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Subtitle B—Regulations Relating to Public Welfare

CHAPTER I [RESERVED]

CHAPTER II—OFFICE OF FAMILY ASSISTANCE (ASSISTANCE PROGRAMS), ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES

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PART 200 [RESERVED]

PART 201—GRANTS TO STATES FOR PUBLIC ASSISTANCE PROGRAMS

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AUTHORITY: 42 U.S.C. 303, 603, 1203, 1301, 1302, 1316, 1353 and 1383 (note).

SOURCE: 35 FR 12180, July 29, 1970, unless otherwise noted.

§ 201.0 Scope and applicability.

Titles I, X, XIV and XVI (as in effect without regard to section 301 of the Social Security Amendments of 1972) shall continue to apply to Puerto Rico, the Virgin Islands, and Guam. The term *State* as used in such titles means Puerto Rico, the Virgin Islands, and Guam.

[39 FR 8326, Mar. 5, 1974]

§ 201.1 General definitions.

When used in this chapter, unless the context otherwise indicates:

(a) *Act* means the Social Security Act, and titles referred to are titles of that Act;

(b) *Department* means the Department of Health and Human Services;

(c) *Administrator* means the Administrator, Family Support Administration;

(d) *Secretary* means the Secretary of Health and Human Services;

(e) *Administration* means the Family Support Administration;

(f) *Regional Administrator* means the Regional Administrator of the Family Support Administration;

(g) *State* means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. The term ''State'' with respect to American Samoa applies to the programs set forth in title IV-A and IV-F of the Act;

(h) *State agency* means the State agency administering or supervising the administration of the State plan or plans under title I, IV-A, IV-F, X, or XVI (AABD) of the Act;

(i) The terms *regional office* and *central office* refer to the regional offices and the central office of the Family Support Administration, respectively.

[35 FR 12180, July 29, 1970, as amended at 39 FR 34543, Sept. 26, 1974; 53 FR 36578, Sept. 21, 1988; 57 FR 30425, July 9, 1992]

Subpart A—Approval of State Plans and Certification of Grants

§ 201.2 General.

The State plan is a comprehensive statement submitted by the State agency describing the nature and scope of its program and giving assurance that it will be administered in conformity with the specific requirements stipulated in the pertinent title of the Act, the regulations in subtitle A and this chapter of this title, and other applicable official issuances of the Department. The State plan contains all information necessary for the Administration to determine whether the plan can be approved, as a basis for Federal financial participation in the State program.

[35 FR 12180, July 29, 1970, as amended at 53 FR 36578, Sept. 21, 1988]

§ 201.3 Approval of State plans and amendments.

The State plan consists of written documents furnished by the State to cover each of its programs under the Act: Old-age assistance (title I); aid and services to needy families with children (part A of title IV); aid to the blind (title X); aid to the permanently and totally disabled (title XIV); or aid to the aged, blind or disabled (title XVI). The State may submit the common material on more than one program as an integrated plan. However, it must identify the provisions pertinent to each title since a separate plan must be approved for each public assistance title. A plan submitted under title XVI encompasses, under a single plan, the programs otherwise covered by three separate plans under titles I, X, and XIV. After approval of the original plan by the Administration, all relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so that the Administration may determine whether the plan continues to meet Federal requirements and policies.

(a) *Submittal.* State plans and revisions of the plans are submitted first to the State governor or his designee for review in accordance with § 204.1 of this chapter, and then to the regional office. The States are encouraged to obtain consultation of the regional staff when a plan is in process of preparation or revision.

(b) *Review.* Staff in the regional offices are responsible for review of State plans and amendments. They also initiate discussion with the State agency on clarification of significant aspects of the plan which come to their attention in the course of this review. State plan material on which the regional staff has questions concerning the application of Federal policy is referred with recommendations as required to the central office for technical assistance. Comments and suggestions, including those of consultants in specified areas, may be prepared by the central office for use by the regional staff in negotiations with the State agency.

(c) *Action.* The Regional Administrator, exercised delegated authority to take affirmative action on State plans and amendments thereto on the basis of policy statements or precedents previously approved by the Administrator. The Administrator retains authority for determining that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval, except that a final determination of disapproval may not be made without prior consultation and discussion by the Administrator with the Secretary. The Regional Administrator, or the Administrator formally notifies the State agency of the actions taken on State plans or revisions.

(d) *Basis for approval.* Determinations as to whether State plans (including plan amendments and administrative practice under the plans) originally meet or continue to meet, the requirements for approval are based on relevant Federal statutes and regulations. Guidelines are furnished to assist in the interpretation of the regulations.

(e) *Prompt approval of State plans.* Pursuant to section 1116 of the Act, the determination as to whether a State plan submitted for approval conforms to the requirements for approval under the Act and regulations issued pursuant thereto shall be made promptly and not later than the 90th day following the date on which the plan submittal is received in the regional office, unless the Regional Administrator, has secured from the State agency a written agreement to extend that period.

(f) *Prompt approval of plan amendments.* Any amendment of an approved State plan may, at the option of the State, be considered as a submission of a new State plan. If the State requests that such amendment be so considered the determination as to its conformity with the requirements for approval shall be made promptly and not later than the 90th day following the date on which such a request is received in the regional office with respect to an amendment that has been received in such office, unless the Regional Administrator, has secured from the State agency a written agreement to extend that period. In absence of request by a State that an amendment of an approved State plan shall be considered as a submission of a new State plan,

the procedures under § 201.6 (a) and (b) shall be applicable.

(g) *Effective date.* The effective date of a new plan may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted, and with respect to expenditures for assistance under such plan, may not be earlier than the first day on which the plan is in operation on a statewide basis. The same applies with respect to plan amendments that provide additional assistance or services to persons eligible under the approved plan or that make new groups eligible for assistance or services provided under the approved plan. For other plan amendments the effective date shall be as specified in other sections of this chapter.

[35 FR 12180, July 29, 1970, as amended at 39 FR 34542, Sept. 26, 1974; 42 FR 43977, Sept. 1, 1977; 53 FR 36579, Sept. 21, 1988]

§ 201.4 Administrative review of certain administrative decisions.

Pursuant to section 1116 of the Act, any State dissatisfied with a determination of the Administrator pursuant to § 201.3 (e) or (f) with respect to any plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Regional Administrator, asking the Administrator for reconsideration of the issue of whether such plan or amendment conforms to the requirements for approval under the Act and pertinent Federal requirements. Within 30 days after receipt of such a petition, the Administrator shall notify the State of the time and place at which the hearing for the purpose of reconsidering such issue will be held. Such hearing shall be held not less than 30 days nor more than 60 days after the date notice of such hearing is furnished to the State, unless the Administrator and the State agree in writing on another time. For hearing procedures, see part 213 of this chapter. A determination affirming, modifying, or reversing the Administrator's original decision will be made within 60 days of the conclusion of the hearing. Action pursuant to an initial determination by the Administrator described in such § 201.3 (e) or (f) that a plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Administrator subsequently determines that his original decision was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

[35 FR 12180, July 29, 1970, as amended at 42 FR 43977, Sept. 1, 1977; 53 FR 36579, Sept. 21, 1988]

§ 201.5 Grants.

To States with approved plans, grants are made each quarter for expenditures under the plan for assistance, services, training and administration. The determination as to the amount of a grant to be made to a State is based upon documents submitted by the State agency containing information required under the Act and such other pertinent facts, including title IV-A the appropriate Federal share of child support collections made by the State, as may be found necessary.

(a) *Form and manner of submittal.* (1) Time and place: The estimates for public assistance grants for each quarterly period must be forwarded to the regional office 45 days prior to the period of the estimate. They include a certification of State funds available and a justification statement in support of the estimates. A statement of quarterly expenditures and any necessary supporting schedules must be forwarded to the Department of Health and Human Services, Family Support Administration, not later than 30 days after the end of the quarter.

(2) Description of forms: ''State Agency Expenditure Projection—Quarterly Projection by Program'' represents the State agency's estimate of the total amount and the Federal share of expenditures for assistance, services, training, and administration to be made during the quarter for each of the public assistance programs under the Act. From these estimates the State and Federal shares of the total expenditures are computed. The State's computed share of total estimated expenditures is the amount of State and local funds necessary for the quarter. The Federal share is the basis for the funds to be advanced for the quarter. The

State agency must also certify, on this form or otherwise, the amount of State funds (exclusive of any balance of advances received from the Federal Government) actually on hand and available for expenditure; this certification must be signed by the executive officer of the State agency submitting the estimate or a person officially designated by him, or by a fiscal officer of the State if required by State law or regulation. (A form ''Certificate of Availability of State Funds for Assistance and Administration during Quarter'' is available for submitting this information, but its use is optional.) If the amount of State funds (or State and local funds if localities participate in the program), shown as available for expenditures is not sufficient to cover the State's proportionate share of the amount estimated to be expended, the certification must contain a statement showing the source from which the amount of the deficiency is expected to be derived and the time when this amount is expected to be made available.

(3) The State agency must also submit a quarterly statement of expenditures for each of the public assistance programs under the Act. This is an accounting statement of the disposition of the Federal funds granted for past periods and provides the basis for making the adjustments necessary when the State's estimate for any prior quarter was greater or less than the amount the State actually expended in that quarter. The statement of expenditures also shows the share of the Federal Government in any recoupment, from whatever source, including for title IV-A the appropriate share of child support collections made by the State, of expenditures claimed in a prior period, and also in expenditures not properly subject to Federal financial participation which are acknowledged by the State agency, including the share of the Federal Government for uncashed and cancelled checks as described at 45 CFR 201.67 and replacement checks as described at 45 CFR 201.70 in this part, or which have been revealed in the course of an audit.

(b) *Review.* The State's estimates are analyzed by the regional office staff and are forwarded with recommendations as required to the central office. The central office reviews the State's estimate, other relevant information, and any adjustments to be made for prior periods, and computes the grant.

(c) *Grant award.* The grant award computation form shows, by program, the amount of the estimate for the ensuing quarter, and the amounts by which the estimate is reduced or increased because of over- or under-estimate for the prior quarter and for other adjustments. This form is transmitted to the State agency to draw the amount of the grant award, as needed, to meet the Federal share of disbursements. The draw is through a commercial bank and the Federal Reserve system against a continuing letter of credit certified to the Secretary of the Treasury in favor of the State payee. A copy of the grant award notice is sent to the State Central Information Reception Agency in accord with section 201 of the Intergovernmental Cooperation Act of 1968.

(d) *Letter of credit payment system.* The letter of credit system for payment of advances of Federal funds was established pursuant to Treasury Department regulations (Circular No. 1075), published in the FEDERAL REGISTER on July 11, 1967 (32 FR 10201). The HEW ''Instructions to Recipient Organizations for Use of Letter of Credit'' was transmitted to all grantees by memorandum from the Assistant Secretary-Comptroller on January 15, 1968.

(e) *General administrative requirements.* With the following exceptions, the provisions of part 74 of this title, establishing uniform administrative requirements and cost principles, shall apply to all grants made to States under this part:

45 CFR PART 74

Subpart G—Matching and Cost Sharing.
Subpart I—Financial Reporting Requirements.

[35 FR 12180, July 29, 1970, as amended at 38 FR 26320, Sept. 19, 1973; 46 FR 48003, Sept. 30, 1981; 53 FR 24269, June 28, 1988; 53 FR 36579, Sept. 21, 1988]

§ 201.6 Withholding of payment; reduction of Federal financial participation in the costs of social services and training.

(a) *When withheld.* Further payments to a State are withheld in whole or in part if the Administrator, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of an approved plan, finds:

(1) That the plan no longer complies with the provisions of section 2, 402, 1002, 1402, or 1602 of the Act; or

(2) That in the administration of the plan there is failure to comply substantially with any such provision.

A question of noncompliance of a State plan may arise from an unapprovable change in the approved State plan, the failure of the State to change its approved plan to conform to a new Federal requirement for approval of State plans, or the failure of the State in practice to comply with a Federal requirement, whether or not its State plan has been amended to conform to such requirement.

(b) *When the rate of Federal financial participation is reduced.* Under title I, X, XIV, or XVI (AABD) of the Act, Federal financial participation in the costs of social services and training approved at the rate of 75 per centum is reduced to 50 per centum if the Administrator, after reasonable notice and opportunity for a hearing to the State agency, finds:

(1) That the plan provision under such title for prescribed services no longer complies with the Federal requirements with respect to such prescribed services; or

(2) That in the administration of the plan there is a failure to comply substantially with such plan provision.

(c) *Information discussions.* Hearings with respect to matters under paragraph (a) or (b) of this section are generally not called, however, until after reasonable effort has been made by the Administration to resolve the questions involved by conference and discussion with State officials. Formal notification of the date and place of hearing does not foreclose further negotiations with State officials.

(d) *Conduct of hearings.* For hearing procedures, see part 213 of this chapter.

(e) *Notification of withholding.* If the Administrator makes a finding of noncompliance with respect to a matter under paragraph (a) of this section, the State agency is notified that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the plan not affected by such failure), until the Administrator is satisfied that there will no longer be any such failure to comply. Until he is so satisfied, no further payments will be made to the State (or will be limited to categories under or parts of the plan not affected by such failure).

(f) *Notification of reduction in the rate of Federal financial participation.* If the Administrator makes a finding of noncompliance with respect to a matter under paragraph (b) of this section, the State agency is notified that further payments will be made to the State at the rate of 50 per centum of the costs of services and training, until the Administrator is satisfied that there will no longer be any failure to comply.

[35 FR 12180, July 29, 1970, as amended at 39 FR 34542, Sept. 26, 1974; 53 FR 36579, Sept. 21, 1988]

§ 201.7 Judicial review.

Any State dissatisfied with a final determination of the Secretary pursuant to § 201.4 or § 201.6(a) may, within 60 days after it has been notified of such determination, file with the U.S. Court of Appeals for the circuit in which such State is located a petition for review of such determination. After a copy of the petition is transmitted by the clerk of the court to the Secretary, the Secretary thereupon shall file in the court the record of proceedings upon which such determination was based as provided in section 2112 of title 28, United States Code. The court is bound by the Secretary's findings of fact, if supported by substantial evidence. The court has jurisdiction to affirm the Secretary's decision, or set it aside in whole or in part, or, for good cause, to remand the case for additional evidence. If the case is remanded, the Secretary may thereupon make new or modified findings of fact, and may modify his previous determination. The Secretary shall certify to the court the transcript and record of the further

proceedings. The judgment of the court is subject to review by the Supreme Court of the United States upon certiorari or certification as provided in 28 U.S.C. 1254.

Subpart B—Review and Audits

§ 201.10 Review of State and local administration.

(a) In order to provide a basis for determining that State agencies are adhering to Federal requirements and to the substantive legal and administrative provisions of their approved plans, the Administration conducts a review of State and local public assistance administration. This review includes analysis of procedures and policies of State and local agencies and examination of case records of individual recipients.

(b) Each State agency is required to carry out a continuing quality control program primarily covering determination of eligibility in statistically selected samples of individual cases. The Service conducts a continuing observation of these State systems.

(c) Adherence to other Federal requirements set forth in the pertinent titles of the Act and the regulations in this title is evaluated through review of selected case records and aspects of agency operations.

[35 FR 12180, July 29, 1970, as amended at 53 FR 36579, Sept. 21, 1988]

§ 201.11 Personnel merit system review.

A personnel merit system review is carried out by the Office of State Merit Systems of the Office of the Assistant Secretary for Administration of the Department. The purpose of the review is to evaluate the effectiveness of the State merit system relating to the public assistance programs and to determine whether there is compliance with Federal requirements in the administration of the merit system plan. See part 70 of this title.

§ 201.12 Public assistance audits.

(a) Annually, or at such frequencies as are considered necessary and appropriate, the operations of the State agency are audited by representatives of the Audit Agency of the Department. Such audits are made to determine whether the State agency is being operated in a manner that:

(1) Encourages prudent use of program funds, and

(2) Provides a reasonable degree of assurance that funds are being properly expended, and for the purposes for which appropriated and provided for under the related Act and State plan, including State laws and regulations.

(b) Reports of these audits are released by the Audit Agency simultaneously to program officials of the Department, and to the cognizant State officials. These audit reports relate the opinion of the Audit Agency on the practices reviewed and the allowability of costs audited at the State agency. Final determinations as to actions required on all matters reported are made by cognizant officials of the Department.

§ 201.13 Action on audit and review findings.

(a) If the audit results in no exceptions, the State agency is advised by letter of this result. The general course for the disposition of proposed exceptions resulting from audits involves the submittal of details of these exceptions to the State agency which then has an opportunity to concur in the proposed exceptions or to assemble and submit additional facts for purposes of clearance. Provision is made for the State agency to appeal proposed audit exceptions in which it has not concurred and which have not been deleted on the basis of clearance material. After consideration of a State agency's appeal by the Administrator, the Administration advises the State agency of any expenditures in which the Federal Government may not participate and requests it to include the amount as adjustments in a subsequent statement of expenditures. Expenditures in which it is found the Federal Government may not participate and which are not properly adjusted through the State's claim will be deducted from subsequent grants made to the State agency.

(b) If the Federal or State reviews reveal serious problems with respect to compliance with any Federal requirement, the State agency is required to

correct its practice so that there will be no recurrence of the problem in the future.

[35 FR 12180, July 29, 1970, as amended at 53 FR 36579, Sept. 21, 1988]

§ 201.14 Reconsideration under section 1116(d) of the Act.

(a) *Applicability.* This section applies to any disallowance of any item or class of items for which FFP is claimed under title I, IV, X, XIV, XVI(AABD), or XX of the Act, with respect to which reconsideration was requested prior to March 6, 1978, unless the State by filing a written notice to that effect with the Executive Secretary, Departmental Grant Appeals Board (with proof of service on the head of the constituent agency), within 30 days after mailing of the confirmation of the disallowance by the agency head, elects to have the reconsideration governed by 45 CFR part 16.

(1) Reduction of the Federal share of assistance payments under title IV-A, for failure to certify WIN registrants (section 402(e) of the Act);

(2) Reduction by one per centum of the quarterly amount payable to a State for all expenditures under title IV-A for failure, in certain cases, to carry out the provisions of section 402(a)(15) of the Act which require the offering of and arrangement for the provision of family planning services (section 402(f) of the Act);

(3)–(5) [Reserved]

(6) Any other decision pursuant to sections 3, 403, 422, 455, 1003, 1403, 1603, or 2003, of the Act.

(b) *Notice of disallowance determination.* (1) When the Regional Administrator, determines that a State claim for FFP in expenditures for a particular item or class of items is not allowable, he shall promptly issue a disallowance letter to the State.

(2) This disallowance letter shall include where appropriate:

(i) The date or dates on which the State's claim for FFP was made;

(ii) The time period during which the expenditures in question were made or claimed to have been made;

(iii) The date and amount of any payment or notice of deferral;

(iv) A statement of the amount of FFP claimed, allowed, and disallowed and the manner in which these amounts were calculated;

(v) Findings of fact on which the disallowance determination is based or a reference to other documents previously or contemporaneously furnished to the State (such as a report of a financial review or audit) which contain the findings of fact on which the disallowance determination is based;

(vi) Pertinent citations to the law, regulations, guides and instructions supporting the action taken; and

(vii) Notice of the State's right to request reconsideration of the disallowance under this section and the time within such request must be made.

(c) *Request for reconsideration.* (1) To obtain reconsideration of a disallowance of an item or class of items for FFP, a State shall, within 30 days of the date of the disallowance letter, request reconsideration by the Administrator, with copy to the Regional Administrator, and enclose a copy of the disallowance letter.

(2) The request for reconsideration must be accompanied by a brief statement of the issues in dispute, including an explanation of the State's position with respect to each issue.

(d) *Reconsideration procedures.* (1) The Administrator will promptly acknowledge receipt of a State's request for reconsideration.

(2) Upon receipt of a copy of the request for reconsideration, the Regional Administrator, shall, within 30 days of the request, provide to the Administrator a complete record of all material which he believes to have a bearing on the reconsideration, including any reports of audit or review which were the basis for his decision.

(3) The Administrator shall promptly forward to the State a list of all items currently in the record, including those received from the Regional Administrator, or with respect to the medical assistance program under title XIX, Regional Medicaid Director and make available for examination, inspection and copying any such items not previously received by the State.

(4) Within 60 days from the date of the Administrator's transmittal to the State under paragraph (d)(3) of this

section, the State shall submit in writing to the Administrator any new relevant evidence, documentation, or argument and shall simultaneously submit a copy thereof to the Regional Administrator, or with respect to the medical assistance program under title XIX, Regional Medicaid Director.

(5) The Regional Administrator, or with respect to the medical assistance program under title XIX, Regional Medicaid Director shall, within 60 days of submittal by the State, submit to the Administrator (with a copy to the State) an analysis of the issues relevant to the disallowance including:

(i) A restatement of the findings on which the disallowance was based;

(ii) A response to each issue raised by the State with respect to such findings;

(iii) A response to any other issues raised by the State, providing additional documentation when necessary; and

(iv) Any additional documentation which he deems relevant.

(6) The State may respond to the material submitted by the Regional Administrator, or with respect to the medical assistance program under title XIX, Regional Medicaid Director by submitting to the Administrator within 15 days any supplemental material the State wishes to have entered into the record.

(7) At the time of submitting any additional material pursuant to paragraph (d)(4), the State may obtain, upon request to him, a conference with the Administrator, during which it may discuss with the Administrator its position on the issues. The State may, at its own expense, have such conference transcribed; the transcript shall become part of the administrative record.

(8) In reconsidering the disallowance, the Administrator may request any additional information or documents necessary to his decision.

(9) New relevant evidence received into the record by the Administrator pursuant to paragraph (d)(8) of this section which is not received from, or previously otherwise made available to, the State shall promptly be made available to the State for examination, inspection, and copying and the State will be given appropriate additional time for comment.

(10) All documents, reports, correspondence, and other materials considered by the Administrator in reaching his decision shall constitute the record of the reconsideration proceedings.

(11) After consideration of such record and the laws and regulations pertinent to the issues in question, the Administrator shall issue a written decision, based on the administrative record, which summarizes the facts and cites the regulations or statutes that support the decision. The decision shall constitute final administrative action on the matter and shall be promptly mailed to the head of the State agency.

(12) Either the state or the Regional Administrator, or with respect to the medical assistance program under title XIX, Regional Medicaid Director may request from the Administrator, for good cause, an extension of any of the time limits specified in this section.

(13) No section of this regulation shall be interpreted as waiving the Department's right to assert any provision or exemption in the Freedom of Information Act.

(e) *Implementation of the decision.* If the decision requires an adjustment in the Federal share, either upward or downward, this will be reflected in subsequent grant awards.

(f) For purposes of this section, the Administrator includes the Deputy Administrator, except that whichever official conducts the conference requested pursuant to paragraph (d)(7) of this section will also issue the final administrative decision pursuant to paragraph (d)(11) of this section.

APPENDIX—RECONSIDERATION OF DISALLOWANCES UNDER SECTION 1116 (D) OF THE SOCIAL SECURITY ACT

TRANSFER OF FUNCTIONS

Under the authority of Reorganization Plan No. 1 of 1953, and pursuant to the authorities vested in me as Secretary of Health amd Human Services, I hereby order that, with respect to reconsiderations of disallowances imposed under titles I, IV, VI, X, XIV, XVI (AABD), XIX and XX of the Social Security Act, 42 U.S.C. 301 *et seq.*, 601 *et*

seq., 801 *et seq.*, 1201 *et seq.*, 1351 *et seq.*, 1381 *et seq.* (AABD), 1396 *et seq.* and 1397 *et seq.*, all references to ''Administrator'' appearing in 45 CFR 201.14 shall be deemed to read ''Chairman, Departmental Grant Appeals Board'' and all references to ''Deputy Administrator'' appearing therein shall be deemed to refer to one or more members of the Departmental Grant Appeals Board, designated by the Chairman to decide a reconsideration. States which have previously had or requested a conference pursuant to 45 CFR 201.14(d)(7) will be entitled to a conference with the Chairman of the Departmental Grant Appeals Board acting (as provided above) as successor to the Administrator of the Social and Rehabilitation Service (SRS), or with a member or members of the Board designated by the Chairman to decide the matter, acting as successor to the Deputy Administrator of SRS. The Chairman may, at his option, utilize a Grant Appeals Panel, designated pursuant to 45 CFR 516.4(b), to decide the matter, and may supplement the § 201.14 procedures by utilizing the procedures of 45 CFR part 16 including the authority provided in 45 CFR 16.51 to waive or modify any procedural provision upon a determination that no party will be prejudiced and that the ends of justice will be served.

[40 FR 34592, Aug. 18, 1975; 40 FR 44326, Sept. 26, 1975, as amended at 41 FR 42205, Sept. 27, 1976; 42 FR 43977, Sept. 1, 1977; 42 FR 51583, Sept. 29, 1977; 43 FR 9266, Mar. 6, 1978; 51 FR 9202, Mar. 18, 1986; 53 FR 36579, Sept. 21, 1988]

§ 201.15 Deferral of claims for Federal financial participation.

(a) *Scope.* Except as otherwise provided, this section applies to all claims for Federal financial participation submitted by States pursuant to titles I, IV, X, XIV, XVI (AABD), of the Social Security Act.

(b) *Definitions.* (1) *Deferral Action* means the process of suspending payment with respect to a claim within the scope of paragraph (a) of this section, pending the receipt and analysis of further information relating to the allowability of the claim, under the procedures specified in this section.

(2) *Deferred claim* means a claim within the scope of paragraph (a) of this section upon which a deferral action has been taken.

(c) *Procedures.* (1) A claim or any portion of a claim for reimbursement for expenditures reported on the Quarterly Statement of Expenditures shall be deferred only when the Regional Administrator believes the claim or a specific portion of the claim is of questionable allowability. The deferral action will be taken within 60 days after receipt of a Quarterly Statement of Expenditures prepared in accordance with instructions issued by the Administration.

(2) When deferral action is taken on a claim, the Regional Administrator or the Administrator will within 15 days send written notice to the State identifying the type and amount of the claim and the reason for deferral. In the written notice of the deferral action, the Regional Administrator or the Administrator will request the State to make available for inspection all documents and materials which the Regional office then believes necessary to determine the allowability of the claim.

(3) Within 60 days of receipt of the notice of deferral action described in paragraph (c)(2) of this section the State shall make available to the Regional office, in readily reviewable form, all requested documents and materials, or when necessary, shall identify those documents and items of information which are not available. If the State requires additional time to make the documents and material available, it shall upon request be given an additional 60 days.

(4) The Regional office will normally initiate the review within 30 days of the date that materials become available for review.

(5) If the Regional Administrator finds that the documents and materials are not in readily reviewable form or that supplemental information is required, he will promptly notify the State. The State will have 15 days from the date of notification to complete the action requested. If the Regional Commissioner or the Administrator finds that the documents necessary to determine the allowability of the claim

are not made available within the allowed time limits, or that the documents are not made available in readily reviewable form, he shall promptly disallow the claim.

(6) The Regional Administrator or the Administrator will have 90 days after all documentation is available in readily reviewable form to determine the allowability of the deferred claim. If he is unable to complete the review within the time period the claim will be paid subject to a later determination of allowability.

(7) It is the responsibility of the State agency to establish the allowability of a deferred claim.

(8) The Regional Office or the Administrator will notify the State in writing of the decision on the allowability of the deferred claim.

(9) If a deferred claim is disallowed, the Regional Administrator or the Administrator shall advise the State of its right to reconsideration pursuant to § 201.14.

(10) A decision to pay a deferred claim shall not preclude a subsequent disallowance as a result of an audit exception or financial management review. If a subsequent disallowance should occur, the State, upon request shall be granted reconsideration pursuant to § 201.14.

[41 FR 7104, Feb. 17, 1976, as amended at 42 FR 51583, Sept. 29, 1977; 47 FR 7669, Feb. 22, 1982; 53 FR 36579, Sept. 21, 1988]

§ 201.66 Repayment of Federal funds by installments.

(a) *Basic Conditions.* When a State has been reimbursed Federal funds for expenditures claimed under titles I, IV-A, X, XIV, XVI (AABD) which are later determined to be unallowable for Federal financial participation, the State may make repayment of such Federal funds in installments provided:

(1) The amount of the repayment exceeds 2½ percent of the estimated annual State share for the program in which the unallowable expenditure occurred as set forth in paragraph (b) of this section; and

(2) The State has notified the Regional Administrator in writing of its intent to make installment repayments. Such notice must be given prior to the time repayment of the total was otherwise due.

(b) *Criteria governing installment repayments.* (1) The number of quarters over which the repayment of the total unallowable expenditures will be made will be determined by the percentage the total of such repayment is of the estimated State share of the annual expenditures for the specific program against which the recovery is made, as follows:

Total repayment amount as percentage of State share of annual expenditures for the specific program	Number of quarters to make repayment
2.5 pct. or less	1
Greater than 2.5, but not greater than 5	2
Greater than 5, but not greater than 7.5	3
Greater than 7.5, but not greater than 10	4
Greater than 10, but not greater than 15	5
Greater than 15, but not greater than 20	6
Greater than 20 but not greater than 25	7
Greater than 25, but not greater than 30	8
Greater than 30, but not greater than 47.5	9
Greater than 47.5, but not greater than 65	10
Greater than 65, but not greater than 82.5	11
Greater than 82.5, but not greater than 100	12

The quarterly repayment amounts for each of the quarters in the repayment schedule shall not be less than the following percentages of the estimated State share of the annual expenditures for the program against which the recovery is made.

For each of the following quarters	Repayment installment may not be less than these percentages
1 to 4	2.5
5 to 8	5.0
9 to 12	17.5

If the State chooses to repay amounts representing higher percentages during the early quarters, any corresponding reduction in required minimum percentages would be applied first to the last scheduled payment, then to the next to the last payment, and so forth as necessary.

(2) The latest State Agency Statement of Financial Plan for AFDC submitted by the State shall be used to estimate the State's share of annual expenditures for the specific program in which the unallowable expenditures occurred. That estimated share shall be

the sum of the State's share of the estimates (as shown on the latest State Agency Statement of Financial Plan for AFDC) for four quarters, beginning with the quarter in which the first installment is to be paid.

(3) In the case of a program terminated by law or by the State, the actual State share—rather than the estimate—shall be used for determining whether the amount of the repayment exceeds 2½% of the annual State share for the program. The annual State share in these cases will be determined using payments computable for Federal funding as reported for the program by the State on its Quarterly Statement of Expenditures reports submitted for the last four quarters preceding the date on which the program was terminated.

(4) Repayment shall be accomplished through adjustment in the quarterly grants over the period covered by the repayment schedule.

(5) The amount of the repayment for purpose of paragraphs (a) and (b) of this section may not include any amount previously approved for installment repayment.

(6) The repayment schedule may be extended beyond 12 quarterly installments if the total repayment amount exceeds 100% of the estimated State share of annual expenditures. In these circumstances, the criteria in paragraphs (b) (1) and (2) or (3) of this section, as appropriate, shall be followed for repayment of the amount equal to 100% of the annual State share. The remaining amount of the repayment shall be in quarterly amounts not less than those for the 9th through 12th quarters.

(7) The amount of a retroactive claim to be paid a State will be offset against any amounts to be, or already being, repaid by the State in installments, under the same title of the Social Security Act. Under this provision the State may choose to:

(i) Suspend payments until the retroactive claim due the State has, in fact, been offset; or

(ii) Continue payments until the reduced amount of its debt (remaining after the offset), has been paid in full. This second option would result in a shorter payment period. A retroactive claim for the purpose of this regulation is a claim applicable to any period ending 12 months or more prior to the beginning of the quarter in which the payment is to be made by the Administration.

[42 FR 28884, June 6, 1977, as amended at 47 FR 7669, Feb. 22, 1982; 52 FR 273, Jan. 5, 1987; 53 FR 36579, Sept. 21, 1988]

§ 201.67 Treatment of uncashed or cancelled checks.

(a) *Purpose.* This section provides the rules to ensure that States refund the Federal portion of uncashed or cancelled (voided) checks under titles I, IV-A, X, XIV, and XVI (AABD).

(b) *Definitions.* As used in this section—*Check* means a check or warrant that the State or local agency uses to make a payment.

Cancelled (voided) check means a check issued by the State agency or local agency which prior to its being cashed is cancelled (voided) by State or local agency action, thus preventing disbursement of funds.

Uncashed check means a check issued by the State agency or local agency which has not been cashed by the payee.

(c) *Refund of Federal financial participation (FFP) for uncashed checks*—(1) *General provisions.* If a check remains uncashed beyond a period of 180 days from the date it was issued, i.e., the date of the check, it will no longer be regarded as an amount expended because no funds have actually been disbursed. If the State agency has claimed and received FFP for the amount of the uncashed check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the State agency must identify those checks which remain uncashed beyond a period of 180 days after issuance. The State agency must report on the Quarterly Statement of Expenditures for that quarter all FFP that it received for uncashed checks. Once reported on the Quarterly Statement of Expenditures for a quarter, an uncashed check is not to be reported on a subsequent Quarterly Statement of Expenditures. If an uncashed check is cashed after the refund is made, the State agency may submit a new claim for FFP.

(d) *Refund of FFP for cancelled (voided) checks*—(1) *General provisions.* If the State agency has claimed and received FFP for the amount of a cancelled (voided) check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the State agency must identify those checks which were cancelled (voided). The State agency must report on the Quarterly Statement of Expenditures for that quarter all FFP received by the State agency for these checks. Once reported on the Quarterly Statement of Expenditures for a quarter, a cancelled (voided) check is not to be reported on a subsequent Quarterly Statement of Expenditures.

[50 FR 37661, Sept. 17, 1985]

§ 201.70 Treatment of replacement checks.

(a) *Purpose.* This section provides the rules to ensure States do not claim Federal financial participation (FFP) for replacement checks under titles I, VI-A, X, XIV, XVI (AABD) except under the circumstances specified in paragraph (c) of this section.

(b) *Definitions.* As used in this section—

Check means a check or warrant that the State or local agency uses to make a payment.

Replacement check means a check issued by the State or local agency to replace an earlier check.

(c) *Claiming of FFP for replacement checks.* The State agency may not claim FFP for the amount of a replacement check unless:

(1) It makes no claim for FFP for the earlier check;

(2) The earlier check has been cancelled (voided) and FFP refunded, where claimed, pursuant to 45 CFR 201.67(d); or

(3) The earlier check has been cashed and FFP has been refunded.

The State agency shall report the amount of the refund of FFP for the earlier check on the Quarterly Statement of Expenditures for the quarter no later than the quarter in which the replacement check is issued.

[53 FR 24269, June 28, 1988]

PART 204—GENERAL ADMINISTRATION—STATE PLANS AND GRANT APPEALS

Sec.

204.1 Submittal of State plans for Governor's review.
204.2 State plans—format.
204.3 Responsibilities of the State.
204.4 Grant appeals.

AUTHORITY: 42 U.S.C. 602(a)(44) and 1302 and sections 1, 5, 6, and 7 of Reorganization Plan No. 1 of 1953, 67 Stat. 631.

§ 204.1 Submittal of State plans for Governor's review.

A State plan under title I, IV-A, IV-B, X, XIV, XVI(AABD) of the Social Security Act, section 101 of the Rehabilitation Act of 1973, or title I of the Mental Retardation Facilities and Community Mental Health Centers Construction Act, must be submitted to the State Governor for his review and comments, and the State plan must provide that the Governor will be given opportunity to review State plan amendments and long-range program planning projections or other periodic reports thereon. This requirement does not apply to periodic statistical or budget and other fiscal reports. Under this requirement, the Office of the Governor will be afforded a specified period in which to review the material. Any comments made will be transmitted to the Family Support Administration with the documents.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302))

[39 FR 34542, Sept. 26, 1974, as amended at 53 FR 36579, Sept. 21, 1988]

§ 204.2 State plans—format.

State plans for Federally-assisted programs for which the Family Support Administration has responsibility must be submitted to the Administration in the format and containing the information prescribed by the Administration, and within time limits set in implementing instructions issued by the Administration. Such time limits will be adequate for proper preparation of plans and submittal in accordance

with the requirements for State Governors' review (see §204.1 of this chapter).

(Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302; sec. 7(b), 68 Stat. 658, 29 U.S.C. 37(b); sec. 139, 84 Stat. 1323, 42 U.S.C. 2677(b))

[38 FR 16872, June 27, 1973, as amended at 53 FR 36579, Sept. 21, 1988]

§204.3 Responsibilities of the State.

The State agency shall be responsible for assuring that the benefits and services available under titles IV-A, IV-D, and IV-F are furnished in an integrated manner.

[57 FR 30425, July 9, 1992]

§204.4 Grant appeals.

(a) *Scope.* This section applies to certain determinations (as set forth in part 16, appendix A, section C of this title), made with respect to direct, discretionary project grants awarded by the Family Support Administration, and such other grants or grant programs as the Administrator, with the approval of the Secretary, may designate. The statutory authority for current grant programs to which this section applies appears in the appendix to this section. This section is also applicable to determinations with respect to grants which were made under authority which has expired or been repealed since the grants were made, even though such authority does not appear in the appendix.

(b) *Submission.* (1) A grantee who has received notification, as described in §16.3 (b) and (c) of this title, of a determination described in part 16, appendix A, section C of this title, may request reconsideration by informing the Grants Appeals Officer as identified in the final adverse determination or otherwise designated by the Administrator, Family Support Administration, Washington, DC 20201 of the grantee's intent to contest the determination. The grantee's request for reconsideration must be postmarked no later than 30 days after the postmark date of the written notification of such determination, except when the Grant Appeals Officer grants an extension of time for good cause.

(2) Although the request need not follow any prescribed form, it shall clearly identify the question or questions in dispute and contain a full statement of the grantee's position with respect to such question or questions, and the pertinent facts and reasons in support of such position. The grantee shall attach to his submission a copy of the agency notification specified in §16.3(b) of this title.

(c) *Action by the Administration on requests for reconsideration.* (1) Upon receipt of such an application the Grant Appeals Officer will inform the grantee that:

(i) His request is under review, and

(ii) If no decision is received within 90 days of the postmark date of the grantee's request for reconsideration, the determination may be appealed to the Departmental Grant Appeals Board.

(2) The Grant Appeals Officer will reconsider the determination appealed from, considering any material submitted by the grantee and any other material necessary.

(3) If the response to the grantee is adverse to the grantee's position, the response will include notification of the grantee's right to appeal to the Departmental Grant Appeals Board.

APPENDIX

This section is issued under sections 1, 5, 6, and 7 of Reorganization Plan No. 1 of 1953, 18 FR 2053, 67 Stat. 631 and is applicable to programs carried out under the following authorities:

(1) Section 222(a) and (b) of the Social Security Amendments of 1972 (Pub. L. 92–603).

(2) Section 426 of the Social Security Act (42 U.S.C. 262).

(3) Section 707 of the Social Security Act (42 U.S.C. 907).

(4) Section 1110 of the Social Security Act (42 U.S.C. 1310).

(5) Section 1115 of the Social Security Act (42 U.S.C. 1315).

(Secs. 1, 5, 6, 7 Reorganization Plan No. 1 of 1953, 67 Stat. 631)

[40 FR 51443, Nov. 5, 1975, as amended at 53 FR 36579, Sept. 21, 1988]

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Sec.

205.5 Plan amendments.
205.10 Hearings.

205.25 Eligibility of supplemental security income beneficiaries for food stamps or surplus commodities.
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205.45 Federal financial participation in relation to State emergency welfare preparedness.
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205.60 Reports and maintenance of records.
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205.100 Single State agency.
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205.120 Statewide operation.
205.130 State financial participation.
205.150 Cost allocation.
205.160 Equipment—Federal financial participation.
205.170 State standards for office space, equipment, and facilities.
205.190 Standard-setting authority for institutions.

AUTHORITY: 42 U.S.C. 602, 603, 606, 607, 1302, 1306(a), and 1320b–7: 42 U.S.C. 1973gg–5.

§ 205.5 Plan amendments.

(a) *State plan requirements.* A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that the plan will be amended whenever necessary to reflect new or revised Federal statutes or regulations, or material change in any phase of State law, organization, policy or State agency operation.

(b) *Federal financial participation.* Except where otherwise provided, Federal financial participation is available in the additional expenditures resulting from an amended provision of the State plan as of the first day of the calendar quarter in which an approvable amendment is submitted or the date on which the amended provision becomes effective in the State, whichever is later.

[39 FR 34542, Dec. 26, 1974, as amended at 53 FR 36579, Sept. 21, 1988]

§ 205.10 Hearings.

(a) *State plan requirements.* A State plan under title I, IV-A, X, XIV, or XVI(AABD) of the Social Security Act shall provide for a system of hearings under which:

(1) The single State agency responsible for the program shall be responsible for fulfillment of hearing provisions which shall provide for:

(i) A hearing before the State agency, or

(ii) An evidentiary hearing at the local level with a right of appeal to a State agency hearing. Where a State agency adopts a system of evidentiary hearings with an appeal to a State agency hearing, it may, in some political subdivisions, permit local evidentiary hearings, and in others, provide for a single hearing before the State agency. Under this requirement hearings shall meet the due process standards set forth in the U.S. Supreme Court decision in Goldberg v. Kelly, 397 U.S. 254 (1970) and the standards set forth in this section.

(2) Hearing procedures shall be issued and publicized by the State agency. Such procedures shall provide for a face-to-face hearing or, at State option, a hearing by telephone when the applicant or recipient also agrees. Under this provision, the State shall assure that the applicant or recipient is afforded all rights as specified in this section, whether the hearing is face-to-face or by telephone;

(3) Every applicant or recipient shall be informed in writing at the time of application and at the time of any action affecting his claim:

(i) Of his right to a hearing, as provided in paragraph (a)(5) of this section;

(ii) Of the method by which he may obtain a hearing;

(iii) That he may be represented by an authorized representative, such as legal counsel, relative, friend, or other spokesman, or he may represent himself.

(4) In cases of intended action to discontinue, terminate, suspend or reduce assistance or to change the manner or form of payment to a protective, vendor, or two-party payment under § 234.60:

(i) The State or local agency shall give timely and adequate notice, except as provided for in paragraphs (a)(4)(ii), (iii), or (iv) of this section. Under this requirement:

(A) *Timely* means that the notice is mailed at least 10 days before the date of action, that is, the date upon which the action would become effective;

(B) *Adequate* means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request an evidentiary hearing (if provided) and a State agency hearing, the circumstances under which assistance is continued if a hearing is requested, and if the agency action is upheld, that such assistance must be repaid under title IV-A, and must also be repaid under titles I, X, XIV or XVI (AABD) if the State plan provides for recovery of such payments.

(ii) The agency may dispense with timely notice but shall send adequate notice not later than the date of action when:

(A) The agency has factual information confirming the death of a recipient or of the AFDC payee when there is no relative available to serve as new payee;

(B) The agency receives a clear written statement signed by a recipient that he no longer wishes assistance, or that gives information which requires termination or reduction of assistance, and the recipient has indicated, in writing, that he understands that this must be the consequence of supplying such information;

(C) The recipient has been admitted or committed to an institution, and further payments to that individual do not qualify for Federal financial participation under the State plan;

(D) The recipient has been placed in skilled nursing care, intermediate care or long-term hospitalization;

(E) The claimant's whereabouts are unknown and agency mail directed to him has been returned by the post office indicating no known forwarding address. The claimant's check must, however, be made available to him if his whereabouts become known during the payment period covered by a returned check;

(F) A recipient has been accepted for assistance in a new jurisdiction and that fact has been established by the jurisdiction previously providing assistance;

(G) An AFDC child is removed from the home as a result of a judicial determination, or voluntarily placed in foster care by his legal guardian;

(H) For AFDC, the agency takes action because of information the recipient furnished in a monthly report or because the recipient has failed to submit a complete or a timely monthly report without good cause. (See § 233.37);

(I) A special allowance granted for a specific period is terminated and the recipient has been informed in writing at the time of initiation that the allowance shall automatically terminate at the end of the specified period;

(J) The agency has made a presumption of mismanagement as a result of a recipient's nonpayment of rent and provides for post hearings in such circumstances;

(K) An individual's payment is suspended or reduced for failure to meet a payment after performance obligation as set forth at § 233.101(b)(2)(iv) (B) or (C) of this chapter. In addition to the contents set forth in paragraph (a)(4)(i)(B) of this section, the adequate notice must advise the individual of the right to have assistance immediately reinstated retroactive to the date of action at the previous month's level pending the hearing decision if he or she makes a request for a hearing and reinstatement within 10 days after the date of the notice.

(iii) When changes in either State or Federal law require automatic grant adjustments for classes of recipients,

timely notice of such grant adjustments shall be given which shall be ''adequate'' if it includes a statement of the intended action, the reasons for such intended action, a statement of the specific change in law requiring such action and a statement of the circumstances under which a hearing may be obtained and assistance continued.

(iv) When the agency obtains facts indicating that assistance should be discontinued, suspended, terminated, or reduced because of the probable fraud of the recipient, and, where possible, such facts have been verified through collateral sources, notice of such grant adjustment shall be timely if mailed at least five (5) days before action would become effective.

(5) An opportunity for a hearing shall be granted to any applicant who requests a hearing because his or her claim for financial assistance (including a request for supplemental payments under §§ 233.23 and 233.27) is denied, or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by any agency action resulting in suspension, reduction, discontinuance, or termination of assistance, or determination that a protective, vendor, or two-party payment should be made or continued. A hearing need not be granted when either State or Federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual appeal is incorrect grant computation.

(i) A request for a hearing is defined as a clear expression by the claimant (or his authorized representative acting for him), to the effect that he wants the opportunity to present his case to higher authority. The State may require that such request be in written form in order to be effective;

(ii) The freedom to make such a request shall not be limited or interfered with in any way. The agency may assist the claimant to submit and process his request;

(iii) The claimant shall be provided reasonable time, not to exceed 90 days, in which to appeal an agency action;

(iv) Agencies may respond to a series of individual requests for hearing by conducting a single group hearing. Agencies may consolidate only cases in which the sole issue involved is one of State or Federal law or policy or changes in State or Federal law. In all group hearings, the policies governing hearings must be followed. Thus, each individual claimant shall be permitted to present his own case or be represented by his authorized representative;

(v) The agency may deny or dismiss a request for a hearing where it has been withdrawn by the claimant in writing, where the sole issue is one of State or Federal law requiring automatic grant adjustments for classes of recipients, where a decision has been rendered after a WIN hearing before the manpower agency that a participant has, without good cause, refused to accept employment or participate in the WIN program, or has failed to request such a hearing after notice of intended action for such refusal, or where it is abandoned. Abandonment may be deemed to have occurred if the claimant, without good cause therefor, fails to appear by himself or by authorized representative at the hearing scheduled for such claimant.

(6) If the recipient requests a hearing within the timely notice period:

(i) Assistance shall not be suspended, reduced, discontinued or terminated (but is subject to recovery by the agency if its action is sustained), until a decision is rendered after a hearing, unless:

(A) A determination is made at the hearing that the sole issue is one of State or Federal law or policy, or change in State or Federal law and not one of incorrect grant computation;

(B) A change affecting the recipient's grant occurs while the hearing decision is pending and the recipient fails to request a hearing after notice of the change;

(C) The recipient specifically requests that he or she not receive continued assistance pending a hearing decision; or

(D) The agency has made a presumption of mismanagement as a result of a recipient's nonpayment of rent and provides for the opportunity for a hearing after the manner or form of payment has been changed for such cases in accordance with § 234.60 (a)(2) and (a)(11).

(ii) The agency shall promptly inform the claimant in writing if assistance is to be discontinued pending the hearing decision; and

(iii) In any case where the decision of an evidentiary hearing is adverse to the claimant, he shall be informed of and afforded the right to make a written request, within 15 days of the mailing of the notification of such adverse decision, for a State agency hearing and of his right to request a de novo hearing. Unless a de novo hearing is specifically requested by the appellant, the State agency hearing may consist of a review by the State agency hearing officer of the record of the evidentiary hearing to determine whether the decision of the evidentiary hearing officer was supported by substantial evidence in the record. Assistance shall not be continued after an adverse decision to the claimant at the evidentiary hearing.

(7) A State may provide that a hearing request made after the date of action (but during a period not in excess of 10 days following such date) shall result in reinstatement of assistance to be continued until the hearing decision, unless (i) the recipient specifically requests that continued assistance not be paid pending the hearing decision; or (ii) at the hearing it is determined that the sole issue is one of State or Federal law or policy. In any case where action was taken without timely notice, if the recipient requests a hearing within 10 days of the mailing of the notice of the action, and the agency determines that the action resulted from other than the application of State or Federal law or policy or a change in State or Federal law, assistance shall be reinstated and continued until a decision is rendered after the hearing, unless the recipient specifically requests that continued assistance not be paid pending the hearing decision.

(8) The hearing shall be conducted at a reasonable time, date, and place, and adequate preliminary written notice shall be given.

(9) Hearings shall be conducted by an impartial official (officials) or designee of the agency. Under this requirement, the hearing official (officials) or designee shall not have been directly involved in the initial determination of the action in question.

(10) When the hearing involves medical issues such as those concerning a diagnosis, an examining physician's report, or a medical review team's decision, a medical assessment other than that of the person or persons involved in making the original decision shall be obtained at agency expense and made part of the record if the hearing officer considers it necessary.

(11) In respect to title IV-C, when the appeal has been taken on the basis of a disputed WIN registration requirement, exemption determination or finding of failure to appear for an appraisal interview, a representative of the local WIN manpower agency shall, where appropriate, participate in the conduct of the hearing.

(12) The hearing shall include consideration of:

(i) An agency action, or failure to act with reasonable promptness, on a claim for financial assistance, which includes undue delay in reaching a decision on eligibility or in making a payment, refusal to consider a request for or undue delay in making an adjustment in payment, and discontinuance, termination or reduction of such assistance;

(ii) Agency decision regarding:

(A) Eligibility for financial assistance in both initial and subsequent determinations,

(B) Amount of financial assistance or change in payments,

(C) The manner or form of payment, including restricted or protective payments, even though no Federal financial participation is claimed.

(13) The claimant, or his representative, shall have adequate opportunity:

(i) To examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing as well as during the hearing;

(ii) At his option, to present his case himself or with the aid of an authorized representative;

(iii) To bring witnesses;

(iv) To establish all pertinent facts and circumstances;

(v) To advance any arguments without undue interference;

(vi) To question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.

(14) Recommendations or decisions of the hearing officer or panel shall be based exclusively on evidence and other material introduced at the hearing. The transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the recommendation or decision of the hearing officer or panel shall constitute the exclusive record and shall be available to the claimant at a place accessible to him or his representative at a reasonable time.

(15) Decisions by the hearing authority shall:

(i) In the event of an evidentiary hearing, consist of a memorandum decision summarizing the facts and identifying the regulations supporting the decision;

(ii) In the event of a State agency de novo hearing, specify the reasons for the decision and identify the supporting evidence and regulations.

Under this requirement no persons who participated in the local decision being appealed shall participate in a final administrative decision on such a case.

(16) Prompt, definitive, and final administrative action shall be taken within 90 days from the date of the request for a hearing.

(17) The claimant shall be notified of the decision in writing and, to the extent it is available to him, of his right to appeal to State agency hearing or judicial review.

(18) When the hearing decision is favorable to the claimant, or when the agency decides in favor of the claimant prior to the hearing, the agency shall promptly make corrective payments retroactively to the date the incorrect action was taken.

(19) All State agency hearing decisions shall be accessible to the public (subject to provisions of safeguarding public assistance information).

(b) *Federal financial participation.* Federal financial participation is available for the following items:

(1) Payments of assistance continued pending a hearing decision.

(2) Payments of assistance made to carry out hearing decisions, or to take corrective action after an appeal but prior to hearing, or to extend the benefit of a hearing decision or court order to others in the same situation as those directly affected by the decision or order. Such payments may be retroactive in accordance with applicable Federal policies on corrective payments.

(3) Payments of assistance within the scope of Federally aided public assistance programs made in accordance with a court order.

(4) Administrative costs incurred by the agency for:

(i) Providing transportation for the claimant, his representative and witnesses to and from the place of the hearing;

(ii) Meeting other expenditures incurred by the claimant in connection with the hearing;

(iii) Carrying out the hearing procedures, including expenses of obtaining an additional medical assessment.

[38 FR 22007, Aug. 15, 1973, as amended at 44 FR 17941, Mar. 23, 1979; 45 FR 20480, Mar. 28, 1980; 47 FR 5673, Feb. 5, 1982; 47 FR 47827, Oct. 28, 1982; 51 FR 9202, Mar. 18, 1986; 53 FR 36579, Sept. 21, 1988; 57 FR 30425, July 9, 1992]

§ 205.25 Eligibility of supplemental security income beneficiaries for food stamps or surplus commodities.

(a) In respect to any individual who is receiving supplemental security income benefits under title XVI of the Social Security Act, the State agency shall make the following determinations:

(1) The amount of assistance such individual would have been entitled to receive for any month under the appropriate State plan in effect for December 1973, under title I, X, XIV, or XVI, and for such purpose such individual shall be deemed to be aged, blind, or permanently and totally disabled, as the case may be, under the provisions of such plan.

(2) The bonus value of the food stamps (according to the Food Stamp Schedule effective for July 1973) such individual would have been entitled to receive for such month, assuming the

individual were receiving the assistance determined under paragraph (a)(1) of this section.

(3) The amount of benefits such individual is receiving for such month under Title XVI, plus supplementary payments as defined in section 1616(a) of the Social Security Act and payments pursuant to section 212 of Pub. L. 93–66, if any.

(b) If the amount determined in paragraph (a)(1) of this section plus the amount determined in paragraph (a)(2) of this section exceeds the amount determined in paragraph (a)(3) of this section, such individual shall be eligible to participate in the food stamp program established by the Food Stamp Act of 1964 or surplus commodities distribution programs established by the Secretary of Agriculture pursuant to section 416 of the Agricultural Act of 1949, section 32 of Pub. L. 74–320, or any other law, in accordance with regulations and procedures established by the Secretary of Agriculture.

(c) For purposes of paragraph (a)(3) of this section, the State agency shall obtain the amount of the title XVI payment and the amount of any Federally administered State supplementary payment from the Social Security Administration.

(d) The State agency shall redetermine the eligibility of individuals to participate in the food stamp or surplus commodities distribution programs hereunder at such times as the Secretary of Agriculture requires recertification for such stamps or commodities.

[38 FR 34324, Dec. 13, 1973]

§ 205.30 Methods of administration.

State plan requirements: A State plan for financial assistance under title I, IV-A, X, XIV or XVI (AABD) of the Social Security Act must provide for such methods of administration as are found by the Secretary to be necessary for the proper and efficient operation of the plan.

[45 FR 56684, Aug. 25, 1980]

§ 205.32 Procedures for issuance of replacement checks.

(a) *State plan requirements.* A State plan under title IV-A of the Social Security Act shall provide that (1) procedures are in effect to ensure that no undue delays occur in issuing a replacement check; and (2) when applicable, prior to the issuance of a replacement check, the State agency must:

(i) Issue a stop payment order on the original AFDC check through appropriate banking procedures; and

(ii) Require recipients to execute a signed statement attesting to the nonreceipt, loss, or theft of the original FDC check. However, if obtaining such a statement from the recipient will cause the issuance of the check to be unduly delayed, the statement may be obtained within a reasonable time after the check is issued.

(b) *State option.* A State plan may provide that as a condition for issuance of a replacement check, a recipient is required to report a lost or stolen AFDC check to the police or other appropriate authorities. Under this provision, the State agency may require that the recipient verify that a report was made to the police or other appropriate authorities and, if so, the agency will establish procedures for such verification.

[51 FR 9203, Mar. 18, 1986]

§ 205.35 Mechanized claims processing and information retrieval systems; definitions.

Section 205.35 through 205.38 contain State plan requirements for an automated statewide management information system, conditions for FFP and responsibilities of the Administration for Children and Families (ACF). For purposes of §§ 205.35 through 205.38:

(a) *A mechanized claims processing and information retrieval system,* hereafter referred to as an automated *application processing and information retrieval system* (APIRS), or the *system,* means a system of software and hardware used:

(1) To introduce, control and account for data items in providing public assistance under the Aid to Families with Dependent Children (AFDC) State plan; and

(2) To retrieve and produce utilization and management information about such aid and services as required by the single State agency and Federal government for program administration and audit purposes.

(b) *Planning* means:

(1) The preliminary project activity to determine the requirements necessitating the project, the activities to be undertaken, and the resources required to complete the project;

(2) The preparation of an APD;

(3) The preparation of a detailed project plan describing when and how the computer system will be designed and developed; and

(4) The preparation of a detailed implementation plan describing specific training, testing, and conversion plans to install the computer system.

(c) The following terms are defined at 45 CFR part 95, subpart F, §95.605:

Annually updated advance automatic data processing planning document;
Design or *System Design*;
Development;
Initial advance automatic data processing planning document;
Installation;
Operation; and
Software.

[51 FR 45330, Dec. 18, 1986, as amended at 53 FR 36579, Sept. 21, 1988; 55 FR 4379, Feb. 7, 1990; 59 FR 30708, June 15, 1994]

§ 205.36 State plan requirements.

A State plan under title IV-A of the Social Security Act shall, at the option of the State, provide for the establishment and operation, in accordance with an (initial and annually updated) advance automated data processing planning document approved by SSA, of an automated statewide management information system designed effectively and efficiently, to assist management in the administration of an approved AFDC State plan. The submission process to amend the State plan is explained in §201.3. This system must be designed:

(a) To automatically control and account for—

(1) All the factors in the total eligibility determination process under the plan for aid, including but not limited to:

(i) Identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses, and mailing addresses (including postal ZIP codes), of all applicants and recipients of AFDC and the relative with whom any child who is an applicant or recipient is living).

(A) To assure sufficient compatibility among the systems of different jurisdictions, and

(B) To permit periodic screening to determine whether an individual is or has been receiving benefits from more than one jurisdiction.

(ii) Checking records of applicants and recipients of such aid on a periodic basis with other agencies, both intra and inter-state, for eligibility determination, verification and payment as required by other provisions of the Social Security Act.

(2) The costs, quality, and delivery of funds and services furnished to applicants for and recipients of such aid.

(b) To notify the appropriate State officials of child support, food stamp, social service, and medical assistance programs approved under title XIX whenever a case/recipient for aid and services becomes ineligible or the amount of aid or services is changed.

(c) To electronically refer and exchange information with programs under titles IV-D and IV-F for purposes of assuring that benefits and services are provided in an integrated manner.

(d) To provide for security against unauthorized access to, or use of, the data in the system.

[51 FR 13006, Apr. 17, 1986, as amended at 57 FR 47002, Oct. 14, 1992]

§ 205.37 Responsibilities of the Administration for Children and Families (ACF).

(a) ACF shall not approve the initial and annually updated advance automatic data processing planning document unless the document, when implemented, will carry out the requirements of the law and the objectives of title IV-A (AFDC) Automated Application Processing and Information Retrieval System Guide. The initial advance automatic data processing planning document must include:

(1) A requirements analysis, including consideration of the program mission, functions, organization, services, constraints and current support relating to such system;

(2) A description of the proposed statewide management system, including the description of information flows, input data formats, output reports and uses;

(3) The security and interface requirements to be employed in such statewide management system;

(4) A description of the projected resource requirements including staff and other needs; and the resources available or expected to be available to meet these requirements;

(5) A cost benefit analysis of alternative systems designs, data processing services and equipment in terms of qualitative and quantitative measures. The alternative systems considered should include the advantages of the proposed system over the alternatives and should indicate the period of time the system will be operated to justify the funds invested. ACF certified systems that are already in place in other States must be included in the alternatives to be considered and evaluated;

(6) A plan for distribution of costs, containing the basis for rates, both direct and indirect, to be in effect under such a statewide management system;

(7) An implementation plan with charts of development events, testing description, proposed acceptance criteria, and backup and fallback procedures to handle possible failure of a system; and

(8) Evidence that the State's system will be compatible with those of the FSA to facilitate the exchange of data between the State and Federal system.

(b) ACF shall on a continuing basis, review, assess, and inspect the planning, design, and operation of, statewide management information systems, with a view to determining whether, and to what extent, these systems meet and continue to meet the requirements under these regulations.

(c) If ACF finds that any statewide management information system referred to in § 205.38 fails to comply substantially with criteria, requirements, and other undertakings prescribed by the approved advance automatic data processing planning document, approval of such document shall be suspended. The State will be given written notice of the suspension. The notice of suspension will state the reason for the suspension, whether the suspended system complies with the criteria for 50 percent FFP under 45 CFR part 95, the actions required for future Federal funding, and the effective date of the suspension. The suspension shall be effective as of the date that the system failed to comply substantially with the approved APD. The suspension shall remain in effect until ACF makes a determination that such system complies with prescribed criteria, requirements, and other undertakings for future Federal funding. Should a State cease development of their approved system, either by voluntary withdrawal or as a result of Federal suspension, all Federal incentive funds invested to date that exceed the normal administrative FFP rate (50 percent) will be subject to recoupment.

(d) ACF shall provide technical assistance to States as is deemed necessary to assist States to plan, design, develop, or install and provide for the security of the management information systems.

(e) Approvals of the systems by ACF under the provisions of this section will be undertaken only as a result of State applications for increased matching. The requirements of 45 CFR part 95, subpart E and subpart F apply.

[51 FR 13006, Apr. 17, 1986, as amended at 53 FR 36579, Sept. 21, 1988; 55 FR 4379, Feb. 7, 1990; 56 FR 1493, Jan. 15, 1991; 59 FR 30709, June 15, 1994]

§ 205.38 Federal financial participation (FFP) for establishing a statewide mechanized system.

(a) Effective July 1, 1981 through March 31, 1994, FFP is available at 90 percent of expenditures incurred for planning, design, development or installation of a statewide automated application processing and information retrieval system which are consistent with an approved ADP. (Beginning April 1, 1994 the match rate available for development of title IV-A automated systems is 50 percent.) The 90 percent FFP includes the purchase or rental of computer equipment and software directly required for and used in the operation of this system.

(b) ACF will approve the system provided the following conditions are met—

(1) ACF determines that the system is likely to provide more efficient, economical, and effective administration of the AFDC program.

(2) The system is compatible with the claims processing and information retrieval systems used in the administration of State plans approved under title XIX, and State programs where there is FFP under title XX.

(3) The system meets the requirements referred to in § 205.36.

(4) The system meets criteria established in the title IV-A (AFDC) Automated Application Processing and Information Retrieval System Guide issued by ACF and which provides specific standard requirements for major functions, such as automated eligibility determination, grant computation, verification, referral, management control, compability, and data security.

(5) The State agency certifies that—

(i) The State will have all ownership rights in software or modifications thereof and associated documentation designed or developed with 90 percent FFP under this section, except that the Department of Health and Human Services reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for Federal government purposes, such software, modifications, and documentation;

(ii) Methods and procedures for properly charging the cost of all systems whether acquired from public or private sources shall be in accordance with Federal regulations in part 74 of this title and the applicable ACF title IV-A (AFDC) Automated Application Processing and Information Retrieval System Guide;

(iii) The complete system planned, designed, developed, installed, and hardware acquired, with FFP under these regulations will be used for a period of time which is consistent with the advance planning document as approved, or which ACF determines is sufficient to justify the Federal funds invested;

(iv) Information in the system will be safeguarded in accordance with applicable Federal law; and

(v) Access to the system in all of its aspects, including design, development, and operation, including work performed by any source, and including cost records of contractors and subcontractors, shall be made available to the Federal Government by the State at intervals deemed necessary by ACF to determine whether the conditions for approval are being met and to determine its efficiency, economy and effectiveness.

(c) If ACF suspends approval, as described in § 205.37, of the advance automated data processing planning document and/or system, FFP at the higher matching rate shall not be allowed for any costs incurred, until such time as the conditions for approval are met. Should the State fail to correct the deficiencies which led to the suspension within 90 days of the date of notification of suspension or within a longer period of time agreed to by both the State and ACF, all Federal incentive funds invested to date that exceed the normal administrative FFP rate (50 percent) will be disallowed.

(d) Should a State voluntarily withdraw its approved APD and cease development of the approved system, all Federal incentive funds invested to date that exceed the normal administrative FFP rate (50 percent) will be disallowed.

