DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 283

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Implementation of Section 403(a)(2) of Social Security Act; Bonus To Reward Decrease in Illegitimacy Ratio

AGENCY: Administration for Children and Families, HHS.

ACTION: Final rule

SUMMARY: The Administration for Children and Families is issuing a final rule describing how we will award a bonus to those States that experience the largest decreases in out-of-wedlock childbearing and also reduce their abortion rates. The total amount of the bonus will be up to $100 million in each of fiscal years 1999 through 2002, and the award for each eligible State in a given year will be $25 million or less.

This incentive provision is a part of the welfare reform block grant program enacted in 1996—the Temporary Assistance for Needy Families, or TANF, program.

DATES: This regulation is effective June 14, 1999.

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Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8:00 a.m. and 7:00 p.m. Eastern time.

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I. The Personal Responsibility and Work Opportunity Reconciliation Act

On August 22, 1996, President Clinton signed ''The Personal Responsibility and Work Opportunity Reconciliation Act of 1996''—or PRWORA—into law. The first title of this law (Pub.L. 104–193) established a comprehensive welfare reform program designed to change the nation's welfare system dramatically. The program is called Temporary Assistance for Needy Families, or TANF, in recognition of its focus on moving recipients into work and time-limited assistance.

PRWORA repealed the prior welfare program known as Aid to Families with Dependent Children (AFDC), which provided cash assistance to needy families on an entitlement basis. It also repealed the related programs known as the Job Opportunities and Basic Skills Training program (JOBS) and Emergency Assistance (EA).

The TANF program went into effect on July 1, 1997, except in States that elected to submit a complete plan and implement the program at an earlier date. It challenges Federal, State, Tribal and local governments to foster positive changes in the culture of the welfare system and to take more responsibility for program results and outcomes.

It also gives States the authority to use Federal welfare funds ''in any manner that is reasonably calculated to accomplish the purpose'' of the new program (see Legislative History below). It provides them broad flexibility to set eligibility rules and decide what benefits are most appropriate, and it offers States an opportunity to try new, far-reaching ideas so they can respond more effectively to the needs of families within their own unique environments.

II. The Bonus Award

A. Legislative History

One of the greatest concerns of Congress in passing the PRWORA was the negative effect of out-of-wedlock births. This concern is reflected in the Congressional findings at section 101 of PRWORA. Here, Congress described the need to address issues relating to marriage, the stability of families, and the promotion of responsible fatherhood and motherhood. The issues cited were: the increasing number of children receiving public assistance; the increasing number of out-of-wedlock births; the negative consequences of an out-of-wedlock birth to the mother, the child, the family, and society; and the negative consequences of raising children in single-parent homes.

Congressional concern is also reflected in the goals of the TANF program and the inclusion of a performance bonus entitled ''Bonus to Reward Decrease in Illegitimacy Ratio.'' One purpose of the TANF program, as stated in section 401(a)(3) of the Social Security Act, is to ''prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies.'' In enacting the bonus provision, Congress intended to provide greater impetus to State efforts in this area and encourage State creativity in developing effective solutions.

B. Summary of the Bonus Award Process

This final rule implements section 403(a)(2) of the Social Security Act (the Act), ''Bonus to Reward Decrease in Illegitimacy Ratio.'' In this final rule, we use the term ''bonus'' to refer to the bonus in section 403(a)(2) of the Act. We use the term ''ratio'' to refer to the ratio of out-of-wedlock births to total births.

As specified in section 403(a)(2) of the Act, we will award up to $100 million annually, in each of fiscal years 1999 through 2002. The amount of the bonus for each eligible State in a given year will be $25 million or less. For the purposes of this award, States include the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, and American Samoa. While the criteria for determining bonus eligibility for Guam, the Virgin Islands, and American Samoa are the same as for the remaining States, their eligibility is determined separately and the determination of their bonus amount is different, as specified in the statute in sections 403(a)(2)(B)(ii) (Amount of Grant) and 403(a)(2)(C)(i)(I) (definition of eligible State).

Briefly, we will award the bonus as follows:

- We will calculate the ratio of out-of-wedlock births to total births for each State for the most recent two-year period for which data are available and for the prior two-year period. To compute these ratios, we will use the vital statistics data compiled annually by the National Center for Health Statistics and based on records submitted by the States.
- For States other than Guam, the Virgin Islands, and American Samoa, we will identify the five States that had the largest proportionate decrease in

their ratios between the most recent two-year period for which data are available and the prior two-year period. These States are potentially eligible.

- For Guam, the Virgin Islands, and American Samoa, we will identify which jurisdictions had a comparable decrease in their ratios (i.e., a decrease at least as large as the smallest decrease among the other qualifying States or a decrease that ranks among the top five decreases when all States and Territories are ranked together). These additional States will also be potentially eligible.
- We will notify the potentially eligible States that, to be considered for the bonus, they need to submit data and information on the number of abortions performed in their State for the most recent year and for 1995.
- We will determine which of the potentially eligible States also experienced a decrease in their rate of abortions (defined for the purposes of this bonus to be ratio of the abortions to live births) for the most recent calendar year compared to 1995, the base year specified in the Act. These States will receive a bonus award.

III. Development of the Final Rule

A. Consultations

In the spirit of both regulatory reform and PRWORA, we implemented a broad consultation strategy prior to the drafting of all proposed regulations for the TANF program, including this bonus provision. We discussed major issues related to the proposed rulemaking with outside parties at several meetings. We spoke with a number of different audiences including representatives of State and local government, State TANF agencies, national advocacy organizations, and data collection experts. These consultations were helpful to us in identifying key issues and evaluating policy options.

B. Regulatory Reform

In its latest *Document Drafting Handbook*, the Office of the Federal Register supports the efforts of the National Performance Review (now the National Partnership for Reinventing Government) to encourage Federal agencies to produce more reader-friendly regulations and regulations written in plain language. In drafting this final rule, we have paid close attention to this guidance. Individuals who are familiar with prior welfare regulations should notice that this package incorporates a distinctly different, more readable style.

In the spirit of facilitating understanding, we have included some of the preamble discussion from the NPRM as well as additional information related to the final rule to provide further explanation and context for the reader. This information is under the heading ''Additional Information Related to This Section.'' We also have exercised some editorial discretion to make the discussion more succinct or clearer in places. However, where we made significant changes in the preamble material or the regulatory text, the preamble explains these changes.

C. Notice of Proposed Rulemaking

On March 2, 1998, the Administration for Children and Families published a Notice of Proposed Rulemaking (NPRM) to implement section 403(a)(2) of the Act. We provided a 60-day comment period which ended on May 1, 1998 (63 FR 10264).

We offered those interested the opportunity to submit comments either by mail or electronically via our Web site. Several commenters took advantage of the electronic access, but we received most comments by mail.

In addition, we held a briefing on the provisions of the NPRM for interested organizations and entities on March 12, 1998. The purpose of the briefing was to answer questions on the NPRM and provide clarifying information.

We received 17 letters commenting on the NPRM from five States, one local government agency, one State legislator, one national organization representing State interests, seven national nonprofit research and advocacy organizations, and three individuals. (One letter was signed by two national organizations.)

In general, the comments expressed qualified approval for our proposed approach to this highly technical statutory provision. Some commenters recognized that we were constrained by the statute in developing the NPRM, but, within those limitations, commended our approach for ''in some instances, minimizing the potential problems posed by the bonus.'' Other commenters supported specific aspects of the NPRM, such as:

- The proposed use of existing data (no new data collection requirements);
- Not ranking States based on their abortion data;
- Our stated preference for residence data on abortions while proposing to accept either occurrence or residence data;
- Recognizing the differences in the States' methods of collecting data on abortions and providing for State changes in State methodology; and
- Designing a process which would allow all States to compete for the bonus, if they so choose.

