

(ii) Whether a family is eligible for an extension of its time limit on federally funded assistance.

(3) If the State is continuing policies for evaluation purposes in accordance with §260.76:

(i) The certification must specify any special work or time-limit standards that apply to the control group and experimental group cases; and

(ii) The State may choose to exclude cases assigned to the experimental and control groups, which are not otherwise exempt, for the purpose of calculating the work participation rate or determining State compliance related to limiting assistance to families including adults who have received 60 months of Federal TANF assistance. In doing so, the State may effectively exclude all experimental group cases and/or control group cases, not otherwise exempt, but may not exclude individual cases on a selective basis.

(c) The certification may include a claim of inconsistency with respect to hours of required participation in work activities only if the State has written evidence that, when implemented, the waiver policies established specific requirements related to hours of work for nonexempt individuals.

(d)(1) The Governor's certification must be provided no later than October 1, 1999.

(2) If a State modifies its waiver policies in a way that has a substantive effect on the determination of its work sanctions, or the calculation of its work participation rates or its time-limit exceptions, it must submit an amended certification no later than the end of the fiscal quarter in which the modifications take effect.

§260.76 What special rules apply to States that are continuing evaluations of their waiver demonstrations?

If a State is continuing research that employs an experimental design in order to complete an impact evaluation of a waiver demonstration, the experimental and control groups may continue to be subject to prior AFDC law, except as modified by the waiver.

PART 261—ENSURING THAT RECIPIENTS WORK

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AUTHORITY: 42 U.S.C. 601, 602, 607, and 609.

SOURCE: 64 FR 17884, Apr. 12, 1999, unless otherwise noted.

§ 261.1 What does this part cover?

This part includes the regulatory provisions relating to the mandatory work requirements of TANF.

§ 261.2 What definitions apply to this part?

The general TANF definitions at §§ 260.30 through 260.33 of this chapter apply to this part.

Subpart A—What Are the Provisions Addressing Individual Responsibility?

§ 261.10 What work requirements must an individual meet?

(a)(1) A parent or caretaker receiving assistance must engage in work activities when the State has determined that the individual is ready to engage in work or when he or she has received assistance for a total of 24 months, whichever is earlier, consistent with section 407(e)(2) of the Act.

(2) The State must define what it means to engage in work for this requirement; its definition may include participation in work activities in accordance with section 407 of the Act.

(b) If a parent or caretaker has received assistance for two months, he or she must participate in community service employment, consistent with section 407(e)(2) of the Act, unless the State has exempted the individual from work requirements or he or she is already engaged in work activities as described at § 261.30. The State will determine the minimum hours per week and the tasks the individual must perform as part of the community service employment.

§ 261.11 Which recipients must have an assessment under TANF?

(a) The State must make an initial assessment of the skills, prior work experience, and employability of each recipient who is at least age 18 or who has not completed high school (or equivalent) and is not attending secondary school.

(b) The State may make any required assessments within 30 days (90 days, at State option) of the date an individual becomes eligible for assistance.

§261.12 What is an individual responsibility plan?

An individual responsibility plan is a plan developed at State option, in consultation with the individual, on the basis of the assessment made under §261.11. The plan:

(a) Should set an employment goal and a plan for moving immediately into private-sector employment;

(b) Should describe the obligations of the individual. These could include going to school, maintaining certain grades, keeping school-aged children in school, immunizing children, going to classes, or doing other things that will help the individual become or remain employed in the private sector;

(c) Should be designed to move the individual into whatever private-sector employment he or she is capable of handling as quickly as possible and to increase over time the responsibility and the amount of work the individual handles;

(d) Should describe the services the State will provide the individual to enable the individual to obtain and keep private sector employment, including job counseling services; and

(e) May require the individual to undergo appropriate substance abuse treatment.

§261.13 May an individual be penalized for not following an individual responsibility plan?

Yes. If an individual fails without good cause to comply with an individual responsibility plan that he or she has signed, the State may reduce the amount of assistance otherwise payable to the family, by whatever amount it considers appropriate. This penalty is in addition to any other penalties under the State's TANF program.

§261.14 What is the penalty if an individual refuses to engage in work?

(a) If an individual refuses to engage in work required under section 407 of the Act, the State must reduce or terminate the amount of assistance payable to the family, subject to any good cause or other exceptions the State may establish. Such a reduction is governed by the provisions of §261.16.

(b)(1) The State must, at a minimum, reduce the amount of assistance otherwise payable to the family pro rata with respect to any period during the month in which the individual refuses to work.

