

the Act. The procedures for determining recipient count are set forth in paragraphs (a), (b) and (c) of this section.

(a) *Adult assistance categories.* For each adult assistance category, under title I, X, XIV, or XVI, of the Act, the recipient count for any month may include:

(1) Eligible recipients who receive money payments or in whose behalf protective payments are made for that month:

Provided, That such payments are not excluded from Federal financial participation under the provisions of §233.145(c) of this chapter; plus

(2) Other eligible recipients in whose behalf payments are made for institutional services in intermediate care facilities for that month, but only in a State which does not have in effect a plan approved under Title XIX of the Act. (See §233.145(b)(2) of this chapter.)

(b) *AFDC category.* For the AFDC category under title IV, part A, of the Act:

(1) The recipient count for any month includes:

(i) Eligible recipients in families which receive a money payment, plus

(ii) Eligible recipients in families not otherwise counted on whose behalf protective or nonmedical vendor assistance payments are made for such month in accordance with the vendor payment provisions at §234.60, provided that such payments are not excluded from Federal financial participation under the provisions of §233.145(c) of this chapter.

(2) For the purpose of this provision, *recipients* means, if otherwise eligible:

(i) Children;

(ii) In a home with no parent who is the caretaker relative, an otherwise eligible relative of specified degree;

(iii) Parent(s);

(iv) The spouse of such parent, in the case of AFDC eligibility due to incapacity or unemployment;

(3) As used in paragraph (b)(2)(iii) of this section, the term *parent* means the natural or adoptive parent, or the stepparent who is married to the child's natural or adoptive parent and is legally obligated to support the child under a State law of general applicability which requires stepparents to sup-

port stepchildren to the same extent that natural or adoptive parents are required to support their children; and the term "spouse" as used in paragraph (b)(2)(iv) of this section means an individual who is the husband or wife of the child's own parent, as defined above, by reason of a legal marriage as defined under State law.

(4) Where there are two or more dependent children living in a place of residence with two other persons and each of such other persons is a relative who has responsibility for the care and control of one or more of the dependent children, there may be two AFDC families (assistance units), if neither family includes a parent or sibling included in the other family pursuant to §206.10 (a)(1)(vii).

(c) *Essential person.* An *essential person* or other ineligible person who is living with the eligible person may not be counted as a recipient.

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PART 250—JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM

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Subpart A—Purpose and Definitions

§250.0 Purpose.

(a) The purpose of the Job Opportunities and Basic Skills Training (JOBS) program under titles IV-A and IV-F of the Social Security Act is to assure that needy families with children obtain the education, training and employment that will help avoid long-term welfare dependence. To accomplish this purpose, the JOBS program is intended to:

(1) Encourage, assist, and require applicants for and recipients of AFDC to fulfill their responsibilities to support their children by preparing for, accepting, and retaining employment;

(2) Provide individuals with the opportunity to acquire the education and skills necessary to qualify for employment;

(3) Provide necessary supportive services, including transitional child care and medical assistance, so that individuals can participate in JOBS and accept employment;

(4) Promote coordination of services at all levels of government in order to make a wide range of services available, especially for individuals at risk of long-term welfare dependency, and to maximize the use of existing resources; and

(5) Emphasize accountability for both participants and service providers.

(b) This part provides that a State IV-A agency, as a condition of participation in the AFDC program, must operate a JOBS program. In addition, these regulations require that States provide child care and other supportive services for participants in the JOBS program, as well as certain other individuals, pursuant to parts 255 and 256. This part contains the policies, rules and regulations pertaining to the Job Opportunities and Basic Skills Training (JOBS) program.

(c) This part is applicable to States with approved JOBS programs pursuant to § 250.20, and to all States as of October 1, 1990.

§ 250.1 Definitions.

Except to the extent otherwise specified in this section, terms used in part 250 shall have the same meaning otherwise applicable to the Aid to Families with Dependent Children (AFDC) program.

Adult recipient means an individual other than a dependent child (unless such child is the minor custodial parent of another dependent child) whose needs are met (in whole or in part) with payments of Aid to Families with Dependent Children.

Basic literacy level means a literacy level that allows a person to function at a level equivalent to at least grade 8.9.

Component means any of the services or activities available under the provisions of § 250.44 through § 250.48.

CWEP means the community work experience program authorized in § 250.45 and § 250.63.

Department means the U.S. Department of Health and Human Services.

FFP means Federal financial participation in expenditures made by a State.

Institution of higher education means any institution determined by the Secretary of Education to meet:

(1) The definition of such term contained in either section 1201(a) or section 481(a) of the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), as amended; or

(2) The definitions of “proprietary institution of higher education” or “postsecondary vocational institution,” which are defined at sections 481 (b) and (c) of that Act.

Intensive job search is, for purposes of § 250.74(c), job search by a parent in an unemployed parent case that is either group or individual job search for a monthly average equivalent to 20 hours per week.

JAS means a JOBS Automated System authorized under § 250.81 for a State to support its operation of the JOBS program.

JOBS is the Job Opportunities and Basic Skills Training program required

by section 402(a)(19) of the Social Security Act, as amended by section 201(a) of the Family Support Act of 1988 (Pub. L. 100-485) and set forth in part F of title IV of the Social Security Act, as added by section 201(b) of the Family Support Act.

JOBS plan means the statewide operational plan for JOBS.

Limited English proficiency means limited ability in speaking, reading, writing, or understanding the English language by a person whose native language is a language other than English or by a person who lives in a family or community environment where a language other than English is the dominant language.

Make good progress and *Making satisfactory progress* in an educational component mean that the participant in any educational activity is meeting, on a periodically measured basis of less than one year, such as a term or quarter, a consistent standard of progress based upon a written policy that was developed by the educational institution or program in which she is enrolled; and approved by the appropriate State or local education agency and by the State welfare agency or Indian Tribe or Alaska Native organization. Such standard includes both a qualitative measure of a participant’s progress, such as a grade point average, and a quantitative measure, such as a reasonable time limit by which a student is expected to complete her studies. Upon review and approval by the State or local education agency and the State IV-A agency or Indian Tribe or Alaska Native organization, the standard may provide that a student who does not meet the institution’s or program’s progress standard is nonetheless making satisfactory progress during a probationary period, or shall be deemed to be making satisfactory progress because of mitigating circumstances. *Make good progress* and *Making satisfactory progress* in a training component (i.e., OJT and skills training) mean that the participant is meeting, on a periodically measured basis of less than one year, such as quarterly, a consistent standard of progress based upon a written policy that was developed by the training provider, and approved by the State

IV-A agency or Indian Tribe or Alaska Native organization. Such standard includes both a qualitative measure of a participant's progress, such as competency gains or proficiency level, and a quantitative measure, such as a reasonable time limit for completion of the training program. Standards for making good or satisfactory progress in a training program must be employed by October 1, 1992, but should be used at an earlier time if available.

MSA means Metropolitan Statistical Area, a system of geographical areas defined and maintained by the Executive Office of the President, Office of Management and Budget.

OJT means on-the-job training as authorized in §250.45 and §250.61.

Postsecondary education means a program of postsecondary instruction offered by:

(1) An institution of higher education determined by the Secretary of Education to meet section 1201(a), or section 481 (a), (b), or (c) of the Higher Education Act of 1965, as amended;

(2) An institution of higher education or a vocational school determined by the Secretary of Education to meet section 435(b) or section 435(c) of the Higher Education Act of 1965, as amended; or

(3) A public institution that is legally authorized by the State to provide such a program within the State.

Secretary means the Secretary of Health and Human Services.

Target population means that group composed of each individual who:

(1) Is receiving AFDC, and who has received such aid for any 36 of the preceding 60 months;

(2) Makes application for AFDC, and has received such aid for any 36 of the 60 months immediately preceding the most recent month for which application has been made;

(3) Is a custodial parent under the age of 24 who:

(i) Has not completed a high school education and, at the time of application for AFDC, is not enrolled in high school (or a high school equivalency course of instruction); or

(ii) Had little or no work experience in the preceding year; or

(4) Is a member of a family in which the youngest child is within 2 years of

being ineligible for AFDC because of age.

For a particular State, this term will include, in lieu of individuals listed, such alternative groups of long-term or potential long-term recipients as the State has demonstrated to the satisfaction of the Secretary are feasible target populations in that State's case-load.

UP means Unemployed Parent and refers to the program authorized in section 407 of the Social Security Act which provides aid to a dependent child who is deprived of parental support or care by reason of the unemployment of the parent who is the principal earner.

Subpart B—Administration

§250.10 State IV-A agency administration.

(a) The State agency responsible for the administration or supervision of the State's title IV-A plan is responsible for the administration or supervision of the JOBS program.

(b) Except as provided in paragraph (c)(2), JOBS activities which involve decision-making with regard to individual participants may be performed by an entity other than the State IV-A agency according to the policies, rules, and regulations of the State IV-A agency. In doing so, such entity must not have the authority to review, change, or disapprove any administrative decision of the State IV-A agency, or otherwise substitute its judgment for that of the State IV-A agency as to the application of policies, rules, and regulations promulgated by the State IV-A agency.

(c) JOBS activities may be delegated or contracted with the exception of the following:

(1) Overall program administration, including:

(i) Establishment of optional provisions and components of the program;

(ii) Responsibility for program planning, design of program, and determining who should participate;

(iii) Establishment of program participation requirements;

(iv) Development of a definition of good cause for failing to participate; and

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(v) The issuance of other policies, rules, and regulations governing the program.

(2) Actions involving individuals, including:

(i) Determination of exemption status;

(ii) Determination of good cause for failure or refusal to participate;

(iii) Determination and application of sanctions;

(iv) Providing notice of case actions; and

(v) Fair hearings.

§ 250.11 Requirement for a statewide program.

(a) Not later than October 1, 1992 the State must make the JOBS program available on a statewide basis. This means that the JOBS program, including all components described in § 250.44 and two of the components in § 250.45, must be available in each political subdivision of the State, unless the State determines that it is not feasible to do so.

(b) Although all required and at least two optional components, as described in §§ 250.44 and 250.45, must be included in a State JOBS program, the components need not be operated in the same manner in each political subdivision, nor must the State operate the same optional components, as listed in § 250.45, in each political subdivision.

(c)(1) If the State IV–A agency concludes that a statewide program is not feasible, appropriate justification must be submitted to the Secretary for review and approval as part of its JOBS plan, unless the following criteria are met:

(i) A minimal JOBS program is available in a number of political subdivisions in which 95 percent of the State's adult recipients reside; and

(ii) A complete JOBS program is available in all Metropolitan Statistical Areas in the State, and in a number of political subdivisions in which 75 percent of the State's adult recipients reside.

(iii) A minimal program includes high school or equivalent education, as specified in § 250.44, one optional component from among those specified at § 250.45, and information and referral to

available non-JOBS employment services. A complete program includes all mandatory components as well as any two optional components.

(iv) In determining the percentages of adult recipients residing in political subdivisions of a State, for purposes of this section, adult members of Indian Tribes and Alaska Native organizations who reside within the service area of a Tribal JOBS program, pursuant to § 250.90, will not be counted.

(2) The justification must include the following:

(i) The number of adult recipients that would be excluded and a comparison of:

(A) The estimated average annual unit cost per participant were the JOBS program extended to excluded areas with

(B) The estimated average annual unit cost per JOBS participant in the included areas;

(ii) A description of the local economic conditions that make operation of the program in such areas infeasible; and

(iii) Whether the State expects to expend all of its limit of entitlement, pursuant to § 250.70, for the period covered by the JOBS plan.

§ 250.12 Coordination and consultation.

State IV–A agencies are required to assure coordination of JOBS program services, including child care and supportive services pursuant to § 255.3(h) of the regulations, with related services provided by other agencies.

(a) The Governor shall assure that JOBS program activities are coordinated with programs under the Job Training Partnership Act (JTPA) and with any other relevant employment, training, and education programs available within the State. At a minimum, this means that the appropriate job training and preparation components of the State JOBS plan shall be consistent with the coordination criteria specified in the Governor's coordination and special services plan required under section 121 of the JTPA.

(b) In developing the JOBS plan and carrying out the JOBS program, including the supportive services provisions, the State IV-A agency must consult and coordinate with other providers, including those specified in paragraph (c) of this section, to identify existing resources to prevent duplication of services, assure that other program services are available to enable participants to achieve self-sufficiency, and assure that costs for these other services for which welfare recipients have been eligible are not incurred by the JOBS program pursuant to § 250.72.

(c) At a minimum, the State IV-A agency must consult and coordinate with:

(1) The State agency responsible for JTPA;

(2) The State agency responsible for the Employment Service;

(3) The State education agency for programs under the Adult Education Act (20 U.S.C. 1201 *et seq.*) and Carl D. Perkins Vocational Education Act (20 U.S.C. 2301 *et seq.*);

(4) The State agencies responsible for child care activities as described in § 255.3(h); and

(5) The State agencies responsible for public housing.