Several commenters, however, expressed serious concern about possible unintended effects of the bonus and about the quality of the abortion data on which the bonus award would be based. They urged increased attention to and recommended that we place additional requirements on the collection of abortion data. They also urged greater Departmental involvement to prevent, for example, actions that might restrict access to abortion. Several commenters recommended specific steps the Department might take to help assure that the bonus award was not based on a State's legislation or policies to restrict abortion services. They also recommended ways in which the Department might use this bonus award process to evaluate out-of-wedlock and teen pregnancy prevention programs, improve the quality of the abortion data, and disseminate information on best practices.

We appreciate the thoughtful and policy-focused comments we received and have seriously considered all concerns and recommendations. We have made several changes in the final rule based on the comments. We will discuss all comments below. Briefly, however, we have:

- Revised the definition of ''abortion'' to exclude spontaneous abortions;
- Specified that if a State changes its methodology for the collection of abortion data, it must describe the nature of the change and submit this explanatory information along with the number of abortions performed after adjusting for these changes;
- For changes in the collection of data on out-of-wedlock births implemented prior to 1998, reduced the period of time States have to submit this information from one year following publication of the final rule to 60 days following publication of the final rule;
- Clarified the time limit on the expenditure of the bonus award funds;
- Clarified the scope of the activities and services that may be funded using bonus award funds and the limitations on the use of these funds;
- Clarified that, for Puerto Rico, Guam, the Virgin Islands, and American Samoa, bonus award funds are not subject to the mandatory funding ceilings established in section 1108(c)(4) of the Act. (Section 1108(c)(4) limits the total amount of TANF block grant funding for these jurisdictions.)

We were not able to accept recommendations that were inconsistent with the statute or our regulatory authority. Examples of these recommendations included:

- That we design a process to ensure that five States (other than Guam, the

Virgin Islands, and American Samoa) would receive bonus awards annually;

- That States that do not collect abortion data be allowed to submit abortion data based on a sub-state population such as Medicaid recipients;
- That we require States to submit information on the policy measures they followed to lower their out-of-wedlock births; and
- That, when determining eligibility, we discount changes in abortion that result from changes in availability of abortion services.

These and other comments and recommendations will be discussed below.

D. Section-By-Section Discussion of the Final Rule

Section 283.1 What Does This Part Cover?

This section of the NPRM provided a summary of the content of part 283 covering how we would determine which States qualify for the bonus award, what data we would use to make this determination, and how we would determine the amount of the award.

We received no specific comments on and have made no changes in this section.

Section 283.2 What Definitions Apply to This Part?

This section of the NPRM proposed definitions of the terms used in part 283. Some of these definitions assigned a one-word term to represent a frequently used phrase. For example, ''bonus'' is defined to mean the Bonus to Reward Decrease in Illegitimacy Ratio authorized under section 403(a)(2) of the Act. Other definitions add clarity and precision to key technical terms. For example, we defined the ''most recent year for which abortion data are available'' as the year that is two calendar years prior to the current calendar year.

We received several comments relating to definitions in this part. These comments referred to definitions for ''abortion,'' ''most recent period for which birth data are available,'' most recent year for which abortion data are available,'' and ''number of out-of-wedlock births.''

Comment: One commenter recommended that we modify the definition of ''abortion'' to make clear that spontaneous abortions, i.e., miscarriages, are not included in this definition.

Response: We agree and have revised the definition accordingly.

Comment: One commenter interpreted the definition of ''most recent two-year period for which birth data are available'' as variable across States. This commenter recommended that we measure potential State eligibility for the bonus based on identical time periods across States.

Response: We agree that the determination of eligibility will be based on birth data for an identical time period across States. We have clarified the definition of ''most recent two-year period for which birth data are available'' to indicate that this will be the most recent period for which the National Center for Health Statistics (NCHS) has released final birth data by State. Final data released by NCHS covers the same year for all reporting States, as noted in the NPRM.

Comment: One commenter objected to this same definition on different grounds. In the NPRM, we said in the preamble discussion to § 283.4 that in bonus year 1999, we would likely compare births in calendar years 1996 and 1997 to births in years 1994 and 1995. The commenter believed that this would not provide a fair comparison among States, particularly those States that had implemented programs to reduce out-of-wedlock births since enactment of PRWORA. The commenter also believed that it did not make sense to compare years prior to enactment of the TANF program and suggested that we use more recent birth data that would reflect recent State efforts to reduce out-of-wedlock births, delaying the bonus award if necessary.

Response: We recognize the importance of basing the bonus on the most recent data available and incorporating data that reflect State efforts to reduce out-of-wedlock childbearing. The rule clearly states that eligibility will be based on the most recent data released by NCHS. In all but the first bonus year, eligibility will likely be based on data that reflect post-TANF outcomes. For example, in the first bonus year, FY 1999, we will base awards on a data period including 1997; awards in FY 2000 will reflect data for 1998.

However, after carefully considering this matter, we have determined that the Department must obligate the first-year bonus funds in fiscal year 1999, and therefore determination of eligibility in the first year cannot be delayed beyond fiscal year 1999.

Comment: One commenter objected to the definition of ''most recent year for which abortion data are available.'' The NPRM defined this term as ''the year that is two calendar years prior to the current calendar year.'' We provided the example that in calendar year 1999, the most recent year for which abortion data are available would be calendar year 1997. The commenter recommended that we change the definition to read: ''the year that is no later than two calendar years prior to the current calendar year.'' The commenter believed that if more timely data were available, States should be allowed to use these data, particularly if the data would have a positive effect on the State's eligibility for the bonus, since the data would not affect another State's eligibility.

Response: The definition stated in the NPRM bases eligibility on reasonably current abortion data gathered for a consistent time period. While States do not compete directly with respect to their abortion measures, it is important to define this period consistently. If each State were to use their most recent year of abortion data, eligibility could be affected not only by changes in the abortion rate but also by changes in the State's decision regarding when to release the next year of data, which is not the intent of the bonus provision. The final rule was not changed with respect to this comment.

Comment: One commenter objected to the definition of ''number of out-of-wedlock births'' and ''number of total births'' because she interpreted the definitions to mean the number of births occurring in the State. The commenter recommended that the number of births be measured according to the state of residence rather than the state of occurrence.

Response: We agree that the number of out-of-wedlock and total births will be measured according to state of residence rather than state of occurrence, and the definitions proposed in the NPRM for out-of-wedlock and total births already reflect this. Therefore, no changes were needed in the final rule. We retained the two pertinent definitions proposed in the NPRM as follows:

''Number of out-of-wedlock births for the State'' means the final number of births occurring outside of marriage to residents of the State, as reported in NCHS vital statistics data. ''Number of total births for the State'' means the final total number of live births to residents of the State, as reported in NCHS vital statistics data.

Section 283.3 What Steps Will We Follow to Award the Bonus?

This section of the NPRM described the process we proposed to follow for identifying which States would be eligible for the bonus and what the amount of the bonus would be. This process was based on the definition of ''eligible State'' in section 403(a)(2)(C)(i)(I). This definition

indicates that a State must have a qualifying decrease in its ratio (i.e., its ratio of live out-of-wedlock births to total births) and also experience a decrease in its abortion rate (i.e. its ratio of abortions to live births). We proposed to base the bonus award on birth and abortion data for the State population as a whole, not on data for TANF recipients or other sub-state populations.