(2) The State may impose a greater reduction, including terminating assistance.

(c) A State that fails to impose penalties on individuals in accordance with the provisions of section 407(e) of the Act may be subject to the State penalty specified at §261.54.

§261.15 Can a family be penalized if a parent refuses to work because he or she cannot find child care?

(a) No, the State may not reduce or terminate assistance based on an individual's refusal to engage in required work if the individual is a single custodial parent caring for a child under age six who has a demonstrated inability to obtain needed child care, as specified at §261.56.

(b) A State that fails to comply with the penalty exception at section 407(e)(2) of the Act and the requirements at §261.56 may be subject to the State penalty specified at §261.57.

§261.16 Does the imposition of a penalty affect an individual's work requirement?

A penalty imposed by a State against the family of an individual by reason of the failure of the individual to comply with a requirement under TANF shall not be construed to be a reduction in any wage paid to the individual.

Subpart B—What Are the Provisions Addressing State Accountability?**§261.20 How will we hold a State accountable for achieving the work objectives of TANF?**

(a) Each State must meet two separate work participation rates, one—the two-parent rate—based on how well it succeeds in helping adults in two-parent families find work activities described at §261.30, the other—the overall rate—based on how well it succeeds in finding those activities for adults in all the families that it serves.

(b) Each State must submit data that allows us to measure its success in requiring adults to participate in work activities, as specified at § 265.3 of this chapter.

(c) If the data show that a State met both participation rates in a fiscal year, then the percentage of historic State expenditures that it must expend under TANF, pursuant to § 263.1 of this chapter, decreases from 80 percent to 75 percent for that fiscal year. This is also known as the State's TANF "maintenance-of-effort" requirement.

(d) If the data show that a State did not meet either minimum work participation rate for a fiscal year, a State could be subject to a financial penalty.

(e) Before we impose a penalty, a State will have the opportunity to claim reasonable cause or enter into a corrective compliance plan, pursuant to §§ 262.5 and 262.6 of this chapter.

§ 261.21 What overall work rate must a State meet?

Each State must achieve the following minimum overall participation rate:

If the fiscal year is:	Then the minimum participation rate is:
1997	25
1998	30
1999	35
2000	40
2001	45
2002 and thereafter	50

§ 261.22 How will we determine a State's overall work rate?

(a) The overall participation rate for a fiscal year is the average of the State's overall participation rates for each month in the fiscal year.

(b) We determine a State's overall participation rate for a month as follows:

(1) The number of families receiving TANF assistance that include an adult or a minor head-of-household who is engaged in work for the month (i.e., the numerator), divided by,

(2) The number of families receiving TANF assistance during the month that include an adult or a minor head-of-household, minus the number of families that are subject to a penalty for refusing to work in that month

(i.e., the denominator). However, if a family has been sanctioned for more than three of the last 12 months, we will not exclude it from the participation rate calculation.

(3) The State may direct us, through its reported participation data, to include in the participation calculation families that have been sanctioned for no more than three of the last 12 months.

(c)(1) A State has the option of not requiring a single custodial parent caring for a child under age one to engage in work.

(2) At State option, we will disregard a family with such a parent from the participation rate calculation for a maximum of 12 months.

(d)(1) If a family receives assistance for only part of a month, we will count it as a month of participation if an adult in the family is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month.

(2) If a State pays benefits retroactively (i.e., for the period between application and approval of benefits), it has the option to consider the family to be receiving assistance during the period of retroactivity.

§ 261.23 What two-parent work rate must a State meet?

A State receiving a TANF grant for a fiscal year must achieve the following minimum two-parent participation rate:

If the fiscal year is:	Then the minimum participation rate is:
1997	75
1998	75
1999 and thereafter	90

§ 261.24 How will we determine a State's two-parent work rate?

(a) The two-parent participation rate for a fiscal year is the average of the State's two-parent participation rates for each month in the fiscal year.

(b) We determine a State's two-parent participation rate for a month as follows:

(1) The number of two-parent families receiving TANF assistance that include an adult or minor child head-of-

household and other parent who meet the requirements set forth in §261.32 for the month (i.e., the numerator), divided by,

(2) The number of two-parent families receiving TANF assistance during the month, minus the number of two-parent families that are subject to a penalty for refusing to work in that month (i.e., the denominator). However, if a family has been sanctioned for more than three of the last 12 months, we will not exclude it from the participation rate calculation.