(e) Once a State is certified as having met the requirements referred to in § 205.36 incentive funding will not be allowable for enhancements or other modifications unless these modifications are authorized by the Administation for Children and Families as a result of Federal legislative or regulatory change.

[51 FR 13007, Apr. 17, 1986, as amended at 53 FR 36579, Sept. 21, 1988; 59 FR 30709, June 15, 1994]

§ 205.44 [Reserved]

§ 205.45 Federal financial participation in relation to State emergency welfare preparedness.

(a) Under title IV-A, Federal financial participation is available at the rate of 50 percent in expenditures for development and planning activities for emergency welfare preparedness. Such activities must relate to emergency welfare situations resulting from natural disasters, civil disorders, and enemy caused disasters, as prescribed in ''Guidelines for the Preparation of State Emergency Welfare Services

Plan'' issued by Social and Rehabilitation Service, DHHS publication No. (SRS) 72–23004. These activities include:

(1) Safekeeping essential documents and records;

(2) Planning and developing emergency operating capability for providing food, lodging, clothing, and welfare registration and inquiry;

(3) Assuring that qualified individuals are responsible for the planning and operation of each welfare function essential under emergency conditions for care and services for public assistance recipients and potential recipients;

(4) Coordinating with other government and voluntary welfare agencies, and welfare-related business and professional organizations and associations, in developing emergency operating plans and attaining operational readiness;

(5) Preparing and maintaining data on kinds, numbers, and locations of essential welfare resources, including manpower;

(6) Developing ability to assess emergency welfare resources and determining requirements necessary to care for public assistance cases in the event of disaster or attack;

(7) Preparing plans for claiming and distributing the above resources;

(8) Developing mutual aid agreements at State and local levels with neighboring welfare organizations;

(9) Preparing and distributing written emergency operations plans for public assistance agencies and operating units;

(10) Participating in preparedness exercises for the purpose of testing plans and determining the role of public assistance programs in relation to the overall preparedness program; and

(11) Travel incidental to any of the above activities.

(b) Federal financial participation is available at 50 percent under title IV-A for providing training in emergency welfare preparedness for all staff and for volunteers.

(c) In Guam, Puerto Rico, and the Virgin Islands, Federal financial participation is available at the rate of 75 percent in expenditures for emergency welfare preparedness under titles I, X, XIV, XVI (AABD) of the Social Security Act.

(d) The cost of these activities must be allocated to all programs benefited in accordance with part 74, subtitle A of title 45 of the Code of Federal Regulations.

[41 FR 23387, June 10, 1976, as amended at 51 FR 9203, Mar. 18, 1986]

§ 205.50 Safeguarding information for the financial assistance programs.

(a) *State plan requirements.* A State plan for financial assistance under title IV-A of the Social Security Act, must provide that:

(1) Pursuant to State statute which imposes legal sanctions:

(i) The use or disclosure of information concerning applicants and recipients will be limited to purposes directly connected with:

(A) The administration of the plan of the State approved under title IV-A, the plan or program of the State under title IV-B, IV-D, IV-E, or IV-F or under title I, X, XIV, XVI (AABD), XIX, XX, or the Supplemental Security Income (SSI) program established by title XVI. Such purposes include establishing eligibility, determining the amount of assistance, and providing services for applicants and recipients.

(B) Any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any such plans or programs.

(C) The administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need.

(D) The verification to the Employment Security Agency, or other certifying agency that an individual has been an AFDC recipient for at least 90 days or is a WIN or WIN Demonstration participant pursuant to Pub. L. 97–34, the Economic Recovery Tax Act of 1981.

(E) Any audit or similar activity, e.g., review of expenditure reports or financial review, conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity.

(F) The administration of a State unemployment compensation program.

(G) The reporting to the appropriate agency or official of information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under circumstances which indicate that the child's health or welfare is threatened.

(ii) The State agency has authority to implement and enforce the provisions for safeguarding information about applicants and recipients:

(iii) Disclosure of any information that identifies by name or address any applicant or recipient to any Federal, State, or local committee or legislative body other than in connection with any activity under paragraph (a)(1)(i)(E) of this section is prohibited.

(iv) Publication of lists or names of applicants and recipients will be prohibited. *Exception.* In respect to a State plan for financial assistance under title I, IVA, X, XIV, or XVI (AABD) of the Social Security Act, an exception to this restriction may be made by reason of the enactment or enforcement of State legislation, prescribing any conditions under which public access may be had to records of the disbursement of funds or payments under such titles within the State, if such legislation prohibits the use of any list or names obtained through such access to such records for commercial or political purposes.

(v) The State or local agency responsible for the administration of the State plan has authority to disclose the current address of a recipient to a State or local law enforcement officer at his or her request. Such information is disclosed only to law enforcement officers who provide the name and Social Security number of the recipient and satisfactorily demonstrate that:

(A) The recipient is a fugitive felon (as defined by the State);

(B) The location or apprehension of such felon is within the law officer's official duties; and

(C) The request is made in the proper exercise of those duties.

(2) The agency will have clearly defined criteria which govern the types of information that are safeguarded and the conditions under which such information may be released or used. Under this requirement:

(i) Types of information to be safeguarded include but are not limited to:

(A) The names and addresses of applicants and recipients and amounts of assistance provided (unless excepted under paragraph (a)(1)(iv) of this section);

(B) Information related to the social and economic conditions or circumstances of a particular individual including information obtained from any agency pursuant to § 205.55; information obtained from the Internal Revenue Service (IRS) and the Social Security Administration (SSA) must be safeguarded in accordance with procedures set forth by those agencies;

(C) Agency evaluation of information about a particular individual;

(D) Medical data, including diagnosis and past history of disease or disability, concerning a particular individual.

(ii) The release or use of information concerning individuals applying for or receiving financial assistance is restricted to persons or agency representatives who are subject to standards of confidentiality which are comparable to those of the agency administering the financial assistance programs.

(iii) Except in the case of information requested pursuant to §§ 205.55 and 205.56, or in the case of an emergency situation when the individual's prior consent for the release of information cannot be obtained, the family or individual is informed whenever possible of a request for information from an outside source, and permission is obtained to meet the request. In an emergency situation when the individual's consent for the release of information cannot be obtained, the individual will be notified immediately.

(iv) In the event of the issuance of a subpoena for the case record or for any agency representative to testify concerning an applicant or recipient, the court's attention is called, through proper channels to the statutory provisions and the policies or rules and regulations against disclosure of information.

(v) The same policies are applied to requests for information from a governmental authority, the courts, or a law enforcement officer (except as provided for under paragraph (a)(1)(v) with respect to fugitive felons) as from any other outside source.

(3)(i) The agency will publicize provisions governing the confidential nature of information about applicants and recipients, including the legal sanctions imposed for improper disclosure and use, and will make these provisions available to applicants and recipients and to other persons and agencies to whom information is disclosed.

(ii) All information obtained pursuant to the income and eligibility verification requirements at §§ 205.55 and 205.56 will be stored and processed so that no unauthorized personnel can acquire or retrieve the information by any means.

(iii) All persons with access to information obtained pursuant to the income and eligibility verification requirements under §§ 205.55 and 205.56 will be advised of the circumstances under which access is permitted and the sanctions imposed for illegal use or disclosure of the information.

(4) All materials sent or distributed to applicants, recipients, or medical vendors, including material enclosed in envelopes containing checks, will be limited to those which are directly related to the administration of the program and will not have political implications except to the extent required to implement the National Voter Registration Act of 1993 (NVRA), Pub. L. 103–31. Under this requirement:

(i) Specifically excluded from mailing or distribution are materials such as ''holiday'' greetings, general public announcements, alien registration notices, and partisan voting information.

(ii) Not prohibited from such mailing or distribution are materials in the immediate interest of the health and welfare of applicants and recipients, such as announcements of free medical examinations, availability of surplus food, and consumer protection information;

(iii) Only the names of persons directly connected with the administration of the program are contained in material sent or distributed to applicants, recipients, and vendors, and such persons are identified only in their official capacity with the State or local agency.

(iv) Under NVRA, the agency must distribute voter information and registration materials as specified in NVRA.

(b) *Voluntary voter registration activities.* For States that are exempt from the requirements of NVRA, voter registration may be a voluntary activity so long as the provisions of section 7(a)(5) of NVRA are observed.

(c) *State plan requirements for programs of financial assistance in Puerto Rico, the Virgin Islands, and Guam.* A State plan under title I, X, XIV, or XVI (AABD) of the Social Security Act must meet all the requirements of paragraph (a) of this section, with the exception of paragraphs (a)(1)(i) (D) and (E), of this section, and also provide for disclosure of information concerning applicants and recipients for use by public officials who require such information in connection with their official duties. Under this requirement, such information shall be available only to public officials who certify in writing that:

(1) They are public officials as defined by State or Federal law of general applicability; and

(2) The information to be disclosed and used is required in connection with their official duties.

[45 FR 56684, Aug. 25, 1980, as amended at 47 FR 46506, Oct. 19, 1982; 49 FR 35599, Sept. 10, 1984; 51 FR 7214, Feb. 28, 1986; 51 FR 9203, Mar. 18, 1986; 54 FR 42243, Oct. 13, 1989; 57 FR 30157, July 8, 1992; 58 FR 49220, Sept. 22, 1993; 59 FR 26142, May 19, 1994; 61 FR 58143, Nov. 13, 1996]

§ 205.51 Income and eligibility verification requirements.

(a) A State plan under title I, IV-A, X, XIV or XVI (AABD) of the Social Security Act must provide that there be an Income and Eligibility Verification System in the State. Income and Eligibility Verification System (IEVS) means a system through which the State agency:

(1) Co-ordinates data exchanges with other Federally-assisted benefit programs covered by section 1137(b) of the Act;

(2) Requests and uses income and benefit information as specified in section 1137(a)(2) of the Act and §§ 205.55 and 205.56; and

(3) Adheres to standardized formats and procedures in exchanging information with the other programs and agencies and in providing such information as may be useful to assist Federal, State and local agencies in the administration of the child support program and the Social Security Administration in the administration of the title II and title XVI (SSI) programs. The State agency (UC) information from the State Wage Information Collection Agency, described in paragraph (b) of this section; from the agency administering the State's unemployment compensation program (UC) under section 3304 of the Internal Revenue Code; from agencies in other States cited in § 205.55(a)(5), as set forth by the Secretary; from SSA, as set forth by the Commissioner of Social Security; and from IRS, as set forth by the Commissioner of Internal Revenue.

(b) A State plan under title I, IV-A, X, XIV or XVI (AABD) of the Social Security Act must provide that, as part of its Income and Eligibility Verification System, there be a State Wage Information Collection Agency in the State. State Wage Information Collection Agency (SWICA) means the State agency receiving quarterly wage reports from employers in the State (which may be the agency administering the State's unemployment compensation program), or an alternative system which has been determined by the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Health and Human Services, to be as effective and timely in providing employment related income and eligibility information.

(c) Wage information maintained by a SWICA which receives quarterly wage reports from employers but does not use these reports for computation of employment compensation shall:

(1) Contain the social security number, first and last name and middle initial, wages earned for the period of the report, and an identifier of the employer (such as name and address) for each employee;

(2) Include all employers covered by the State's UC law and require such employers to report wage information (as specified above) for each employee within 30 days from the end of each calendar quarter;

(3) Accumulate earnings reported by employers for periods no longer than calendar quarters;

(4) Be machine readable; i.e., maintained in a fashion that permits automated processing; and

(5) Be available to other agencies in the State, to agencies in other States, and to Social Security Administration for establishing or verifying eligibility and benefit amounts under titles II and XVI of the Social Security Act, pursuant to agreements as required in § 205.58.

(d) A State shall obtain prior written approval from the Department, where appropriate, in accordance with 45 CFR 95.611, for any new developmental costs for automatic data processing equipment and services incurred in meeting IEVS requirements.

[51 FR 7214, Feb. 28, 1986]

§ 205.52 Furnishing of social security numbers.

The State plan under title I, IV-A, X, XIV, or CVI (AABD) of the Social Security Act must provide that:

(a) As a condition of eligibility, each applicant for or recipient of aid will be required:

(1) To furnish to the State or local agency a social security account number, hereinafter referred to as the SSN (or numbers, if more than one has been issued); and

(2) If he cannot furnish a SSN (either because such SSN has not been issued or is not known), to apply for such number through procedures adopted by the State or local agency with the Social Security Administration. If such procedures are not in effect, the applicant or recipient shall apply directly for such number, submit verification of such application, and provide the number upon its receipt.

(b) The State or local agency will assist the applicant or recipient in making applications for SSNs and will comply with the procedures and requirements established by the Social Security Administration for application,

issuance, and verification of social security account numbers.

(c) The State or local agency will not deny, delay, or discontinue assistance pending the issuance or verfication of such numbers if the applicant or recipient has complied with the requirements of paragraph (a) of this section.

(d) The State or local agency will use such account numbers, in addition to any other means of identification it may determine to employ, in the administration of the plan.

(e) ''Applicant'' and ''recipient'' include for the purposes of this section the individuals seeking or receiving assistance and any other individual whose needs are considered in determining the amount of assistance.

(f) The State or local agency shall notify the applicant or recipient that the furnishing of the SSN is a condition of eligibility for assistance required by section 1137 of the Social Security Act and that the SSN will be utilized in the administration of the program.

(g) The State agency will submit all unverified social security numbers to the Social Security Administration (SSA) for verification. The State agency may accept as verified a social security number provided directly to the State agency by SSA or by another Federal or federally-assisted benefit program which has received the number from SSA or has submitted it to SSA for verification.

[51 FR 7217, Feb. 28, 1986]

§ 205.55 Requirements for requesting and furnishing eligibility and income information.

A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) Except as provided in paragraph (b), the State agency will request through the IEVS:

(1) Wage information from the SWICA for all applicants at the first opportunity following receipt of the application and for all recipients on a quarterly basis.

(2) Unemployment compensation information from the agency administering the State's unemployment compensation program under section 3304 of the Internal Revenue Code of 1954 and section 303 of the Act as follows:

(i) For applicants at the first opportunity following receipt of the application and in each of the first three months in which the individual is receiving aid, unless the individual is found to be receiving unemployment compensation, in which case the information will be requested until benefits are exhausted; and

(ii) In each of the first three months following any recipient-reported loss of employment, unless the individual is found to be receiving unemployment compensation, in which case the information will be requested until the benefits are exhausted.

(3) All available information maintained by the Social Security Administration for all applicants at the first opportunity following receipt of the application in the manner set forth by the Commissioner of Social Security. The State agency will also request such information for all recipients as of the effective date of this provision for whom such information has not previously been requested.

(4) Unearned income information from the Internal Revenue Service available under section 6103 (l)(7)(B) of the Internal Revenue Code of 1954, for all applicants at the first opportunity following receipt of the application for all recipients on a yearly basis. The request shall be made at the time and in the manner set forth by the Commissioner of Internal Revenue.

(5) As necessary, any income or other information affecting eligibility available from agencies in the State or other States administering:

(i) An AFDC program (in another State) under title IV-A of the Social Security Act;

(ii) A Medicaid program under title XIX of the Social Security Act;

(iii) An unemployment compensation program (in another State) under section 3304 of the Internal Revenue Code of 1954;

(iv) A Food Stamp program under the Food Stamp Act of 1977, as amended;

(v) Any State program administered under plan approved under title I, X, XIV, or XVI (AABD) of the Social Security Act; and

(vi) A SWICA (in another State).

(b)(1) With respect to individuals who cannot furnish an SSN at application, information specified in paragraph (a) will be requested at the first opportunity provided by each source after the State agency is provided with the SSN.

(2) For the purposes of this section, applicants and recipients shall also include any other individuals whose income or resources are considered in determining the amount of assistance, if the State agency has obtained the SSN of such individuals.

(c) The State agency must furnish, when requested, income, eligibility and benefit information to:

(1) Agencies in the State or other States administering the programs cited in paragraph (a)(5) of this section, in accordance with specific agreements as described in §205.58;

(2) The agency in the State or other States administering a program under title IV-D of the Social Security Act; and

(3) The Social Security Administration for purposes of establishing or verifying eligibility or benefit amounts under title II and XVI (SSI) of the Social Security Act.

(d) The Secretary may, based upon application from a State, permit a State to obtain and use income and eligibility information from an alternate source or sources in order to meet any requirement of paragraph (a) of this section. The State agency must demonstrate to the Secretary that the alternate source or sources is as timely, complete and useful for verifying eligibility and benefit amounts. The Secretary will consult with the Secretary of Agriculture and the Secretary of Labor prior to approval of a request. The State must continue to meet the requirements of this section unless the Secretary has approved the request.

(e) The State agency must, upon request, reimburse another agency for reasonable costs incurred in furnishing income and eligibility information as prescribed in this section, including new developmental costs associated with furnishing such information, in accordance with specific agreements as described in §205.58.

[51 FR 7215, Feb. 28, 1986]

§205.56 Requirements governing the use of income and eligibility information.

A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) The State agency will use the information obtained under §205.55, in conjunction with other information, for:

(1) Determining individuals' eligibility for assistance under the State plan and determining the amount of assistance. States wishing to exclude categories of information items from follow-up must submit for the Secretary's approval a follow-up plan describing the categories of information items which it proposes to exclude. For each category, the State must provide a reasonable justification that follow-up is not cost-effective. A formal cost-benefit analysis is not required. A State may exclude information items from the following data sources without written justification if followed up previously from another source: Unemployment compensation information received from the Internal Revenue Service, and earnings information received from the Social Security Administration. Information items in these categories which are not duplicative, but provide new leads, may not be excluded without written justification. A State may submit a follow-up plan or alter its plan at any time by notifying the Secretary and submitting the necessary justification. The Secretary will approve or disapprove categories of information items to be excluded under the plan within 60 days of its submission. Those categories approved by the Secretary will constitute an approved State follow-up plan for IEVS. For those information items not excluded from follow-up,

(i) The State agency shall review and compare the information obtained from each data exchange against information contained in the case record to determine whether it affects the applicant's or the recipient's eligibility or the amount of assistance.

(ii) The State agency shall verify that the information is accurate and applicable to case circumstances either through the applicant or recipient or through a third party, if such

verification is determined appropriate based on agency experience or is required under paragraph (b) of this section.

(iii) For applicants, if the information is received during the application period, the State agency shall use such information, to the extent possible, in making the eligibility determination.

(iv) For individuals who are recipients when the information is received or for whom a decision could not be made prior to authorization of benefits, the State agency shall within forty-five (45) days of its receipt, initiate a notice of case action or an entry in the case record that no case action is necessary, except that: Completion of action may be delayed beyond forty-five (45) days on no more than twenty (20) percent of the information items targeted for follow-up, if:

(A) The reason that the action cannot be completed within forty-five (45) days is the nonreceipt of requested third-party verification; and

(B) Action is completed promptly, when third party verification is received or at the next time eligibility is redetermined, whichever is earlier. If action is completed when eligibility is redetermined and third party verification has not been received, the State agency shall make its decision based on information provided by the recipient and any other information in its possession.

(v) The State agency shall use appropriate procedures to monitor the timeliness requirements specified in this subparagraph;

(2) Investigations to determine whether recipients received assistance under the State plan to which they were not entitled; and

(3) Criminal or civil prosecutions based on receipt of assistance under the State plan to which recipients were not entitled.

(b)(1) State agencies shall not take any adverse action to terminate, deny, suspend or reduce benefits to an applicant or recipient, based on information produced by a Federal computer matching program that is subject to the requirements in the Computer Matching and Privacy Protection Act (CMPPA) unless (i) The information has been independently verified in accordance with the independent verification requirements set out in the State agency's written agreement as required by §205.58 or (ii) The independent verification requirement has been waived by the Department's Data Integrity Board.

(2) The CMPPA defines a matching program as any computerized comparison of (i) Two or more automated systems of records or a system of records with non-Federal records for the purpose of (A) Establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or (B) Recouping payments or delinquent debts under such Federal benefit programs, or (ii) Two or more automated Federal personnel or payroll system of records or a system of Federal personnel or payroll record with non-Federal records.

(c) If the agency intends to reduce, suspend, terminate or deny benefits as a result of the actions taken pursuant to this section, the agency must provide notice and the opportunity for a fair hearing in accordance with §205.10(a).

[51 FR 7215, Feb. 28, 1986, as amended at 53 FR 52712, Dec. 29, 1988; 57 FR 53859, Nov. 13, 1992]

§ 205.57 Maintenance of a machine readable file; requests for income and eligibility information.

A State plan under title I, IV—A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) The State agency will maintain a file which is machine readable, i.e., which is maintained in a fashion that permits automated processing, and which contains the first and last name and verified social security number of each person applying for or receiving assistance under the plan.

(b) The State agency will use this file to exchange data with other agencies pursuant to §205.55.

[51 FR 7216, Feb. 28, 1986]

§ 205.58 Income and eligibility information; specific agreements required between the State agency and the agency supplying the information.

(a) A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that, in carrying out the requirements of §§ 205.55 and 205.56, the State agency will enter into specific written agreements as described in paragraph (b) of this section with those agencies providing income and eligibility information. Agreements with Federal agencies are subject to the approval by the appropriate Federal Data Integrity Boards. The agreements will contain the procedure to be used in requesting and providing information.

(b) These agreements will include, but need not be limited to, the following:

(1) Purpose of the request;

(2) Identification of all agency officials, by position with authority to request information;

(3) Methods and timing of the requests for information, including the machine readable format to be used, the period of time needed to furnish the requested information and the basis for establishing this period. Agreements with the SWICA and the agency administering the Unemployment Compensation program in the State must provide that the State agency shall obtain information no less frequently than twice monthly;

(4) The type of information and reporting periods for which information will be provided and the verification methodologies to be used;

(5) Safeguards limiting release or redisclosure as required by Federal or State law or regulation, including the requirements of § 205.50 and as may be required by guidelines issued by the Secretary; and

(6) Reimbursement, if any, for the costs of furnishing the information requested by the State agency, including new developmental costs associated with furnishing such information.

[51 FR 7216, Feb. 28, 1986, as amended at 57 FR 53860, Nov. 13, 1992]

§ 205.60 Reports and maintenance of records.

A State plan under title I, IV—A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) The State agency will maintain or supervise the maintenance of records necessary for the proper and efficient operation of the plan, including records regarding applications, determination of eligibility, the provision of financial assistance, and the use of any information obtained under § 205.55, with respect to individual applications denied, recipients whose benefits have been terminated, recipients whose benefits have been modified, and the dollar value of these denials, terminations and modifications. Under this requirement, the agency will keep individual records which contain pertinent facts about each applicant and recipient. The records will include information concerning the date of application and the date and basis of its disposition; facts essential to the determination of initial and continuing eligibility (including the individual's social security number, need for, and provision of financial assistance); and the basis for discontinuing assistance.

(b) The agency shall report as the Secretary prescribes for the purpose of determining compliance with the requirements of §§ 205.55 and 205.56 and for evaluating the effectiveness of the Income and Eligibility Verification System.

[51 FR 7216, Feb. 28, 1986]

§ 205.70 Availability of agency program manuals.

State plan requirements. A State plan for financial assistance under title I, IV-A, IV-B, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(a) Program manuals and other policy issuances which affect the public, including the State agency's rules and regulations governing eligibility, need and amount of assistance, and recipient rights and responsibilities will be maintained in the State office and in each local and district office for examination on regular workdays during regular office hours by individuals,

upon request for review, study, or reproduction by the individual.

(b)(1) A current copy of such material will be made available without charge or at a charge related to the cost of reproduction for access by the public through custodians who (i) request the material for this purpose, (ii) are centrally located and publicly accessible to a substantial number of the recipient population they serve, and (iii) agree to accept responsibility for filing all amendments and changes forwarded by the agency.

(2) Under this requirement the material, if requested, must be made available without charge or at a charge related to the cost of reproduction to public or university libraries, the local or district offices of the Bureau of Indian Affairs, and welfare or legal services offices or organizations. The material may also be made available, with or without charge, to other groups and to individuals. Wide availability of agency policy materials is recommended.

(c) Upon request, the agency will reproduce without charge or at a charge related to the cost of reproduction the specific policy materials necessary for an applicant or recipient, or his representative, to determine whether a fair hearing should be requested or to prepare for a fair hearing; and will establish policies for reproducing policy materials without charge, or at a charge related to cost, for any individual who requests such material for other purposes.

[38 FR 26378, Sept. 20, 1973, as amended at 44 FR 17941, Mar. 23, 1979; 45 FR 56685, Aug. 25, 1980]

§ 205.100 Single State agency.

(a)(1) *State plan requirements.* A State plan for financial assistance under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must:

(i) Provide for the establishment or designation of a single State agency with authority to administer or supervise the administration of the plan.

(ii) Include a certification by the attorney general of the State identifying the single State agency and citing the legal authority under which such agency administers, or supervises the administration of, the plan on a statewide basis including the authority to make rules and regulations governing the administration of the plan by such agency or rules and regulations that are binding on the political subdivisions, if the plan is administered by them.

(2) [Reserved]

(b) *Conditions for implementing the requirements of paragraph (a) of this section.* (1) The State agency will not delegate to other than its own officials its authority for exercising administrative discretion in the administration or supervision of the plan including the issuance of policies, rules, and regulations on program matters.

(2) In the event that any rules and regulations or decisions of the single State agency are subject to review, clearance, or other action by other offices or agencies of the State government, the requisite authority of the single State agency will not be impaired.

(3) In the event that any services are performed for the single State agency by other State or local agencies or offices, such agencies and offices must not have authority to review, change, or disapprove any administrative decision of the single State agency, or otherwise substitute their judgment for that of the agency as to the application of policies, rules, and regulations promulgated by the State agency.

[45 FR 56685, Aug. 25, 1980]

§ 205.101 Organization for administration.

(a) A State plan for financial assistance under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act shall include a description of the organization and functions of the single State agency and an organizational chart of the agency.

(b) Where applicable, a State plan for financial assistance under title I, IV-A, X, XIV, or XVI (AABD) of the act shall identify the organizational unit within the State agency which is responsible for operation of the plan and shall include a description of its organization and functions and an organizational chart of the unit.

[45 FR 56685, Aug. 25, 1980]

§ 205.120 Statewide operation.

(a) *State plan requirements.* A State plan for financial assistance under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(1) It shall be in operation, through a system of local offices, on a statewide basis in accordance with equitable standards for assistance and administration that are mandatory throughout the State;

(2) If administered by political subdivisions of the State, the plan will be mandatory on such political subdivisions;

(3) The State agency will assure that the plan is continuously in operation in all local offices or agencies through:

(i) Methods for informing staff of State policies, standards, procedures and instructions; and

(ii) Regular planned examination and evaluation of operations in local offices by regularly assigned State staff, including regular visits by such staff; and through reports, controls, or other necessary methods.

(b) [Reserved]

[39 FR 16971, May 10, 1974, as amended at 44 FR 17942, Mar. 23, 1979; 45 FR 56686, Aug. 25, 1980]

§ 205.130 State financial participation.

State plan requirements:

(a) A State plan for financial assistance under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that:

(1) State (as distinguished from local) funds will be used in both assistance and administration; and

(2) State and Federal funds will be apportioned among the political subdivisions of the State on a basis consistent with equitable treatment of individuals in similar circumstances throughout the State.

(b) A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Act must provide further that State funds will be used to pay a substantial part of the total costs of the assistance programs.

[45 FR 56686, Aug. 25, 1980]

§ 205.150 Cost allocation.

A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that the State agency will have an approved cost allocation plan on file with the Department in accordance with the requirements contained in subpart E of 45 CFR part 95. Subpart E also sets forth the effect on FFP if the requirements contained in that subpart are not met.

[47 FR 17508, Apr. 23, 1982]

§ 205.160 Equipment—Federal financial participation.

Claims for Federal financial participation in the cost of equipment for the cash assistance programs under titles I, IV-A, X, XIV, XVI [AABD] and for the separate administrative unit established under section 402(a)(19)(G) of the Social Security Act are to be determined in accordance with subpart G or 45 CFR part 95. Requirements concerning the management and disposition of equipment under these titles are also prescribed in subpart G of 45 CFR part 95.

[47 FR 41576, Sept. 21, 1982]

§ 205.170 State standards for office space, equipment, and facilities.

State plan requirements: A State plan for financial assistance under title I, IV-A, X, XIV, or XVI(AABD) of the Social Security Act must provide that:

(a) The State agency will establish and maintain standards for office space, equipment, and facilities that will adequately and effectively meet program and staff needs. Under this requirement, offices must be well marked and clearly identifiable in the community as a public service.

(b) The State agency will assure that the standards are continuously in effect in all State and local offices or agencies, including agency suboffices, and special centers through:

(1) Making information about the standards available to State and local staff and other appropriate persons;

(2) Regular planned evaluation of housing and facilities by regularly assigned staff through visits, reports, controls and other necessary methods;

(3) Methods for enforcement when necessary to secure compliance with State standards.

[36 FR 3862, Feb. 27, 1971, as amended at 45 FR 56686, Aug. 25, 1980]

§ 205.190 Standard-setting authority for institutions.

(a) *State plan requirements.* If a State plan for financial assistance under title I, X, XIV, or XVI(AABD) of the Social Security Act includes aid or assistance to individuals in institutions as defined in § 233.60(b) (1) and (2) of this chapter the plan must:

(1) Provide for the designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

(2) Provide that the State agency will keep on file and make available to FSA, OFA upon request:

(i) A listing of the types or kinds of institutions in which an individual may receive financial assistance;

(ii) A record naming the State authority(ies) responsible for establishing and maintaining standards for such types of institutions;

(iii) The standards to be utilized by such State authority(ies) for approval or licensing of institutions including, to the extent applicable, standards related to the following factors:

(*a*) Health (dietary standards and accident prevention);

(*b*) Humane treatment;

(*c*) Sanitation;

(*d*) Types of construction;

(*e*) Physical facilities, including space and accommodations per person;

(*f*) Fire and safety,

(*g*) Staffing, in number and qualifications, related to the purposes and scope of services of the institution;

(*h*) Resident records;

(*i*) Admission procedures;

(*j*) Administrative and fiscal records;

(*k*) The control by the individual, or his guardian or protective payee, of the individual's personal affairs.

(3) Provide for cooperative arrangements with the standard-setting authority(ies) in the development of standards directed toward assuring adequate quality of care; in upgrading of institutional programs and practice; in actions necessary to close institutions that mistreat or are hazardous to the safety of the patients; and in planning so that institutions may be geographically located in accordance with need.

(b) *Federal financial participation.* (1) Federal financial participation is available in staff and related costs of the State or local agency that are necessary to discharge the responsibilities of the State agency under this section, including such costs for staff:

(i) Participating with other agencies and community groups in activities to set up the authority(ies) and to advise on the formulation of policy for the establishment and maintenance of standards;

(ii) On loan for a time limited period to work with the standard-setting authority(ies) in upgrading institutional care;

(iii) Engaged in the function of coordination in States where there is more than one authority; and

(iv) Engaged in adjusting complaints and making reports and recommendations to the standard-setting authority(ies) on conditions which appear to be in violation of such standards.

(2) Federal financial participation is not available in the costs incurred by the standard-setting authority(ies) in establishing and maintaining standards for institutions.

[36 FR 3862, Feb. 27, 1971, as amended at 45 FR 56686, Aug. 25, 1980; 53 FR 36580, Sept. 21, 1988]

PART 206—APPLICATION, DETERMINATION OF ELIGIBILITY AND FURNISHING ASSISTANCE—PUBLIC ASSISTANCE PROGRAMS

AUTHORITY: Sections 402 and 1102 of the Social Security Act (42 U.S.C. 602 and 1302) and Pub. L. No. 97–248, 96 Stat. 324, and Pub. L. No. 99–603, 100 Stat. 3359.

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) *State plan requirements.* A State plan under title I, IV-A, X, XIV, or XVI(AABD), of that Social Security Act shall provide that:

(1) Each individual wishing to do so shall have the opportunity to apply for assistance under the plan without delay. Under this requirement:

(i) Each individual may apply under whichever of the State plan plans he chooses;

(ii) The agency shall require a written application, signed under a penalty of perjury, on a form prescribed by the State agency, from the applicant himself, or his authorized representative, or, where the applicant is incompetent or incapacitated, someone acting responsibly for him. When an individual is required to be included in an existing assistance unit pursuant to paragraph (a)(1)(vii), such individual will be considered to be included in the application, as of the date he is required to be included in the assistance unit;

(iii) An applicant may be assisted, if he so desires, by an individual(s) of his choice (who need not be a lawyer) in the various aspects of the application process and the redetermination of eligibility and may be accompanied by such individual(s) in contacts with the agency and when so accompanied may also be represented by them.

(iv)–(v) [Reserved]

(vi) Every recipient in a State which provides a supplemental payment under §233.27 of this chapter shall have an opportunity to request that payment without delay.

(vii) For AFDC only, in order for the family to be eligible, an application with respect to a dependent child must also include, if living in the same household and otherwise eligible for assistance:

(A) Any natural or adoptive parent, or stepparent (in the case of States with laws of general applicability); and

(B) Any blood-related or adoptive brother or sister; *Exception:* needs and income of disqualified alien siblings, pursuant to §233.50(c), are not considered in determining the eligibility and payment of an otherwise eligible dependent child.

(2)(i) Applicants shall be informed about the eligibility requirements and their rights and obligations under the program. Under this requirement individuals are given information in written form, and orally as appropriate, about coverage, conditions of eligibility, scope of the program, and related services available, and the rights and responsibilities of applicants for and recipients of assistance. Specifically developed bulletins or pamphlets explaining the rules regarding eligibility and appeals in simple, understandable terms are publicized and available in quantity.

(ii) Procedures shall be adopted which are designed to assure that recipients make timely and accurate reports of any change in circumstances which may affect their eligibility or the amount of assistance.

(iii) All applicants for and recipients of assistance shall be notified in writing at the time of application and on redetermination that eligibility and income information will be regularly requested from agencies specified in §205.55 and will be used to aid in determining their eligibility for assistance.

(3) A decision shall be made promptly on applications, pursuant to reasonable State-established time standards not in excess of:

(i) 45 days for OAA, AFDC, AB, AABD (for aged and blind); and

(ii) 60 days for APTD, AABD (for disabled). Under this requirement, the applicant is informed of the agency's time standard in acting on applications which covers the time from date of application under the State plan to the date that the assistance check, or notification of denial of assistance or change of award is mailed to the applicant or recipient. The State's time standards apply except in unusual circumstances (e.g., where the agency cannot reach a decision because of failure or delay on the part of the applicant or an examining physician, or because of some administrative or other emergency that could not be controlled by the agency), in which instances the case record shows the cause for the delay. The agency's standards of promptness for acting on applications or redetermining eligibility shall not be used as a waiting period before granting aid, or as a basis for denial of an application or for terminating assistance.

(4) Adequate notice shall be sent to applicants and recipients to indicate that assistance has been authorized (including the amount of financial assistance) or that it has been denied or terminated. Under this requirement, adequate notice means a written notice that contains a statement of the action taken, and the reasons for and specific regulations supporting such action,

and an explanation of the individual's right to request a hearing.

(5)(i) Financial assistance and medical care and services included in the plan shall be furnished promptly to eligible individuals without any delay attributable to the agency's administrative process, and shall be continued regularly to all eligible individuals until they are found to be ineligible. Under this requirement there must be arrangements to assist applicants and recipients in obtaining medical care and services in emergency situations on a 24-hour basis, 7 days a week.

(ii) Assistance will not be denied, delayed, or discontinued pending receipt of income or other information requested under § 205.55, if other evidence establishes the individual's eligibility for assistance.

(6) Assistance shall begin as specified in the State plan, which:

(i) For financial assistance.

(A) Must be no later than:

(*1*) The date of authorization of payment, or

(*2*) Thirty days in OAA, AFDC, AB, and AABD (as to the aged and blind), and 60 days in APTD and AABD (as to the disabled), from the date of receipt of a signed and completed application form, whichever is earlier: *Provided,* That the individuals then met all the eligibility conditions, and

(B) For purposes of Federal financial participation in OAA, AB, APTD, and AABD, may be as early as the first of the month in which an application has been received and the individual meets all the eligibility conditions; and

(C) In AFDC, for purposes of Federal financial participation, may be as early as the date of application provided that the assistance unit meets all the eligibility conditions; and

(D) In AFDC, States that pay for the month of application must prorate the payment for that month by multiplying the amount payable if payment were made for the entire month including special needs in accordance with § 233.34 by the ratio of the days in the month including and following the date of application (or, at State option, the date of authorization of payment) to the total number of days in such month. The State plan may provide for using a standard 30-day month to determine the prorated amount.

(7) In cases of proposed action to terminate, discontinue, suspend or reduce assistance, the agency shall give timely and adequate notice. Such notice shall comply with the provisions of § 205.10 of this chapter.

(8) Each decision regarding eligibility or ineligibility will be supported by facts in the applicant's or recipient's case record. Under this requirement each application is disposed of by a finding of eligibility or ineligibility unless:

(i) The applicant voluntarily withdraws his application, and there is an entry in the case record that a notice has been sent to confirm the applicant's notification to the agency that he does not desire to pursue his application; or

(ii) There is an entry in the case record that the application has been disposed of because the applicant died or could not be located.

(9) Where an individual has been determined to be eligible, eligibility will be reconsidered or redetermined:

(i) When required on the basis of information the agency has obtained previously about anticipated changes in the individual's situation;

(ii) Promptly, after a report is obtained which indicates changes in the individual's circumstances that may affect the amount of assistance to which he is entitled or may make him ineligible; and

(iii) Periodically, within agency established time standards, but not less frequently than every 12 months in OAA, AB, APTD, and AABD, on eligibility factors subject to change. For recipients of AFDC, all factors of eligibility will be redetermined at least every 6 months except in the case of monthly reporting cases or cases covered by an approved error-prone profiling system as specified in paragraph (a)(9)(iv) of this section. Under the AFDC program, at least one face-to-face redetermination must be conducted in each case once in every 12 months.

(iv) In accordance with paragraph (a)(9)(iii) of this section, under an alternative redetermination plan based on error-prone profiling, which has

been approved by the Secretary, and includes:

(A) A description of the statistical methodology used to develop the error-prone profile system upon which the redetermination schedule is based;

(B) The criteria to be used to vary the scope of review and to assign different types of cases; and

(C) A detailed outline of the evaluation system, including provisions for necessary changes in the error-prone output, such as types of cases, types of errors, frequencies of redeterminations and corrective action.

(10) Standards and methods for determination of eligibility shall be consistent with the objectives of the programs, and will respect the rights of individuals under the United States Constitution, the Social Security Act, title VI of the Civil Rights Act of 1964, and all other relevant provisions of Federal and State laws.

(11) [Reserved]

(12) The State agency shall establish and maintain methods by which it shall be kept currently informed about local agencies' adherence to the State plan provisions and to the State agency's procedural requirements for determining eligibility, and it shall take corrective action when necessary.

(b) *Definitions.* For purposes of this section:

(1) *Applicant* is a person who has, directly, or through his authorized representative, or where incompetent or incapacitated, through someone acting responsibly for him, made application for public assistance from the agency administering the program, and whose application has not been terminated.

(2) *Application* is the action by which an individual indicates in writing to the agency administering public assistance (on a form prescribed by the State agency) his desire to receive assistance. The relative with whom a child is living or will live ordinarily makes application for the child for AFDC. An application is distinguished from an inquiry, which is simply a request for information about eligibility requirements for public assistance. Such inquiry may be followed by an application. When an individual is required to be included in an existing assistance unit pursuant to paragraph (a)(1)(vii), such individual will be considered to be included in the application, as of the date he is required to be included in the assistance unit.

(3) *Date of Application* is the date on which the action described in paragraph (b)(2) of this section occurs.

(4) *Redetermination* is a review of factors affecting AFDC eligibility and payment amount; e.g. continued absence, income (including child and spousal support), etc.

(5) *Assistance Unit* is the group of individuals whose income, resources and needs are considered as a unit for purposes of determining eligibility and the amount of payment.

[48 FR 28407, June 21, 1983 as amended at 49 FR 35599, Sept. 10, 1984; 51 FR 7217, Feb. 28, 1986; 51 FR 9203, Mar. 18, 1986; 52 FR 48689, Dec. 24, 1987; 53 FR 30433, Aug. 12, 1988; 57 FR 30157, July 8, 1992]

PART 211—CARE AND TREATMENT OF MENTALLY ILL NATIONALS OF THE UNITED STATES, RETURNED FROM FOREIGN COUNTRIES

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AUTHORITY: Secs. 1–11, 74 Stat. 308–310; 24 U.S.C. 321–329.

SOURCE: 39 FR 26546, July 19, 1974, unless otherwise noted.

§ 211.1 General definitions.

When used in this part:

(a) *Act* means Pub. L. 86–571, approved July 5, 1960, 74 Stat. 308, entitled ''An Act to provide for the hospitalization, at Saint Elizabeths Hospital in the District of Columbia or elsewhere, of certain nationals of the United States adjudged insane or otherwise found mentally ill in foreign countries, and for other purposes'';

(b) The term *Secretary* means the Secretary of Health and Human Services;

(c) The term *Department* means the Department of Health and Human Services;

(d) The term *Administrator* means the Administrator, Family Support Administration, Department of Health and Human Services;

(e) The term *eligible person* means an individual with respect to whom the certificates referred to in § 211.3 are furnished to the Administrator in connection with the reception of an individual arriving from a foreign country;

(f) The term *Public Health Service* means the Public Health Service in the Department of Health and Human Services;

(g) The term *agency* means an appropriate State or local public or nonprofit agency with which the Administrator has entered into arrangements for the provision of care, treatment, and assistance pursuant to the Act;

(h) The term *State* includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam;

(i) The term *residence* means residence as determined under the applicable law or regulations of a State or political subdivision for the purpose of determining the eligibility of an individual for hospitalization in a public mental hospital;

(j) The term *legal guardian* means a guardian, appointed by a court, whose powers, duties, and responsibilities include the powers, duties, and responsibilities of guardianship of the person.

[39 FR 26546, July 19, 1974, as amended at 53 FR 36580, Sept. 21, 1988]

§ 211.2 General.

The Administrator shall make suitable arrangements with agencies to the end that any eligible person will be received, upon request of the Secretary of State, at the port of entry or debarkation upon arrival in the United States from a foreign country and be provided, to the extent necessary, with temporary care, treatment, and assistance, pending transfer and release or hospitalization pursuant to the Act. The Administrator shall also make suitable arrangements with appropriate divisions of the Public Health Service, with Saint Elizabeths Hospital in the District of Columbia, with Federal hospitals outside of the Department, or with other public or private hospitals to provide the eligible person with care and treatment in a hospital. The Administrator shall maintain a roster setting forth the name and address of each eligible person currently receiving care and treatment, or assistance, pursuant to the Act.

§ 211.3 Certificates.

The following certificates are necessary to establish that an individual is an eligible person:

(a) *Certificates as to nationality*. A certificate issued by an authorized official of the Department of State, stating that the individual is a national of the United States.

(b) *Certificate as to mental condition*. Either (1) a certificate obtained or transmitted by an authorized official of the Department of State that the individual has been legally adjudged insane in a named foreign country; or (2) a certificate of an appropriate authority or person stating that at the time of such certification the individual was in a named foreign country and was in need of care and treatment in a mental hospital. A statement shall, if possible, be incorporated into or attached to the certificate furnished under this paragraph setting forth all available medical and other pertinent information concerning the individual.

(c) *Appropriate authority or person*. For the purpose of paragraph (b)(2) of this section a medical officer of the Public Health Service or of another agency of the United States, or a medical practitioner legally authorized to provide care or treatment of mentally ill persons in the foreign country, is an ''appropriate authority or person,'' and shall be so identified in his execution of the certificate. If such a medical officer or practitioner is unavailable, an

authorized official of the Department of State may serve as an ''appropriate authority or person,'' and shall, in the execution of the certificate, identify himself as serving as such person due to the unavailability of a suitable medical officer or practitioner.

§ 211.4 Notification to legal guardian, spouse, next of kin, or interested persons.

(a) Whenever an eligible person arrives in the United States from a foreign country, or when such person is transferred from one State to another, the Administrator shall, upon such arrival or transfer (or in advance thereof, if possible), provide for notification of his legal guardian, or in the absence of such a guardian, of his spouse or next of kin, or in the absence of any of these, of one or more interested persons, if known.

(b) Whenever an eligible person is admitted to a hospital pursuant to the Act, the Administrator shall provide for immediate notification of his legal guardian, spouse, or next of kin, if known.

§ 211.5 Action under State law; appointment of guardian.

Whenever an eligible person is incapable of giving his consent to care and treatment in a hospital, either because of his mental condition or because he is a minor, the agency will take appropriate action under State law, including, if necessary, procuring the appointment of a legal guardian, to ensure the proper planning for and provision of such care and treatment.

§ 211.6 Reception; temporary care, treatment, and assistance.

(a) *Reception.* The agency will meet the eligible person at the port of entry or debarkation, will arrange for appropriate medical examination, and will plan with him, in cooperation with his legal guardian, or, in the absence of such a guardian, with other interested persons, if any, for needed temporary care and treatment.

(b) *Temporary care, treatment, and assistance.* The agency will provide for temporary care, treatment, and assistance, as reasonably required for the health and welfare of the eligible person. Such care, treatment, and assistance may be provided in the form of hospitalization and other medical and remedial care (including services of necessary attendants), food and lodging, money, payments, transportation, or other goods and services. The agency will utilize the Public Health Service General Hospital nearest to the port of entry or debarkation or any other suitable public or private hospital, in providing hospitalization and medical care, including diagnostic service as needed, pending other appropriate arrangements for serving the eligible person.

§ 211.7 Transfer and release of eligible person.

(a) *Transfer and release to relative.* If at the time of arrival from a foreign country or any time during temporary or continuing care and treatment the Administrator finds that the best interests of the eligible person will be served thereby, and a relative, having been fully informed of his condition, agrees in writing to assume responsibility for his care and treatment, the Administrator shall transfer and release him to such relative. In determining whether his best interest will be served by such transfer and release, due weight shall be given to the relationship of the individuals involved, the financial ability of the relative to provide for such person, and the accessibility to necessary medical facilities.

(b) *Transfer and release to appropriate State authorities, or agency of the United States.* If appropriate arrangements cannot be accomplished under paragraph (a) of this section, and if no other agency of the United States is responsible for the care and treatment of the eligible person, the Administrator shall endeavor to arrange with the appropriate State mental health authorities of the eligible person's State of residence or legal domicile, if any, for the assumption of responsibility for the care and treatment of the eligible person by such authorities and shall, upon the making of such arrangements in writing, transfer and release him to such authorities. If any other agency of the United States is responsible for the

care and treatment of the eligible person, the Administrator shall make arrangements for his transfer and release to that agency.

§ 211.8 Continuing hospitalization.

(a) *Authorization and arrangements.* In the event that appropriate arrangements for an eligible person in need of continuing care and treatment in a hospital cannot be accomplished under § 211.7, or until such arrangements can be made, care and treatment shall be provided by the Administrator in Saint Elizabeths Hospital in the District of Columbia, in an appropriate Public Health Service Hospital, or in such other suitable public or private hospital as the Administrator determines is in the best interests of such person.

(b) *Transfer to other hospital.* At any time during continuing hospitalization, when the Administrator deems it to be in the interest of the eligible person or of the hospital affected, the Administrator shall authorize the transfer of such person from one hospital to another and, where necessary to that end, the Administrator shall authorize the initiation of judicial proceedings for the purpose of obtaining a commitment of such person to the Secretary.

(c) *Place of hospitalization.* In determining the placement or transfer of an eligible person for purposes of hospitalization, due weight shall be given to such factors as the location of the eligible person's legal guardian or family, the character of his illness and the probable duration thereof, and the facilities of the hospital to provide care and treatment for the particular health needs of such person.

§ 211.9 Examination and reexamination.

Following admission of an eligible person to a hospital for temporary or continuing care and treatment, he shall be examined by qualified members of the medical staff as soon as practicable, but not later than the fifth day after his admission. Each such person shall be reexamined at least once within each six month period beginning with the month following the month in which he was first examined.

§ 211.10 Termination of hospitalization.

(a) *Discharge or conditional release.* If, following an examination, the head of the hospital finds that the eligible person hospitalized for mental illness (whether or not pursuant to a judicial commitment) is not in need of such hospitalization, he shall be discharged. In the case where hospitalization was pursuant to a judicial commitment, the head of the hospital may, in accordance with laws governing hospitalization for mental illness as may be in force and generally applicable in the State in which the hospital is located, conditionally release him if he finds that this is in his best interests.

(b) *Notification to committing court.* In the case of any person hospitalized under § 211.8 who has been judicially committed to the custody of the Secretary, the Secretary will notify the committing court in writing of the discharge or conditional release of such person under this section or of his transfer and release under § 211.7.

§ 211.11 Request for release from hospitalization.

If an eligible person who is hospitalized pursuant to the Act, or his legal guardian, spouse, or adult next of kin, requests his release, such request shall be granted by the Administrator if his best interests will be served thereby, or by the head of the hospital if he is found not to be in need of hospitalization by reason of mental illness. The right of the administrator or the head of the hospital, to refuse such request and to detain him for care and treatment shall be determined in accordance with laws governing the detention, for care and treatment, of persons alleged to be mentally ill as may be in force and applicable generally in the State in which such hospital is located, but in no event shall the patient be detained more than forty-eight hours (excluding any period of time falling on a Sunday or a legal holiday observed by the courts of the State in which such hospital is located) after the receipt of such request unless within such time (a) judicial proceedings for such hospitalization are commenced or (b) a judicial extension of such time is obtained, for a period of not more than

five days, for the commencement of such proceedings.

§ 211.12 Federal payments.

The arrangements made by the Administrator with an agency or hospital for carrying out the purposes of the Act shall provide for payments to such agency or hospital, either in advance or by way of reimbursement, of the costs of reception, temporary care, treatment, and assistance, continuing care and treatment, and transportation, pursuant to the Act, and payments for other expenditures necessarily and reasonably related to providing the same. Such arrangements shall include the methods and procedures for determining the amounts of the advances or reimbursements, and for remittance and adjustment thereof.

§ 211.13 Financial responsibility of the eligible person; collections, compromise, or waiver of payment.

(a) *For temporary care and treatment.* If an eligible person receiving temporary care, treatment, and assistance, pursuant to the Act, has financial resources available to pay all or part of the costs of such care, the Administrator shall require him to pay for such costs, either in advance or by way of reimbursement, unless in his judgment it would be inequitable or impracticable to require such payment.

(b) *For continuing care and treatment.* Any eligible person receiving continuing care and treatment in a hospital, or his estate, shall be liable to pay or contribute toward the payment of the costs or charges therefor, to the same extent as such person would, if a resident of the District of Columbia, be liable to pay, under the laws of the District of Columbia, for his care and maintenance in a hospital for the mentally ill in that jurisdiction.

(c) *Collections, compromise, or waiver of payment.* The Administrator may, in his discretion, where in his judgment substantial justice will be best served thereby or the probable recovery will not warrant the expense of collection, compromise, or waive the whole or any portion of, any claim for continuing care and treatment, and assistance, and in the process of arriving at such decision, the Administrator may make or cause to be made such investigations as may be necessary to determine the ability of the patient to pay or contribute toward the cost of his continuing care and treatment in a hospital.

§ 211.14 Disclosure of information.

(a) No disclosure of any information of a personal and private nature with respect to an individual obtained at any time by any person, organization, or institution in the course of discharging the duties of the Secretary under the Act shall be made except insofar:

(1) As the individual or his legal guardian, if any (or, if he is a minor, his parent or legal guardian), shall consent;

(2) As disclosure may be necessary to carry out any functions of the Secretary under the Act;

(3) As disclosure may be directed by the order of a court of competent jurisdiction;

(4) As disclosure may be necessary to carry out any functions of any agency of the United States which are related to the return of the individual from a foreign country, or his entry into the United States; or

(5) As expressly authorized by the Administrator.

(b) An agreement made with an agency or hospital for care, treatment, and assistance pursuant to the Act shall provide that no disclosure will be made of any information of a personal and private nature received by such agency or hospital in the course of discharging the duties under such agreement except as is provided therein, or is otherwise specifically authorized by the Administrator.

(c) Nothing in this section shall preclude disclosure, upon proper inquiry, of information as to the presence of an eligible person in a hospital, or as to his general condition and progress.

§ 211.15 Nondiscrimination.

(a) No eligible person shall, on the ground of race, color, or national origin, be excluded from participation, be denied any benefits, or otherwise be subjected to discrimination of any nature or form in the provision of any benefits, under the Act.

(b) The prohibition in paragraph (a) of this section precludes discrimination either in the selection of individuals to receive the benefits, in the scope of benefits, or in the manner of providing them. It extends to all facilities and services provided by the Administrator or an agency to an individual, and to the arrangements and the procedures under this part relating thereto, in connection with reception, temporary care, treatment, and assistance, and continuing hospitalization under the Act.

PART 212—ASSISTANCE FOR UNITED STATES CITIZENS RETURNED FROM FOREIGN COUNTRIES

Sec.

212.1 General definitions.
212.2 General.
212.3 Eligible person.
212.4 Reception; initial determination, provisions of temporary assistance.
212.5 Periodic review and redetermination; termination of temporary assistance.
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212.10 Nondiscrimination.

AUTHORITY: Sec. 302, 75 Stat. 142, sec. 1102, 49 Stat. 647; 42 U.S.C. 1313, 1302.

SOURCE: 39 FR 26548, July 19, 1974, unless otherwise noted.

§ 212.1 General definitions.

When used in this part:

(a) *Act* means section 1113 of the Social Security Act, as amended;

(b) The term *Secretary* means the Secretary of Health and Human Services;

(c) The term *Department* means the Department of Health and Human Services;

(d) The term *Administration* means the Administration for Children and Families, Department of Health and Human Services;

(e) The term *Assistant Secretary* means the Assistant Secretary for Children and Families;

(f) The term *eligible person* means an individual with respect to whom the conditions in § 212.3 are met;

(g) The term *State* includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam;

(h) The term *United States* when used in a geographical sense means the States;

(i) The term *agency* means State or local public agency or organization or national or local private agency or organization with which the Assistant Secretary has entered into agreement for the provision of temporary assistance pursuant to the Act;

(j) The term *temporary assistance* means money payments, medical care, temporary billeting, transportation, and other goods and services necessary for the health, or welfare of individuals, including guidance, counseling, and other welfare services.

[39 FR 26548, July 19, 1974, as amended at 53 FR 36580, Sept. 21, 1988; 60 FR 19864, Apr. 21, 1995]

§ 212.2 General.

The Assistant Secretary shall develop plans and make arrangements for provision of temporary assistance within the United States to any eligible person, after consultation with appropriate offices of the Department of State, the Department of Justice, and the Department of Defense. Temporary assistance shall be provided, to the extent feasible, in accordance with such plans, as modified from time to time by the Assistant Secretary. The Assistant Secretary shall enter into agreements with agencies whose services and facilities are to be utilized for the purpose of providing temporary assistance pursuant to the Act, specifying the conditions governing the provision of such assistance and the manner of payment of the cost of providing therefor.

[39 FR 26548, July 19, 1974, as amended at 60 FR 19864, Apr. 21, 1995]

§ 212.3 Eligible person.

In order to establish that an individual is an eligible person, it must be found that:

(a) He is a citizen of the United States or a dependent of a citizen of the United States;

(b) A written statement has been transmitted to the Administration by

an authorized official of the Department of State containing information which identifies him as having returned, or been brought, from a foreign country to the United States because of the destitution of the citizen of the United States, or the illness of such citizen or any of his dependents, or because of war, threat of war, invasion, or similar crisis. Such statement shall, if possible, incorporate or have attached thereto, all available pertinent information concerning the individual. In case of war, threat of war, invasion, or similar crisis, a determination by the Department of State that such a condition is the general cause for the return of citizens of the United States and their dependents from a particular foreign country, and evidence that an individual has returned, or, been brought, from such country to the United States shall be considered sufficient identification of the reason for his return to, or entry into the United States; and

(c) He is without resources immediately accessible to meet his needs.

[39 FR 26548, July 19, 1974, as amended at 60 FR 19864, Apr. 21, 1995]

§ 212.4 Reception; initial determination, provisions of temporary assistance.

(a) The Administration, or the agency upon notification by the Administration, will meet individuals identified as provided in § 212.3(b), at the port of entry or debarkation.

(b) The Administration or agency will make findings, setting forth the pertinent facts and conclusions, and an initial determination, according to standards established by the Administration, as to whether an individual is an eligible person.

(c) The Administration or agency will provide temporary assistance within the United States to an eligible person, according to standards of need established by the Administration, upon arrival at the port of entry or debarkation, during transportation to his intermediate and ultimate destinations, and after arrival at such destinations.

(d) Temporary assistance may be furnished only for 90 days from the day of arrival of the eligible person in the United States unless he is handicapped in attaining self-support or self-care for such reasons as age, disability, or lack of vocational preparation. In such cases temporary assistance may be extended upon prior authorization by the Administration for nine additional months.

[39 FR 26548, July 19, 1974, as amended at 40 FR 43218, Sept. 19, 1975; 53 FR 36580, Sept. 21, 1988]

§ 212.5 Periodic review and redetermination; termination of temporary assistance.

(a) The Administration or agency will review the situation of each recipient of temporary assistance at frequent intervals to consider whether or not circumstances have changed that would require a different plan for him.

(b) Upon a finding by the Administration or agency that a recipient of temporary assistance has sufficient resources available to meet his needs, temporary assistance shall be terminated.

[39 FR 26548, July 19, 1974, as amended at 53 FR 36580, Sept. 21, 1988]

§ 212.6 Duty to report.

The eligible person who receives temporary assistance, or the person who is caring for or otherwise acting on behalf of such eligible person, shall report promptly to the Administration or agency any event or circumstance which would cause such assistance to be changed in amount or terminated.

[39 FR 26548, July 19, 1974, as amended at 53 FR 36580, Sept. 21, 1988]

§ 212.7 Repayment to the United States.

(a) An individual who has received temporary assistance shall be required to repay, in accordance with his ability, any or all of the cost of such assistance to the United States, except insofar as it is determined that:

(1) The cost is not readily allocable to such individual;

(2) The probable recovery would be uneconomical or otherwise impractical;

(3) He does not have, and is not expected within a reasonable time to have, income and financial resources

sufficient for more than ordinary needs; or

(4) Recovery would be against equity and good conscience.

(b) In determining an individual's resources, any claim which he has against any individual, trust or estate, partnership, corporation, or government shall be considered, and assignment to the United States of such claims shall be taken in appropriate cases.

(c) A determination that an individual is not required to repay the cost of temporary assistance shall be final and binding, unless such determination was procured by fraud or misrepresentation of the individual or some other person, or the individual voluntarily offers to repay.

(d) A determination that an individual is required to repay any or all of the cost of temporary assistance may be reconsidered at any time prior to repayment of the required amount. A further determination shall be made with respect to his liability to repay the balance of such amount on the basis of new evidence as to whether (1) he has, or is expected within a reasonable time to have, income and financial resources sufficient for more than ordinary needs, or (2) recovery would be against equity and good conscience.

§ 212.8 Federal payments.

(a) The agreement made by the Assistant Secretary with an agency for carrying out the purposes of the Act shall provide for payment to such agency, either in advance or by way of reimbursement, of the cost of temporary assistance provided pursuant to the Act, and payment of the cost of other expenditures necessarily and reasonably related to providing the same. Such agreement shall include the cost of other expenditures necessarily and reasonably related to providing the same. Such agreement shall include the method for determining such costs, as well as the methods and procedures for determining the amounts of advances or reimbursement and for remittance and adjustment thereof.

(b) To receive reimbursements, States, or other agencies, shall request and receive prior approval from the Assistant Secretary for administrative expenses incurred in developing or preparing to implement repatriation plans for groups of eligible persons. Such requests should include a description of the activities to be undertaken, an estimate of the expenses and a rationale for the expenditures. In reviewing requests, the Assistant Secretary will consider the necessity and reasonableness of the costs. Prior approval is not required for administrative expenditures incurred by a State in implementing approved repatriation plans as a result of Federal notification that an evacuation may be necessary.

[39 FR 26548, July 19, 1974, as amended at 60 FR 19864, Apr. 21, 1995]

§ 212.9 Disclosure of information.

(a) No disclosures of any information of a personal and private nature with respect to an individual obtained at any time by any person, organization, or institution in the course of discharging the duties of the Secretary under the Act shall be made except insofar:

(1) As the individual or his legal guardian, if any (or, if he is a minor, his parent or legal guardian), shall consent;

(2) As disclosure may be necessary to carry out any functions of the Secretary under the Act;

(3) As disclosure may be necessary to carry out any functions of any agency of the United States which are related to the return of the individual from a foreign country, or his entry into the United States; or

(4) As expressly authorized by the Assistant Secretary.

(b) An agreement made with an agency for the provision of temporary assistance pursuant to the Act shall provide that no disclosure will be made of any information of a personal and private nature received by such agency in the course of discharging the duties under such agreement except as is provided therein, or is otherwise specifically authorized by the Assistant Secretary.

[39 FR 26548, July 19, 1974, as amended at 60 FR 19864, Apr. 21, 1995]

§ 212.10 Nondiscrimination.

(a) No eligible person shall, on the ground of race, color, or national origin be excluded from participation, be denied any benefits, or otherwise be subjected to discrimination of any nature or form in the provision of any benefits under the Act.

(b) The prohibition in paragraph (a) of this section precludes discrimination either in the selection of individuals to receive the benefits, in the scope of benefits, or in the manner of providing them. It extends to all facilities and services provided by the Administration or an agency to an individual, and to the arrangements and the procedures under this part relating thereto, in connection with reception and temporary assistance under the Act.

[39 FR 26548, July 19, 1974, as amended at 60 FR 19864, Apr. 21, 1995]

PART 213—PRACTICE AND PROCEDURE FOR HEARINGS TO STATES ON CONFORMITY OF PUBLIC ASSISTANCE PLANS TO FEDERAL REQUIREMENTS

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AUTHORITY: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.

SOURCE: 36 FR 1454, Jan. 29, 1971, unless otherwise noted.

Subpart A—General

§ 213.1 Scope of rules.

(a) The rules of procedure in this part govern the practice for hearings afforded by the Department to States pursuant to § 201.4 or § 201.6 (a) or (b) of this chapter, and the practice relating to decisions upon such hearings. These rules may also be applied to hearings afforded by the Department to States in other Federal-State programs for which Federal administrative responsibility has been delegated to the Service.

(b) Nothing in this part is intended to preclude or limit negotiations between the Department and the State, whether before, during, or after the hearing to resolve the issues which are, or otherwise would be, considered at the hearing. Such negotiations and resolution of issues are not part of the hearing, and are not governed by the rules in this part, except as expressly provided herein.

§ 213.2 Records to be public.

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the FSA Hearing Clerk. Inquiries may be made at the Central Information Center, Department of Health and Human Services, 330 Independence Avenue SW., Washington, DC 20201.

[36 FR 1454, Jan. 29, 1971, as amended at 53 FR 36580, Sept. 21, 1988]

§ 213.3 Use of gender and number.

As used in this part, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing the

masculine gender may be applied to females or organizations.

§ 213.4 Suspension of rules.

Upon notice to all parties, the Administrator or the presiding officer, with respect to matters pending before him and within his jurisdiction, may modify or waive any rule in this part upon determination that no party will be unduly prejudiced and the ends of justice will thereby be served.

§ 213.5 Filing and service of papers.

(a) All papers in the proceedings shall be filed with the FSA Hearing Clerk, in an original and two copies. Originals only of exhibits and transcripts of testimony need be filed.

(b) All papers in the proceedings shall be served on all parties by personal delivery or by mail. Service on the party's designated attorney will be deemed service upon the party.

[36 FR 1454, Jan. 29, 1971, as amended at 53 FR 36580, Sept. 21, 1988]

Subpart B—Preliminary Matters—Notice and Parties

§ 213.11 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the Administrator to the State. The notice shall state the time and place for the hearing, and the issues which will be considered, and shall be published in the FEDERAL REGISTER.

§ 213.12 Time of hearing.

The hearing shall be scheduled not less than 30 days nor more than 60 days after the date notice of the hearing is furnished to the State.

§ 213.13 Place.