We received several comments in support of the general process for awarding the bonus. Commenters supported the two-year comparison period for State birth data. They also supported the use of NCHS data on births because it avoids duplicate State data collection and allows the bonus to be awarded based on statistics similar for all States. Commenters also supported the use of the proportionate ratio method in ranking States based on birth data because it allows States to compete on a more level playing field, regardless of population size or previous decreases in out-of-wedlock birth ratios.

We also received several comments expressing concerns related to this section. These included comments regarding the determination of eligibility for Guam, American Samoa and the Virgin Islands, comments regarding the number of potentially eligible States, and comments that the final rule should include an appeals process for those who do not receive the bonus.

Comment: One commenter questioned our preamble discussion on how the bonus for Guam, the Virgin Islands, and American Samoa would be computed and recommended that the process for making awards to these jurisdictions be the same as for other States.

Response: We agree that, for these jurisdictions, the criteria for how bonus eligibility will be determined is the same as for other States, and we have clarified this in paragraph (a)(3). It is only the amount of the award that will be different.

Comment: One commenter recommended that the Department design a process that would ensure that the maximum number of States (five other than Guam, American Samoa and the Virgin Islands) receive a bonus each year. They suggested informing more than just five States (e.g., between 7–10 States) that they were potentially eligible for the bonus based on their birth data. Among this larger group of potentially eligible States, even if some States were not eligible based on their abortion data, DHHS would still be able to identify five eligible States.

Response: Section 403(a)(2)(C)(i)(I) of the Act clearly indicates that an eligible State must meet two criteria; it must be among the top five States with the largest decrease in the ratio of out-of-wedlock to total births and it must have a reduction in its abortion rate. A State that is not among the top five States would not meet the definition of eligibility stated in the Act, and the Act clearly provides for the possibility that fewer than five States will receive the bonus. We did not change the final rule with respect to this comment.

Comment: Another comment that did not directly reference § 283.3 but is related most closely to this section, recommended that the final rule include an appeals process for those States that did not qualify for the bonus.

Response: We recognize the importance of awarding the bonus fairly. To accomplish this, the final rule bases eligibility on widely accepted and standard measures of births and clearly describes the objective criteria we will follow in ranking and identifying those States with the largest decrease in the ratio of out-of-wedlock to total births. The final rule also clearly defines what abortion data the State must submit to be eligible for the bonus and assigns to the States the responsibility of collecting those data and calculating any necessary adjustment. Because eligibility is based on nondiscretionary, objective criteria and data that are largely submitted by the States, we do not believe an appeals process is appropriate.

Therefore, the final rule does not provide for an appeals process and no changes to the final rule were made with respect to this comment. While section 410 of the Act does provide for an appeals process, this section applies only to adverse actions such as the imposition of penalties and does not apply to bonus awards.

Finally, we have made editorial changes for clarity.

Additional Information Related to This Section

This final rule places no mandates on States with respect to data collection. Competition for the bonus is entirely voluntary. Also, where possible, this final rule uses existing data sources or data that are the least burdensome to collect and report.

When calculating decreases in the ratios of out-of-wedlock to total births, we will use the NCHS vital statistics data for total births and out-of-wedlock births, which are based on data submitted by the States. Vital statistics data include information on virtually all births occurring in the United States and are already reported by State Health Departments to NCHS through the Vital Statistics Cooperative Program (VSCP). Hospitals and other facilities report this information to the State health departments on a standard birth certificate, following closely the format and content of the U.S. Standard Certificate of Live Birth. The States process all of their birth records and send their files to NCHS in electronic form in a standard format. The mother of the child or other informant provides the demographic information on the birth certificate.

We chose vital statistics data to measure births because we viewed them as the most reliable and standard data available across States. Also, using vital statistics data from NCHS will allow us to measure the same years for all States and will give States a reasonable and standard time frame in which to submit the data. This is particularly important for birth data because we will rank States on their decreases in the ratio based on these data.

We also determined that obtaining these data directly from NCHS rather than from the individual States will avoid a duplicate information collection activity and will be less burdensome for the States and for us. In most cases, States will not need to provide any new data or information related to births beyond what they already submit to NCHS.

As specified in section 403(a)(2) of the Act, once we have identified the potentially eligible States with the largest decreases in their ratios, we will notify those States that, to be considered for eligibility for the bonus award, they must submit the necessary data on the number of abortions for both 1995 and the most recent year as well as information on any adjustment to these data.

There is no need for all States to submit data on abortions, based on the definition of ''eligible State'' in section 403(a)(2)(C)(i)(I). A State cannot qualify for the bonus unless it is among the top five with the largest decrease in the ratio of live out-of-wedlock to total births (or it is one of the previously mentioned territories and has a comparable decrease).

Even if some potentially eligible States later become ineligible based on their abortion data, all States that were previously ineligible based on their birth data remain ineligible. Therefore, one State's abortion rate does not affect whether another State qualifies. Thus, while abortion data affects whether an individual State receives the bonus, competition among States for the bonus depends on the birth data.

Section 283.4 If a State Wants To Be Considered for Bonus Eligibility, What Birth Data Must It Submit?

This section of the NPRM described in more detail what birth data a State must have submitted to NCHS for each year in the calculation period as a first step in qualifying for the bonus. This section also described what the State must do if it changed its methodology for collecting or reporting birth data, i.e., the method for determining marital status at the time of birth.

Several commenters agreed with the proposed approach in this section. They were pleased that we proposed to rely on statistics already submitted by States. They also were pleased that we recognized that some States may have changed (or may plan to change) their methodology or classification procedures for collecting out-of-wedlock birth data and agreed with our proposed approach that would allow those States to be eligible to compete for the bonus. However, commenters also expressed several concerns.

Comment: One commenter was concerned that the NPRM included no standards by which NCHS ''must fairly evaluate the adjustment methods used by a State which had changed its reporting methodology'' for birth data. They suggested that the final rule clarify these standards in order to assure fair and consistent review of the additional information submitted by a State.

Response: We recognize the importance of fairly adjusting for changes in data collection. The NPRM proposed in § 283.4(b) that if a State changed its data collection methodology regarding nonmarital births, it would have to submit additional detailed information regarding this change, in addition to submitting the number of out-of-wedlock and total births. This information included an alternative calculation showing, to the greatest extent possible, what the number of out-of-wedlock births would have been under the prior methodology, documentation of the changes in data collection methodology, and how it determined the alternative number.

In the preamble we stated that NCHS would then calculate an adjustment factor based on this information. NCHS has extensive expertise in working with the State vital statistics data and working with States regarding the collection of these data.

Specifying in greater detail how NCHS will calculate the adjustment is not feasible until more specific information is available regarding the actual changes a State might make in data collection. However, NCHS will examine all information submitted with respect to this requirement to ensure that it is statistically valid.

Comment: Two commenters believed that the final rule should require States seeking the bonus to submit information regarding the policies they undertook to reduce their out-of-wedlock births, and that we should evaluate these efforts and disseminate the findings. The commenters cited sections 413(a) (research) and 413(c) (dissemination) of the Act in support of this suggestion. They believed that without such information, the Federal government might award significant sums of money without learning sufficiently about effective practices to lower out-of-wedlock births. Another commenter expressed the importance of learning from best practices regarding reduction in unintended pregnancies and out-of-wedlock births, but did not recommend that such information be required as part of this final rule.