(3) The State may direct us, through its reported participation data, to include in the participation calculation families that have been sanctioned for no more than three of the last 12 months.

(c) For purposes of the calculation in paragraph (b) of this section, a two-parent family includes, at a minimum, all families with two natural or adoptive parents (of the same minor child) receiving assistance and living in the home, unless both are minors and neither is a head-of-household.

(d)(1) If a family receives assistance for only part of a month, we will count it as a month of participation if an adult in the family (or both adults, if they are both required to work) is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month.

(2) If a State pays benefits retroactively (i.e., for the period between application and approval of benefits), it has the option to consider the family to be receiving assistance during the period of retroactivity.

(e) If a family includes a disabled parent, we will not consider the family to be a two-parent family under paragraph (b) of this section; i.e., we will not include such a family in either the numerator or denominator of the two-parent rate.

§261.25 Does a State include Tribal families in calculating these rates?

At State option, we will include families that are receiving assistance under an approved Tribal family assistance plan or under a Tribal work program in calculating the State's participation rates under §§ 261.22 and 261.24.

Subpart C—What Are the Work Activities and How Do They Count?

§261.30 What are the work activities?

- The work activities are:
- (a) Unsubsidized employment;
 - (b) Subsidized private-sector employment;
 - (c) Subsidized public-sector employment;
 - (d) Work experience if sufficient private-sector employment is not available;
 - (e) On-the-job training (OJT);
 - (f) Job search and job readiness assistance;
 - (g) Community service programs;
 - (h) Vocational educational training;
 - (i) Job skills training directly related to employment;
 - (j) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;
 - (k) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, if a recipient has not completed secondary school or received such a certificate; and
 - (l) Providing child care services to an individual who is participating in a community service program.

§261.31 How many hours must an individual participate to count in the numerator of the overall rate?

(a) An individual counts as engaged in work for a month for the overall rate if:

(1) He or she participates in work activities during the month for at least the minimum average number of hours per week listed in the following table:

If the fiscal year is:	Then the minimum average hours per week is:
1997	20
1998	20
1999	25
2000 or thereafter	30

and

(2) At least 20 of the above hours per week come from participation in the

§ 261.32

activities listed in paragraph (b) of this section.

(b) The following nine activities count toward the first 20 hours of participation: unsubsidized employment; subsidized private-sector employment; subsidized public-sector employment; work experience; on-the-job training; job search and job readiness assistance; community service programs; vocational educational training; and providing child care services to an individual who is participating in a community service program.

(c) Above 20 hours per week, the following three activities may also count as participation: job skills training directly related to employment; education directly related to employment; and satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence.

§ 261.32 How many hours must an individual participate to count in the numerator of the two-parent rate?

(a) Subject to paragraph (d) of this section, an individual counts as engaged in work for the month for the two-parent rate if:

(1) If an individual and the other parent in the family are participating in work activities for an average of at least 35 hours per week during the month, and

(2) At least 30 of the 35 hours per week come from participation in the activities listed in paragraph (b) of this section.

(b) The following nine activities count for the first 30 hours of participation: unsubsidized employment; subsidized private-sector employment; subsidized public-sector employment; work experience; on-the-job training; job search and job readiness assistance; community service programs; vocational educational training; and providing child care services to an individual who is participating in a community service program.

(c) Above 30 hours per week, the following three activities may also count for participation: job skills training directly related to employment; education directly related to employment; and satisfactory attendance at secondary school or in a course of study

leading to a certificate of general equivalence.

(d)(1) If the family receives federally funded child care assistance and an adult in the family is not disabled or caring for a severely disabled child, then the individual and the other parent must be participating in work activities for an average of at least 55 hours per week for the individual to count as a two-parent family engaged in work for the month.

(2) At least 50 of the 55 hours per week must come from participation in the activities listed in paragraph (b) of this section.

(3) Above 50 hours per week, the three activities listed in paragraph (c) of this section may also count as participation.

§ 261.33 What are the special requirements concerning educational activities in determining monthly participation rates?

(a) Vocational educational training may only count for a total of 12 months for any individual.

(b)(1) A recipient who is married or a single head-of-household under 20 years old counts as engaged in work in a month if he or she:

(i) Maintains satisfactory attendance at a secondary school or the equivalent during the month; or

(ii) Participates in education directly related to employment for an average of at least 20 hours per week during the month.

(2)(i) For a married recipient, such participation counts as the greater of 20 hours or the actual hours of participation.