The hearing shall be held in the city in which the regional office of the Department is located or in such other place as is fixed by the Administrator in light of the circumstances of the case, with due regard for the convenience and necessity of the parties or their representatives.

§ 213.14 Issues at hearing.

(a) The Administrator may, prior to a hearing under § 201.6 (a) or (b) of this chapter, notify the State in writing of additional issues which will be considered at the hearing, and such notice shall be published in the FEDERAL REGISTER. If such notice is furnished to the State less than 20 days before the date of the hearing, the State or any other party, at its request, shall be granted a postponement of the hearing to a date 20 days after such notice was furnished, or such later date as may be agreed to by the Administrator.

(b) If, as a result of negotiations between the Department and the State, the submittal of a plan amendment, a change in the State program, or other actions by the State, any issue is resolved in whole or in part, but new or modified issues are presented, as specified by the Administrator, the hearing shall proceed on such new or modified issues.

(c)(1) If at any time, whether prior to, during, or after the hearing, the Administrator finds that the State has come into compliance with Federal requirements on any issue, in whole or in part, he shall remove such issue from the proceedings in whole or in part, as may be appropriate. If all issues are removed, he shall terminate the hearing.

(2) Prior to the removal of any issue from the hearing, in whole or in part, the Administrator shall provide all parties other than the Department and the State (see § 213.15(b)) with the statement of his intention, and the reasons therefor, and a copy of the proposed State plan provision on which the State and he have settled, and the parties shall have opportunity to submit in writing within 15 days, for the Administrator's consideration and for the record, their views as to, or any information bearing upon, the merits of the proposed plan provision and the merits of the Administrator's reasons for removing the issue from the hearing.

(d) The issues considered at the hearing shall be limited to those issues of which the State is notified as provided in § 213.11 and paragraph (a) of this section, and new or modified issues described in paragraph (b) of this section, and shall not include issues or parts of

issues removed from the proceedings pursuant to paragraph (c) of this section.

§ 213.15 Request to participate in hearing.

(a) The Department and the State are parties to the hearing without making a specific request to participate.

(b)(1) Other individuals or groups may be recognized as parties, if the issues to be considered at the hearing have caused them injury and their interest is within the zone of interests to be protected by the governing Federal statute.

(2) Any individual or group wishing to participate as a party shall file a petition with the FSA Hearing Clerk within 15 days after notice of the hearing has been published in the FEDERAL REGISTER, and shall serve a copy on each party of record at that time, in accordance with §213.5(b). Such petition shall concisely state (i) petitioner's interest in the proceeding, (ii) who will appear for petitioner, (iii) the issues on which petitioner wishes to participate, and (iv) whether petitioner intends to present witnesses.

(3) Any party may, within 5 days of receipt of such petition, file comments thereon.

(4) The presiding officer shall promptly determine whether each petitioner has the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the presiding officer may request all such petitioners to designate a single representative, or he may recognize one or more of such petitioners to represent all such petitioners. The presiding officer shall give each petitioner written notice of the decision on his petition, and if the petition is denied, he shall briefly state the grounds for denial.

(c)(1) Any interested person or organization wishing to participate as amicus curiae shall file a petition with the FSA Hearing Clerk before the commencement of the hearing. Such petition shall concisely state (i) the petitioner's interest in the hearing, (ii) who will represent the petitioner, and (iii) the issues on which petitioner intends to present argument. The presiding officer may grant the petition if he finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome and may contribute materially to the proper disposition of the issues. An amicus curiae is not a party but may participate as provided in this paragraph.

(2) An amicus curiae may present a brief oral statement at the hearing, at the point in the proceedings specified by the presiding officer. He may submit a written statement of position to the presiding officer prior to the beginning of a hearing, and shall serve a copy on each party. He may also submit a brief or written statement at such time as the parties submit briefs, and shall serve a copy on each party.

[36 FR 1454, Jan. 29, 1971, as amended at 53 FR 36580, Sept. 21, 1988]

Subpart C—Hearing Procedures

§ 213.21 Who presides.

(a) The presiding officer at a hearing shall be the Administrator or his designee.

(b) The designation of the presiding officer shall be in writing. A copy of the designation shall be served on all parties.

[39 FR 40850, Nov. 21, 1974]

§ 213.22 Authority of presiding officer.

(a) The presiding officer shall have the duty to conduct a fair hearing, to avoid delay, maintain order, and make a record of the proceedings. He shall have all powers necessary to accomplish these ends, including, but not limited to, the power to:

(1) Change the date, time, and place of the hearing, upon due notice to the parties. This includes the power to continue the hearing in whole or in part. In hearings pursuant to section 1116(a)(2) of the Social Security Act (see §201.4 of this chapter), changes of time are subject to the requirements of the statute.

(2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(3) Regulate participation of parties and amici curiae and require parties and amici curiae to state their position with respect to the various issues in the proceeding.

(4) Administer oaths and affirmations.

(5) Rule on motions and other procedural items on matters pending before him including issuance of protective orders or other relief to a party against whom discovery is sought.

(6) Regulate the course of the hearing and conduct of counsel therein.

(7) Examine witnesses.

(8) Receive, rule on, exclude or limit evidence or discovery.

(9) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him.

(10) If the presiding officer is the Administrator, make a final decision.

(11) If the presiding officer is a hearing examiner, certify the entire record including his recommended findings and proposed decision to the Administrator.

(12) Take any action authorized by the rules in this part or in conformance with the provisions of 5 U.S.C. 551 through 559.

(b) The presiding officer does not have authority to compel by subpoena the production of witnesses, papers, or other evidence.

(c) If the presiding officer is a hearing examiner, his authority pertains to the issues of compliance by a State with Federal requirements which are to be considered at the hearing, and does not extend to the question of whether, in case of any noncompliance, Federal payments will not be made in respect to the entire State plan or will be limited to categories under or parts of the State plan affected by such noncompliance.

[40 FR 50272, Oct. 29, 1975]

§ 213.23 Rights of parties.

All parties may:

(a) Appear by counsel or other authorized representative, in all hearing proceedings.

(b) Participate in any prehearing conference held by the presiding officer.

(c) Agree to stipulations as to facts which will be made a part of the record.

(d) Make opening statements at the hearing.

(e) Present relevant evidence on the issues at the hearing.

(f) Present witnesses who then must be available for cross-examination by all other parties.

(g) Present oral arguments at the hearing.

(h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

§ 213.23a Discovery.

The Department and any party named in the notice issued pursuant to § 213.11 shall have the right to conduct discovery (including depositions) against opposing parties. Rules 26–37 of the Federal Rules of Civil Procedures shall apply to such proceedings; there will be no fixed rule on priority of discovery. Upon written motion, the Presiding Officer shall promptly rule upon any objection to such discovery action initiated pursuant to this section. The Presiding Officer shall also have the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the Presiding Officer may, in his discretion, issue any order and impose any sanction (other than contempt orders) authorized by Rule 37 of the Federal Rules of Civil Procedure.

[40 FR 50272, Oct. 29, 1975]

§ 213.24 Evidentiary purpose.

The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what he intends to prove, may be made at hearings.

§ 213.25 Evidence.

(a) *Testimony.* Testimony shall be given orally under oath or affirmation by witnesses at the hearing. Witnesses shall be available at the hearing for cross-examination by all parties.

(b) *Stipulations and exhibits.* Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, shall be exchanged at the prehearing conference or otherwise prior to the hearing if the presiding officer so requires.

(c) *Rules of evidence.* Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his direct examination. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

§ 213.26 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at the hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

§ 213.27 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

§ 213.28 Official transcript.

The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

§ 213.29 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision shall constitute the exclusive record for decision.

Subpart D—Posthearing Procedures, Decisions

§ 213.31 Posthearing briefs.

The presiding officer shall fix the time for filing posthearings briefs, which may contain proposed findings of fact and conclusions of law, and, if permitted, reply briefs.

§ 213.32 Decisions following hearing.

(a) If the Administrator is the presiding officer, he shall, when the time for submission of posthearing briefs has expired, issue his decision within 60 days.

(b)(1) If a hearing examiner is the presiding officer, he shall, when the time for submission of posthearing briefs has expired, certify the entire record, including his recommended findings and proposed decision, to the Administrator. The Administrator shall serve a copy of the recommended findings and proposed decision upon all parties, and amici, if any.

(2) Any party may, within 20 days, file with the Administrator exceptions to the recommended findings and proposed decision and a supporting brief or statement.

(3) The Administrator shall thereupon review the recommended decision and, within 60 days of its issuance, issue his own decision.

(c) If the Administrator concludes that a State plan does not comply with Federal requirements, he shall also, in the case of a hearing pursuant to § 201.6(a) of this chapter, specify whether further payments will not be made to the State or whether, in the exercise of his discretion, payments will be limited to categories under or parts of the State plan not affected by such noncompliance. The Administrator may ask the parties for recommendations or briefs or may hold conferences of the parties on this question.

(d) The decision of the Administrator under this section shall be the final decision of the Secretary and shall constitute ''final agency action'' within the meaning of 5 U.S.C. 704 and a ''final determination'' within the meaning of section 1116(a)(3) of the Act and § 201.7 of this chapter. The Administrator's decision shall be promptly served on all parties, and amici, if any.

[36 FR 1454, Jan. 29, 1971, as amended at 36 FR 21520, Nov. 10, 1971]

§ 213.33 Effective date of Administrator's decision.

If, in the case of a hearing pursuant to § 201.6(a) of this chapter, the Administrator concludes that a State plan does not comply with Federal requirements, his decision that further payments will not be made to the State, or payments will be limited to categories under or parts of the State plan not affected, shall specify the effective date for the withholding of Federal funds. The effective date shall not be earlier than the date of the Administrator's decision and shall not be later than the first day of the next calendar quarter. The provisions of this section may not be waived pursuant to § 213.4.

PART 225—TRAINING AND USE OF SUBPROFESSIONALS AND VOLUNTEERS

Sec.

225.1 Definitions.
225.2 State plan requirements.
225.3 Federal financial participation.

AUTHORITY: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.

§ 225.1 Definitions.

(a) The classification of subprofessional staff as community service aides refers to persons in a variety of positions in the planning, administration, and delivery of health, social, and rehabilitation services in which the duties of the position are composed of tasks that are an integral part of the agency's service responsibilities to people and that can be performed by persons with less than a college education, by high school graduates, or by persons with little or no formal education.

(b) *Full-time or part-time employment* means that the person is employed by the agency and his position is incorporated into the regular staffing pattern of the agency. He is paid a regular wage or salary in relation to the value of services rendered and time spent on the job.

(c) The term *Volunteer* describes a person who contributes his personal service to the community through the agency's human services program. He is not a replacement or substitute for paid staff but adds new dimensions to agency services, and symbolizes the community's concern for the agency's clientele.

(d) *Partially paid volunteers* means volunteers who are compensated for expenses incurred in the giving of services. Such payment does not reflect the value of the services rendered, or the amount of time given to the agency.

[34 FR 1319, Jan. 28, 1969]

§ 225.2 State plan requirements.

The State plan for financial assistance programs under titles I, X, XIV, or XVI (AABD) of the Social Security Act for Guam, Puerto Rico and the Virgin Islands or for child welfare services under title IV-B of the Act must:

(a) Provide for the training and effective use of subprofessional staff as community service aides through part-time or full-time employment of persons of low income and, where applicable, of recipients and for that purpose will provide for:

(1) Such methods of recruitment and selection as will offer opportunity for full-time or part-time employment of

persons of low income and little or no formal education, including employment of young and middle aged adults, older persons, and the physically and mentally disabled, and in the case of a State plan for financial assistance under title I, X, XIV, or XVI (AABD), of recipients: And will provide that such subprofessional positions are subject to merit system requirements, except where special exemption is approved on the basis of a State alternative plan for recruitment and selection among the disadvantaged of persons who have the potential ability for training and job performance to help assure achievement of program objectives;

(2) An administrative staffing plan to include the range of service personnel of which subprofessional staff are an integral part;

(3) A career service plan permitting persons to enter employment at the subprofessional level and, according to their abilities, through work experience, pre-service and in-service training and educational leave with pay, progress to positions of increasing responsibility and reward;

(4) An organized training program, supervision, and supportive services for subprofessional staff; and

(5) Annual progressive expansion of the plan to assure utilization of increasing numbers of subprofessional staff as community service aides, until an appropriate number and proportion of subprofessional staff to professional staff are achieved to make maximum use of subprofessionals in program operation.

(b) Provide for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State agency and for that purpose provide for:

(1) A position in which rests responsibility for the development, organization, and administration of the volunteer program, and for coordination of the program with related functions;

(2) Methods of recruitment and selection which will assure participation of volunteers of all income levels in planning capacities and service provision;

(3) A program for organized training and supervision of such volunteers;

(4) Meeting the costs incident to volunteer service and assuring that no individual shall be deprived of the opportunity to serve because of the expenses involved in such service; and

(5) Annual progressive expansion of the numbers of volunteers utilized, until the volunteer program is adequate for the achievement of the agency's service goals.

[34 FR 1320, Jan. 28, 1969, as amended at 41 FR 12015, Mar. 23, 1976; 42 FR 60566, Nov. 28, 1977; 45 FR 56686, Aug. 25, 1980; 51 FR 9204, Mar. 18, 1986]

§ 225.3 Federal financial participation.

Under the State plan for financial assistance programs under titles I, X, XIV, XVI (AABD) or for child welfare services under title IV-B of the Act, Federal financial participation in expenditures for the recruitment, selection, training, and employment and other use of subprofessional staff and volunteers is available at the rates and under related conditions established for training, services, and other administrative costs under the respective titles.

[51 FR 9204, Mar. 18, 1986]

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

Sec.

233.10 General provisions regarding coverage and eligibility.
233.20 Need and amount of assistance.
233.21 Budgeting methods for OAA, AB, APTD, and AABD.
233.22 Determining eligibility under prospective budgeting.
233.23 When assistance shall be paid under retrospective budgeting.
233.24 Retrospective budgeting; determining eligibility and computing the assistance payment in the initial one or two months.
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233.27 Supplemental payments under retrospective budgeting.
233.28 Monthly reporting.
233.29 How monthly reports are treated and what notices are required.

233.31 Budgeting methods for AFDC.
233.32 Payment and budget months (AFDC).
233.33 Determining eligibility prospectively for all payment months (AFDC).
233.34 Computing the assistance payment in the initial one or two months (AFDC).
233.35 Computing the assistance payment under retrospective budgeting after the initial one or two months (AFDC).
233.36 Monthly reporting (AFDC).
233.37 How monthly reports are treated and what notices are required (AFDC).
233.38 Waiver of monthly reporting and retrospective budgeting requirements; AFDC.
233.39 Age.
233.40 Residence.
233.50 Citizenship and alienage.
233.51 Eligibility of sponsored aliens.
233.52 Overpayment to aliens.
233.53 Support and maintenance assistance (including home energy assistance) in AFDC.
233.60 Institutional status.
233.70 Blindness.
233.80 Disability.
233.90 Factors specific to AFDC.
233.100 Dependent children of unemployed parents.
233.101 Dependent children of unemployed parents.
233.106 Denial of AFDC benefits to strikers.
233.107 Restriction in payment to households headed by a minor parent.
233.110 Foster care maintenance and adoption assistance.
233.145 Expiration of medical assistance programs under titles I, IV-A, X, XIV and XVI of the Social Security Act.

AUTHORITY: 42 U.S.C. 301, 602, 602 (note), 606, 607, 1202, 1302, 1352, and 1382 (note).

§ 233.10 General provisions regarding coverage and eligibility.

(a) *State plan requirements.* A State plan under title I, IV—A, X, XIV, or XVI, of the Social Security Act must:

(1) Specify the groups of individuals, based on reasonable classifications, that will be included in the program, and all the conditions of eligibility that must be met by the individuals in the groups. The groups selected for inclusion in the plan and the eligibility conditions imposed must not exclude individuals or groups on an arbitrary or unreasonable basis, and must not result in inequitable treatment of individuals or groups in the light of the provisions and purposes of the public assistance titles of the Social Security Act. Under this requirement:

(i) A State shall impose each condition of eligibility required by the Social Security Act; and

(ii) A State may:

(A) Provide more limited public assistance coverage than that provided by the Act only where the Social Security Act or its legislative history authorizes more limited coverage;

(B) Impose conditions upon applicants for and recipients of public assistance which, if not satisfied, result in the denial or termination of public assistance, if such conditions assist the State in the efficient administration of its public assistance programs, or further an independent State welfare policy, and are not inconsistent with the provisions and purposes of the Social Security Act.

(iii) There must be clarity as to what groups are included in the plan, and which are within, and which are outside, the scope of Federal financial participation.

(iv) Eligibility conditions must be applied on a consistent and equitable basis throughout the State.

(v) A plan under title XVI must have the same eligibility conditions and other requirements for the aged, blind, and disabled, except as otherwise specifically required or permitted by the Act.

(vi) Eligibility conditions or agency procedures or methods must not preclude the opportunity for an individual to apply and obtain a determination of eligibility or ineligibility.

(vii) Methods of determining eligibility must be consistent with the objective of assisting all eligible persons to qualify.

(2) Provide that the State agency will establish methods for identifying the expenditures for assistance for any groups included in the plan for whom Federal financial participation in assistance may not be claimed.

(3) In addition, a State plan under title IV-A, X, XIV, or XVI of the Act, must: Provided that no aid or assistance will be provided under the plan to an individual with respect to a period for which he is receiving aid or assistance under a State plan approved under any other of such titles or under title I of the Act.

(b) *Federal financial participation.* (1) The provisions which govern Federal financial participation in assistance payments are set forth in the Social Security Act, throughout this chapter, and in other policy issuances of the Secretary. Where indicated, State plan provisions are prerequisite to Federal financial participation with respect to the applicable group and payments. State plan provisions on need, the amount of assistance, and eligibility determine the limits of Federal financial participation. Federal financial participation is excluded from assistance payments in which the State refuses to participate because of the failure of a local authority to apply such State plan provisions.

(2) The following is a summary statement regarding the groups for whom Federal financial participation is available. (More detailed information is given elsewhere.)

(i) OAA—for needy individuals under the plan who are 65 years of age or older.

(ii) AFDC—for:

(*a*) Needy children under the plan who are:

(*1*) Under the age of 18, or age 18 if a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and reasonably expected to complete the program before reaching age 19;

(*2*) Deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or unemployment of a principal earner, and

(*3*) Living in the home of a parent or of certain relatives specified in the Act.

(*b*) The parent(s) of a dependent child, a caretaker relative (other than a parent) of a dependent child, and, in certain situations, a parent's spouse.

(iii) AB—for needy individual's under the plan who are blind.

(iv) APTD—for needy individuals under the plan who are 18 years of age or older and permanently and totally disabled.

(v) AABD—for needy individuals under the plan who are aged, blind, or 18 years of age or older and permanently and totally disabled.

(3) Federal financial participation is available in assistance payments made for the entire month in accordance with the State plan if the individual was eligible for a portion of the month, provided that the individual was eligible on the date that the payment was made; except that where it has been determined that the State agency had previously denied assistance to which the individual was entitled, Federal financial participation will be provided in any corrective payment regardless of whether the individual is eligible on the date that the corrective payment is made.

(4) Federal financial participation is available in assistance payments which are continued in accordance with the State plan, for a temporary period during which the effects of an eligibility condition are being overcome, e.g., blindness in AB, disability in APTD, physical or mental incapacity, continued absence of a parent, or unemployment of a principal earner in AFDC.

(5) Where changed circumstances or a hearing decision makes the individual ineligible for any assistance, or eligible for a smaller amount of assistance than was actually paid, Federal financial participation is available in excess payments to such individuals, for not more than one month following the month in which the circumstances changed or the hearing decision was rendered. Federal financial participation is available where assistance is required to be continued unadjusted because a hearing has been requested.

[36 FR 3866, Feb. 27, 1971, as amended at 38 FR 8744, Apr. 6, 1973; 39 FR 26912, July 24, 1974; 40 FR 32958, Aug. 5, 1975; 47 FR 5674, Feb. 5, 1982; 47 FR 47828, Oct. 28, 1982; 51 FR 9204, Mar. 18, 1986; 57 FR 30158, July 8, 1992]

§ 233.20 Need and amount of assistance.

(a) *Requirements for State Plans.* A State Plan for OAA, AFDC, AB, APTD or AABD must, as specified below:

(1) *General.* (i) Provide that the determination of need and amount of assistance for all applicants and recipients will be made on an objective and equitable basis and all types of income will be taken into consideration in the

same way except where otherwise specifically authorized by Federal statute and

(ii) Provide that the needs, income, and resources of individuals receiving SSI benefits under title XVI, individuals with respect to whom Federal foster care payments are made, individuals with respect to whom State or local foster care payments are made, individuals with respect to whom Federal adoption assistance payments are made, or individuals with respect to whom State or local adoption assistance payments are made, for the period for which such benefits or payments are received, shall not be included in determining the need and the amount of the assistance payment of an AFDC assistance unit; except that the needs, income, and resources of an individual with respect to whom Federal adoption assistance payments are made, or individuals with respect to whom State or local adoption assistance payments are made are included in determining the need and the amount of the assistance payment for an AFDC assistance unit of which the individual would otherwise be regarded as a member where the amount of the assistance payment that the unit would receive would not be reduced by including the needs, income, and resources of such individual. Under this requirement, ''individuals receiving SSI benefits under title XVI'' include individuals receiving mandatory or optional State supplementary payments under section 1616(a) of the Social Security Act or under section 212 of Public Law 93–66, and ''individuals with respect to whom Federal foster care payments are made'' means a child with respect to whom Federal foster care maintenance payments under section 472(b) and defined in section 475(4)(A) of title IV-E of the Social Security Act are made, and a child whose costs in a foster family home or child care institution are covered by the Federal foster care maintenance payments made with respect to his or her minor parent under sections 472(h) and 475(4)(B) of title IV-E. ''Individuals with respect to whom Federal adoption assistance payments are made'' means a child who receives payments made under an approved title IV-E plan based on an adoption assistance agreement between the State and the adoptive parents of a child with special needs, pursuant to sections 473 and 475(3) of the Social Security Act.

(iii) For AFDC, when an individual who is required to be included in the assistance unit pursuant to § 206.10(a)(1)(vii) is also required to be included in another assistance unit, those assistance units must be consolidated, and treated as one assistance unit for purposes of determining eligibility and the amount of payment.

(iv) For AFDC, when a State learns of an individual who is required to be included in the assistance unit after the date he or she is required to be included in the unit, the State must redetermine the assistance unit's eligibility and payment amount, including the need, income, and resources of the individual. This redetermination must be retroactive to the date that the individual was required to be in the assistance unit either through birth/adoption or by becoming a member of the household. Any resulting overpayment must be recovered or corrective payment made pursuant to § 233.20(a)(13).

(v) In determining need and the amount of payment for AFDC, all income and resources of an individual required to be in the assistance unit, but subject to sanction under § 250.34 or because of an intentional program violation under the optional fraud control program implementing section 416 of the Social Security Act, are considered available to the assistance unit to the same extent that they would be if the person were not subject to a sanction. However, the needs of the sanctioned individual(s) are not considered. In accord with § 250.34(c), if a parent in an AFDC-UP case is sanctioned pursuant to § 233.100(a)(5), the needs of the second parent are not taken into account 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. An individual required to be in an assistance unit pursuant to § 206.10(a)(1)(vii) but who fails to cooperate in meeting a condition of his or her eligibility for assistance is a sanctioned individual whose needs, income,

and resources are treated in the manner described above.

(2) *Standards of assistance.* (i) Specify a statewide standard, expressed in money amounts, to be used in determining (*a*) the need of applicants and recipients and (*b*) the amount of the assistance payment.

(ii) In the AFDC plan, provide that by July 1, 1969, the State's standard of assistance for the AFDC program will have been adjusted to reflect fully changes in living costs since such standards were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted. In such adjustment a consolidation of the standard (i.e., combining of items) may not result in a reduction in the content of the standard. In the event the State is not able to meet need in full under the adjusted standard, the State may make ratable reductions in accordance with paragraph (a)(3)(viii) of this section. Nevertheless, if a State maintains a system of dollar maximums these maximums must be proportionately adjusted in relation to the updated standards.

(iii) Provide that the standard will be uniformly applied throughout the State except as provided under §239.54.

(iv) Include the method used in determining need and the amount of the assistance payment. For AFDC, the method must provide for rounding down to the next lower whole dollar when the result of determining the standard of need or the payment amount is not a whole dollar. Proration under §206.10(a)(6)(i)(D) to determine the amount of payment for the month of application must occur before rounding to determine the payment amount for that month.

(v) If the State IV-A agency includes special need items in its standard:

(A) Describe those that will be recognized and the circumstances under which they will be included, and

(B) Provide that they will be considered for all applicants and recipients requiring them; except that:

(*1*) Under AFDC, work expenses and child care (or care of incapacitated adults living in the same home and receiving AFDC) resulting from employment or participation in either a CWEP or an employment search program cannot be special needs, and

(*2*) In a State which has a JOBS program under part 250, child care, transportation, work-related expenses, other work-related supportive services, and the costs of education (including tuition, books, and fees) resulting from participation in JOBS (including participation pursuant to §§250.46, 250.47, and 250.48) or any other education or training activity cannot be special needs.

(vi) If the State chooses to establish the need of the individual on a basis that recognizes, as essential to his well-being, the presence in the home of other needy individuals, (A) specify the persons whose needs will be included in the individual's need, and (B) provide that the decision as to whether any individual will be recognized as essential to the recipient's well-being shall rest with the recipient.

(vii) [Reserved]

(viii) Provide that the money amount of any need item included in the standard will not be prorated or otherwise reduced solely because of the presence in the household of a non-legally responsible individual; and the agency will not assume any contribution from such individual for the support of the assistance unit except as provided in paragraphs (a)(3)(xiv) and (a)(5) of this section and §233.51 of this part.

(ix) For AFDC, provide that a State shall consider utility payments made in lieu of any direct rental payment to a landlord or public housing agency to be shelter costs for applicants or recipients living in housing assisted under the U.S. Housing Act of 1937, as amended, and section 236 of the National Housing Act. The amount considered as a shelter payment shall not exceed the total amount the applicant or recipient is expected to contribute for the cost of housing as determined by HUD. *Utility payments* means only those payments made directly to a utility company or supplier which are for gas, electricity, water, heating fuel, sewerage systems, and trash and garbage collection. Utility payments are made ''in lieu of any direct rental payment to a landlord or public housing agency'' when, and only when, the AFDC family pays its entire required

contribution at HUD's direction to one or more utility companies and does not make any direct payment to the landlord or the public housing agency. Housing covered by ''the U.S. Housing Act of 1937, as amended, and section 236 of the National Housing Act'' means Department of Housing and Urban Development assisted housing which includes Indian and public housing, section 8 new and existing rental housing, and section 236 rental housing.

(3) *Income and resources.* (i)(A) *OAA, AB, APTD, AABD,* Specify the amount and types of real and personal property, including liquid assets, that may be reserved, i.e., retained to meet the current and future needs while assistance is received on a continuing basis. In addition to the home, personal effects, automobile and income producing property allowed by the agency, the amount of real and personal property, including liquid assets, that can be reserved for each individual recipient shall not be in excess of two thousand dollars. Policies may allow reasonable proportions of income from businesses or farms to be used to increase capital assets, so that income may be increased; and (B) in AFDC—The amount of real and personal property that can be reserved for each assistance unit shall not be in excess of one thousand dollars equity value (or such lesser amount as the State specifies in its State plan) excluding only:

(*1*) The home which is the usual residence of the assistance unit;

(*2*) One automobile, up to $1,500 of equity value or such lower limit as the State may specify in the State plan; (any excess equity value must be applied towards the general resource limit specified in the State plan);

(*3*) One burial plot (as defined in the State plan) for each member of the assistance unit;

(*4*) Bona fide funeral agreements (as defined and within limits specified in the State plan) up to a total of $1,500 in equity value or such lower limit as the State may specify in the State plan for each member of the assistance unit (any excess equity value must be applied towards the general resource limit specified in the State plan). This provision addresses only formal agreements for funeral and burial expenses such as burial contracts, burial trusts or other funeral arrangements (generally with licensed funeral directors) and does not apply to other assets (e.g., passbook bank accounts, simple set-aside of savings, and cash surrender value of life insurance policies);

(*5*) Real property for a period of six consecutive months (or, at the option of the State, nine consecutive months) which the family is making a good faith effort (as defined in the State plan) to sell, subject to the following provisions. The family must sign an agreement to dispose of the property and to repay the amount of aid received during such period that would not have been paid had the property been sold at the beginning of such period, but not to exceed the amount of the net proceeds of the sale. The family has five working days from the date it realizes cash from the sale of the excess real property to repay the overpayment; failure to make repayment within this period results in the cash being considered to be an available resource. If the family becomes ineligible for AFDC for any other reason during the conditional payment period while making a good faith effort to sell the property, or fails to sell the property by the end of the period despite such a good faith effort, then the amount of the overpayment attributable to the real property will not be determined and recovery will not be begun until the property is, in fact, sold. However, if the property was intentionally sold at less than fair market value so that a good faith effort to sell it was not made, or if it is otherwise determined that a good faith effort to sell the property is not being made, the overpayment amount shall be computed using the fair market value determined at the beginning of the period. For applicants, the conditional payment period begins with the first payment month for which all otherwise applicable eligibility conditions are met and payment is authorized. For recipients who acquire property while receiving assistance, the period begins with the payment month in which the recipient receives the property; and

(*6*) At State option, basic maintenance items essential to day-to-day living such as clothes, furniture and

other similarly essential items of limited value.

(ii) Provide that in determining need and the amount of the assistance payment, after all policies governing the reserves and allowances and disregard or setting aside of income and resources referred to in this section have been uniformly applied:

(A) In determining need, all remaining income and resources shall be considered in relation to the State's need standard;

(B) In determining financial eligibility and the amount of the assistance payment all remaining income (except unemployment compensation received by an unemployed principal earner) and, except for AFDC, all resources may be considered in relation to either the State's need standard or the State's payment standard. Unemployment compensation received by an unemployed principal earner shall be considered only by subtracting it from the amount of the assistance payment after the payment has been determined under the State's payment method;

(C) States may have policies which provide for allocating an individual's income for his or her own support if the individual is not applying for or receiving assistance; for the support of other individuals living in the same household but not receiving assistance; and for the support of other individuals living in another household. Such other individuals are those who are or could be claimed by the individual as dependents for determining Federal personal income tax liability, or those he or she is legally obligated to support. No income may be allocated to meet the needs of an individual who has been sanctioned under §§224.51, 232.11(a)(2), 232.12(d), 238.22 or 240.22 or who is required to be included in the assistance unit and has failed to cooperate. The amount allocated for the individual and the other individuals who are living in the home must not exceed the State's need standard amount for a family group of the same composition. The amount allocated for individuals not living in the home must not exceed the amount actually paid.

(D) Income after application of disregards, except as provided in paragraph (a)(3)(xiii) of this section, and resources available for current use shall be considered. To the extent not inconsistent with any other provision of this chapter, income and resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance.

(E) For AFDC, income tax refunds, but such payments shall be considered as resources; and

(F) When the AFDC assistance unit's income, after applying applicable disregards, exceeds the State need standard for the family because of receipt of nonrecurring earned or unearned lump sum income (including for AFDC, title II and other retroactive monthly benefits, and payments in the nature of a windfall, e.g., inheritances or lottery winnings, personal injury and worker compensation awards, to the extent it is not earmarked and used for the purpose for which it is paid, i.e., monies for back medical bills resulting from accidents or injury, funeral and burial costs, replacement or repair of resources, etc.), the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size. Any income remaining from this calculation is income in the first month following the period of ineligibility. The period of ineligibility shall begin with the month of receipt of the nonrecurring income or, at State option, as late as the corresponding payment month. For purposes of applying the lump sum provision, family includes all persons whose needs are taken into account in determining eligibility and the amount of the assistance payment, and includes solely for determining the income and resources of a family an individual who must be in a family pursuant to §206.10(a)(1)(vii) but who does not meet a condition of his or her eligibility due to a failure to cooperate or is required by law to have his or her needs excluded from an assistance unit's AFDC grant calculation due to the failure to perform some action. A State may

shorten the remaining period of ineligibility when: the standard of need increases and the amount the family would have received also changes (e.g., situations involving additions to the family unit during the period of ineligibility of persons who are otherwise eligible for assistance); the lump sum income or a portion thereof becomes unavailable to the family for a reason beyond the control of the family; or the family incurs and pays for medical expenses. If the State chooses to shorten the period of ineligibility, the State plan shall:

(*1*) Identify which of the above situations are included;

(*2*) In the case of situations involving an increase in the need standard and changes in the amount that should have been paid to the family, specify the types of circumstances which will be included;

(*3*) In the case of situations involving the unavailability of the lump sum income, include a definition of unavailability, and specify what reasons will be considered beyond the control of the family; and

(*4*) In the case of situations involving the payment of medical expenses, specify the types of medical expenses the State will allow to be offset against the lump sum income.

For purposes of this paragraph (a)(3): Automobile means a passenger car or other motor vehicle used to provide transportation of persons or goods. (In AFDC, in appropriate geographic areas, one alternate primary mode of transportation may be substituted for the automobile); Equity value means fair market value minus encumbrances (legal debts); Fair market value means the price an item of a particular make, model, size, material or condition will sell for on the open market in the geographic area involved (If a motor vehicle is especially equipped with apparatus for the handicapped, the apparatus shall not increase the value of the vehicle); Liquid assets are those properties in the form of cash or other financial instruments which are convertible to cash and include savings accounts, checking accounts, stocks, bonds, mutual fund shares, promissory notes, mortgages, cash value of insurance policies, and similar properties; Need standard means the money value assigned by the State to the basic and special needs it recognizes as essential for applicants and recipients; Payment standard means the amount from which non-exempt income is subtracted.

(iii) States may prorate income received by individuals employed on a contractual basis over the period of the contract or may prorate intermittent income received quarterly, semiannually, or yearly over the period covered by the income. In OAA, AB, APTD and AABD, they may use the prorated amount to determine need under § 233.23 and the amount of the assistance payment under §§ 233.24 and 233.25. In AFDC, they may use the prorated amount to determine need under § 233.33 and the amount of the assistance payment under §§ 233.34 and 233.35.

(iv) Provide that in determining the availability of income and resources, the following will not be included as income:

(A) Except for AFDC, income equal to expenses reasonably attributable to the earning of income (including earnings from public service employment);

(B) Grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs;

(C) Home produce of an applicant or recipient, utilized by him and his household for their own consumption;

(D) For AFDC, any amounts paid by a State IV-A agency from State-only funds to meet needs of children receiving AFDC, if the payments are made under a statutorily-established State program which has been continuously in effect since before January 1, 1979;

(E) For AFDC, income tax refunds, but such payments shall be considered as resources; and

(F) At State option, small nonrecurring gifts, such as those for Christmas, birthdays and graduations, not to exceed $30 per recipient in any quarter; and

(G) For AFDC, the amount paid to the family by the IV-A agency under § 232.20(d) or, in a State that treats direct support payments as income under § 233.20(a)(3)(v)(B), the first $50 received by the assistance unit which represents a current monthly support obligation

or a voluntary support payment. In no case shall the total amount disregarded exceed $50 per month per assistance unit.

(v) Provide that agency policies will assure that:

(A) In determining eligibility for an assistance payment, support payments assigned under §232.11 of this chapter will be treated in accordance with §232.20 and §232.21 of this chapter; and

(B) In determining the amount of an assistance payment, assigned support payments retained in violation of §232.12(b)(4) of this chapter, will be counted as income to meet need unless the approved IV-A State plan provides that such support payments are subject to IV-D recovery under §§302.31(a)(3) and 303.80 of this title or unless such payments are sufficient to render the family ineligible as provided at §232.20 of this chapter.

(vi)(A) In family groups living together, income of the spouse is considered available for his spouse and income of a parent is considered available for children under 21, except as provided in paragraphs (a)(3)(xiv) and (a)(3)(xviii) of this section for AFDC. If an individual is a spouse or parent who is a recipient of SSI benefits under title XVI, an individual with respect to whom Federal foster care payments are made, an individual with respect to whom State or local foster care payments are made, an individual with respect to whom Federal adoption assistance payments are made, or an individual with respect to whom State or local adoption assistance payments are made, then, for the period for which such benefits or payments are received, his or her income and resources shall not be counted as income and resources available to the AFDC unit except that a child receiving adoption assistance payments will not be excluded if such exclusion would cause the AFDC benefits of the assistance unit of which the child would otherwise be considered a member to be reduced. For purposes of this exception, ''a recipient of SSI benefits under title XVI'' includes a spouse or parent receiving mandatory or optional State supplementary payments under section 1616(a) of the Social Security Act or under section 212 of Public Law 93–66 and an ''individual with respect to whom Federal foster care payments are made'' means a child with respect to whom Federal foster care maintenance payments are made under section 472(b) and defined in section 475(4)(A) of the Act, and a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments made with respect to his or her minor parent under sections 472(h) and 475(4)(B) of the Act. ''Individuals with respect to whom Federal adoption assistance payments are made'' means a child who receives payments made under an approved title IV-E plan based on an adoption assistance agreement between the State and the adoptive parents of a child with special needs, pursuant to sections 473 and 475(3) of the Social Security Act.

(B) Income of an alien parent, who is disqualified pursuant to §233.50(c) is considered available to the otherwise eligible child by applying the stepparent deeming formula at 45 CFR 233.20(a)(3)(xiv).

(vii) If the State agency establishes policy under which assistance from other agencies and organizations will not be deducted in determining the amount of assistance to be paid, provide that no duplication shall exist between such other assistance and that provided by the public assistance agency. In such complementary program relationships, nonduplication shall be assured by provision that such aid will be considered in relation to: (*a*) The different purpose for which the other agency grants aid such as vocational rehabilitation; (*b*) the provision of goods and services that are not included in the statewide standard of the public assistance agency, e.g., a private agency might provide money for special training for a child or for medical care when the public assistance agency does not carry this responsibility; or housing and urban development payments might be provided to cover moving expenses that are not included in the assistance standard; or (*c*) the fact that public assistance funds are insufficient to meet the total amount of money determined to be needed in accordance with the statewide standard. In such instances, grants by other agencies in an amount sufficient to

make it possible for the individual to have the amount of money determined to be needed, in accordance with the public assistance agency standard, will not constitute duplication.

(viii) Provide that: (A) Payment will be based on the determination of the amount of assistance needed; (B) if full individual payments are precluded by maximums or insufficient funds, adjustments will be made by methods applied uniformly statewide; (C) in the case of AFDC no payment of aid shall be made to an assistance unit in any month in which the amount of aid prior to any adjustments is determined to be less than $10; and (D) an individual who is denied aid because of the limitation specified in (C) of this section, or because the payment amount is determined to be zero as a result of rounding the payment amount as required by §233.20(a)(2)(iv), shall be deemed a recipient of aid for all other purposes except participation in the Community Work Experience Program.

(ix) Provide that the agency will establish and carry out policies with reference to applicants' and recipients' potential sources of income that can be developed to a state of availability.

(x) Provide that the income and resources of individuals receiving SSI benefits under title XVI, individuals with respect to whom Federal foster care payments are made, individuals with respect to whom State or local foster care payments are made, individuals with respect to whom Federal adoption assistance payments are made, or individuals with respect to whom State or local adoption assistance payments are made, for the period for which such benefits or payments are received, shall not be counted as income and resources of an assistance unit applying for or receiving assistance under title IV-A; except that a child receiving adoption assistance payments will not be excluded if such exclusion would cause the AFDC benefits of the assistance unit of which the child would otherwise be considered a member to be reduced. Under this requirement, ''individuals receiving SSI benefits under title XVI'' include individuals receiving mandatory or optional State supplementary payments under section 1616(a) of the Social Security Act or under section 212 of Public Law 93–66 and, ''individuals with respect to whom Federal foster care payments are made'' means a child with respect to whom Federal foster care maintenance payments are made under section 472(b) and defined in section 475(4)(A) of the Act, and a child whose costs in a foster family home or child-care institution are covered by foster care maintenance payments made with respect to his or her minor parent under sections 472(h) and 475(4)(B) of the Act. ''Individuals with respect to whom Federal adoption assistance payments are made'' means a child who receives payments made under an approved title IV-E plan based on an adoption assistance agreement between the State and the adoptive parents of a child with special needs, pursuant to sections 473 and 475(3) of the Social Security Act.

(xi) In the case of AFDC if the State chooses to count the value of the food stamp coupons as income, provide that the State plan shall:

(A) Identify the amount for food included in its need and payment standards for an assistance unit of the same size and composition. (States which have a flat grant system must estimate the amount based on historical data or some other justifiable procedure.); and

(B) Specify the amount of such food stamp coupons that it will count as income. Under this requirement, the amount of food stamp coupons which a State may count as income may not exceed the amount for food established in its payment standard for an assistance unit of the same size and composition.

(xii) In the case of AFDC if the State chooses to count the value of the governmental rent or housing subsidies as income, provide that the State plan shall:

(A) Identify the amount for shelter included in its need and payment standards for an assistance unit of the same size and composition. (States which have a flat grant system must estimate this amount based on historical data or some other justifiable procedure.); and

(B) Specify the amount of such housing assistance that it will count as income. Under this requirement, the

amount of such rent or housing subsidies which a State may count as income may not exceed the amount for shelter established in its payment standard for assistance unit of the same size and composition.

(xiii) Under the AFDC plan, provide that no assistance unit is eligible for aid in any month in which the unit's income (other than the assistance payment) exceeds 185 percent of the State's need standard (including special needs) for a family of the same composition (including special needs), without application of the disregards in paragraph (a)(11)(i) (except to the extent provided for under paragraph (a)(3)(xix)), paragraph (a)(11)(ii) and paragraph (a)(11)(viii) of this section.

(xiv) For AFDC, in States that do not have laws of general applicability holding the stepparent legally responsible to the same extent as the natural or adoptive parent, the State agency shall count as income to the assistance unit the income of the stepparent (i.e., one who is married, under State law, to the child's parent) of an AFDC child who is living in the household with the child after applying the following disregards (exception: if the stepparent is included in the assistance unit, the disregard under paragraph (a)(11) (i) and (ii) of this section apply instead:

(A) The first $90 of the gross earned income of the stepparent;

(B) An additional amount for the support of the stepparent and any other individuals who are living in the home, but whose needs are not taken into account in making the AFDC eligibility determinations except for sanctioned individuals or individuals who are required to be included in the assistance unit but have failed to cooperate and are or could be claimed by the stepparent as dependents for purposes of determining his or her Federal personal income tax liability. This disregarded amount shall equal the State's need standard amount for a family group of the same composition as the stepparent and those other individuals described in the preceding sentence;

(C) Amounts actually paid by the stepparent to individuals not living in the home but who are or could be claimed by him or her as dependents for purposes of determining his or her Federal personal income tax liability; and

(D) Payments by such stepparent of alimony or child support with respect to individuals not living in the household.

(xv) For AFDC, provide for the consideration of the income and resources of an alien's sponsor who is an individual as provided in § 233.51.

(xvi) For AFDC, provide that in considering the availability of income and resources, support and maintenance assistance (including home energy assistance) will be taken into account in accordance with § 233.53.

(xvii) In the case of AFDC, if the State chooses to disregard monthly income of any dependent child when the income is derived from participation in a program under the JTPA, provide that the State plan shall:

(A) Identify from which programs under the JTPA, income will be disregarded;

(B) In the case of earned income, specify what amount will be disregarded, and the length of time the disregard will be applicable (up to six months per calendar year); and

(C) In the case of unearned income, specify what amount will be disregarded, and the length of time per calendar year the disregard will be applicable if any such limit is chosen.

(xviii) For AFDC, in the case of a dependent child whose parent is a minor under the age of 18 (without regard to school attendance), the State shall count as income to the assistance unit the income, after appropriate disregards, of such minor's own parent(s) living in the same household as the minor and dependent child. The disregards to be applied are the same as are applied to the income of a stepparent pursuant to paragraph (a)(3)(xiv) of this section. However, in applying the disregards, each employed parent will receive the benefit of the work expense disregard in paragraph (a)(3)(xiv)(A) of this section.

(xix) In the case of AFDC, if the State chooses to disregard monthly earned income of dependent children who are full-time students in the determination of whether the family's income exceeds the limit under

§ 233.20(a)(3)(xiii) of this section, provide that the State plan shall specify what amounts will be disregarded and the length of time the disregard will be applicable (up to six months per calendar year) except that earned income derived from participation in a program under the JTPA may only be disregarded under this paragraph, paragraph (a)(3)(xvii) or a combination of both paragraphs for a total of 6 months per calendar year.

(xx) In the case of AFDC, if the State chooses to disregard in the determination of eligibility the monthly earned income of dependent children applying for AFDC who are full-time students, provide that the State plan shall:

(A) Specify the amount that will be disregarded, and

(B) Provide that the disregard shall only apply to the extent that the earned income is also disregarded pursuant to paragraph (a)(3)(xix) of this section.

(xxi) Provide that the principal of a bona fide loan will not be counted as income or resources in the determination of eligibility and the amount of assistance. Interest earned on a loan is counted as unearned income in the month received and as resources thereafter and purchases made with a loan are counted as resources. For purposes of this paragraph, a loan is considered bona fide when it meets objective and reasonable criteria included in the State plan.

(4) *Disregard of income in OAA, AFDC, AB, APTD, OR AABD.* (i) For all programs except AFDC. If the State chooses to disregard income from all sources before applying other provisions for disregarding or setting aside income, specify the amount that is first to be disregarded, but not more than $7.50 per month, of any income of an individual, child or relative claiming assistance. All income must be included such as social security or other benefits, earnings, contributions from relatives, or other income the individual may have.

(ii) Provide that in determining eligibility for public assistance and the amount of the assistance payment, the following will be disregarded as income and resources:

(*a*) In OAA, AB, APTD, and AABD, the value of the coupon allotment under the Food Stamp Act of 1964 in excess of the amount paid for the coupons;

(*b*) The value of the U.S. Department of Agriculture donated foods (surplus commodities);

(*c*) Any payment received under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(*d*) Grants or loans to any undergraduate student for educational purposes made or insured under any programs administered by the Secretary of Education except the programs under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 *et seq.*). Student financial assistance provided under the Carl D. Perkins Vocational and Applied Technology Education Act will be disregarded in accordance with paragraph (a)(4)(ii)(*t*) of this section.

(*e*) Any funds distributed per capita to or held in trust for members of any Indian tribe under Public Law 92–254 or Pub. L. 94–540;

(*f*) Any benefits received under title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended;

(*g*) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other programs under titles II and III, pursuant to section 418 of Pub. L. 93–113;

(*h*) Payments to applicants or recipients participating in the Volunteers in Service to America (VISTA) Program, except that this disregard will not be applied when the Director of ACTION determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938, or the minimum wage under the laws of the States where the volunteers are serving, whichever is greater. (Section

404(g) of Pub. L. 93–113, as amended by section 9 of Pub. L. 96–143);

(*i*) The value of supplemental food assistance received under the Child Nutrition Act of 1966 as amended, and the special food service program for children under the National School Lunch Act, as amended (Pub. L. 92–433 and Pub. L. 93–150);

(*j*) [Reserved]

(*k*) Pursuant to section 15 of Public Law 100–241, any of the following distributions made to a household, an individual Native, or a descendant of a Native by a Native Corporation established pursuant to the Alaska Native Claims Settlement Act (ANCSA) (Pub. L. 92–203, as amended):

(*1*) Cash distributions (including cash dividends on stock from a Native Corporation) received by an individual are never counted as income or resources to the extent that such cash does not, in the aggregate, exceed $2,000 in a year. Cash which, in the aggregate, is in excess of $2,000 in a year is not subject to the income and resources disregards in this paragraph (a)(4)(ii)(*k*)(*1*);

(*2*) Stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock);

(*3*) A partnership interest;

(*4*) Land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and

(*5*) An interest in a settlement trust.

(*l*) Benefits paid to eligible households under the Low Income Home Energy Assistance Act of 1981 pursuant to section 2605(f) of Pub. L. 97–35;

(*m*) Effective October 17, 1975, pursuant to section 6 of Pub. L. 94–114 (89 Stat. 577, 25 U.S.C. 459e) receipts distributed to members of certain Indian tribes which are referred to in section 5 of Pub. L. 94–114 (89 Stat. 577, 25 U.S.C. 459d).

(*n*) Pursuant to section 7 of Public Law 93–134, as amended by section 4 of Public Law 97–458, Indian judgment funds that are held in trust by the Secretary of the Interior (including interest and investment income accrued while such funds are so held in trust), or distributed per capita to a household or member of an Indian tribe pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress, and initial purchases made with such funds. This disregard does not apply to proceeds from the sale of initial purchases, subsequent purchases made with funds derived from the sale or conversion of the initial purchases, or to funds or initial purchases which are inherited or transferred.

(*o*) Pursuant to section 2 of Public Law 98–64, all funds held in trust by the Secretary of the Interior for an Indian tribe (including interest and investment income accrued while such funds are so held in trust) and distributed per capita to a household or member of an Indian tribe, and initial purchases made with such funds. This disregard does not apply to proceeds from the sale of initial purchases, subsequent purchases made with funds derived from the sale or conversion of initial purchases, or to funds or initial purchases which are inherited or transferred.

(*p*) Any student financial assistance provided under programs in title IV of the Higher Education Act of 1965, as amended, and under Bureau of Indian Affairs education assistance programs.

(*q*) For AFDC, any payments made as restitution to an individual under title I of Public Law 100–383 (the Civil Liberties Act of 1988) or under title II of Public Law 100–383 (the Aleutian and Pribilof Islands Restitution Act).

(*r*) Any Federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, as amended by Public Law 100–707 (the Disaster Relief and Emergency Assistance Amendments of 1988) and comparable disaster assistance provided by States, local governments and disaster assistance organizations.

(*s*) Any payments made pursuant to the settlement in the In Re Agent Orange Product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

(*t*) Student financial assistance made available for the attendance costs defined in this paragraph under programs in the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 *et seq.*). Attendance costs are: tuition and fees normally assessed a student carrying the same academic

workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study; and an allowance for books, supplies, transportation, dependent care and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution.

(*u*) For AFDC, any payments made pursuant to section 6(h)(2) of Public Law 101–426, the Radiation Exposure Compensation Act.

(iii) Provide that income and resources which are disregarded or set aside under this part will not be taken into consideration in determining the need of any other individual for assistance.

(iv) For AFDC, any amounts determined to have been paid by a State from State-only funds to supplement or otherwise increase the amount of aid paid to an assistance unit as computed under §233.35 for a month in recognition of current or anticipated needs of the assistance unit for that same month shall not be counted as income—to the extent that the total of the State supplemental payment, the AFDC payment and actual income (i.e., the amount of income received during the payment month after subtracting from gross income the $75 work expense disregard (to recognize mandatory payroll deductions, transportation costs, and other work expenses), child care and other applicable disregards) received in that month are not in excess of what the State would have paid for that month to an assistance unit of the same size and composition with no income—in computing the assistance payment under §233.35 for the corresponding payment month.

(5) *Proration of shelter, utilities, and similar needs in AFDC.* (i) Provide that the State agency may prorate allowances in the need and payment standards for shelter, utilities, and similar needs when the AFDC assistance unit lives together with other individuals as a household; except that, the State shall not prorate with respect to any person receiving SSI to whom the statutory one-third reduction (section 1612(a)(2)(A)(i) of the Act) is applied, or prorate when a bona fide landlord-tenant relationship exists. If the State chooses to prorate under this paragraph, it must prorate both the need standard and payment standard.

(ii) If the State agency elects to prorate allowances for shelter, utilities, and similar needs the State plan must:

(A) Indicate which allowances will be prorated, and describe the procedure which will be used to prorate the allowances;

(B) Provide that the allowances will be prorated on a reasonable basis; and

(C) Specify the circumstances under which proration will occur, including a description of which individuals are considered to be living with an AFDC assistance unit as a household.

(6) *Disregard of earned income; definition.* Provide that for purposes of disregarding earned income the agency policies will include:

(i) A definition of *earned income* in accordance with the provisions of paragraphs (a)(6) (iii) through (ix) of this section; and

(ii) Provision for disregarding earned income for the period during which it is earned, rather than when it is paid, in cases of lump-sum payment for services rendered over a period of more than 1 month.

(iii) The term earned income encompasses income in cash or in kind earned by an individual through the receipt of wages, salary, commissions, or profit from activities in which he is engaged as a self-employed individual or as an employee. For AFDC, *earned income* means gross earned income prior to any deductions for taxes or for any other purposes, except as provided in paragraph (a)(6)(v). Such earned income may be derived from his own employment, such as a business enterprise, or farming; or derived from wages or salary received as an employee. It includes earnings over a period of time for which settlement is made at one given time, as in the instance of sale of farm crops, livestock, or poultry. For OAA, AB, APTD and AABD only, in considering income from farm operation, the option available for reporting under OASDI, namely the *cash receipts and disbursements* method, i.e., a record of actual gross, of expenses, and of net, is an individual

determination and is acceptable also for these assistance programs.

(iv) With reference to commissions, wages, or salary, the term *earned income* means the total amount, irrespective of personal expenses, such as income-tax deductions, lunches, and transportation to and from work, and irrespective of expenses of employment which are not personal, such as the cost of tools, materials, special uniforms, or transportation to call on customers.

(v)(A) For OAA, AB, APTD, and AABD, with respect to self-employment, the term *earned income* means the total profit from business enterprise, farming, etc., resulting from a comparison of the gross income received with the *business expenses,* i.e., total cost of the production of the income. Personal expenses, such as income-tax payments, lunches, and transportation to and from work, are not classified as business expenses.

(B) For AFDC, with respect to self-employment the term *earned income* means the total profit from business enterprise, farming, etc., resulting from a comparison of the gross receipts with the *business expenses,* i.e., expenses directly related to producing the goods or services and without which the goods or services could not be produced. However, items such as depreciation, personal business and entertainment expenses, personal transportation, purchase of capital equipment and payments on the principal of loans for capital assets or durable goods are not business expenses.

(vi) The definition shall exclude the following from *earned income:* Returns from capital investment with respect to which the individual is not himself actively engaged, as in a business (for example, under most circumstances, dividends and interest would be excluded from *earned income*); benefits (not in the nature of wages, salary, or profit) accruing as compensation, or reward for service, or as compensation for lack of employment (for example, pensions and benefits, such as United Mine Workers' benefits or veterans' benefits).

(vii) With regard to the degree of activity, earned income is income produced as a result of the performance of services by a recipient; in other words, income which the individual earns by his own efforts, including managerial responsibilities, would be properly classified as earned income, such as management of capital investment in real estate. Conversely, for example, in the instance of capital investment wherein the individual carries no specific responsibility, such as where rental properties are in the hands of rental agencies and the check is forwarded to the recipient, the income would not be classified as earned income.

(viii) Reserves accumulated from earnings are given no different treatment than reserves accumulated from any other sources.

(7) *Disregard of earned income; method.* (i) Provide that for other than AFDC, the following method will be used for disregarding earned income: The applicable amounts of earned income to be disregarded will be deducted from the gross amount of *earned income,* and all work expenses, personal and non-personal, will then be deducted. Only the net amount remaining will be applied in determining need and the amount of the assistance payment.

(ii) In applying the $30 and one-third disregard under paragraph (a)(11)(i)(D) of this section to an applicant for AFDC, there will be a preliminary step to determine whether the assistance unit is eligible without applying the disregard to the individual's earned income, by comparing the applicant's gross earned income (less the disregards in paragraphs (a)(11)(i) (A), (B) and (C)) and all of the assistance unit's other income to the State need standard. This preliminary step does not apply if the individual has received AFDC in one of the four months prior to the month of application.

(8) *Disregard of earned income applicable only to OAA, APTD, or AABD.* If the State chooses to disregard earned income, specify the amount to be disregarded of the first $80 per month of income that is earned by an aged or disabled individual claiming OAA, APTD, or AABD, who is not blind, but not more than $20 per month plus one-half of the next $60 of such earned income.

(9) *Disregard of income and resources applicable only to APTD or AABD.* If the

State chooses to disregard income (which may be additional to the income disregarded under paragraph (a)(8) of this section) or resources for a disabled individual to achieve the fulfillment of a plan of self-support, provide that the amounts of additional income and resources will not exceed those found necessary for the period during which the individual is actually undergoing vocational rehabilitation, and specify the period, not in excess of 36 months, for which such amounts are to be disregarded.

(10) *Disregard of income and resources applicable only to AB or AABD.* Provide that, in determining the need of individuals who are blind, (i) the first $85 per month of earned income of the individual plus one-half of earned income in excess of $85 per month will be disregarded; and (ii) if the individual has a plan for achieving self-support, such additional income and resources as are necessary to fulfill such plan will be disregarded for a period not in excess of 12 months. Such additional income and resources may be disregarded for an additional period not in excess of 24 months (for a total of 36 months), as specified in the State plan.

(11) *Disregard of income and resources applicable only to AFDC.* (i) For purposes of eligibility determination, the State must disregard from the monthly earned income, i.e., earned income as defined in § 233.20(a)(6)(iii), of each individual whose needs are included in the eligibility determination:

(A) Disregard all of the monthly earned income of each child receiving AFDC if the child is a full-time student or is a part-time student who is not a full-time employee. A student is one who is attending a school, college, or university or a course of vocational or technical training designed to fit him or her for gainful employment and includes a participant in the Job Corps program under the Job Training Partnership Act (JTPA).

(B) The first $90.

(C) Where appropriate, an amount equal to $30 plus one-third of the earned income not already disregarded under paragraphs (a)(11)(i), (a)(11)(v) and (a)(11)(vi) of this section of an individual who received assistance in one of the four prior months.

(D) An amount equal to the actual cost for the care of each dependent child or incapacitated adult living in the same home and receiving AFDC, but not to exceed $175 for each dependent child who is at least age two or each incapacitated adult, and not to exceed $200 for each dependent child who is under age two. For individuals not engaged in full-time employment or not employed throughout the month, the $175 and $200 disregard limits may be applied, or the State agency may establish disregard limits less than $175 and $200.

(E) Where appropriate, $30 of the earned income not already disregarded under paragraphs (a)(11) (i), (v), and (vi) of this section, in the case of an individual who reapplies for assistance within the eight-month period that he/she is eligible for the $30 disregard.

(ii) For purposes of benefit calculation for individuals found eligible under paragraph (a)(11)(i) of this section, the following disregards must be made by the State:

(A) Disregard all of the monthly earned income of each child receiving AFDC if the child is a full-time student or is a part-time student who is not a full-time employee. A student is one who is attending a school, college, or university or a course of vocational or technical training designed to fit him or her for gainful employment and includes a participant in the Job Corps program under the Job Training Partnership Act (JTPA).

(B) Disregard from any other individual's earned income the amounts specified in paragraphs (a)(11)(i)(B) and (a)(11)(i)(D) of this section, and $30 plus one-third of the individual's earned income not already disregarded under paragraphs (a)(11)(ii) and (a)(11)(v) of this section. However, the State may not provide the one-third portion of the disregard to an individual after the fourth consecutive month (any month for which the unit loses the $30 plus one-third disregard because of a provision in paragraph (a)(11)(iii) of this section, shall be considered as one of these months) it has been applied to the individual's earned income and may not apply the $30 disregard after the eighth month following the fourth consecutive month (regardless of whether the $30

disregard was actually applied in those months) unless twelve consecutive months have passed during which the individual is not a recipient of AFDC. If income from a recurring source resulted in suspension or termination due to an extra paycheck, the month of ineligibility does not interrupt the accumulation of consecutive months of the $30 plus one-third disregard, nor does it count as one of the consecutive months.

(iii) The applicable earned income disregards in paragraphs (i) (B) and (C) and (ii)(B) of this paragraph do not apply to the earned income of the individual for the month in which one of the following conditions apply to him:

(A) An individual terminated his employment or reduced his earned income without good cause (as specified in the State plan) within the period of 30 days preceding such month;

(B) An individual refused without good cause (as specified in the State plan) within the period of 30 days preceding such month to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined by the State or local agency administering the State plan, after notification by him, to be a bona fide offer of employment;

(C) An individual failed without good cause (as specified in the State plan) to make a timely report (as defined in §233.37(c)) of that income; or

(D) The individual voluntarily requests assistance to be terminated for the primary purpose of avoiding receiving the $30 and one-third disregard for four consecutive months.

(iv) [Reserved]

(v) The treatment of earned income and expenses under JOBS is as follows:

(A) For earned income from regular employment or on-the-job training, as described at §250.61, the disregards in paragraphs (a)(11)(i) and (a)(11)(ii)(B) shall apply.

(B) For earned income from a job under the work supplementation component, as described at §250.62, the disregards in paragraphs (a)(11)(i) and (a)(11)(ii)(B) shall apply unless the State IV-A agency in its State JOBS plan, has elected to provide otherwise under §250.62(j) and §250.62(k).

(C) For all activities under JOBS and self-initiated education and training in non-JOBS areas, advance payment or reimbursement to the individual for child care, transportation, work-related expenses, or work-related supportive services is disregarded.

(D) Payment or reimbursement of child care pursuant to part 255 for employed individuals who are not JOBS participants and one-time work-related expenses for individuals who are not JOBS participants pursuant to part 255 are disregarded.

(vi) At State option, disregard all or part of the monthly income of any dependent child applying for or receiving AFDC when the income is derived from a program carried out under the Job Training Partnership Act of 1982, except that in respect to earned income such disregard may not exceed six months per calendar year.

(vii) At State option, disregard all or part of the monthly earned income of any dependent child applying for AFDC, if the child is a full-time student, and that income has been disregarded for purposes of paragraph (a)(3)(xiii) of this section.

(viii) Disregard as income the amount of any earned income tax credit payments received by an applicant or recipient. Disregard as resources, in the month of receipt and the following month, the amount of any earned income tax credit payments received by an applicant or recipient. ''Earned income tax credit payments'' include: Any advance earned income tax credit payment made to a family by an employer and any earned income tax credit payment made as a refund of Federal income taxes.

(12) *Recoupment of overpayments and correction of underpayments for programs other than AFDC.* Specify uniform Statewide policies for:

(i) Recoupment of overpayments of assistance, including certain overpayments resulting from assistance paid pending hearing decisions.

(A) The State may not recoup any overpayment previously made to a recipient:

(*1*) Unless the recipient has income or resources exclusive of the current assistance payment currently available in the amount by which the agency proposes to reduce payments: except that,

(*2*) Where such overpayments were occassioned or caused by the recipient's willful withholding of information concerning his income, resources or other circumstances which may affect the amount of payment, the State may recoup prior overpayments from current assistance grants irrespective of current income or resources.

(B) Withholding of information which is subject to the provisions of paragraph (a)(12)(i)(A)(*2*) of this section includes the following:

(*1*) Willful misstatements (either oral or written) made by a recipient in response to oral or written questions from the State agency concerning the recipient's income, resources or other circumstances which may affect the amount of payment. Such misstatements may include understatements of amounts of income or resources and omission of an entire category of income or resources;

(*2*) A willful failure by the recipient to report changes in income, resources or other circumstances which may affect the amount of payment, if the State agency has clearly notified the recipient of an obligation to report such changes. The recipient shall be given such notification periodically at times (not less frequently than semiannually) and by methods which the State agency determines will effectively bring such reporting requirements to the recipient's attention:

(*3*) A willfull failure by the recipient (*i*) to report receipt of a payment which the recipient knew represented an erroneous overpayment, or (*ii*) to notify the State agency of receipt of a check which exceeded the prior check by at least the amount which the State agency had previously notified the recipient (pursuant to the provisions of paragraph (a)(12)(i)(A)(*4*) of this section) might represent an overpayment and constitute a sum to which the recipient would not be entitled. In making a determination pursuant to this paragraph (a)(12)(i)(B)(*3*), all relevant circumstances including the amount by which the erroneous payment exceeded the previous payment shall be considered.