Response: We recognize the importance of disseminating information on effective practices regarding efforts to reduce out-of-wedlock births and unintended pregnancies, and the Department has made it a priority to continue facilitating the collection, review, and dissemination of this information in the future. We will build on our existing efforts described in section IV of the preamble, ''Departmental Activities Related to Out-of-Wedlock Births'' and explore further ways to disseminate information on State best practices and winning strategies. The final rule was not changed to reflect our research and dissemination efforts because they are beyond the scope of section 403(a)(2) of the Act, to which this final rule pertains.

Also, the final rule does not require States to submit information on the policies they undertook to reduce out-of-wedlock births because such a requirement would be inconsistent with the eligibility requirements specified in section 403(a)(2) of the Act. The Act specifies that if a State is among the top five States with the largest decrease in its ratio of out-of-wedlock to total births and its abortion rate is lower than the rate in 1995, they are eligible for the bonus. This definition does not provide for making eligibility contingent on supplying information regarding policies aimed at reducing out-of-wedlock births.

Sections 413(a) and 413(c) of the Act direct the Secretary to conduct research on ''the benefits, effects and costs of State programs funded under [TANF]'' and disseminate information. However, these sections do not give us the authority to require such information from States, or to make bonus eligibility contingent on this information. In addition, efforts initiated by States to reduce out-of-wedlock births may be, but are not necessarily, ''programs funded under TANF.''

In addition, after reviewing the language of the NPRM, we have made two changes in paragraph § 283.4(b) of the final rule. The first change gives States greater flexibility regarding the information they submit with respect to changes in methodology for collecting birth data. In paragraph (b)(2) of the NPRM, we proposed that, in a year when a State changed its methodology for collecting birth data, the State must generate an alternative number of out-of-wedlock births based on a consistent methodology for the year of the change and the previous year. In the final rule, States for which NCHS agrees it would be technically infeasible to produce the alternative number would have the option of accepting an NCHS estimate of the alternative number. We made this change based on our identification of several complexities regarding the changes in birth data collection that have occurred. This change reflects our efforts to be accommodating of technical difficulties that States might face, while maintaining an award process that is fair and methodologically sound. Because NCHS will evaluate all information submitted by States to ensure it is methodologically valid, we strongly encourage States to work with NCHS as they respond to this eligibility criterion. Paragraphs (b)(2) and (3) reflect this change.

The second change affects when information must be submitted to NCHS on changes in a State's methodology for collecting birth data. Paragraph (b)(4) of the NPRM proposed that States must submit documentation on such changes made prior to 1998 and prior to the publication of the final rule within one year of publication of the final rule.

In the final rule, we have reduced this time period to two months for changes pertaining to 1997 or earlier years. Information pertaining to changes in data for 1998 or later years will not be due until the end of calendar year 1999 or the deadline that normally applies to the State's submission of vital statistics data for that year, whichever is later. This changes reflects a balance between our need to base the 1999 award on timely information and our efforts to allow States as much time as possible to submit the required information. This change is reflected in paragraph (b)(4).

Additional Information Related to This Section

As specified in section 403(a)(2)(C)(i)(I)(aa) of the Act, the calculation period for each bonus year covers four years, i.e., the most recent two calendar years for which NCHS has final data and the prior two calendar years. Consider the hypothetical example where bonus eligibility is being determined in July of 1999 and the most recent year for which NCHS has final data for all reporting States is 1997. In this example, the calculation period would be calendar years 1997, 1996, 1995, and 1994.

If a State did not change its method for determining marital status at any time during the calculation period, it will not need to submit any additional information beyond the information submitted to the NCHS as part of the vital statistics program. States must have submitted these vital statistics files for each year in the calculation period. NCHS will use these data to tabulate the number of total and out-of-wedlock births occurring to residents of each State.

While the determination of marital status at the time of birth is fairly standard across States, there is some variation. Most States use a direct question on marital status, while a few infer marital status based on various pieces of information.

Section 403(a)(2)(C)(i)(II)(aa) of the Act requires us to disregard changes in a State's birth data due to changed reporting methods. Examples of such changes in data collection include replacing an inferential procedure with a direct question on marital status, or changing the data items from which marital status is inferred.

Accordingly, if a State implemented changes that affected its data on out-of-wedlock births for the calculation period, the State must provide additional information to NCHS as specified in § 283.4. This additional information is necessary only if a State chooses to be considered for the bonus. It is not required as part of the Vital Statistics Cooperative Program.

Section 283.5 How Will We Use These Birth Data to Determine Bonus Eligibility?

This section of the NPRM explained how we would identify which States have the largest decrease in their ratios.

The comments we received on this section expressed support for the use of the proportionate ratio calculation and recommended that we design a process to award bonus funds to the maximum number of States each year. These latter comments were addressed in a prior section of the preamble.

We have made only editorial changes in the final rule for clarity.

Section 283.6 If a State Wants To Be Considered for Bonus Eligibility, What Data on Abortions Must It Submit?

This section of the NPRM described the data that a potentially eligible State also must submit on abortions in order to qualify for the bonus. As noted above, only those States that are potentially eligible based on their ratios of out-of-wedlock to total births would need to submit abortion data in each year. Other States cannot be eligible and, therefore, do not need to submit abortion numbers.

We received a number of comments in support of various provisions of this section. Various commenters supported:

- The proposal to review State abortion data only for those States with a decrease in out-of-wedlock births large enough to make them potentially eligible;
- The proposal that States will not be ranked according to their abortion data;
- The 60-day time period to report abortion data after a State is notified that it is potentially eligible;
- The approach in the NPRM which gave States flexibility to change their abortion data collection methodology over time and provide appropriately adjusted data to account for the change;
- The proposal that abortion data based on state of residence is preferred, but that States have flexibility to submit data based on either state of residence or state of occurrence; and
- The proposal that the responsibility for certifying the validity of abortion data lies with the Offices of the Governors and that ACF would not conduct further review or analysis of the data.

We also received several comments recommending changes in this section of the final rule. These include recommendations that state of residence data be required, that abortion data should not be required to cover the entire State population, that States should be allowed to adjust 1995 abortion data, and that there should be more Federal oversight regarding abortion data.

Comment: Several commenters questioned the provision that would allow States to submit data on either the total number of abortions performed within the State, or the total number of abortions performed within the State on in-state residents. Some commenters strongly recommended that the final rule require States to count only abortions to in-state residents. Other commenters recommended that the final rule should require States to count out-of-state abortions obtained by their residents as well. Some commenters believed that these changes were the only method to assure fairness, while other commenters believed these changes would reduce the unintended consequences that the bonus may have regarding the availability of abortion services.

Response: We recognize the value of using abortion data based on state of residence and the final rule continues to emphasize this as the preferred measure. However, the final rule does not require data based on state of residence because numerous States did not have data based on state of residence for the base year of 1995 and, therefore, would have no opportunity to compete for the bonus. In addition, we also did not accept the recommendation that a potentially eligible State obtain data from other States on abortions obtained by its residents in other States. This is because the degree to which neighboring States will have information on state of residence for abortions will vary across States, and because we have no authority to require all States to report this information. The final rule was not changed with respect to these comments.

Comment: One commenter urged that, for a State that does not have mandatory statewide reporting of abortion data and does not collect abortion statistics, the final rule permit such a State to report less than total population data, e.g., abortion data on the title XIX (Medicaid) population.

Response: Section 403(a)(2) of the Act clearly indicates that eligibility shall be based on the number of abortions performed in the State and does not provide for a measure based on other more narrowly defined populations. We did not change the final rule with respect to this comment.