(d) The State IV-A agency and local welfare agencies, as appropriate, must consult with the private industry councils (as established under section 102 of the JTPA):

(1) On the development of arrangements and contracts under JOBS, as described in § 250.13, and under the JTPA; and

(2) To identify and obtain advice on the types of jobs available, or likely to become available, in the area. The State IV-A agency must ensure that JOBS provides training for the types of jobs which are, or are likely to become, available in the area, and that resources are not expended on training for jobs that are not likely to become available.

(e) The State IV-A agency must exchange information with an eligible Indian Tribe or Alaska Native organization which submitted an application to the Department by April 13, 1989 to operate a separate JOBS program under § 250.91.

(1) This information includes available data on adult Tribal or Alaska Native organization AFDC recipients necessary to determine a Tribe or organization's JOBS funding level and designated service area, as appropriate, as described in § 250.93(b). State and Tribal and Alaska Native organization representatives receiving such AFDC recipient data must follow comparable standards of confidentiality as described in § 250.93(b).

(2) Since the State IV-A agency maintains responsibility for providing basic AFDC program services, such as eligibility notifications, and child care funds or services to participants in a Tribal JOBS program, the State and such grantee must coordinate inter-related activities as described in § 250.94(a) and part 255.

§ 250.13 Contracting authority.

The State IV-A agency shall carry out the JOBS program directly or through arrangements or under contracts with administrative entities under section 4(2) of the Job Training Partnership Act (JTPA), with State and local educational agencies, and with other public agencies, Indian Tribes or Alaska Native organizations or private organizations (including community-based organizations as defined in section 4(5) of the JTPA).

(a) Arrangements and contracts entered into under this section may cover any service or activity (including outreach, information and referral) to be made available under the JOBS program. Such contracted service or activity must be consistent with the requirements under § 250.10 and must not otherwise be available on a non-reimbursable basis, as specified in § 250.72(c).

(b) The State IV-A agency must consult with the private industry councils on the development of arrangements and contracts under JOBS pursuant to § 250.12.

(c) In selecting service providers, the State IV-A agency must take into account appropriate factors which may include past performance in providing similar services, demonstrated effectiveness, fiscal accountability, cost efficiency, ability to meet performance standards, and such other factors as

the State IV-A agency may determine to be appropriate.

(d) For purposes of claiming FFP, the State IV-A agency must segregate costs by the applicable matching rates, as defined at § 250.73(b)(1), in any arrangement or contract entered into under this section.

(e) Services contracted under JOBS are subject to the requirements of part 92, excluding the provisions at § 92.30(d)(4).

Subpart C—State Plan Requirements and Content

§ 250.20 Requirement for a State JOBS plan.

(a) As a condition of participation in the AFDC program, the agency responsible for administering or supervising the administration of the IV-A plan must:

(1) No later than October 1, 1990, establish and operate a JOBS program under a JOBS plan that has been approved by the Secretary before implementation and that meets the requirements of this part;

(2) Submit its initial JOBS plan to the Secretary for review and action at least 45 days prior to the anticipated implementation date; and

(3) Submit its initial Supportive Services plan, in accordance with §§ 255.1 and 256.1 concurrent with the initial JOBS plan, except that a State which has not submitted a JOBS plan prior to April 1, 1990, must submit a Supportive Services plan for transitional child care in accordance with § 256.1 at least 45 days prior to implementation.

(b) The initial JOBS plan and Supportive Services plan will be subject to prior approval by the Secretary. FFP will only be available for expenditures incurred after approval by the Secretary.

(c) A State JOBS plan and Supportive Services plan must be submitted to:

(1) The Governor for review and comment; and

(2) The State Job Training Coordinating Council (SJTCC) and the State education agency for review and comment at least 60 days prior to submittal to the Secretary. The plan shall be published and otherwise made reason-

ably available through local news facilities and public announcements, to the general public, including members of federally-recognized Tribes and Alaska Native organizations in the State, for review and comment, concurrent with submittal to the SJTCC and the State education agency. Comments received shall be resolved by the State.

(d)(1) State JOBS plans and Supportive Services plans submitted to the Secretary prior to the issuance of the JOBS and Supportive Services plan preprints shall be considered interim plans.

(2)(i) A State operating a JOBS program and providing supportive services under interim plans shall submit a new JOBS plan and a new Supportive Services plan for approval within 90 days of the date that JOBS and Supportive Services plan preprints are issued by the Secretary.

(ii) The new JOBS and Supportive Services plans must be submitted for public review and comment pursuant to the provisions of paragraph (c) no later than 30 days prior to submittal to the Secretary, if substantial changes to the interim plans have been made.

(iii) Interim plans shall remain in force until formal action on the new plans is taken (i.e., approval or disapproval) by the Secretary.

(e)(1) The State must submit an update of its JOBS and Supportive Services plans to the Secretary for approval not less than every two years. The update shall be considered a new JOBS plan and Supportive Services plan, and shall be submitted to the Secretary for approval at least 90 days prior to beginning of the next biennial period. The State must follow the public review and comment provisions in paragraph (c).

(2) The update must consist of:

(i) Assurances regarding those parts of the State JOBS Plan and Supportive Services plan that remain unchanged;

(ii) A description of any changes in program operations including but not limited to changes in components and target populations served;

(iii) An estimate of the number of persons to be served by the program during the next biennium and the availability of services provided by the

State IV-A agency as well as other providers; and

(iv) An assurance that the State JOBS plan is consistent with the coordination criteria specified in the current Governor's Coordination and Special Services Plan required under section 121 of the JTPA.

(3)(i) For all States the first biennial update must be submitted by July 1, 1992, for the period beginning October 1, 1992. As an alternative, a State may submit its first biennial update by April 1, 1992 for the period beginning July 1, 1992. A State which elects to submit its biennial update on April 1, 1992 for the period beginning July 1, 1992 must show in the update that it will have a Statewide program by October 1, 1992.

(ii) A State JOBS plan and Supportive Services plan approved pursuant to paragraph (d)(2) shall remain in force until formal action is taken (i.e., approval or disapproval) by the Secretary on the first biennial update.

(iii) Each approved biennial update shall remain in force until formal action is taken (i.e., approval or disapproval) by the Secretary on the update for the following biennial period.

(f)(1) The State shall submit proposed amendments to approved plans as necessary and they shall be reviewed according to the process described at §§ 201.3(f) and 201.3(g).

(2) A plan amendment is necessary if the State makes changes which affect eligibility for services or requirements to participate, or makes changes in program design that alter the nature of the program.

(g) A State that submits a plan, an amendment to an existing plan, or a biennial update that is not approvable will be given the opportunity to make revisions before formal disapproval; upon formal disapproval, a State may request a hearing pursuant to the process set forth in § 201.4 and part 213.

§ 250.21 State plan content.

A State's JOBS plan must contain the following:

(a) Assurances that:

(1) The title IV-A agency will, upon approval of the JOBS plan by the Secretary, have in effect and operation:

(i) A JOBS program that meets the requirements of section 402(a)(19) and title IV-F of the Act; and

(ii) A program for providing child care and other supportive services consistent with the requirements of the Act and with the State's separate Supportive Services plan, pursuant to §§ 255.1 and 256.1;

(2) The JOBS program will meet all statutory and regulatory requirements;

(3) To the extent that the program is available in a political subdivision of a State and the State's resources otherwise permit, the State will require non-exempt recipients for whom the State guarantees child care in accordance with § 255.2(a) to participate;

(4) Individuals are not discriminated against on the basis of race, sex, national origin, religion, age, or handicapping condition in assignment to training and education developed under the JOBS program;

(5) In assigning participants to any JOBS program activity the State agency will comply with the provisions of section 484(a) of the Act;

(6) Benefits and services provided under the programs in part A, part D, and part F of title IV of the Act are furnished in an integrated manner;

(7) Services provided by the State IV-A agency are not otherwise available on a non-reimbursable basis, as required by § 250.72(e);

(8) All applicants for and recipients of aid are encouraged, assisted, and required to fulfill their responsibilities to support their children by preparing for, accepting, and retaining such employment as they are capable of performing;

(9) State and local funds expended for such purpose shall be maintained at least at the level of such expenditures for the FY 1986. The FY 1986 level must be identified;

(10) Federal funds made available to a State for purposes of the program shall not be used to supplant non-Federal funds for existing services and activities which promote the purpose of part F of title IV of the Act.

(b) Information about overall implementation of the State's JOBS program:

(1) A statement of the goals and objectives of the State JOBS program,

and a description of how the State intends to implement the program during the biennium to support those goals and objectives;

(2) A description of the administrative structure for the JOBS program;

(3) A description of the contracting process that will be used to deliver services for the State IV-A agency, pursuant to § 250.13, including:

(i) Types of services to be provided under contract;

(ii) Types of contracts used;

(iii) Types of providers;

(4) If the State program is less than statewide, identification of subdivisions to be included or excluded. For any period after September 30, 1992, for which the State does not meet the criteria at § 250.11(c)(1), justification as described at § 250.11(c)(2);

(5) If the State proposes to serve target populations other than those described at § 250.1,

(i) The characteristics of the caseload in the State that make it infeasible to meet the requirements of § 250.74(a)(1); and

(ii) The long-term or potential long-term recipients that the State is targeting instead of those described at § 250.1.

(6) A description of the State's dispute resolution process including:

(i) A description of the conciliation process including:

(A) Length of conciliation; and

(B) The entity responsible for conciliation;

(ii) A description of an alternative fair hearing process the State uses for the JOBS program, if any;

(iii) A description of the grievance procedure for resolving complaints by regular employees pursuant to section 484(d) of the Act.

(c) The options for participation which the State elects including:

(1) Lowering the age of the youngest child (but no less than one) for the exemption pursuant to § 250.30(b)(9)(i);

(2) Making exemptions in § 250.30(b)(9)(i) and (b)(9)(ii) inapplicable to both parents and requiring their participation if child care is guaranteed in accordance with part 255;

(3) Limiting exemptions in § 250.30(b)(9)(i) and (b)(9)(ii) to the parent who is not the principal earner;

(4) Establishing minimum standards for work that qualifies an individual for the exemption at § 250.30(b)(7);

(5) Making supplemental payments if a family would experience a net loss of cash income resulting from acceptance of a job, pursuant to § 250.35(c). A State must describe what necessary and reasonable expenses it uses to calculate "net loss of cash income;"

(6) Allowing a parent under age 25 who has not completed high school or an equivalent course of education to meet the unemployed parent program 16-hour work requirement by participating in educational activities.

(d) A description of program operations to include the following:

(1) A description of the client flow process;

(2) For each required component and each optional component a State elects (including all components in §§ 250.46, 250.47, and 250.48):

(i) A description of the services to be provided in the component;

(ii) The extent to which such services will be:

(A) Available on a non-reimbursable basis;

(B) Provided directly or funded by the State IV-A agency;

(iii) The extent to which such services will be provided in each political subdivision covered by the State JOBS program;

(3) If the State elects to use a case management system pursuant to § 250.43, a description of the case management system to include:

(i) How case management services will be delivered and by what entities; and

(ii) If not used statewide, description of methods by which individuals will be assigned a case manager;

(4) If the State elects to use agreements or contracts with participants, pursuant to § 250.42, a description of how they will be used, including, if not used statewide, how the State will determine for whom they will be used;

(5) If the State elects to offer an alternative work experience component pursuant to § 250.63, a description of potential sponsors, types of activities, the hours and duration of participation

that will be required, target populations, and how the program differs from CWEP;

(6) If the State elects to design a work program for unemployed parents, pursuant to § 250.33, a description of the program including an assurance that the State has not substituted education or training activities for the work requirement;

(7) If the State elects to operate a work supplementation component pursuant to § 250.62, which of the following options it elects and, if appropriate, what the policy is with respect to:

(i) Exempting individuals holding supplemented jobs from the retrospective budgeting requirements at part 233 and monthly reporting;

(ii) Varying the standard of need by subdivision in which the work supplementation component is in operation;

(iii) Varying the standard of need for different categories of recipients on the basis of ability to participate in the program;

(iv) Making any other adjustment in the amount of aid paid under the title IV-A plan to different categories of recipients pursuant to § 250.62(i)(3);

(v) Reducing or eliminating the amount of earned income to be disregarded from participation in a supplemented job;

(vi) Varying the number of months (up to nine) the State applies the \$30 and one-third or the \$30 disregard;

(vii) Using a sampling methodology to determine the amounts to be reserved and used for providing and subsidizing jobs pursuant to § 250.62(m);

(8) Description of any State limits or restrictions upon postsecondary educational services, with respect to the subject matter of the education or training offered, length of program, characteristics of the institution, and length of coverage under JOBS (if different from length of program), for:

(i) Postsecondary education to which the State refers a JOBS participant under § 250.46.