(ii) If both parents in the family are under 20 years old, the requirements at § 261.32(d) are met if both meet the conditions of paragraphs (b)(1)(i) or (b)(1)(ii) of this section.

(c) In counting individuals for each participation rate, not more than 30 percent of individuals engaged in work in a month may be included in the numerator because they are:

(1) Participating in vocational educational training; and

(2) In fiscal year 2000 or thereafter, individuals deemed to be engaged in work by participating in educational activities described in paragraph (b) of this section.

§261.34 Are there any limitations in counting job search and job readiness assistance toward the participation rates?

Yes. There are four limitations concerning job search and job readiness.

(a) Except as provided in paragraph (b) of this section, an individual's participation in job search and job readiness assistance counts for a maximum of six weeks in any fiscal year.

(b) If the State's total unemployment rate is at least 50 percent greater than the United States' total unemployment rate or if the State meets the definition of a needy State, specified at §260.30 of this chapter, then an individual's participation in job search and job readiness assistance counts for a maximum of 12 weeks in that fiscal year.

(c) An individual's participation in job search and job readiness assistance does not count for a week that immediately follows four consecutive weeks of such participation in a fiscal year.

(d) Not more than once for any individual in a fiscal year, a State may count three or four days of job search and job readiness assistance during a week as a full week of participation.

§261.35 Are there any special work provisions for single custodial parents?

Yes. A single custodial parent or caretaker relative with a child under age six will count as engaged in work if he or she participates for at least an average of 20 hours per week.

§261.36 Do welfare reform waivers affect the calculation of a State's participation rates?

A welfare reform waiver could affect the calculation of a State's participation rate, pursuant to subpart C of part 260 and section 415 of the Act.

Subpart D—How Will We Determine Caseload Reduction Credit for Minimum Participation Rates?

§261.40 Is there a way for a State to reduce the work participation rates?

(a)(1) If the average monthly number of cases receiving assistance, including

assistance under a separate State program (as provided at §261.42(b)), in a State in the preceding fiscal year was lower than the average monthly number of cases that received assistance in FY 1995, the minimum overall participation rate the State must meet for the fiscal year (as provided at §261.21) decreases by the number of percentage points the prior-year caseload fell in comparison to the FY 1995 caseload.

(2) The minimum two-parent participation rate the State must meet for the fiscal year (as provided at §261.23) decreases, at State option, by either:

(i) The number of percentage points the prior-year two-parent caseload, including two-parent cases receiving assistance under a separate State program (as provided at §261.42(b)), fell in comparison to the FY 1995 two-parent caseload or;

(ii) The number of percentage points the prior-year overall caseload, including assistance under a separate State program (as provided at §261.42(b)), fell in comparison to the FY 1995 overall caseload.

(b) The calculations in paragraph (a) of this section must disregard the net caseload reduction (i.e., caseload decreases offset by increases) due either to requirements of Federal law or to changes that a State has made in its eligibility criteria in comparison to its criteria in effect in FY 1995.

(c)(1)(i) To establish the caseload base for fiscal year 1995, we will use the number of AFDC cases and Unemployed Parent cases reported on ACF-3637, Statistical Report on Recipients under Public Assistance.

(ii) We will automatically adjust the Unemployed Parent caseload proportionally upward, based on the percentage of cases with two parents in the household, as shown in Quality Control data for the period prior to the State's reporting two-parent data under TANF.

(2) To determine the prior-year caseload for subsequent years, we will use caseload information from the TANF Data Report and the SSP-MOE Data Report.

(3) To qualify for a caseload reduction, a State must have reported monthly caseload information, including cases in separate State programs,

for the preceding fiscal year for cases receiving assistance as defined at § 261.43.

(d)(1) A State may correct erroneous data or submit accurate data to adjust IV-A program data or to include unduplicated cases. For example, a State may submit accurate data for Emergency Assistance cases and two-parent cases outside the Unemployed Parent program.

(2) A State may submit data to adjust the caseload for FY 1999 and thereafter to include two-parent or other State program cases covered by Federal TANF or State MOE expenditures, but not otherwise reported.

(3) We will adjust both the FY 1995 baseline and the caseload information for subsequent years, as appropriate, based on these State submissions.

(e) We refer to the number of percentage points by which a caseload falls, disregarding the cases described in paragraph (b), as a caseload reduction credit.

§ 261.41 How will we determine the caseload reduction credit?