Comment: One commenter observed that NCHS, through its Vital Statistics Cooperative Program, previously supported abortion data collection by grants to 14 States, and that the funding support was discontinued in the commenter's State during 1994. The commenter observed that this cessation in funding caused a reduction in effort to collect 1995 abortion data, and the 1995 abortion rate is a low point for that State. This has implications for that State in terms of the bonus, as 1995 is the base year for comparison purposes.

Response: We recognize that this Federal funding for collection of abortion data in 14 States was eliminated in 1995. To the extent that this elimination of funding led to

differences in data collection or reporting between 1995 and subsequent years in the bonus period, the final rule allows States to adjust their number of abortions to account for these differences. No change in the final rule was necessary in response to this comment.

Comment: Several commenters recommended more specific Federal requirements with respect to the submission of abortion data for the bonus and any adjustments to that data. (The Act states that States must adjust their abortion data if the data reporting methodology changed between 1995 and the evaluation year.) These commenters made the following recommendations:

- That the final rule provide guidelines for how a State should calculate the adjustment;
- That we make clear that States should adjust for changes in reporting among providers (e.g. changes in the proportion or makeup of providers reporting);
- That the final rule require States to report any legislative or policy changes in the State that could impact the collection or reporting of abortion data; and
- That we review the abortion data and information provided by States regarding changes in data collection.

Response: We agree that we should be more specific regarding adjustments for changes in abortion data collection and should require additional information from those States that adjust their abortion data. We have revised paragraph (d) of the final rule to reflect this.

We have stated more specifically in paragraph (d) what changes in data collection or reporting entails, including such things as changes in the response rate of providers in reporting abortion data. We have also stated that to qualify for the bonus, States must indicate whether or not they have adjusted their abortion data and, if so, give the rationale for the adjustment (e.g. describe how legislative, policy or procedural changes impacted data collection and necessitated the adjustment).

The final rule does not give more specific requirements regarding how States should adjust for changes in data collection because it is not feasible at this time to anticipate what these changes might be and how to best adjust for them. In the final rule, the States remain responsible for calculating any adjustment and certifying as to the correctness of the abortion data submitted.

Comment: Another commenter suggested that when submitting data on the number of abortions for the most recent year, the State should demonstrate that any decreases were not the result of restrictions in access to abortion services. The commenter expressed strong concern that without such an adjustment, the bonus provision could encourage States to restrict access to abortion services, given that States must have an abortion rate lower than their 1995 rate in order to qualify for the bonus.

Response: Section 403(a)(2)(C)(i)(I) of the Act specifies that if a State is among the top five States with the largest decrease in its ratio of out-of-wedlock to total births and its abortion rate (i.e., ratio of abortions to live births) is lower than the rate in 1995, it is eligible for the bonus. This definition does not provide for making eligibility contingent on access to abortion services. Therefore, we have not changed the final rule with respect to this comment.

Finally, we have deleted the phrase ''by the end of calendar year 1997'' in paragraph (c) as no longer applicable, and made other editorial changes for clarity in paragraph (d).

Additional Information Related to This Section

The information the State must submit for 1995 and the most recent year is either the number of all abortions (i.e., both medically and surgically induced abortions) performed within the State, or the number of all abortions performed within the State on in-state residents. We will accept either measure. However, we prefer the second measure because the population of in-state residents is more relevant for the intent of this provision. We assume that State policies to reduce out-of-wedlock childbearing will affect in-state residents most directly.

We received numerous comments during our external consultation, prior to publication of the NPRM, that the measure should be based on in-state residents, if possible. We understand, however, that some States collect data only on total abortions that occurred within the State and do not separately identify abortions provided to in-state or out-of-state residents. While such States could begin to collect the data on a state-resident basis in the future, their 1995 data would not have been collected on this basis. We investigated whether a State could adjust its 1995 data to make it comparable to future data based on in-state residents. After extensive consultation, we concluded this would not be technically feasible. We have retained this policy position in the final rule.

The State must use the same definition to measure abortions in later years as it chooses for 1995. For example, if a State submitted data on abortions performed in the State in 1995, it also must submit data on abortions performed in the State in 1999.

Most States have reporting systems in place for abortion data and these are the preferred data to use for purposes of this bonus. However, States have the flexibility to choose the source of the abortion data they submit, allowing States that do not already have their own reporting system in place to compete for the bonus using data from other sources. Regardless of the data source, the data must cover the entire State population, and not be limited to other more narrowly defined populations such as Medicaid recipients.

The State also has some flexibility to change its abortion reporting over time. However, the State must adjust for effects of these changes. This flexibility allows States to improve their abortion reporting systems without making them ineligible for the bonus. The Governor, or his or her designee, must certify that the State has made the appropriate adjustments.

These abortion reporting restrictions, including the need to adjust for changes in data reporting and the need to define the population consistently over time, apply only to the number of abortions reported to ACF for purposes of this bonus. Therefore, the number of abortions reported for purposes of the bonus might or might not equal the number of abortions reported in public health statistics.

The NPRM did not specify what methodology States must use to adjust for changes in data collection. After extensive consultation, we do not believe it is feasible to design a single methodology that would address all possible changes in data reporting. In addition, we understand that some State privacy laws restrict the types of abortion provider information that can be reported. Some of the more specific reporting requirements we considered as a way of ensuring a more uniform methodology appeared to conflict with these State confidentiality laws.

Our aim in this section of the final rule is to obtain from States the best quality and most standard abortion data possible. We believe this is necessary for the fair and equitable distribution of these bonus awards. We also believe, however, that this rule provides States with important flexibility that would

make it technically feasible for States to submit the necessary data if they choose to compete for the bonus. We believe that this flexibility better incorporates State program knowledge and expertise in measuring abortions.

This flexibility could introduce variation in measurement of abortions across States for purposes of the bonus and could raise concerns about fair competition for the bonus. However, these concerns are greatly mitigated by the fact that States are not competing with each other on their abortion rates. As noted above, a State's abortion rate affects its own qualification only, not the qualification of any other State.

A State cannot be eligible for the bonus unless it submits the necessary abortion data. However, as competition for the bonus is voluntary, this provision places no requirement on States to submit these data.

Section 283.7 How Will We Use These Data on Abortions To Determine Bonus Eligibility?

This section of the NPRM described how we would use the abortion data to identify which States are eligible for the bonus.

Comment: We received one comment specifically on this section. Two organizations recommended an alternative ratio for computing the abortion ratio. The NPRM proposed to calculate the rate of abortions for 1995 and for the most recent year for which abortion data are available. The rate would be equal to the number of abortions divided by the total number of live births in the State. The commenters believed that this ratio might encourage States to manipulate birth rates. They recommended that the ratio be based on abortions per 1,000 women ages 15 to 44. They stated that this is a standard measure, consistent with the statute, and would more directly reflect the number of abortions and would not unnecessarily incorporate birthrate data into the calculation.

Response: We recognize the importance of using standard measures to calculate changes in abortion rates, and in developing the NPRM, we considered using the number of abortions per 1,000 women ages 15 to 44. However, the number of women ages 15 to 44 in each State is difficult to measure precisely between census years. Typically, these measures come from intercensal population estimates. The degree of error in these data varies from year to year and from State to State, and the estimates decline in reliability as the interval since the last census increases. This makes it difficult to separate actual changes in the abortion rate from year to year changes in estimation error. The number of births occurring to residents of the State is highly reliable because it is based on a complete count of all births in the State. In contrast, data on the number of women in the State are based on intercensal population estimates. We made no changes to the final rule with respect to this comment.