(ii) Self-initiated education or training under § 250.48(a) for which the State provides child care or supportive services.

(9) Criteria established for:

(i) Determining the inappropriateness of educational activities for custodial parents aged 18 or 19 who are to be placed in training or work activities in lieu of educational activities under § 250.32(a)(3);

(ii) Assigning an individual aged 20 or over who does not have a high school diploma or the equivalent to educational activities under § 250.32(b);

(iii) Approving postsecondary educational activities under § 250.46, if the State elects to refer participants to such education; and

(iv) Approving self-initiated education or training under § 250.48(a).

(10) If the State elects to excuse custodial parents under 18 years of age from educational activities, the criteria in accordance with § 250.32;

(11) If the State elects to define "basic literacy level" as higher than the grade 8.9 floor defined at § 250.1, the State's definition;

(12) The State's definition of other "good cause" for failure to participate in accordance with § 250.35(d). At a minimum this must include circumstances that are beyond a household's control;

(13) If a State elects to provide case management services to an individual who loses eligibility for AFDC after she accepts employment, the length of time up to 90 days for which services will be provided;

(e) A description of the nature of coordination with public and private agencies and organizations as described at § 250.12. This must include:

(1) Identification of specific existing resources that are available and appropriate for participants in the State JOBS program;

(2) A description of coordination and consultation in the development of the State JOBS plan;

(3) A description of how the State JOBS plan is consistent with the coordination criteria specified in the Governor's coordination and special services plan, pursuant to § 250.12(a);

(4) The results of consultation with private industry councils to assure that training and educational activities under JOBS are directed toward jobs that are available or likely to become available;

(f) Annual estimates of the numbers of persons to be served on a monthly

basis during the biennium covered by the plan, and;

(g) Other information needed to clarify how the State has chosen to implement its JOBS program in accordance with title II of the Family Support Act of 1988 and implementing regulations.

Subpart D—Participation Requirements, Exemptions and Sanctions

§ 250.30 Requirements for individual participation and exemptions.

A State JOBS plan must provide that:

(a) Where State resources otherwise permit, all recipients of AFDC who live in a subdivision covered by a JOBS program and for whom the State IV-A agency has guaranteed child care in accordance with part 255 shall be required to participate in JOBS except as provided under paragraph (b) of this section.

(b) An individual shall be considered exempt and not be required to participate if she:

- (1) Is a child who—
 - (i) Is under age 16, or
 - (ii) Attends, full-time, an elementary, secondary, vocational or technical school (except that such school attendance as a required JOBS activity for a child who loses this exemption will not requalify the child for the exemption);
- (2) Is ill, when determined by the State on the basis of medical evidence or another sound basis that the illness or injury is serious enough to temporarily prevent entry into employment or training;
- (3) Is incapacitated, when verified by the State that a physical or mental impairment, determined by a physician or a licensed or certified psychologist, prevents the individual from engaging in employment or training under JOBS. This may include a period of recuperation after childbirth if prescribed by a woman's physician;
- (4) Is 60 years of age or older;
- (5) Resides in a subdivision of the State where the JOBS program is available, but in a location which is so remote from a JOBS program or activity that effective participation is precluded. The individual shall be consid-

ered remote if a round trip of more than 2 hours by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility, would be required for a normal work or training day. However, if normal round trip commuting time in the area is more than 2 hours, then the round trip commuting time shall not exceed the generally accepted community standards;

(6) Is needed in the home because another member of the household requires the individual's presence due to illness or incapacity as determined by a physician or a licensed or certified psychologist, and no other appropriate member of the household is available to provide the needed care;

(7) Is working 30 or more hours a week. The State IV-A agency may establish minimum standards in its JOBS plan for work that qualifies an individual for this exemption;

(8) Is pregnant, and it has been medically verified that the child is expected to be born in the month in which participation would be required or within the following six-month period;

(9)(i) Subject to paragraph (b)(9)(iv), is the parent or other relative of a child under 3 years of age (or an age less than 3 but not less than 1, if the State plan so provides) who is personally providing care for the child; or

(ii) Subject to paragraph (b)(9)(iv), is the parent or other relative personally providing care for a child under 6 years of age, unless the State IV-A agency assures that child care will be guaranteed and that participation in the program by the parent or relative will not be required for more than 20 hours per week.

(iii) Only one parent or other relative in a case may be exempt under paragraph (b)(9)(i) or paragraph (b)(9)(ii) of this section.

(iv) In the case of a family eligible for AFDC by reason of the unemployment of the parent who is the principal earner, only one parent may be exempt under paragraph (b)(9)(i) or paragraph (b)(9)(ii) of this section. The State IV-A agency may:

(A) Limit the exemptions in paragraph (b)(9)(i) and paragraph (b)(9)(ii)

of this section to the parent who is not the principal earner;

(B) Make the exemptions in paragraph (b)(9)(i) and paragraph (b)(9)(ii) of this section inapplicable to both parents and require their participation in the program if child care in accordance with part 255 is guaranteed with respect to the family; or

(10) Is a full-time volunteer serving under the Volunteers In Service To America (VISTA) program, pursuant to title I of the Domestic Volunteer Service Act of 1973;

(c)(1) The State IV-A agency shall re-evaluate any exemption at such time as the condition is expected to terminate but no less frequently than at each redetermination of AFDC eligibility;

(2) The State IV-A agency shall promptly notify the recipient and any appropriate service providers of any change in the recipient's exemption status.

§ 250.31 Volunteers.

The State IV-A agency must provide that applicants for and recipients of AFDC who are exempt under § 250.30 from participation in the program or who are not otherwise required by the State IV-A agency to participate will be allowed to do so on a voluntary basis to the extent that the program is available in the applicable political subdivision and State resources otherwise permit.

(a) The State IV-A agency shall give first consideration to applicants for or recipients of AFDC who volunteer to participate in determining the priority of participation within the target populations described at § 250.1.

(b) When an individual who volunteers to participate stops participating in the program without good cause as defined at § 250.35,

(1) If she has been determined to be exempt pursuant to § 250.30, she shall not be given priority to participate so long as other individuals are actively seeking to participate.

(2) If she has been determined not to be exempt pursuant to § 250.30, she shall be subject to sanction as described at § 250.34.

§ 250.32 Participation requirements for education.

(a) To the extent that the program is available in the political subdivision involved and State resources otherwise permit, in the case of a custodial parent who is not yet 20 years of age, has not completed a high school education (or its equivalent) and is not exempt from participation under § 250.30(b), the State shall require such a parent to participate in educational activities as described in § 250.44(a)(1). For purposes of this section, custodial parent means the parent who lives with the child, including custodial parents who would otherwise be exempt under § 250.30(b)(9) because of the age of the youngest child.

(1) The State IV-A agency may require full-time participation (as defined by the educational provider) in educational activities directed toward the attainment of a high school diploma or its equivalent. This includes individuals who would otherwise only have to participate on a part-time basis because their youngest child is under 6 years of age.

(2) The State IV-A agency may excuse a custodial parent who is under age 18 from the school attendance requirement if such parent is determined to be beyond the State's compulsory attendance requirements and if the State's JOBS plan contains criteria for making this determination. The State's criteria must:

(i) Provide that each determination is based upon an individual assessment of the parent rather than upon the application of categorical exemptions;

(ii) Not rely solely upon grade completion; and

(iii) Provide for participation in another educational activity as defined under § 250.44(a) or in skills training activities under § 250.44(b) that are combined with education.

(3) The State IV-A agency may require a custodial parent who is age 18 or 19, and required to participate in JOBS under this section, to participate in training or work activities (subject to the 20-hour limit in § 250.30(b)(9)(ii)) instead of educational activities described at § 250.44(a) if one of the following conditions is met:

(i) Such parent fails to make good progress in successfully completing educational activities, or

(ii) Prior to any assignment of the individual to such educational activities it is determined, based on an educational assessment and the employment goal established in the individual's employability plan, that participation in educational activities is inappropriate for such parent.

(b) If a State IV–A agency requires an individual who has attained the age of 20 years and has not earned a high school diploma (or its equivalent) to participate in JOBS, the State agency shall include educational activities consistent with her employment goals as a component in the individual's employability plan. Any other services or activities may not be permitted to interfere with her participation in appropriate educational activities under §250.44. However, a State IV–A agency may elect not to require an individual to participate in educational activities if:

(1) The individual demonstrates a basic literacy level; or

(2) The long-term employment goal of the individual, as identified by the State IV–A agency in her employability plan, does not require a high school diploma (or equivalent).

§ 250.33 Participation requirements for unemployed parents.

(a) The State IV–A agency shall require that at least one parent, in any family eligible for AFDC by reason of the unemployment of the parent who is the principal earner, participate for a total of at least 16 hours a week in a work supplementation program, a community work experience program, or other work experience program, on-the-job training, or a State-designed work program described in the State JOBS plan and approved by the Secretary. A State-designed work program may not substitute education or training activities for the work requirement.

(b) In the case of a parent under age 25 who has not completed high school or an equivalent course of education, the State IV–A agency may require the individual to participate in educational activities as defined at §250.44(a) in

lieu of one or more of the programs specified in paragraph (a). An individual meets the participation requirements of this section if he or she is making satisfactory progress as defined at §250.1.

(c) An individual participating in a community work experience program under §250.63 shall be considered to have met the participation requirement in paragraph (a) if the individual participates for the maximum number of hours in any month calculated in accordance with §250.63(d)(1).

§ 250.34 Sanctions.

(a)(1) When an AFDC recipient who is required to participate in the JOBS program, including those individuals required to participate because the State IV–A agency exercised its option under §250.30(b)(9)(iii), fails to comply (i.e., fails without good cause to participate in the program, refuses without good cause to accept employment, or terminates employment or reduces earnings without good cause), the sanctions in paragraph (c) of this section shall apply during the following periods:

(i) For the first such failure to comply, until the failure to comply ceases;

(ii) For the second such failure to comply, until the failure to comply ceases, or 3 months, whichever is longer; and

(iii) For any subsequent failure to comply, until the failure to comply ceases, or 6 months, whichever is longer.

(2) Failure to participate in the program includes failure to meet State IV–A agency requirements for orientation, assessment, employability development planning, or case management.

(b) For the purpose of determining that an individual's failure to comply has ceased, a State IV–A agency may require the individual to participate in the activity to which she was previously assigned or an activity designed by the State to lead to full participation for a period of up to two weeks before terminating the sanction. During such participation, the individual shall be eligible for child care and support services which the State determines are necessary for participation. If she successfully participates in such

activities, the sanction will be considered to have terminated as of the day she agreed to participate. If no such activity is available, the sanction will terminate on the day she agrees to participate.

(c) During the sanction period:

(1) The State IV-A agency will not take into account the individual's needs in determining the family's need for assistance and the amount of the assistance payment.

(2) If the individual is a parent whose family is eligible in accordance with § 233.100, the State IV-A agency will not take into account the needs of the second parent in determining the family's need for assistance and the amount of the assistance payment unless the second parent is participating in the JOBS program.

(3) If the individual is the only dependent child, the State IV-A agency will not take into account the individual's needs in determining the family's need for assistance and the amount of the assistance payment.

(d) If such individual is a parent or other caretaker relative, payments for the remaining members of the assistance unit will be in the form of protective or vendor payments in accordance with § 234.60(a)(12). However, if after making reasonable efforts the State IV-A agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments on behalf of the remaining members of the assistance unit to the sanctioned caretaker relative.

(e) The State IV-A agency will promptly remind in writing any individual whose failure or refusal has continued for 3 months of the individual's option to end the sanction. The notice shall advise that:

(1) She may immediately terminate the first or second sanction by participating in the program or accepting employment; and

(2) She may terminate any subsequent sanction after six months have elapsed by participating in the program or accepting employment.

§ 250.35 Good cause.

For the purposes of § 250.34(a), good cause for failure to participate in the

program or refusal to accept employment shall be found if:

(a) The individual is the parent or other relative personally providing care for a child under age 6 and the employment would require such individual to work more than 20 hours per week;

(b) Child care (or day care for any incapacitated individual living in the same home as a dependent child) is necessary for an individual to participate or continue participation in the program or accept employment and such care is not available and the State agency fails to provide such care;

(c)(1) The employment would result in the family of the participant experiencing a net loss of cash income. A participant may not claim good cause under this paragraph if the State IV-A agency assures that the family will not experience a net loss of cash income by making a supplemental payment;

(2) Net loss of cash income results if the family's gross income less necessary work-related expenses is less than the cash assistance the individual was receiving at the time the offer of employment is made. Gross income includes, but is not limited to, earnings, unearned income and cash assistance; or

(d) The individual meets other grounds for good cause set forth by the State IV-A agency in its JOBS plan. At a minimum, the State must describe what circumstances beyond the household's control will constitute "good cause."