(a)(1) We will determine the total and two-parent caseload reduction credits that apply to each State based on the information and estimates reported to us by the State on eligibility policy changes, application denials, and case closures.

(2) We will accept the information and estimates provided by a State, unless they are implausible based on the criteria listed in paragraph (d) of this section.

(3) We may conduct on-site reviews and inspect administrative records on applications and terminations to validate the accuracy of the State estimates.

(b) In order to receive a caseload reduction credit, a State must submit a Caseload Reduction Report to us containing the following information:

(1) A listing of, and implementation dates for, all State and Federal eligibility changes, as defined at § 261.42, made by the State since the beginning of FY 1995;

(2) A numerical estimate of the positive or negative impact on the applicable caseload of each eligibility change (based, as appropriate, on application

denials, case closures or other analyses);

(3) An overall estimate of the total net positive or negative impact on the applicable caseload as a result of all such eligibility changes;

(4) An estimate of the State's caseload reduction credit;

(5) The number of application denials and case closures for fiscal year 1995 and the prior fiscal year;

(6) The distribution of such denials and case closures, by reason, for fiscal year 1995 and the prior fiscal year;

(7) A description of the methodology and the supporting data that it used to calculate its caseload reduction estimates;

(8) A certification that it has provided the public an appropriate opportunity to comment on the estimates and methodology, considered their comments, and incorporated all net reductions resulting from Federal and State eligibility changes; and

(9) A summary of all public comments.

(c) A State requesting a caseload reduction credit for both rates must provide separate estimates and information for the two-parent credit if it wishes to base the caseload reduction credit for the two-parent rate on reductions in the two-parent caseload.

(1) The State must base its estimates of the impact of eligibility changes for the overall participation rate on decreases in its overall caseload compared to the FY 1995 overall caseload baseline established in accordance with § 261.40(d).

(2) The State must base its estimates of the impact of eligibility changes for two-parent cases on decreases in its two-parent caseload compared to the FY 1995 two-parent caseload baseline established in accordance with § 261.40(d).

(d)(1) For each State, we will assess the adequacy of information and estimates using the following criteria: its methodology; its estimates of impact compared to other States; the quality of its data; and the completeness and adequacy of its documentation.

(2) If we request additional information to develop or validate estimates,

the State may negotiate an appropriate deadline or provide the information within 30 days of the date of our request.

(3) The State must provide sufficient data to document the information submitted under paragraph (b) of this section.

(e) We will not calculate a caseload reduction credit unless the State reports case-record data on individuals and families served by any separate State program, as required under §265.3(d) of this chapter.

(f) A State may only apply to its participation rate a caseload reduction credit that we have calculated. If a State disagrees with the caseload reduction credit, it may appeal the decision as an adverse action in accordance with §262.7 of this chapter.

§261.42 Which reductions count in determining the caseload reduction credit?

(a)(1) A State's caseload reduction estimate must not include net caseload decreases (i.e., caseload decreases offset by increases) due to Federal requirements or State changes in eligibility rules since FY 1995 that directly affect a family's eligibility for assistance. These include more stringent income and resource limitations, time limits, full family sanctions, and other new requirements that deny families assistance when an individual does not comply with work requirements, cooperate with child support, or fulfill other behavioral requirements.

(2) A State may count the reductions attributable to enforcement mechanisms or procedural requirements that are used to enforce existing eligibility criteria (e.g., fingerprinting or other verification techniques) to the extent that such mechanisms or requirements identify or deter families otherwise ineligible under existing rules.

(b) A State must include cases receiving assistance in separate State programs as part of its prior-year caseload. However, if a State provides documentation that separate State program cases meet the following conditions, we will exclude them from the caseload count:

(1) The cases overlap with, or duplicate, cases in the TANF caseload; or

(2) They are cases made ineligible for Federal benefits by Pub. L. 104-193 that are receiving only State-funded cash assistance, nutrition assistance, or other benefits.

§261.43 What is the definition of a "case receiving assistance" in calculating the caseload reduction credit?

(a)(1) The caseload reduction credit is based on decreases in caseloads receiving assistance (other than those excluded pursuant to §261.42) both in a State's TANF program and in separate State programs that address basic needs and are used to meet the maintenance-of-effort requirement.

(2) A State that is investing State MOE funds in eligible families in excess of the required 80 percent or 75 percent basic MOE amount need only include the pro rata share of caseloads receiving assistance that are required to meet basic MOE requirements.

(b)(1) Depending on a State's TANF implementation date, for fiscal years 1995, 1996 and 1997, we will use adjusted baseline caseload data as established in accordance with §261.40(d).