(C) Each periodic notification under paragraph (a)(12)(i)(B)(*2*) of this section shall:

(*1*) Include a reminder that it is the recipient's continuing obligation to furnish to the State agency accurate and timely information concerning changes in income, resources, or other circumstances which may affect the amount of payment, within a reasonable specified period after such change. The recipient may also be notified that a failure to so notify the State agency within the designated time period may constitute a willful withholding of such information and permit the State agency to recover any overpayment occasioned or caused by the willful withholding;

(*2*) Specifically and comprehensibly in simple phraseology indicate the type of information to be disclosed by the recipient. Examples shall be furnished of the most frequent types of newly acquired income or resources (e.g., inheritance, wages from a part-time job);

(*3*) Require that, if there is any doubt whether a particular change in circumstances constitutes such reportable information, the recipient contact the State agency or a designated representative thereof within a reasonable specified period of time after such change in circumstances;

(*4*) If the State plan provides for recoupment in the circumstances described in paragraph (a)(12)(i)(B)(*3*)(*ii*) of this section, notify the recipient that if the check received exceeds the prior check by a specified amount (which amount may not be less than that which a reasonable man should have known was erroneous), this increased check may constitute a sum to which the recipient is not entitled. In such instances, the notification may require that the recipient notify the State agency or a designated representative thereof prior to the negotiation of such check, so that corrective action may be taken; the State agency shall respond to such notification within 24 hours. The recipient may also be notified that a failure to so notify the State agency within the designated time period may constitute a willful

withholding of such information and permit the State agency to recover such overpayment.

(D) The State agency shall require periodic formal acknowledgement by recipients (on a form utilized for this purpose) that the reporting obligations of this paragraph had been brought to the recipient's attention and that they were understood.

(E) Any recoupment of overpayments made under circumstances other than those specified in paragraph (a)(12)(i)(B) of this section shall be limited to overpayments made during the 12 months preceding the month in which the overpayment was discovered.

(F) Any recoupment of overpayments permitted by paragraph (a)(12)(i)(A)(*2*) of this section may be made from available income and resources (including disregarded, set-aside or reserved items) or from current assistance payment or from both. If recoupments are made from current assistance payments, the State shall, on a case-by-case basis, limit the proportion of such payments that may be deducted in each case, so as not to cause undue hardship to recipients.

(G) The plan may provide for recoupment in all situations specified herein, or only in certain of the circumstances specified herein, and for waiver of the overpayment where the cost of collection would exceed the amount of the overpayment.

(H) Election by the State not to recoup overpayments shall not waive the provisions of §§ 205.40, and 205.41, or any other quality control requirement.

(ii) Prompt correction of underpayments to current recipients, resulting from administrative error where the State plan provides for recoupment of overpayments. Under this requirement:

(*a*) Retroactive corrective payment shall be made only for the 12 months preceding the month in which the underpayment is discovered;

(*b*) For purposes of determining continued eligibility and amount of assistance, such retroactive corrective payments shall not be considered as income or as a resource in the month paid nor in the next following month; and

(*c*) No retroactive payment need be made where the administrative cost would exceed the amount of the payment.

(13) *Recovery of overpayments and correction of underpayments for AFDC.*(i) Specify uniform Statewide policies for recovery of overpayments of assistance, including overpayments resulting from assistance paid pending hearing decisions. Overpayment means a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible. (The agency may deny assistance for the corresponding payment month rather than recover if the assistance unit was ineligible for the budget month, the State becomes aware of the ineligibility when the monthly report is submitted, the recipient accurately reported the budget month's income and other circumstances, and the assistance unit will be eligible for the following payment month.)

(A) The State must take all reasonable steps necessary to promptly correct any overpayment, except that, as set forth in the plan, a State may waive any overpayment which occurred because receipt of an earned income tax credit payment by a family during the period January 1, 1990, to December 31, 1990, caused ineligibility under the 185 percent gross income limitation in paragraph (a)(3)(xiii) of this section.

(*1*) Any recovery of an overpayment to a current assistance unit, including a current assistance unit or recipient whose overpayment occurred during a prior period of eligibility, must be recovered through repayment (in part or in full) by the individual responsible for the overpayment or recovering the overpayment by reducing the amount of any aid payable to the assistance unit of which he or she is a member, or both.

(*2*) If recovery is made from the grant, such recovery shall result in the assistance unit retaining, for any payment month, from the combined aid, income and liquid resources, (without application of section 402(a)(8) of the Act) not less than 90 percent of the amount payable under the State plan to a family of the same composition with no other income. Where a State chooses to recover at a rate less than

the maximum, it must recover promptly.

(B) The State shall recover an overpayment from (*1*) the assistance unit which was overpaid, or (*2*) any assistance unit of which a member of the overpaid assistance unit has subsequently become a member, or (*3*) any individual members of the overpaid assistance unit whether or not currently a recipient. If the State recovers from individuals who are no longer recipients, or from recipients who refuse to repay the overpayment from their income and resources, recovery shall be made by appropriate action under State law against the income or resources of those individuals.

(C) If through recovery, the amount payable to the assistance unit is reduced to zero, members of the assistance unit are still considered recipients of AFDC.

(D) In cases which have both an underpayment and an overpayment, the State may offset one against the other in correcting the payment.

(E) Prompt recovery of an overpayment: A State must take one of the following three actions by the end of the quarter following the quarter in which the overpayment is first identified:

(*1*) Recover the overpayment, (*2*) initiate action to locate and/or recover the overpayment from a former recipient, or (*3*) execute a monthly recovery agreement from a current recipient's grant or income/resources.

(ii) Specify uniform Statewide policies for prompt correction of any underpayments to current recipients and those who would be a current recipient if the error causing the underpayment had not occurred. Underpayment means a financial assistance payment received by or for an assistance unit for the payment month which is less than the amount for which the assistance unit was eligible, or failure by the State to issue a financial assistance payment for the payment month to an eligible assistance unit if such payment should have been issued. Under this requirement, for purposes of determining continued eligibility and amount of assistance, such retroactive corrective payments shall not be considered as income, or as a resource in the month paid nor in the next following month.

(iii) Paragraph (a)(13) of this section is effective for incorrect payments which are identified subsequent to September 30, 1981.

(iv) In locating former recipients who have outstanding overpayments the State should use appropriate data sources such as State unemployment insurance files, State Department of Revenue information from tax returns, State automobile registration, Bendex, and other files relating to current or former recipients.

(v) The State must maintain information on the individual and total number and amount of overpayments identified and their disposition for current and former recipients.

(vi) The State may elect not to attempt recovery of an overpayment from an individual no longer receiving aid where the overpayment amount is less than $35. Where the overpayment amount owed by an individual no longer receiving aid is $35 or more, the State can determine when it is no longer cost-effective to continue overpayment recovery efforts, provided it has made reasonable efforts to recover the overpayment from the individual. Reasonable efforts must include notification of the amount of and reason for the overpayment and that repayment is required. States must also maintain information regarding uncollected overpayments as provided under paragraph (a)(13)(v) of this section, to enable the State to recover those overpayments if the individual subsequently becomes a recipient. In cases involving fraud, States must make every effort to recover the overpayment, regardless of the amount.

(14) For Medicaid eligibility only, beginning October 1, 1998, pursuant to section 402(a)(37) of the Act, an assistance unit will be deemed to be receiving AFDC, but only for the purposes of this paragraph, for a period of nine months after the last month the family actually received aid if the loss of AFDC eligibility was solely because a member of the unit was no longer eligible due to the 4 and 12 month time limitations to have the $30 and one-third or the $30 disregard in paragraph (a)(11)(ii)(B) applied to his or her

earned income. At State option, an additional period of Medicaid coverage for up to six months may be provided when the assistance unit would be eligible during such additional period to receive AFDC if the $30 and one-third or the $30 disregards were applied to the assistance unit's earned income.

(15) For Medicaid eligibility only, pursuant to section 406(h) of the Act:

(i) Each dependent child and each relative with whom such a child is living (including the eligible spouse of such relative pursuant to section 237.50(b) of this chapter) who becomes ineligible for AFDC wholly or partly because of the initiation of or an increase in the amount of a child or spousal support collection under title IV-D will be deemed to be receiving AFDC, but only for purposes of this paragraph (a)(15), for a period of four consecutive calendar months beginning with the first month of AFDC ineligibility. To be eligible for extended Medicaid coverage pursuant to this paragraph (a)(15), each dependent child and relative must meet the following conditions:

(A) The individual must have become ineligible for AFDC on or after August 16, 1984; and

(B) The individual must have received AFDC in at least three of the six months immediately preceding the month in which the individual becomes ineligible for AFDC; and

(C) The individual must have become ineligible for AFDC wholly or partly as a result of the initiation of or an increase in the amount of a child or spousal support collection under title IV-D.

(ii)(A) Except as provided in paragraph (a)(15)(ii)(B) of this section, individuals who are eligible for extended Medicaid lose this coverage if they move to another State during the 4-month period. However, if they move back to and reestablish residence in the State in which they have extended coverage, they are eligible for any of the months remaining in the 4-month period in which they are residents of the State.

(B) If a State has chosen in its State plan to provide Medicaid to non-residents, the State may continue to provide the 4-month extended benefits to individuals who have moved to another State.

(iii) For purposes of paragraph (i) of this section:

(A) The new collection or increased collection of child or spousal support results in the termination of AFDC eligibility when it actively causes or contributes to the termination. This occurs when:

(*1*) The change in support collection in and of itself is sufficient to cause ineligibility. This rule applies even if the support collection must be added to other, stable income. It also applies even if other independent factors, alone or in combination with each other, might simultaneously cause ineligibility; or

(*2*) The change in support contributes to ineligibility but does not by itself cause ineligibility. Ineligibility must result when the change in support is combined with other changes in income or changes in other circumstances and the other changes in income or circumstances cannot alone or in combination result in termination without the change in support.

(B) In cases of increases in the amounts of both the support collections and earned income, eligibility under this section does not preclude eligibility under paragraph (a)(14) of this section or section 1925 of the Social Security Act (which was added by section 303(a) of the Family Support Act of 1988 (42 U.S.C. 139r–6)). Extended periods result from both an increase in the amount of the support collection and from an increase in earned income must run concurrently.

(b) *Federal financial participation; General.* (1) Federal participation will be available in financial assistance payments made on the basis that (after application of policies governing the allowable reserve, disregard or setting aside of income and resources), all income of the needy individual, together with the assistance payment, do not exceed the State's defined standard of assistance, and available resources of the needy individuals do not exceed the limits under the State plan.

(2) Federal participation is available within the maximums specified in the Federal law, when the payments do not exceed the amount determined to be

needed under the statewide standard, and are made in accordance with the State method for determining the amount of the payments, as specified in § 233.31 for AFDC and in §§ 233.24 and 233.25 for OAA, AB, APTD, and AABD.

(3) Federal participation is available in financial assistance payments made on the basis of the need of the individual. This basis may include consideration of needy persons living in the same home with the recipient when such other persons are within the State's policy as essential to his well-being. Persons living in the home who are ''essential to the well-being of the recipient,'' as specified in the State plan, will govern as the basis for Federal participation (see Guides and Recommendations). When the State includes persons living outside the home or persons not in need, Federal participation is not available for that portion of financial assistance payments attributable to such persons, and the State's claims must, therefore, identify the amounts of any such nonmatchable payments.

(4) For all assistance programs except AFDC, Federal participation is available for supplemental payments in the retrospective budgeting system.

(c) *Federal financial participation in vendor payments for home repairs.* With respect to expenditures made after December 31, 1967, expenditures to a maximum of $500 are subject to Federal financial participation at 50 percent for repairing the home owned by an individual who is receiving aid or assistance (other than Medical Assistance for the Aged) under a State plan for OAA, AFDC, AB, APTD, or AABD if:

(1) Prior to making the expenditures the agency determined that: (i) The home is so defective that continued occupancy is unwarranted; (ii) unless repairs are made the recipient would need to move to rental quarters; and (iii) the rental cost of quarters for the recipient (including the spouse living with him in such home and any other individual whose needs were considered in determining the recipient's need) would exceed (over a period of 2 years) the repair costs needed to make such home habitable together with other costs attributable to continued occupancy of such home.

(2) No expenditures for repair of such home were made previously pursuant to a determination as described in paragraph (c)(1) of this section. This does not preclude more than one payment made at the time repairs are made pursuant to the determination, e.g., separate payments to the roofer, the electrician, and the plumber.

(3) Expenditures for home repairs are authorized in writing by a responsible agency person, records show the eligible person in whose behalf the home repair expenditure was made, and there is sufficient evidence that the home repair was performed.

[34 FR 1394, Jan. 29, 1969]

EDITORIAL NOTE: For FEDERAL REGISTER citations to § 233.20, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

EFFECTIVE DATE NOTE: At 47 FR 5678, Feb. 5, 1982, in § 233.20, paragraph (a)(13)(v) was added. The amendment contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 233.21 Budgeting methods for OAA, AB, APTD, and AABD.

(a) *Requirements for State plans.* A State plan for OAA, AB, APTD, and AABD shall specify if assistance payments shall be computed using a prospective budgeting system or a retrospective budgeting system. A State electing retrospective budgeting shall specify which options it selects and the State plan shall state that it shall meet the requirements in §§ 233.21 through 233.29. Budgeting methods for AFDC are described in §§ 233.31 through 233.37.

(b) *Definitions.* The following definitions apply to §§ 233.21 through 233.29:

(1) *Prospective budgeting* means that the agency shall compute the amount of assistance for a payment month based on its best estimate of income and circumstances which will exist in that month. This estimate shall be based on the agency's reasonable expectation and knowledge of current, past or future circumstances.

(2) *Retrospective budgeting* means that the agency shall compute the amount of assistance for a payment month

based on actual income or circumstances which existed in a previous month, the ''budget month''.

(3) *Budget month* means the fiscal or calendar month from which the agency shall use income or circumstances of the family to compute the amount of assistance.

(4) *Payment month* means the fiscal or calendar month for which an agency shall pay assistance. Payment is based upon income or circumstances in the budget month. In prospective budgeting, the budget month and the payment month are the same. In retrospective budgeting, the payment month follows the budget month and the payment month shall begin within 32 days after the end of the budget month.

(5) *Make an assistance payment.* In the context of retrospective budgeting, to make an assistance payment means that the check shall be deposited in the U.S. mail, hand delivered to the recipient, or deposited with an intermediary organization, such as a bank.

(6) *Supplemental payment.* In the context of retrospective budgeting, a supplemental payment is a payment which maintains a family during the time it takes for the monthly assistance payment to reflect a change in circumstances or income.

[44 FR 26082, May 4, 1979, as amended at 47 FR 5678, Feb. 5, 1982]

§ 233.22 Determining eligibility under prospective budgeting.

In States which compute the amount of the assistance payment prospectively, the State plan shall provide that the State shall also determine all factors of eligibility prospectively. Thus, the State agency shall establish eligibility based on its best estimate of income and circumstances which will exist in the month for which the assistance payment is made.

[44 FR 26082, May 4, 1979]

§ 233.23 When assistance shall be paid under retrospective budgeting.

(a) A State which uses retrospective budgeting shall specify in its plan that it will make assistance payments within the following time limits to recipients who file a completed report on time, and to those who are not required to file a report. A State shall choose one of two time periods for making assistance payments. The State plan shall provide that payment must be made:

(1) Within 25 days from the close of the budget month; or

(2) Between 25 and 45 days from the close of the budget month.

(b)(1) Where a State makes payments between 25 and 45 days from the close of the budget month, the State plan shall provide that the State will make supplemental payments as provided in § 233.27.

(2) If a State makes payments within 25 days from the close of the budget month, and also makes supplemental payments as provided in § 233.27, the State plan shall so specify.

(c) In States which issue two checks for each payment month, these time periods apply to the first check.

[44 FR 26083, May 4, 1979]

§ 233.24 Retrospective budgeting; determining eligibility and computing the assistance payment in the initial one or two months.

(a) States which make assistance payments within 25 days of the close of the budget month shall determine eligibility and compute the amount of the payment for all recipients prospectively for the initial month of assistance. These States may choose to determine eligibility and compute the payment prospectively for the second month, also.

(b) States which make assistance payments between 25 and 45 days from the close of the budget month shall determine eligibility and compute the amount of the payment prospectively for the initial two months of assistance.

(c) When a person who previously received assistance reapplies during the same month in which a termination became effective, eligibility shall be determined according to paragraph (a) or (b) of this section. However, the amount of the assistance payment for the month of the reapplication shall be computed retrospectively.

[44 FR 26083, May 4, 1979]

§ 233.25 Retrospective budgeting; computing the assistance payment after the initial one or two months.

The State plan shall provide:

(a) After the initial one or two payment months of assistance under § 233.24, the amount of each subsequent month's payment shall be computed retrospectively, i.e., shall be based on earned and unearned income received in the corresponding budget month.

(b) In these subsequent months, other factors of need which affect the amount of the assistance payment may also be based on circumstances in the corresponding budget month, or they may be based on circumstances in the payment month.

(c) For the first month in which retrospective budgeting is used, a State shall not consider income received by the recipient before the date of application. When a person reapplies during the same month in which a termination became effective, the State may consider income received before the date of application.

[44 FR 26083, May 4, 1979]

§ 233.26 Retrospective budgeting; determining eligibility after the initial one or two months.

(a) Under retrospective budgeting, there are three options for determining eligibility. The State plan shall specify that eligibility, following the initial one or two months under § 233.24, shall be determined by one of the following methods:

(1) A State may consider all factors, including income retrospectively, i.e., only from the budget month. For example, if a change in circumstances occurs which affects eligibility, e.g., deprivation ceases, the change may be reported at the end of the budget month and assistance shall be terminated for the corresponding payment month. Thus, even if the agency could have terminated assistance earlier than the corresponding payment month, it shall not do so under retrospective determination of eligibility.

(2) A State may consider all factors, including income, prospectively. For example, if deprivation ceases, and the family becomes ineligible, the agency shall immediately take steps to terminate assistance.

(3) A State may use a combination of the options in paragraphs (a) and (b) of this section by considering factors related to earned and unearned income retrospectively and all other factors prospectively. For example, if a change in income makes the family ineligible, the agency shall wait until the corresponding payment month to terminate assistance. On the other hand, if a change of circumstances other than income makes the family ineligible, the agency shall immediately take steps to terminate assistance.

[44 FR 26083, May 4, 1979; 44 FR 29065, May 18, 1979, as amended at 47 FR 47828, Oct. 28, 1982]

§ 233.27 Supplemental payments under retrospective budgeting.

(a) *General requirements.* A State plan which provides for payments between 25 and 45 days from the close of a budget month, shall provide for supplemental payments to eligible recipients who request them. A State plan which provides for payments within 25 days may provide for supplemental payments:

(1) The supplemental payment shall be paid for the month in which it was requested.

(2) The recipient family is eligible for a supplemental payment if its income for the month is less than 80 percent of the amount the State would pay for a similar family with no income. However, this percentage of the amount the State would pay for a similar family with no income may be set between 80 and 100 percent, as specified in the State plan. The supplemental payment equals the difference between the family's income in the payment month and that percentage.

(3) Supplemental payments shall be issued within 5 working days of request.

(b) *How income is treated.* For purposes of supplemental payments, income includes that month's assistance payment and any income received or expected to be received by the recipient, but does not include work-related expenses.

(1) The amount used for the assistance payment shall be the monthly assistance payment without regard to

any recoupments made for prior overpayments or adjustments for prior underpayments.

(2) The agency may include as income cash in hand or available in bank accounts. It may also include as income any cash disregarded in determining need or the amount of the assistance payment, but not cash payments that are disregarded by §233.20(a)(4)(ii), paragraphs (c) on relocation assistance, (d) on educational grants or loans and (g) on payments for certain services.

[44 FR 26083, May 4, 1979, as amended at 51 FR 9205, Mar. 18, 1986]

§233.28 Monthly reporting.

(a) State plans specifying retrospective budgeting shall require that recipients with earned income, other than income from self-employment, report that income to the agency monthly. The State may require recipients with unearned income, no income, or income from self-employment to report monthly. The agency shall provide a form for this purpose, which:

(1) Is written in clear simple language;

(2) Specifies the date by which the agency must receive the form and the consequences of a late or incomplete form, including whether the agency will delay or withhold payment if the form is not returned by the specified date;

(3) Identifies an individual or agency unit the recipient should contact to receive prompt answers to questions about information requested on the form, and provides a telephone number for this purpose;

(4) Includes a statement, to be signed by the recipient, that he or she understands that the information he or she provides may result in changes in assistance, including reduction or termination;

(5) Advises the recipient if supplemental payments are available and the proper procedures for initiating a request; and

(6) Advises the recipient of his or her right to a fair hearing on any decrease or termination of assistance or denial of a supplemental payment.

(b) The agency shall specify the date by which it must receive the monthly report. This date shall be at least 5 days from the end of the budget month and shall also allow the recipient at least 5 days to complete the report.

(c) The agency may consider a monthly report incomplete only if it is unsigned or omits information necessary to determine eligibility or compute the payment amount.

(d) The agency shall provide a stamped, self-addressed envelope for returning the monthly report.

(e) The agency shall make special provisions for persons who are illiterate or have other handicaps so that they cannot complete a monthly report form.

[44 FR 26083, May 4, 1979]

§233.29 How monthly reports are treated and what notices are required.

(a) *What happens if a completed monthly report is received on time.* When the agency receives a completed monthly report by the date specified in §233.28 it shall process the payment. The agency shall notify the recipient of any changes from the prior payment and the basis for its determinations. This notice must meet the requirements of §205.10(a)(4)(i)(B) of this chapter on adequate notice if the payment is being reduced or assistance is being terminated. This notice must be received by the recipient no later than his or her resulting payment or in lieu of the payment.

(b) *What happens if the completed monthly report is received before the extension deadline.* (1) If the completed monthly report is not received by the date specified in §233.28, the agency shall send a notice to the recipient. This notice shall inform him or her that the monthly report is overdue or is not complete and that he or she has at least 10 additional days to file. It must inform the recipient that termination may result if that is the agency's policy, if the report is not filed within the extension period. This notice must reach the recipient at least 10 days before the expected payment. However, in States in which the date specified in §233.28 is within 10 days of the expected payment date, the notice must reach the recipient on or before the expected payment date.

(2) When the report is received within the extension period, the agency may delay payment to the recipient, as follows:

(i) In a State that pays within 25 days of the budget month the payment may be delayed 10 days;

(ii) In a State that pays within 25 to 45 days of the budget month, the payment may not be delayed beyond the 45th day.

(c) *What happens if a monthly report is not received by the end of the extension period.* An agency may terminate assistance if it has not received a report or has received an incomplete report, and the 10 day extension period has expired. If the State decides to terminate assistance, it must send the recipient a notice which meets the requirements of § 205.10(a)(4)(i)(B) on adequate notice.

(d) *How a recipient may delay an adverse action based on a monthly report.* If a recipient's assistance is reduced or terminated based on information in the monthly report, and he or she requests a fair hearing within 10 days, the assistance payment shall be reinstated immediately at the previous month's level pending the hearing decision. The payment shall be made effective from the date assistance was reduced or terminated.

[44 FR 26084, May 4, 1979]

§ 233.31 Budgeting methods for AFDC.

(a) *Requirements for State plans.* A State plan for AFDC shall specify that all factors of eligibility shall be determined prospectively and the amount of the assistance for any month for all assistance units required to file a monthly report for the month designated as the budget month under the State's retrospective budgeting procedures shall be determined using retrospective budgeting as provided in §§ 233.31–233.37 except as provided in § 233.34. The State plan shall specify whether the State uses prospective or retrospective budgeting to determine the amount of the assistance payments for recipients not required to report monthly. Budgeting methods for OAA, AB, APTD, and AABD are described in §§ 233.21–233.29.

(b) *Definitions.* The following definitions apply to §§ 233.31 through 233.37:

(1) *Prospective budgeting* means that the agency shall determine eligibility (and compute the amount of assistance for the first one or two months) based on its best estimate of income and circumstances which will exist in that month. This estimate shall be based on the agency's reasonable expectation and knowledge of current, past or future circumstances.

(2) *Retrospective budgeting* means that the agency shall compute the amount of assistance for a payment month based on actual income or circumstances which existed in a previous month, the ''budget month.''

(3) *Budget month* means the fiscal or calendar month from which the agency shall use income or circumstances of the family to compute the amount of assistance.

(4) *Payment month* means the fiscal or calendar month for which an agency shall pay assistance. Payment is based upon income or circumstances in the budget month. In prospective budgeting, the budget month and the payment month are the same. In retrospective budgeting, the payment month follows the budget month.

(5) *Recent work history* means the individual received earned income in any one of the two months prior to the budget month.

[47 FR 5678, Feb. 5, 1982, as amended at 49 FR 35602, Sept. 10, 1984; 57 FR 30160, July 8, 1992]

§ 233.32 Payment and budget months (AFDC).

A State shall specify in its plan for AFDC the time period covered by the payment (payment month) and the time period used to determine that payment (budget month) and whether it adopts (a) a one-month or two-month retrospective system; and (b) a one-month or two-month prospective system for the initial payment months. If a State elects to have a two-month retrospective system it must also elect a two-month prospective system.

[47 FR 5678, Feb. 5, 1982]

§ 233.33 Determining eligibility prospectively for all payment months (AFDC).

(a) The State plan for AFDC shall provide that the State shall determine all factors of eligibility prospectively for all payment months. Thus, the State agency shall establish eligibility

based on its best estimate of income and circumstances which will exist in the month for which the assistance payment is made.

(b) When a IV-A agency receives an official report of a child support collection it shall consider that information as provided in § 232.20(a) of this chapter. (§ 232.20(a) explains the treatment of child support collections.)

[47 FR 5678, Feb. 5, 1982]

§ 233.34 Computing the assistance payment in the initial one or two months (AFDC).

A State shall compute the amount of the AFDC payment for the initial month of eligibility:

(a) Prospectively (except as in paragraphs (b) and (c) of this section); or

(b) Retrospectively if the applicant received assistance (or would have except for the prohibition on payments of less than $10) for the immediately preceding payment month (except where the State pays the second month after application prospectively); or

(c) Retrospectively if:

(1) Assistance had been suspended as defined in paragraph (d) of this section; and

(2) The initial month follows the month of suspension; and

(3) The family's circumstances for the initial month had not changed significantly from those reported in the corresponding budget month, e.g., loss of job.

(d) A State may suspend, rather than terminate, assistance when:

(1) The agency has knowledge of, or reason to believe that ineligibility would be only for one payment month; and

(2) Ineligibility for that one payment month was caused by income or other circumstances in the corresponding budget month.

(e) If the initial month is computed prospectively as in paragraph (a) of this section, the second month shall be prospective if the State elects a 2-month retrospective budgeting system.

[47 FR 5679, Feb. 5, 1982]

§ 233.35 Computing the assistance payment under retrospective budgeting after the initial one or two months (AFDC).

The State plan for AFDC shall provide:

(a) After the initial one or two payment months of assistance under § 233.34, the amount of each subsequent month's payment shall be computed retrospectively, i.e., shall be based on income and other relevant circumstances in the corresponding budget month except as provided in § 233.20(a)(3)(iii). In any month for which an individual will be determined eligible prospectively and will be added to an existing AFDC assistance unit, the State must meet the individual's needs to the same extent it would if the individual were an applicant for AFDC.

(b) Except as provided in § 233.34(b), for the first and second payment month for which retrospective budgeting is used, the State shall not count income from the budget month already considered for any payment month determined prospectively which is not of a continuous nature.

[47 FR 5679, Feb. 5, 1982]

§ 233.36 Monthly reporting (AFDC).

(a) Except as provided in paragraph (b) of this section, a State plan for AFDC shall require the caretaker relative, or another person designated by the State, to submit, on behalf of each assistance unit whose members have earned income or recent work history, each assistance unit which has income deemed to it from individuals living with the unit who have earned income or a recent work history and, at State option, other assistance units, a completed report form to the agency monthly on:

(1) Budget month income, family composition, and other circumstances relevant to the amount of the assistance payment; and

(2) Any changes in income, resources, or other relevant circumstances affecting continued eligibility which the assistance unit expects to occur in the current month or in future months.

(3) The income of a parent or a legal guardian of a minor parent, a stepparent, or an alien sponsor, as well as

the resources of an alien sponsor, where appropriate.

(b) A State may exempt categories of recipients otherwise required to report monthly from reporting each month with prior approval by the Secretary if the State can demonstrate that not requiring these cases to file monthly reports is cost effective. The Secretary will grant waivers under this provision for a period up to one year, at the end of which time the State may request an extension of the waiver. A decision by the Secretary not to approve a request for an exemption is not appealable. The plan shall include criteria for assuring (1) that exempted cases are unlikely to incur changes in circumstances from month to month which would impact their eligibility r amount of assistance and (2) that the administrative cost of requiring those categories to report monthly will be greater than the program savings which would accrue.

(c) States shall also direct recipients to report information as defined in paragraph (a)(2) of this section to the agency as they become aware of expected changes rather than waiting to inform the State on the monthly report.

[47 FR 5679, Feb. 5, 1982 as amended at 49 FR 35602, Sept. 10, 1984; 57 FR 30160, July 8, 1992]

§ 233.37 How monthly reports are treated and what notices are required (AFDC).

(a) *What happens if a completed monthly report is received on time.* When the agency receives a completed monthly report as specified in § 233.36, and if all eligibility conditions are met, it shall process the payment. The agency shall notify the recipient of any changes from the prior payment and the basis for its determinations. This notice must meet the requirements of § 205.10(a)(4)(i)(B) of this chapter on adequate notice if the payment is being reduced or assistance is terminated as a result of information provided in the monthly report. The notice must be mailed to arrive no later than the resulting payment or in lieu of the payment. A recipient has 10 days from the date of the notice to request a hearing in order to receive reinstatement.

(b) *What happens if a completed monthly report is not received by the agency.* An agency may terminate assistance if it has received no report or has received only an incomplete report as defined by the State. In this case, the agency must send the recipient a notice meeting the requirements of § 205.10(a)(4)(i)(B) to arrive not later than the date it would have made payment if the agency had received a completed monthly report on time. If the recipient notifies the agency and files a completed report within 10 days of the date of this notice, the agency must accept the replacement form and make a payment based on the information on the form if the information indicates that the person is still eligible (without the applicable earned income disregards if the State agency determines no good cause exists for failing to file a timely report of earnings). If the recipient is found ineligible or eligible for an amount less than the prior month's payment, the State must promptly notify the recipient of his or her right to a fair hearing and his or her right to have assistance reinstated. A recipient has 10 days from the date of the notice to request a hearing in order to receive reinstatement.

(c) *What happens if a completed monthly report is received but is not timely.* States must specify in their plans a definition of timeliness related to the filing of a monthly report and the number of days an individual has to report changes in earnings which impact eligibility. States must inform recipients what constitutes timeliness and that no disregard of earnings as described in § 233.20(a)(11) (i) and (ii)(B) ($30 and one-third, child care, and work expenses) will be applied to any earnings which are not reported in a timely manner without good cause. The State must provide recipients an opportunity to show good cause for not filing a timely report of earnings. If the State finds good cause, then applicable earned income disregards will be applied in determining payment. If the State does not find good cause, then applicable earned income disregards will not be applied. If the recipient is found ineligible or eligible for an amount less than the prior month's payment, the

State must promptly notify the recipient of his or her right to a fair hearing and his or her right to have assistance reinstated. A recipient has 10 days from the date of the notice to request a hearing in order to receive reinstatement.

[47 FR 5679, Feb. 5, 1982]

§ 233.38 Waiver of monthly reporting and retrospective budgeting requirements; AFDC.

(a) States may request waivers of the requirements at §§ 233.31–233.37 to promote compatibility with monthly reporting and budgeting requirements of the Food Stamp Act of 1977 as amended.

(b) The Secretary will not approve requests for waivers unless the information documenting the need for the waiver shows that the waiver would simplify administration of both programs and would not result in a net cost to the Federal government. Approvals for waivers will be for periods up to one year, after which time the State may request an extension of the waiver.

(c) Any decision by the Secretary not to approve a request for a waiver is not appealable.

[49 FR 35602, Sept. 10, 1984]

§ 233.39 Age.

(a) *Condition for plan approval.* A State plan under title I or XVI of the Social Security Act may not impose any age requirement of more than 65 years.

(b) *Federal financial participation.* (1) Federal financial participation is available in financial assistance provided to otherwise eligible persons who were, for any portion of the month for which assistance is paid:

(i) In OAA or AABD with respect to the aged, 65 years of age or over;

(ii) In AFDC, under 18 years of age; or age 18 if a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and reasonably expected to complete the program before reaching age 19.

(iii) In AB or AABD with respect to the blind, any age;

(iv) In APTD or AABD with respect to the disabled, 18 years of age or older.

(2) Federal determination of whether an individual meets the age requirements of the Social Security Act will be made according to the common-law method (under which a specific age is attained the day before the anniversary of birth), unless the State plan specifies that the popular usage method (under which an age is attained on the anniversary of birth), is used.

(3) The State agency may adopt an arbitrary date such as July 1 as the point from which age will be computed in all instances where the month of an individual's birth is not available, but the year can be established.

[36 FR 3866, Feb. 27, 1971. Redesignated and amended at 47 FR 5678, Feb. 5, 1982]

§ 233.40 Residence.

(a) *Condition for plan approval.* A State plan under title I, IV-A, X, XIV, or XVI of the Social Security Act may not impose any residence requirement which excludes any individual who is a resident of the State except as provided in paragraph (b) of this section. For purposes of this section:

(1) A resident of a State is one: (i) Who is living in the State voluntarily with the intention of making his or her home there and not for a temporary purpose. A child is a resident of the State in which he or she is living other than on a temporary basis. Residence may not depend upon the reason for which the individual entered the State, except insofar as it may bear upon whether the individual is there voluntarily or for a temporary purpose; or

(ii) Who, is living in the State, is not receiving assistance from another State, and entered the State with a job commitment or seeking employment in the State (whether or not currently employed). Under this definition, the child is a resident of the State in which the caretaker is a resident.

(2) Residence is retained until abandoned. Temporary absence from the State, with subsequent returns to the State, or intent to return when the purposes of the absence have been accomplished, does not interrupt continuity of residence.

(b) *Exception.* A State plan under title I, X, XIV, or XVI need not include an

individual who has been absent from the State for a period in excess of 90 consecutive days (regardless of whether the individual has maintained his or her residence in the State during this period) until he or she has been present in the State for a period of 30 consecutive days (or a shorter period specified by the State) in the case of such individual who has maintained residence in the State during such period of absence or for a period of 90 consecutive days (or a shorter period as specified by the State) in the case of any other such individual. An individual thus excluded under any such plan may not, as a consequence of that exclusion, be excluded from assistance under the State's title XIX plan if otherwise eligible under the title XIX plan (see 42 CFR 436.403).

[45 FR 26962, Apr. 22, 1980]

§ 233.50 Citizenship and alienage.

A State plan under title I (OAA); title IV-A (AFDC); title X (AB); title XIV (APTD); and title XVI (AABD-disabled) of the Social Security Act shall provide that an otherwise eligible individual, dependent child, or a caretaker relative or any other person whose needs are considered in determining the need of the child or relative claiming aid, must be either:

(a) A citizen, or

(b) An alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law, including certain aliens lawfully present in the United States as a result of the application of the following provisions of the Immigration and Nationality Act:

(1) Section 207(c), in effect after March 31, 1980—Aliens Admitted as Refugees.

(2) Section 203(a)(7), in effect prior to April 1, 1980—Individuals who were Granted Status as Conditional Entrant Refugees.

(3) Section 208—Aliens Granted Political Asylum by the Attorney General.

(4) Section 212(d)(5)—Aliens Granted Temporary Parole Status by the Attorney General, or

(c) An alien granted lawful temporary resident status pursuant to section 201, 302, or 303 of the Immigration Reform and Control Act of 1986 (Pub. L. 99–603) who must be either:

(1) A Cuban and Haitian entrant as defined in paragraph (1) or (2)(A) of section 501(e) of Pub. L. 96–422, as in effect on April 1, 1983, or

(2) An adult assistance applicant for OAA, AB, APTD, or AABD, or

(3) An applicant for AFDC who is not a Cuban and Haitian applicant under paragraph (c)(1) of this section who was adjusted to lawful temporary resident status more than five years prior to application.

All other aliens granted lawful temporary or permanent resident status, pursuant to sections 201, 302, or 303 of the Immigration Reform and Control Act of 1986, are disqualified for five years from the date lawful temporary resident status is granted.

[47 FR 5680, Feb. 5, 1982; 47 FR 43383, Oct. 1, 1982, as amended at 52 FR 48689, Dec. 24, 1987 (interim); 53 FR 30433, Aug. 12, 1988 (final); 54 FR 10544, Mar. 14, 1989]

§ 233.51 Eligibility of sponsored aliens.

Definition: *Sponsor* is any person who, or any public or private agency or organization that, executed an affidavit(s) of support or similar agreement on behalf of an alien (who is not the child of the sponsor or the sponsor's spouse) as a condition of the alien's entry into the United States. Paragraphs (a) through (d) of this section apply only to aliens who are sponsored by individuals and who filed applications for the first time after September 30, 1981. Paragraphs (e) and (f) apply only to aliens sponsored by public or private agencies or organizations with respect to periods after October 1, 1984. A State plan under title IV-A of the Act shall provide that:

(a) For a period of three years following entry for permanent residence into the United States, a sponsored alien who is not exempt under paragraph (g) of this section, shall provide the State agency with any information and documentation necessary to determine the income and resources of the sponsor and the sponsor's spouse (if applicable and if living with the sponsor) that can be deemed available to the alien, and obtain any cooperation necessary from the sponsor.

(b) The income and resources of a sponsor and the sponsor's spouse shall be deemed to be the unearned income

and resources of an alien for three years following the alien's entry into the United States:

(1) Monthly income deemed available to the alien from the sponsor and the sponsor's spouse not receiving AFDC or SSI shall be:

(i) The total monthly unearned and earned income of the sponsor and sponsor's spouse reduced by 20 percent (not to exceed $175) of the total of any amounts received by them in the month as wages or salary or as net earnings from self-employment.

(ii) The amount described in paragraph (b)(1)(i) of this section reduced by:

(A) The cash needs standard under the plan in the alien's State of residence for a family of the same size and composition as the sponsor and those other people living in the same household as the sponsor who are or could be claimed by the sponsor as dependents to determine his or her Federal personal income tax liability but whose needs are not taken into account in making a determination under §233.20 of this chapter;

(B) Any amounts actually paid by the sponsor or sponsor's spouse to people not living in the household who are or could be claimed by them as dependents to determine their Federal personal income tax liability; and

(C) Actual payments of alimony or child support, with respect to individuals not living in the household.

(2) Monthly resources deemed available to the alien from the sponsor and sponsor's spouse shall be the total amount of their resources determined as if they were applying for AFDC in the alien's State of residence, less $1500.

(c) In any case where a person is the sponsor of two or more aliens, the income and resources of the sponsor and sponsor's spouse, to the extent they would be deemed the income and resources of any one of the aliens under the provisions of this section, shall be divided equally among the sponsored aliens.

(d) Income and resources which are deemed to a sponsored alien shall not be considered in determining the need of other unsponsored members of the alien's family except to the extent the income or resources are actually available.

(e) For a period of three years following entry for permanent residence into the United States, any alien who is not exempt under paragraph (g) of this section and has been sponsored by a public or private agency or organization, shall be ineligible for assistance unless the State agency determines (in accordance with paragraph (f)) that the sponsor no longer exists or has become unable to meet the alien's needs.

(f) The State plan shall set forth the criteria the State agency will use in determining whether an agency or organization no longer exists or is unable to meet the alien's needs and the documentation the agency will require of the alien in making such determination. The sponsored alien shall provide the State agency with any information and documentation necessary for such determination and obtain any cooperation necessary from the sponsor.

(g) The provisions of this section shall not apply to any alien who is:

(1) Admitted as a conditional entrant refugee to the United States as a result of the application, of the provisions of section 203(a)(7) (in effect prior to April 1, 1980) of the Immigration and Nationality Act;

(2) Admitted as a refugee to the United States as a result of the application of the provisions of section 207(c) (in effect after March 31, 1980) of the Immigration and Nationality Act;

(3) Paroled into the United States as a refugee under section 212(d)(5) of the Immigration and Nationality Act;

(4) Granted political asylum by the Attorney General under section 208 of the Immigration and Nationality Act;

(5) A Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); or

(6) The dependent child of the sponsor or sponsor's spouse.

(h) The Secretary shall make information necessary to make a determination under this section and supplied under agreement with the Secretary of State and the Attorney General, available upon request to a concerned State Agency.

[47 FR 5680, Feb. 5, 1982; 47 FR 43383, Oct. 1, 1982; 47 FR 47828, Oct. 28, 1982; 49 FR 35602, Sept. 10, 1984; 57 FR 30160, July 8, 1992]

§ 233.52 Overpayment to aliens.

A State Plan under title IV-A of the Social Security Act, shall provide that:

(a) Any sponsor of an alien and the alien shall be jointly and severally liable for any overpayment of aid under the State plan made to the alien during the three years after the alien's entry into the United States due to the sponsor's failure to provide correct information under the provisions of § 233.51, except as provided in paragraph (b) of this section.

(b) When a sponsor is found to have good cause or to be without fault (as defined in the State plan) for not providing information to the agency, the sponsor will not be held liable for the overpayment and recovery will not be made from this sponsor.

(c) An overpayment for which the alien or the sponsor and the alien are liable (as described in paragraphs (a) and (b) of this section) shall be repaid to the State or recovered in accordance with § 233.20(a)(13). If the agency is unable to recover the overpayment through this method, funds to reimburse the agency for the overpayment shall be withheld from future payments to which the alien or the alien and the individual sponsor are entitled under:

(1) Any State administered or supervised program established by the Social Security Act, or

(2) Any federally administered cash benefit program established by the Social Security Act.

[47 FR 5680, Feb. 5, 1982 as amended at 49 FR 35602, Sept. 10, 1984]

§ 233.53 Support and maintenance assistance (including home energy assistance) in AFDC.

(a) *General.* At State option, certain support and maintenance assistance (including home energy assistance) may be excluded from income and resources.

(b) *Definitions.* The following definitions are limited to the support and maintenance assistance provisions of this section.

Appropriate State agency means the agency designated by the chief executive officer of the State to handle the State's responsibilities with respect to support and maintenance assistance under paragraph (c) of this section.

Based on need means that the assistance is given to or on behalf of an applicant or recipient for the purpose of support and maintenance (including home energy) and meets the criteria established by the State for determining the need for such assistance.

In kind assistance means assistance furnished in any form except direct cash payments to an applicant or recipient or direct payments to an applicant or recipient through other financial instruments which are convertible to cash.

Private, nonprofit organization means a religious, charitable, educational, or other organization such as described in section 501(c) of the Internal Revenue Code of 1954. (Actual tax exempt certification by IRS is not necessary).

Rate-of-return entity means an entity whose revenues are primarily received from the entity's charges to the public for goods or services, and such charges are based on rates regulated by a State or Federal governmental body.

Support and maintenance assistance means any assistance designed to meet the expenses of day to day living. Support and maintenance assistance includes home energy assistance. Home energy assistance means any assistance related to meeting the cost of heating or cooling a home. Home energy assistance includes such items as payments for utility service or bulk fuels; assistance in kind such as portable heaters, fans, blankets, storm doors, or other items which help reduce the costs of heating and cooling such as conservation or weatherization materials and services; etc.

(c) *Requirements for State Plans.* If a State elects to exclude from income and resources support and maintenance assistance, the State plan for AFDC must as specified below:

(1) Provide that an appropriate State agency will certify that support and maintenance assistance is based on need (as defined in paragraph (b) of this section), and that such certification will be accepted for purposes of determining eligibility for and the amount of payments under the AFDC program.

(2) Provide that in joint AFDC/SSI households, support and maintenance assistance furnished to the household which is not excluded under this paragraph will be prorated on a reasonable basis to determine the amount provided to the AFDC assistance unit. The State plan must describe the method that will be used to prorate the assistance in these circumstances.

(3) Provide that the types and amount of support and maintenance assistance that are excluded when received by an AFDC applicant or recipient will also be excluded in determining the income and resources of a parent, stepparent, spouse or alien sponsor whose income is considered available to an AFDC applicant or recipient.

(4) Provide that the State may exclude, from income and resources, support and maintenance assistance (as defined in paragraph (b) of this section) which the appropriate State agency certifies is based on need, if the assistance is furnished by:

(i) A supplier of home heating gas or oil, regardless of whether the assistance is in cash or in kind; or

(ii) A municipal utility providing home energy, regardless of whether the assistance is in cash or in kind; or

(iii) A rate-of-return entity which provides home energy, regardless of whether the assistance is in cash or in kind; or

(iv) A private nonprofit organization, but only if such assistance is in kind.

(5) Provide that, if the State elects to exclude from income and resources any support and maintenance assistance, the State plan must:

(i) Describe the criteria that will be used to determine the need for the assistance;

(ii) Identify the types and amounts of assistance which will be excluded; and

(iii) Provide that any limitations will be made on a reasonable basis.

[51 FR 39533, Oct. 29, 1986, as amended at 56 FR 64204, Dec. 9, 1991]

§ 233.60 Institutional status.

(a) *Federal financial participation.* (1) Federal financial participation under title I, X, XIV, or XVI of the Social Security Act is not available in payments to or in behalf of any individual who is an inmate of a public institution except as a patient in a medical institution.

(2)(i) Federal financial participation under title X or XIV of the Social Security Act is not available in payments to or in behalf of any individual who is a patient in an institution for tuberculosis or mental diseases.

(ii) Federal financial participation under title XVI of the Social Security Act is not available in payments to or in behalf of any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases.

(3) For purposes of this paragraph:

(i) Federal financial participation is available in payments for the month in which an individual (if otherwise eligible) became an inmate of a public institution, or a patient in an institution for tuberculosis or mental diseases;

(ii) Whether an institution is one for tuberculosis or mental diseases will be determined by whether its overall character is that of a facility established and maintained primarily for the care and treatment of individuals with tuberculosis or mental diseases (whether or not it is licensed);

(iii) An institution for the mentally retarded is not an institution for mental diseases;

(iv) An individual on conditional release or convalescent leave from an institution for mental diseases is not considered to be a patient in such institution.

(b) *Definitions.* For purposes of Federal financial participation under paragraph (a) of this section:

(1) *Institution* means an establishment which furnishes (in single or multiple facilities) food and shelter to four or more persons unrelated to the proprietor, and in addition, provides some treatment or services which meet some

need beyond the basic provision of food and shelter.

(2) *In an institution* refers to an individual who is admitted to participate in the living arrangements and to receive treatment or services provided there which are appropriate to his requirements.

(3) *Public institution* means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

(4) *Inmate of a public institution* means a person who is living in a public institution. An individual is not considered an inmate when:

(i) He is in a public educational or vocational training institution, for purposes of securing education or vocational training, or

(ii) He is in a public institution for a temporary emergent period pending other arrangements appropriate to his needs.

(5) *Medical institution* means an institution which:

(i) Is organized to provide medical care, including nursing and convalescent care;

(ii) Has the necessary professional personnel, equipment, and facilities to manage the medical, nursing, and other health needs of patients on a continuing basis in accordance with accepted standards;

(iii) Is authorized under State law to provide medical care;

(iv) Is staffed by professional personnel who have clear and definite responsibility to the institution in the provision of professional medical and nursing services including adequate and continual medical care and supervision by a physician; sufficient registered nurse or licensed practical nurse supervision and services and nurse aid services to meet nursing care needs; and appropriate guidance by a physician(s) on the professional aspects of operating the facility.

(6) *Institution for tuberculosis* means an institution which is primarily engaged in providing diagnosis, treatment, or care of persons with tuberculosis, including medical attention, nursing care, and related services.

(7) *Institution for mental diseases* means an institution which is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases, including medical attention, nursing care, and related services.

(8) *Patient* means an individual who is in need of and receiving professional services directed by a licensed practitioner of the healing arts toward maintenance, improvement, or protection of health, or alleviation of illness, disability, or pain.

[36 FR 3867, Feb. 27, 1971]

§ 233.70 Blindness.

(a) *State plan requirements.* A State plan under title X or XVI of the Social Security Act must:

(1) Contain a definition of blindness in terms of ophthalmic measurement. The following definition is recommended: An individual is considered blind if he has central visual acuity of 20/200 or less in the better eye with correcting glasses or a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance of no greater than 20°.

(2) Provide, in any instance in which a determination is to be made whether an individual is blind or continues to be blind as defined under the State plan, that there will be an initial examination or re-examination performed by either a physician skilled in the diseases of the eye or by an optometrist, whichever the individual so selects.

(i) No examination is necessary when both eyes are missing.

(ii) Where an initial eye examination or re-examination is necessary, the physician or optometrist conducting such examination will submit to the State agency a report thereof, on such forms and in such manner, as may be prescribed for such purpose. A determination whether the individual meets the State's definition of blindness under the State plan will be based upon a review of such eye examination report as provided for in paragraph (a)(3) of this section, and other information or additional examination reports as the State deems necessary.

(3) Provide that each initial eye examination report and any subsequent re-examination report will be reviewed

by a State reviewing physician skilled in the diseases of the eye (e.g., an ophthalmologist or an eye, ear, nose and throat specialist). Such physician is responsible for making the agency's decision that the applicant or recipient does or does not meet the State's definition of blindness, and for determining if and when reexaminations are necessary in periodic reviews of eligibility, as required in §206.10(a)(9)(iii) of this chapter.

(b) *Federal financial participation*—(1) *Assistance payments.* Federal financial participation is available in assistance provided to or in behalf of any otherwise eligible person who is blind under the State's title X or XVI plan. Blindness may be considered as continuing until a determination by the reviewing physician establishes the fact that the recipient's vision has improved beyond the State's definition of blindness set forth under its State title of X or XVI plan.

(2) *Administrative expenses.* Federal financial participation is available in any expenditures incident to the eye examination necessary to determine whether an individual is blind.

[36 FR 3867, Feb. 27, 1971, as amended at 40 FR 25819, June 19, 1975]

§ 233.80 Disability.

(a) *State plan requirements.* A State plan under title XIV or XVI of the Social Security Act must:

(1) Contain a definition of permanently and totally disabled, showing that:

(i) ''Permanently'' is related to the duration of the impairment or combination of impairments; and

(ii) ''Totally'' is related to the degree of disability.

The following definition is recommended:

''Permanently and totally disabled'' means that the individual has some permanent physical or mental impairment, disease, or loss, or combination thereof, this substantially precludes him from engaging in useful occupations within his competence, such as holding a job.

Under this definition:

''Permanently'' refers to a condition which is not likely to improve or which will continue throughout the lifetime of the individual; it may be a condition which is not likely to respond to any known therapeutic procedures, or a condition which is likely to remain static or to become worse unless certain therapeutic measures are carried out, where treatment is unavailable, inadvisable, or is refused by the individual on a reasonable basis; ''permanently'' does not rule out the possibility of vocational rehabilitation or even possible recovery in light of future medical advances or changed prognosis; in this sense the term refers to a condition which continues indefinitely, as distinct from one which is temporary or transient;

''Totally'' involves considerations in addition to those verified through the medical findings, such as age, training, skills, and work experience, and the probable functioning of the individual in his particular situation in light of his impairment; an individual's disability would usually be tested in relation to ability to engage in remunerative employment; the ability to keep house or to care for others would be the appropriate test for (and only for) individuals, such as housewives, who were engaged in this occupation prior to the disability and do not have a history of gainful employment; eligibility may continue, even after a period of rehabilitation and readjustment, if the individual's work capacity is still very considerably limited (in comparison with that of a normal person) in terms of such factors as the speed with which he can work, the amount he can produce in a given period of time, and the number of hours he is able to work.

(2) Provide for the review of each medical report and social history by technically competent persons—not less than a physician and a social worker qualified by professional training and pertinent experience—acting cooperatively, who are responsible for the agency's decision that the applicant does or does not meet the State's definition of permanent and total disability. Under this requirement:

(i) The medical report must include a substantiated diagnosis, based either on existing medical evidence or upon current medical examination;

(ii) The social history must contain sufficient information to make it possible to relate the medical findings to the activities of the ''useful occupation'' and to determine whether the individual is totally disabled, and

(iii) The review physician is responsible for setting dates for reexamination; the review team is responsible for reviewing reexamination reports in conjunction with the social data to determine whether disabled recipients whose health condition may improve

continue to meet the State's definition of permanent and total disability.

(3) Provide for cooperative arrangements with related programs, such as vocational rehabilitation services.

(b) *Federal financial participation*—(1) *Assistance payments.* Federal financial participation is available in payments to or in behalf of any otherwise eligible individual who is permanently and totally disabled. Permanent and total disability may be considered as continuing until the review team establishes the fact that the recipient's disability is no longer within the State's definition of permanent and total disability.

(2) *Administrative expenses.* Federal financial participation is available in any expenditures incident to the medical examinations necessary to determine whether an individual is permanently and totally disabled.

[36 FR 3867, Feb. 27, 1971]

§ 233.90 Factors specific to AFDC.

(a) *State plan requirements.* A State plan under title IV-A of the Social Security Act shall provide that:

(1) The determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his or her parent who is the principal earner will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is married, under State law, to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children. Under this requirement, the inclusion in the family, or the presence in the home, of a ''substitute parent'' or ''man-in-the-house'' or any individual other than one described in this paragraph is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State; and

(2) Where it has reason to believe that a child receiving aid is in an unsuitable environment because of known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of such child, under circumstances which indicate the child's health or welfare is threatened, the State or local agency will:

(i) Bring such condition to the attention of a court, law-enforcement agency, or other appropriate agency in the State, providing whatever data it has with respect to the situation;

(ii) In reporting such conditions, use the same criteria as are used in the State for all other parents and children; and

(iii) Cooperate with the court or other agency in planning and implementing action in the best interest of the child.

(b) *Conditions for plan approval.* (1) A child may not be denied AFDC either initially or subsequently ''because of the conditions of the home in which the child resides'', or because the home is considered ''unsuitable'', unless ''provision is otherwise made pursuant to a State statute for adequate care and assistance with respect to such child''. (Section 404(b) of the Social Security Act.)

(2) An otherwise eligible child who is under the age of 18 years may not be denied AFDC, regardless of whether she attends school (unless she is required to participate in the JOBS program pursuant to § 250.30 and she is assigned to educational activities) or makes satisfactory grades.

(3) A state may elect to include in its AFDC program children age 18 who are full-time students in a secondary school, or in the equivalent level of vocational or technical training, and who may reasonably be expected to complete the program before reaching age 19.

(4)(i) A child may not be denied AFDC either initially or subsequently because a parent or other caretaker relative fails to cooperate with the child support agency in performing any of the activities needed to:

(A) Establish the paternity of a child born out of wedlock; or

(B) Obtain support from a person having a legal duty to support the child.

(ii) Any parent or caretaker relative who fails to so cooperate shall be treated in accordance with § 232.12 of this chapter.

(5) [Reserved]

(6) An otherwise eligible child may not be denied AFDC if a parent is mentally or physically incapacitated as defined in paragraph (c)(1)(iv) of this section.

(c) *Federal financial participation.* (1) Federal financial participation under title IV-A of the Social Security Act in payments with respect to a ''dependent child,'' as defined in section 406(a) of the Act, is available within the following interpretations:

(i) *Needy child deprived by reason of.* The phrase ''needy child * * * deprived * * * by reason of'' requires that both need and deprivation of parental support or care exist in the individual case. The phrase encompasses the situation of any child who is in need and otherwise eligible, and whose parent—father or mother—either has died, has a physical or mental incapacity, or is continually absent from the home. This interpretation is equally applicable whether the parent was the chief bread winner or devoted himself or herself primarily to the care of the child, and whether or not the parents were married to each other. The determination whether a child has been deprived of parental support or care is made in relation to the child's natural parent or, as appropriate, the adoptive parent or stepparent described in paragraph (a) of this section.

(ii) *Death of a parent.* If either parent of a child is deceased, the child is deprived of parental support or care, and may, if he is in need and otherwise eligible, be included within the scope of the program.

(iii) *Continued absence of the parent from the home.* Continued absence of the parent from the home constitutes the reason for deprivation of parental support or care when the parent is out of the home, the nature of the absence is such as either to interrupt or to terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child, and the known or indefinite duration of the absence precludes counting on the parent's performance of the function of planning for the present support or care of the child. If these conditions exist, the parent may be absent for any reason, and may have left only recently or some time previously; except that a parent whose absence is occasioned solely by reason of the performance of active duty in the uniformed services of the United States (as defined in section 101(3) of Title 37, United States code) is not considered absent from the home. A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

(iv) *''Physical or mental incapacity''.* ''Physical or mental incapacity'' of a parent shall be deemed to exist when one parent has a physical or mental defect, illness, or impairment. The incapacity shall be supported by competent medical testimony and must be of such a debilitating nature as to reduce substantially or eliminate the parent's ability to support or care for the otherwise eligible child and be expected to last for a period of at least 30 days. In making the determination of ability to support, the agency shall take into account the limited employment opportunities of handicapped individuals.

A finding of eligibility for OASDI or SSI benefits, based on disability or blindness is acceptable proof of incapacity for AFDC purposes.

(v) *''Living with [a specified relative] in a place of residence maintained * * * as his * * * own home''.* (A) A child may be considered to meet the requirement of living with one of the relatives specified in the Act if his home is with a parent or a person in one of the following groups:

(*1*) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great.

(*2*) Stepfather, stepmother, stepbrother, and stepsister.

(*3*) Person who legally adopt a child or his parent as well as the natural and other legally adopted children of such persons, and other relatives of the

adoptive parents in accordance with State law.

(*4*) Spouses of any persons named in the above groups even after the marriage is terminated by death or divorce.

(B) A home is the family setting maintained or in process of being established, as evidenced by assumption and continuation of responsibility for day to day care of the child by the relative with whom the child is living. A home exists so long as the relative exercises responsibility for the care and control of the child, even though either the child or the relative is temporarily absent from the customary family setting. Within this interpretation, the child is considered to be ''living with'' his relative even though:

(*1*) He is under the jurisdiction of the court (e.g., receiving probation services or protective supervision); or

(*2*) Legal custody is held by an agency that does not have physical possession of the child.

(2) Federal financial participation is available in:

(i) Initial payments made on behalf of a child who goes to live with a relative specified in section 406(a)(1) of the Social Security Act within 30 days of the receipt of the first payment, provided payments are not made for concurrent period for the same child in the home of another relative or as foster care under title IV-E;

(ii) Payments made for the entire month in the course of which a child leaves the home of a specified relative, provided payments are not made for a concurrent period for the same child in the home of another relative or as foster care under title IV-E; and

(iii) Payments made to persons acting for relatives specified in section 406(a)(1) of the Act in emergency situations that deprive the child of the care of the relative through whom he has been receiving aid, for a temporary period necessary to make and carry out plans for the child's continuing care and support.

(iv) At State option, (A) payments with respect to a pregnant woman with no other children receiving assistance, and additionally, at State option, (B) payments for the purpose of meeting special needs occasioned by or resulting from pregnancy both for the pregnant woman with no other children as well as for the pregnant woman receiving AFDC. However, for both paragraphs (c)(2)(iv) (A) and (B) of this section it must be medically verified that the child is expected to be born in the month such payments are made or within the three-month period following such month of payment, and who, if such child had been born and was living with her in the month of payment, would be eligible for aid to families with dependent children. Federal financial participation is not available to meet the needs of the unborn child. (Refer to Medicaid regulations at 42 CFR 435.115 for Medicaid coverage of pregnant women.)

(3) Federal financial participation (at the 50 percent rate) is available in any expenses incurred in establishing eligibility for AFDC, including expenses incident to obtaining necessary information to determine the existence of incapacity of a parent or pregnancy of a mother.

[36 FR 3868, Feb. 27, 1971 as amended at 39 FR 34038, Sept. 23, 1974; 40 FR 27156, June 26, 1975; 44 FR 12424, Mar. 7, 1979; 47 FR 5681, Feb. 5, 1982; 47 FR 41114, Sept. 17, 1982; 48 FR 28409, June 21, 1983; 51 FR 9206, Mar. 18, 1986; 52 FR 28824, Aug. 4, 1987; 54 FR 42243, Oct. 13, 1989; 58 FR 49218, Sept. 22, 1993; 59 FR 26142, May 19, 1994]

§ 233.100 Dependent children of unemployed parents.

(a) Requirements for State Plans. If a State wishes to provide AFDC for children of unemployed parents, the State plan under title IV-A of the Social Security Act must:

(1) Include a definition of an unemployed parent who is the principal earner which shall apply only to families determined to be needy in accordance with the provisions in § 233.20. Such definition must include any such parent who:

(i) Is employed less than 100 hours a month; or

(ii) Exceeds that standard for a particular month, if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that he or she was under the 100-hour standard for the prior 2 months and is expected to be under the standard during the next month; except that at the option

of the State, such definition need not include a principal earner who is unemployed because of participation in a labor dispute (other than a strike) or by reason of conduct or circumstances which result or would result in disqualification for unemployment compensation under the State's unemployment compensation law.

(2) Include a definition of a dependent child which shall include any child of an unemployed parent (as defined by the State pursuant to paragraph (a)(1) of this section) who would be, except for the fact that his parent is not dead, absent from the home, or incapacitated, a dependent child under the State's plan approved under section 402 of the Act.

(3) Provide for payment of aid with respect to any dependent child (as defined by the State pursuant to paragraphs (a)(2) of this section) when the conditions set forth in paragraphs (a)(3) (i), (ii), (iii), and (vii) of this section are met:

(i) His or her parent who is the principal earner has been unemployed for at least 30 days prior to the receipt of such aid.

(ii) Such parent has not without good cause, within such 30-day period prior to the receipt of such aid, refused a bona fide offer of employment or training for employment. Before it is determined that such parent has refused a bona fide offer of employment or training for employment without good cause, the agency must make a determination that such an offer was actually made. (In the case of offers of employment made through the public employment or manpower agencies, the determination as to whether the offer was bona fide, or whether there was good cause to refuse it, will be made by that office or agency.) The parent must be given an opportunity to explain why such offer was not accepted. Questions with respect to the following factors must be resolved:

(*a*) That there was a definite offer of employment at wages meeting any applicable minimum wage requirements and which are customary for such work in the community;

(*b*) Any questions as to the parent's inability to engage in such employment for physical reasons or because he has no way to get to or from the particular job; and

(*c*) Any questions of working conditions, such as risks to health, safety, or lack of worker's compensation protection.

(iii) Such parent (*a*) has six or more quarters of work (as defined in paragraph (a)(3)(iv) of this section), within any 13-calendar-quarter period ending within 1 year prior to the application for such aid, or (*b*) within such 1-year period, received unemployment compensation under an unemployment compensation law of a State or of the United States, or was qualified under the terms of paragraph (a)(3)(v) of this section) for such compensation under the State's unemployment compensation law.

(iv) A ''quarter of work'' with respect to any individual means a period (of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31) in which he or she received earned income of not less than $50 (or which is a ''quarter of coverage'' as defined in section 213(a)(2) of the Act), or in which he or she participated in a community work experience program under section 409 of the Act or the work incentive program established under title IV-C of the Act.

(v) An individual shall be deemed ''qualified'' for unemployment compensation under the State's unemployment compensation law if he would have been eligible to receive such benefits upon filing application, or he performed work not covered by such law which, if it had been covered, would (together with any covered work he performed) have made him eligible to receive such benefits upon filing application.

(vi)(A) The ''parent who is the principal earner'' means, in the case of any child, whichever parent, in a home in which both parents of such child are living, earned the greater amount of income in the 24-month period the last month of which immediately precedes the month in which an application is filed for aid under this part on the basis of the unemployment of a parent. If the State cannot secure primary evidence of earnings for this period, the State shall designate the principal

earner, using the best evidence available. The earnings of each parent are considered in determining the principal earner regardless of when their relationship began. The principal earner so defined remains the principal earner for each consecutive month for which the family receives such aid on the basis of such application. This requirement applies to both new applicants and current AFDC unemployed parent families who were eligible and receiving aid prior to October 1, 1981.

(B) If both parents earned an identical amount of income (or earned no income) in such 24-month period, the State shall designate which parent shall be the principal earner.

(vii) The parent who is the principal earner (unless exempt under §240.14) has met the requirements for participation in an employment search program under part 240 of this chapter.

(4) Provide for entering into cooperative arrangements with the State agency responsible for administering or supervising the administration of vocational education to assure maximum utilization of available public vocational education services and facilities in the State to encourage the retraining of individuals capable of being retrained.