§ 250.36 Conciliation and fair hearings.

(a) Each State IV-A agency shall establish a conciliation procedure to resolve disputes related to an individual's participation in the JOBS Program.

(b) Once conciliation ends and the notice of adverse action has been issued, the individual may contest the proposed sanction. If she contests and loses, or does not contest, then a sanction will be imposed for the appropriate time period.

(c) If a dispute is not resolved through conciliation, the State shall provide the individual with an opportunity for a hearing. The hearing process may follow the provisions of

§205.10. Alternatively, the hearing process may be established for the JOBS program. However, assistance may not be suspended, reduced, discontinued, or terminated as a result of a dispute involving an individual's participation in JOBS unless the hearing meets the due process standards set forth by the U.S. Supreme Court in *Goldberg v. Kelly*, 397 U.S. 254 (1970).

Subpart E—Operation of State JOBS Programs/Program Components

§250.40 Providing program information to AFDC applicants and recipients.

(a) The State IV–A agency must at the time of application or redetermination inform all AFDC applicants and recipients, in writing and orally as appropriate, of the availability of the program activities and the supportive services for which they are eligible, and agency and participant responsibilities, including:

(1) Education, employment, and training opportunities available under the JOBS plan;

(2) Supportive services, including, but not limited to, child care during participation, transitional child care, health coverage transition options pursuant to section 1925 of the Act, and transportation and other work-related supportive services provided under the JOBS plan;

(3) The obligations of the State IV–A agency including the program and supportive services to be provided, as described in paragraphs (a) (1) and (2) of this section;

(4) The rights, responsibilities, and obligations of participants in the program, including but not limited to, the grounds for exemptions from participation and the consequences for refusing or failing to participate (including the effect on volunteers as described in §250.31);

(5)(i) The types and locations of child care services reasonably accessible to participants in the program. Such information may be provided directly or through arrangement with others such as the appropriate human services or resource and referral agency;

(ii) The assistance that is available to help participants select appropriate child care services; and

(iii) The assistance available, on request, to help participants obtain child care services.

(b) The agency must also inform applicants and recipients of their responsibility to cooperate in establishing paternity and enforcing child support obligations, as described in part 232, and must assist individuals in obtaining the paternity establishment and child support services for which they may be eligible.

(c)(1) After the State IV–A agency gives an AFDC applicant the information described in paragraphs (a) and (b) of this section, the State IV–A agency must notify the individual, in writing, within one month of the determination of eligibility, of the opportunity to indicate her desire to participate in the program and provide a clear description of how to enter the program.

(2) After the State IV–A agency gives an AFDC recipient the information described in paragraphs (a) and (b) of this section, the State IV–A agency must notify the individual, in writing, within one month of providing that information, of the opportunity to indicate her desire to participate in the program, and provide a clear description of how to enter the program.

(3) The notification provision in paragraphs (c)(1) and (c)(2) of this section does not prohibit the State IV–A agency from requiring non-exempt recipients, or applicants in the case of job search, to participate in the JOBS program prior to the one-month notice.

(4) If a non-exempt individual indicates a preference not to participate, in response to such notification under paragraphs (c)(1) or (c)(2) of this section, such a preference does not prevent the State IV–A agency from otherwise requiring participation in JOBS.

§250.41 Initial assessment and employability plan.

(a)(1) Within a reasonable time period prior to participation the State IV–A agency must make an initial assessment of employability based on:

(i) The individual's educational, child care, and other supportive services needs;

(ii) The individual's proficiencies, skills deficiencies, and prior work experience;

(iii) A review of the family circumstances, which may include the needs of any child of the individual; and

(iv) Other factors that the State IV-A agency determines are relevant in developing the employability plan, as described in paragraph (b) of this section.

(2) The State IV-A agency may conduct the initial assessment through various methods such as interviews, testing, counseling and self-assessment instruments.

(b) On the basis of the assessment described in paragraph (a) of this section, the State IV-A agency must develop an employability plan in consultation with the participant, including a participant in a self-initiated activity pursuant to §250.48 of this part.

(1) The employability plan must:

(i) Contain an employment goal for the participant;

(ii) Describe the services to be provided by the State IV-A agency, including child care and other supportive services pursuant to part 255;

(iii) Describe the JOBS activities, as provided in subpart E of this part, that will be undertaken by the participant to achieve the employment goal; and

(iv) Describe any other needs of the family, pursuant to paragraph (a)(1)(iii), that might be met by JOBS, such as participation by a child in drug education or in life skills planning sessions.

(2) The employability plan shall take into account:

(i) Available program resources;

(ii) The participant's supportive services needs;

(iii) The participant's skills level and aptitudes;

(iv) Local employment opportunities; and

(v) To the maximum extent possible the preferences of the participant.

(3) The employability plan shall not be considered a contract.

(4) Final approval of the plan rests with the State IV-A agency.

§ 250.42 Agency-participant agreement.

(a) Following the initial assessment and the development of the employability plan as described in §250.41, the State IV-A agency may require the participant (or the adult caretaker in the family of which the participant is a member) to negotiate and enter into an agreement with the State IV-A agency.

(1) Such agreement should indicate at a minimum:

(i) The purpose of the agreement;

(ii) The participant's obligations under the program;

(iii) The length of participation in the program, including the number of hours of participation per week; and

(iv) The educational, training and employment activities, and the supportive services, including child care, to be provided by the agency during the period of participation.

(2) If the State IV-A agency elects this option, it must give the participant such assistance as she may need to review and understand the agreement.

(3) This agreement may be considered a contract between the State IV-A agency and the JOBS participant, pursuant to applicable State laws and regulations.

(b) If the State IV-A agency elects to use agreements or contracts, it does not have to use them in all political subdivisions having JOBS programs. The State IV-A agency, however, must apply this provision to participants on an equitable basis.

§ 250.43 Case management.

(a) The State IV-A agency may assign a case manager to a participant and the participant's family. The decision to assign a case manager may be made on a case-by-case basis.

(b) The case manager must be responsible for assisting the family to obtain any services that may be needed to assure effective participation in the program.

§ 250.44 Mandatory components.

A State's JOBS program must include the following four services and activities. The State IV-A agency need not make each service or activity a discrete offering, but may combine several into a single program activity,

§ 250.45

provided that the State IV-A agency can adequately distinguish the principal components for the purpose of Federal reporting requirements. The required services and activities are:

(a) Any educational activity below the postsecondary level that the State IV-A agency determines to be appropriate to the participant's employment goal. Such activities may be combined with training that the State IV-A agency determines is needed in relation to the participant's employability plan. The educational activities that must be made available include, but are not limited to:

(1) High school education or education designed to prepare a person to qualify for a high school equivalency certificate;

(2) Basic and remedial education that will provide an individual with a basic literacy level, equivalent to at least grade 8.9; and

(3) Education in English proficiency for an individual who is not sufficiently competent to understand, speak, read, or write the English language to allow employment commensurate with her employment goal;

(b) Job skills training, which includes vocational training for a participant in technical job skills and equivalent knowledge and abilities in a specific occupational area;

(c) Job readiness activities that help prepare participants for work by assuring that participants are familiar with general workplace expectations and exhibit work behavior and attitudes necessary to compete successfully in the labor market; and

(d) Job development and job placement activity by the agency, in soliciting a public or private employer's unsubsidized job opening or in discovering such job openings, and the marketing of participants, and securing job interviews for participants.

§ 250.45 Optional components.

A State JOBS program must include, but is not limited to, at least two of the following four components:

(a) Group and individual job search, as described in § 250.60;

(b) On-the-job training, as described in § 250.61;

(c) Work supplementation, as described in § 250.62; and

(d) Community work experience program, or other approved work experience program, as described in § 250.63.

§ 250.46 Postsecondary education.

A State's JOBS program may include referral of a participant to postsecondary education, as determined necessary to meet any individual goals that are directly related to obtaining useful employment in a recognized occupation, within limits established by the State IV-A agency and reflected in the State JOBS plan. In accordance with § 233.20(a)(2)(v), the costs of such education, including tuition, books and fees, do not qualify for FFP as special needs.

§ 250.47 Other education, training, and employment activities.

(a) A State's JOBS program may include education, training, and employment activities other than those described in §§ 250.44 through 250.46, but which are included in the approved State JOBS plan.

(b) In no event will a State program of public service employment be approved under JOBS. Public service employment is fully-subsidized employment in a public agency.

§ 250.48 Self-initiated education or training.

(a) The State IV-A agency may allow a parent or other caretaker relative or any dependent child in the family who is attending in good standing an institution of higher education (as defined in section 481(a) of the Higher Education Act of 1965), or a school or other entity offering a course of vocational or technical training, at the time she would otherwise commence participation in the JOBS program, to continue to attend. Vocational or technical training leads to useful employment in a recognized occupation. It includes postsecondary education, as defined in § 250.1, that results in other than a baccalaureate or advanced degree, and such training offered by other entities such as public secondary schools and public and private entities that offer adult vocational education.

(1) Self-initiated activity qualifies as “self-initiated education or training” under this paragraph if:

(i) The participant is attending at least half-time as defined by the institution;

(ii) The participant is making satisfactory progress in such institution, school, or course;

(iii) The course of study is consistent with the individual’s employment goal; and

(iv) The participant meets the State’s criteria for determining the appropriateness of the self-initiated education or training.

(2)(i) The State IV-A agency must conduct an assessment and develop an employability plan, as provided at §250.41, so that the State IV-A agency may determine the appropriateness of the education or training in accordance with the criteria it has established.

(ii) If the State IV-A agency approves the self-initiated education or training, any other JOBS activities in which such individual participates may not be permitted to interfere with the education or training activity. However, an individual may be required to accept employment after a review of her employability plan, if the State IV-A agency has informed her at the time it first approves the self-initiated activity that it could perform such a review and reassignment.

(3) The costs of self-initiated education or training under this paragraph shall not constitute federally reimbursable expenses under JOBS.

(4) A State IV-A agency may restrict postsecondary education or training in its State JOBS plan.

(5) The costs of child care, transportation, and other supportive services necessary for approved self-initiated education or training under this paragraph are eligible for Federal reimbursement pursuant to §255.4.

(b) If an individual in a JOBS area is enrolled in a self-initiated activity that does not meet the requirements of paragraph (a) of this section, the State may approve such activity as a JOBS activity according to the regulations and State criteria applicable to JOBS component activities covered under §§250.44 through 250.47. Eligibility for child care, transportation and other

supportive services shall be in accordance with §255.2.

Subpart F—[Reserved]

Subpart G—Optional Components of State JOBS Programs

§250.60 Job search program.

(a) A State IV-A agency may operate a job search program as a component of its JOBS program. A job search program may serve participants in either group or individual job-seeking activities.

(1) Individual job search includes the provision of counseling, job-seeking skills training, information dissemination and support on a one-to-one basis.

(2) Group job search includes the provision of counseling and training in a group setting where applicants or recipients are taught job-seeking skills, and may include a phone bank from which participants contact potential employers.

(b) In addition to non-exempt recipients, a State IV-A agency may require an individual applying for AFDC to participate in a job search component unless she is exempt under §250.30(b).

(c) A State IV-A agency may require an individual to participate in a job search component from the date she files an application for aid for an initial period of up to eight consecutive weeks. Following this initial period (which may extend beyond the date when eligibility is determined), the State IV-A agency may require additional participation in a job search component not in excess of eight weeks (or its equivalent) in any period of 12 consecutive months. The first such period of 12 consecutive months shall begin at any time following the close of the initial period.

(1) A State IV-A agency may not delay the processing of an individual’s application for aid because of her participation in job search.

(2) In no event may an individual be required to participate in job search for more than 3 weeks before the State IV-A agency conducts an assessment as provided at §250.41. If the State IV-A agency determines based on the assessment that another JOBS activity is more appropriate, or is required by

part 250, the State IV-A agency shall terminate the job search requirement.

(d) Additional job search activities beyond those required in paragraph (c) may be required only as part of another educational, training, or employment component designed to improve the individual's employment prospects.

(e) Job search by an individual under this section shall in no event be treated, for any purpose, as an activity under JOBS if the individual has participated in such job search for 4 months (or its equivalent) out of the preceding 12 months.

§ 250.61 On-the-job training.

(a) A State IV-A agency may operate an on-the-job training (OJT) program as a component of its JOBS program. Under OJT a participant is hired by a private or public employer and while engaged in productive work receives training that provides knowledge or skills essential to the full and adequate performance of that job. The State IV-A agency or its agent shall enter into a contract with the OJT employer to reimburse the employer for providing training and additional supervision to the participant.