(2) For subsequent fiscal years, we will determine the caseload based on all cases in a State receiving assistance (according to the definition of assistance at §260.31 of this chapter).

§261.44 When must a State report the required data on the caseload reduction credit?

(a) A State must report the necessary documentation on caseload reductions for the preceding fiscal year by December 31.

(b) We will notify the State of its caseload reduction credit no later than March 31.

Subpart E—What Penalties Apply to States Related to Work Requirements?

§261.50 What happens if a State fails to meet the participation rates?

(a) If we determine that a State did not achieve one of the required minimum work participation rates, we must reduce the SFAG payable to the State.

(b)(1) If there was no penalty for the preceding fiscal year, the base penalty for the current fiscal year is five percent of the adjusted SFAG.

(2) For each consecutive year that the State is subject to a penalty under this part, we will increase the amount of the base penalty by two percentage points over the previous year's penalty. However, the penalty can never exceed 21 percent of the State's adjusted SFAG.

(c) We impose a penalty by reducing the SFAG payable for the fiscal year that immediately follows our final determination that a State is subject to a penalty and our final determination of the penalty amount.

(d) In accordance with the procedures specified at § 262.4 of this chapter, a State may dispute our determination that it is subject to a penalty.

§ 261.51 Under what circumstances will we reduce the amount of the penalty below the maximum?

(a) We will reduce the amount of the penalty based on the degree of the State's noncompliance.

(1) If the State fails only the two-parent participation rate specified at § 261.23, reduced by any applicable caseload reduction credit, its maximum penalty will be a percentage of the penalty specified at § 261.50. This percentage will equal the percentage of two-parent cases in the State's total caseload.

(2) If the State fails the overall participation rate specified at § 261.21, reduced by any applicable caseload reduction credit, or both rates, its maximum penalty will be the penalty specified at § 261.50.

(b)(1) In order to receive a reduction of the penalty amounts determined under paragraphs (a)(1) or (a)(2) of this section:

(i) The State must achieve participation rates equal to a threshold level defined as 50 percent of the applicable minimum participation rate at § 261.21 or § 261.23, minus any caseload reduction credit determined pursuant to subpart D of this part; and

(ii) The adjustment factor for changes in the number of individuals engaged in work, described in para-

graph (b)(4) of this section, must be greater than zero.

(2) If the State meets the requirements of paragraph (b)(1) of this section, we will base its reduction on the severity of the failure. For this purpose, we will calculate the severity of the State's failure based on:

(i) The degree to which it missed the target rate;

(ii) An adjustment factor that accounts for changes in the number of individuals who are engaged in work in the State since the prior year; and

(iii) The number of consecutive years in which the State failed to meet the participation rates and the number of rates missed.

(3) We will determine the degree to which the State missed the target rate using the ratio of the following two factors:

(i) The difference between the participation rate achieved by the State and the 50-percent threshold level (adjusted for any caseload reduction credit determined pursuant to subpart D of this part); and

(ii) The difference between the minimum applicable participation rate and the threshold level (both adjusted for any caseload reduction credit determined pursuant to subpart D of this part).

(4) We will calculate the adjustment factor for changes in the number of individuals engaged in work using the following formula:

(i) The average monthly number of individuals engaged in work in the penalty year minus the average monthly number of individuals engaged in work in the prior year, divided by,

(ii) The product of 0.15 and the average monthly number of individuals engaged in work in the prior year.

(5) Subject to paragraph (c) of this section, if the State fails only the two-parent participation rate specified at § 261.23, and qualifies for a penalty reduction under paragraph (b)(1) of this section, its penalty reduction will be the product of:

(i) The amount determined in paragraph (a)(1) of this section;

(ii) The ratio described in paragraph (b)(3) of this section computed with respect to two-parent families; and

(iii) The adjustment factor described in paragraph (b)(4) of this section computed with respect to two-parent families.

(6) Subject to paragraph (c) of this section, if the State fails the overall participation rate specified at §261.21, or both rates, and qualifies for a penalty reduction under paragraph (b)(1) of this section, its penalty reduction will be the product of:

(i) The amount determined in paragraph (a)(2) of this section;

(ii) The ratio described in paragraph (b)(3) of this section computed with respect to all families; and

(iii) The adjustment factor described in paragraph (b)(4) of this section.

(7) Pursuant to §260.58 of this chapter, we will adjust the calculations in this section to exclude cases for which a State has granted federally recognized good cause domestic violence waivers.