(5) Provide for the denial of such aid to any such dependent child or the relative specified in section 406(a)(1) of the Act with whom such child is living,

(i) If and for so long as such child's parent, unless exempt under §224.20, is not currently registered for the work incentive program or if exempt under §224.20(b)(6), is not currently registered with a public employment office in the State, except that in a State with an approved JOBS plan under §250.20, such child's parent, unless exempt under §250.30(b), must be currently participating (or available for participation) in a program under part 250, or, if he is exempt under §250.30(b)(5), must be registered with a public employment office in the State, and

(ii) With respect to any week for which such child's parent qualifies for unemployment compensation under an unemployment compensation law of the State or of the United States but refuses to apply for or accept such unemployment compensation, and

(iii) If the parent who is the principal earner (unless exempt under §240.14) fails to meet the requirements for participation in a program of employment search established under part 240 of this chapter.

(6) Provide that within 30 days after the receipt of such aid, unemployed principal earners will be certified for participation in the Work Incentive program under part 224 or, if the State IV-A agency has an approved JOBS plan pursuant to §250.20, will participate or apply for participation in a program under part 250 unless the program is not available in the area where the parent is living.

(b) [Reserved]

(c) *Federal financial participation.* (1) Federal financial participation is available in payments authorized in accordance with the State plan approved under section 402 of the Act as aid to families with dependent children with respect to a child.

(i) Who meets the requirements of section 406(a)(2) of the Act;

(ii) Who is living with any of the relatives specified in section 406(a)(1) of the Act in a place of residence maintained by one or more of such relatives as his (or their) own home;

(iii) Who has been deprived of parental support or care by reason of the fact that his or her parent who is the principal earner is employed less than 100 hours a month; or exceeds that standard for a particular month if his or her work is intermittent and the excess is of a temporary nature as evidenced by the fact that he or she was under the 100-hour standard for 2 prior months and is expected to be under the standard during the next month.

(iv) Whose parent who is the principal earner (*a*) has six or more quarters of work (as defined in paragraph (a)(3)(iv) of this section) within any 13-calendar-quarter period ending within 1 year prior to the application for such aid, (*b*) within such 1-year period, received unemployment compensation under an unemployment compensation law of a State or of the United States, or was qualified (under the terms of paragraph (a)(3)(v) of this section) for such compensation under the State's unemployment compensation law; and

(v) Whose parent who is the principal earner (*a*) is currently registered with the WIN program unless exempt or is registered with the public employment office in the State if exempt from WIN registration under §224.20(b)(6) or because there is no WIN program in which he can effectively participate; and (*b*) has not refused to apply for or accept unemployment compensation with respect to any week for which such child's parent qualifies for unemployment compensation under an unemployment compensation law of a State or of the United States.

(2) The State may not include in its claim for Federal financial participation payments made as aid under the plan with respect to a child who meets the conditions set forth in paragraph (c)(1) of this section, where such payments were made.

(i) For any part of the 30-day period specified in paragraph (a)(3)(i) of this section;

(ii) For such 30-day period if during that period the parent refused without good cause a bona fide offer of employment or training for employment;

(iii) For any period beginning with the 31st day after receipt of aid, if and for as long as no action is taken during the period to certify the parent for participation in the Work Incentive program under part 224, or if the State IV-A agency has an approved JOBS plan pursuant to §250.20, no action is taken during the period to undertake appropriate steps directed toward the participation of such parent in a program under part 250; and

(iv) For any part of the sanction period imposed under §240.22 (for failure to meet the requirements for participation in the employment search program).

(d) For all States (other than Puerto Rico, American Samoa, Guam, and the Virgin Islands) the provisions of this section are suspended through September 30, 1998. For Puerto Rico, American Samoa, Guam, and the Virgin Islands, the provisions of this section are suspended from October 1, 1992, through September 30, 1998.

[34 FR 1146, Jan. 24, 1969, as amended at 36 FR 13604, July 22, 1971; 38 FR 18549, July 12, 1973; 38 FR 26608, Sept. 24, 1973; 46 FR 46769, Sept. 21, 1981; 47 FR 5681, Feb. 5, 1982; 47 FR 41114, Sept. 17, 1982; 47 FR 43383, Oct. 1, 1982; 48 FR 28409, June 21, 1983; 51 FR 9206, Mar. 18, 1986; 54 FR 42244, Oct. 13, 1989; 57 FR 30426, July 9, 1992]

§ 233.101 Dependent children of unemployed parents.

(a) Requirements for State Plans. Effective October 1, 1990 (for Puerto Rico, American Samoa, Guam, and the Virgin Islands, October 1, 1992), a State plan must provide for payment of AFDC for children of unemployed parents. A State plan under title IV-A for payment of such aid must:

(1) Include a definition of an unemployed parent who is the principal earner which shall apply only to families determined to be needy in accordance with the provisions in §233.20 of this part. Such definition must have a reasonable standard for measuring unemployment and, at a minimum, include any such parent who:

(i) Is employed less than 100 hours a month; or

(ii) Exceeds that standard for a particular month, if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that he or she was under the 100-hour standard for the prior 2 months and is expected to be under the standard during the next month; except that at the option of the State, such definition need not include a principal earner who is unemployed because of participation in a labor dispute (other than a strike) or by reason of conduct or circumstances which result or would result in disqualification for unemployment compensation under the State's unemployment compensation law.

(2) Include a definition of a dependent child which shall include any child of an unemployed parent (as defined by the State pursuant to paragraph (a)(1) of this section) who would be, except for the fact that his parent is not dead, absent from the home, or incapacitated, a dependent child under the State's plan approved under section 402 of the Act.

(3) Provide for payment of aid with respect to any dependent child (as defined by the State pursuant to paragraph (a)(2) of this section) when the conditions set forth in paragraphs (a)(3)(i), (a)(3)(ii), and (a)(3)(iii) of this section are met.

(i) His or her parent who is the principal earner has been unemployed for at least 30 days prior to the receipt of such aid;

(ii) Such parent has not without good cause, within such 30-day period prior to the receipt of such aid, refused a bona fide offer of employment or training for employment. Before it is determined that such parent has refused a bona fide offer of employment or training for employment without good cause, the agency must make a determination that such offer was actually made. (In the case of offers of employment made through the public employment or manpower agencies, the determination as to whether the offer was bona fide, or whether there was good cause to refuse it, shall be made by the title IV-A agency. The IV-A agency may accept the recommendations of such agencies.) The parent must be given an opportunity to explain why such offer was not accepted. Questions with respect to the following factors must be resolved:

(A) That there was a definite offer of employment at wages meeting any applicable minimum wage requirements and which are customary for such work in the community;

(B) Any questions as to the parent's inability to engage in such employment for physical reasons or because he has no way to get to or from the particular job; and

(C) Any questions of working conditions, such as risks to health, safety, or lack of worker's compensation protection.

(iii) Such parent:

(A) Has six or more quarters of work (as defined in paragraph (a)(3)(iv) of this section), within any 13-calendar-quarter period ending within one year prior to the application for such aid, or

(B) Within such 1-year period, received unemployment compensation under an unemployment compensation law of a State or of the United States, or was qualified under the terms of paragraph (a)(3)(v) of this section for such compensation under the State's unemployment compensation law.

(iv) A ''quarter of work'' with respect to any individual means a period (of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31):

(A) In which an individual received earned income of not less than $50 (or which is a ''quarter of coverage'' as defined in section 213(a)(2) of the Social Security Act) or participated in a program under part 250 of this chapter; or

(B) At State option (as specified in the plan), in one or more subdivisions of the State, in which he or she attended, full-time, an elementary school, a secondary school, or a vocational or technical training course that is designed to prepare the individual for gainful employment, or in which the individual participated in an educational or training program established under the Job Training Partnership Act, provided that an individual may qualify for no more than four quarters of work under this paragraph for purposes of the requirement set forth in paragraph (a)(3)(iii)(A) of this section; and

(C) A calendar quarter ending before October 1990 in which an individual participated in CWEP under section 409 of the Social Security Act or the WIN program established under title IV-C of the Social Security Act (as in effect for a State immediately before the effective date of that State's JOBS program).

(v) An individual shall be deemed ''qualified'' for unemployment compensation under the State's unemployment compensation law if he or she would have been eligible to receive such benefits upon filing an application, or he performed work not covered by such law, which, if it had been covered, would (together with any covered work he performed) have made him eligible to receive such benefits upon filing an application.

(vi)(A) The ''parent who is the principal earner'' means, in the case of any child, whichever parent, in a home in which both parents of such child are living, earned the greater amount of income in the 24-month period the last month of which immediately precedes

the month in which an application is filed for aid under this part on the basis of the unemployment of a parent. If the State cannot secure primary evidence of earnings for this period, the State shall designate the principal earner, using the best evidence available. The earnings of each parent are considered in determining the principal earner regardless of when their relationship began. The principal earner so defined remains the principal earner for each consecutive month for which the family receives such aid on the basis of such application. This requirement applies to both new applicants and current AFDC unemployed parent families who were eligible and receiving aid prior to October 1, 1981.

(B) If both parents earned an identical amount of income (or earned no income) in such 24-month period, the State shall designate which parent shall be the principal earner.

(4) Provide for entering into cooperative arrangements with the State agency responsible for administering or supervising the administration of vocational education to assure maximum utilization of available public vocational education services and facilities in the State to encourage the retraining of individuals capable of being retrained.

(5) Provide that the needs of the child's parent(s) shall not be taken into account in determining the needs and amount of assistance of the child's family:

(i) If and for so long as such child's parent(s), unless exempt under §250.30(b) of this chapter, is not currently participating (or available for participation) in a program under part 250 of this chapter or, if they are exempt under §250.30(b)(5) of this chapter (or because a JOBS program has not been established in the subdivision where they reside or they reside in a JOBS subdivision but there is no appropriate JOBS activity in which they can participate), are not registered with a public employment office in the State, and

(ii) With respect to any week for which such child's parent qualifies for unemployment compensation under an unemployment compensation law of the State or of the United States but refuses to apply for or accept such unemployment compensation.

(6) Provide that medical assistance will be furnished under the State's approved plan under title XIX during any month in which an otherwise eligible individual is denied assistance solely by reason of the time limitation provided under paragraph (b)(3) of this section.

(b) *State Plan Options.* A State plan under title IV-A may:

(1) Require the principal earner or both parents to participate in an activity in the JOBS program under part 250 of this chapter, subject to the limitations and conditions of part 250 of this chapter, provided that the participation of each parent in all required activities under the JOBS program does not exceed 40 hours per week, per parent.

(2) Provide cash assistance after the performance of assigned program activities by parents required to participate in an activity in the JOBS program under part 250 of this chapter (as provided in paragraph (b)(1) of this section) so long as the State:

(i) Makes assistance payments at regular intervals at least monthly,

(ii) Prescribes a set of criteria which defines goals or standards for each assigned activity in the JOBS program which must be completed by the participant prior to payment, and

(iii) Prior to, or concurrent with, assignment to an activity, notifies the participant of the prescribed goals or standards and that payment for a period will be withheld unless performance of each assigned activity for that period is completed.

(3) Provide for a State to operate a payment after performance system under which a family is issued an assistance payment after the applicable family member has successfully completed her obligation to participate in JOBS for a specific period. If the applicable family member fails without good cause to satisfy the obligation, the State may:

(i) Impose a sanction in accordance with the JOBS program rules at §§250.34, 250.35 and 250.36 of this chapter;

(ii) Reduce the family's assistance payment to which the specific period

applies by the amount of the payment attributable to the family member for that period or do not make the payment to the family; or

(iii) Reduce the family's assistance payment to which the specific period applies (or the amount of the payment attributable to the family member for that period) in proportion to the number of required hours that were not completed.

For States that elect to implement paragraphs (b)(3) (ii) or (iii) of this section, the fair hearing requirements set forth at § 205.10(a)(4)(ii)(K) of this chapter apply.

(4) Limit the number of months that a family may receive AFDC-UP under this section when the following conditions are met:

(i) The State did not have on September 26, 1988, an approved AFDC-UP program under section 407 of the Social Security Act.

(ii) The family received such aid (on the basis of the unemployment of the parent who is the principal earner) in at least 6 of the preceding 12 months.

(iii) The State has in effect a program (described in the plan) for providing education, training, and employment services to assist parents in preparing for and obtaining employment throughout the year. Such a program may include education, training and employment activities under the JOBS program which are provided in part 250 of this chapter or under a State-designed program which provides:

(A) Education and instruction for individuals who have not graduated from a secondary school or obtained an equivalent degree,

(B) Training whereby an individual acquires market-oriented skills necessary for self-support, and

(C) Employment services which seek to place individuals in jobs.

(iv) The State must guarantee child care necessary for an individual to participate in an approved, State-designed, non-JOBS program. The regulations at part 255 of this chapter apply to such care.

(v) The State has the option of providing necessary supportive services associated with an individual's participation in a State-designed, non-JOBS program. Federal financial participation is available under sections 403 (k) and (l) of the Social Security Act. The regulations at part 255 of this chapter apply to such supportive services.

(vi) The State must inform an AFDC-UP family at the time of application that AFDC-UP cash assistance will terminate due to a time limitation, that any family with a child who is (or becomes) deprived due to the death, continued absence, or incapacity of a parent may receive cash assistance under the AFDC program during the time limitation for AFDC-UP, and that a program of training, education, and employment services is available to prepare the family to become self-supporting.

(vii) Prior to termination due to a time limitation, the State must notify an AFDC-UP recipient family of the earliest month that it may receive AFDC-UP cash assistance again. This notification may be included in the notice of proposed action which is required pursuant to § 205.10(a)(4) of this chapter. To receive assistance again, the family must make a new application.

(viii) In establishing eligibility upon re-application following months of nonpayment due to the time limitation, an otherwise eligible family that does not receive aid in a month solely by reason of the option to limit assistance under this paragraph shall be deemed, for purposes of determining the period under paragraph (a)(3)(iii)(A) of this section, to be receiving AFDC-UP cash assistance in that month. This provision also applies if, at the time of the family's original application for assistance, eligibility was established based on the provisions of paragraph (a)(3)(iii)(B) of this section, but eligibility could have been established based on the provisions of paragraph (a)(3)(iii)(A) of this section.

(c) *Federal Financial Participation.* (1) Federal financial participation is available for payments authorized in accordance with the State plan approved under section 402 of the Act as aid to families with dependent children with respect to a child:

(i) Who meets the requirements of section 406(a)(2) of the Act;

(ii) Who is living with any of the relatives specified in section 406(a)(1) of

the Act in a place of residence maintained by one or more of such relatives as his (or their) own home;

(iii) Who has been deprived of parental support or care by reason of the fact that his or her parent who is the principal earner is employed less than 100 hours a month; or exceeds that standard for a particular month if his or her work is intermittent and the excess is of a temporary nature as evidenced by the fact that he or she was under the 100-hour standard for 2 prior months and is expected to be under the standard during the next month;

(iv) Whose parent who is the principal earner:

(A) Has six or more quarters of work (as defined in paragraph (a)(3)(iv) of this section) within any 13-calendar-quarter period ending within 1 year prior to the application for such aid,

(B) Within such 1-year period, received unemployment compensation under an unemployment compensation law of a State or of the United States, or was qualified (under the terms of paragraph (a)(3)(v) of this section) for such compensation under the State's unemployment compensation law; and

(v) Whose parent who is the principal earner:

(A) Is currently participating in or available to participate in an activity in the JOBS program under part 250 of this chapter, unless exempt, or is registered with the public employment office in the State if exempt from the JOBS program under §250.30(b)(5) of this chapter; and

(B) Has not refused to apply for or accept unemployment compensation with respect to any week for which such child's parent qualifies for unemployment compensation under an unemployment compensation law of the State or of the United States.

(2) The State may not include in its claim for Federal financial participation payments made as aid under the plan with respect to a child who meets the conditions set forth in paragraph (c)(1) of this section, where such payments were made:

(i) For any part of the 30-day period specified in paragraph (a)(3)(i) of this section;

(ii) For such 30-day period if during that period the parent refused without good cause a bona fide offer of employment or training for employment;

(iii) For any period beginning with the 31st day after the receipt of aid, if and for as long as no action is taken during the period to undertake appropriate steps directed toward the participation of the parent who is the principal earner in a program under part 250 of this chapter;

(iv) To the extent that such payments are made to meet the need of an individual who is subject to a sanction imposed, under part 250 of this chapter (for failure to meet the requirements for participation in the JOBS program).

(3) Federal financial participation is available for child care and supportive services expenditures associated with participation in an approved State-designed program (as provided in paragraph (b)(3)(iii) of this section) under titles IV-A and IV-F of the Act respectively. However, Federal financial participation is not available for any other costs, program or administrative, associated with State-designed programs.

(d) For all States (other than Puerto Rico, American Samoa, Guam, and the Virgin Islands) the provisions of this section are in effect through September 30, 1998. For Puerto Rico, American Samoa, Guam, and the Virgin Islands, the provisions of this section are in effect from October 1, 1992, through September 30, 1998.

[57 FR 30426, July 9, 1992, as amended at 63 FR 42274, Aug. 7, 1998]

§233.106 Denial of AFDC benefits to strikers.

(a) *Condition for plan approval.* A State plan under title IV-A of the Social Security Act must:

(1) Provide that participation in a strike shall not constitute good cause to leave, or to refuse to seek or accept, employment.

(2)(i) Provide for the denial of AFDC benefits to any family for any month in which any caretaker relative with whom the child is living is, on the last day of such month, participating in a strike; and

(ii) Provide that no individual's needs shall be included in determining the amount of aid payable for any month

to a family under the plan if, on the last day of such month, such individual is participating in a strike.

(b) *Definitions.* (1) The State must define ''strike'' by using the National Labor Relations Board definition (29 U.S.C. 142(2)) or another definition of the term that is currently in State law.

(2) The State must define the term ''participating in a strike.''

(3) For purposes of paragraph (a)(2)(i) of this section, ''caretaker relative'' means any natural or adoptive parent.

[47 FR 5682, Feb. 5, 1982]

§ 233.107 Restriction in payment to households headed by a minor parent.

(a) *State plan requirements.* A State in its title IV-A State plan may provide that a minor parent and the dependent child in his or her care must reside in the household of a parent, legal guardian, or other adult relative, or in an adult-supervised supportive living arrangement in order to receive, AFDC unless:

(1) The minor parent has no living parent or legal guardian whose whereabouts is known;

(2) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home;

(3) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for AFDC;

(4) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian;

(5) There is otherwise good cause for the minor parent and dependent child to receive assistance while living apart from the minor parent's parent, legal guardian, or other adult relative, or an adult-supervised supportive living arrangement.

(b) *Allegations.* If a minor parent makes allegations supporting the conclusion that paragraph (a)(4) of this section applies, the State agency shall determine whether it is justified.

(c) *Good Cause.* The circumstances justifying a determination of good cause must be set forth in the State plan.

(d) *Protective Payments.* When a minor parent and his or her dependent child are required to live with the minor parent's parent, legal guardian, or other adult relative, or in an adult-supervised supportive living arrangement, then AFDC is paid (where possible) in the form of a protective payment.

(e) *Definitions:* For purposes of this section:

(1) A *minor parent* is an individual who (i) is under the age of 18, (ii) has never been married, and (iii) is either the natural parent of a dependent child living in the same household or eligible for assistance paid under the State plan to a pregnant woman as provided in § 233.90(c)(2)(iv) of this part.

(2) A *household of a parent, legal guardian, or other adult relatives* means the place of residence of (i) a natural or adoptive parent or a stepparent, or (ii) a legal guardian as defined by the State, or (iii) another individual who is age 18 or over and related to the minor parent as specified in § 233.90(c)(1)(v) of this part provided that the residence is maintained as a home for the minor parent and child as provided in § 233.90(c)(1)(v)(B) of this part.

(3) *An adult-supervised supportive living arrangement* means a private family setting or other living arrangement (not including a public institution), which, as determined by the State, is maintained as a family setting, as evidenced by the assumption of responsibility for the care and control of the minor parent and dependent child or the provision of supportive services, such as counseling, guidance, or supervision. For example, foster homes and maternity homes are ''adult-supervised supportive living arrangements.''

(f) *Notice Requirements.* Minor applicants shall be informed about the eligibility requirements and their rights and obligations consistent with the provisions at § 206.10(a)(2)(i). For example, a State may wish to: (1) Advise the minor of the possible exemptions and specifically ask whether one or more of these exemptions is applicable; and (2) assist the minor in attaining the necessary verifications if one or more of these exemptions is alleged.

[57 FR 30428, July 9, 1992]

§ 233.110 Foster care maintenance and adoption assistance.

(a) *State plan requirements.* A State plan under title IV-A of the Social Security Act must provide that the State has in effect a plan approved under part E, title IV of the Social Security Act, and operates a foster care maintenance and adoption assistance program in conformity with such a plan.

(b) [Reserved]

[51 FR 9206, Mar. 18, 1986]

§ 233.145 Expiration of medical assistance programs under titles I, IV-A, X, XIV and XVI of the Social Security Act.

(a) Under the provisions of section 121(b) of Pub. L. 89–97, enacted July 30, 1965, no payment may be made to any State under title I, IV-A, X, XIV or XVI of the Social Security Act for aid or assistance in the form of medical or any other type of remedial care for any period after December 31, 1969. However, these provisions do not affect the availability of Federal financial participation in the cost of medical or remedial care furnished under title IV-A of the Act (pursuant to sections 403(a)(5) and 406(e)) of the Act, as emergency assistance to needy families with children (see § 233.120 of this part), subject to the provisions of paragraph (c)[1] of this section. Federal financial participation in vendor payments for medical care and services is not otherwise available except under title XIX of the Act.

(b) Under the provisions of section 4(c) of Pub. L. 92–223, enacted December 28, 1971, and the provisions of section 292 of Pub. L. 92–603, enacted October 30, 1972:

(1) In the case of any State which on January 1, 1972, had in effect a State plan approved under title XIX of the Social Security Act, section 1121 of the Act authorizing payments under title I, X, XIV, or XVI of the Act for assistance in the form of institutional services in intermediate care facilities is rescinded; and

(2) In the case of any State which on January 1, 1972, did not have in effect a State plan approved under title XIX of the Act, Federal financial participation is available in assistance in the form of institutional services in intermediate care facilities pursuant to section 1121 of the Act and under the provisions of § 234.130 of this chapter until the first day of the first month after January 1, 1972, that the State has in effect a State plan approved under title XIX.

(c)(1) Under the provisions of section 249D of Pub. L. 92–603, enacted October 30, 1972, Federal matching is not available for any portion of any payment by any State under titles I, IV-A, X, XIV, or XVI of the Social Security Act for or on account of any medical or any other type of remedial care provided by an institution to any individual as an inpatient thereof, in the case of any State which has a plan approved under title XIX of such Act, if such care is (or could be provided, under a State plan approved under title XIX of such Act, by an institution certified under such title XIX. The effective date of this proposed provision will be the date of publication of the final regulation in the FEDERAL REGISTER.

(2) For purposes of this paragraph,

(i) An institution (see § 233.60(b)(1) of this chapter) is considered to provide medical or remedial care if it provides any care or service beyond room and board because of the physical or mental condition (or both) of its inpatients;

(ii) An inpatient is an individual who is living in an institution which provides medical or remedial care and who is receiving care or service beyond room and board because of his physical or mental condition (or both).

(iii) Federal financial participation is not available for any portion of the payment for care of an inpatient. It is immaterial whether such payment is made as a vendor payment or as a money payment or other cash assistance payment. It is also immaterial whether the payment is divided into components, such as separate amounts or payments for room and board, and for care or services beyond room and board, or whether the payment is considered to meet ''basic'' needs or ''special'' needs. If, however, a money payment (or protective payment) is made to an individual who is living in an institution, and such payment does not

[1] See notice published Aug. 29, 1973 (38 FR 23337).

exceed a reasonable rate for room, board and laundry for individuals not living in their own homes, and no additional payment is made for such individual's care in the institution, Federal financial participation is available in the money payment (or protective payment) since the individual may spend the funds at his discretion and obtain room and board at the place of his choice.

(iv) Federal financial participation is available in cash assistance payments to meet the needs of an inpatient for specific medical services, such as dental care or prescription drugs, which generally are not delivered in an institutional setting and in fact are not provided by the institution to the inpatient, provided that such services are not available to the individual under the State's approved title XIX plan.

[38 FR 26379, Sept. 20, 1973, as amended at 38 FR 32912, Nov. 29, 1973]

PART 234—FINANCIAL ASSISTANCE TO INDIVIDUALS

Sec.

234.11 Assistance in the form of money payments.
234.60 Protective, vendor, and two-party payments for dependent children.
234.70 Protective payments for the aged, blind, or disabled.
234.75 Rent payments to public housing agencies.
234.120 Federal financial participation.
234.130 Assistance in the form of institutional services in intermediate care facilities.

AUTHORITY: 42 U.S.C. 602, 603, 606, and 1302.

§ 234.11 Assistance in the form of money payments.

(a) Federal financial participation is available in money payments made under a State plan under title I, IV-A, X, XIV, or XVI of the Social Security Act to eligible families and individuals. Money payments are payments in cash, checks, or warrants immediately redeemable at par, made to the grantee or his legal representative with no restrictions imposed by the agency on the use of funds by the individual.

(b) [Reserved]

[36 FR 22238, Nov. 23, 1971, as amended at 51 FR 9206, Mar. 18, 1986]

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) *State plan requirements.* (1) If a State plan for AFDC under title IV-A of the Social Security Act provides for protective, vendor and two-party payments for cases other than failure to participate in the Job Opportunities and Basic Skills Training (JOBS) Program under § 250.34(d), or failure by the caretaker relative to meet the eligibility requirements of § 232.11, 232.12, or 232.13 of this chapter. It must meet the requirements in paragraphs (a) (2) through (11) of this section. In addition, the plan may provide for protective, vendor, and two-party payments at the request of recipients as provided in paragraph (a)(14) of this section.

(2)(i) Methods will be in effect to identify children whose relatives have demonstrated such an inability to manage funds that payments to the relative have not been or are not currently used in the best interest of the child. This means that the relative has misused funds to such an extent that allowing him or her to manage the AFDC grant is a threat to the health or safety of the child.

(ii) States will establish criteria to determine if mismanagement exists. Under this provision, States may elect to use as one criterion a presumption of mismanagement based on a recipient's nonpayment of rent.

(iii) Under State agency procedures, the recipient shall be notified whenever a creditor requests a protective, vendor, or two-party payment for mismangement on the basis of nonpayment of bills.

(iv) The recipient shall be notified by the agency of a decision not to use a protective, vendor, or two-party payment if such payment has been requested by a creditor.

(v) A statement of the specific reasons that demonstrate the need for making protective, vendor, and two-party payments must be placed in the file of the child involved.

(3) Criteria will be established to identify the circumstances under which protective, vendor, or two-party payments will be made in whole or in part to:

(i) Another individual who is interested in or concerned with the welfare of the child or relative; or

(ii) A person or persons furnishing food, living accommodations or other goods, services, or items to or for the child, relative, or essential person.

(4) Procedures will be established for making protective, vendor, or two-party payments. Under this provision, part of the payment may be made to the family and part may be made to a protective payee or to a vendor, or part may be made in the form of two-party payments, i.e., checks which are drawn jointly to the order of the recipient and the person furnishing goods, services, or items and negotiable only upon endorsement by both the recipient and the other person.

(5)–(6) [Reserved]

(7) Standards will be established for selection:

(i) Of protective payees, who are interested in or concerned with the recepient's welfare, to act for the recipient in receiving and managing assistance, with the selection of a protective payee being made by the recipient, or with his participation and consent, to the extent possible. If it is in the best interest of the recipient for a staff member of a private agency, of the public welfare department, or of any other appropriate organization to serve as a protective payee, such selection will be made preferably from the staff of an agency or that part of the agency providing protective services for families; and the public welfare department will employ such additional staff as may be necessary to provide protective payees. The selection will not include: The executive head of the agency administering public assistance; the person determining financial eligibility for the family; special investigative or resource staff; or staff handling fiscal processes related to the recipient; or landlords, grocers, or other vendors of goods, services, or items dealing directly with the recipient.

(ii) Of such persons providing goods, services, or items with the selection of such persons being made by the recipient, or with his participation and consent, to the extent possible.

(8) The agency will undertake and continue special efforts to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family.

(9) Review will be made as frequently as indicated by the individual's circumstances, and at least once every 12 months, of:

(i) The need for protective, vendor, and two-party payments; and

(ii) The way in which a protective payee's responsibilities are carried out.

(10) Provision will be made for termination of protective payments, or payments to a person furnishing goods or services, as follows:

(i) When relatives are considered able to manage funds in the best interest of the child, there will be a return to money payment status.

(ii) When it appears that need for protective, vendor, or two-party payments will continue or is likely to continue beyond 2 years because all efforts have not resulted in sufficiently improved use of assistance in behalf of the child, judicial appointment of a guardian or other legal representative will be sought and such payments will terminate when the appointment has been made.

(11)(i) Opportunity for a fair hearing pursuant to §205.10 will be given to any individual claiming assistance in relation to the determination:

(A) That a protective, vendor, and two-party payment should be made or continued.

(B) As to the payee selected.

(ii) In cases where the agency has elected the option to presume mismanagement based on a recipient's nonpayment of rent pursuant to paragraph (a)(2)(ii), the agency may also elect the option to provide the opportunity for a fair hearing pursuant to §205.10 either before or after the manner or form of payment has been changed for these cases.

(12) In cases where an individual is sanctioned for failure to participate in WIN, employment search, CWEP, or JOBS, the State plan must provide that when protective or vendor payments are made pursuant to §224.52(a)(1), §238.22, §240.22(a)(1), §240.22(b)(1) and §250.34(d) of this chapter, only paragraphs (a)(7), (a)(9)(ii), and (a)(11)(i) and (ii) of this section will

be applicable. Under these circumstances, when protective payments are made, the entire payment will be made to the protective payee; and when vendor payments are made, at least the greater part of the payment will be through this method. However, if after making all reasonable efforts, the State 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. Provision will be made for termination of protective payments, or payments to a person furnishing goods or services, with return to money payment status when adults who refused training, employment, or participation in employment search without good cause either accept training, employment, or employment search or agree to do so. In the case of continuing refusal of the relative to participate, payments will be continued for the children in the home in accordance with this paragraph.

(13) For cases in which a caretaker relative fails to meet the eligibility requirements of §§ 232.11, 232.12, or 232.13 of this chapter by failing to assign rights to support or cooperate in determining paternity, securing support, or identifying and providing information to assist the State in pursuing third party liability for medical services, the State plan must provide that only the requirements of paragraphs (a)(7) and (9)(ii) of this section will be applicable. For such cases, the entire amount of the assistance payment will be in the form of protective or vendor payments. These protective or vendor payments will be terminated, with return to money payment status, only upon compliance by the caretaker relative with the eligibility requirements of §§ 232.11, 232.12, and 232.13 of this chapter. However, if after making reasonable efforts, the State agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments to the sanctioned caretaker relative on behalf of the remaining members of the assistance unit.

(14) If the plan provides for protective, vendor, or two-party payments:

(i) The State may use any combination of protective, vendor, or two-party payments (at the request of the recipient),

(ii) The request must be in writing from the recipient to whom payment would otherwise be made in an unrestricted manner and must be recorded or retained in the case file, and

(iii) The restriction will be discontinued promptly upon the written request of the recipient who initiated it.

(b) *Federal financial participation.* Federal financial participation is available in payments which otherwise qualify as money payments with respect to an eligible dependent child, but which are made as protective, vendor or two-party payments under this section. Payrolls must identify protective, vendor, or two-party payments either by use of a separate payroll for these cases or by using a special identifying code or symbol on the regular payroll. The payment must be supported by an authorization of award through amendment of an existing authorization document for each case or by preparation of a separate authorization document. In either instance, the authorization document must be a formal agency record signed by a responsible agency official, showing the name of each eligible child and relative, the amount of payment authorized and the name of the protective, vendor or two-party payee.

[37 FR 9025, May 4, 1972, as amended at 37 FR 12202, June 20, 1972; 45 FR 20480, Mar. 28, 1980; 47 FR 5682, Feb. 5, 1982; 49 FR 35603, Sept. 10, 1984; 51 FR 9206, Mar. 18, 1986; 54 FR 42244, Oct. 13, 1989; 56 FR 8932, Mar. 4, 1991; 57 FR 30160, July 8, 1992]

§ 234.70 Protective payments for the aged, blind, or disabled.

(a) *State plan requirements.* If a State plan for OAA, AB, APTD, or AABD under the Social Security Act includes provisions for protective payments, the State plan must provide that:

(1) Methods will be in effect to determine that needy individuals have, by reason of physical or mental condition, such inability to manage funds that making payment to them would be contrary to their welfare; such methods to include medical or psychological

evaluations, or other reports of physical or mental conditions including observation of gross conditions such as extensive paralysis, serious mental retardation, continued disorientation, or severe memory loss.

(2) There will be responsibility to assure referral to social services for appropriate action to protect recipients where problems and needs for services and care of the recipients are manifestly beyond the ability of the protective payee to handle. (See paragraph (a)(5) of this section.)

(3) Standards will be established for selection of protective payees who are interested in or concerned with the individual's welfare, to act for the individual in receiving and managing assistance, with the selection of a protective payee being made by the individual, or with his participation and consent, to the extent possible. If it is in the best interest of the individual for a staff member of a private agency, of the public welfare department, or of any other appropriate organization to serve as a protective payee, such selection will be made preferably from the staff of an agency or that part of the agency providing protective services for families or for the disabled or aged group of which the recipient is a member; and such staff of the public welfare department will be utilized only to the extent that the department has adequate staff for this purpose. The selection will not include: The executive head of the agency administering public assistance; the person determining financial eligibility for the individual; special investigative or resource staff, or staff handling fiscal processes related to the recipient; or landlords, grocers, or other vendors of goods or services dealing directly with the recipient—such as the proprietor, administrator or fiscal agent of a nursing home, or social care, medical or nonmedical institution, except for the superintendent of a public institution for mental diseases or a public institution for the mentally retarded, or the designee of such superintendent, when no other suitable protective payee can be found and there are appropriate staff available to assist the superintendent in carrying out the protective payment function.

(4) Protective payments will be made only in cases in which the assistance payment, with other available income, meets all the needs of the individual, using the State's standards for assistance for the pertinent program, not standards for protective payment cases only.

(5) The agency will undertake and continue special efforts to protect the welfare of such individuals and to improve, to the extent possible, their capacity for self-care and to manage funds.

(6) Reconsideration of the need for protective payments and the way in which a protective payee's responsibilities are carried out will be as frequent as indicated by the individual's circumstances and at least every 6 months.

(7) Provision will be made for appropriate termination of protective payments as follows:

(i) When individuals are considered able to manage funds in their best interest, there will be a return to money payment status.

(ii) When a judicial appointment of a guardian or other legal representative appears to serve the best interest of the individual, such appointment will be sought and the protective payment will terminate when the appointment has been made.

(8) Opportunity for a fair hearing will be given to any individual claiming assistance in relation to the determination that a protective payment should be made or continued, and in relation to the payee selected.

(b) *Federal financial participation.* Federal financial participation is available for payments, which otherwise qualify as money payments with respect to a needy individual, but which are made to a protective payee under paragraph (a)(3) of this section. The payment must be supported by an authorization of award through amendment of an existing authorization document for such case or by preparation of a separate authorization document. In either instance, the authorization document must be a formal agency record signed by a responsible agency official showing the name of each eligible individual, the amount of payment

authorized and the name of the protective payee. Payrolls must identify protective payment cases either by use of a separate payroll for these cases or by using a special identifying code or symbol on the regular payroll.

[34 FR 1323, Jan. 28, 1969]

§ 234.75 Rent payments to public housing agencies.

At the option of a State, if its plan approved under title I, X, XIV, or XVI of the Social Security Act so provides, Federal financial participation under such title is available in rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of OAA, AB, APTD, or AABD. Such Federal financial participation is available in rent payments only to the extent that they do not exceed the amount included for rent under the State's standard of assistance or the amount of rent due under applicable law, whichever is less.

[38 FR 26380, Sept. 20, 1973]

§ 234.120 Federal financial participation.

Federal financial participation is available in assistance payments made under a State plan under title I, IV-A, X, XIV, or XVI of the Social Security Act to any family or individual for periods beginning with the month in which they meet all eligibility conditions under the plan and in which an application has been received by the agency. Such assistance payments include:

(a) Money payments (titles I, IV-A, X, XIV, and XVI, see § 234.11 of this chapter);

(b) Protective and vendor payments for dependent children (title IV-A, see § 234.60 of this chapter);

(c) Protective payments for the aged, blind, or disabled (titles I, X, XIV, and XVI, see § 234.70 of this chapter);

(d) AFDC foster care payments (title IV-A, see § 233.110 of this chapter);

(e) Vendor payments for institutional services in intermediate care facilities (titles I, X, XIV, and XVI), but only in a State that did not, as of January 1, 1972, have an approved plan under title XIX of the act, and only until such State has such a plan in effect (see § 234.130 of this chapter);

(f) Emergency assistance to needy families with children (title IV-A, see § 233.120 of this chapter);

(g) Vendor payments for home repairs (titles I, IV-A, X, XIV, and XVI, see § 233.20(c) of this chapter); and

(h) Rent payments to public housing agencies (titles I, X, XIV, and XVI, see § 234.75 of this chapter).

[38 FR 26380, Sept. 20, 1973]

§ 234.130 Assistance in the form of institutional services in intermediate care facilities.

(a) *Applicability and State plan requirements.* A State which, on January 1, 1972, did not have in effect a State plan approved under title XIX of the Social Security Act may provide assistance under title I, X, XIV, or XVI of the Act in the form of institutional services in intermediate care facilities as authorized under title XI of the Act, until the first day of the first month (occurring after January 1, 1972) that such State does have in effect a State plan approved under title XIX of the Act. In any State which may provide such assistance as authorized under title XI of the Act, a State plan under title I, X, XIV, or XVI of the Act which includes such assistance must:

(1) Provide that such benefits will be provided only to individuals who:

(i) Are entitled (or would, if not receiving institutional services in intermediate care facilities, be entitled) to receive assistance, under the State plan, in the form of money payments; and

(ii) Because of their physical or mental condition (or both) require living accommodations and care which, as a practical matter, can be made available to them only through institutional facilities; and

(iii) Do not have such an illness, disease, injury, or other condition as to require the degree of care and treatment which a hospital or skilled nursing home (as that term is employed in title XIX) is designed to provide.

(2) Provide that, in determining financial eligibility for benefits in the form of institutional services in intermediate care facilities, available income will be applied, first for personal

and incidental needs including clothing, and that any remaining income will be applied to the costs of care in the intermediate care facility.

(3) Provide methods of administration that include:

(i) Placing of responsibility, within the State agency, with one or more staff members with sufficient staff time exclusive of other duties to direct and guide the agency's activities with respect to services in intermediate care facilities, including arrangements for consultation and working relationships with the State standard-setting authority and State agencies responsible for mental health and for mental retardation;

(ii) In relation to authorization of benefits, provisions for evaluation by a physician of the individual's physical and mental condition and the kinds and amounts of care he requires; evaluation by the agency worker of the resources available in the home, family and community; and participation by the recipient in determining where he is to receive care, except that in the case of services being provided in a Christian Science Sanatorium, certification by a qualified Christian Science practitioner that the individual meets the requirements specified in paragraphs (a)(1) (ii) and (iii) of this section may be substituted for the evaluation by a physician;

(iii) Provisions for redetermination at least semiannually that the individual is properly a recipient of intermediate care.

(4) Provide for regular, periodic review and reevaluation no less often than annually (by or on behalf of the State agency administering the plan and in addition to the activities described in paragraph (a)(3) of this section) of recipients in intermediate care facilities to determine whether their current physical and mental conditions are such as to indicate continued placement in the intermediate care facility, whether the services actually rendered are adequate and responsive to the conditions and needs identified, and whether a change to other living arrangements, or other institutional facilities (including skilled nursing homes) is indicated. Such reviews must be followed by appropriate action on the part of the State agency administering the plan. They must be conducted by or under the supervision of a physician with participation by a registered professional nurse and other appropriate medical and social service personnel not employed by or having a financial interest in the facility, except that, in the case of recipients who have elected care in a Christian Science sanatorium, review by a physician or other medical personnel is not required.

(5) Provide that all services with respect to social and related problems which the agency makes available to applicants and recipients of assistance under the plan will be equally available to all applicants for and recipients of benefits in the form of institutional services in intermediate care facilities.

(6) Specify the types of facilities, however described, that will qualify under the State plan for participation as intermediate care facilities, and provide for availability to the Department of Health and Human Services, upon request of (i) copies of the State's requirements for licensing of such facilities, (ii) any requirements imposed by the State in addition to licensing and to definition of intermediate care facilities, and (iii) a description of the manner in which such requirements are applied and enforced including copies of agreements or contracts, if any, with the licensing authority for this purpose.

(7) Provide for and describe methods of determining amounts of vendor payments to intermediate care facilities which systematically relate amounts of the payment to the kinds, levels, and quantities of services provided to the recipients by the institutions and to the cost of providing such services.

(b) *Other requirements.* Except when inconsistent with purposes of section 1121 of the Act or contrary to any provision therein, any modification, pursuant thereto, of an approved State plan shall be subject to the same conditions, limitations, rights, and obligations as obtained with respect to such approved State plan. Included specifically among such conditions and limitations are the provisions of titles I, X, XIV, and XVI relating to payments to or care in behalf of any individual who

is an inmate of a public institution (except as a patient in a medical institution).

(c) *Federal financial participation.* (1) Federal financial participation is available under section 1121 of the Act in vendor payments for institutional services provided to individuals who are eligible under the respective State plan and who are residents in intermediate care facilities. The rate of participation is the same as for money payments under the respective title or, if the State so elects, at the rate of the Federal medical assistance percentage as defined in section 1905(b) of the Act. Such Federal financial participation ends on the date specified in paragraph (c)(2) of this section, or 12 months after the date when the State first has in effect a State plan approved under title XIX of the Act, whichever is later.

(2) For the period from January 1, 1972, to the date on which a determination is made under the provisions of 42 CFR 449.33 as to a facility's eligibility to receive payments for intermediate care facility services under the medical assistance program, title XIX of the Act, but not later than 12 months following the effective date of these regulations, Federal financial participation in payments for such services under title XIX is governed by the provisions of this section, applied to State plans under title XIX.

(d) *Definition of terms.* For purposes of section 1121 of the Social Security Act, the following definitions apply:

(1) *Institutional services.* The term, *institutional services,* means those items and services provided by or under the auspices of the institution which contribute to the health, comfort, and well-being of the residents thereof; except that the term, *institutional services,* does not include allowances for clothing and incidental expenses for which money payments to recipients are made under the plan, nor does it include medical care, in a form identifiable as such and separable from the routine services of the facility, for which vendor payments may be made under a State plan approved under title XIX.

(2) *Distinct part of an institution.* A *distinct part* of an institution is defined as a part which meets the definition of an intermediate care facility and the following conditions:

(i) *Identifiable unit.* The *distinct part* of the institution is an entire unit such as an entire ward or contiguous wards, wing, floor, or building. It consists of all beds and related facilities in the unit and houses all residents, except as hereafter provided, for whom payment is being made for intermediate care. It is clearly identified and is approved, in writing, by the agency applying the definition of intermediate care facility herein.

(ii) *Staff.* Appropriate personnel are assigned and work regularly in the unit. Immediate supervision of staff is provided in the unit at all time by qualified personnel.

(iii) *Shared facilities and services.* The distinct part may share such central services and facilities as management services, building maintenance and laundry, with other units.

(iv) *Transfers between distinct parts.* In a facility having distinct parts devoted to skilled nursing home care and intermediate care, which facility has been determined by the appropriate State agency to be organized and staffed to provide services according to individual needs throughout the institution, nothing herein shall be construed to require transfer of an individual within the institution when in the opinion of the individual's physician such transfer might be harmful to the physical or mental health of the individual.

(3) *Intermediate care facility.* An intermediate care facility is an institution or a distinct part thereof which:

(i) Is licensed, under State law to provide the residents thereof, on a regular basis, the range or level of care and services as defined in paragraph (d)(4) of this section, which is suitable to the needs of individuals who:

(*a*) Because of their physical or mental limitations or both, require living accommodations and care which, as a practical matter, can be made available to them only through institutional facilities, and

(*b*) Do not have such an illness, disease, injury, or other condition as to

require the degree of care and treatment which a hospital or skilled nursing home (as that term is employed in title XIX) is designed to provide:

(ii) Does not provide the degree of care required to be provided by a skilled nursing home furnishing services under a State plan approved under title XIX:

(iii) Meets such standards of safety and sanitation as are applicable to nursing homes under State law; and

(iv) Regularly provides a level of care and service beyond board and room.

The term *intermediate care facility* also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Mass.

(4) *Range or level of care and services.* The range or level of care and services suitable to the needs of individuals described in paragraph (d)(3)(i) of this section is to be defined by the State agency. The following items are recommended as a minimum.

(i) *Admission, transfer, and discharge of residents.* The admission, transfer, and discharge of residents of the facility are conducted in accordance with written policies of the institution that include at least the following provisions.

(*a*) Only those persons are accepted into the facility whose needs can be met within the accommodations and services the facility provides;

(*b*) As changes occur in their physical or mental condition, necessitating service or care not regularly provided by the facility, residents are transferred promptly to hospitals, skilled nursing homes, or other appropriate facilities;

(*c*) The resident, his next of kin, and the responsible agency if any, are consulted in advance of the discharge of any resident, and casework services or other means are utilized to assure that adequate arrangements exist for meeting his needs through other resources.

(ii) *Personal care and protective services.* The types and amounts of protection and personal service needed by each resident of the facility are a matter of record and are known to all staff members having personal contact with the resident. At least the following services are provided.

(*a*) There is, at all times, a responsible staff member actively on duty in the facility, and immediately accessible to all residents, to whom residents can report injuries, symptoms of illness, or emergencies, and who is immediately responsible for assuring that appropriate action is taken promptly.

(*b*) Assistance is provided, as needed by individual residents, with routine activities of daily living including such services as help in bathing, dressing, grooming, and management of personal affairs such as shopping.

(*c*) Continuous supervision is provided for residents whose mental condition is such that their personal safety requires such supervision.

(iii) *Social services.* Services to assist residents in dealing with social and related problems are available to all residents through one or more caseworkers on the staff of the facility; and/or, in the case of recipients of assistance, through caseworkers on the staff of the assistance agency; or through other arrangements.

(iv) *Activities.* Activities are regularly available for all residents, including social and recreational activities involving active participation by the residents, entertainment of appropriate frequency and character, and opportunities for participation in community activities as possible and appropriate.

(v) *Food service.* At least three meals a day, constituting a nutritionally adequate diet, are served in one or more dining areas separate from sleeping quarters, and tray service is provided for residents temporarily unable to leave their rooms.

(vi) *Special diets.* If the facility accepts or retains individuals in need of medically prescribed special diets, the menus for such diets are planned by a professionally qualified dietitian, or are reviewed and approved by the attending physician, and the facility provides supervision of the preparation and serving of the meals and their acceptance by the resident.

(vii) *Health services.* Whether provided by the facility or from other sources, at least the following services are available to all residents:

(*a*) Immediate supervision of the facility's health services by a registered

professional nurse or a licensed practical nurse employed full-time in the facility and on duty during the day shift except that, where the State recognizes and describes two or more distinct levels of institutions as intermediate care facilities such personnel are not required in any level that serves only individuals who have been determined by their physicians not to be in need of such supervision and whose need for such supervision is reviewed as indicated, and at least quarterly;

(*b*) Continuing supervision by a physician who sees the resident as needed and in no case, less often than quarterly;

(*c*) Under direction by the resident's physician and (where applicable in accordance with (d)(4)(vii)(*a*) of this section), general supervision by the nurse in charge of the facility's health services, guidance, and assistance for each resident in carrying out his personal health program to assure that preventive measures, treatments, and medications prescribed by the physician are properly carried out and recorded;

(*d*) Arrangements for services of a physician in the event of an emergency when the resident's own physician cannot be reached;

(*e*) In the presence of minor illness and for temporary periods, bedside care under direction of the resident's physician including nursing service provided by, or supervised by, a registered professional nurse or a licensed practical nurse;

(*f*) An individual health record for each resident including;

(*1*) The name, address, and telephone number of his physician;

(*2*) A record of the physician's findings and recommendations in the preadmission evaluation of the individual's condition and in subsequent reevaluations and all orders and recommendations of the physician for care of the resident;

(*3*) All symptoms and other indications of illness or injury brought to the attention of the staff by the resident, or from other sources, including the date, time, and action taken regarding each.

(viii) *Living accommodations.* Space and furnishings provide each resident clean, comfortable, and reasonably private living accommodations with no more than four residents occupying a room, with individual storage facilities for clothing and personal articles, and with lounge, recreation and dining areas provided apart from sleeping quarters.

(ix) *Administration and management.* The direction and management of the facility are such as to assure that the services required by the residents are so organized and administered that they are, in fact, available to the residents on a regular basis and that this is accomplished efficiently and with consideration for the objective of providing necessary care within a homelike atmosphere. Staff are employed by the facility sufficient in number and competence, as determined by the appropriate State agency, to meet the requirements of the residents.

[35 FR 8990, June 10, 1970, as amended at 39 FR 2220, Jan. 17, 1974; 39 FR 8918, Mar. 7, 1974]

PART 235—ADMINISTRATION OF FINANCIAL ASSISTANCE PROGRAMS

Sec.

235.40 [Reserved]
235.50 State plan requirements for methods of personnel administration.
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235.70 Prompt notice to child support or Medicaid agency.
235.110 Fraud.

AUTHORITY: 42 U.S.C. 603, 616, and 1302.

§ 235.40 [Reserved]

§ 235.50 State plan requirements for methods of personnel administration.

(a) A State plan for financial assistance programs under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act must provide that methods

of personnel administration will be established and maintained in public agencies administering or supervising the administration of the program in conformity with the Standards for a Merit System of Personnel Administration, 5 CFR part 900, subpart F, which incorporates the Intergovernmental Personnel Act Merit Principles (Pub. L. 91–648, section 2, 84 Stat. 1909), prescribed by the Office of Personnel Management pursuant to section 208 of the Intergovernmental Personnel Act of 1970 as amended.

[45 FR 25398, Apr. 15, 1980]

§ 235.60 Federal financial participation (FFP) for State and local training.

Sections 235.61 through 235.66 contain (a) State plan requirements for training programs and (b) conditions for Federal financial participation (FFP) for training costs under the State plans. These sections apply to the State plans for the financial assistance programs in all jurisdictions under title I, IV-A, X, XIV, or XVI (AABD) of the Social Security Act.

[45 FR 29833, May 6, 1980]

§ 235.61 Definition of terms.

For purposes of §§ 235.60–235.66:

Act means the Social Security Act, as amended.

A grant to an educational institution means payments to an educational institution for services rendered under a time limited agreement between the State agency and the eligible educational institution which provides for the training of State or local agency employees or persons preparing for employment with the State or local agency.

A training program is the method through which the State agency carries out a plan of educational and training activities to improve the operation of its programs.

(a) *Initial in-service training* means a period of intensive, task-oriented training to prepare new employees to assume job responsibilities.

(b) *Continuing training* means an ongoing program of training planned to enable employees to: (1) Reinforce their basic knowledge and develop the required skills for the performance of specific functions, and (2) acquire additional knowledge and skill to meet changes such as enactment of new legislation, development of new policies, or shifts in program emphasis.

(c) *Full-time training* means training that requires employees to be relieved of all responsibility for performance of current work to participate in a training program.

(d) *Part-time training* means training that allows employees to continue full time in their jobs or requires only partial reduction of work activities to participate in a training program outside of the State or local agency.

(e) *Long-term training* means training for eight consecutive work weeks or longer.

(f) *Short-term training* means training for less than eight consecutive work weeks.

FFP or Federal financial participation means the Federal government's share of expenditures made by a State or local agency under a training program.

Fringe benefits means the employer's share of premiums for industrial compensation, employee's retirement, unemployment compensation, health insurance, and similar expenses.

Persons preparing for employment means individuals who are not yet employed by the State or local agency, but who have received financial assistance from the State agency for training, and have made a legally binding commitment with the State or local agency for future employment under the conditions of these regulations.

Stipend means the basic living allowance paid to a student.

[45 FR 29833, May 6, 1980]

§ 235.62 State plan requirements for training programs.

A State plan under title I, IV-A, X, XIV, or XVI (AABD) of the Act must provide for a training program for agency personnel. The training program must:

(a) Include initial in-service training for newly appointed staff, and continuing agency training opportunities to improve the operation of the program. The training program may also include short-term and long-term training at educational institutions

through grants to institutions or by direct financial assistance to students enrolled in institutions who are agency employees or persons preparing for employment with the State or local agency;

(b) Be related to job duties performed or to be performed by the persons trained, and be consistent with the program objectives of the agency; and

(c) Be described in an annual training plan prepared prior to the beginning of the fiscal year. Copies of the training plan shall be made available upon request to the Regional Office of Family Assistance for review by the Federal staff.

[45 FR 29833, May 6, 1980, as amended at 46 FR 29264, June 1, 1981]

§ 235.63 Conditions for FFP.

(a) *Who may be trained.* FFP is available only for training provided personnel employed in all classes of positions, volunteers, and persons preparing for employment by the State or local agency administering the program.

(b) *When FFP is available.* FFP is available for personnel employed and persons preparing for employment by the State or local agency provided the following conditions are met, and with the following limitations:

(1) Employees in full-time, long-term training make a commitment to work in the agency for a period of time equal to the period for which financial assistance is granted. A State agency may exempt an employee from fulfilling this commitment only if failure to continue in employment is due to death, disability, employment in a financial assistance program in a public assistance agency in another State, or other emergent circumstances determined by the single State agency head to be valid for exemption;

(2) An employee retains his or her rights and benefits in the agency while on full-time, long-term training leave;

(3) Persons preparing for employment are selected by the State agency and accepted by the school;

(4) Persons preparing for employment are pursuing educational programs approved by the State agency;

(5) Persons preparing for employment are committed to work for State or local agency for a period of time at least equal to the period for which financial assistance is granted if employment is offered within 2 months after training is completed;

(6) The State or local agency offers the individual preparing for employment a job upon completion of training unless precluded by merit system requirements, legislative budget cuts, position freezes, or other circumstances beyond the agency's control; and if unable to offer employment, releases the individual from his or her commitment;

(7) The State agency keeps a record of the employment of persons trained. If the persons are not employed by the State or local agency, the record specifies the reason for non-employment;

(8) The State agency evaluates the training programs; and

(9) Any recoupment of funds by the State from trainees failing to fulfill their commitment under this section shall be treated as a refund and deducted from total training costs for the purpose of determining net costs for FFP.

(c) *Grants to educational institutions.* FFP is available in payments for services rendered under grants to educational institutions provided all of the following conditions are met:

(1) Grants are made for the purpose of developing, expanding, or improving training for personnel employed by the State or local agency or preparing for employment by the State or local agency administering the program. Grants are made for an educational program (curriculum development, classroom instruction, field instruction, or any combination of these) that is directly related to the agency's program. Grants are made for not more than 3 years, but may be renewed, subject to the conditions of this section;

(2) Grants are made to educational institutions and programs that are accredited by the appropriate institutional accrediting body recognized by the U.S. Commissioner of Education. When a specialized program within the institution for which there is a specialized accrediting body is used, that program must be accredited by or have pre-accreditation status from that body. (Part 149 of this title explains the

requirements and procedures for obtaining recognition as an accrediting agency or association. Lists of currently recognized accrediting bodies are published in the FEDERAL REGISTER periodically. *See also Nationally Recognized Accrediting Agencies and Associations* published by the Office of Education);

(3) The State agency has written policies establishing conditions and procedures for such grants;

(4) Each grant describes objectives in terms of how the educational program is related to the financial assistance programs and how it is designed to meet the State or local agency's manpower needs; and

(5) An evaluation of the educational program funded by each grant is made no later than the close of the second year of the grant. The evaluation shall be conducted by representatives from the educational institution and the State agency to determine whether conditions and objectives described in the grant are being met. If the educational program does not meet these conditions and objectives, payment shall be terminated no later than the close of the second year of the grant.

[45 FR 29834, May 6, 1980]

§ 235.64 FFP rates, and activities and costs matchable as training expenditures.

Under title I, IV-A, X, XIV, or XVI(AABD) of the Act, FFP is available at the rate of 50 percent for the following costs:

(a) Salaries, fringe benefits, travel and per diem for:

(1) Staff development personnel (including support staff) assigned full time to training functions and;

(2) Staff development personnel assigned part time to training functions to the extent time is spent performing such functions.

(b) For agency training sessions, FFP is available for:

(1) Salaries, fringe benefits, travel and per diem for employees in initial in-service training of at least one week;

(2) Travel and per diem for employees in agency training sessions away from the employee's work site, or in institutes, seminars or workshops related to the job and sponsored by professional organizations;

(3) Salaries, fringe benefits, travel and per diem for experts outside the agency engaged to develop or conduct special programs; and

(4) Costs of space, postage, teaching supplies, purchase or development of teaching material and equipment, and costs of maintaining and operating the agency library as an essential resource to the agency's training program.

(c) For training and education outside of the agency, FFP is available for:

(1) Salaries, fringe benefits, dependency allowance, travel, tuition, books, and educational supplies for employees in full-time, long-term training programs (with no assigned agency duties);

(2) Salaries, fringe benefits, travel, tuition, books, and educational supplies for employees in full-time, short-term training programs of four or more consecutive work weeks;

(3) Travel, per diem, tuition, books and educational supplies for employees in short-term training programs of less than four consecutive work weeks, or part-time training programs; and

(4) Stipends, travel, tuition, books and educational supplies for persons preparing for employment with the State or local agency.

(d) FFP is available for payments to educational institutions, as described in § 235.63(c) for salaries, fringe benefits, and travel of instructors, clerical assistance, teaching materials and equipment.

[45 FR 29834, May 6, 1980, as amended at 47 FR 5683, Feb. 5, 1982; 59 FR 12861, Mar. 18, 1994]

§ 235.65 Activities and costs not matchable as training expenditures.

FFP is not available for the following expenditures as training costs; however, the expenditures described in this section may be matched as administrative costs, if conditions for such matching are met:

(a) Salaries of supervisors (day-to-day supervision of staff is not a training activity); and

(b) Employment of students on a temporary basis, such as in the summertime.

[45 FR 29835, May 6, 1980]

§ 235.66 Sources of State funds.

(a) *Public funds.* Public funds may be considered as the State's share in claiming Federal reimbursement where the funds:

(1) Are 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, or certified by the contributing public agency as representing expenditures eligible for FFP under §§ 235.60–235.66;

(2) Are not used to match other Federal funds; and

(3) Are not federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds.

(b) *Private funds.* Funds donated from private sources may be considered as the State's share in claiming Federal reimbursement only where the funds are:

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

(2) Donated without any restriction which would require their use for the training of a particular individual or at particular facilities or institutions; and

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

[45 FR 29835, May 6, 1980]

§ 235.70 Prompt notice to child support or Medicaid agency.

(a) A State plan under title IV-A of the Social Security Act must provide for prompt notice to the State or local child support agency designated pursuant to section 454(3) of the Social Security Act and to the State title XIX agency, as appropriate, whenever:

(1) Aid is furnished to a child who has been deserted or abandoned by a parent, to the parent(s) with whom the child lives, or to a pregnant woman under § 233.90(c)(2)(iv), or

(2) Any of the persons in paragraph (a)(1) of this section is deemed to be a recipient of aid under § 233.20(a)(3)(viii)(D).

(b) In this section:

(1) *Aid* means Aid to Families with Dependent Children, or AFDC Foster Care.

(2) *Prompt notice* means written notice including a copy of the AFDC case record, or all relevant information as prescribed by the child support agency. Prompt notice must also include all relevant information as prescribed by the State medicaid agency for the pursuit of liable third parties. The prompt notice shall be provided within two working days of the furnishing of aid or the determination that an individual is a recipient under § 233.20(a)(3)(viii)(D). The title IV-A, IV-D and XIX agencies may agree to provide notice immediately upon the filing of an application for assistance.

(3) *Furnish* means the date on which cash is given to the family, a check or warrant is mailed to the family, a deposit is made in a bank for the family, or other similar circumstances in which an assistance payment is made to the family, or the date on which individuals are determined to be recipients under § 233.20(a)(3)(viii)(D).

(4) *A child who has been deserted or abandoned by a parent* means any child whose eligibility for AFDC is based on continued absence of a parent from the home, and includes a child born out of wedlock without regard to whether the paternity of such child has been established.

[47 FR 5683, Feb. 5, 1982, as amended at 56 FR 8933, Mar. 4, 1991]

§ 235.110 Fraud.

State plan requirements: A State plan under title I, IV-A, X, XIV, or XVI of the Social Security Act must provide:

(a) That the State agency will establish and maintain:

(1) Methods and criteria for identifying situations in which a question of fraud in the program may exist, and

(2) Procedures developed in cooperation with the State's legal authorities for referring to law enforcement officials situations in which there is valid reason to suspect that fraud has been practiced.

The definition of fraud for purposes of this section will be determined in accordance with State law.

(b) For methods of investigation of situations which there is a question of fraud, that do not infringe on the legal rights of persons involved and are consistent with the principles recognized as affording due process of law.

(c) For the designation of official position(s) responsible for referral of situations involving suspected fraud to the proper authorities.

[36 FR 3869, Feb. 27, 1971]

PART 237—FISCAL ADMINISTRATION OF FINANCIAL ASSISTANCE PROGRAMS

AUTHORITY: Section 1102 of the Social Security Act (42 U.S.C. 1302); 49 Stat. 647, as amended.

§ 237.50 Recipient count, Federal financial participation.

Pursuant to the formulas in sections 3, 403, 1003, 1118, 1121, 1403, and 1603 of the Social Security Act, it is necessary to identify expenditures that may be included in claims for Federal financial participation. The quarterly statement of expenditures and recoveries which is required for OAA, AFDC, AB, APTD, and AABD must include, as a part of the basis for computing the amount of Federal participation in such expenditures, the number of eligible recipients each month. However, where the State is making claims under section 1118 of the Act or under optional provisions for Federal sharing specified in such paragraphs no recipient count is involved. Vendor payments for medical care may not be considered if the State has a plan approved under title XIX of 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 support 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.

[38 FR 32914, Nov. 29, 1973, as amended at 57 FR 30161, July 8, 1992]

PART 260—GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) PROVISIONS

Subpart A—What Provisions Generally Apply to the TANF Program?

Sec.

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Subpart A—What Rules Generally Apply to the TANF Program?

§ 260.10 What does this part cover?

This part includes regulatory provisions that generally apply to the Temporary Assistance for Needy Families (TANF) program.

§ 260.20 What is the purpose of the TANF program?

The TANF program has the following four purposes:

(a) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(b) End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(c) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

(d) Encourage the formation and maintenance of two-parent families.

§ 260.30 What definitions apply under the TANF regulations?

The following definitions apply under parts 260 through 265 of this chapter:

ACF means the Administration for Children and Families.

Act means Social Security Act, unless otherwise specified.

Adjusted State Family Assistance Grant, or adjusted SFAG, means the SFAG amount, minus any reductions for Tribal Family Assistance Grants paid to Tribal grantees on behalf of Indian families residing in the State and any transfers to the Social Services Block Grant or the Child Care and Development Block Grant.

Administrative costs has the meaning specified at § 263.0(b) of this chapter.

Adult means an individual who is not a ''minor child,'' as defined elsewhere in this section.

AFDC means Aid to Families with Dependent Children.

Aid to Families with Dependent Children means the welfare program in effect under title IV-A of prior law.

Assistance has the meaning specified at § 260.31.

Basic MOE means the expenditure of State funds that must be made in order to meet the MOE requirement at section 409(a)(7) of the Act.

Cash assistance, when provided to participants in the Welfare-to-Work program (WtW), has the meaning specified at § 260.32.

CCDBG means the Child Care and Development Block Grant Act of 1990, as amended, 42 U.S.C. 9858 *et seq.*

CCDF means the Child Care and Development Fund, or those child care programs and services funded either under section 418(a) of the Act or CCDBG.