(b) Payments to an employer for on-the-job training shall not exceed an average of 50 percent of the wages paid by the employer to the participant during the period of such training.

(c) A participant in OJT shall be compensated by the employer at the same rates, including benefits and periodic increases, as similarly situated employees or trainees and in accordance with applicable law, but in no event less than the higher of the Federal minimum wage or applicable State or local minimum wage law.

(d) Wages paid to participants in OJT will be considered to be earned income for purposes of any provision.

(e) If a participant in OJT becomes ineligible for AFDC pursuant to the rules applicable to earned income at § 233.20, or pursuant to the 100-hour rule at § 233.100 in the case of a principal earner in an unemployed parent case, she shall remain a JOBS participant for the duration of the OJT and shall be eligible for supportive services under part 255 available to other JOBS participants similarly situated.

(f) If the individual would have been eligible for transitional child care pursuant to part 256 at the time the ineligibility for AFDC occurred, she shall be eligible for transitional child care after the OJT ends for the number of months that remain in the 12-month period following the month in which she became ineligible for AFDC after OJT ended. As an alternative, the State IV-A agency may treat all child care provided after an individual in an OJT job loses eligibility for AFDC as transitional child care if the individual meets the requirements at part 256.

(g) The State IV-A agency must develop qualitative measures for making good or satisfactory progress, pursuant to § 250.1, in order for OJT to qualify as a component activity under JOBS.

§ 250.62 Work supplementation program.

(a) A State IV-A agency may operate a work supplementation program as a component of its JOBS program. Under the work supplementation program, a State IV-A agency may use AFDC funds to develop and subsidize jobs for AFDC recipients as an alternative to aid.

(b) A "supplemented job" is a job provided under this section to an eligible individual by the State or local agency administering the State IV-A plan or by any other employer for which all or part of the wages are paid by such State or local IV-A agency.

(1) The State IV-A agency may use whatever means it determines appropriate to provide or to subsidize jobs for participants.

(2) The State IV-A agency may provide or subsidize any type of job. It may determine the length of time the position is to be provided or subsidized, the amount of wages to be paid to the recipient, the amount of subsidy to be provided by the State or local IV-A agency, and the conditions of participation, except that no participant may be assigned to fill any established, unfilled position vacancy in accordance with section 484 of the Act.

(c)(1) An eligible individual is an individual who is in a category which the State IV-A agency determines should be eligible to participate in the work supplementation program, and who

would, at the time of placement in the supplemented job, be eligible for AFDC if the State IV-A agency did not have a work supplementation program in effect. For the purpose of this section, time of placement is defined as the date on which the State IV-A agency and the employer reach agreement on the terms of the placement and the specific individual to be placed.

(2) The State may establish a work supplementation program as either a mandatory or voluntary program.

(d) A State or local IV-A agency administering the State plan is not required to provide employee status to any eligible individual to whom it provides a job position or with respect to whom it subsidizes all or part of the wages paid to such individual by another entity under this program, nor is it required to provide that eligible individuals filling job positions provided by other entities under such program be provided employee status by such entity during the first 13 weeks in which they fill such position.

(e) Participants in supplemented jobs will be paid wages which shall be considered to be earned income for purposes of any provision of law.

(f) The State IV-A agency may elect to calculate the amount of an eligible individual's residual (direct AFDC) grant, if any, at the time of placement in the supplemented job and base the amount of the residual grant (the AFDC grant minus earnings and other countable income) for the duration of the individual's participation in the supplemented job (in whole or part) on that calculation. Such a policy is known as "freezing the grant." If the individual becomes otherwise ineligible for AFDC benefits, the State IV-A agency may allow the individual to continue in the supplemented job and divert the AFDC grant to the wage pool, but the State IV-A agency shall not pay a residual grant to the individual.

(g) At State option, individuals who hold supplemented jobs may be exempt from the retrospective budgeting requirements at part 233 and monthly reporting, and the amount of the aid which is payable to the family of any such individual for any month, or which would be so payable but for the

individual's participation in a supplemented job, shall be determined on the basis of the income and other relevant circumstances in that month.

(h) If an individual in a supplemented job would have been eligible for transitional child care pursuant to part 256 at the time the ineligibility for AFDC occurred, she shall be eligible for transitional child care after her supplemented job ends for the number of months that remain in the 12-month period following the month in which she became ineligible. In the alternative, the State IV-A agency may treat all child care provided after an individual in a supplemented job loses eligibility for AFDC as transitional child care if the individual meets the requirements at part 256.

(i) A State IV-A agency may adjust the standard of need under the State IV-A plan as the State determines to be necessary and appropriate to carry out a work supplementation program. Such changes in the need standard may be made notwithstanding § 233.20.

(1) The standard of need in effect in those subdivisions of the State in which such program is in operation may be different from the need standard in effect in subdivisions in which such program is not available.

(2) The standard of need for categories of recipients of aid may vary among such categories as the State IV-A agency determines to be appropriate on the basis of ability to participate in the work supplementation program.

(3) A State IV-A agency may make further adjustments in the amount of aid paid under the title IV-A plan to different categories of recipients in order to offset increases in benefits from other government-provided, needs-related programs as the State IV-A agency deems necessary and appropriate to further the purpose of the work supplementation program.

(j) A State IV-A agency may reduce or eliminate the amount of earned income to be disregarded from participation in a supplemented job.

(k) Notwithstanding the time limitations on the \$30 and one-third and the \$30 disregard in § 233.20(a)(11), a State IV-A agency may allow a participant employed in a supplemented job to receive the \$30 and one-third or the \$30

disregards for one or more of the first nine months of such employment.

(l) Payments by the State IV-A agency to individuals or to entities providing jobs for recipients under the work supplementation program shall be expenditures incurred by the State IV-A agency for AFDC and shall not exceed the amount that would otherwise be payable under the title IV-A plan if the family of each individual employed in the program had received the maximum amount of aid payable to such a family with no income for a period of either 9 months or the length of the individual's employment in the program, whichever is less. (This amount is determined without regard to any adjustments made under paragraphs (i), (j), and (k), and for each month of participation, may be based upon the maximum amount that would otherwise have been payable for a month at the time of placement in the program).

(m) A State IV-A agency may determine the amounts to be reserved and used for providing and subsidizing jobs under this section by using a sampling methodology. The State IV-A agency must describe its sampling methodology in its JOBS plan.

§250.63 Community work experience program.

(a) A State IV-A agency may operate a community work experience program (CWEP) as a component of its JOBS program. The purpose of CWEP is to improve the employability of individuals not otherwise able to obtain employment by providing work experience and training to assist them to move promptly into regular public or private employment.

(b) The State IV-A agency shall provide coordination among a community work experience program, any program of job search, and the other employment-related activities under the JOBS program to insure that job placement will have priority over participation in CWEP, and that individuals eligible to participate in more than one program under JOBS are not denied AFDC on the grounds of failure to participate in one such program if they are actively and satisfactorily participating in another. The State IV-A agency may provide that part-time participation in

more than one such program may be required where appropriate.

(c) Community work experience programs shall be limited to projects which serve a useful public purpose in fields such as health, social service, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care.

(d)(1) The maximum number of hours that an individual may be required to work or undergo training (or both) in CWEP is the number of hours which would result from dividing the family's monthly grant amount by the greater of the Federal or the applicable State minimum wage.

(2) The portion of a recipient's aid for which the State is reimbursed by a child support collection (except for the \$50 pass-through) shall be excluded in determining the maximum number of hours that she is required to work.

(e) Nothing contained in this section shall be construed as authorizing the payment of AFDC as compensation for work performed, nor shall a participant be entitled to a salary or to any work or training expense provided under any other provision of law by reason of her participation in a CWEP program.

(f) To the extent possible, a State IV-A agency shall take into account the prior training, experience and skills of a recipient in making appropriate work assignments.

(1) After each six months of an individual's participation in a community work experience program and at the conclusion of each assignment under such a program the State IV-A agency must provide a reassessment and revision, as appropriate, of the individual's employability plan.

(2) After an individual has been assigned to a position for a total of nine months, such individual may not be required to continue in that assignment unless the maximum number of hours of participation is no greater than the family's grant divided by the highest of:

- (i) The Federal minimum wage; or
- (ii) The applicable State minimum wage; or

(iii) The rate of pay for individuals employed in the same or similar occupations by the same employer at the same site.

The portion of a recipient's aid for which the State is reimbursed by a child support collection (not including the \$50 pass-through) shall continue to be excluded in determining the number of hours that such individual may be required to work.

(g) Participants in CWEP may perform work in the public interest (which otherwise meets the requirements of this section) for a Federal office or agency with its consent, and, notwithstanding 31 U.S.C. 1342, or any other provision of law, such agency may accept such services, but such participants shall not be considered to be Federal employees for any purpose.

(h) Nothing in this section or in any State plan approved under §250.20 shall be construed to prevent a State IV-A agency from operating (on such terms and conditions and in such cases as the State IV-A agency may find to be necessary or appropriate) a community work experience program.

(i) CWEP participants must not fill established, unfilled position vacancies in accordance with section 484 of the Act.

(j) FFP is not available for:

(1) Capital expenditures, depreciation or use allowances in connection with a CWEP;

(2) The cost of making or acquiring materials or equipment in connection with participation in a project; or

(3) The cost of supervision of participants.

(k) The State IV-A agency may offer any other work experience program which is described in the JOBS plan and approved by the Secretary.

(1) The program narrative for such a program should include a description of the potential sponsors, the type of activities, the hours or length of participation required, target group(s), and how the program is different from CWEP.

(2) The limitations on FFP for CWEP in paragraph (j) apply to all State work experience programs.

(3) Any other work experience program must meet the general program standards at section 484 of the Act.

Subpart H—Funding

§ 250.70 JOBS allocation entitlement.

(a) Federal matching for JOBS program expenditures is limited to a national total equal to the amounts established for each fiscal year in section 403(k)(3) of the Act.

(b) A State IV-A agency with an approved JOBS plan shall be entitled to payments from this annual limit. The maximum annual payment for a State will be the sum of two amounts:

(1) An amount equal to the State's WIN or WIN Demonstration allotment for fiscal year 1987; and

(2) An amount allocated from the balance of the annual national limitation on the basis of each State's relative average monthly number of adult recipients as defined at §250.1.

(c) In accordance with §92.23, JOBS funds allocated to a State IV-A agency for a given Federal fiscal year are for use during that fiscal year and must be obligated by the State no later than the end of the fiscal year. Carry forward of an unobligated balance of Federal funds to a succeeding Federal fiscal year is not permitted. An unobligated Federal fund balance at the close of a Federal fiscal year will be returned to the Federal government through the issuance of a negative grant award by the Department following receipt of the final quarterly expenditure report for the fiscal year.

(d) A State must liquidate all obligations incurred under the title IV-F grant awards not later than one year after the end of the fiscal year for which the funds were awarded and obligated. The Federal share of unliquidated obligations will be returned to the Federal government.

§ 250.71 Allotment of JOBS limit of entitlement.

(a) For a State IV-A agency that implements JOBS in a quarter of a fiscal year prior to October 1, 1990, the State's allotment from its JOBS limit of entitlement for that period will be proportional to the number of such quarters that JOBS is operational in that State in that fiscal year.

(b) An Indian Tribe or Alaska Native organization which receives the Secretary's approval to conduct a JOBS

program shall receive a direct payment for operation of its JOBS program, without the requirement for a non-Federal share, pursuant to § 250.93.

(1) The amount of any such direct payment will be deducted from the amount of the State's allotment, and will be proportional to the Tribe's or organization's proportion of the State's adult AFDC recipient population, as established pursuant to § 250.93.

(2) The remaining allocation to a State IV-A agency shall be subject to the regulations governing FFP at § 250.73.

(c) The following rules apply to Puerto Rico, Guam, the Virgin Islands and American Samoa which are subject to the provisions of section 1108 of the Act:

(1) The limitations on payments contained in section 1108 do not apply to a State's annual limit of entitlement for the JOBS program as described in § 250.70(b).

(2) The availability of FFP for child care under part 255 and the related appropriate FFP rates are described at § 255.4(b)(2) and § 255.4(g).

(3) The availability of FFP for transitional child care under part 256 and the related appropriate FFP rates are described at § 256.4(b).

§ 250.72 Maintenance of effort.

(a) Federal JOBS funds shall not be used to supplant non-Federal funds for services and activities that promote the purposes of the JOBS program.

(b) States must spend no less than the total of State and local expenditures incurred in fiscal year 1986 for training, employment and education programs which had a defined purpose of preventing welfare dependency or potential welfare dependency. This requirement includes State and local funds expended for title IV-A and title IV-C work programs, including expenditures on those programs which were unmatched, and other State and local funds expended for this purpose, with or without benefit of Federal matching funds. This requirement also applies to expenditures for supportive services, including child care, expended for this purpose. In determining that State and local fiscal year expenditures are no less than fiscal year 1986 expenditures,

States may use total aggregate expenditures.