(c)(1) If the State was not subject to a penalty the prior year, the State will receive:

(i) The full applicable penalty reduction described in paragraph (b)(5) or (b)(6) of this section if it failed only one participation rate; or

(ii) 50 percent of the penalty reduction described in paragraph (b)(6) of this section if it failed both participation rates.

(2) If the penalty year is the second successive year in which the State is subject to a penalty, the State will receive:

(i) 50 percent of the applicable penalty reduction described in paragraph (b)(5) or (b)(6) of this section if it failed only one participation rate; or

(ii) 25 percent of the penalty reduction described in paragraph (b)(6) of this section if it failed both participation rates.

(3) If the penalty year is the third or greater successive year in which the State is subject to a penalty, the State will not receive a penalty reduction described in paragraph (b)(5) or (b)(6) of this section.

(d)(1) We may reduce the penalty if the State failed to achieve a participation rate because:

(i) It meets the definition of a needy State, specified at §260.30 of this chapter; or,

(ii) Noncompliance is due to extraordinary circumstances such as a natural disaster, regional recession, or substantial caseload increase.

(2) In determining noncompliance under paragraph (d)(1)(ii) of this section, we will consider such objective evidence of extraordinary circumstances as the State chooses to submit.

§261.52 Is there a way to waive the State's penalty for failing to achieve either of the participation rates?

(a) We will not impose a penalty under this part if we determine that the State has reasonable cause for its failure.

(b) In addition to the general reasonable cause criteria specified at §262.5 of this chapter, a State may also submit a request for a reasonable cause exemption from the requirement to meet the minimum participation rate in two specific case situations.

(1) We will determine that a State has reasonable cause if it demonstrates that failure to meet the work participation rates is attributable to its provision of federally recognized good cause domestic violence waivers (i.e., it provides evidence that it achieved the applicable work rates when individuals receiving federally recognized good cause domestic violence waivers of work requirements, in accordance with the provisions at §§260.54(b) and 260.55 of this chapter, are removed from the calculations in §§261.22(b) and 261.24(b)).

(2) We will determine that a State has reasonable cause if it demonstrates that its failure to meet the work participation rates is attributable to its provision of assistance to refugees in federally approved alternative projects under section 412(e)(7) of the Immigration and Nationality Act (8 U.S.C. 1522(e)(7)).

(c) In accordance with the procedures specified at §262.4 of this chapter, a State may dispute our determination that it is subject to a penalty.

§261.53 May a State correct the problem before incurring a penalty?

(a) Yes. A State may enter into a corrective compliance plan to remedy a problem that caused its failure to meet

a participation rate, as specified at § 262.6 of this chapter.

(b) To qualify for a penalty reduction under § 262.6(j)(1) of this chapter, based on significant progress towards correcting a violation, a State must reduce the difference between the participation rate it achieved in the year for which it is subject to a penalty and the rate applicable during the penalty year (adjusted for any caseload reduction credit determined pursuant to subpart D of this part) by at least 50 percent.

§ 261.54 Is a State subject to any other penalty relating to its work program?

(a) If we determine that, during a fiscal year, a State has violated section 407(e) of the Act, relating to imposing penalties against individuals, we must reduce the SFAG payable to the State.

(b) The penalty amount for a fiscal year will equal between one and five percent of the adjusted SFAG.

(c) We impose a penalty by reducing the SFAG payable for the fiscal year that immediately follows our final determination that a State is subject to a penalty and our final determination of the penalty amount.

§ 261.55 Under what circumstances will we reduce the amount of the penalty for not properly imposing penalties on individuals?

(a) We will reduce the amount of the penalty based on the degree of the State's noncompliance.

(b) In determining the size of any reduction, we will consider objective evidence of:

(1) Whether the State has established a control mechanism to ensure that the grants of individuals are appropriately reduced for refusing to engage in required work; and

(2) The percentage of cases for which the grants have not been appropriately reduced.

§ 261.56 What happens if a parent cannot obtain needed child care?

(a)(1) If the individual is a single custodial parent caring for a child under age six, the State may not reduce or terminate assistance based on the parent's refusal to engage in required work if he or she demonstrates an in-

ability to obtain needed child care for one or more of the following reasons:

(i) Appropriate child care within a reasonable distance from the home or work site is unavailable;

(ii) Informal child care by a relative or under other arrangements is unavailable or unsuitable; or

(iii) Appropriate and affordable formal child care arrangements are unavailable.