Commingled State TANF expenditures means expenditures of State funds that are made within the TANF program and commingled with Federal TANF funds.

Contingency fund means Federal TANF funds available under section 403(b) of the Act, and contingency funds means the Federal monies made available to States under that section. Neither term includes any State funds expended pursuant to section 403(b).

Contingency fund MOE means the MOE expenditures that a State must make in order to meet the MOE requirements at sections 403(b)(6) and 409(a)(10) of the Act and subpart B of part 264 of this chapter and retain contingency funds made available to the State. The only expenditures that qualify for Contingency Fund MOE are State TANF expenditures.

Control group is a term relevant to continuation of a ''waiver'' and has the meaning specified at § 260.71.

Countable State expenditures has the meaning specified at § 264.0 of this chapter.

Discretionary fund of the CCDF refers to child care funds appropriated under the CCDBG.

EA means Emergency Assistance.

Eligible State means a State that, during the 27-month period ending with the close of the first quarter of the fiscal year, has submitted a TANF plan that we have determined is complete.

Emergency assistance means the program option available to States under sections 403(a)(5) and 406(e) of prior law to provide short-term assistance to needy families with children.

Expenditure means any amount of Federal TANF or State MOE funds that a State expends, spends, pays out, or disburses consistent with the requirements of parts 260 through 265 of this chapter. It may include expenditures on the refundable portions of State or local tax credits, if they are consistent with the provisions at § 260.33. It does not include any amounts that merely represent avoided costs or foregone revenue. Avoided costs include such items as contractor penalty payments for poor performance and purchase price discounts, rebates, and credits that a State receives. Foregone revenue includes State tax provisions—such as waivers, deductions, exemptions, or nonrefundable tax credits—that reduce a State's tax revenue.

Experimental group is a term relevant to continuation of a ''waiver'' and has the meaning specified at § 260.71.

FAG has the meaning specified at § 264.0(b) of this chapter.

Family Violence Option (or FVO) has the meaning specified at § 260.51.

FAMIS means the automated statewide management information system under sections 402(a)(30), 402(e), and 403 of prior law.

Federal expenditures means expenditures by a State of Federal TANF funds.

Federal TANF funds means all funds provided to the State under section 403 of the Act except WtW funds awarded under section 403(a)(5), including the SFAG, any bonuses, supplemental grants, or contingency funds.

Federally recognized good cause domestic violence waiver has the meaning specified at § 260.51.

Fiscal year means the 12-month period beginning on October 1 of the preceding calendar year and ending on September 30.

FY means fiscal year.

Good cause domestic violence waiver has the meaning specified at § 260.51.

Governor means the Chief Executive Officer of the State. It thus includes the Governor of each of the 50 States and the Territories and the Mayor of the District of Columbia.

IEVS means the Income and Eligibility Verification System operated pursuant to the provisions in section 1137 of the Act.

Inconsistent is a term relevant to continuation of a ''waiver'' and has the meaning specified at § 260.71.

Indian, Indian Tribe and Tribal Organization have the meaning given such terms by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), except that the term ''Indian tribe'' means, with respect to the State of Alaska, only the Metlakatla Indian Community of the Annette Islands Reserve and the following Alaska Native regional nonprofit corporations:

(1) Arctic Slope Native Association;

(2) Kawerak, Inc.;

(3) Maniilaq Association;

(4) Association of Village Council Presidents;

(5) Tanana Chiefs Council;

(6) Cook Inlet Tribal Council;

(7) Bristol Bay Native Association;

(8) Aleutian and Pribilof Island Association;

(9) Chugachmuit;

(10) Tlingit Haida Central Council;

(11) Kodiak Area Native Association; and

(12) Copper River Native Association.

Individual Development Account, or IDA, has the meaning specified at § 263.20 of this chapter.

Job Opportunities and Basic Skills Training Program means the program under title IV-F of prior law to provide education, training and employment services to welfare recipients.

JOBS means the Job Opportunities and Basic Skills Training Program.

Minor child means an individual who:

(1) Has not attained 18 years of age; or

(2) Has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

MOE means maintenance-of-effort.

Needy State is a term that pertains to the provisions on the Contingency Fund and the penalty for failure to meet participation rates. It means, for a month, a State where:

(1)(i) The average rate of total unemployment (seasonally adjusted) for the most recent 3-month period for which data are published for all States equals or exceeds 6.5 percent; and

(ii) The average rate of total unemployment (seasonally adjusted) for such 3-month period equals or exceeds 110 percent of the average rate for either (or both) of the corresponding 3-month periods in the two preceding calendar years; or

(2) The Secretary of Agriculture has determined that the average number of individuals participating in the Food Stamp program in the State has grown at least 10 percent in the most recent 3-month period for which data are available.

Noncustodial parent means a parent of a minor child who:

(1) Lives in the State; and

(2) Does not live in the same household as the minor child.

Prior law means the provisions of title IV-A and IV-F of the Act in effect as of August 21, 1996. They include provisions related to Aid to Families with Dependent Children (or AFDC), Emergency Assistance (or EA), Job Opportunities and Basic Skills Training (or JOBS), and FAMIS.

PRWORA means the Personal Responsibility and Work Opportunity

Reconciliation Act of 1996, or Pub. L. 104–193, 42 U.S.C. 1305 note.

Qualified Aliens has the meaning prescribed under section 431 of PRWORA, as amended, 8 U.S.C. 1641.

Qualified State Expenditures means the total amount of State funds expended during the fiscal year that count for basic MOE purposes. It includes expenditures, under any State program, for any of the following with respect to eligible families:

(1) Cash assistance;

(2) Child care assistance;

(3) Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except expenditures involving the provision of services or assistance of an eligible family that is not generally available to persons who are not members of an eligible family;

(4) Any other use of funds allowable under subpart A of part 263 of this chapter; and

(5) Administrative costs in connection with the matters described in paragraphs (1), (2), (3) and (4) of this definition, but only to the extent that such costs do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year.

Secretary means Secretary of the Department of Health and Human Services or any other Department official duly authorized to act on the Secretary's behalf.

Segregated State TANF expenditures means expenditures of State funds within the TANF program that are not commingled with Federal TANF funds.

Separate State program, or SSP, means a program operated outside of TANF in which the expenditures of State funds may count for basic MOE purposes.

SFAG means State family assistance grant, as defined in this section.

SFAG payable means the SFAG amount, reduced, as appropriate, for any Tribal Family Assistance Grants made on behalf of Indian families residing in the State and any penalties imposed on a State under this chapter.

Single audit means an audit or supplementary review conducted under the authority of the Single Audit Act at 31 U.S.C. chapter 75.

Social Services Block Grant means the social services program operated under title XX of the Act, pursuant to 42 U.S.C. 1397.

SSBG means the Social Services Block Grant.

State means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa, unless otherwise specified.

State agency means the agency that the Governor certifies as the administering and supervising agency for the TANF program, pursuant to section 402(a)(4) of the Act.

State family assistance grant means the amount of the basic block grant allocated to each eligible State under the formula at section 403(a)(1) of the Act.

State MOE expenditures means the expenditure of State funds that may count for purposes of the basic MOE requirements at section 409(a)(7) of the Act and the Contingency Fund MOE requirements at sections 403(b)(4) and 409(a)(10) of the Act.

State TANF expenditures means the expenditure of State funds within the TANF program.

TANF means The Temporary Assistance for Needy Families Program.

TANF program means a State program of family assistance operated by an eligible State under its State TANF plan.

Territories means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

Title IV-A refers to the title and part of the Act that now includes TANF, but previously included AFDC and EA. For the purpose of the TANF program regulations, this term does not include child care programs authorized and funded under section 418 of the Act, or their predecessors, unless we specify otherwise.

Tribal family assistance grant means a grant paid to a Tribe that has an approved Tribal family assistance plan under section 412(a)(1) of the Act.

Tribal grantee means a Tribe that receives Federal TANF funds to operate a Tribal TANF program under section 412(a) of the Act.

Tribal TANF program means a TANF program developed by an eligible Tribe, Tribal organization, or consortium and approved by us under section 412 of the Act.

Tribe means Indian Tribe or Tribal organization, as defined elsewhere in this section. The definition may include Tribal consortia (i.e., groups of federally recognized Tribes or Alaska Native entities that have banded together in a formal arrangement to develop and administer a Tribal TANF program).

Victim of domestic violence has the meaning specified at § 260.51.

Waiver, when used in subpart C of this part, has the meaning specified at § 260.71.

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

Welfare-to-Work means the new program for funding work activities at section 403(a)(5) of the Act.

WtW means Welfare-to-Work.

WtW cash assistance has the meaning specified at § 260.32.

[64 FR 17878, Apr. 12, 1999; 64 FR 40291, July 26, 1999]

§ 260.31 What does the term "assistance" mean?

(a)(1) The term ''assistance'' includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).

(2) It includes such benefits even when they are:

(i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and

(ii) Conditioned on participation in work experience or community service (or any other work activity under § 261.30 of this chapter).

(3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and child care provided to families who are not employed.

(b) It excludes:

(1) Nonrecurrent, short-term benefits that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of the Act, to an individual who is not otherwise receiving assistance.

(c) The definition of the term assistance specified in paragraphs (a) and (b) of this section:

(1) Does not apply to the use of the term assistance at part 263, subpart A, or at part 264, subpart B, of this chapter; and

(2) Does not preclude a State from providing other types of benefits and services in support of the TANF goal at § 260.20(a).

§ 260.32 What does the term "WtW cash assistance" mean?

(a) For the purpose of § 264.1(b)(1)(iii) of this chapter, WtW cash assistance only includes benefits that:

(1) Meet the definition of assistance at § 260.31; and

(2) Are directed at basic needs.

(b) Thus, it includes benefits described in paragraphs (a)(1) and (a)(2) of § 260.31, but excludes benefits described in paragraph (a)(3) of § 260.31.

(c) It only includes benefits identified in paragraphs (a) and (b) of this section when they are provided in the form of cash payments, checks, reimbursements, electronic funds transfers, or any other form that can legally be converted to currency.

§ 260.33 When are expenditures on State or local tax credits allowable expenditures for TANF-related purposes?

(a) To be an allowable expenditure for TANF-related purposes, any tax credit program must be reasonably calculated to accomplish one of the purposes of the TANF program, as specified at § 260.20.

(b)(1) In addition, pursuant to the definition of expenditure at § 260.30, we would only consider the refundable portion of a State or local tax credit to be an allowable expenditure.

(2) Under a State Earned Income Tax Credit (EITC) program, the refundable portion that may count as an expenditure is the amount that exceeds a family's State income tax liability prior to application of the EITC. (The family's tax liability is the amount owed prior to any adjustments for credits or payments.) In other words, we would count only the portion of a State EITC that the State refunds to a family and that is above the amount of EITC used as credit towards the family's State income tax liability.

(3) For other refundable (and allowable) State and local tax credits, such as refundable dependent care credits, the refundable portion that would count as an expenditure is the amount of the credit that exceeds the taxpayer's tax liability prior to the application of the credit. (The taxpayer's liability is the amount owed prior to any adjustments for credits or payments.) In other words, we would count only the portion of the credit that the State refunds to the taxpayer and that is above the amount of the credit applied against the taxpayer's tax bill.

§ 260.34 When do the Charitable Choice provisions of TANF apply?

(a) These Charitable Choice provisions apply whenever a State or local government uses Federal TANF funds or expends State and local funds used to meet maintenance-of-effort (MOE) requirements of the TANF program to directly procure services and benefits from non-governmental organizations, or provides TANF beneficiaries with certificates, vouchers, or other forms of indirect disbursement redeemable from such organizations. For purposes of this section:

(1) *Direct funding or funds provided directly* means that the government or an intermediate organization with the same duties as a governmental entity under this part selects the provider and purchases the needed services straight from the provider (*e.g.*, via a contract or cooperative agreement).

(2) *Indirect funding or funds provided indirectly* means placing the choice of service provider in the hands of the beneficiary, and then paying for the cost of that service through a voucher, certificate, or other similar means of payment.

(b)(1) Religious organizations are eligible, on the same basis as any other organization, to participate in TANF as long as their Federal TANF or State MOE funded services are provided consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution.

(2) Neither the Federal government nor a State or local government in its use of Federal TANF or State MOE funds shall, in the selection of service providers, discriminate for or against an organization that applies to provide, or provides TANF services or benefits on the basis of the organization's religious character or affiliation.

(c) No Federal TANF or State MOE funds provided directly to participating organizations may be expended for inherently religious activities, such as worship, religious instruction, or proselytization. If an organization conducts such activities, it must offer them separately, in time or location, from the programs or services for which it receives direct Federal TANF or State MOE funds under this part,

and participation must be voluntary for the beneficiaries of those programs or services.

(d) A religious organization that participates in the TANF program will retain its independence from Federal, State, and local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not expend Federal TANF or State MOE funds that it receives directly to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide TANF-funded services without removing religious art, icons, scriptures, or other symbols. In addition, a Federal TANF or State MOE funded religious organization retains the authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(e) The participation of a religious organization in, or its receipt of funds from, a TANF program does not affect that organization's exemption provided under 42 U.S.C. 2000e–1 regarding employment practices.

(f) A religious organization that receives Federal TANF or State MOE funds shall not, in providing program services or benefits, discriminate against a TANF applicant or recipient on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

(g)(1) If an otherwise eligible TANF applicant or recipient objects to the religious character of a TANF service provider, the recipient is entitled to receive services from an alternative provider to which the individual has no religious objection. In such cases, the State or local agency must refer the individual to an alternative provider of services within a reasonable period of time, as defined by the State or local agency. That alternative provider must be reasonably accessible and have the capacity to provide comparable services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection, as defined by the State or local agency.

(2) The alternative provider need not be a secular organization. It must simply be a provider to which the recipient has no religious objection. States may adopt reasonable definitions of the terms ''reasonably accessible,'' ''a reasonable period of time,'' ''comparable,'' ''capacity,'' and '' value that is not less than.'' We expect States to apply these terms in a fair and consistent manner.

(3) The appropriate State or local governments that administer Federal TANF or State MOE funded programs shall ensure that notice of their right to alternative services is provided to applicants or recipients. The notice must clearly articulate the recipient's right to a referral and to services that reasonably meet the timeliness, capacity, accessibility, and equivalency requirements discussed above.

(h) Religious organizations that receive Federal TANF and State MOE funds are subject to the same regulations as other non-governmental organizations to account, in accordance with generally accepted auditing/accounting principles, for the use of such funds. Religious organizations may keep Federal TANF and State MOE funds they receive for services segregated in a separate account from non-governmental funds. If religious organizations choose to segregate their funds in this manner, only the Federal TANF and State MOE funds are subject to audit by the government under the program.

(i) This section applies whenever a State or local organization uses Federal TANF or State MOE funds to procure services and benefits from non-governmental organizations, or redeems certificates, vouchers, or other forms of disbursement from them whether with Federal funds, or State and local funds claimed to meet the MOE requirements of section 409(a)(7) of the Social Security Act. Subject to the requirements of paragraph (j), when State or local funds are used to meet the TANF MOE requirements, the

provisions apply irrespective of whether the State or local funds are commingled with Federal funds, segregated, or expended in separate State programs.

(j) Preemption. Nothing in this section shall be construed to preempt any provision of a State constitution, or State statute that prohibits or restricts the expenditure of segregated or separate State funds in or by religious organizations.

(k) If a non-governmental intermediate organization, acting under a contract or other agreement with a State or local government, is given the authority under the contract or agreement to select non-governmental organizations to provide Federal TANF or MOE funded services, the intermediate organization must ensure that there is compliance with the Charitable Choice statutory provisions and these regulations. The intermediate organization retains all other rights of a non-governmental organization under the Charitable Choice statute and regulations.

(l) Any party which seeks to enforce its right under this section may assert a civil action for injunctive relief exclusively in an appropriate State court against the entity or agency that allegedly commits such violation.

[68 FR 56465, Sept. 30, 2003]

§ 260.35 What other Federal laws apply to TANF?

(a) Under section 408(d) of the Act, the following provisions of law apply to any program or activity funded with Federal TANF funds:

(1) The Age Discrimination Act of 1975;

(2) Section 504 of the Rehabilitation Act of 1973;

(3) The Americans with Disabilities Act of 1990; and

(4) Title VI of the Civil Rights Act of 1964.

(b) The limitation on Federal regulatory and enforcement authority at section 417 of the Act does not limit the effect of other Federal laws, including Federal employment laws (such as the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA) and unemployment insurance (UI)) and nondiscrimination laws. These laws apply to TANF beneficiaries in the same manner as they apply to other workers.

§ 260.40 When are these provisions in effect?

(a) In determining whether a State is subject to a penalty under parts 261 through 265 of this chapter, we will not apply the regulatory provisions in parts 260 through 265 of this chapter retroactively. We will judge State actions that occurred prior to the effective date of these rules and expenditures of funds received prior to the effective date only against a reasonable interpretation of the statutory provisions in title IV-A of the Act.

(b) The effective date of these rules is October 1, 1999.

Subpart B—What Special Provisions Apply to Victims of Domestic Violence?

§ 260.50 What is the purpose of this subpart?

Under section 402(a)(7) of the Act, under its TANF plan, a State may elect to implement a special program to serve victims of domestic violence and to waive program requirements for such individuals. This subpart explains how adoption of these provisions affects the penalty determinations applicable if a State fails to meet its work participation rate or comply with the five-year limit on Federal assistance.

§ 260.51 What definitions apply to this subpart?

Family Violence Option (or FVO) means the provision at section 402(a)(7) of the Act under which a State certifies in its State plan if it has elected the option to implement comprehensive strategies for identifying and serving victims of domestic violence.

Federally recognized good cause domestic violence waiver means a good cause domestic violence waiver that meets the requirements at §§260.52(c) and 260.55.

Good cause domestic violence waiver means a waiver of one or more program requirements granted by a State to a victim of domestic violence under the FVO, as described at §260.52(c).

Victim of domestic violence means an individual who is battered or subject to

extreme cruelty under the definition at section 408(a)(7)(C)(iii) of the Act.

§ 260.52 What are the basic provisions of the Family Violence Option (FVO)?

Section 402(a)(7) of the Act provides that States electing the FVO certify that they have established and are enforcing standards and procedures to:

(a) Screen and identify individuals receiving TANF and MOE assistance with a history of domestic violence, while maintaining the confidentiality of such individuals;

(b) Refer such individuals to counseling and supportive services; and

(c) Provide waivers, pursuant to a determination of good cause, of normal program requirements to such individuals for so long as necessary in cases where compliance would make it more difficult for such individuals to escape domestic violence or unfairly penalize those who are or have been victimized by such violence or who are at risk of further domestic violence.

§ 260.54 Do States have flexibility to grant good cause domestic violence waivers?

(a) Yes; States have broad flexibility to grant these waivers to victims of domestic violence. For example, they may determine which program requirements to waive and decide how long each waiver might be necessary.

(b) However, if a State wants us to take the waivers that it grants into account in deciding if it has reasonable cause for failing to meet its work participation rates or comply with the five-year limit on Federal assistance, has achieved compliance or made significant progress towards achieving compliance with such requirements during a corrective compliance period, or qualifies for a reduction in its work penalty under § 261.51 of this chapter, the waivers must be federally recognized good cause domestic violence waivers, within the meaning of §§ 260.52(c) and 260.55, and the State must submit the information specified at § 265.9(b)(5) of this chapter on its strategies and procedures for serving victims of domestic violence and the number of waivers granted.

§ 260.55 What are the additional requirements for Federal recognition of good cause domestic violence waivers?

To be federally recognized, good cause domestic violence waivers must:

(a) Identify the specific program requirements that are being waived;

(b) Be granted appropriately based on need, as determined by an individualized assessment by a person trained in domestic violence and redeterminations no less often than every six months;

(c) Be accompanied by an appropriate services plan that:

(1) Is developed by a person trained in domestic violence;

(2) Reflects the individualized assessment and any revisions indicated by the redetermination; and

(3) To the extent consistent with § 260.52(c), is designed to lead to work.

§ 260.58 What penalty relief is available to a State whose failure to meet the work participation rates is attributable to providing federally recognized good cause domestic violence waivers?

(a)(1) We will determine that a State has reasonable cause if its failure to meet the work participation rates was attributable to federally recognized good cause domestic violence waivers granted to victims of domestic violence.

(2) To receive reasonable cause under the provisions of § 262.5(b) of this chapter, the State must provide evidence that it achieved the applicable rates, except with respect to any individuals who received a federally recognized good cause domestic violence waiver of work participation requirements. In other words, it must demonstrate that it met the applicable rates when such waiver cases are removed from the calculations at §§ 261.22(b) and 261.24(b) of this chapter.

(b)(1) We will reduce a State's penalty based on the degree of noncompliance to the extent that its failure to meet the work participation rates was attributable to federally recognized good cause domestic violence waivers.

(2) To receive a reduction based on degree of noncompliance under the provisions of § 261.51 of this chapter, a State granting federally recognized

good cause domestic violence waivers of work participation requirements must demonstrate that it achieved participation rates above the threshold at §261.51(b)(3) of this chapter, when such waiver cases are removed from the calculations at §§261.22(b) and 261.24(b) of this chapter.

(c) We may take federally recognized good cause domestic violence waivers of work requirements into consideration in deciding whether a State has achieved compliance or made significant progress towards achieving compliance in meeting the work participation rates during a corrective compliance period.

(d) To receive the penalty relief specified in paragraphs (a), (b), and (c) of this section, the State must submit the information specified at §265.9(b)(5) of this chapter.

§260.59 What penalty relief is available to a State that failed to comply with the five-year limit on Federal assistance because it provided federally recognized good cause domestic violence waivers?

(a)(1) We will determine that a State has reasonable cause if it failed to comply with the five-year limit on Federal assistance because of federally recognized good cause domestic violence waivers granted to victims of domestic violence.

(2) More specifically, to receive reasonable cause under the provisions at §264.3(b) of this chapter, a State must demonstrate that:

(i) It granted federally recognized good cause domestic violence waivers to extend time limits based on the need for continued assistance due to current or past domestic violence or the risk of further domestic violence; and

(ii) When individuals and their families are excluded from the calculation, the percentage of families receiving federally funded assistance for more than 60 months did not exceed 20 percent of the total.

(b) We may take federally recognized good cause domestic violence waivers to extend time limits into consideration in deciding whether a State has achieved compliance or made significant progress towards achieving compliance in meeting the five-year limit on Federal assistance during a corrective compliance period.

(c) To receive the penalty relief specified in paragraphs (a) and (b) of this section, the State must submit the information specified at §265.9(b)(5) of this chapter.

[64 FR 17878, Apr. 12, 1999]

Subpart C—What Special Provisions Apply to States that Were Operating Programs Under Approved Waivers?

§260.70 What is the purpose of this subpart?

(a) Under section 415 of the Act, if a State was granted a waiver under section 1115 of the Act and that waiver was in effect on August 22, 1996, the amendments made by PRWORA do not apply for the period of the waiver, to the extent that they are inconsistent with the waiver and the State elects to continue its waiver.

(b) Identification of waiver inconsistencies is relevant for the determination of penalties in three areas:

(1) Under §261.50 of this chapter for failing to meet the work participation rates at part 261 of this chapter;

(2) Under §264.2 of this chapter for failing to comply with the five-year limit on Federal assistance at subpart A of part 264 of this chapter; and

(3) Under §261.54 of this chapter for failing to impose sanctions on individuals who fail to work.

(c) This subpart explains how we will determine waiver inconsistencies and apply them in the penalty determination process for these penalties.

§260.71 What definitions apply to this subpart?

(a) *Inconsistent* means that complying with the TANF work participation or sanction requirements at section 407 of the Act or the time-limit requirement at section 408(a)(7) of the Act would necessitate that a State change a policy reflected in an approved waiver.

(b) *Waiver* consists of the work participation or time-limit component of the State's demonstration project under section 1115 of the Act. The component includes the revised AFDC requirements indicated in the State's

waiver list, as approved by the Secretary under the authority of section 1115, and the associated AFDC provisions that did not need to be waived.

(c) *Control group* and *experimental group* have the meanings specified in the terms and conditions of the State's demonstration.

§ 260.72 What basic requirements must State demonstration components meet for the purpose of determining if inconsistencies exist with respect to work requirements or time limits?

(a) The policies must be consistent with the requirements of section 415 of the Act and the requirements of this subpart.

(b) The policies must be within the scope of the approved waivers both in terms of geographical coverage and the coverage of the types of cases specified in the waiver approval package.

(c) The State must have applied its waiver policies on a continuous basis from the date that it implemented its TANF program, except that it may have adopted modifications that have the effect of making its policies more consistent with the provisions of PRWORA.

(d) An inconsistency may not apply beyond the earlier of the following dates:

(1) The expiration of waiver authority as determined in accordance with the demonstration terms and conditions; or

(2) For any specific inconsistency, the date upon which the State discontinued the applicable waiver policy.

(e) The State must submit the Governor's certification specified in § 260.75.

(f) In general, the policies in this subpart do not have the effect of delaying the date when a State might be subject to the work or time-limit penalties at §§ 261.50, 261.54, and 264.1 of this chapter or the data collection requirements at part 265 of this chapter.

§ 260.73 How do existing welfare reform waivers affect the participation rates and work rules?

(a) If a State is implementing a work participation component under a waiver, in accordance with this subpart, the provisions of section 407 of the Act will not apply in determining if a penalty should be imposed, to the extent that the provision is inconsistent with the waiver.

(b) For the purpose of determining if the State's demonstration has a work participation component, the waiver list for the demonstration must include one or more specific provisions that directly correspond to the work policies in section 407 of the Act (i.e., change allowable JOBS activities, exemptions from JOBS participation, hours of required JOBS participation, or sanctions for noncompliance with JOBS participation).

(c) Corresponding to the inconsistencies certified by the Governor under § 260.75:

(1) We will calculate the State's work participation rates, by:

(i) Excluding cases exempted from participation under the demonstration component and, if applicable, experimental and control cases not otherwise exempted, in calculating the rate;

(ii) Defining work activities as defined in the demonstration component in determining the numerator; and

(iii) Including cases meeting the required number of hours of participation in work activities in accordance with demonstration component policy, in determining the numerator.

(2) We will determine whether a State is taking appropriate sanctions when an individual refuses to work based on the State's certified waiver policies.

(d) We will use the data submitted by States pursuant to § 265.3 of this chapter to calculate and make public a State's work participation rates under both the TANF requirements and the State's alternative waiver requirements.

§ 260.74 How do existing welfare reform waivers affect the application of the Federal time-limit provisions?

(a)(1) If a State is implementing a time-limit component under a waiver, in accordance with this subpart, the provisions of section 408(a)(7) of the Act will not apply in determining if a penalty should be imposed, to the extent that they are inconsistent with the waiver.

(2) For the purpose of determining if the State's demonstration has a time-limit component, the waiver list for the demonstration must include provisions that directly correspond to the time-limit policies enumerated in section 408(a)(7) of the Act (i.e., address which individuals or families are subject to, or exempt from, terminations of assistance based solely on the passage of time or who qualifies for extensions to the time limit).

(b)(1) Generally, under an approved waiver, except as provided in paragraph (b)(3) of this section, a State will count, toward the Federal five-year limit, all months for which the head-of-household or spouse of the head-of-household subject to the State time limit receives assistance with Federal TANF funds, just as it would if it did not have an approved waiver.

(2) The State need not count, toward the Federal five-year limit, any months for which a head-of-household or spouse of the head-of-household receives assistance with Federal TANF funds while that individual is exempt from the State's time limit under the State's approved waiver.

(3) Where a State has continued a time limit under waivers that only terminates assistance for adults, the State need not count, toward the Federal five-year limit, any months for which an adult subject to the State time limit receives assistance with Federal TANF funds.

(4) The State may continue to provide assistance with Federal TANF funds for more than 60 months, without a numerical limit, to families provided extensions to the State time limit, under the provisions of the terms and conditions of the approved waiver.

(c) Corresponding to the inconsistencies certified by the Governor under §260.75, we will calculate the State's time-limit exceptions by:

(1) Excluding, from the determination of the number of months of Federal assistance received by a family:

(i) Any month in which the adult(s) were exempt from the State's time limit under the terms of an approved waiver or any months in which the children received assistance under a waiver that only terminated assistance to adults; and

(ii) If applicable, experimental and control group cases not otherwise exempted; and

(2) Applying the State's waiver policies with respect to the availability of extensions to the time limit.

§260.75 If a State is claiming a waiver inconsistency for work requirements or time limits, what must the Governor certify?

(a) The Governor of the State must certify in writing to the Secretary that:

(1) The applicable policies have been continually applied in operating the TANF program, as described in §260.72(c);

(2) The inconsistencies claimed by the State are within the scope of the approved waivers, as described in §260.72(b);

(b) The certification must identify the specific inconsistencies that the State chooses to continue with respect to work and time limits.

(1) If the waiver inconsistency claim includes work provisions, the certification must specify the standards that will apply, in lieu of the provisions in subparts B and C of part 261 of this chapter, to determine:

(i) The number of two-parent and all-parent cases that are exempt from participation, if any, for the purpose of determining the denominator of the work participation rate;

(ii) The number of nonexempt two-parent and all-parent cases that are participating in work activities for the purpose of determining the numerator of the work participation rate, including standards applicable to;

(A) Countable work activities; and

(B) Required hours of work for participation for individual participants; and

(iii) The penalty against an individual or family when an individual refuses to work.

(2) If the waiver inconsistency claim includes time-limit provisions, the certification must include the standards that will apply, in lieu of the provisions in §264.1 of this chapter, in determining:

(i) Which families are counted toward the Federal time limit; and

(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; Pub. L. 109–171.

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 and State work participation data verification requirements.

[71 FR 37475, June 29, 2006]

§ 261.2 What definitions apply to this part?

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

(b) *Unsubsidized employment* means full-or part-time employment in the public or private sector that is not subsidized by TANF or any other public program.

(c) *Subsidized private sector employment* means employment in the private sector for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing a recipient.

(d) *Subsidized public sector employment* means employment in the public sector for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing a recipient.

(e) *Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available* means a work activity, performed in return for welfare, that provides an individual with an opportunity to acquire the

general skills, training, knowledge, and work habits necessary to obtain employment. The purpose of work experience is to improve the employability of those who cannot find unsubsidized employment. This activity must be supervised by an employer, work site sponsor, or other responsible party on an ongoing basis no less frequently than daily.

(f) *On-the-job training* means training in the public or private sector that is given to a paid employee while he or she is engaged in productive work and that provides knowledge and skills essential to the full and adequate performance of the job. On-the-job training must be supervised by an employer, work site sponsor, or other responsible party on an ongoing basis no less frequently than daily.

(g) *Job search and job readiness assistance* means the act of seeking or obtaining employment, preparation to seek or obtain employment, including life skills training, and substance abuse treatment, mental health treatment, or rehabilitation activities for those who are otherwise employable. Such treatment or therapy must be determined to be necessary and certified by a qualified medical or mental health professional. Job search and job readiness assistance activities must be supervised by the TANF agency or other responsible party on an ongoing basis no less frequently than daily.

(h) *Community service programs* mean structured programs and embedded activities in which TANF recipients perform work for the direct benefit of the community under the auspices of public or nonprofit organizations. Community service programs must be limited to projects that serve a useful community purpose in fields such as health, social service, environmental protection, education, urban and rural redevelopment, welfare, recreation, public facilities, public safety, and child care. Community service programs are designed to improve the employability of recipients not otherwise able to obtain employment, and must be supervised on an ongoing basis no less frequently than daily. A State agency shall take into account, to the extent possible, the prior training, experience, and skills of a recipient in making appropriate community service assignments.

(i) *Vocational educational training (not to exceed 12 months with respect to any individual)* means organized educational programs that are directly related to the preparation of individuals for employment in current or emerging occupations requiring training other than a baccalaureate or advanced degree. Vocational educational training must be supervised on an ongoing basis no less frequently than daily.

(j) *Job skills training directly related to employment* means training or education for job skills required by an employer to provide an individual with the ability to obtain employment or to advance or adapt to the changing demands of the workplace. Job skills training directly related to employment must be supervised on an ongoing basis no less frequently than daily.

(k) *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* means education related to a specific occupation, job, or job offer. Education directly related to employment must be supervised on an ongoing basis no less frequently than daily.

(l) *Satisfactory school attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate* means regular attendance, in accordance with the requirements of the secondary school or course of study, at a secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate. This activity must be supervised on an ongoing basis no less frequently than daily.

(m) *Providing child care services to an individual who is participating in a community service program* means providing child care to enable another TANF recipient to participate in a community service program. This activity must be supervised on an ongoing basis no less frequently than daily.

(n)(1) *Work-eligible individual* means an adult (or minor child head-of-household) receiving assistance under TANF

or a separate State program or a non-recipient parent living with a child receiving such assistance unless the parent is:

(i) A minor parent and not the head-of-household or spouse of the head-of-household;

(ii) An alien who is ineligible to receive assistance due to his or her immigration status; or

(iii) At State option on a case-by-case basis, a recipient of Supplemental Security Income (SSI) benefits.

(2) The term also excludes:

(i) A parent providing care for a disabled family member living in the home who does not attend school on a full-time basis, provided that the need for such care is supported by medical documentation; and

(ii) An individual in a family receiving MOE-funded assistance under an approved Tribal TANF program, unless the State includes the Tribal family in calculating work participation rates, as permitted under section 261.25.

[71 FR 37475, June 29, 2006]

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?

SOURCE: 71 FR 37476, June 29, 2006, unless otherwise noted.

§ 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 in FY 2006 and thereafter, one—the two-parent rate based on how well it succeeds in helping work-eligible individuals 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 work-eligible individuals in all the families that it serves.

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

(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'' (MOE) requirement.

(d) If the data show that a State did not meet a 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 a 50 percent minimum overall participation rate in FY 2006 and thereafter, minus any caseload reduction credit to which it is entitled as provided in subpart D of this part.

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

(a)(1) 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.

(2) The rate applies to families with a work-eligible individual.

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

(1) The number of TANF and SSP–MOE families that include a work-eligible individual who meet the requirements set forth in §261.31 for the month (*i.e.*, the numerator), divided by,

(2) The number of TANF and SSP–MOE families that include a work-eligible individual, minus the number of such families that are subject to a penalty for refusing to work in that month (*i.e.*, the denominator). However, if a family with a work-eligible individual has been penalized for refusal to participate in work activities for more than three of the last 12 months, we will not exclude it from the participation rate calculation.

(3) At State option, we will include in the participation rate calculation families with a work-eligible individual that have been penalized for refusing to work 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 a work-eligible individual 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?

Each State must achieve a 90 percent minimum two-parent participation rate in FY 2006 and thereafter, minus any caseload reduction credit to which it is entitled as provided in subpart D of this part.

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

(a)(1) 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.

(2) The rate applies to two-parent families with two work-eligible individuals. However, if one of the parents is a disabled work-eligible individual, we will not consider the family to be a two-parent family; *i.e.*, we will not include such a family in either the numerator or denominator of the two-parent rate.

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

(1) The number of two-parent TANF and SSP–MOE families in which both parents are work-eligible individuals and together they meet the requirements set forth in §261.32 for the month (*i.e.*, the numerator), divided by,

(2) The number of two-parent TANF and SSP–MOE families in which both parents are work-eligible individuals during the month, minus the number of such two-parent families that are subject to a penalty for refusing to work in that month (the denominator). However, if a family with a work-eligible individual has been penalized for more than three months of the last 12 months, we will not exclude it from the participation rate calculation.

(3) At State option, we will include in the participation rate calculation families with a work-eligible individual that have been penalized for refusing to work 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) who are work-eligible individuals and living in the home, unless both are minors and neither is a head-of-household.

(d)(1) If the family receives assistance for only part of a month, we will count it as a month of participation if a work-eligible individual in the family (or both work-eligible individuals, 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.

§ 261.25 Does a State include Tribal families in calculating the work participation rate?

At State option, we will include families with a work-eligible individual 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 a work-eligible individual participate for the family to count in the numerator of the overall rate?

(a) A work-eligible 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 a minimum average of 30 hours per week; and

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

(d) We will consider a work-eligible individual who participates in a work experience or community service program for the maximum number of hours per week that a State may require by dividing the combined monthly TANF grant and food stamp allotment by the appropriate minimum wage under the minimum wage requirement of the Fair Labor Standards Act (FLSA) to have participated 20 hours per week if actual participation falls short of 20 hours per week. This policy is limited to States that have adopted a food stamp workfare program and a Simplified Food Stamp Program. For families that need additional hours beyond the core activity requirement, these hours must be satisfied in some other TANF work activity.

[71 FR 37477, June 29, 2006]

§ 261.32 How many hours must work-eligible individuals participate for the family to count in the numerator of the two-parent rate?

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

(1) Work-eligible parents in the family are participating in work activities for a combined 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) We will consider a family with two work-eligible parents in which one or both parents participate in a work experience or community service program for the maximum number of hours per week that a State may require by dividing their combined monthly TANF grant and food stamp allotment by the appropriate minimum wage under the minimum wage requirement of the Fair Labor Standards Act (FLSA) to have participated 30 hours per week if actual participation falls short of 30 hours per week. This policy is limited to States that have adopted a food stamp workfare program and a Simplified Food Stamp Program. For families that need additional hours beyond the core activity requirement, these hours must be satisfied in some other TANF work activity.

(e)(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 work-eligible individuals must be participating in work activities for an average of at least 55 hours per week 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.

(4) We will consider family with two work-eligible parents receiving federally funded child care in which one or both parents participate in a work experience or community service program for the maximum number of hours per week that a State may require by dividing their combined monthly TANF grant and food stamp allotment by the appropriate minimum wage under the minimum wage requirement of the Fair Labor Standards Act (FLSA) to have participated 50 hours per week if actual participation falls short of 50 hours per week. This policy is limited to States that have adopted a food stamp workfare program and a Simplified Food Stamp Program. For families that need additional hours beyond the core activity requirement, these hours must be satisfied in some other TANF work activity.

[71 FR 37477, June 29, 2006]

§ 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?

SOURCE: 71 FR 37477, June 29, 2006, unless otherwise noted.

§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, including assistance under a separate State program in that State in FY 2005, 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 2005 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 2005 two-parent caseload, including two-parent cases receiving assistance under a separate State program; 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 2005 overall caseload, including cases receiving assistance under a separate State program.

(3) For the credit calculation, we will refer to the fiscal year that precedes the fiscal year to which the credit applies as the ''comparison year.''

(b)(1) The calculations in paragraph (a) of this section must disregard caseload reductions due to requirements of Federal law and to changes that a State has made in its eligibility criteria in comparison to its criteria in effect in FY 2005.

(2) At State option, the calculation may offset the disregard of caseload reductions in paragraph (b)(1) of this section by changes in eligibility criteria that increase caseloads.

(c)(1) To establish the caseload base for FY 2005 and to determine the comparison-year caseload, we will use the combined TANF and Separate State Program caseload figures reported on the Form ACF–199, TANF Data Report, and Form ACF–209, SSP–MOE Data Report, respectively.

(2) To qualify for a caseload reduction, a State must have reported monthly caseload information, including cases in separate State programs, for FY 2005 and the comparison year for cases receiving assistance as defined at § 261.43.

(d)(1) A State may correct erroneous data or submit accurate data to adjust program data or to include unduplicated cases within the fiscal year.

(2) We will adjust both the FY 2005 baseline and the comparison-year caseload information, 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 overall 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 using application denials, case closures, or other administrative data sources and analyses.

(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, case closures, or other administrative data sources 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 2006;

(2) A numerical estimate of the positive or negative average monthly impact on the comparison-year 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) A description of the methodology and the supporting data that a State used to calculate its caseload reduction estimates; and

(6) 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.

(c)(1) A State requesting a caseload reduction credit for the overall participation rate must base its estimates of the impact of eligibility changes on decreases in its comparison-year overall caseload compared to the FY 2005 overall caseload baseline established in accordance with § 261.40(d).

(2) A State requesting a caseload reduction credit for its two-parent rate must base its estimates of the impact of eligibility changes on decreases in either:

(i) Its two-parent caseload compared to the FY 2005 comparison-year two-parent caseload baseline established in accordance with § 261.40(d); or

(ii) Its overall caseload compared to the FY 2005 comparison-year overall

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 the 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 credit must not include caseload decreases due to Federal requirements or State changes in eligibility rules since FY 2005 that directly affect a family's eligibility for assistance.

(2) At State option, a State's caseload reduction credit may include caseload increases due to Federal requirements or State change in eligibility rules since FY 2005 if used to offset caseload decreases in paragraph (a)(1) of this section.

(3) A State may not receive a caseload reduction credit that exceeds the actual caseload decline between FY 2005 and the comparison year.

(4) 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 FY 2005 caseload and comparison-year caseload. However, if a State provides documentation that separate State program cases overlap with or duplicate cases in the TANF caseload, we will exclude them from the caseload count.

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

(a) 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 MOE requirement.

(b) 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 is required to meet basic MOE requirements.

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

A State must report the necessary documentation on caseload reductions for the preceding fiscal year by December 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 paragraph (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 inability 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 statewide 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 We Ensure the Accuracy of Work Participation Information?

SOURCE: 71 FR 37479, June 29, 2006, unless otherwise noted.

§ 261.60 What methods may a State use to report a work-eligible individual's hours of participation?

(a) A State must report the actual hours that an individual participates in an activity, subject to the qualifications in paragraphs (b) and (c) and § 261.61(c). It is not sufficient to report the hours an individual is scheduled to participate in an activity.

(b) For the purposes of calculating the work participation rates, actual hours may include the hours for which an individual was paid, including paid holidays and sick leave. For participation in unpaid work activities, it may also include excused absences for hours missed due to holidays and a maximum of an additional 10 days of excused absences in any 12-month period, no more than two of which may occur in a month. In order to count an excused absence as actual hours of participation, the individual must have been scheduled to participate in an allowable work activity for the period of the absence that the State reports as participation. A State must describe its excused absence policies and definitions as part of its Work Verification Plan, specified at § 261.62.

(c) A State may not count more hours toward the participation rate for a self-employed individual than the number derived by dividing the individual's self-employment income (gross income less business expenses) by the Federal minimum wage. A State may propose an alternative method of determining self-employment hours as part of its Work Verification Plan.

§ 261.61 How must a State document a work-eligible individual's hours of participation?

(a) A State must support each individual's hours of participation through documentation in the case file. In accordance with § 261.62, a State must describe in its Work Verification Plan the documentation it uses to verify hours of participation in each activity.

(b) For an employed individual, the documentation may consist of, but is not limited to pay stubs, employer reports, or time and attendance records substantiating hours of participation. A State may presume that an employed individual participated in unsubsidized employment for the total number of hours for which that individual was paid.

(c) For unsubsidized employment, subsidized employment, and OJT, a State may report projected actual hours of employment participation for up to six months based on current, documented actual hours of work. Any time a State receives information that the client's actual hours of work have changed, or no later than the end of any six-month period, the State must re-verify the client's current actual average hours of work, and may report these projected actual hours of participation for another six-month period.

(d) For an individual who is not employed, the documentation for substantiating hours of participation may consist of, but is not limited to, time sheets, service provider attendance records, or school attendance records.

(e) For an individual who is self-employed, the documentation must comport with standards set forth in the State's approved Work Verification Plan. Self-reporting by a participant without additional verification is not sufficient documentation.

§ 261.62 What must a State do to verify the accuracy of its work participation information?

(a) To ensure accuracy in the reporting of work activities by work-eligible

individuals on the TANF Data Report and, if applicable, the SSP–MOE Data Report, each State must:

(1) Establish and employ procedures for determining whether its work activities may count for participation rate purposes;

(2) Establish and employ procedures for determining how to count and verify reported hours of work;

(3) Establish and employ procedures for identifying who is a work-eligible individual;

(4) Establish and employ internal controls to ensure compliance with the procedures; and

(5) Submit to the Secretary for approval the State's Work Verification Plan in accordance with paragraph (b) of this section.

(b) A State's Work Verification Plan must include the following:

(1) For each countable work activity:

(i) A description demonstrating how the activity meets the relevant definition at § 261.2;

(ii) A description of how the State determines the number of countable hours of participation for self-employed individuals; and

(iii) A description of the documentation it uses to monitor participation and ensure that the actual hours of participation are reported;

(2) A description of the State's procedures for identifying all work-eligible individuals, as defined at § 261.2;

(3) A description of how the State ensures that, for each work-eligible individual, it:

(i) Accurately inputs data into the State's automated data processing system;

(ii) Properly tracks the hours though the automated data processing system; and

(iii) Accurately reports the hours to the Department;

(4) A description of the procedures for ensuring it does not transmit to the Department a work-eligible individual's hours of participation in an activity that does not meet a Federal definition of a countable work activity; and

(5) A description of the internal controls that the State has implemented to ensure a consistent measurement of the work participation rates, including the quality assurance processes and sampling specifications it uses to monitor adherence to the established work verification procedures by State staff, local staff, and contractors.

(c) We will review a State's Work Verification Plan for completeness and approve it if we believe that it will result in accurate reporting of work participation information.

§ 261.63 When is a State's Work Verification Plan Due?

(a) Each State must submit its interim Work Verification Plan for validating work activities reported in the TANF Data Report and, if applicable, the SSP–MOE Data Report no later than September 30, 2006.

(b) If HHS requires changes, a State must submit them within 60 days of receipt of our notice and include all necessary changes as part of a final approved Work Verification Plan no later than September 30, 2007.

(c) If a State modifies its verification procedures for TANF or SSP–MOE work activities or its internal controls for ensuring a consistent measurement of the work participation rate, the State must submit for approval an amended verification plan by the end of the quarter in which the State modifies the procedures or internal controls.

§ 261.64 How will we determine if the State is meeting the requirement to establish and maintain work verification procedures that ensure an accurate measurement of work participation?

(a) We will determine that a State has met the requirement to establish work verification procedures if it submits an interim Work Verification Plan by September 30, 2006 and a complete Work Verification Plan that we approve by September 30, 2007.

(b) A ''complete'' Work Verification Plan means that:

(1) The plan includes all the information required by § 261.62(b); and

(2) The State certifies that the plan includes all the information required by § 261.62(b) and that it accurately reflect the procedures under which the State is operating.

(c) For conduct occurring after October 1, 2007, we will use the single audit

under OMB Circular A–133 in conjunction with other reviews, audits, and data sources, as appropriate, to assess the accuracy of the data filed by States for use in calculating the work participation rates.

§ 261.65 Under what circumstances will we impose a work verification penalty for failure to submit a work verification plan or for failure to maintain adequate procedures to ensure a consistent measurement of the work participation rate?

(a) We will take action to impose a penalty under § 262.1(a)(15) of this chapter if:

(1) The requirements under §§ 261.64(a) and (b) have not been met; or

(2) We determine that the State has not maintained adequate documentation, verification, or internal control procedures to ensure the accuracy of the data used in calculating the work participation rates.

(b) If a State fails to submit an interim or complete Work Verification Plan by the due dates in § 261.64(a), we will reduce the SFAG payable for the immediately succeeding fiscal year by five percent of the adjusted SFAG.

(c) If a State fails to maintain adequate internal controls to ensure a consistent measurement of work participation, we will reduce the adjusted SFAG by the following percentages for a fiscal year:

(1) One percent for the first year;

(2) Two percent for the second year;

(3) Three percent for the third year;

(4) Four percent for the fourth year; and

(5) Five percent for the fifth and subsequent years.

(d) If a State complies with the requirements in this subpart for two consecutive years, then any penalty imposed for subsequent failures will begin anew, as described in paragraph (c) of this section.

(e) If we take action to impose a penalty under §§ 261.64(b) or (c), we will reduce the SFAG payable for the immediately succeeding fiscal year.

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.

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

§ 261.80 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.

[64 FR 17884, Apr. 12, 1999. Redesignated at 71 FR 37479, June 29, 2006]

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; Pub. L. 109–171.

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 Child Support Enforcement (IV-D) agency;

(7) A penalty equal to the outstanding loan amount, plus interest, for failure to repay a Federal loan;

(8) A penalty equal to the amount by which a State fails to meet its basic MOE requirement;

(9) A penalty of five percent of the adjusted SFAG for failure to comply with the five-year limit on Federal assistance;

(10) A penalty equal to the amount of contingency funds that were received but were not remitted for a fiscal year, if the State fails to maintain 100 percent of historic State expenditures in that fiscal year;

(11) A penalty of no more than five percent of the adjusted SFAG for the failure to maintain assistance to an adult single custodial parent who cannot obtain child care for a child under age six;

(12) A penalty of no more than two percent of the adjusted SFAG plus the amount a State has failed to expend of its own funds to replace the reduction to its SFAG due to the assessment of penalties in this section in the immediately succeeding fiscal year;

(13) A penalty equal to the amount of the State's Welfare-to-Work formula grant for failure to meet its basic MOE requirement during a year in which it receives the formula grant;

(14) A penalty of not less than one percent and not more than five percent of the adjusted SFAG for failure to impose penalties properly against individuals who refuse to engage in required work in accordance with section 407 of the Act; and

(15) A penalty of not less than one percent and not more than five percent of the adjusted SFAG for failure to establish or comply with work participation verification procedures.

(b) In the event of multiple penalties for a fiscal year, we will add all applicable penalty percentages together. We will then assess the penalty amount against the adjusted SFAG that would have been payable to the State if we had assessed no penalties. As a final step, we will subtract other (fixed) penalty amounts from the adjusted SFAG.

(c)(1) We will take the penalties specified in paragraphs (a)(1), (a)(2), and (a)(7) of this section by reducing the SFAG payable for the quarter that immediately follows our final decision.

(2) We will take the penalties specified in paragraphs (a)(3), (a)(4), (a)(5), (a)(6), (a)(8), (a)(9), (a)(10), (a)(11), (a)(12), (a)(13), (a)(14), and (a)(15) of this section by reducing the SFAG payable for the fiscal year that immediately follows our final decision.

(d) When imposing the penalties in paragraph (a) of this section, the total reduction in an affected State's quarterly SFAG amount must not exceed 25 percent. If this 25-percent limit prevents the recovery of the full penalty amount imposed on a State during a quarter or a fiscal year, as appropriate, we will apply the remaining amount of the penalty to the SFAG payable for the immediately succeeding quarter

until we recover the full penalty amount.

(e)(1) In the immediately succeeding fiscal year, a State must expend additional State funds to replace any reduction in the SFAG resulting from penalties.

(2) The State must document compliance with this replacement provision on its TANF Financial Report (or Territorial Financial Report).

[64 FR 17890, Apr. 12, 1999, as amended at 71 FR 37480, June 29, 2006]

§ 262.2 When do the TANF penalty provisions apply?

(a) A State will be subject to the penalties specified in § 262.1(a)(1), (2), (7), (8), (9), (10), (11), (12), (13), and (14) for conduct occurring on and after the first day the State operates the TANF program.

(b) A State will be subject to the penalties specified in § 262.1(a)(3), (4), (5), and (6) for conduct occurring on and after July 1, 1997, or the date that is six months after the first day the State operates the TANF program, whichever is later.

(c) For the time period prior to October 1, 1999, we will assess State conduct as specified in § 260.40(b) of this chapter.

(d) The penalty specified in § 262.1(a)(15) takes effect on October 1, 2006, for failure to establish work participation verification procedures and on October 1, 2007, for failure to comply with those procedures.

[64 FR 17890, Apr. 12, 1999, as amended at 71 FR 37480, June 29, 2006]

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

(a)(1) We will use the single audit under OMB Circular A–133, in conjunction with other reviews, audits, and data sources, as appropriate, to determine if a State is subject to a penalty for misusing Federal TANF funds (§ 263.10 of this chapter), intentionally misusing Federal TANF funds (§ 263.12 of this chapter), failing to participate in IEVS (§ 264.10 of this chapter), failing to comply with paternity establishment and child support requirements (§ 264.31 of this chapter), failing to maintain assistance to an adult single custodial parent who cannot obtain child care for a child under 6 (§ 261.57 of this chapter), failing to reduce assistance to a recipient who refuses without good cause to work (§ 261.54 of this chapter), and after October 1, 2007 failing to comply with work participation verification procedures (§ 261.64 of this chapter).

(2) We will also use the single audit as a secondary method of determining if a State is subject to other penalties if an audit detects lack of compliance in other penalty areas.

(b)(1) We will use the TANF Data Report required under part 265 of this chapter to determine if a State failed to meet participation rates (§§ 261.21 and 261.23 of this chapter) or failed to comply with the five-year limit on Federal assistance (§ 264.1 of this chapter).

(2) Data in these reports are subject to our verification in accordance with § 265.7 of this chapter.

(c)(1) We will use the TANF Financial Report (or, as applicable, the Territorial Financial Report) as the primary method for determining if a State has failed to meet the basic MOE requirement (§ 263.8 of this chapter), meet the Contingency Fund MOE requirement (§ 264.76 of this chapter), or replace SFAG reductions with State-only funds (§ 264.50 of this chapter).

(2) Data in these reports are subject to our verification in accordance with § 265.7 of this chapter.

(d) We will determine that a State is subject to the specific penalties for failure to perform if we find information in the reports under paragraphs (b) and (c) of this section to be insufficient to show compliance or if we determine that the State has not adequately documented actions verifying that it has met the participation rates or the time limits.

(e) To determine if a State has met its MOE requirements, we will also use the supplemental information in the annual report required in accordance with § 265.9(c) of this chapter.

(f) States must maintain records in accordance with § 92.42 of this title.

[64 FR 17890, Apr. 12, 1999, as amended at 71 FR 37481, June 29, 2006]

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

(a) If we determine that a State is subject to a penalty, we will notify the State agency in writing, specifying which penalty we will impose and the reasons for the penalty. This notice will:

(1) Specify the penalty provision at issue, including the penalty amount;

(2) Specify the source of information and the reasons for our decision;

(3) Invite the State to present its arguments if it believes that the information or method that we used were in error or were insufficient or that its actions, in the absence of Federal regulations, were based on a reasonable interpretation of the statute; and

(4) Explain how and when the State may submit a reasonable cause justification under § 262.5 and/or corrective compliance plan under § 262.6.

(b) Within 60 days of when it receives our notification, the State may submit a written response that:

(1) Demonstrates that our determination is incorrect because our information or the method that we used in determining the violation or the amount of the penalty was in error or was insufficient, or that the State acted, in the absence of Federal rules, on a reasonable interpretation of the statute;

(2) Demonstrates that the State had reasonable cause for failing to meet the requirement(s); and/or

(3) Provides a corrective compliance plan, pursuant to § 262.6.

(c) If we find that we determined the penalty erroneously, or that the State has adequately demonstrated that it had reasonable cause for failing to meet one or more requirements, we will not impose the penalty.

(d) Reasonable cause and corrective compliance plans are not available for failing to repay a Federal loan; meet the basic MOE requirement; meet the Contingency Fund MOE requirement; expend additional State funds to replace adjusted SFAG reductions due to the imposition of one or more penalties listed in § 262.1; or maintain 80 percent, or 75 percent, as appropriate, basic MOE during a year in which the State receives a Welfare-to-Work grant.

(e)(1) If we request additional information from a State that we need to determine reasonable cause, the State must ordinarily provide such information within 30 days.

(2) Under unusual circumstances, we may give the State an extension of the time to respond to our request.

(f)(1)(i) We will notify the State in writing of our findings with respect to reasonable cause generally within 60 days of the date when we receive its response to our penalty notice (in accordance with paragraph (b) of this section).

(ii) If the finding is negative and the State has not yet submitted a corrective compliance plan, it may do so in response to this notice in accordance with § 262.6.

(2) We will notify the State of our decision regarding its corrective compliance plan in accordance with the provisions of § 262.6(g).

(g) We will impose a penalty in accord with the provisions in § 262.1(c) after we make our final decision and the appellate process is completed, if applicable. If there is an appellate decision upholding the penalty, we will take the penalty and charge interest back to the date that we formally notified the Governor of the adverse action pursuant to § 262.7(a)(1).

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

(a) We will not impose a penalty against a State if we determine that the State had reasonable cause for its failure. The general factors a State may use to claim reasonable cause include:

(1) Natural disasters and other calamities (e.g., hurricanes, earthquakes, fire) whose disruptive impact was so significant as to cause the State's failure;

(2) Formally issued Federal guidance that provided incorrect information resulting in the State's failure; or

(3) Isolated problems of minimal impact that are not indicative of a systemic problem.

(b)(1) We will grant reasonable cause to a State that:

(i) Clearly demonstrates that its failure to submit complete, accurate, and timely data, as required at § 265.8 of this chapter, for one or both of the first

two quarters of FY 2000, is attributable, in significant part, to its need to divert critical system resources to Year 2000 compliance activities; and

(ii) Submits complete and accurate data for the first two quarters of FY 2000 by September 30, 2000.

(2) A State may also use the additional factors for claiming reasonable cause for failure to comply with the five-year limit on Federal assistance or the minimum participation rates, as specified at §§ 261.52 and 264.3 and subpart B of part 260 of this chapter.

(c) In determining reasonable cause, we will consider the efforts the State made to meet the requirement, as well as the duration and severity of the circumstances that led to the State's failure to achieve the requirement.

(d)(1) The burden of proof rests with the State to fully explain the circumstances and events that constitute reasonable cause for its failure to meet a requirement.

(2) The State must provide us with sufficient relevant information and documentation to substantiate its claim of reasonable cause.

[64 FR 17890, Apr. 12, 1999; 64 FR 40291, July 26, 1999]

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

(a) A State may accept the penalty or enter into a corrective compliance plan that will correct or discontinue the violation in order to avoid the penalty if:

(1) A State does not claim reasonable cause; or

(2) We find that the State does not have reasonable cause.

(b) A State that does not claim reasonable cause will have 60 days from receipt of our notice described in § 262.4(a) to submit its corrective compliance plan.

(c) A State that unsuccessfully claimed reasonable cause will have 60 days from the date that it received our second notice, described in § 262.4(f), to submit its corrective compliance plan.

(d) The corrective compliance plan must include:

(1) A complete analysis of why the State did not meet the requirements;

(2) A detailed description of how the State will correct or discontinue, as appropriate, the violation in a timely manner;

(3) The time period in which the violation will be corrected or discontinued;

(4) The milestones, including interim process and outcome goals, that the State will achieve to assure it comes into compliance within the specified time period; and

(5) A certification by the Governor that the State is committed to correcting or discontinuing the violation, in accordance with the plan.

(e) The corrective compliance plan must correct or discontinue the violation within the following time frames:

(1) For a penalty under §§ 262.1(a)(4), (a)(9), or (a)(15), by the end of the first fiscal year ending at least six months after our receipt of the corrective compliance plan; and

(2) For the remaining penalties, by a date the State proposes that reflects the minimum period necessary to achieve compliance.

(f) During the 60-day period following our receipt of the State's corrective compliance plan, we may request additional information and consult with the State on modifications to the plan including in the case of a penalty under § 262.1(a)(15), modifications to the State's work verification procedures and Work Verification Plan.

(g) We will accept or reject the State's corrective compliance plan, in writing, within 60 days of our receipt of the plan, although a corrective compliance plan is deemed to be accepted if we take no action during the 60-day period following our receipt of the plan.

(h) If a State does not submit an acceptable corrective compliance plan on time, we will assess the penalty immediately.

(i) We will not impose a penalty against a State with respect to any violation covered by a corrective compliance plan that we accept if the State completely corrects or discontinues, as appropriate, the violation within the period covered by the plan.

(j) Under limited circumstances, we may reduce the penalty if the State fails to completely correct or discontinue the violation pursuant to its corrective compliance plan and in a timely manner. To receive a reduced

penalty, the State must demonstrate that it met one or both of the following conditions:

(1) Although it did not achieve full compliance, the State made significant progress towards correcting or discontinuing the violation; or

(2) The State's failure to comply fully was attributable to either a natural disaster or regional recession.

[64 FR 17890, Apr. 12, 1999, as amended at 71 FR 37481, June 29, 2006]

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

(a)(1) We will formally notify the Governor and the State agency of an adverse action (i.e., the reduction in the SFAG) within five days after we determine that a State is subject to a penalty under parts 261 through 265 of this chapter.

(2) Such notice will include the factual and legal basis for taking the penalty in sufficient detail for the State to be able to respond in an appeal.

(b)(1) The State may file an appeal of the action, in whole or in part, with the HHS Departmental Appeals Board (the Board) within 60 days after the date it receives notice of the adverse action. The State must submit its brief and supporting documents when it files its appeal.

(2) The State must send a copy of the appeal, and any supplemental filings, to the Office of the General Counsel, Children, Families and Aging Division, Room 411–D, 200 Independence Avenue, SW., Washington, DC 20201.

(c) We will submit our reply brief and supporting documentation within 45 days of the receipt of the State's submission under paragraph (b) of this section.

(d) The State may submit a reply and any supporting documentation within 21 days of its receipt of our reply under paragraph (c) of this section.

(e) The appeal to the Board must follow the provisions of the rules under this section and those at §§16.2, 16.9, 16.10, and 16.13–16.22 of this title, to the extent that they are consistent with this section.

(f) The Board will consider an appeal filed by a State on the basis of the documentation and briefs submitted, along with any additional information the Board may require to support a final decision. Such information may include a hearing if the Board determines that it is necessary. In deciding whether to uphold an adverse action or any portion of such action, the Board will conduct a thorough review of the issues.

(g)(1) A State may obtain judicial review of a final decision by the Board by filing an action within 90 days after the date of such decision. It should file this action with the district court of the United States in the judicial district where the State agency is located or in the United States District Court for the District of Columbia.

(2) The district court will review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by 5 U.S.C. 706(2). The court will base its review on the documents and supporting data submitted to the Board.

PART 263—EXPENDITURES OF STATE AND FEDERAL TANF FUNDS

Sec.

263.0 What definitions apply to this part?

Subpart A—What Rules Apply to a State's Maintenance of Effort?

263.1 How much State money must a State expend annually to meet the basic MOE requirement?

263.2 What kinds of State expenditures count toward meeting a State's basic MOE expenditure requirement?

263.3 When do child care expenditures count?

263.4 When do educational expenditures count?

263.5 When do expenditures in State-funded programs count?

263.6 What kinds of expenditures do not count?

263.8 What happens if a State fails to meet the basic MOE requirement?

263.9 May a State avoid a penalty for failing to meet the basic MOE requirement through reasonable cause or through corrective compliance?

Subpart B—What Rules Apply to the Use of Federal TANF Funds?

263.10 What actions would we take against a State if it uses Federal TANF funds in violation of the Act?

263.11 What uses of Federal TANF funds are improper?
263.12 How will we determine if a State intentionally misused Federal TANF funds?
263.13 Is there a limit on the amount of Federal TANF funds that a State may spend on administrative costs?

Subpart C—What Rules Apply to Individual Development Accounts?

263.20 What definitions apply to Individual Development Accounts (IDAs)?
263.21 May a State use the TANF grant to fund IDAs?
263.22 Are there any restrictions on IDA funds?
263.23 How does a State prevent a recipient from using the IDA account for unqualified purposes?

AUTHORITY: 42 U.S.C. 604, 607, 609, and 862a; Pub. L. 109–171.

SOURCE: 64 FR 17893, Apr. 12, 1999, unless otherwise noted.

§ 263.0 What definitions apply to this part?

(a) Except as noted in § 263.2(d), the general TANF definitions at § 260.30 through § 260.33 of this chapter apply to this part.

(b) The term ''administrative costs'' means costs necessary for the proper administration of the TANF program or separate State programs.

(1) It excludes direct costs of providing program services.

(i) For example, it excludes costs of providing diversion benefits and services, providing program information to clients, screening and assessments, development of employability plans, work activities, post-employment services, work supports, and case management. It also excludes costs for contracts devoted entirely to such activities.

(ii) It excludes the salaries and benefits costs for staff providing program services and the direct administrative costs associated with providing the services, such as the costs for supplies, equipment, travel, postage, utilities, rental of office space and maintenance of office space.