(c) State IV-A agency contracts and arrangements may be made for services only to the extent that they are not otherwise available on a non-reimbursable basis. "Not otherwise available" here means that if the services are available to AFDC applicants and recipients by a provider, the provider must maintain that level of service before the State IV-A agency may contract for additional services of the same sort from that provider.

(d) Any State IV-A agency arrangement or contract must contain a certification from the provider that the services being contracted for are not otherwise available from that provider on a non-reimbursable basis. Services provided on a "non-reimbursable basis" are those services that a State makes available to most eligible residents or to the low income population, including AFDC applicants and recipients.

(e) A State IV-A agency directly providing JOBS component services must certify in the State JOBS plan that such services are not otherwise available on a non-reimbursable basis.

§ 250.73 Matching rates.

(a) From a State IV-A agency's total annual limit of entitlement, FFP is available at a rate of 90 percent for expenditures up to an amount equal to the State's WIN or WIN Demonstration allotment for fiscal year 1987. The State's match for this amount may be in cash or in kind fairly evaluated.

(b)(1) FFP will be available for the balance of a State IV-A agency's limit of entitlement as follows:

(i) At the higher of the State's Medicaid matching rate or 60 percent for: personnel costs (salaries and benefits) for full-time staff working full-time in any capacity in the JOBS program; and all direct costs associated with providing JOBS program services to individuals, including assessment, development of the employability plan, case management, and JOBS component activities.

(ii) At 50 percent for: indirect personnel costs which are excluded from JOBS matching at the FMAP rate (or 60%); non-personal services costs associated with these indirect personnel

costs, including space, travel, utilities, equipment, and supplies; the costs of such items as JOBS program planning, monitoring, letting contracts, systems, title IV-F fair hearing activities, and other indirect costs of providing JOBS services and activities; and for transportation, work-related expenses, and work-related supportive services as provided under the requirements of part 255.

(2) A State's match for these amounts must be in cash, not in kind.

(c) The costs of services and activities purchased under contract by the State or local IV-A agency must be segregated according to the requirements of the FMAP rate with a floor of 60 percent and the requirements for 50 percent matching.

(d) A State's share of JOBS expenditures may include public and private funds.

(1) Public funds may be considered as the State's share in claiming FFP when the funds are:

(i) Appropriated directly to the State or local agency, or transferred from another public agency (including Indian tribes) to the State or local agency and under its administrative control;

(ii) Not used to match other Federal funds; and

(iii) Not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds.

(2) Funds donated from private sources may be considered as the State's share in claiming FFP when the funds are:

(i) Transferred to the State or local agency and under its administrative control;

(ii) Donated without any restriction which would require their use for assisting a particular individual or at particular facilities or institutions;

(iii) Do not revert to the donor's facility or use.

(e) If included in a State's JOBS and Supportive Services plans, FFP is available for JOBS activities and services provided for certain periods to an individual who has been a JOBS participant but who loses eligibility for AFDC. These activities and periods are:

(1) Case management activities and supportive services for up to 90 days

from the date the individual loses eligibility for AFDC; and

(2) JOBS component activities for the duration of the activity if funds for the activity are obligated or expended before the individual loses eligibility for AFDC.

§250.74 Reduced matching rate.

(a)(1) FFP for a State IV-A agency shall be 50 percent (rather than the rates described in §250.73) in any fiscal year in which that State spends less than 55 percent of the State's JOBS expenditures on applicants and recipients who are members of the State's target populations as defined in §250.1.

(2) If any State IV-A agency demonstrates to the satisfaction of the Secretary that the characteristics of the caseload in that State make it infeasible to meet the requirements of paragraph (a)(1), and that the State is targeting an approved set of long-term or potential long-term recipients, the match rate in §250.73 shall be applied.

(3) A State IV-A agency need not require or allow participation of an individual in the program if, as a result of such participation, the amount payable to the State for quarters in a fiscal year with respect to the program would be reduced pursuant to paragraph (a)(1).

(b)(1) FFP for a State IV-A agency shall be 50 percent (rather than the rates described in §250.73) in any fiscal year for the State's JOBS expenditures if the State's participation rate (determined under paragraph (b)(2)) for the preceding fiscal year does not equal or exceed:

(i) 7 percent if the preceding fiscal year is 1990;

(ii) 7 percent if such year is 1991, however, no reduction in FFP shall be made in 1991 for any failure to meet the participation rate specified in (b)(1)(i);

(iii) 11 percent if such year is 1992;

(iv) 11 percent if such year is 1993;

(v) 15 percent if such year is 1994; and

(vi) 20 percent if such year is 1995.

(2) The State IV-A agency's participation rate for a fiscal year shall be the average of its participation rates for computation periods in such fiscal year. The computation periods shall be:

(i) The fiscal year, in the case of fiscal year 1990;

(ii) The first six months, and the seventh through twelfth months, in the case of fiscal year 1991;

(iii) The first three months, the fourth through sixth months, the seventh through ninth months, and the tenth through twelfth months, in the case of fiscal years 1992 and 1993; and

(iv) Each month, in the case of fiscal years 1994 and 1995.

(3) The State IV-A agency's participation rate for a computation period shall be the number, expressed as a percentage, equal to:

(i) The average monthly number of individuals required or allowed by the State to participate in the program, who have participated (as defined in § 250.78) in such program in months in the computation period, plus the number of individuals required or allowed by the State to participate in such program, who have so participated in that month in such period for which the number of such participants is the greatest; divided by

(ii) Twice the average monthly number of individuals required to participate in such period (other than individuals described in paragraphs (b)(9)(i) and (b)(9)(iv) of § 250.30 with respect to whom the State IV-A agency has exercised its option to require their participation and individuals sanctioned under § 250.34).

(4) In determining the average monthly number of individuals required to participate as provided in paragraph (b)(3)(ii), the following individuals shall be excluded:

(i) Those who are determined exempt in accordance with exemption criterion in § 250.30(b);

(ii) Those who on a case-by-case basis have been determined to have good cause for not participating;

(iii) Those who reside in an area of the State in which the JOBS program is not operated; and

(iv) Those who have been sanctioned.

(5) If the Secretary determines that the State IV-A agency has failed to achieve the participation rate for any fiscal year, if the Secretary may waive, in whole or in part, the reduction in the payment rate otherwise required by paragraph (b)(1) if he finds that:

(i) The State is in conformity with section 402(a)(19) and part F of the Act;

(ii) The State has made a good faith effort to achieve the applicable participation rate for such fiscal year; and

(iii) The State has submitted a proposal which is likely to achieve the applicable participation rate for the current fiscal year and the subsequent fiscal years (if any) specified therein.

(c)(1) FFP for a State IV-A agency shall be 50 percent beginning in fiscal year 1995 for the State's JOBS expenditures (rather than the rates described in § 250.73) if the percentage of UP cases meeting the participation requirements in § 250.33, for the preceding fiscal year does not equal or exceed:

(i) 40 percent in the case of the average of each month in fiscal year 1994;

(ii) 50 percent in the case of the average of each month in fiscal year 1995;

(iii) 60 percent in the case of the average of each month in fiscal year 1996; and

(iv) 75 percent in the case of the average of each month in each of the fiscal years 1997 and 1998.

(2) The percentage of participants for any month in a fiscal year for this purpose shall equal the average of:

(i) The number of individuals described in § 250.33 who have met the requirement therein; divided by

(ii) The total number of principal earners (but excluding those in families who have been recipients of aid for 2 months or less if, during the period that the family received aid, at least one parent engaged in intensive job search as defined in § 250.1).

(3) If the Secretary determines that the State IV-A agency has failed to achieve the participation rate for any fiscal year specified above, the Secretary may waive, in whole or in part, the reduction in the payment rate otherwise required by paragraph (c)(1) if he finds that:

(i) The State is in conformity with section 402(a)(19) and part F of the Act;

(ii) The State has made a good faith effort to achieve the applicable participation rate and has been unable to do so because of economic conditions in the State, including significant numbers of recipients living in remote locations or isolated rural areas where the availability of work sites is severely

limited, or because of rapid and substantial increases in the caseload that cannot reasonably be planned for; and

(iii) The State has submitted a proposal which is likely to achieve the applicable participation rate for the current fiscal year and the subsequent fiscal years (if any) specified therein.

§ 250.75 Activities excluded from FFP.

(a) The costs of education or training activities (such as tuition, books, fees, room and board) that the State IV-A agency determines may constitute participation under the provisions of § 250.48(a) shall not constitute federally reimbursable expenses for purposes of the JOBS program.

(b) No funds shall be used for construction.

(c) No funds shall be used to assist, promote, or deter union organizing.

§ 250.76 Financial reports, records, statements and audits.

(a) The following Departmental regulations are applicable to the JOBS program: Part 92, "Uniform administrative requirements for grants and cooperative agreements to State and local governments;" Part 16, "Procedures of the Departmental Appeals Board;" Part 30, "Claims collection;" Part 75, "Informal grant appeals procedures;" Part 95, "General administration-grant programs;" and Part 201, "Grants to States for public assistance programs."

(b) Financial reporting of JOBS program expenditures are generally subject to the requirements of the existing regulations at § 201.5 and § 92.41, as appropriate.

(c) Financial records and accounts shall be made available for audit purposes to the Secretary or any authorized representative.

(d) JOBS program funds and activities shall be audited in conformity with the requirements of §§ 92.26 and 74.62(a).

(e) FFP improperly claimed under the JOBS program is subject to disallowance. If a State IV-A agency disagrees with a decision to disallow FFP, it can appeal within 30 days of the date of the disallowance decision. The procedures for appeal of AFDC disallowances apply, including review of the Departmental Appeals Board, in ac-

cordance with part 16 of the Department's regulations.

§ 250.77 Costs matchable as AFDC payments.

(a) Costs incurred by the State IV-A agency for supplemental AFDC payments shall be treated as title IV-A costs with respect to which sections 403(a)(1) or 403(a)(2) of the Act apply, when such payments are made in order that a recipient's family shall not experience a net loss of cash income from the recipient having been required by the State to accept a job.

(b) Payments to employers under work supplementation as described at § 250.62(l) shall be expenditures incurred by the State IV-A agency for AFDC.

(c) States may claim as AFDC administrative expenditures those costs related to JOBS orientation, determination of mandatory status, and referral to the JOBS program when such activities are conducted by a title IV-A eligibility or income maintenance worker. When these same activities are conducted by JOBS staff, these costs must be claimed under title IV-F.

§ 250.78 Definition of participation for enhanced FFP.

(a) For the purpose of determining a State's participation rate under § 250.74(b), the average monthly number of individuals who have participated will be the largest number of applicants and recipients whose combined and averaged weekly hours of participation in the activities specified in paragraph (b)(1) equals or exceeds 20 hours per week.

(b) For the purpose of paragraph (a),

(1) Activities include:

(i) Assessment and employability plan development, but only for one month for each such individual for each period on AFDC;

(ii) Any component specified in the State JOBS plan, with the exception of job development and job placement;

(iii) Any approved self-initiated education or training pursuant to § 250.48(a);

(iv) Job entry, in the following manner. For the month in which the job entry occurs, an individual will be considered to be participating for the number of hours of work. Hours of work

will then be included with hours of component activity in the month of the job entry in determining the average weekly activity level for the individual. Hours of work in the following month will be counted, provided the individual retains employment throughout the month. However, job entries will only be considered for:

(A) Individuals who were participating in a JOBS component or activity during the month of the job entry, or the preceding calendar month, or;

(B) Individuals who received job development and placement services during the month of job entry, or the preceding calendar month.

(2) The number of hours counted for an individual will not include time spent commuting to or from the assignment or to or from a child care provider;

(3) Individuals, other than those in high school, will not be considered to be participating in an educational activity during the period between school years. An individual enrolled and in attendance in high school during the last semester of the school year will be considered to be participating at her average weekly attendance level for the previous school year during the period between school years if she is expected to return to high school for the next school year. Individuals in all educational activities will be considered to be participating for the assigned hours during shorter, scheduled school breaks;

(4) An individual will be considered to have satisfactorily participated if she attended an activity for at least 75 percent of the monthly hours scheduled. All hours of scheduled activity will be counted if the individual has satisfactorily participated. Neither hours of scheduled activity nor hours of participation will be counted if an individual has not satisfactorily participated.

Subpart I—Uniform Data Collection Requirements

§ 250.80 Uniform data collection requirements.

(a) A State IV–A agency must provide to the Department a sample of monthly unaggregated case record data

containing such data and identifiers as are specified in § 250.82, and such additional data as the Secretary may from time to time specify in an Action Transmittal or in reporting instructions.