Additional Information Related to This Section

We will use the abortion data that States provide to calculate a rate of abortions. This rate would equal the number of abortions in a State for the most recent year, divided by the number of total resident live births for the same year as reported by NCHS. This statistic is also known as the ''abortion to live birth ratio.'' It is a standard statistic used to measure abortions and incorporates the same denominator as the ratio of live out-of-wedlock births to total births.

Section 283.8 What Will be the Amount of the Bonus?

This section of the NPRM explained how we would determine the amount of the bonus for eligible States. These amounts are specified in section 403(a)(2)(B) of the Act.

For Guam, the Virgin Islands, and American Samoa, the award would be 25 percent of their mandatory ceiling amount as defined in section 1108 of the Act. Any bonuses paid to the these States would be subtracted from $100 million (the total annual amount available for the bonus awards), and the remainder would be divided among the other qualifying States up to a maximum award of $25 million per State. If Guam, the Virgin Islands, and American Samoa are not among the qualifying States, the bonus for each State would be $20 million if five States qualified and $25 million if fewer States qualified.

Consider the hypothetical example where American Samoa and four States other than American Samoa, Guam and the Virgin Islands qualify for the bonus. In this case, American Samoa would receive $250,000 (25 percent of their mandatory ceiling amount of $1,000,000) and the remaining eligible States would each receive $24,937,500 ($100,000,000 minus $250,000 all divided by four). If American Samoa and two States other than Guam, American Samoa and the Virgin Islands qualified for the bonus, American Samoa would receive $250,000 and the remaining States would receive $25 million, which is the maximum amount that any State can receive.

We received no comments on and have made no changes in this section of the final rule.

Section 283.9 What Do Eligible States Need To Know To Access and Use the Bonus Funds?

This section of the NPRM specified additional information on how we would pay the bonus and how States may use bonus award funds. In the NPRM, we proposed to pay the award to the Executive Office of the Governor. We also specified that States must use bonus funds to carry out the purposes of the TANF program and that bonus award funds are subject to the limitations in, and the requirements of, sections 404 and 408 of the Act.

We made one change in this section after further internal ACF discussion and made other changes in response to comments. In the final rule, we deleted the proposed provision to pay the bonus to the Executive Office of the Governor. We continue to believe that the Governor, as Chief Executive Officer of the State, is responsible not only for the TANF block grant program but for the well-being of all citizens of the State, including efforts to reduce out-of-wedlock childbearing for the State population as a whole. Therefore, we will award the bonus to the Governor of the winning State(s) and other jurisdiction(s), but, for uniform fiscal reporting and accounting purposes, we will issue the bonus award grant funds to the TANF agency.

Comment: Several commenters asked for a clarification of and more information on how bonus funds may be used and what limitations apply to the use of these funds. One commenter suggested that the final rule direct States to use bonus funds only on specific programs, i.e., public family planning education and contraception services, child health and child day care, and job training for women. Other commenters questioned why the prohibitions and limitations in sections 404 and 408 of the Act applied to bonus award funds given that the funds related to the State's entire population, not just the TANF population.

Response: We agree that clarification is needed regarding the provisions of this section. First, in the context of the flexibility provided to States under the TANF block grant program, we decline to specify how States must use these bonus award funds. We want to make clear that the State has the same flexibility on the use of these funds that it has in the use of the TANF block grant funds. We have added an example in paragraph (a) of the final rule to clarify that States may use bonus award funds

for statewide programs to prevent and reduce the incidence of out-of-wedlock pregnancies, a purpose of the TANF program in section 401 of the Act.

Second, the prohibitions and limitations in sections 404 and 408 are statutory requirements. Grants made to a State under section 403 of the Act—whether TANF block grant funds, bonus award funds, or Welfare-to-Work grants—are subject to these conditions, as applicable. Section 404(a)(1) of the Act provides that the State may use grants made under section 403 (including the bonus award) ''. . . in any manner that is reasonably calculated to accomplish the purpose of this part . . .'' The purposes of this part (i.e., title IV, Part A, of the Act) are found in section 401 of the Act. The funds may also be used ''. . . in any manner that the State was authorized to use the funds . . . under prior programs'' (i.e., title IV–A and title IV–F of the Act).

However, sections 404 (b) through (j) and section 408 of the Act specify a number of limitations on the use of TANF funds. For example, if a State uses bonus funds to provide assistance, the prohibitions against providing assistance to certain individuals in section 408 of the Act will apply. If a State uses bonus funds for activities that are not defined as assistance, then these prohibitions are not applicable.

Finally, some of the general requirements in sections 404 and 408 of the Act will apply regardless of how the State chooses to use these funds. For example, the 15 percent limitation on the use of TANF grant funds for administrative purposes (section 404(b)) means that any bonus award funds will be added to the State's total TANF grant funds and the administrative cost percentage will be computed based on the total.

Comment: We received several comments asking us to clarify the expenditure period for bonus award funds. One commenter suggested that the State be allowed three years to expend these funds.

Response: Because there is no expenditure period for TANF funds, and because bonus award funds are a part of the total TANF funds awarded to States under section 403 of the Act, there is no expenditure period for bonus award funds. In using bonus award funds, States must report on the use of these funds as they do other TANF funds.

Comment: One commenter recommended that we state explicitly in the rule that bonus award funds to Puerto Rico, Guam, the Virgin Islands, and American Samoa are not subject to the mandatory funding ceilings for these jurisdictions in section 1108(c)(4) of the Act.

Response: We agree and have added a new paragraph (c) to this section to specify this information. It is important to clarify this provision because section 1108(c)(4) sets a statutory limit on the TANF funds these jurisdictions may receive. We provide explicitly that any bonus funds received by Puerto Rico, the Virgin Islands, Guam or American Samoa will not be counted toward this limitation.

E. Response to Comments That Were Beyond the Scope of the Final Rule

Several comments we received were outside the scope of this rulemaking. These include comments expressing concern that a competitive bonus is not the appropriate way to try to reduce out-of-wedlock childbearing, that efforts to reduce out-of-wedlock births should not place the burden solely on women, and that policies addressing single parent families should not place unreasonable burdens on men. Because these comments focused on general criticisms of the statutory language or criticisms of other policies (which cannot be addressed within this final rule), we made no changes to the final rule with respect to these comments.

IV. Departmental Activities Related to Out-of-Wedlock Births

The Department has various activities underway related to reducing out-of-wedlock births. Given public comments on the Department's role in providing information on this important topic, we summarize some of these activities below, and have made materials regarding these efforts available to the public.

In 1995, the Department produced the *Report to Congress on Out-of-Wedlock Childbearing,* and *Beginning too Soon: Adolescent Sexual Behavior, Pregnancy and Parenthood,* both reports that contained valuable information regarding the occurrence of out-of-wedlock and teen pregnancy as well as strategies for addressing these concerns. Since then, the Department has undertaken many additional initiatives to support programs and research focused on reducing out-of-wedlock childbearing.

In 1997, the Department developed the National Strategy to Prevent Teen Pregnancy, as required in section 905 of PRWORA. The Department has recently released its first annual report to Congress, citing, among other things, that HHS has funded teen pregnancy prevention programs in at least 31 percent of communities across the country. The report also lists more than twenty departmental programs aimed at educating teens and preventing pregnancy, including Girl Neighborhood Power! and demonstration grants to communities in 11 States funded through The Center for Disease Control and Prevention Community Coalition Partnership Programs.

To help disseminate information on efforts to reduce teen pregnancy, the Department is currently working with the National Campaign to Prevent Teen Pregnancy to develop a ''Tool Kit'' that will provide States and communities with practical advice on how to implement a wide range of teen pregnancy prevention initiatives. The Department will be disseminating additional information to communities regarding programs that specifically target boys and young men.