(2) It includes costs for general administration and coordination of these programs, including contract costs and all indirect (or overhead) costs. Examples of administrative costs include:

(i) Salaries and benefits of staff performing administrative and coordination functions;

(ii) Activities related to eligibility determinations;

(iii) Preparation of program plans, budgets, and schedules;

(iv) Monitoring of programs and projects;

(v) Fraud and abuse units;

(vi) Procurement activities;

(vii) Public relations;

(viii) Services related to accounting, litigation, audits, management of property, payroll, and personnel;

(ix) Costs for the goods and services required for administration of the program such as the costs for supplies, equipment, travel, postage, utilities, and rental of office space and maintenance of office space, provided that such costs are not excluded as a direct administrative cost for providing program services under paragraph (b)(1) of this section;

(x) Travel costs incurred for official business and not excluded as a direct administrative cost for providing program services under paragraph (b)(1) of this section;

(xi) Management information systems not related to the tracking and monitoring of TANF requirements (e.g., for a personnel and payroll system for State staff); and

(xii) Preparing reports and other documents.

Subpart A—What Rules Apply to a State's Maintenance of Effort?

§ 263.1 How much State money must a State expend annually to meet the basic MOE requirement?

(a)(1) The minimum basic MOE for a fiscal year is 80 percent of a State's historic State expenditures.

(2) However, if a State meets the minimum work participation rate requirements in a fiscal year, as required under §§ 261.21 and 261.23 of this chapter, after adjustment for any caseload reduction credit under § 261.41 of this chapter, then the minimum basic MOE for that fiscal year is 75 percent of the State's historic State expenditures.

(3) A State that does not meet the minimum participation rate requirements in a fiscal year, as required

under §§ 261.21 and 261.23 of this chapter (after adjustment for any caseload reduction credit under § 261.41 of this chapter), but which is granted full or partial penalty relief for that fiscal year, must still meet the minimum basic MOE specified under paragraph (a)(1) of this section.

(b) The basic MOE level also depends on whether a Tribe or consortium of Tribes residing in a State has received approval to operate its own TANF program. The State's basic MOE level for a fiscal year will be reduced by the same percentage as we reduced the SFAG as the result of any Tribal Family Assistance Grants awarded to Tribal grantees in the State for that year.

§ 263.2 What kinds of State expenditures count toward meeting a State's basic MOE expenditure requirement?

(a) Expenditures of State funds in TANF or separate State programs may count if they are made for the following types of benefits or services:

(1) Cash assistance, including the State's share of the assigned child support collection that is distributed to the family, and disregarded in determining eligibility for, and amount of the TANF assistance payment;

(2) Child care assistance (see § 263.3);

(3) Education activities designed to increase self-sufficiency, job training, and work (see § 263.4);

(4) Any other use of funds allowable under section 404(a)(1) of the Act including:

(i) Nonmedical treatment services for alcohol and drug abuse and some medical treatment services (provided that the State has not commingled its MOE funds with Federal TANF funds to pay for the services), if consistent with the goals at § 260.20 of this chapter; and

(ii) Pro-family activities that are consistent with the goals at §§ 260.20(c) or (d) of this chapter, but do not constitute ''assistance'' as defined in § 260.31(a) of this chapter; and

(5)(i) Administrative costs for activities listed in paragraphs (a)(1) through (a)(4) of this section, not to exceed 15 percent of the total amount of countable expenditures for the fiscal year.

(ii) Costs for information technology and computerization needed for tracking or monitoring required by or under part IV-A of the Act do not count towards the limit in paragraph (5)(i) of this section, even if they fall within the definition of ''administrative costs.''

(A) This exclusion covers the costs for salaries and benefits of staff who develop, maintain, support, or operate the portions of information technology or computer systems used for tracking and monitoring.

(B) It also covers the costs of contracts for the development, maintenance, support, or operation of those portions of information technology or computer systems used for tracking or monitoring.

(b) With the exception of paragraph (a)(4)(ii) of this section, the benefits or services listed under paragraph (a) of this section count only if they have been provided to or on behalf of eligible families. An ''eligible family'' as defined by the State, must:

(1) Be comprised of citizens or aliens who:

(i) Are eligible for TANF assistance;

(ii) Would be eligible for TANF assistance, but for the time limit on the receipt of federally funded assistance; or

(iii) Are lawfully present in the United States and would be eligible for assistance, but for the application of title IV of PRWORA;

(2) Include a child living with a custodial parent or other adult caretaker relative (or consist of a pregnant individual); and

(3) Be financially eligible according to the appropriate income and resource (when applicable) standards established by the State and contained in its TANF plan.

(c) Benefits or services listed under paragraph (a) of this section provided to a family that meets the criteria under paragraphs (b)(1) through (b)(3) of this section, but who became ineligible solely due to the time limitation given under § 264.1 of this chapter, may also count.

(d) Expenditures for the benefits or services listed under paragraph (a) of this section count whether or not the benefit or service meets the definition of assistance under § 260.31 of this chapter. Further, families that meet the

criteria in paragraphs (b)(2) and (b)(3) of this section are considered to be eligible for TANF assistance for the purposes of paragraph (b)(1)(i) of this section.

(e) Expenditures for benefits or services listed under paragraph (a) of this section may include allowable costs borne by others in the State (e.g. local government), including cash donations from non-Federal third parties (e.g., a non-profit organization) and the value of third party in-kind contributions if:

(1) The expenditure is verifiable and meets all applicable requirements in 45 CFR 92.3 and 92.24;

(2) There is an agreement between the State and the other party allowing the State to count the expenditure toward its MOE requirement; and

(3) The State counts a cash donation only when it is actually spent.

(f)(1) The expenditures for benefits or services in State-funded programs listed under paragraph (a) of this section count only if they also meet the requirements of § 263.5.

(2) Expenditures that fall within the prohibitions in § 263.6 do not count.

(g) State funds used to meet the Healthy Marriage Promotion and Responsible Fatherhood Grant match requirement may count to meet the MOE requirement in § 263.1, provided the expenditure also meets all the other MOE requirements in this subpart.

[71 FR 37481, June 29, 2006]

§ 263.3 When do child care expenditures count?

(a) State funds expended to meet the requirements of the CCDF Matching Fund (i.e., as match or MOE amounts) may also count as basic MOE expenditures up to the State's child care MOE amount that must be expended to qualify for CCDF matching funds.

(b) Child care expenditures that have not been used to meet the requirements of the CCDF Matching Fund (i.e., as match or MOE amounts), or any other Federal child care program, may also count as basic MOE expenditures. The limit described in paragraph (a) of this section does not apply.

(c) The child care expenditures described in paragraphs (a) and (b) of this section must be made to, or on behalf of, eligible families, as defined in § 263.2(b).

§ 263.4 When do educational expenditures count?

(a) Expenditures for educational activities or services count if:

(1) They are provided to eligible families (as defined in § 263.2(b)) to increase self-sufficiency, job training, and work; and

(2) They are not generally available to other residents of the State without cost and without regard to their income.

(b) Expenditures on behalf of eligible families for educational services or activities provided through the public education system do not count unless they meet the requirements under paragraph (a) of this section.

§ 263.5 When do expenditures in State-funded programs count?

(a) If a current State or local program also operated in FY 1995, and expenditures in this program would have been previously authorized and allowable under the former AFDC, JOBS, Emergency Assistance, Child Care for AFDC recipients, At-Risk Child Care, or Transitional Child Care programs, then current fiscal year expenditures in this program count in their entirety, provided that the State has met all requirements under § 263.2.

(b) If a current State or local program also operated in FY 1995, and expenditures in this program would not have been previously authorized and allowable under the former AFDC, JOBS, Emergency Assistance, Child Care for AFDC recipients, At-Risk Child Care, or Transitional Child Care programs, then countable expenditures are limited to the amount by which total current fiscal year expenditures that meet the requirements under § 263.2 exceed total State expenditures in the program during FY 1995.

§ 263.6 What kinds of expenditures do not count?

The following kinds of expenditures do not count:

(a) Expenditures of funds that originated with the Federal government;

(b) State expenditures under the Medicaid program under title XIX of the Act;

(c) Expenditures that a State makes as a condition of receiving Federal funds under another program that is not in Part IV-A of the Act, except as provided in § 263.3;

(d) Expenditures that a State made in a prior fiscal year;

(e) Expenditures that a State uses to match Federal Welfare-to-Work funds provided under section 403(a)(5) of the Act; and

(f) Expenditures that a State makes in the TANF program to replace the reductions in the SFAG as a result of penalties, pursuant to § 264.50 of this chapter.

[71 FR 37481, June 29, 2006]

§ 263.8 What happens if a State fails to meet the basic MOE requirement?

(a) If any State fails to meet its basic MOE requirement for any fiscal year, then we will reduce dollar-for-dollar the amount of the SFAG payable to the State for the following fiscal year.

(b) If a State fails to meet its basic MOE requirement for any fiscal year, and the State received a WtW formula grant under section 403(a)(5)(A) of the Act for the same fiscal year, we will also reduce the amount of the SFAG payable to the State for the following fiscal year by the amount of the WtW formula grant paid to the State.

§ 263.9 May a State avoid a penalty for failing to meet the basic MOE requirement through reasonable cause or corrective compliance?

No. The reasonable cause and corrective compliance provisions at §§ 262.4, 262.5, and 262.6 of this chapter do not apply to the penalties in § 263.8.

Subpart B—What Rules Apply to the Use of Federal TANF Funds?

§ 263.10 What actions would we take against a State if it uses Federal TANF funds in violation of the Act?

(a) If a State misuses its Federal TANF funds, we will reduce the SFAG payable for the immediately succeeding fiscal year quarter by the amount misused.

(b) If the State fails to demonstrate that the misuse was not intentional, we will further reduce the SFAG payable for the immediately succeeding fiscal year quarter in an amount equal to five percent of the adjusted SFAG.

(c) The reasonable cause and corrective compliance provisions of §§ 262.4 through 262.6 of this chapter apply to the penalties specified in paragraphs (a) and (b) of this section.

§ 263.11 What uses of Federal TANF funds are improper?

(a) States may use Federal TANF funds for expenditures:

(1) That are reasonably calculated to accomplish the purposes of TANF, as specified at § 260.20 of this chapter; or

(2) For which the State was authorized to use IV-A or IV-F funds under prior law, as in effect on September 30, 1995 (or, at the option of the State, August 21, 1996).

(b) We will consider use of funds in violation of paragraph (a) of this section, sections 404 and 408 and other provisions of the Act, section 115(a)(1) of PRWORA, the provisions of part 92 of this title, or OMB Circular A–87 to be misuse of funds.

§ 263.12 How will we determine if a State intentionally misused Federal TANF funds?

(a) The State must show, to our satisfaction, that it used these funds for purposes that a reasonable person would consider to be within the purposes of the TANF program (as specified at § 260.20 of this chapter) and consistent with the provisions listed in § 263.11.

(b) We may determine that a State misused funds intentionally if there is supporting documentation, such as Federal guidance or policy instructions, precluding the use of Federal TANF funds for such purpose.

(c) We may also determine that a State intentionally misused funds if the State continues to use the funds in the same or similarly improper manner after receiving notification that we had determined such use to be improper.

§ 263.13 Is there a limit on the amount of Federal TANF funds that a State may spend on administrative costs?

(a)(i) Yes, a State may not spend more than 15 percent of the amount that it receives as its adjusted SFAG, or under other provisions of section 403 of the Act, on ''administrative costs,'' as defined at § 263.0(b).

(ii) Any violation of the limitation in paragraph (a)(i) of this section will constitute a misuse of funds under § 263.11(b).

(b) Expenditures on the information technology and computerization needed for tracking and monitoring required by or under part IV-A of the Act do not count towards the limit specified in paragraph (a) of this section.

(1) This exclusion covers the costs for salaries and benefits of staff who develop, maintain, support or operate the portions of information technology or computer systems used for tracking and monitoring.

(2) It also covers the costs of contracts for development, maintenance. support, or operation of those portions of information technology or computer systems used for tracking or monitoring.

Subpart C—What Rules Apply to Individual Development Accounts?

§ 263.20 What definitions apply to Individual Development Accounts (IDAs)?

The following definitions apply with respect to IDAs:

Date of acquisition means the date on which a binding contract to obtain, construct, or reconstruct the new principal residence is entered into.

Eligible educational institution means an institution described in section 481(a)(1) or section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)(1) or 1141(a)), as such sections were in effect on August 21, 1996. Also, an area vocational education school (as defined in subparagraph (C) or (D) of section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)) that is in any State (as defined in section 521(33) of such Act), as such sections were in effect on August 21, 1996.

Individual Development Account (IDA) means an account established by, or for, an individual who is eligible for assistance under the TANF program, to allow the individual to accumulate funds for specific purposes. Notwithstanding any other provision of law (other than the Internal Revenue Code of 1986), the funds in an IDA account must be disregarded in determining eligibility for, or the amount of, assistance in any Federal means-tested programs.

Post-secondary educational expenses means a student's tuition and fees required for the enrollment or attendance at an eligible educational institution, and required course fees, books, supplies, and equipment required at an eligible educational institution.

Qualified acquisition costs means the cost of obtaining, constructing, or reconstructing a residence. The term includes any usual or reasonable settlement, financing, or other closing costs.

Qualified business means any business that does not contravene State law or public policy.

Qualified business capitalization expenses means business expenses pursuant to a qualified plan.

Qualified entity means a nonprofit, tax-exempt organization, or a State or local government agency that works cooperatively with a nonprofit, tax-exempt organization.

Qualified expenditures means expenses entailed in a qualified plan, including capital, plant equipment, working capital, and inventory expenses.

Qualified first-time home buyer means a taxpayer (and, if married, the taxpayer's spouse) who has not owned a principal residence during the three-year period ending on the date of acquisition of the new principal residence.

Qualified plan means a business plan that is approved by a financial institution, or by a nonprofit loan fund having demonstrated fiduciary integrity. It includes a description of services or goods to be sold, a marketing plan, and projected financial statements, and it may require the eligible recipient to obtain the assistance of an experienced entrepreneurial advisor.

Qualified principal residence means the place a qualified first-time home buyer

will reside in accordance with the meaning of section 1034 of the Internal Revenue Code of 1986 (26 U.S.C. 1034). The qualified acquisition cost of the residence cannot exceed the average purchase price of similar residences in the area.

§ 263.21 May a State use the TANF grant to fund IDAs?

If the State elects to operate an IDA program, then the States may use Federal TANF funds or WtW funds to fund IDAs for individuals who are eligible for TANF assistance and exercise flexibility within the limits of Federal regulations and the statute.

§ 263.22 Are there any restrictions on IDA funds?

The following restrictions apply to IDA funds:

(a) A recipient may deposit only earned income into an IDA.

(b) A recipient's contributions to an IDA may be matched by, or through, a qualified entity.

(c) A recipient may withdraw funds only for the following reasons:

(1) To cover post-secondary education expenses, if the amount is paid directly to an eligible educational institution;

(2) For the recipient to purchase a first home, if the amount is paid directly to the person to whom the amounts are due and it is a qualified acquisition cost for a qualified principal residence by a qualified first-time home buyer; or

(3) For business capitalization, if the amounts are paid directly to a business capitalization account in a federally insured financial institution and used for a qualified business capitalization expense.

§ 263.23 How does a State prevent a recipient from using the IDA account for unqualified purposes?

To prevent recipients from using the IDA account improperly, States may do the following:

(a) Count withdrawals as earned income in the month of withdrawal (unless already counted as income);

(b) Count withdrawals as resources in determining eligibility; or

(c) Take such other steps as the State has established in its State plan or written State policies to deter inappropriate use.

PART 264—OTHER ACCOUNTABILITY PROVISIONS

Sec.

264.0 What definitions apply to this part?

Subpart A—What Specific Rules Apply for Other Program Penalties?

264.1 What restrictions apply to the length of time Federal TANF assistance may be provided?
264.2 What happens if a State does not comply with the five-year limit?
264.3 How can a State avoid a penalty for failure to comply with the five-year limit?
264.10 Must States do computer matching of data records under IEVS to verify recipient information?
264.11 How much is the penalty for not participating in IEVS?
264.30 What procedures exist to ensure cooperation with the child support enforcement requirements?
264.31 What happens if a State does not comply with the IV-D sanction requirement?
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264.50 What happens if, in a fiscal year, a State does not expend, with its own funds, an amount equal to the reduction to the adjusted SFAG resulting from a penalty?

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264.70 What makes a State eligible to receive a provisional payment of contingency funds?
264.71 What determines the amount of the provisional payment of contingency funds that will be made to a State?
264.72 What requirements are imposed on a State if it receives contingency funds?
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Subpart C—What Rules Pertain Specifically to the Spending Levels of the Territories?

264.80 If a Territory receives Matching Grant funds, what funds must it expend?
264.81 What expenditures qualify for Territories to meet the Matching Grant MOE requirement?
264.82 What expenditures qualify for meeting the Matching Grant FAG amount requirement?
264.83 How will we know if a Territory failed to meet the Matching Grant funding requirements at § 264.80?
264.84 What will we do if a Territory fails to meet the Matching Grant funding requirements at § 264.80?
264.85 What rights of appeal are available to the Territories?

AUTHORITY: 31 U.S.C. 7501 *et seq.*; 42 U.S.C. 609, 654, 1302, 1308, and 1337.

SOURCE: 64 FR 17896, Apr. 12, 1999, unless otherwise noted.

§ 264.0 What definitions apply to this part?

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

(b) The following definitions also apply to this part:

Countable State Expenditures means the amount of qualifying State expenditures, as defined in § 264.75, plus the amount of contingency funds expended by the State in the fiscal year.

FAG means the Family Assistance Grant granted to a Territory pursuant to section 403(a)(1) of the Act. It is thus the Territorial equivalent of the SFAG, as defined at § 260.30 of this chapter.

Food Stamp Trigger means a State's monthly average of individuals participating in the Food Stamp program (as of the last day of the month) for the most recent three-month period that exceeds its monthly average of individuals in the corresponding three-month period in the Food Stamp caseload for FY 1994 or FY 1995, whichever is less, by at least ten percent, assuming that the immigrant provisions of title IV and the Food Stamp provisions under title VII of PRWORA had been in effect in those years.

Unemployment Trigger means a State's average unemployment rate for the most recent three-month period of at least 6.5 percent and equal to at least 110 percent of the State's unemployment rate for the corresponding three-month period in either of the two preceding calendar years.

Subpart A—What Specific Rules Apply for Other Program Penalties?

§ 264.1 What restrictions apply to the length of time Federal TANF assistance may be provided?

(a)(1) Subject to the exceptions in this section, no State may use any of its Federal TANF funds to provide assistance (as defined in § 260.31 of this chapter) to a family that includes an adult head-of-household or a spouse of the head-of-household who has received Federal assistance for a total of five years (i.e., 60 cumulative months, whether or not consecutive).

(2) The provision in paragraph (a)(1) of this section also applies to a family that includes a pregnant minor head-of-household, minor parent head-of-household, or spouse of such a head-of-household who has received Federal assistance for a total of five years.

(3) Notwithstanding the provisions of paragraphs (a)(1) and (a)(2) of this section, a State may provide assistance under WtW, pursuant to section 403(a)(5) of the Act, to a family that is ineligible for TANF solely because it has reached the five-year time limit.

(b)(1) States must not count toward the five-year limit:

(i) Any month of receipt of assistance by an individual who is not the head-of-household or married to the head-of-household;

(ii) Any month of receipt of assistance by an adult while living in Indian country (as defined in section 1151 of title 18, United States Code) or a Native Alaskan Village where at least 50 percent of the adults were not employed; and

(iii) Any month for which an individual receives only noncash assistance provided under WtW, pursuant to section 403(a)(5) of the Act.

(2) Only months of assistance that are paid for with Federal TANF funds (in whole or in part) count towards the five-year time limit.

(c) States have the option to extend assistance paid for by Federal TANF funds beyond the five-year limit for up to 20 percent of the average monthly

number of families receiving assistance during the fiscal year or the immediately preceding fiscal year, whichever the State elects. States are permitted to extend assistance to families only on the basis of:

(1) Hardship, as defined by the State; or

(2) The fact that the family includes someone who has been battered, or subject to extreme cruelty based on the fact that the individual has been subjected to:

(i) Physical acts that resulted in, or threatened to result in, physical injury to the individual;

(ii) Sexual abuse;

(iii) Sexual activity involving a dependent child;

(iv) Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;

(v) Threats of, or attempts at, physical or sexual abuse;

(vi) Mental abuse; or

(vii) Neglect or deprivation of medical care.

(d) If a State opts to extend assistance to part of its caseload as permitted under paragraph (c) of this section, it would grant such an extension to a specific family once a head-of-household or spouse of a head-of-household in the family has received 60 cumulative months of assistance.

(e) To determine whether a State has failed to comply with the five-year limit on Federal assistance established in paragraph (c) of this section for a fiscal year, we would divide the average monthly number of families with a head-of-household or a spouse of a head-of-household who has received assistance for more than 60 cumulative months by the average monthly number of all families that received assistance during that fiscal year or during the immediately preceding fiscal year.

(f) If the five-year limit is inconsistent with a State's waiver granted under section 1115 of the Act, we will determine State compliance with the Federal time limit in accordance with the provisions of subpart C of part 260.

§ 264.2 What happens if a State does not comply with the five-year limit?

If we determine that a State has not complied with the requirements of § 264.1, we will reduce the SFAG payable to the State for the immediately succeeding fiscal year by five percent of the adjusted SFAG unless the State demonstrates to our satisfaction that it had reasonable cause, or it corrects or discontinues the violation under an approved corrective compliance plan.

§ 264.3 How can a State avoid a penalty for failure to comply with the five-year limit?

(a) We will not impose the penalty if the State demonstrates to our satisfaction that it had reasonable cause for failing to comply with the five-year limit on Federal assistance or it achieves compliance under a corrective compliance plan, pursuant to §§ 262.5 and 262.6 of this chapter.

(b) In addition, we will determine a State has reasonable cause if it demonstrates that it failed to comply with the five-year limit on Federal assistance because of federally recognized good cause domestic violence waivers provided to victims of domestic violence in accordance with provisions of subpart B of part 260.

[64 FR 17896, Apr. 12, 1999; 64 FR 40292, July 26, 1999]

§ 264.10 Must States do computer matching of data records under IEVS to verify recipient information?

(a) Pursuant to section 1137 of the Act and subject to paragraph (a)(2) of that section, States must meet the requirements of IEVS and request the following information from the Internal Revenue Service (IRS), the State Wage Information Collections Agency (SWICA), the Social Security Administration (SSA), and the Immigration and Naturalization Service (INS):

(1) IRS unearned income;

(2) SWICA employer quarterly reports of income and unemployment insurance benefit payments;

(3) IRS earned income maintained by SSA; and

(4) Immigration status information maintained by the INS.

(b) The requirements at §§205.51 through 205.60 of this chapter also apply to the TANF IEVS requirement.

[64 FR 17896, Apr. 12, 1999; 64 FR 40292, July 26, 1999]

§ 264.11 How much is the penalty for not participating in IEVS?

If we determine that the State has not complied with the requirements of §264.10, we will reduce the SFAG payable for the immediately succeeding fiscal year by two percent of the adjusted SFAG unless the State demonstrates to our satisfaction that it had reasonable cause or achieved compliance under a corrective compliance plan pursuant to §§262.5 and 262.6 of this chapter.

§ 264.30 What procedures exist to ensure cooperation with the child support enforcement requirements?

(a)(1) The State agency must refer all appropriate individuals in the family of a child, for whom paternity has not been established or for whom a child support order needs to be established, modified or enforced, to the child support enforcement agency (i.e., the IV-D agency).

(2) Referred individuals must cooperate in establishing paternity and in establishing, modifying, or enforcing a support order with respect to the child.

(b) If the IV-D agency determines that an individual is not cooperating, and the individual does not qualify for a good cause or other exception established by the State agency responsible for making good cause determinations in accordance with section 454(29) of the Act or for a good cause domestic violence waiver granted in accordance with §260.52 of this chapter, then the IV-D agency must notify the IV-A agency promptly.

(c) The IV-A agency must then take appropriate action by:

(1) Deducting from the assistance that would otherwise be provided to the family of the individual an amount equal to not less than 25 percent of the amount of such assistance; or

(2) Denying the family any assistance under the program.

§ 264.31 What happens if a State does not comply with the IV-D sanction requirement?

(a)(1) If we find that, for a fiscal year, the State IV-A agency did not enforce the penalties against recipients required under §264.30(c), we will reduce the SFAG payable for the next fiscal year by one percent of the adjusted SFAG.

(2) Upon a finding for a second fiscal year, we will reduce the SFAG by two percent of the adjusted SFAG for the following year.

(3) A third or subsequent finding will result in the maximum penalty of five percent.

(b) We will not impose a penalty if:

(1) The State demonstrates to our satisfaction that it had reasonable cause pursuant to §262.5 of this chapter; or

(2) The State achieves compliance under a corrective compliance plan pursuant to §262.6 of this chapter.

§ 264.40 What happens if a State does not repay a Federal loan?

(a) If a State fails to repay the amount of principal and interest due at any point under a loan agreement developed pursuant to section 406 of the Act:

(1) The entire outstanding loan balance, plus all accumulated interest, becomes due and payable immediately; and

(2) We will reduce the SFAG payable for the immediately succeeding fiscal year quarter by the outstanding loan amount plus interest.

(b) Neither the reasonable cause provisions at §262.5 of this chapter nor the corrective compliance plan provisions at §262.6 of this chapter apply when a State fails to repay a Federal loan.

§ 264.50 What happens if, in a fiscal year, a State does not expend, with its own funds, an amount equal to the reduction to the adjusted SFAG resulting from a penalty?

(a)(1) When we withhold Federal TANF funds from a State during a fiscal year because of other penalty actions listed at §262.1 of this chapter, the State must replace these Federal TANF funds with State funds during the subsequent fiscal year.

(2) If the State fails to replace funds during the subsequent year, then we will assess an additional penalty of no more than two percent of the adjusted SFAG during the year that follows the subsequent year.

(b) A State must expend such replacement funds under its TANF program, not under ''separate State programs.''

(c) We will assess a penalty of no more than two percent of the adjusted SFAG plus the amount equal to the difference between the amount the State was required to expend and the amount it actually expended in the fiscal year.

(1) We will assess the maximum penalty amount if the State made no additional expenditures to compensate for the reductions to its adjusted SFAG resulting from penalties.

(2) We will reduce the percentage portion of the penalty if the State has expended some of the amount required. In such case, we will calculate the applicable percentage portion of the penalty by multiplying the percentage of the required expenditures that the State failed to make in the fiscal year by two percent.

(d) The reasonable cause and corrective compliance plan provisions at §§ 262.5 and 262.6 of this chapter do not apply to this penalty.

Subpart B—What Are the Requirements for the Contingency Fund?

§ 264.70 What makes a State eligible to receive a provisional payment of contingency funds?

(a) In order to receive a provisional payment of contingency funds, a State must:

(1) Be a needy State, as defined in § 260.30 of this chapter; and

(2) Submit to ACF a request for contingency funds for an eligible month (i.e., a month in which a State is a needy State).

(b) A determination that a State is a needy State for a month makes that State eligible to receive a provisional payment of contingency funds for two consecutive months.

(c) Only the 50 States and the District of Columbia may receive contingency funds. Territories and Tribal TANF grantees are not eligible.

§ 264.71 What determines the amount of the provisional payment of contingency funds that will be made to a State?

We will make a provisional payment to a State that meets the requirements of § 264.70, within the following limits:

(a) The amount that we will pay to a State in a fiscal year will not exceed an amount equal to 1/12 times 20 percent of that State's SFAG for that fiscal year, multiplied by the number of eligible months for which the State has requested contingency funds;

(b) The total amount that we will pay to all States during a fiscal year will not exceed the amount appropriated for this purpose; and

(c) We will pay contingency funds to States in the order in which we receive requests for such payments.

§ 264.72 What requirements are imposed on a State if it receives contingency funds?

(a)(1) A State must meet a Contingency Fund MOE level of 100 percent of historic State expenditures for FY 1994.

(2) A State must exceed the Contingency Fund MOE level to keep any of the contingency funds that it received. It may be able to retain a portion of the amount of contingency funds that match countable State expenditures, as defined in § 264.0, that are in excess of the State's Contingency Fund MOE level, after the overall adjustment required by section 403(b)(6)(C) of the Act.

(b) A State must complete an annual reconciliation, in accordance with § 264.73, in order to determine how much, if any, of the contingency funds that it received in a fiscal year it may retain.

(c) If required to remit funds under the annual reconciliation, a State must remit all (or a portion) of the funds paid to it for a fiscal year within one year after it has failed to meet either the Food Stamp trigger or the Unemployment trigger, as defined in § 264.0, for three consecutive months.

(d) A State must expend contingency funds in the fiscal year in which they are awarded.

(e) A State may not transfer contingency funds to the Discretionary Fund of the CCDF or the SSBG.

(f) A State must follow the restrictions and prohibitions in effect for Federal TANF funds, including the provisions of § 263.11 of this chapter, in its use of contingency funds.

§ 264.73 What is an annual reconciliation?

(a) The annual reconciliation involves the calculation, for a fiscal year, of:

(1) The amount of a State's qualifying expenditures;

(2) The amount by which a State's countable State expenditures, as defined in § 264.0, exceed the State's required Contingency Fund MOE level; and

(3) The amount of contingency funds that the State may retain or must remit.

(b) If a State exceeded its required Contingency Fund MOE level, it may be able to retain some or all of the contingency funds that it received.

(c) A State determines the amount of contingency funds that it may retain by performing the following calculations:

(1) From the lesser of the following two amounts:

(i) The amount of contingency funds paid to it during the fiscal year; or

(ii) Its countable State expenditures, as defined in § 264.0, minus its required Contingency Fund MOE level, multiplied by:

(A) The State's Federal Medical Assistance Percentage (FMAP) applicable for the fiscal year for which funds were awarded; and

(B) 1/12 times the number of months during the fiscal year for which the State received contingency funds.

(2) Subtract the State's proportionate remittance (as reported to the State by ACF) for the overall adjustment of the Contingency Fund for that fiscal year required by section 403(b)(6)(C) of the Act.

§ 264.74 How will we determine the Contingency Fund MOE level for the annual reconciliation?

(a)(1) The Contingency Fund MOE level includes the State's share of expenditures for AFDC benefit payments, administration, and FAMIS; EA; and the JOBS program for FY 1994.

(2) We will use the same data sources and date, i.e., April 28, 1995, that we used to determine the basic MOE levels for FY 1994. We will exclude the State's share of expenditures from the former IV-A child care programs (AFDC/JOBS, Transitional and At-Risk child care) in the calculation.

(b) We will reduce a State's Contingency Fund MOE level by the same percentage that we reduce the basic MOE level for any fiscal year in which we reduce the State's annual SFAG allocation to provide funding to Tribal grantees operating a Tribal TANF program.

§ 264.75 For the annual reconciliation, what are qualifying State expenditures?

(a) Qualifying State expenditures are expenditures of State funds made in the State TANF program, with respect to eligible families, for the following:

(1) Cash assistance, including assigned child support collected by the State, distributed to the family, and disregarded in determining eligibility for, and amount of the TANF assistance payment;

(2) Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except expenditures involving the provision of services or assistance to an eligible family that are not generally available to persons who are not members of an eligible family;

(3) Any other services allowable under section 404(a)(1) of the Act and consistent with the goals at § 260.20 of this chapter; and

(4) Administrative costs in connection with the provision of the benefits and services listed in paragraphs (a)(1) through (a)(3) of this section, but only to the extent that such costs are consistent with the 15-percent limitation at § 263.2(a)(5) of this chapter.

(b) Qualifying State expenditures do not include:

(1) Child care expenditures; and

(2) Expenditures made under separate State programs.

§ 264.76 What action will we take if a State fails to remit funds after failing to meet its required Contingency Fund MOE level?

(a) If, for a fiscal year in which it receives contingency funds, a State fails to meet its required Contingency Fund MOE level, we will penalize the State by reducing the SFAG payable for the next fiscal year by the amount of contingency funds not remitted.

(b) A State may appeal this decision, as provided in § 262.7 of this chapter.

(c) The reasonable cause exceptions and corrective compliance regulations at §§ 262.5 and 262.6 of this chapter do not apply to this penalty.

§ 264.77 How will we determine if a State met its Contingency Fund expenditure requirements?

(a) States receiving contingency funds for a fiscal year must complete the quarterly TANF Financial Report. As part of the fourth quarter's report, a State must complete its annual reconciliation.

(b) The TANF Financial Report and State reporting on expenditures are subject to our review.

Subpart C—What Rules Pertain Specifically to the Spending Levels of the Territories?

§ 264.80 If a Territory receives Matching Grant funds, what funds must it expend?

(a) If a Territory receives Matching Grant funds under section 1108(b) of the Act, it must:

(1) Contribute 25 percent of the expenditures funded under the Matching Grant for title IV-A or title IV-E expenditures;

(2) Expend 100 percent of the amount of historic expenditures for FY 1995 for the AFDC program (including administrative costs and FAMIS), the EA program, and the JOBS program; and

(3) Expend 100 percent of the amount of the Family Assistance Grant annual allocation using Federal TANF, title IV-E funds and/or Territory-only funds, without regard to any penalties applied in accordance with section 409 of the Act.

(b) Territories may not use the same Territorial expenditures to satisfy the requirements of paragraphs (a)(1), (a)(2) and (a)(3) of this section.

§ 264.81 What expenditures qualify for Territories to meet the Matching Grant MOE requirement?

To meet the Matching Grant MOE requirements, Territories may count:

(a) Territorial expenditures made in accordance with §§ 263.2, 263.3, 263.4, and 263.6 of this chapter that are commingled with Federal TANF funds or made under a segregated TANF program; and

(b) Territorial expenditures made pursuant to the regulations at 45 CFR parts 1355 and 1356 for the Foster Care and Adoption Assistance programs and section 477 of the Act for the Independent Living program.

§ 264.82 What expenditures qualify for meeting the Matching Grant FAG amount requirement?

To meet the Matching Grant FAG amount requirement, Territories may count:

(a) Expenditures made with Federal TANF funds pursuant to § 263.11 of this chapter;

(b) Expenditures made in accordance with §§ 263.2, 263.3, 263.4, and 263.6 of this chapter that are commingled with Federal TANF funds or made under a segregated TANF program;

(c) Amounts transferred from TANF funds pursuant to section 404(d) of the Act; and

(d) The Federal and Territorial shares of expenditures made pursuant to the regulations at 45 CFR parts 1355 and 1356 for the Foster Care and Adoption Assistance programs and section 477 of the Act for the Independent Living program.

§ 264.83 How will we know if a Territory failed to meet the Matching Grant funding requirements at § 264.80?

We will require the Territories to report the expenditures required by § 264.80(a)(2) and (a)(3) on the quarterly Territorial Financial Report.

§ 264.84 What will we do if a Territory fails to meet the Matching Grant funding requirements at § 264.80?

If a Territory does not meet the requirements at either or both of § 264.80(a)(2) and (a)(3), we will disallow

all Matching Grant funds received for the fiscal year.

§ 264.85 What rights of appeal are available to the Territories?

The Territories may appeal our decisions to the Departmental Appeals Board in accordance with our regulations at part 16 of this title if we decide to take disallowances under section 1108(b) of the Act.

PART 265—DATA COLLECTION AND REPORTING REQUIREMENTS

Sec.

265.1 What does this part cover?
265.2 What definitions apply to this part?
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AUTHORITY: 42 U.S.C. 603, 605, 607, 609, 611, and 613; Pub. L. 109–171.

SOURCE: 64 FR 17900, Apr. 12, 1999, unless otherwise noted.

§ 265.1 What does this part cover?

(a) This part explains how we will collect the information required by section 411(a) of the Act (data collection and reporting); the information required to implement section 407 of the Act (work participation requirements), as authorized by section 411(a)(1)(A)(xii); the information required to implement section 409 (penalties), section 403 (grants to States), section 405 (administrative provisions), section 411(b) (report to Congress), and section 413 (annual rankings of State TANF programs); and the data necessary to carry out our financial management and oversight responsibilities.

(b) This part describes the information in the quarterly and annual reports that each State must file, as follows:[1]

(1) The case record information (disaggregated and aggregated) on individuals and families in the quarterly TANF Data Report;

(2) The expenditure data in the quarterly TANF Financial Report (or, as applicable, the Territorial Financial Report); and

(3) The definitions and other information on the State's TANF and MOE programs that must be filed annually.

(c) If a State claims MOE expenditures under a separate State program(s), this part describes the case record information (disaggregated and aggregated) on individuals and families in the quarterly SSP–MOE Data Report that each State must file.

(d) This part describes when reports are due, how we will determine if reporting requirements have been met, and how we will apply the statutory penalty for failure to file a timely report. It also specifies electronic filing and sampling requirements.

[64 FR 17900, Apr. 12, 1999, as amended at 71 FR 37482, June 29, 2006]

§ 265.2 What definitions apply to this part?

(a) Except as provided in paragraph (b) of this section, the general TANF definitions at §§ 260.30 through 260.33 and the definitions of a work-eligible individual and the work activities in § 261.2 of this chapter apply to this part.

(b) For data collection and reporting purposes only, family means:

(1) All individuals receiving assistance as part of a family under the State's TANF or separate State program (including noncustodial parents, where required under § 265.5(g)); and

(2) The following additional persons living in the household, if not included under paragraph (b)(1) of this section:

(i) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

[1] The Appendices contain the specific data elements in the quarterly Data Report, the quarterly Financial Report, and the Annual Report on State MOE Programs, as well as the instructions for filing these reports. They also include the form and instructions for the Caseload Reduction Report described at § 261.41(b) of this chapter.

(ii) Minor siblings of any child receiving assistance; and

(iii) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

[71 FR 37482, June 29, 2006]

§ 265.3 What reports must the State file on a quarterly basis?

(a) *Quarterly reports.* (1) Each State must collect on a monthly basis, and file on a quarterly basis, the data specified in the TANF Data Report and the TANF Financial Report (or, as applicable, the Territorial Financial Report).

(2) Each State that claims MOE expenditures for a separate State program(s) must collect on a monthly basis, and file on a quarterly basis, the data specified in the SSP–MOE Data Report.

(b) *TANF Data Report.* The TANF Data Report consists of four sections. Two sections contain disaggregated data elements and two sections contain aggregated data elements.

(1) *Disaggregated Data on Families Receiving TANF Assistance—Section one.* Each State must file disaggregated information on families receiving TANF assistance. This section specifies identifying and demographic data such as the individual's Social Security Number and information such as the amount of assistance received, educational level, employment status, work participation activities, citizenship status, and earned and unearned income. The data must be provided for both adults and children.

(2) *Disaggregated Data on Families No Longer Receiving TANF Assistance—Section two.* Each State must file disaggregated information on families no longer receiving TANF assistance. This section specifies the reasons for case closure and data similar to the data required in section one.

(3) *Aggregated Data—Section three.* Each State must file aggregated information on families receiving, applying for, and no longer receiving TANF assistance. This section of the TANF Data Report requires aggregate figures in such areas as: The number of applications received and their disposition; the number of recipient families, adult recipients, and child recipients; the number of births and out-of-wedlock births for families receiving TANF assistance; the number of noncustodial parents participating in work activities; and the number of closed cases.

(4) *Aggregated Caseload Data by Stratum—Section four.* Each State that opts to use a stratified sample to report the quarterly TANF disaggregated data must file the monthly caseload data by stratum for each month in the quarter.

(c) *The TANF Financial Report (or Territorial Financial Report).* (1) Each State must file quarterly expenditure data on the State's use of Federal TANF funds, State TANF expenditures, and State expenditures of MOE funds in separate State programs.

(2) If a State is expending Federal TANF funds received in prior fiscal years, it must file a separate quarterly TANF Financial Report (or, as applicable, Territorial Financial Report) for each fiscal year that provides information on the expenditures of that year's TANF funds.

(3) Territories must report their expenditure and other fiscal data on the Territorial Financial Report, as provided at § 264.85 of this chapter, in lieu of the TANF Financial Report.

(d) *SSP–MOE Data Report.* The SSP–MOE Data Report consists of four sections. Two sections contain disaggregated data elements and two sections contain aggregated data elements.

(1) *Disaggregated Data on Families Receiving SSP–MOE Assistance—Section one.* Each State that claims MOE expenditures for a separate State program(s) must file disaggregated information on families receiving SSP–MOE assistance. This section specifies identifying and demographic data such as the individual's Social Security Number, the amount of assistance received, educational level, employment status, work participation activities, citizenship status, and earned and unearned income. The data must be provided for both adults and children.

(2) *Disaggregated Data on Families No Longer Receiving SSP–MOE Assistance—Section two.* Each State that claims MOE expenditures for a separate State program(s) must file disaggregated information on families no longer receiving SSP–MOE assistance. This section

specifies the reasons for case closure and data similar to the data required in section one.

(3) *Aggregated Data—Section three.* Each State that claims MOE expenditures for a separate State program(s) must file aggregated information on families receiving and no longer receiving SSP–MOE assistance. This section of the SSP–MOE Data Report requires aggregate figures in such areas as: The number of recipient families, adult recipients, and child recipients; the total amount of assistance for families receiving SSP–MOE assistance; the number of non-custodial parents participating in work activities; and the number of closed cases.

(4) *Aggregated Caseload Data by Stratum—Section four.* Each State that claims MOE expenditures for a separate State program(s) and that opts to use a stratified sample to report the SSP–MOE quarterly disaggregated data must file the monthly caseload by stratum for each month in the quarter.

(e) *Optional data elements.* A State has the option not to report on some data elements for some individuals in the TANF Data Report and the SSP–MOE Data Report, as specified in the instructions to these reports.

(f) *Non-custodial parents.* A State must report information on a non-custodial parent (as defined in § 260.30 of this chapter) if the non-custodial parent:

(1) Is receiving assistance as defined in § 260.31 of this chapter;

(2) Is participating in work activities as defined in section 407(d) of the Act; or

(3) Has been designated by the State as a member of a family receiving assistance.

[71 FR 37482, June 29, 2006]

§ 265.4 When are quarterly reports due?

(a) Each State must file the TANF Data Report and the TANF Financial Report (or, as applicable, the Territorial Financial Report) within 45 days following the end of the quarter or be subject to a penalty.

(b) Each State that claims MOE expenditures for a separate State program(s) must file the SSP–MOE Data Report within 45 days following the end of the quarter or be subject to a penalty.

(c) A State that fails to submit the reports within 45 days will be subject to a penalty unless the State files complete and accurate reports before the end of the fiscal quarter that immediately succeeds the quarter for which the reports were required to be submitted.

[71 FR 37483, June 29, 2006]

§ 265.5 May States use sampling?

(a) Each State may report the disaggregated data in the TANF Data Report and the SSP-MOE Data Report on all recipient families or on a sample of families selected through the use of a scientifically acceptable sampling method that we have approved. States may use sampling to generate certain aggregated data elements as identified in the instructions to the reports. States may not use sampling to report expenditure data.

(b) ''Scientifically acceptable sampling method'' means:

(1) A probability sampling method in which every sampling unit in the population has a known, non-zero chance to be included in the sample; and

(2) Our sample size requirements are met.

(c) In reporting data based on sampling, the State must follow the specifications and procedures in the TANF Sampling Manual.

§ 265.6 Must States file reports electronically?

Each State must file all quarterly reports (i.e., the TANF Data Report, the TANF Financial Report (or, as applicable, the Territorial Financial Report), and the SSP-MOE Data Report) electronically, based on format specifications that we will provide.

§ 265.7 How will we determine if the State is meeting the quarterly reporting requirements?

(a) Each State's quarterly reports (the TANF Data Report, the TANF Financial Report (or Territorial Financial Report), and the SSP-MOE Data Report) must be complete and accurate and filed by the due date.

(b) For a disaggregated data report, ''a complete and accurate report'' means that:

(1) The reported data accurately reflect information available to the State in case records, financial records, and automated data systems;

(2) The data are free from computational errors and are internally consistent (e.g., items that should add to totals do so);

(3) The State reports data for all required elements (i.e., no data are missing);

(4)(i) The State provides data on all families; or

(ii) If the State opts to use sampling, the State reports data on all families selected in a sample that meets the specification and procedures in the TANF Sampling Manual (except for families listed in error); and

(5) Where estimates are necessary (e.g., some types of assistance may require cost estimates), the State uses reasonable methods to develop these estimates.

(c) For an aggregated data report, ''a complete and accurate report'' means that:

(1) The reported data accurately reflect information available to the State in case records, financial records, and automated data systems;

(2) The data are free from computational errors and are internally consistent (e.g., items that should add to totals do so);

(3) The State reports data on all applicable elements; and

(4) Monthly totals are unduplicated counts for all families (e.g., the number of families and the number of out-of-wedlock births are unduplicated counts).

(d) For the TANF Financial Report (or, as applicable, the Territorial Financial Report), ''a complete and accurate report'' means that:

(1) The reported data accurately reflect information available to the State in case records, financial records, and automated data systems;

(2) The data are free from computational errors and are internally consistent (e.g., items that should add to totals do so);

(3) The State reports data on all applicable elements; and

(4) All expenditures have been made in accordance with §92.20(a) of this title.

(e) We will review the data filed in the quarterly reports to determine if they meet these standards. In addition, we will use audits and reviews to verify the accuracy of the data filed by the States.

(f) States must maintain records to adequately support any report, in accordance with §92.42 of this title.

§ 265.8 Under what circumstances will we take action to impose a reporting penalty for failure to submit quarterly and annual reports?

(a) We will take action to impose a reporting penalty under §262.1(a)(3) of this chapter if:

(1) A State fails to file the quarterly TANF Data Report, the quarterly TANF Financial Report (or, as applicable, the Territorial Financial Report), or the quarterly SSP–MOE Data Report (if applicable) within 45 days of the end of the quarter;

(2) The disaggregated data in the TANF Data Report or the SSP–MOE Data Report are not accurate or a report does not include all the data required by section 411(a) of the Act (other than section 411(a)(1)(A)(xii) of the Act) or the nine additional elements necessary to carry out the data collection system requirements, including the social security number;

(3) The aggregated data elements in the TANF Data Report or the SSP–MOE Data Report required by section 411(a) of the Act are not accurate and the report does not include the data elements necessary to carry out the data collection system requirements and to verify and validate the disaggregated data;

(4) The TANF Financial Report (or, as applicable, the Territorial Financial Report) does not contain complete and accurate information on total expenditures and expenditures on administrative costs and transitional services; or

(5) The annual report under §265.9 does not contain the description of transitional services provided by a State to families no longer receiving assistance due to employment.

(b) If we determine that a State meets one or more of the conditions set

forth in paragraph (a) of this section, we will notify the State that we intend to reduce the SFAG payable for the immediately succeeding fiscal year.

(c) We will not impose the penalty at § 262.1(a)(3) of this chapter if the State files the complete and accurate quarterly report or the annual report before the end of the fiscal quarter that immediately succeeds the fiscal quarter for which the reports were required.

(d) If the State does not file all reports as provided under paragraph (a) of this section by the end of the immediately succeeding fiscal quarter, the penalty provisions of §§ 262.4 through 262.6 of this chapter will apply.

(e) Subject to paragraphs (a) through (c) of this section and §§ 262.4 through 262.6 of this chapter, for each quarter for which a State fails to meet the reporting requirements, we will reduce the SFAG payable by an amount equal to four percent of the adjusted SFAG (or a lesser amount if the State achieves substantial compliance under a corrective compliance plan).

[71 FR 37483, June 29, 2006]

§ 265.9 What information must the State file annually?

(a) Each State must file an annual report containing information on the TANF program and the State's MOE program(s) for that year. The report may be filed as:

(1) An addendum to the fourth quarter TANF Data Report; or

(2) A separate annual report.

(b) Each State must provide the following information on the TANF program:

(1) The State's definition of each work activity;

(2) A description of the transitional services provided to families no longer receiving assistance due to employment;

(3) A description of how a State will reduce the amount of assistance payable to a family when an individual refuses to engage in work without good cause pursuant to § 261.14 of this chapter;

(4) The average monthly number of payments for child care services made by the State through the use of disregards, by the following types of child care providers:

(i) Licensed/regulated in-home child care;

(ii) Licensed/regulated family child care;

(iii) Licensed/regulated group home child care;

(iv) Licensed/regulated center-based child care;

(v) Legally operating (i.e., no license category available in State or locality) in-home child care provided by a nonrelative;

(vi) Legally operating (i.e., no license category available in State or locality) in-home child care provided by a relative;

(vii) Legally operating (i.e., no license category available in State or locality) family child care provided by a nonrelative;

(viii) Legally operating (i.e., no license category available in State or locality) family child care provided by a relative;

(ix) Legally operating (i.e., no license category available in State or locality) group child care provided by a nonrelative;

(x) Legally operating (i.e., no license category available in State or locality) group child care provided by a relative; and

(xi) Legally operated (i.e., no license category available in State or locality) center-based child care;

(5) If the State has adopted the Family Violence Option and wants Federal recognition of its good cause domestic violence waivers under subpart B of part 260 of this chapter, a description of the strategies and procedures in place to ensure that victims of domestic violence receive appropriate alternative services and an aggregate figure for the total number of good cause domestic waivers granted;

(6) A description of any nonrecurrent, short-term benefits provided, including:

(i) The eligibility criteria associated with such benefits, including any restrictions on the amount, duration, or frequency of payments;

(ii) Any policies that limit such payments to families that are eligible for TANF assistance or that have the effect of delaying or suspending a family's eligibility for assistance; and

(iii) Any procedures or activities developed under the TANF program to ensure that individuals diverted from assistance receive information about, referrals to, or access to other program benefits (such as Medicaid and food stamps) that might help them make the transition from welfare to work;

(7) A description of the procedures the State has established and is maintaining to resolve displacement complaints, pursuant to section 407(f)(3) of the Act. This description must include the name of the State agency with the lead responsibility for administering this provision and explanations of how the State has notified the public about these procedures and how an individual can register a complaint;

(8) A summary of State programs and activities directed at the third and fourth statutory purposes of TANF (as specified at §260.20(c) and (d) of this chapter); and

(9) An estimate of the total number of individuals who have participated in subsidized employment under §261.30(b) or (c) of this chapter.

(c) Each State must provide the following information on the State's program(s) for which the State claims MOE expenditures:

(1) The name of each program and a description of the major activities provided to eligible families under each such program;

(2) Each program's statement of purpose;

(3) If applicable, a description of the work activities in each separate State MOE program in which eligible families are participating;

(4) For each program, both the total annual State expenditures and the total annual State expenditures claimed as MOE;

(5) For each program, the average monthly total number or the total number of eligible families served for which the State claims MOE expenditures as of the end of the fiscal year;

(6) The eligibility criteria for the families served under each program/activity;

(7) A statement whether the program/activity had been previously authorized and allowable as of August 21, 1996, under section 403 of prior law;

(8) The FY 1995 State expenditures for each program/activity not authorized and allowable as of August 21, 1996, under section 403 of prior law (see §263.5(b) of this chapter); and

(9) A certification that those families for which the State is claiming MOE expenditures met the State's criteria for ''eligible families.''[7]

(d) If the State has submitted the information required in paragraphs (b) and (c) of this section in the State Plan, it may meet the annual reporting requirements by reference in lieu of resubmission. If the information in the annual report has not changed since the previous annual report, the State may reference this information in lieu of re-submission.

(e) If a State makes a substantive change in certain data elements in paragraphs (b) and (c) of this section, it must file a copy of the change with the next quarterly data report or as an amendment to its State Plan. The State must also indicate the effective date of the change. This requirement is applicable to the following data elements:

(1) Paragraphs (b)(1), (b)(2), and (b)(3) of this section; and

(2) Paragraphs (c)(1), (c)(2), (c)(3), (c)(6), (c)(7), and (c)(8) of this section.

§265.10 When is the annual report due?

The annual report required by §265.9 is due at the same time as the fourth quarter TANF Data Report.

PART 270—HIGH PERFORMANCE BONUS AWARDS

Sec.

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[7] See Appendix I for the reporting form for the Annual Report on State Maintenance-of-Effort Programs.

270.7 What data will we use to measure performance on the work support and other measures?
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270.13 What do States need to know about the use of bonus funds?

AUTHORITY: 42 U.S.C. 603(a)(4).

SOURCE: 65 FR 52851, Aug. 30, 2000, unless otherwise noted.

§ 270.1 What does this part cover?

This part covers the regulatory provisions relating to the bonus to reward high performing States in the TANF program, as authorized in section 403(a)(4) of the Social Security Act.

§ 270.2 What definitions apply to this part?

The following definitions apply under this part:

Absolute rate means the actual rate of performance achieved in the performance year or the comparison year.

Act means the Social Security Act, as amended.

Bonus year means each of the fiscal years 2002 and 2003 in which TANF bonus funds are awarded, as well as any subsequent fiscal year for which Congress authorizes and appropriates bonus funds.

CCDF means the Child Care and Development Fund.

Comparison year means the fiscal or calendar year preceding the performance year.

Fiscal year means the 12-month period beginning on October 1 of the preceding calendar year and ending on September 30.

Food Stamp Program means the program administered by the United States Department of Agriculture pursuant to the Food Stamp Act of 1977, U.S.C. 2011 *et seq.*

CMS is the Centers for Medicare & Medicaid Services.

Improvement rate means the positive percentage point change between the absolute rate of performance in the performance year and the comparison year, except for the calculation and ranking of States on the increase in success in the work force measure in § 270.5(a)(4).

Medicaid is a State program of medical assistance operated in accordance with a State plan under title XIX of the Act.

MSIS is the Medicaid Statistical Information System.

Performance year means the year in which a State's performance is measured, i.e., the fiscal year or the calendar year immediately preceding the bonus year.

SCHIP is the State Children's Health Insurance Program as described in title XXI of the Act.

Separate State Program (SSP) means a program operated outside of TANF in which the expenditure of State funds may count for TANF maintenance-of-effort (MOE) purposes.

SSP-MOE Data Report is the report containing disaggregated and aggregated data required to be filed on SSP-MOE recipients in separate State programs as specified in § 265.3(d) of this chapter.

State means each of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

TANF means The Temporary Assistance for Needy Families Program.

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

§ 270.3 What is the annual maximum amount we will award and the maximum amount that a State can receive each year?

(a) Except as provided in § 270.9, we will award $200 million in bonus funds annually, subject to Congressional authorization and the availability of the appropriation.

(b) The amount payable to a State in a bonus year may not exceed five percent of a State's family assistance grant.

§ 270.4 On what measures will we base the bonus awards?

(a) *Performance measures: general.* In FY 2002 and beyond, we will base the high performance bonus awards on: four work measures; five measures that support work and self-sufficiency related to participation by low-income working families in the Food Stamp Program, participation of former TANF recipients in the Medicaid and SCHIP programs, and receipt of child care; and one measure on family formation and stability.

(b) *Work measures.* (1) Beginning in FY 2002, we will measure State performance on the following work measures:

(i) Job entry rate;

(ii) Success in the work force rate;

(iii) Increase in the job entry rate; and

(iv) Increase in success in the work force rate.

(2) For any given year, we will score and rank competing States and award bonuses to the ten States with the highest scores in each work measure.

(c) *Measures of participation by low-income working households in the Food Stamp Program*—(1) *Food Stamp absolute measure.* (i) Beginning in FY 2002, we will measure the number of low-income working households with children (*i.e.*, households with children under age 18 which have an income less than 130 percent of poverty and earnings equal to at least half-time, full-year minimum wage) receiving Food Stamps as a percentage of the number of low-income working households with children (as defined in this paragraph) in the State.

(ii) We will rank all States that choose to compete on this measure and will award bonuses to the three States with the highest scores. We will calculate the percentage rate for this measure to two decimal points. If two or more States have the same percentage rate for the measure, we will calculate the rates for these States to as many decimal points as necessary to eliminate the tie.

(2) *Food Stamp improvement measure.* (i) Beginning in FY 2002, we will measure the improvement in the number of low-income working households with children (*i.e.*, households with children under age 18 which have an income less than 130 percent of poverty and earnings equal to at least half-time, full-year Federal minimum wage) receiving Food Stamps as a percentage of the number of low-income working households with children (as defined in this subparagraph) in the State.

(ii) For any given year, we will compare a State's performance on this measure to its performance in the previous year, beginning with a comparison of calendar (CY) 2000 to CY 2001, based on Census Bureau decennial and annual demographic program data.

(iii) We will rank all States that choose to compete on this measure and will award bonuses to the seven States with the greatest percentage point improvement in this measure. We will calculate the percentage rate for this measure to two decimal points. If two or more States have the same percentage rate for this measure, we will calculate the rates for these States to as many decimal points as necessary to eliminate the tie.

(d) Measures of participation by low-income families in the Medicaid/SCHIP Programs. (1) *Medicaid/SCHIP absolute measure.* (i) Beginning in FY 2002, we will measure the number of individuals receiving TANF benefits who are also enrolled in Medicaid or SCHIP, who leave TANF in a fiscal year and are enrolled in Medicaid or SCHIP in the fourth month after leaving TANF assistance, and who are not receiving TANF assistance in the fourth month as a percentage of individuals who left TANF in the fiscal year and are not receiving TANF assistance in the fourth month after leaving.

(ii) We will rank the performance of each State that chooses to compete on this absolute measure and award bonuses to the three States with the highest scores.

(iii) We will calculate the percentage rate for this measure to two decimal points. If two or more States have the same percentage rate for this measure, we will calculate the rates for these

States to as many decimal points as necessary to eliminate the tie.

(2) *Medicaid/SCHIP improvement measure.* (i) Beginning in FY 2002, we will measure the improvement in the number of individuals receiving TANF benefits who are also enrolled in Medicaid or SCHIP, who leave TANF in a fiscal year and are enrolled in Medicaid or SCHIP in the fourth month after leaving TANF assistance, and who are not receiving TANF assistance in the fourth month as a percentage of individuals who left TANF in the fiscal year and are not receiving TANF assistance in the fourth month after leaving.

(ii) For any given year, we will compare a State's performance on this improvement measure to its performance in the previous year, beginning with a comparison of FY 2000 to FY 2001, based on a quarterly submission by the State as determined by matching individuals (adults and children) who have left TANF assistance and who are not receiving TANF assistance in the fourth month with Medicaid or SCHIP enrollment data.

(iii) We will rank the performance of all States that choose to compete on this improvement measure and will award bonuses to the seven States with the greatest percentage point improvement in this measure.

(iv) We will calculate the percentage rate for the measure to two decimal points. If two or more States have the same percentage rate for this measure, we will calculate the rates for these States to as many decimal points as necessary to eliminate the tie.

(e) *Child care subsidy measure.* (1) Beginning in FY 2002, we will measure State performance based upon a composite ranking of:

(i) The accessibility of services based on the percentage of children in the State who meet the maximum allowable Federal eligibility requirements for the Child Care and Development Fund (CCDF) who are served by the State during the performance year, and who are included in the data reported on the ACF–800 and ACF–801 for the same fiscal year; and

(ii) The affordability of CCDF services based on a comparison of the reported assessed family co-payment to reported family income and a comparison of the number of eligible children under the State's defined income limits to the number of eligible children under the federal eligibility limits.

(2) Beginning in FY 2003, we will measure State performance based upon a composite ranking of:

(i) The two components described in paragraph (e)(1) of this section; and

(ii) The quality of CCDF services based on a comparison of reimbursement rates during the performance year to the market rates, determined in accordance with 45 CFR 98.43(b)(2), applicable to that year.

(3) For the affordability component in paragraph (e)(1)(ii) of this section, we will compare family income to the assessed State family co-payment as reported on the ACF–801 across four income ranges. These income ranges refer to percentages of the Federal Poverty Guidelines for a family of three persons. The income ranges are as follows:

(i) Income below the poverty level;

(ii) Income at least 100 percent and below 125 percent of poverty;

(iii) Income at least 125 percent and below 150 percent of poverty; and

(iv) Income at least 150 percent and below 175 percent of poverty.

(4)(i) For the affordability component, we will calculate, for each income range, the average of the ratios of family co-payment to family income for each family served; and

(ii) We will calculate a ratio of the number of children eligible under the State's defined income limits compared to the number of children eligible under the Federal eligibility limits in the CCDF, i.e., 85 percent of the State's median income.

(iii) We will rank each State based on each of the four averages calculated in paragraph (e)(4)(i) of this section and the ratio calculated in paragraph (e)(4)(ii) of this section and combine the ranks to obtain the State's score on this component.

(5) For the quality component specified in paragraph (e)(2)(ii) of this section, in FY 2003 and beyond, we will compare the actual rates paid by the State as reported on the ACF–801 (not the published maximum rates) to the

market rates applicable to the performance year, i.e., FY 2002. Each State competing on this measure must submit the following data as a part of its market rate survey:

(i) Age-specific rates for children 0–13 years of age reported by the child care centers and family day care homes responding to the State's market rate survey; and

(ii) The provider's county or, if the State uses multi-county regions to measure market rates or set maximum payment rates, the administrative region.

(6) For the quality component, we will compute the percentile of the market represented by the amount paid for each child as reported on the ACF–801 by comparing the actual payment for each child to the array of reported market rates for children of the same age in the relevant county or administrative region. (We will compare payments for children in center-based care to reported center care provider rates. We will compare payments for children in non-center-based care, i.e., family day care and unlicensed child care, to reported family child care provider rates.)

(i) We will take the percentile that results from the per-child comparison of the actual payment to the reported market rates and compute separate State-wide averages for center-based and non-center-based care; and

(ii) We will rank the State according to the two State-wide averages and combine the ranks to obtain the State's score on this component.

(7) For any given year, we will rank the States that choose to compete on the child care measure on each component of the overall measure and award bonuses to the ten States with the highest composite rankings.

(8) We will calculate each component score for this measure to two decimal points. If two or more States have the same score for a component, we will calculate the scores for these States to as many decimal points as necessary to eliminate the tie.

(9)(i) The rank of the measure for the FY 2002 bonus year will be a composite weighted score of the two components at paragraph (e)(1) of this section, with the component at paragraph (e)(1)(i) of this section having a weight of 6 and the component at paragraph (e)(1)(ii) of this section having a weight of 4.

(ii) The rank of the measure for the bonus beginning in FY 2003 will be a composite weighted score of the three components at paragraph (e)(2) of this section, with the component at paragraph (e)(1)(i) of this section having a weight of 5, the component at paragraph (e)(1)(ii) of this section having a weight of 3, and the component at paragraph (e)(2)(ii) of this section having a weight of 2.

(10) We will award bonuses only to the top ten qualifying States that have fully obligated their CCDF Matching Funds for the fiscal year corresponding to the performance year and fully expended their CCDF Matching Funds for the fiscal year preceding the performance year.

(f) *Family formation and stability measure.* (1) Beginning in FY 2002 and beyond, we will measure the increase in the percent of children in each State who reside in married couple families, beginning with a comparison of CY 2000 and CY 2001 data from the Census Bureau. For any given subsequent year we will compare a State's performance on this measure to its performance in the previous year.

(2) We will rank the performance of those States that choose to compete on this measure and will award bonuses to the ten States with the greatest percentage point improvement in this measure.

(3) We will calculate the percentage rate for the measure to two decimal points. If two or more States have the same percentage rate for this measure, we will calculate the rates for these States to as many decimal points as necessary to eliminate the tie.

(g) *Option to compete.* Each State has the option to compete on one, any number of, or none of the measures specified in this section.

[65 FR 52851, Aug. 30, 2000, as amended at 65 FR 75634, Dec. 4, 2000; 66 FR 23859, May 10, 2001]

EFFECTIVE DATE NOTE: At 66 FR 23859, May 10, 2001, in §270.4, paragraph (e)(2)(ii) was revised. The amendment contains information collection and recordkeeping requirements and will not become effective until approval

has been given by the Office of Management and Budget.

§ 270.5 What factors will we use to determine a State's score on the work measures?

(a) *Definitions.* The work measures are defined as follows:

(1) The *Job Entry* Rate means the unduplicated number of adult recipients who entered employment for the first time in the performance year (job entries) as a percentage of the total unduplicated number of adult recipients unemployed at some point in the performance year.

(2) The *Success in the Work Force Rate* is composed of two equally weighted sub-measures defined as follows:

(i) The *Job Retention Rate* means the performance year sum of the unduplicated number of employed adult recipients in each quarter one through four who were also employed in the first and second subsequent quarters, as a percentage of the sum of the unduplicated number of employed adult recipients in each quarter. (At some point, the adult might become a former recipient.); and

(ii) The *Earnings Gain Rate* means the performance year sum of the gain in earnings between the initial and second subsequent quarter in each of quarters one through four for adult recipients employed in both these quarters as a percentage of the sum of their initial earnings in each of quarters one through four. (At some point, the adult might become a former recipient.)