(1) The sample must be provided in formats specified by the Department. Data must be submitted electronically on an on-going basis by means of disk, tape or electronic connection, with all cases submitted no later than 45 days after the end of the month in which the sample is drawn.

(2) Each record of the sample must contain an identifier that is not the Social Security number, and that protects the privacy of the individual pursuant to the requirements of § 205.50.

(3) The sample must be large enough to provide a precision of plus or minus two percentage points for an 0.2 attribute ($p=20\%$ or 0.2) at a 95 percent confidence level. Submission of 100 percent of unaggregated JOBS case records is also acceptable.

(4) The sample shall be drawn from the population of individuals scheduled to participate in a component, actively engaged in assessment or employability planning in the month, or who had a job entry in the sample month or the month previous to the sample month.

(5) For each record in the sample, the State must verify that the individual satisfactorily participated in the sample month, as defined in § 250.78, except that for individuals who entered employment, the State must verify only that the individual was employed at the end of the sample month.

(b) For the purpose of determining participation rates, a State IV–A agency must report, for each month, on a quarterly basis, the aggregate number of individuals required to participate as specified in § 250.74(b)(3)(ii).

(c)(1) For the purpose of calculating whether a State spent 55 percent of its title IV–F funds on target groups pursuant to § 250.74(a), and determining the amounts spent per family by component and activity, each year a State IV–A agency may, instead of a cost-tracking system that identifies all funds spent on each individual, develop and submit to the Secretary a table of

the previous Federal fiscal year's average total JOBS cost per participant per month of participation.

(2) The average total cost data in the table must separately state:

(i) For pre-component activity: assessment and related testing, employability development planning, and associated administrative and case management costs;

(ii) For each component: component costs, and associated administrative and case management costs;

(d) A State IV-A agency must submit any other information that the Secretary determines necessary.

(e) Until October 1, 1991, or until sample based reporting is implemented, whichever is later, the State must submit such interim aggregate hardcopy reports as are required by the Secretary.

§ 250.81 State data systems options.

(a) A State IV-A agency may integrate its JOBS Automated System (JAS) with an existing or planned title IV-A system. A State IV-A agency may also use a stand-alone system. Either option must be a client-based information system capable of:

(1) Producing at a minimum all data elements required in § 250.82; and

(2) Accepting referrals and exchanging data electronically with the title IV-A automated system and, the title IV-D automated system unless this exchange is otherwise met through the interface with the IV-A system.

(b)(1) Title IV-A funding is available for planning, design, development and implementation of the JOBS interface between title IV-A and title IV-F requirements. The interface of an automated JOBS program with the title IV-A system, for verification of eligibility and reconciliation of data, includes planning, design, development and implementation of title IV-A systems to:

(i) Manage information on eligibility factors and target group membership;

(ii) Effect notifications and referrals including non-cooperation;

(iii) Check records of applicants and recipients on a periodic basis with other agencies to verify continued eligibility; and

(iv) Notify appropriate officials when a recipient ceases to be eligible.

(2) If the JAS interfaces with an existing or planned FAMIS-type system and all FAMIS requirements are met, title IV-A FFP at 90 percent is available. Otherwise interface expenditures are matched at 50 percent under title IV-A.

(c) JOBS funding is available at a 50 percent administrative rate for the acquisition and development of the remainder of the JAS, subject to the requirements of § 205.35 through § 205.38. This excludes the JOBS interface with the title IV-A system, but includes all other input, maintenance and reporting of those data elements required in § 250.82 that cannot be obtained from the title IV-A system through the JOBS interface. A cost allocation plan must be approved to share the cost among all Federal and State programs benefiting from the State's JAS.

(d) Administrative funding under either title IV-A or title IV-F for systems design, development, and implementation must comply with the requirements of § 95.601, *et seq.*

[54 FR 42245, Oct. 13, 1989, as amended at 57 FR 47002, Oct. 14, 1992]

§ 250.82 Required case record data.

(a) The State IV-A agency must maintain an individual case record for each JOBS participant.

(1) For the purposes of this section, a JOBS participant is an individual who is:

(i) Actively engaged in assessment or employability planning during the month; or

(ii) Assigned to a component, including self-initiated education or training pursuant to § 250.48(a).

(2) To the extent the State IV-A agency's JAS can access the required data in the required form from other systems, duplicate entry is to be avoided.

(b) The minimum data required are:

(1) Case identifier other than Social Security Number, but the State must maintain in its files a link between the identifier and the SSN;

(2) Date of birth;

(3) Program status and exemption code;

(4) Youngest child's date of birth;

(5) Date of most recent AFDC opening;

(6) Number of months within the most recent 60 months of receipt of AFDC;

(7) Education level (highest grade completed) and date completed;

(8) Literacy level, but only when the State elects to determine a literacy level;

(9) Target group codes to identify which of the target groups specified in § 250.1 an individual was a member of, if any, at the time of entry into JOBS, and the date of entry;

(10) Identifier for a person not exempt, because the State elected to reduce the age of youngest child exemption to less than age three, or because the State elected to require participation of the second parent in a UP case where the second parent would otherwise be exempt for meeting the requirements of § 250.30(b)(9);

(11) Assignment status: scheduled hours, and beginning and ending dates, for each of the following that apply:

(i) Assessment and employability development planning;

(ii) Each JOBS component, including separate identification for self-initiated education or training, pursuant to § 250.48(a);

(iii) Job status, including date of job entry;

(12) Identifier indicating that the individual satisfactorily participated in the JOBS program, as defined at § 250.78, during the month, but only for sampled cases described in § 250.80;

(13) Amount of supportive services, other than child care, paid during the month;

(14) Amount of child care payment for the month;

(15) Type of child care;

(16) Such additional data as the Secretary may from time to time specify in an Action Transmittal or in reporting instructions.

Subpart J—Operation of JOBS Programs by Indian Tribes and Alaska Native Organizations

§ 250.90 Scope and purpose.

The purpose of an Indian Tribe or Alaska Native organization JOBS program is to assure that Tribal (refers to both an Indian Tribe and Alaska Native organization) members receiving

AFDC obtain the education, training and employment services they need to avoid long-term dependency. Tribal grantees are subject to all the regulations under part 250, unless otherwise indicated in this subpart, and regulations under parts 255, 74, and 92, which include general funding and disallowance and termination provisions for Federal programs.

§ 250.91 Eligible Indian Tribe and Alaska Native organization grantees.

Funds shall be allotted to operate a JOBS program pursuant to § 250.71 to groups meeting the following eligibility standards:

(a) An Indian Tribe, defined as any Tribe, band, nation, or other organized group or community of Indians which:

(1) Is federally recognized as eligible for the special programs and services provided by the United States Government to Indians because of their status as Indians; and

(2) Has a reservation, which means Indian reservation, public domain Indian allotment, or former Indian reservation in Oklahoma.

(b) A consortium or Tribal organization representing more than one Tribe if each participating member Tribe meets the eligibility requirements for JOBS as defined in paragraph (a) of this section and if such consortium or organization meets the following criteria:

(1) All the participating members must be in geographic proximity to one another. However, a consortium may operate in more than one State;

(2) The consortium must demonstrate that it has the managerial, technical or administrative staff with the ability to properly administer government funds, manage a JOBS program, and comply with the provisions of the Statute and of the regulations;

(3) The consortium must submit with its JOBS application a resolution from each participating Tribe authorizing the consortium to receive JOBS funds on behalf of each Tribe in its JOBS program.

(c) An Alaska Native organization including any Alaska Native village, or regional or village corporation eligible to operate a Federal program under

Public Law 93-638 (Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450) or such group's designee. The boundaries of an Alaska Native organization are those of the geographical region, established pursuant to section 7(a) of the Alaska Native Claims Settlement Act, (85 Stat. 688) within which the Alaska Native organization is located.

§ 250.92 Selection criteria for eligible Alaska Native organizations.

(a) The Secretary may approve only one application from an Alaska Native organization for each of the 12 geographical regions established pursuant to section 7(a) of the Alaska Native Claims Settlement Act. The Department shall designate the Alaska Native grantee for each geographic region based on the following criteria:

(1) Previous experience in operating an effective employment and training program serving Indians and Native Alaskans;

(2) The number and kinds of activities of similar magnitude and complexity that the applicant has successfully completed; and

(3) The ability to provide services effectively to all eligible Native Alaskans residing in the region.

(b) In order to be approved an Alaska Native application must promote the efficient and nonduplicative administration of the JOBS program in the State of Alaska.

§ 250.93 Funding formula.

(a) A Tribal grantee's share of program funds will be calculated annually pursuant to § 250.71 and will be based on the following ratio:

(1) The number of adult members of the Indian Tribe receiving AFDC who live in the designated service area compared to the total number of adult AFDC recipients in the State. The designated service area must include the reservation but can not extend to areas or communities which are not designated by the Commissioner of Indian Affairs as "near reservation" as defined at 25 CFR 20.1(r). Tribal grantees may exclude a portion of the reservation which is remote from that part of the reservation where JOBS services are provided; or

(2) The number of adult Alaska Natives receiving AFDC who reside within the boundaries of the region which the organization represents to the total number of adult AFDC recipients in the State of Alaska.

(3) Tribal member means a person who is enrolled in, or certified as meeting the membership requirements by the designated official of, that Indian Tribe or Alaska Native organization.

(b)(1) The State IV-A agency and the Indian Tribe or Alaska Native organization must exchange available information on adult Tribal AFDC recipients needed to determine the eligible Tribal population and to define the designated service area, if other than the reservation or trust lands. State and Tribal representatives receiving such AFDC recipient data must follow standards of confidentiality to assure that recipient and Tribal privacy is protected pursuant to § 205.50.

(2) If sufficient data on adult AFDC recipient members of a Tribe or of an Alaska Native organization are not available, the State IV-A agency and the Tribe or organization may enter into an agreement covering a mutually agreed upon estimated figure of the eligible Tribal population or covering the designated service area.

(3) If the State IV-A agency and the Tribe or organization cannot agree on the number of Tribal adult AFDC recipients or designated service area, the Secretary, in consultation with the Tribe or organization and State, will make the final determination of Tribal funding.

(c) A Tribal grantee is not required to match Federal funds.

(d) States with Tribal JOBS programs in operation or a pending application may require applicants and recipients living in the designated service area to provide Tribal membership status as a condition of eligibility for AFDC under the following conditions:

(1) The information is necessary either to determine the number of adult members of an Indian Tribe or Alaska Native organization who receive AFDC, or to help determine whether such individual is to be served by a State or Tribal JOBS program;

(2) Upon requesting information about Tribal status, the State must explain the reason for its request for the information (e.g., to determine which JOBS program will serve the individual), and refer the individual to the appropriate Tribal JOBS program for further information;

(3) Such information is only requested in those areas in which there is a Tribal JOBS program or an application pending and where a State JOBS program is also in operation; and

(4) Information requested must relate only to membership in those Tribes or Alaska Native organizations operating or expected to operate a JOBS program in the area.

§ 250.94 Program administration, implementation and operations.

(a) The Tribal grantee must designate a Tribal agency or department to administer the Tribal JOBS program.

(1) The designated agency or department will be responsible for the administration of the Tribal JOBS program including the requirements under 402(a)(19) and part F of the Act.

(2) The responsibility for the administration of JOBS, pursuant to paragraph (a)(1) of this section, includes functional areas such as exemption and priority determinations (§ 250.30), orientation and referrals (§ 250.40), assessment and the development of the employability plan (§ 250.41), JOBS activities (§ 250.44 and § 250.94(e)), dispute resolution and hearings (§ 250.36). Certain other related functions are retained by the State IV-A agency. These include the administration of provisions on child care (part 255) and transitional child care services (part 256).

(3) The designated agency or department may not delegate or contract out any functions which involve agency discretion, except as provided for in § 250.10 of the regulations.

(b) The Tribe or organization that submitted an application by April 13, 1989, may begin operating its JOBS program as of the first day of any quarter between July 1, 1989 and October 1, 1990, independent of the State's JOBS implementation date. If the Tribe or organization elects to begin operating

its program before the State, during this interim time period:

(1) The Tribe or organization must guarantee necessary child care (without additional title IV-A funding for child care pursuant to part 255) if it requires an individual to participate in its JOBS program.

(2) If the Tribe or organization cannot guarantee necessary child care as described in paragraph (b)(1), it cannot require an individual to participate in its JOBS program but may operate an entirely voluntary program.

(c) The Tribe or organization may not begin its JOBS program prior to approval of the Secretary. Final documentation for the application (meaning supplemental materials submitted after the initial April 13, 1989 application) must be sent to the Department at least 45 days prior to implementation of the Tribal program. This will allow sufficient time for the Department's review and approval.