HHS is also administering the State Abstinence Education Program as authorized by section 912 of the PRWORA. This program authorizes $50 million per year beginning in FY 1998. By July 1997, every State had applied for this money to build on their State efforts to prevent teen pregnancy (although New Hampshire has now declined their funding for FY 1998). As mandated in the Balanced Budget Act of 1997, the Department is conducting an evaluation of these programs, and will include five sites involving random assignment and one involving a rigorous evaluation of comprehensive community approaches.

The Office of the Assistant Secretary for Planning and Evaluation also is providing additional funding to three existing rigorous teen pregnancy prevention evaluations. These three programs each have a unique approach, including differing levels of pregnancy prevention services, a statewide program targeted at siblings of adolescent mothers, and a statewide teen pregnancy prevention program that allows each local community to develop its own intervention.

The Department also is actively supporting expanding pregnancy prevention efforts to include a focus on boys and young men. Through the HHS Regional Offices $2 million in small grants have been awarded to Title X Family Planning Clinics to develop pilot programs designed to prevent premature fatherhood. These projects employ male high school students as interns to provide them with on-the-job training in clinic operations and allied health occupations and provide education about male responsibility, family planning and reproductive health.

In addition to these programmatic initiatives, the Department has supported numerous research and

evaluation projects. The National Study of Adolescent Health, the National Survey of Family Growth, and the National Survey of Adolescent Males have all provided important insight into adolescent risk behaviors including sexual activity and response to pregnancy.

V. Regulatory Impact Analyses

A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This rulemaking implements statutory authority based on broad consultation and coordination.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described elsewhere in the preamble, ACF consulted with State and local officials, their representative organizations, and a broad range of technical and interest group representatives.

To a considerable degree, this final rule reflects the comments we received in response to the NPRM. We appreciate and have seriously considered all of the detailed and thoughtful comments we received.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental agencies. This rule will affect only States. Therefore, the Secretary certifies that this rule will not have a significant impact on small entities.

C. Paperwork Reduction Act

This rule does not contain information collection activities that are subject to review and approval by the Office of Management and Budget. The birth data on which we will base the computation of the bonus are currently available from the NCHS. Therefore, no new data collection is required to measure out-of-wedlock birth ratios. The abortion data would be solicited only for up to eight States, i.e., five States and three Territories. This does not meet the criteria for OMB review and approval.

D. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

We have determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

E. Congressional Review

This final rule is not a major rule as defined in 5 U.S.C., Chapter 8.

List of Subjects in 45 CFR Part 283

Health statistics, Family planning, Maternal and child health, Public assistance programs.

(Catalogue of Federal Domestic Assistance Programs: 17.253 Employment and Training Assistance—Welfare-to-Work Grants to States and Local Entities for Hard-to-Employ Welfare Recipient Programs; 93.558 TANF Programs-State Family Assistance Grants, Assistance Grants to Territories, Matching Grants to Territories, Supplemental Grants for Population Increases and Contingency Fund; 93.559-Loan Fund; and 93.595-Welfare Reform Research, Evaluations and National Studies)

Dated: December 24, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: January 11, 1999.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, we are amending 45 CFR chapter II by adding Part 283 to read as follows:

PART 283—IMPLEMENTATION OF SECTION 403(A)(2) OF THE SOCIAL SECURITY ACT BONUS TO REWARD DECREASE IN ILLEGITIMACY RATIO

Sec.

283.1 What does this part cover?
283.2 What definitions apply to this part?
283.3 What steps will we follow to award the bonus?
283.4 If a State wants to be considered for bonus eligibility, what birth data must it submit?
283.5 How will we use these birth data to determine bonus eligibility?
283.6 If a State wants to be considered for bonus eligibility, what data on abortions must it submit?
283.7 How will we use these data on abortions to determine bonus eligibility?
283.8 What will be the amount of the bonus?
283.9 What do eligible States need to know to access and use the bonus funds?

Authority: 42 U.S.C. 603

§ 283.1 What does this part cover?

This part explains how States may be considered for the ''Bonus to Reward Decrease in Illegitimacy Ratio,'' as authorized by section 403(a)(2) of the Social Security Act. It describes the data on which we will base the bonus, how we will make the award, and how we will determine the amount of the award.

§ 283.2 What definitions apply to this part?

The following definitions apply to this part:

Abortions means induced pregnancy terminations, including both medically and surgically induced pregnancy terminations. This term does not include spontaneous abortions, i.e., miscarriages.

Act means the Social Security Act.

Bonus refers to the Bonus to Reward Decrease in Illegitimacy Ratio, as set forth in section 403(a)(2) of the Act.

Calculation period refers to the four calendar years used for determining the decrease in the out-of-wedlock birth ratios for a bonus year. (The years included in the calculation period change from year to year.)

Most recent two-year period for which birth data are available means the most recent two calendar years for which the National Center for Health Statistics has released final birth data by State.

Most recent year for which abortion data are available means the year that is two calendar years prior to the current calendar year. (For example, for eligibility determinations made during calendar year 1999, the most recent year for which abortion data are available would be calendar year 1997.)

NCHS means the National Center for Health Statistics, of the Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

Number of out-of-wedlock births for the State means the final number of births occurring outside of marriage to residents of the State, as reported in NCHS vital statistics data.

Number of total births for the State means the final total number of live births to residents of the State, as reported in NCHS vital statistics data.

Rate of abortions means the number of abortions reported by the State in the

most recent year for which abortion data are available divided by the State's total number of resident live births reported in vital statistics for that same year. (This measure is also more traditionally known as the ''abortion to live birth ratio.'')

Ratio refers to the ratio of live out-of-wedlock births to total live births, as defined in § 283.5(b).

State means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa, as provided in section 419(a)(5) of the Act.

Vital statistics data means the data reported by State health departments to NCHS, through the Vital Statistics Cooperative Program (VSCP).

We (and any other first person plural pronouns) means the Secretary of Health and Human Services or any of the following individuals or organizations acting in an official capacity on the Secretary's behalf: the Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

§ 283.3 What steps will we follow to award the bonus?

(a) For each of the fiscal years 1999 through 2002, we will:

(1) Based on the vital statistics data provided by NCHS as described in § 283.4, calculate the ratios for the most recent two years for which final birth data are available, and for the prior two years, as described in § 283.5;

(2) Calculate the proportionate change between these two ratios, as described in § 283.5.

(3) Identify as potentially eligible a maximum of eight States, i.e., Guam, the Virgin Islands, and American Samoa, and five other States, that have qualifying decreases in their ratios, using the methodology described in § 283.5;

(4) Notify these potentially eligible States that we will consider them for the bonus if they submit data on abortions as stated in § 283.6; and

(5) Identify which of the potentially eligible States that submitted the required data on abortions have experienced decreases in their rates of abortion relative to 1995, as described in § 283.7. These States will receive the bonus.

(b) We will determine the amount of the grant for each eligible State, based on the number of eligible States, and whether Guam, American Samoa, or the Virgin Islands are eligible. No State will receive a bonus award greater than $25 million in any year.

§ 283.4 If a State wants to be considered for bonus eligibility, what birth data must it submit?

(a) To be considered for a bonus, the State must have submitted data on out-of-wedlock births as follows:

(1) The State must have submitted to NCHS the final vital statistics data files for all births occurring in the State. These files must show, among other elements, the total number of live births and the total number of out-of-wedlock live births occurring in the State. These data must conform to the Vital Statistics Cooperative Program contract for all years in the calculation period. This contract specifies, among other things, the guidelines and time-lines for submitting vital statistics data files; and

(2) The State must have submitted these data for the most recent two years for which NCHS reports final data, as well as for the previous two years.

