to promulgate the rule without complying with the CRA suggests that it feared Congress would balk at such wholesale rewriting of the law by the executive branch. As Hatch and Camp noted in a [statement](#), "the guidance issued by the Obama Administration simply declares — despite specific statutory provisions to the contrary — that states may waive work requirements at the heart of the nation's successful welfare reform program." The administration undoubtedly concluded that it would be better off asking for forgiveness than requesting permission; and with the Senate under Democratic control, it is unlikely even to do that.

Once again, then, the Obama administration has attempted, in Camp's words, "an end-run around Congress"; and once again it has been caught. Will it continue to get away with this "flagrant abuse of our system of checks and balances," as Hatch put it? That, it appears, is up to voters to decide.

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