(d)(1) Tribes or organizations shall not be subject to the specific requirements of § 250.12 of the regulations, but must coordinate program services with appropriate agencies as follows:

(i) The Tribal application with final documentation must be submitted to the State IV-A agency for its review and comment at least 30 days before submittal to the Secretary. The Tribe or organization shall consider comments made by the State IV-A agency in its application submitted to the Secretary.

(ii) The application with final documentation must also be made available to Tribal members for review and comment at least 30 days prior to submittal to the Secretary. The Tribe or organization must certify in its application that such public participation has taken place.

(2) To operate a JOBS program, the Tribe or organization must coordinate with the State IV-A agency to ensure that interrelated program functions are effectively performed. These functions include State responsibilities—such as providing to the Tribal grantee eligibility notifications and the necessary child care funds or services for Tribal participation—and Tribal responsibilities—such as notifying the

State IV-A agency when Tribal members fail to participate without good cause.

(3) A Tribe or organization must consult and coordinate with other providers including those specified in paragraph (d)(4) of this section, to identify existing resources, prevent duplication of services, and ensure that the maximum level of services is available to enable participants to achieve self-sufficiency.

(4) At a minimum, the Tribal grantee must consult and coordinate with:

(i) The Tribal agency responsible for JTPA, if applicable;

(ii) The Tribal agency responsible for other employment and training services, including those offered under the Bureau of Indian Affairs;

(iii) The Tribal agency responsible for education, including any programs under the Bureau of Indian Affairs, the Department of Interior, or under the Office of Indian Education of the Department of Education.

(5) The Tribal grantee must consult with existing formal advisory councils, such as private industry councils, on the development of arrangements and contracts under JOBS, as described in § 250.12(d).

(6) The Tribal grantee must consult with private industry councils and Tribal Employment Rights Offices, as appropriate, to identify, and obtain advice on, the types of jobs available or likely to become available within a reasonable commuting distance from the Tribe's designated service area or the organization's boundaries. The Tribe or organization must ensure that JOBS provides training for the types of jobs which are, or are likely to become, available in or near its designated service area or organization's boundaries and that resources are not expended on training for jobs that are not likely to become available.

(e) Tribal programs are subject to the requirements of § 250.44 but are not subject to the requirements of § 250.45.

(1) A Tribal JOBS program must include all the mandatory components at § 250.44 unless the Tribe or organization can justify that such activities are inappropriate. A Tribe's or organization's application must describe the types of

activities and methods of delivery for each of the mandatory components.

(2) Tribal programs are not subject to the provisions at § 250.45 but must include at least one of the following components unless a Tribe or organization can justify that such activities are inappropriate:

(i) Group and individual job search, as described in § 250.60;

(ii) On-the-job training, as described in § 250.61;

(iii) Community work experience program, as described in § 250.63, or a work experience program as approved by the Secretary;

(iv) Work supplementation program, as described in § 250.62;

(v) Alternative education, training and employment activities which are not described in § 250.60, § 250.61, § 250.62 or § 250.63, as approved by the Secretary.

(A) Innovative approaches with the private sector are encouraged if they are consistent with the purpose of JOBS to assist AFDC recipients to avoid long-term dependency.

(B) JOBS funds may not be used for public service employment or for allowances other than for those required for supportive services as described in part 255.

(3) Because the amount of the IV-A payment is an integral part of determining participation in work supplementation and community work experience programs, a Tribe or organization may operate these programs only if adequate agreements with the State IV-A agency are implemented. The agreements should cover operational procedures and the exchange of information, including grant levels and child support calculations for community work experience participants and earnings for work supplementation participants.

§ 250.95 Supportive services.

(a) The Tribal grantee must provide, pay for, or reimburse necessary supportive services (other than child care) pursuant to part 255, including transportation and other work-related expenses, that the Tribe or organization determines are necessary to enable an individual to participate in JOBS.

§ 250.96

(b) The State IV-A agency is responsible for guaranteeing child care for Tribal JOBS participants according to the provisions specified under part 255.

(c) If the Tribe or organization is using child care funds or services provided by the State pursuant to paragraph (b) of this section, it must ensure, based on a method which is mutually acceptable to the State IV-A agency and Tribal grantee, that necessary child care is available when requiring an individual to participate in its program.

(d) If the Tribe or organization does not choose to use State funds or services for child care, it must provide (without additional title IV-A funding for child care) these funds or services in order to guarantee necessary child care when requiring an individual to participate.

(e) Once the State has implemented its JOBS program, the Tribe or organization, in order to require an individual to participate, must guarantee necessary child care either through the State IV-A agency, pursuant to paragraphs (b) and (c), or directly, pursuant to paragraph (d) of this section; but it may not operate an entirely voluntary JOBS program.

§ 250.96 Waiver authority.

The Secretary may waive any JOBS requirements set forth under section 402(a)(19) and part F of the Act that he determines inappropriate for Tribal JOBS programs.

(a) The Secretary has determined that certain requirements of the Act are inappropriate for JOBS programs operated by Indian Tribes or Alaska Native organizations. They cover the following provisions or sections of the regulations:

- (1) Section 250.10 (IV-A agency administration);
- (2) Section 250.11 (Statewide requirement);
- (3) Section 250.12 (Coordination and consultation);
- (4) Section 250.20 (State plan requirements);
- (5) Section 250.21 (State plan content);
- (6) Section 250.33 (UP-16 hour rule);
- (7) Section 250.45 (Optional components);

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(8) Section 250.70 (a) and (b) (Allocation entitlement);

(9) Section 250.71 (b)(2) and (c) (Allotment);

(10) Section 250.72 (Maintenance of effort);

(11) Section 250.73 (Matching rates);

(12) Section 250.74 (Reduced matching rate);

(13) Section 250.78 (Definition of Participation for Enhanced FFP);

(14) Section 250.80 (Uniform Data Collection Requirements);

(15) Section 250.81 (State data systems);

(16) Section 250.82 (Required case record data);

(17) Section 255.1 (c) and (h) (Supportive Services plan requirements).

(b) A Tribe or organization may request that the Secretary waive any other requirements of section 402(a)(19) or part F of the Act not listed under paragraph (a) of this section with proper justification. The Secretary will consider the appropriateness of such waivers on a case-by-case basis.

§ 250.97 Application requirements and documentation.

(a) As a condition of participation in the JOBS program, the designated Tribal agency or department responsible for administering the JOBS program must:

(1) No later than October 1, 1990, establish and operate a JOBS program under a JOBS application that has been approved by the Secretary before implementation and meets the requirements of parts 250 and 255.

(2) Submit final documentation for the application to the Secretary for review and action at least 45 days prior to the anticipated implementation date. The Tribal grantee may not begin its JOBS program prior to the Secretary's approval pursuant to § 250.94(c).

(b) The Tribal application must be submitted to the State IV-A agency for review and comment at least 30 days prior to submittal to the Secretary. The application shall be made available to Tribal members for review and comment at least 30 days prior to submittal to the Secretary. Comments received shall be resolved by the Tribe or organization.

(c)(1) The Tribal grantee must submit an update of its JOBS application to the Secretary for approval at least every two years. The update shall be considered a new JOBS application and shall be submitted to the Secretary for approval at least 90 days prior to the beginning of the next biennial period. The Tribal grantee must follow the public review and comment provisions in paragraph (b).

(2) The update must consist of:

(i) Assurances regarding those parts of the Tribal JOBS application that remain unchanged;

(ii) A description of any changes in program operations including but not limited to changes in component activities; and

(iii) An estimate of the number of persons to be served by the program during the next biennium.

(3)(i) For all Tribal grantees the first biennial update must be submitted by July 1, 1992, for the period beginning October 1, 1992.

(ii) Each approved biennial update shall remain in force until formal action is taken (i.e. approval or disapproval) by the Secretary on the update for the following biennial period.

(d) The Tribal grantee shall submit proposed amendments to the approved application as necessary, and they shall be reviewed according to the process described at §§201.3(f) and 201.3(g).

(e) A Tribe or organization that submits an application, an amendment to an existing application, or a biennial update to its application that is not approvable will be given the opportunity to make revisions before formal disapproval; upon formal disapproval, a Tribe or organization may request a hearing pursuant to the process set forth in §201.4 and part 213.

(f) A Tribal applicant must submit documentation (which is in addition to the information requested in the application) covering the following items for the Secretary's review before final approval of the application can be determined:

(1) Assurances that the administering Tribal agency will have in effect a JOBS program which meets the requirements of section 402(a)(19) and part F of the Act, unless waived by the

Secretary, and including cross-references to all appropriate statutory and regulatory requirements that the JOBS program will meet;

(2) A description of the administrative process and methods of delivery for:

(i) Providing program information under §250.40;

(ii) Assessments pursuant to §250.41;

(iii) Agency-participant agreements, if this option is elected;

(iv) Case management system (§250.43), if this option is elected;

(3) A description of the mandatory and elected optional component activities described under §250.94(e) and the methods of delivery;

(4) A description of the selection and assignment criteria that will be used to refer participants to the various services and activities provided under the Tribal JOBS program;

(5) A description of the coordination processes with other programs, including any agreements with the State IV-A agency, Tribal JTPA agency, other employment and training agencies and educational agencies, specifying how these other agencies will track and report to the Tribe or organization on satisfactory participation and use of JOBS funds;

(6) A description of how the administering Tribal agency will determine eligibility for work-related expenses such as clothing or transportation and other supportive services; a listing of the work-related expenses and the supportive services it will provide to its JOBS participants; the methods of delivering these supportive services; and

(7) A description of the conciliation and hearings procedures which meet the due process standards specified in proposed §250.36, including notification to the State IV-A agency of formal decisions that a non-exempt Tribal member has failed to participate.

§250.98 Maintenance of effort for Indian Tribes and Alaska Native organizations.

Tribal programs are not subject to the requirements in §250.72 but are subject to the following requirements:

(a) JOBS funds shall be used only for education, training and employment activities that are in addition to those

which would otherwise be available to Tribal AFDC recipients in the absence of such funds.

(b) A Tribe or organization may contract for services only to the extent that such services are not otherwise available to AFDC Tribal recipients on a non-reimbursable basis.

PART 251—PROGRAM PARTICIPANT EMPLOYMENT PROTECTION

Sec.

251.0 Purpose.

251.1 Program activity conditions.

251.2 Workers' compensation and tort claims protections.

251.3 Displacement.

251.4 Grievances by regular employees.

251.5 Complaints with respect to on-the-job working conditions, workers' compensation coverage and CWEP wage rates.

AUTHORITY: Sections 484 and 1102 of the Social Security Act as amended (42 U.S.C. 684 and 1302)

SOURCE: 56 FR 2639, Jan. 23, 1991]

§251.0 Purpose.

(a) The purpose of this part 251 is to set forth the conditions generally applicable when assigning participants to program activities (i.e., work, education or training) under the Jobs Opportunity and Basic Skills Training (JOBS) program. This part contains the following:

(1) The conditions that the State agency shall assure when assigning participants to any program activity;

(2) Appropriate workers' compensation and tort claims protections that must be provided to participants;

(3) Provisions to assure that work assignments shall not result in displacements;

(4) A grievance procedure for resolving displacement complaints by regular employees;

(5) A grievance procedure under the State fair hearing process with respect to on-the-job working conditions, workers' compensation, and wage rates in the case of individuals participating in community work experience programs (CWEP); and

(6) Procedures for appealing State decisions on displacement complaints and certain other complaints to the Department of Labor.

(b) The provisions of this part apply to any work-related programs and activities under JOBS and under any other work-related programs and activities authorized in connection with the Aid to Families with Dependent Children (AFDC) program under section 1115 of the Social Security Act.

§251.1 Program activity conditions.

(a) *Program activity.* The State agency shall assure that:

(1) The program activity shall be related to the capability of the participant to perform the task on a regular basis, including physical capacity, skills, experience, family responsibilities and place of residence.

(2) The total daily commuting time to and from home to the program activity site to which the participant is assigned shall not normally exceed 2 hours, not including the transporting of a child to and from child care. If a longer commuting distance and time is generally accepted in the community, then the round trip commuting time shall not exceed the generally accepted community standards without the participant's consent.

(3) No participant shall be required, without his or her consent, to remain away from his or her home overnight.

(4) The conditions of participation shall be reasonable, taking into account in each case the proficiency of the participant and the child care and other supportive service needs of the participant.

(5) Training shall be appropriate. For training to be appropriate, the nature of the training shall, to the extent practicable, meet local employers' requirements (including their occupational needs) so that the participant will be in a competitive position within the local labor market. The training must also be likely to lead to employment which will meet the provisions in paragraphs (a)(1) through (a)(4) of this section.

(b) *Health and safety standards.* Participants are subject to the same health and safety standards established under State and Federal law that otherwise apply to other individuals in similar activities who are not JOBS participants.