(2) Refusal to work when an acceptable form of child care is available is not protected from sanctioning.

(b)(1) The State will determine when the individual has demonstrated that he or she cannot find child care, in accordance with criteria established by the State.

(2) These criteria must:

(i) Address the procedures that the State uses to determine if the parent has a demonstrated inability to obtain needed child care;

(ii) Include definitions of the terms "appropriate child care," "reasonable distance," "unsuitability of informal care," and "affordable child care arrangements"; and

(iii) Be submitted to us.

(c) The TANF agency must inform parents about:

(1) The penalty exception to the TANF work requirement, including the criteria and applicable definitions for determining whether an individual has demonstrated an inability to obtain needed child care;

(2) The State's process or procedures (including definitions) for determining a family's inability to obtain needed child care, and any other requirements or procedures, such as fair hearings, associated with this provision; and

(3) The fact that the exception does not extend the time limit for receiving Federal assistance.

[64 FR 17884, Apr. 12, 1999; 64 FR 40291, July 26, 1999]

§ 261.57 What happens if a State sanctions a single parent of a child under six who cannot get needed child care?

(a) If we determine that a State has not complied with the requirements of § 261.56, we will reduce the SFAG payable to the State by no more than five percent for the immediately succeeding

fiscal year unless the State demonstrates to our satisfaction that it had reasonable cause or it achieves compliance under a corrective compliance plan pursuant to §§ 262.5 and 262.6 of this chapter.

(b) We will impose the maximum penalty if:

(1) The State does not have a state-wide process in place to inform parents about the exception to the work requirement and enable them to demonstrate that they have been unable to obtain child care; or

(2) There is a pattern of substantiated complaints from parents or organizations verifying that a State has reduced or terminated assistance in violation of this requirement.

(c) We may impose a reduced penalty if the State demonstrates that the violations were isolated or that they affected a minimal number of families.

Subpart F—How Do Welfare Reform Waivers Affect State Penalties?

§ 261.60 How do existing welfare reform waivers affect a State's penalty liability under this part?

A welfare reform waiver could affect a State's penalty liability under this part, subject to subpart C of part 260 of this chapter and section 415 of the Act.

Subpart G—What Nondisplacement Rules Apply in TANF?

§ 261.70 What safeguards are there to ensure that participants in work activities do not displace other workers?

(a) An adult taking part in a work activity outlined in § 261.30 may not fill a vacant employment position if:

(1) Another individual is on layoff from the same or any substantially equivalent job; or

(2) The employer has terminated the employment of any regular employee or caused an involuntary reduction in its work force in order to fill the vacancy with an adult taking part in a work activity.

(b) A State must establish and maintain a grievance procedure to resolve complaints of alleged violations of the displacement rule in this section.

(c) This section does not preempt or supersede State or local laws providing greater protection for employees from displacement.

PART 262—ACCOUNTABILITY PROVISIONS—GENERAL

Sec.

262.0 What definitions apply to this part?

262.1 What penalties apply to States?

262.2 When do the TANF penalty provisions apply?

262.3 How will we determine if a State is subject to a penalty?

262.4 What happens if we determine that a State is subject to a penalty?

262.5 Under what general circumstances will we determine that a State has reasonable cause?

262.6 What happens if a State does not demonstrate reasonable cause?

262.7 How can a State appeal our decision to take a penalty?

AUTHORITY: 31 U.S.C. 7501 *et seq.*; 42 U.S.C. 606, 609, and 610.

SOURCE: 64 FR 17890, Apr. 12, 1999, unless otherwise noted.

§ 262.0 What definitions apply to this part?

The general TANF definitions at §§ 260.30 through 260.33 of this chapter apply to this part.

§ 262.1 What penalties apply to States?

(a) We will assess fiscal penalties against States under circumstances defined in parts 261 through 265 of this chapter. The penalties are:

(1) A penalty of the amount by which a State misused its TANF funds;

(2) An additional penalty of five percent of the adjusted SFAG if such misuse was intentional;

(3) A penalty of four percent of the adjusted SFAG for each quarter a State fails to submit an accurate, complete and timely required report;

(4) A penalty of up to 21 percent of the adjusted SFAG for failure to satisfy the minimum participation rates;

(5) A penalty of no more than two percent of the adjusted SFAG for failure to participate in IEVS;

(6) A penalty of no more than five percent of the adjusted SFAG for failure to enforce penalties on recipients who are not cooperating with the State