(b) If a State has changed its method of determining marital status for the purposes of these data, the State also must have met the following requirements:

(1) The State has identified all years for which the method of determining marital status is different from that used for the previous year;

(2) For those years identified under paragraph (b)(1) of this section, the State has either:

(i) Replicated as closely as possible a consistent method for determining marital status at the time of birth, and the State has reported to NCHS the resulting alternative number of out-of-wedlock births; or

(ii) If NCHS agrees that such replication is not methodologically feasible, the State may chose to accept an NCHS estimate of what the alternative number would be;

(3) The State has submitted documentation to NCHS on what changes occurred in the determination of marital status for those years and, if appropriate, how it determined the alternative number of out-of-wedlock births for the State; and

(4) For methodological changes that were implemented prior to 1998 and applicable to data collected for the bonus period, the State has submitted the information described in paragraphs (b)(1), (2) and (3) of this section within two months after April 14, 1999. For such changes implemented during or after 1998, the State must submit such information either by the end of calendar year 1999 or according to the same deadline that applies to its vital statistics data for that year, whichever is later.

§ 283.5 How will we use these birth data to determine bonus eligibility?

(a) We will base eligibility determinations on final vital statistics data provided by NCHS showing the number of out-of-wedlock live births and the number of total live births among women living in each State and a factor provided by NCHS to adjust for changes in data reporting for those States that have changed their methodology for collecting data on out-of-wedlock births during the bonus period.

(b) We will use the number of total live births and the number of out-of-wedlock births, adjusted for any changes in data collection or reporting, to calculate the decrease in the ratio of out-of-wedlock to total births for each State as follows:

(1) We will calculate the ratio as the number of out-of-wedlock births for the State during the most recent two-year period for which NCHS has final birth data divided by the number of total births for the State during the same period. We will calculate, to three decimal places, the ratio for each State that submits the necessary data on total and out-of-wedlock births described in § 283.4.

(2) We will calculate the ratio for the previous two-year period using the same methodology.

(3) We will calculate the proportionate change in the ratio as the ratio of out-of-wedlock births to total births for the most recent two-year period minus the ratio of out-of-wedlock births to total births from the prior two-year period, all divided by the ratio of out-of-wedlock births to total births for the prior two-year period. A negative number will indicate a decrease in the ratio and a positive number will indicate an increase in the ratio.

(c) We will identify which States have a decrease in their ratios large enough to make them potentially eligible for the bonus, as follows:

(1) For States other than Guam, American Samoa and the Virgin Islands, we will use this calculated change to rank the States and identify which five States have the largest decrease in their ratios. Only States among the top five will be potentially eligible for the bonus. We will identify fewer than five such States as potentially eligible if fewer than five experience decreases in their ratios. We will not include Guam, American Samoa and the Virgin Islands in this ranking.

(2) If we identify more than five States due to a tie in the decrease, we will

recalculate the ratio and the decrease in the ratio to as many decimal places as necessary to eliminate the tie. We will identify no more than five States.

(3) For Guam, American Samoa and the Virgin Islands, we will use the calculated change in the ratio to identify which of these States experienced a decrease that is either at least as large as the smallest qualifying decrease identified in paragraph (c)(1) of this section, or a decrease that ranks within the top five decreases when all States and Territories are ranked together. These identified States will be potentially eligible for the bonus also.

(4) We will notify the potentially eligible States, as identified under paragraphs (a) through (c) of this section that they must submit the information on abortions specified under § 283.6 if they want to be considered for the bonus.

§ 283.6 If a State wants to be considered for bonus eligibility, what data on abortions must it submit?

(a) To be considered further for bonus eligibility, each potentially eligible State, as identified under § 283.5, must submit to ACF data and information on the number of abortions for calendar year 1995 within two months of this notification. This number must measure either of the following:

(1) For calendar year 1995, the total number of abortions performed by all providers within the State; or

(2) For calendar year 1995, the total number of abortions performed by all providers within the State on the total population of State residents only. This is the preferred measure.

(b) States must have obtained these data on abortions for calendar year 1995 within 60 days of publication of the final rule and must include with their submission of 1995 data an official record documenting when they obtained the abortion data.

(c) Within two months of notification by ACF of potential eligibility, the State must submit:

(1) The number of abortions performed for the most recent year for which abortion data are available (as defined in § 283.2 to mean the year that is two calendar years prior to the current calendar year). In measuring the number of abortions, the State must use the same definition, either under paragraph (a)(1) or paragraph (a)(2) of this section, for both 1995 and the most recent year; or

(2) If applicable, the adjusted number and information specified in paragraph (d) of this section.

(d) If the State's data collection or reporting methodology changed between 1995 and the bonus year in such a way as to reflect an increase or decrease in the number of abortions that is different than what actually occurred during the period, the State must:

(1) When submitting the number of abortions for the most recent year under paragraph (c)(2), adjust the number to exclude increases or decreases in the number due to changes in methodology for collecting or reporting the data. For example, this calculation should include adjustments for increases or decreases in response rates for providers in reporting abortion data;

(2) Provide a rationale for the adjustment, i.e., a description of how the data collection or reporting methodology was changed. This could include a description of how legislative, policy or procedural changes affected the collection or reporting of abortion data, or an indication of changes in the response rate of providers in reporting abortion data; and

(3) Provide a certification by the Governor, or his or her designee, that the number of abortions reported to ACF accurately reflects these adjustments for changes in data collection or reporting methodology.

§ 283.7 How will we use these data on abortions to determine bonus eligibility?

(a) For those States that have met all the requirements under §§ 283.1 through 283.6, we will calculate the rate of abortions for calendar year 1995 and for the most recent year for which abortion data are available as defined in § 283.2. These rates will equal the number of abortions reported by the State to ACF for the applicable year, divided by total live births among women living in the State reported by NCHS for the same year. We will calculate the rates to three decimal places.

(b) If ACF determines that the State's rate of abortions for the most recent year for which abortion data are available is less than the rate for 1995, and, if the State has met all the requirements listed elsewhere under this part, the State will receive the bonus.

§ 283.8 What will be the amount of the bonus?

(a) If, for a bonus year, none of the eligible States is Guam, American Samoa or the Virgin Islands, then the amount of the grant shall be:

(1) $20 million per State if there are five eligible States; or

(2) $25 million per State if there are fewer than five eligible States.

(b) If for a bonus year, Guam, the Virgin Islands, or American Samoa is an eligible State, then the amount of the grant shall be:

(1) In the case of such a State, 25 percent of the mandatory ceiling amount as defined in section 1108 of the Act; and

(2) In the case of any other State, $100 million, minus the total amount of any bonuses paid to Guam, the Virgin Islands, and American Samoa, and divided by the number of eligible States other than Guam, American Samoa and the Virgin Islands, not to exceed $25 million per State.

§ 283.9 What do eligible States need to know to access and use the bonus funds?

(a) States must use the bonus funds to carry out the purposes of the Temporary Assistance for Needy Families Block Grant in section 401 and 404 of the Act. This may include statewide programs to prevent and reduce the incidence of out-of-wedlock pregnancies.

(b) As applicable, these funds are subject to the requirements in, and the limitations of, sections 404 and 408 of the Act.

(c) For Puerto Rico, Guam, the Virgin Islands, and American Samoa, the bonus award funds are not subject to the mandatory ceilings on funding established in section 1108(c)(4) of the Act.

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