(3) The *Increase in the Job Entry Rate* means the positive percentage point difference between the job entry rate for the performance year and the job entry rate for the comparison year; and

(4) The Increase in Success in the Work Force Rate means the positive percentage point difference on at least one sub-measure between the success in the work force rate for the performance year and the success in the work force rate for the comparison year. It is composed of two equally weighted sub-measures defined as follows:

(i) The *Increase in the Job Retention Rate* means the percentage point difference between the job retention rate for the performance year and the job retention rate for the comparison year; and

(ii) The *Increase in the Earning Gain Rate* means the percentage point difference between the earnings gain rate for the performance year and the earnings gain rate for the comparison year.

(b) *Ranking of States.* (1) We will measure State performance in the work measures over the course of an entire fiscal year both for the performance year and the comparison year, if applicable.

(2) We will rank the competing States on the work measures for which they:

(i) Indicate they wish to compete; and

(ii) Submit the data specified in § 270.6 within the time frames specified in § 270.11.

(3) We will rank the States on absolute performance in each of the work measures in paragraphs (a)(1) and (a)(2) of this section. For each of the work measures in paragraphs (a)(3) and (a)(4) of this section, we will rank States based on the percentage point change in their improvement rate in the performance year compared to the comparison year. The rank of the performance in paragraphs (a)(2) and (a)(4) of this section will be a composite score of the rank of the job retention and the earnings gain measures.

(4) We will calculate the percentage rate for each work measure to two decimal points. If two or more States have the same absolute or improvement rate for a specific work measure, we will calculate the rates for these States to as many decimal points as necessary to eliminate the tie.

§ 270.6 What data and other information must a State report to us?

(a) *Data for work measures.* (1) If a State wishes to compete on any of the work measures specified in § 270.5(a), it must collect quarterly and report semi-annually for the performance year and, if the State chooses to compete on an improvement measure, the comparison year, the identifying information on all adult TANF recipients as specified in program guidance.

(2) Each State must submit the information in this paragraph for both adult TANF recipients and adult SSP-MOE recipients for whom the State would

report the data described in paragraph (b) of this section.

(b) *Data on SSP-MOE programs.* In order to compete on any high performance bonus measure, each State must submit the information in Sections One and Three of the SSP-MOE Data Report as specified in §265.3(d) of this chapter.

(c) *Data for the Medicaid/SCHIP measures.* If a State wishes to compete on the Medicaid/SCHIP measures in §270.4(d), it must submit the information that we and CMS will specify.

(d) *Data for the child care measure.* If a State wishes to compete on the child care measure in §270.4(e), it must report the data as required by the CCDF program and additional data on child care market rates that we will specify.

(e) *Intent to compete.* Each State must notify us on which of the measures it will compete in each bonus year.

§270.7 What data will we use to measure performance on the work support and other measures?

(a) We will use Census Bureau data to rank States on their performance on the Food Stamp measures in §270.4(c) and on the measure of family formation and stability in §270.4(f). We will also use Census Bureau data, along with other information, to rank States on the child care measure in §270.4(e). We will rank only those States that choose to compete on these measures.

(b) We will rank State performance on the Medicaid/SCHIP measures in §270.4(d) based on data submitted by those States that choose to compete on these measures, as determined by matching TANF individuals who were enrolled in Medicaid/SCHIP and are no longer receiving TANF assistance with Medicaid/SCHIP enrollment data.

(c) We will rank State performance on the child care measure based on data submitted by those States that choose to compete on this measure. We will use data reported on Forms ACF 800, ACF 801, ACF 696 and other necessary data we will specify.

§270.8 How will we allocate the bonus award funds?

(a) In FY 2002 and beyond, we will allocate and award $140 million to the ten States with the highest scores for each work measure as follows, subject to reallocation as specified in §270.9:

(1) Job Entry Rate—$56 million

(2) Success in the Work Force—$35 million

(3) Increase in Job Entry Rate—$28 million

(4) Increase in Success in the Work Force—$21 million;

(b) In FY 2002 and beyond, we will allocate and award $20 million to the ten States with the highest scores on the Food Stamp measures and $20 million to the ten States with the highest scores on the Medicaid/SCHIP measures, subject to reallocation as specified in §270.9. For these measures, we will:

(1) Award $6 million to the three States with the highest scores on the Food Stamp absolute measure;

(2) Award $6 million to the three States with the highest scores on the Medicaid/SCHIP absolute measure;

(3) Award $14 million to the seven States with the highest scores on the Food Stamp improvement measure; and

(4) Award $14 million to the seven States with the highest scores on the Medicaid/SCHIP improvement measure.

(c) In FY 2002 and beyond, we will allocate and award $10 million to the ten States with the highest scores on the child care subsidy measure and $10 million to the ten States with the highest scores on the family formation and stability improvement measure.

(d) We will distribute the bonus dollars for each measure based on each State's percentage of the total amount of the State family assistance grants of the States that will receive a bonus.

§270.9 How will we redistribute funds if that becomes necessary?

(a) If we cannot distribute the funds as specified in §270.8, we will reallocate any undistributed funds among the measures listed in §270.4.

(b) If we still cannot distribute funds within the bonus year, they will remain available for distribution in the next bonus year, to the extent authorized by law.

§ 270.10 How will we annually review the award process?

(a) *Annual determination.* Annually, as needed, we will review the measures, data sources, and funding allocations specified in this part to determine if modifications, adjustments, or technical changes are necessary. We will add new measures or make changes in the funding allocations for the various measures only through regulations.

(b) *Criteria.* We will determine if any modifications, adjustments, or technical changes need to be made based on:

(1) Our experience in awarding high performance bonuses in previous years; and

(2) The availability of national, State-reliable, and objective data.

(c) *Consultation.* We will consult with the National Governors' Association, the American Public Human Services Association, and other interested parties before we make our final decisions on any modification, adjustment, or technical changes for the bonus awards. We will notify States and other interested parties of our decisions through annual program guidance. We will also post this information on the Internet.

§ 270.11 When must the States report the data and other information in order to compete for bonus awards?

(a) *All measures.* Each State must submit a list of the measures on which it is competing by February 28 of each bonus year.

(b) *Work measures.* Each State must collect quarterly and submit semi-annually during the bonus year the data specified in § 270.6(a) as follows:

(1) The data for the first and second quarters of the performance year and, if a State chooses to compete on an improvement measure, the first and second quarters of the comparison year, must be submitted by the dates we will specify in program guidance.

(2) The data for the third and fourth quarters of the performance year and, if a State chooses to compete on an improvement measure, the third and fourth quarters of the comparison year, must be submitted by the dates we will specify in program guidance.

(c) *SSP-MOE reporting.* Each State must collect quarterly its SSP-MOE Data Report as specified in § 270.6(b) and submit it:

(1) At the same time as it submits its quarterly TANF Data Report; or

(2) At the time it seeks to be considered for a high performance bonus as long as it submits the required data for the full period for which this determination will be made.

(d) *Medicaid/SCHIP measures.* Each State must submit the data required to compete on the Medicaid/SCHIP measures by the dates and in a manner that we and CMS will specify.

(e) *Child care subsidy measure.* Each State must submit the data required to compete on the child care measure by the date(s) we will specify.

§ 270.12 Must States file the data electronically?

Each State must submit the data required to compete for the high performance bonus work measures and the Medicaid/SCHIP measures electronically in a manner that we and CMS will specify.

§ 270.13 What do States need to know about the use of bonus funds?

(a) A State must use bonus award funds to carry out the purposes of the TANF block grant as specified in section 401 (Purpose) and section 404 (Use of Grants) of the Act.

(b) As applicable, these funds are subject to the requirements in and limitations of sections 404 and 408 of the Act and § 263.11 of this chapter.

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

(d) States must report quarterly on the use of the bonus funds.

PART 282 [RESERVED]

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

Sec.

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

AUTHORITY: 42 U.S.C. 603.

SOURCE: 64 FR 18493, Apr. 14, 1999, unless otherwise noted.

§ 283.1 What does this part cover?

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

§ 283.2 What definitions apply to this part?

The following definitions apply to this part:

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

Act means the Social Security Act.

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

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

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

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

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

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

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

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

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

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

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

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

Health and Human Services, and the Administration for Children and Families.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) We will base eligibility determinations on final vital statistics data provided by NCHS showing the number

of out-of-wedlock live births and the number of total live births among women living in each State and a factor provided by NCHS to adjust for changes in data reporting for those States that have changed their methodology for collecting data on out-of-wedlock births during the bonus period.

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

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

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

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

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

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

(2) If we identify more than five States due to a tie in the decrease, we will recalculate the ratio and the decrease in the ratio to as many decimal places as necessary to eliminate the tie. We will identify no more than five States.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 283.8 What will be the amount of the bonus?

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

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

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

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

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

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

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

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

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

(c) For Puerto Rico, Guam, the Virgin Islands, and American Samoa, the

bonus award funds are not subject to the mandatory ceilings on funding established in section 1108(c)(4) of the Act.

PART 284—METHODOLOGY FOR DETERMINING WHETHER AN INCREASE IN A STATE OR TERRITORY'S CHILD POVERTY RATE IS THE RESULT OF THE TANF PROGRAM

Sec.

284.10 What does this part cover?
284.11 What definitions apply to this part?
284.15 Who must submit information to ACF to carry out the requirements of this part?
284.20 What information will we use to determine the child poverty rate in each State?
284.21 What will we do if the State's child poverty rate increased five percent or more over the two-year period?
284.30 What information must the State include in its assessment of the impact of the TANF program(s) in the State on the increase in child poverty?
284.35 What action will we take in response to the State's assessment and other information?
284.40 When is a corrective action plan due?
284.45 What are the contents and duration of a corrective action plan?
284.50 What information will we use to determine the child poverty rate in each Territory?

AUTHORITY: 42 U.S.C. 613(i)

SOURCE: 65 FR 39248, June 23, 2000, unless otherwise noted.

§ 284.10 What does this part cover?

(a) This part describes the methodology for determining the child poverty rates in the States and the Territories, as required by section 413(i) of the Social Security Act, including determining whether the child poverty rate increased by five percent or more as a result of the TANF program(s) in the State or Territory. It also describes the content and duration of the corrective action plan.

(b) The requirements of this part do not apply to any Territory that has never operated a TANF program.

§ 284.11 What definitions apply to this part?

The following definitions apply to this part:

ACF means the Administration for Children and Families.

Act means the Social Security Act, unless otherwise specified.

Census Bureau methodology means the various methods developed by the Census Bureau for estimating the number and percentage of children in poverty in each State. These methods may include national estimates based on the Current Population Survey; the Small Area Income and Poverty Estimates; the annual demographic programs, including the American Community Survey; or any other programs or methods used by the Census Bureau to estimate poverty. ''Children in poverty'' means children that live in families with incomes below 100 percent of the Census Bureau's poverty threshold.

Child poverty rate means the percentage of all children in a State or Territory which live in families with incomes below 100 percent of the Census Bureau's poverty threshold.

Date of enactment means calendar year 1996.

MOE means maintenance-of-effort. This is a provision in section 409(a)(7) of the Social Security Act that requires States to maintain a certain level of spending based on historical (*i.e.,* FY 1994) expenditure levels.

SAIPE means the Small Area Income and Poverty Estimates, a methodology developed by the Census Bureau to obtain more accurate estimates of poverty and income (including the number and percentage of children in poverty) at the State and county level between decennial censuses.

SSP-MOE means a separate State program operated outside of the TANF program for which the expenditure of State funds may count for MOE purposes.

State means each of the 50 States of the United States and the District of Columbia.

TANF means the Temporary Assistance for Needy Families program under sections 401 through 419 of the Social Security Act, as enacted by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, sections 101–116 of Pub. L. 104–193 (42 U.S.C. 601–619).

Territories means American Samoa, the Commonwealth of Puerto Rico,

Guam, and the United States Virgin Islands.

Tribal TANF program means a TANF program developed by an eligible Tribe, Tribal organization, or consortium of Tribes, and approved by us under section 412 of the Act.

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

§ 284.15 Who must submit information to ACF to carry out the requirements of this part?

(a) The Chief Executive Officer of the State, or his or her designee, is responsible for submitting to ACF the information required by this part.

(b) The State should obtain information from and work with the Indian tribe(s) (and Tribal consortia) operating a Tribal TANF program in the State in preparing and submitting the assessment, as specified in § 284.30, and the corrective action plan, as specified in § 284.45.

§ 284.20 What information will we use to determine the child poverty rate in each State?

(a) *General.* We will determine the child poverty rate in each State based on estimates from either the Census Bureau or the State, as described in this section. Each year we will use these data to determine the change in the State's child poverty rate over a two-year period, beginning with calendar years 1996 and 1997.

(b) *Estimates from the Census Bureau.* (1) Annually, we will obtain from the Census Bureau and provide to each State the estimate of the number and percentage of children in poverty in each State. The estimate will be based on the Census Bureau methodology.

(2) In 2000, and annually thereafter, we will determine for each State, at the 90-percent confidence level, the percentage change in the child poverty rate and provide this information to the State. The determination of percentage change in 2000 will cover the change between calendar years 1996 and 1997.

(c) *Estimates from the State.* (1) As an alternative to the Census Bureau estimates provided to the State under paragraph (b) of this section, the State may provide to us data on child poverty in the State derived from an independent source.

(2) If the State provides data on child poverty as described in paragraph (c)(1) of this section, it must:

(i) Provide an estimate of the child poverty rate for the same two calendar years as the Census Bureau estimates provided to the State under paragraph (b)(2) of this section;

(ii) Provide the change in the child poverty rate for the applicable two-calendar-year period at the 90-percent confidence level;

(iii) Use the official definition of poverty as used by the Census Bureau; and

(iv) Describe the methodology used to develop its independent estimates, the sources of data and methodology for collecting the data, any known problems associated with making estimates of this type, the estimate of the standard error, and the power of the sample to detect a five percent change in the child poverty rate.

(3) The State must submit its independent estimates and supporting information within 45 days of the date the State receives the Census Bureau estimates as described in paragraph (b) of this section.

(d) *Determination of the State's child poverty rate.* (1) If we determine that the State's independent estimates of the child poverty rate are more reliable than the Census Bureau estimates, we will accept these estimates.

(2) For all other States, we will determine the State's child poverty rate based on the Census Bureau's estimates.

§ 284.21 What will we do if the State's child poverty rate increased five percent or more over the two-year period?

(a) If we determine, based on § 284.20, that the State's child poverty rate did not increase by five percent or more

over the applicable two-year period at the 90-percent confidence interval, we will:

(1) Conclude that the State has satisfied the statutory requirements of section 413(i) of the Act; and

(2) Notify the State that no further information from or action by the State is required for the applicable two-calendar-year period.

(b) If we determine, based on §284.20, that the State's child poverty rate increased by five percent or more over the applicable two-year period at the 90-percent confidence level, we will notify the State that it has 90 days from the date of its receipt of our notification to submit an assessment of the impact of the TANF program(s) in the State, as specified in §284.30.

§284.30 What information must the State include in its assessment of the impact of the TANF program(s) in the State on the increase in child poverty?

(a) The State's assessment must:

(1) Cover the same two-calendar-year period as the Census Bureau estimates provided to the State in §284.20(b)(2);

(2) Directly address the issue of whether the State's child poverty rate increased as a result of the TANF program(s) in the State and include the State's analysis, explanation, and conclusions in relation to this issue; and (3) Include the information on which the assessment was based.

(b) The State's assessment may be supported by any materials the State believes to be pertinent to its analysis, explanation, and conclusions. The following are examples of such materials:

(1) The number of families receiving TANF cash assistance payments under the State TANF program and, if applicable, the Tribal TANF program(s);

(2) The total amount of State and Tribal spending on TANF cash assistance payments;

(3) The number and/or percentage of eligible families with children in the State who are participating in the Food Stamp Program or other State supportive and assistance programs;

(4) The proportion of students certified for free or reduced-price school lunches;

(5) TANF income eligibility rules that show that client participation was not limited or cash benefits did not decrease;

(6) Examples of efforts that the State and the Indian tribe(s), as appropriate, have taken using TANF and other funds to support families entering the work force;

(7) The percentage of eligible individuals in the State receiving TANF assistance;

(8) Information on TANF program participation such as the number of applications disapproved or denied, or cases sanctioned;

(9) The number of TANF cases closed as a result of time-limit restrictions or non-compliance with work requirements;

(10) The amount of total cash assistance expenditures that can be claimed for SSP-MOE purposes;

(11) Information based on Unemployment Insurance wage record data showing, for example, increases in the number of TANF participants entering jobs, retaining jobs, and increasing their earnings;

(12) The number of families receiving work subsidies, *i.e.*, payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training;

(13) Information that a State met the definition of ''needy State'' under section 403(b)(6) of the Act for an extended period of time within the applicable two-calendar-year period;

(14) Examples of past efforts that the State and the Indian tribe(s), as appropriate, have taken to mitigate or address child poverty;

(15) Any other data on the TANF program(s) in the State that would support the State's conclusions; and

(16) Information on other circumstances in the State that may have contributed to the increase in child poverty such as changes in economic or social conditions, *e.g.*, an increase in the State's unemployment rate.

§284.35 What action will we take in response to the State's assessment and other information?

(a) We will review the State's assessment along with other available information. If we determine that the increase in the child poverty rate of five percent or more is not the result of the

TANF program(s) in the State, we will notify the State that no further information from, or action by, the State is required for the applicable two-calendar-year period.

(b) Based on our review of the State's assessment and other information, if we determine that the increase in the State's child poverty rate of five percent or more is the result of the TANF program(s) in the State, we will notify the State that it must submit a corrective action plan as specified in §§284.40 and 284.45.

§284.40 When is a corrective action plan due?

Each State must submit a corrective action plan to ACF within 90 days of the date the State receives notice of our determination that, as a result of the TANF program(s) in the State, its child poverty rate increased by five percent or more for the applicable two-calendar-year period.

§284.45 What are the contents and duration of the corrective action plan?

(a) The State must include in the corrective action plan:

(1) An outline of the manner in which the State or Territory will reduce its child poverty rate;

(2) A description of the actions it will take under the plan; and

(3) Any actions to be taken under the plan by the Indian tribe(s) (or Tribal consortia) operating a TANF program in the State.

(b) The State must implement the corrective action plan until it determines and notifies us that its child poverty rate, as determined in §284.20, is less than the lowest child poverty rate on the basis of which the State was required to submit the corrective action plan. The ''lowest child poverty rate'' means the five percent threshold above the first year in the two-year comparison period.

§284.50 What information will we use to determine the child poverty rate in each Territory?

(a) Our intent is that, to the extent that reliable data are available and the procedures are appropriate, the Territories must meet the requirements in §§284.11 through 284.45 as specified for the 50 States and the District of Columbia.

(b) When reliable Census Bureau data are available for the Territories, we will:

(1) Notify the Territories through guidance of our intent to use these data in the implementation of this part; and

(2) Begin the process by providing to each Territory the number and percent of children in poverty in each jurisdiction, as specified in §284.20(b).

PART 285 [RESERVED]

PART 286—TRIBAL TANF PROVISIONS

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Subpart A—General Tribal TANF Provisions

§ 286.1 What does this part cover?

Section 412 of the Social Security Act allows Indian tribes to apply to operate a Tribal Family Assistance program. This part implements section 412. It specifies:

(a) who can apply to operate a Tribal Family Assistance program;

(b) the requirements for the submission and contents of a Tribal Family Assistance Plan;

(c) the determination of the amount of a Tribal Family Assistance Grant; and

(d) other program requirements and procedures.

§ 286.5 What definitions apply to this part?

The following definitions apply under this part:

ACF means the Administration for Children and Families.

Act means the Social Security Act, unless otherwise specified.

Administrative cost means costs necessary for the proper administration of the TANF program.

(1) It excludes the direct costs of providing program services.

(i) For example, it excludes costs of providing diversion benefits and services, providing program information to clients, screening and assessments, development of employability plans, work activities, post-employment services, work supports, information on and referral to Medicaid, Child Health Insurance Program (CHIP), Food Stamp and Native Employment Works (NEW) programs and case management.

(ii) It excludes the salaries and benefit costs for staff providing program services and the direct administrative costs associated with providing the services, such as the costs for supplies, equipment, travel, postage, utilities, rental of office space and maintenance of office space, and

(iii) It excludes information technology and computerization needed for tracking and monitoring.

(2) It includes the costs for general administration and coordination of this program, including contract costs for these functions and indirect (or overhead) costs. Some examples of administrative costs include, but are not limited to:

(i) Salaries and benefits and all other direct costs not associated with providing program services to individuals, including staff performing administrative and coordination functions;

(ii) Preparation of program plans, budgets, and schedules;

(iii) Monitoring of programs and projects;

(iv) Fraud and abuse units;

(v) Procurement activities;

(vi) Public relations;

(vii) Services related to accounting, litigation, audits, management of property, payroll, and personnel;

(viii) Costs for the goods and services required for administration of the program such as the costs for supplies, equipment, travel, postage, utilities, and rental of office space and maintenance of office space, provided that such costs are not excluded as a direct administrative cost for providing program services under paragraph (1) of this definition;

(ix) Travel costs incurred for official business and not excluded as a direct administrative cost for providing program services under paragraph (1) of this definition;

(x) Management information systems not related to the tracking and monitoring of TANF requirements (*e.g.*, for a personnel and payroll system for Tribal staff); and

(xi) Preparing reports and other documents related to program requirements.

Adult means an individual who is not a ''minor child,'' as defined below.

Alaska Tribal TANF entity means the twelve Alaska Native regional nonprofit corporations in the State of Alaska and the Metlakatla Indian Community of the Annette Islands Reserve.

Assistant Secretary means the Assistant Secretary for Children and Families, Department of Health and Human Services.

Cash assistance, when provided to participants in the Welfare-to-Work program, has the meaning specified at § 286.130.

Comparability means similarity between State and Tribal TANF programs in the State of Alaska. Comparability, when defined related to services provided, does not necessarily mean identical or equal services.

Consortium means a group of Tribes working together for the same identified purpose and receiving combined TANF funding for that purpose.

The Department means the Department of Health and Human Services.

Duplicative Assistance means the receipt of services/ assistance from two or more TANF programs for the same purpose.

Eligible families means all families eligible for TANF funded assistance under the Tribal TANF program funded under section 412(a), including:

(1) All U.S. citizens who meet the Tribe's criteria for Tribal TANF assistance;

(2) All qualified aliens, who meet the Tribe's criteria for Tribal TANF assistance, who entered the U.S. before August 22, 1996;

(3) All qualified aliens, who meet the Tribe's criteria for Tribal TANF assistance, who entered the U.S. on or after August 22, 1996, who have been in the U.S. for at least 5 years beginning on the date of entry into the U.S. with a qualified alien status, are eligible beginning 5 years after the date of entry into the U.S. There are exceptions to this 5-year bar for qualified aliens who enter on or after August 22, 1996, and the Tribal TANF program must cover these excepted individuals:

(a) An alien who is admitted to the U.S. as a refugee under section 207 of the Immigration and Nationality Act;

(b) An alien who is granted asylum under section 208 of such Act;

(c) An alien whose deportation is being withheld under section 243(h) of such Act; and

(d) An alien who is lawfully residing in any State and is a veteran with an honorable discharge, is on active duty in the Armed Forces of the U.S., or is the spouse or unmarried dependent child of such an individual;

(4) All permanent resident aliens who are members of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act;

(5) All permanent resident aliens who have 40 qualifying quarters of coverage as defined by Title II of the Act.

Eligible Indian tribe means any Tribe or intertribal consortium that meets the definition of Indian tribe in this section and is eligible to submit a Tribal TANF plan to ACF.

Family Violence Option (or FVO) means the provision at section 402(a)(7) of the Act made available to Tribes under which a Tribe may certify in its Tribal TANF plan that it has elected the option to implement comprehensive strategies for identifying and serving victims of domestic violence.

Fiscal year means the 12-month period beginning on October 1 of the preceding calendar year and ending on September 30.

FY means fiscal year.

Good cause domestic violence waiver means a waiver of one or more program requirements granted by a Tribe to a victim of domestic violence under the FVO, as described in § 286.140(a)(3).

Grant period means the period of time that is specified in the Tribal TANF grant award document.

Indian, Indian tribe and Tribal Organization have the same meaning given such terms by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), except that the term ''Indian tribe'' means, with respect to the State of Alaska, only the Metlakatla Indian Community of the Annette Islands Reserve and the following Alaska Native regional nonprofit corporations:

(1) Arctic Slope Native Association;

(2) Kawerak, Inc.;

(3) Maniilaq Association;

(4) Association of Village Council Presidents;

(5) Tanana Chiefs Council;

(6) Cook Inlet Tribal Council;

(7) Bristol Bay Native Association;

(8) Aleutian and Pribilof Island Association;

(9) Chugachmuit;

(10) Tlingit Haida Central Council;

(11) Kodiak Area Native Association; and

(12) Copper River Native Association.

Indian country has the meaning given the term in 18 U.S.C. 1151.

Minor child means an individual who:

(1) Has not attained 18 years of age; or

(2) Has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

Minor Head-of-Household means an individual under age 18, or 19 and a full-time student in a secondary school, who is the custodial parent of a minor child.

PRWORA means the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Qualified Aliens has the same meaning given the term in 8 U.S.C. 1641 except that it also includes members of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act, who are lawfully admitted under 8 U.S.C. 1359.

Retrocession means the process by which a Tribe voluntarily terminates and cedes back (or returns) a Tribal TANF program to the State which previously served the population covered by the Tribal TANF plan. Retrocession includes the voluntary relinquishment of the authority to obligate previously awarded grant funds before that authority would otherwise expire.

Secretary means the Secretary of the Department of Health and Human Services.

Scientifically acceptable sampling method means a probability sampling method in which every sampling unit has a known, non-zero chance to be included in the sample and the sample size requirements are met.

SFAG or State Family Assistance Grant means the amount of the block grant funded under section 403(a) of the Act for each eligible State.

SFAP or State Family Assistance Plan is the plan for implementation of a State TANF program under PRWORA.

State means, except as otherwise specifically provided, the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

TANF means the Temporary Assistance for Needy Families Program, which is authorized under title IV-A of the Social Security Act.

TANF funds mean funds authorized under section 412(a) of the Act.

TFAG or Tribal Family Assistance Grant means the amount of the block grant funded under section 412(a) of the Act for each eligible Tribe.

TFAP or Tribal Family Assistance Plan means the plan for implementation of the Tribal TANF program under section 412(b) of the Act.

Title IV-A refers to the title of the Social Security Act that now includes TANF, but previously included AFDC and EA. For the purpose of the TANF program regulations, this term does not include child care programs authorized and funded under section 418 of the Act, or their predecessors, unless we specify otherwise.

Title IV-F refers to the title of the Social Security Act that was eliminated with the creation of TANF and previously included the Job Opportunities and Basic Skills Training Program (JOBS).

Tribal TANF expenditures means expenditures of TANF funds, within the Tribal TANF program.

Tribal TANF program means a Tribal program subject to the requirements of section 412 of the Act that is funded by TANF funds on behalf of eligible families.

Victim of domestic violence means an individual who is battered or subject to extreme cruelty under the definition at section 408(a)(7)(C)(iii) of the Act.

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

Welfare-related services means all activities, assistance, and services funded under Tribal TANF provided to an eligible family. See definition of ''Assistance'' in § 286.10.

Welfare-to-Work means the program for funding work activities at section 412(a)(2)(C) of the Act.

WtW means Welfare-to-Work.

WtW cash assistance, when provided to participants in the Welfare-to-Work program, has the meaning specified at § 286.130.

§ 286.10 What does the term "assistance" mean?

(a) The term ''assistance'' includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (*i.e.,* for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).

(1) It includes such benefits even when they are:

(i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and

(ii) Conditioned on participation in work experience or community service or any other work activity.

(2) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and child care provided to families who are not employed.

(b) It excludes:

(1) Nonrecurring, short-term benefits that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (*i.e.,* payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, information on and referral to Medicaid, Child Health Insurance Program (CHIP), Food Stamp and Native Employment Works (NEW) programs, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of the Act, to an individual who is not otherwise receiving assistance.

(c) The definition of the term assistance specified in paragraphs (a) and (b) of this section does not preclude a Tribe from providing other types of benefits and services consistent with the purposes of the TANF program.

§ 286.15 Who is eligible to operate a Tribal TANF program?

(a) An Indian tribe that meets the definition of Indian tribe given in § 286.5 is eligible to apply to operate a Tribal Family Assistance Program.

(b) In addition, an intertribal consortium of eligible Indian tribes may develop and submit a single TFAP.

Subpart B—Tribal TANF Funding

§ 286.20 How is the amount of a Tribal Family Assistance Grant (TFAG) determined?

(a) We will request and use data submitted by a State to determine the amount of a TFAG. The State data that we will request and use are the total Federal payments attributable to State expenditures, including administrative costs (which includes systems costs) for fiscal year 1994 under the former Aid to Families With Dependent Children, Emergency Assistance and Job Opportunities and Basic Skills Training programs, for all Indian families residing in the geographic service area or areas identified in the Tribe's letter of intent or Tribal Family Assistance Plan.

(1) A Tribe must indicate its definition of ''Indian family'' in its Tribal Family Assistance Plan. Each Tribe may define ''Indian family'' according to its own criteria.

(2) When we request the necessary data from the State, the State will have 30 days from the date of the request to submit the data.

(i) If we do not receive the data requested from the State at the end of the 30-day period, we will so notify the Tribe.

(ii) In cases where data is not received from the State, the Tribe will

have 45 days from the date of the notification in which to submit relevant information. Relevant information may include, but is not limited to, Census Bureau data, data from the Bureau of Indian Affairs, data from other Federal programs, and Tribal records. In such a case, we will use the data submitted by the Tribe to assist us in determining the amount of the TFAG. Where there are inconsistencies in the data, follow-up discussions with the Tribe and the State will ensue.

(b) We will share the data submitted by the State under paragraph (a)(2)(i) of this section with the Tribe. The Tribe must submit to the Secretary a notice as to the Tribe's agreement or disagreement with such data no later than 45 days after the date of our notice transmitting the data from the State. During this 45-day period we will help resolve any questions the Tribe may have about the State-submitted data.

(c) We will notify each Tribe that has submitted a TFAP of the amount of the TFAG. At this time, we will also notify the State of the amount of the reduction in its SFAG.

(d) We will prorate TFAGs that are initially effective on a date other than October 1 of any given Federal fiscal year, based on the number of days remaining in the Federal fiscal year.

§ 286.25 How will we resolve disagreements over the State-submitted data used to determine the amount of a Tribal Family Assistance Grant?

(a) If a Tribe disagrees with the data submitted by a State, the Tribe may submit additional relevant information to the Secretary. Relevant information may include, but is not limited to, Census Bureau data, data from the Bureau of Indian Affairs, data from other Federal programs, and Tribal records.

(1) The Tribe must submit any relevant information within 45 days from the date it notifies the Secretary of its disagreement with State submitted data under § 286.20(b).

(2) We will review the additional relevant information submitted by the Tribe, together with the State-submitted data, in order to make a determination as to the amount of the TFAG. We will determine the amount of the TFAG at the earliest possible date after consideration of all relevant data.

§ 286.30 What is the process for retrocession of a Tribal Family Assistance Grant?

(a) A Tribe that wishes to terminate its TFAG prior to the end of its three-year plan must—

(1) Notify the Secretary and the State in writing of the reason(s) for termination no later than 120 days prior to the effective date of the termination, or

(2) Notify the Secretary in writing of the reason(s) for termination no later than 30 days prior to the effective date of the termination, where such effective data is mutually agreed upon by the Tribe and the affected State(s).

(b) The effective date of the termination must coincide with the last day of a calendar month.

(c) For a Tribe that retrocedes, the provisions of 45 CFR part 92 will apply with regard to closeout of the grant. All unobligated funds will be returned by the Tribe to the Federal government.

(d) The SFAG will be increased by the amount of the TFAG available for the subsequent quarterly installment.

(e) A Tribe's application to implement a TANF program subsequent to its retrocession will be treated as any other application to operate a TANF program, except that we may take into account when considering approval—

(1) Whether the circumstances that the Tribe identified for termination of its TANF program remain applicable and the extent to which—

(i) The Tribe has control over such circumstances, and

(ii) Such circumstances are reasonably related to program funding accountability, and

(2) Whether any outstanding funds and penalty amounts are repaid.

(f) A Tribe which retrocedes a Tribal TANF program is responsible for:

(1) Complying with the data collection and reporting requirements and all other program requirements for the period before the retrocession is effective;

(2) Any applicable penalties (see subpart D) for actions occurring prior to

retrocession; the provisions of 45 CFR Part 92 and OMB Circulars A–87 and A–133;

(3) compliance with other Federal statutes and regulations applicable to the TANF program; and

(4) any penalties resulting from audits covering the period before the effective date of retrocession.

§ 286.35 What are proper uses of Tribal Family Assistance Grant funds?

(a) Tribes may use TFAGs for expenditures that:

(1) Are reasonably calculated to accomplish the purposes of TANF, including, but not limited to, the provision to low income households with assistance in meeting home heating and cooling costs; assistance in economic development and job creation activities, the provision of supportive services to assist needy families to prepare for, obtain, and retain employment; the provision of supportive services to prevent of out-of-wedlock pregnancies, and assistance in keeping families together, or

(2) Were an authorized use of funds under the State plans for Parts A or F of title IV of the Social Security Act, as such parts were in effect on September 30, 1995.

§ 286.40 May a Tribe use the Tribal Family Assistance Grant to fund IDAs ?

(a) If the Tribe elects to operate an IDA program, it may use Federal TANF funds or WtW funds to fund IDAs for individuals who are eligible for TANF assistance and may exercise flexibility within the limits of Federal regulations and the statute.

(b) The following restrictions apply to IDA funds:

(1) A recipient may deposit only earned income into an IDA.

(2) A recipient's contributions to an IDA may be matched by, or through, a qualified entity.

(3) A recipient may withdraw funds only for the following reasons:

(i) To cover post-secondary education expenses, if the amount is paid directly to an eligible educational institution;

(ii) For the recipient to purchase a first home, if the amount is paid directly to the person to whom the amounts are due and it is a qualified acquisition cost for a qualified principal residence by a qualified first-time buyer; or

(iii) For business capitalization, if the amounts are paid directly to a business capitalization account in a federally insured financial institution and used for a qualified business capitalization expense.

(c) To prevent recipients from withdrawing funds held in an IDA improperly, Tribes may do the following:

(1) Count withdrawals as earned income in the month of withdrawal, unless already counted as income,

(2) Count withdrawals as resources in determining eligibility, or

(3) Take such other steps as the Tribe has established in its Tribal plan or written Tribal policies to deter inappropriate use.

§ 286.45 What uses of Tribal Family Assistance Grant funds are improper?

(a) A Tribe may not use Tribal Family Assistance Grant funds to provide assistance to:

(1) Families or individuals that do not otherwise meet the eligibility criteria contained in the Tribal Family Assistance Plan (TFAP); or

(2) For more than the number of months as specified in a Tribe's TFAP (unless covered by a hardship exemption); or

(3) Individuals who are not citizens of the United States or qualified aliens or who do not otherwise meet the definition of ''eligible families'' at § 286.5.

(b) Tribal Family Assistance Grant funds may not be used to contribute to or to subsidize non-TANF programs.

(c) A Tribe may not use Tribal Family Assistance Grant funds for services or activities prohibited by OMB Circular A–87.

(d) All provisions in OMB Circular A–133 and in 45 CFR part 92 are applicable to the Tribal TANF program.

(e) Tribal TANF funds may not be used for the construction or purchase of facilities or buildings.

(f) Tribes must use program income generated by the Tribal Family Assistance grant for the purposes of the TANF program and for allowable TANF services, activities and assistance.

§ 286.50 Is there a limit on the percentage of a Tribal Family Assistance Grant that can be used for administrative costs?

(a) ACF will negotiate a limitation on administrative costs with each Tribal TANF applicant individually for the first year of a program's operation based on the applicant's proposed administrative cost allocation. No Tribal TANF grantee may expend more than 35 percent of its Tribal Family Assistance Grant for administrative costs during the first year.

(b) ACF will negotiate a limitation on administrative costs with each Tribal TANF applicant individually for the second year of a program's operation based on the applicant's proposed administrative cost allocation. No Tribal TANF grantee may expend more than 30 percent of its TFAG for administrative costs during the second year.

(c) ACF will negotiate a limitation on administrative costs with each Tribal TANF applicant individually for the third and all subsequent years of a program's operation based on the applicant's proposed administrative cost allocation. As negotiated, a Tribal TANF grantee may not expend more than 25 percent of its TFAG for administrative costs during any subsequent grant period.

(1) For the purposes of determining administrative costs, Tribes with approved plans who have been operating Tribal TANF programs prior to the effective date of this regulation will be able to negotiate a reasonable adjustment in their approved administrative cost rate, not to exceed the limitations in the Final Rule delineated above.

(2) [Reserved]

(d) ACF will negotiate limitations on administrative costs based on, but not limited to, a Tribe's TANF funding level, economic conditions, and the resources available to the Tribe, the relationship of the Tribe's administrative cost allocation proposal to the overall purposes of TANF, and a demonstration of the Tribe's administrative capability.

§ 286.55 What types of costs are subject to the administrative cost limit on Tribal Family Assistance Grant funds?

(a) Activities that fall within the definition of ''administrative costs'' at § 286.5 are subject to the limit determined under § 286.50.

(b) Information technology and computerization for tracking, data entry and monitoring, including personnel and other costs associated with the automation activities needed for Tribal TANF monitoring, data entry and tracking purposes, are excluded from the administrative cost cap, even if they fall within the definition of ''administrative costs.''

(c) Designing, administering, monitoring, and controlling a sample are not inherent parts of information technology and computerization and, thus, costs associated with these tasks must be considered administrative costs.

(d) Indirect Costs negotiated by BIA, the Department's Division of Cost Allocation, or another federal agency must be considered to be part of the total administrative costs.

§ 286.60 Must Tribes obligate all Tribal Family Assistance Grant funds by the end of the fiscal year in which they are awarded?

(a) No. A Tribe may reserve amounts awarded to it, without fiscal year limitation, to provide assistance under the Tribal TANF program.

(b) A Tribe may expend funds beyond the fiscal year in which awarded only on benefits that meet the definition of assistance at § 286.10 or on the administrative costs directly associated with providing that assistance.

Subpart C—Tribal TANF Plan Content and Processing

§ 286.65 How can a Tribe apply to administer a Tribal Temporary Assistance For Needy Families (TANF) Program?

(a) Any eligible Indian tribe, Alaska Native organization, or intertribal consortium that wishes to administer a Tribal TANF program must submit a three-year TFAP to the Secretary of the Department of Health and Human

Services. The original must be submitted to the appropriate ACF Regional Office with a copy to the ACF Central Office.

(b) A Tribe currently operating a Tribal TANF program must submit to the appropriate ACF Regional Office, with a copy to the ACF Central Office, no later than 120 days prior to the end of the three-year grant period, either—

(1) A letter of intent, with a copy to the affected State or States, which specifies they do not intend to continue operating the program beyond the end of the three-year grant period; or

(2) A letter of intent, with a copy to the affected State or States, which specifies they intend to continue program operations with no changes to the geographic service area or service population; or

(3) A new three-year plan which indicates a change in either the geographic service area or service population.

(c) For Tribes choosing option (b)(2) above, a new three-year plan must be submitted to the appropriate ACF Regional Office, with a copy to the ACF Central Office, no later than 60 days before the end of the current three-year grant period.

§ 286.70 Who submits a Tribal Family Assistance Plan?

(a) A TFAP must be submitted by the chief executive officer of the Indian tribe and be accompanied by a Tribal resolution supporting the TFAP.

(b) A TFAP from a consortium must be forwarded under the signature of the chief executive officer of the consortium and be accompanied by Tribal resolutions from all participating Tribes that demonstrate each individual Tribe's support of the consortium, the delegation of decision-making authority to the consortium's governing board, and the Tribe's recognition that matters involving operation of the Tribal TANF consortium are the express responsibility of the consortium's governing board.

(c) When one of the participating Tribes in a consortium wishes to withdraw from the consortium, the Tribe needs to both notify the consortium and the Secretary of this fact.

(1) This notification must be made at least 120 days prior to the effective date of the withdrawal.

(2) The time frame in paragraph (c)(i) of this section is applicable only if the Tribe's withdrawal will cause a change to the service area or population of the consortium.

(d) When one of the participating Tribes in a consortium wishes to withdraw from the consortium in order to operate its own Tribal TANF program, the Tribe needs to submit a Tribal TANF plan that follows the requirements at § 286.75 and § 286.165.

§ 286.75 What must be included in the Tribal Family Assistance Plan?

(a) The TFAP must outline the Tribe's approach to providing welfare-related services for the three-year period covered by the plan, including:

(1) Information on the general eligibility criteria the Tribe has established, which includes a definition of ''needy family,'' including income and resource limits and the Tribe's definition of ''Tribal member family'' or ''Indian family.''

(2) A description of the assistance, services, and activities to be offered, and the means by which they will be offered. The description of the services, assistance, and activities to be provided includes whether the Tribe will provide cash assistance, and what other assistance, services, and activities will be provided.

(3) If the Tribe will not provide the same services, assistance, and activities in all parts of the service area, the TFAP must indicate any variations.

(4) If the Tribe opts to provide different services to specific populations, including teen parents and individuals who are transitioning off TANF assistance, the TFAP must indicate whether any of these services will be provided and, if so, what services will be provided.

(5) The Tribe's goals for its TANF program and the means of measuring progress towards those goals;

(6) Assurance that a 45-day public comment period on the Tribal TANF plan concluded prior to the submission of the TFAP.

(7) Assurance that the Tribe has developed a dispute resolution process to

be used when individuals or families want to challenge the Tribe's decision to deny, reduce, suspend, sanction or terminate assistance.

(8) Tribes may require cooperation with child support enforcement agencies as a condition of eligibility for TANF assistance. Good cause and other exceptions to cooperation shall be defined by the Tribal TANF program.

(b) The TFAP must identify which Tribal agency is designated by the Tribe as the lead agency for the overall administration of the Tribal TANF program along with a description of the administrative structure for supervision of the TANF program.

(c) The TFAP must indicate whether the services, assistance and activities will be provided by the Tribe itself or through grants, contracts or compacts with inter-Tribal consortia, States, or other entities.

(d) The TFAP must identify the population to be served by the Tribal TANF program.

(1) The TFAP must identify whether it will serve Tribal member families only, or whether it will serve all Indian families residing in the Tribal TANF service area.

(2) If the Tribe wishes to serve any non-Indian families (and thus include non-Indians in its service population), an agreement with the State TANF agency must be included in the TFAP. This agreement must provide that, where non-Indians are to be served by Tribal TANF, these families are subject to Tribal TANF program rules.

(e) The TFAP must include a description of the geographic area to be served by the Tribal TANF program, including a specific description of any ''near reservation'' areas, as defined at 45 CFR 20.1(r), or any areas beyond ''near reservation'' to be included in the Tribal TANF service area.

(1) In areas beyond those defined as ''near reservation'', the TFAP must demonstrate the Tribe's administrative capacity to serve such areas and the State(s)', and if applicable, other Tribe(s)' concurrence with the proposed defined boundaries.

(2) A Tribe cannot extend its service area boundaries beyond the boundaries of the State(s) in which the reservation and BIA near-reservation designations are located.

(3) For Tribes in Oklahoma, if the Tribe defines its service area as other than its ''tribal jurisdiction statistical area'' (TJSA), the Tribe must include an agreement with the other Tribe(s) reflecting agreement to the service area. TJSAs are areas delineated by the Census Bureau for each federally-recognized Tribe in Oklahoma without a reservation.

(f) The TFAP must provide that a family receiving assistance under the plan may not receive duplicative assistance from other State or Tribal TANF programs and must include a description of the means by which the Tribe will ensure duplication does not occur.

(g) The TFAP must identify the employment opportunities in and near the service area and the manner in which the Tribe will cooperate and participate in enhancing such opportunities for recipients of assistance under the plan, consistent with any applicable State standards. This should include:

(1) A description of the employment opportunities available, in both the public and private sector, within and near the Tribal service area; and

(2) A description of how the Tribe will work with public and private sector employers to enhance the opportunities available for Tribal TANF recipients.

(h) The TFAP must provide an assurance that the Tribe applies the fiscal accountability provisions of section 5(f)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c(f)(1)), relating to the submission of a single-agency audit report required by chapter 75 of title 31, United States Code.

§ 286.80 What information on minimum work participation requirements must a Tribe include in its Tribal Family Assistance Plan?

(a) To assess a Tribe's level of success in meeting its TANF work objectives, a Tribe that submits a TFAP must negotiate with the Secretary minimum work participation requirements that will apply to families that receive Tribal TANF assistance that includes

an adult or minor head of household receiving such assistance.

(b) A Tribe that submits a TFAP must include in the plan the Tribe's proposal for minimum work participation requirements, which includes the following:

(1) For each fiscal year covered by the plan, the Tribe's proposed participation rate(s) for all families, for all families and two-parent families, or for one-parent families and two-parent families;

(2) For each fiscal year covered by the plan, the Tribe's proposed minimum number of hours per week that adults and minor heads of household will be required to participate in work activities;

(i) If the Tribe elects to include reasonable transportation time to and from the site of work activities in determining the hours of work participation, it must so indicate in its TFAP along with a definition of ''reasonable'' for purposes of this subsection, along with:

(A) An explanation of how the economic conditions and/or resources available to the Tribe justify inclusion of transportation time in determining work participation hours; and

(B) An explanation of how counting reasonable transportation time is consistent with the purposes of TANF;

(3) The work activities that count towards these work requirements;

(4) Any exemptions, limitations and special rules being established in relation to work requirements; and

(5) The Tribe must provide rationale for the above, explaining how the proposed work requirements relate to and are justified based on the Tribe's needs and conditions.

(i) The rationale must address how the proposed work requirements are consistent with the purposes of TANF and with the economic conditions and resources of the Tribe.

(ii) Examples of the information that could be included to illustrate the Tribe's proposal include, but are not limited to: poverty, unemployment, jobless and job surplus rates; education levels of adults in the service area; availability of and/or accessibility to resources (educational facilities, transportation) to help families become employable and find employment; and employment opportunities on and near the service area.

§ 286.85 How will we calculate the work participation rates?

(a) Work participation rate(s) will be the percentage of families with an adult or minor head-of-household receiving TANF assistance from the Tribe who are participating in a work activity approved in the TFAP for at least the minimum number of hours approved in the TFAP.

(b) The participation rate for a fiscal year is the average of the Tribe's participation rate for each month in the fiscal year.

(c) A Tribe's participation rate for a month is expressed as the following ratio:

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

(2) The number of families that include an adult or a minor head-of-household receiving TANF assistance during the month excluding:

(i) Families that were penalized for non-compliance with the work requirements in that month as long as they have not been sanctioned for more than three months (whether or not consecutively) out of the last 12 months; and

(ii) Families with children under age one, if the Tribe chooses to exempt these families from participation requirements.

(d) If a family receives assistance for only part of a month or begins participating in activities during the month, the Tribe may count it as a month of participation if an adult or minor head-of-household in the family is participating for the minimum average number of hours in each full week that the family receives assistance or participates in that month.

(e) Two-parent families in which one of the parents is disabled are considered one-parent families for the purpose of calculating a Tribe's participation rate.

§ 286.90 How many hours per week must an adult or minor head-of-household participate in work-related activities to count in the numerator of the work participation rate?

During the month, an adult or minor head-of-household must participate in work activities for at least the minimum average number of hours per week specified in the Tribe's approved Tribal Family Assistance Plan.

§ 286.95 What, if any, are the special rules concerning counting work for two-parent families?

Parents in a two-parent family may share the number of hours required to be considered as engaged in work.

§ 286.100 What activities count towards the work participation rate?

(a) Activities that count toward a Tribe's participation rate may include, but are not limited to, the following:

(1) Unsubsidized employment;

(2) Subsidized private sector employment;

(3) Subsidized public sector employment;

(4) Work experience;

(5) On-the-job training (OJT);

(6) Job search and job readiness assistance; (see § 286.105)

(7) Community service programs;

(8) Vocational educational training; (see § 286.105)

(9) Job skills training directly related to employment;

(10) 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;

(11) 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;

(12) Providing child care services to an individual who is participating in a community service program; and

(13) Other activities that will help families achieve self-sufficiency.

(b) [Reserved]

§ 286.105 What limitations concerning vocational education, job search and job readiness assistance exist with respect to the work participation rate?

(a) Tribes are not required to limit vocational education for any one individual to a period of 12 months.

(b) There are two limitations concerning job search and job readiness:

(1) Job search and job readiness assistance only count for 6 weeks in any fiscal year.

(2) If the Tribe's unemployment rate in the Tribal TANF service area is at least 50 percent greater than the United States' total unemployment rate for that fiscal year, then an individual's participation in job search or job readiness assistance counts for up to 12 weeks in that fiscal year.

(c) If job search or job readiness is an ancillary part of another activity, then there is no limitation on counting the time spent in job search/job readiness.

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

(a) An adult or minor head-of-household taking part in a work activity outlined in § 286.100 cannot fill a vacant employment position if:

(1) Any other 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 otherwise caused an involuntary reduction in its work force in order to fill the vacancy with the TANF participant.

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

(c) This regulation does not preempt or supersede Tribal laws providing greater protection for employees from displacement.

§ 286.115 What information on time limits for the receipt of assistance must a Tribe include in its Tribal Family Assistance Plan?

(a) The TFAP must include the Tribe's proposal for:

(1) Time limits for the receipt of Tribal TANF assistance;

(2) Any exceptions to these time limits; and

(3) The percentage of the caseload to be exempted from the time limit due to hardship or if the family includes an individual who has been battered or subjected to extreme cruelty.

(b) The Tribe must also include the rationale for its proposal in the plan. The rationale must address how the proposed time limits are consistent with the purposes of TANF and with the economic conditions and resources of the Tribe.

(1) Examples of the information that could be included to illustrate the Tribe's proposal include, but are not limited to: Poverty, unemployment, jobless and job surplus rates; education levels of adults in the service area; availability of and/or accessibility to resources (educational facilities, transportation) to help families become employable and find employment; and employment opportunities on and near the service area.

(c) We may require that the Tribe submit additional information about the rationale before we approve the proposed time limits.

(d) Tribes must not count towards the time limit:

(1) Any month of receipt of assistance to a family that does not include an adult head-of-household;

(2) A family that does not include a pregnant minor head-of-household, minor parent head-of-household, or spouse of such a head-of-household; and

(3) Any month of receipt of assistance by an adult during which the adult lived in Indian country or in an Alaskan Native Village in which at least 50 percent of the adults were not employed.

(e) A Tribe must not use any of its TFAG to provide assistance (as defined in §286.10) to a family that includes an adult or minor head-of-household who has received assistance beyond the number of months (whether or not consecutive) that is negotiated with the Tribe.

§286.120 Can Tribes make exceptions to the established time limit for families?

(a) Tribes have the option to exempt families from the established time limits for:

(1) Hardship, as defined by the Tribe, or

(2) The family includes someone who has been battered or has been subject to extreme cruelty.

(b) If a Tribe elects the hardship option, the Tribe must specify in its TFAP the maximum percent of its average monthly caseload of families on assistance that will be exempt from the established time limit under paragraph (a) of this section.

(c) If the Tribe proposes to exempt more than 20 percent of the caseload under paragraph (a) of this section, the Tribe must include a rationale in the plan.

§286.125 Does the receipt of TANF benefits under a State or other Tribal TANF program count towards a Tribe's TANF time limit?

Yes, the Tribe must count prior months of TANF assistance funded with TANF block grant funds, except for any month that was exempt or disregarded by statute, regulation, or under any experimental, pilot, or demonstration project approved under section 1115 of the Act.

§286.130 Does the receipt of Welfare-to-Work (WtW) cash assistance count towards a Tribe's TANF time limit?

(a) For purposes of an individual's time limit for receipt of TANF assistance as well as the penalty provision at §286.195(a)(1), WtW cash assistance counts towards a Tribe's TANF time limit only if:

(1) Such assistance satisfies the definition at §286.10; and

(2) Is directed at ongoing basic needs.

(b) Only cash assistance provided in the form of cash payments, checks, reimbursements, electronic funds transfers, or any other form that can legally be converted to currency is subject to paragraph (a) of this section.

§ 286.135 What information on penalties against individuals must be included in a Tribal Family Assistance Plan?

(a) The TFAP must include the Tribe's proposal for penalties against individuals who refuse to engage in work activities. The Tribe's proposal must address the following:

(1) Will the Tribe impose a pro rata reduction, or more at Tribal option, or will it terminate assistance to a family?

(2) After consideration of the provision specified at § 286.150, what will be the proposed Tribal policies related to a single custodial parent, with a child under the age of 6, who refuses to engage in work activities because of a demonstrated inability to obtain needed child care?

(3) What good cause exceptions, if any, does the Tribe propose that will allow individuals to avoid penalties for failure to engage in work?

(4) What other rules governing penalties does the Tribe propose?

(5) What, if any, will be the Tribe's policies related to victims of domestic violence consistent with § 286.140?

(b) The Tribe's rationale for its proposal must also be included in the TFAP.

(1) The rationale must address how the proposed penalties against individuals are consistent with the purposes of TANF, consistent with the economic conditions and resources of the Tribe, and how they relate to the requirements of section 407(e) of the Act.

(2) Examples of the information that could be included to illustrate the Tribe's proposal include, but are not limited to; poverty, unemployment, jobless and job surplus rates; education levels of adults in the service area; availability of and/or accessibility to resources (educational facilities, transportation) to help families become employable and find employment; and employment opportunities on and near the service area.

(c) We may require a Tribe to submit additional information about the rationale before we approve the proposed penalties against individuals.

§ 286.140 What special provisions apply to victims of domestic violence?

(a) Tribes electing the Family Violence Option (FVO) must certify that they have established and are enforcing standards and procedures to:

(1) Screen and identify individuals receiving TANF assistance with a history of domestic violence, while maintaining the confidentiality of such individuals;

(2) Refer such individuals to counseling and supportive services; and

(3) Provide waivers, pursuant to a determination of good cause, of TANF program requirements to such individuals for so long as necessary in cases where compliance would make it more difficult for such individuals to escape domestic violence or unfairly penalize those who are or have been victimized by such violence or who are at risk of further domestic violence.

(b) Tribes have broad flexibility to grant waivers of TANF program requirements, but such waivers must:

(1) Identify the specific program requirement being waived;

(2) Be granted based on need as determined by an individualized assessment by a person trained in domestic violence and redeterminations no less than every six months;

(3) Be accompanied by an appropriate services plan that:

(i) Is developed in coordination with a person trained in domestic violence;

(ii) Reflects the individualized assessment and any revisions indicated by any redetermination; and

(iii) To the extent consistent with paragraph (a)(3) of this section, is designed to lead to work.

(c) If a Tribe wants us to take waivers that it grants under this section into account in deciding if it has reasonable cause for failing to meet its work participation rates or comply with the established time limit on TANF assistance, has achieved compliance or made significant progress towards achieving compliance with such requirements during a corrective compliance period, the waivers must comply with paragraph (b) of this section.

(d) We will determine that a Tribe has reasonable cause for failing to meet its work participation rates or to

comply with established time limits on assistance if—

(1) Such failures were attributable to good cause domestic violence waivers granted to victims of domestic violence;

(2) In the case of work participation rates, the Tribe provides evidence that it achieved the applicable rates except with respect to any individuals who received a domestic violence waiver of work participation requirements. In other words, the Tribe must demonstrate that it met the applicable rates when such waiver cases are removed from the calculation of work participation rate;

(3) In the case of established time limits on assistance, the Tribe provides evidence that it granted good cause domestic violence waivers to extend time limits based on the need for continued assistance due to current or past domestic violence or the risk of further domestic violence, and individuals and their families receiving assistance beyond the established time limit under such waivers do not exceed 20 percent of the total number of families receiving assistance.

(e) We may take good cause domestic violence waivers of work participation or waivers which extend the established time limits for assistance into consideration in deciding whether a Tribe has achieved compliance or made significant progress toward achieving compliance during a corrective compliance period.

(f) Tribes electing the FVO must submit the information specified at § 286.275(b)(7).

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

If an individual refuses to engage in work activities in accordance with the minimum work participation requirements specified in the approved TFAP, the Tribe must apply to the individual the penalties against individuals that were established in the approved TFAP.

§ 286.150 Can a family, with a child under age 6, be penalized because a parent refuses to work because (s)he cannot find child care?

(a) If the individual is a single custodial parent caring for a child under age six, the Tribe may not reduce or terminate assistance based on the parent's refusal to engage in required work if he or she demonstrates an inability to obtain needed child care for one or more of the following reasons:

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

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

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

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

(c) The Tribe will determine when the individual has demonstrated that he or she cannot find child care, in accordance with criteria established by the Tribe. These criteria must:

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

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

(3) Be submitted to us.

(d) The Tribal TANF agency must inform parents about:

(1) The penalty exception to the Tribal 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 Tribe's 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.

§ 286.155 May a Tribe condition eligibility for Tribal TANF assistance on assignment of child support to the Tribe?

(a) Tribes have the option to condition eligibility for Tribal TANF assistance on assignment of child support to the Tribe consistent with paragraph (b) of this section.

(b) For Tribes choosing to condition eligibility for Tribal TANF assistance on assignment of child support to the Tribe, the TFAP must address the following—

(1) Procedures for ensuring that assigned child support collections in excess of the amount of Tribal TANF assistance received by the family will not be retained by the Tribe; and

(2) How any amounts generated under an assignment and retained by the Tribe will be used to further the Tribe's TANF program, consistent with § 286.45(f).

[65 FR 8530, Feb. 18, 2000, as amended at 69 FR 16672, Mar. 30, 2004]

§ 286.160 What are the applicable time frames and procedures for submitting a Tribal Family Assistance Plan?

(a) A Tribe must submit a Tribal TANF letter of intent and/or a TFAP to the Secretary according to the following time frames:

Implementation date:	Letter of intent due to ACF and the State:	Formal plan due to ACF:	ACF notification to the State due:
January 1, February 1 or March 1.	July 1 of previous year	September 1 of previous year	October 1 of previous year.
April 1, May 1 or June 1	October 1 of previous year	December 1 of previous year	January 1 of same year.
July 1, August 1 or September 1.	January 1 of same year	March 1 of same year	April 1 of same year.
October 1, November 1 or December 1.	April 1 of same year	June 1 of same year	July 1 of same year.

(b) A Tribe that has requested and received data from the State and has resolved any issues concerning the data more than six months before its proposed implementation date is not required to submit a letter of intent.

(c) The effective date of the TFAP must be the first day of any month.

(d) The original TFAP must be sent to the appropriate ACF Regional Administrator, with a copy sent to the Division of Tribal Services, Office of Community Services, Administration for Children and Families.

(e) A Tribe that submits a TFAP or an amendment to an existing plan that cannot be approved by the Secretary will be given the opportunity to make revisions in order to make the TFAP, or an amendment, approvable.

(f) Tribes operating a consolidated Public Law 102–477 program must submit a TFAP plan to the Secretary for review and approval prior to the consolidation of the TANF program into the Public Law 102–477 plan.

§ 286.165 How is a Tribal Family Assistance Plan amended?

(a) An amendment to a TFAP is necessary if the Tribe makes any substantial changes to the plan, including those which impact an individual's eligibility for Tribal TANF services or participation requirements, or any other program design changes which alter the nature of the program.

(b) A Tribe must submit a plan amendment(s) to the Secretary no later than 30 days prior to the proposed implementation date. Proposed implementation dates shall be the first day of any month.

(c) We will promptly review and either approve or disapprove the plan amendment(s).

(d) Approved plan amendments are effective no sooner than 30 days after date of submission.

(e) A Tribe whose plan amendment is disapproved may petition for an administrative review of such disapproval under § 286.170 and may appeal our final written decision to the Departmental Appeals Board no later than 30 days from the date of the disapproval. This appeal to the Board should follow the

provisions of the rules under this subpart and those at 45 CFR part 16, where applicable.

§ 286.170 How may a Tribe petition for administrative review of disapproval of a TFAP or amendment?

(a) If, after a Tribe has been provided the opportunity to make revisions to its TFAP or amendment, the Secretary determines that the TFAP or amendment cannot be approved, a written Notice of Disapproval will be sent to the Tribe. The Notice of Disapproval will indicate the specific grounds for disapproval.

(b) A Tribe may request reconsideration of a disapproval determination by filing a written Request for Reconsideration to the Secretary within 60 days of receipt of the Notice of Disapproval. If reconsideration is not requested, the disapproval is final and the procedures under paragraph (f) of this section must be followed.

(1) The Request for Reconsideration must include—

(i) All documentation that the Tribe believes is relevant and supportive of its TFAP or amendment; and

(ii) A written response to each ground for disapproval identified in the Notice of Disapproval indicating why the Tribe believes that its TFAP or amendment conforms to the statutory and regulatory requirements for approval.

(c) Within 30 days after receipt of a Request for Reconsideration, the Secretary or designee will notify the Tribe of the date and time a hearing for the purpose of reconsideration of the Notice of Disapproval will be held. Such a hearing may be conducted by telephone conference call.

(d) A hearing conducted under § 286.170(c) must be held not less than 30 days nor more than 60 days after the date of the notice of such hearing is furnished to the Tribe, unless the Tribe agrees in writing to an extension.

(e) The Secretary or designee will make a written determination affirming, modifying, or reversing disapproval of the TFAP or amendment within 60 days after the conclusion of the hearing.

(f) If a TFAP or amendment is disapproved, the Tribe may appeal this final written decision to the Departmental Appeals Board (the Board) within 30 days after such party receives notice of determination. The party's appeal to the Board should follow the provisions of the rules under this section and those at 45 CFR part 16, where applicable.

§ 286.175 What special provisions apply in Alaska?

A Tribe in the State of Alaska that receives a TFAG must use the grant to operate a program in accordance with program requirements comparable to the requirements applicable to the State of Alaska's Temporary Assistance for Needy Families program. Comparability of programs must be established on the basis of program criteria developed by the Secretary in consultation with the State of Alaska and the Tribes in Alaska. The State of Alaska has authority to waive the program comparability requirement based on a request by an Indian tribe in the State.

§ 286.180 What is the process for developing the comparability criteria that are required in Alaska?

We will work with the Tribes in Alaska and the State of Alaska to develop an appropriate process for the development and amendment of the comparability criteria.

§ 286.185 What happens when a dispute arises between the State of Alaska and the Tribal TANF eligible entities in the State related to the comparability criteria?

(a) If a dispute arises between the State of Alaska and the Tribes in the State on any part of the comparability criteria, we will be responsible for making a final determination and notifying the State of Alaska and the Tribes in the State of the decision.

(b) Any of the parties involved may appeal our decision, in whole or in part, to the HHS Departmental Appeals Board (the Board) within 60 days after such party receives notice of determination. The party's appeal to the Board should follow the provisions of the rules under this section and those at 45 CFR part 16, where applicable.

§ 286.190 If the Secretary, the State of Alaska, or any of the Tribal TANF eligible entities in the State of Alaska want to amend the comparability criteria, what is the process for doing so?

(a) At such time that any of the above parties wish to amend the comparability document, the requesting party should submit a request to us, with a copy to the other parties, explaining the requested change(s) and supplying background information in support of the change(s).

(b) After review of the request, we will make a determination on whether or not to accept the proposed change(s).

(c) If any party wishes to appeal the decision regarding the adoption of the proposed amendment, they may appeal using the appeals process pursuant to § 286.165.

Subpart D—Accountability and Penalties

§ 286.195 What penalties will apply to Tribes?

(a) Tribes will be subject to fiscal penalties and requirements as follows:

(1) If we determine that a Tribe misused its Tribal Family Assistance Grant funds, including providing assistance beyond the Tribe's negotiated time limit under § 286.115, we will reduce the TFAG for the following fiscal year by the amount so used;

(2) If we determine that a Tribe intentionally misused its TFAG for an unallowable purpose, the TFAG for the following fiscal year will be reduced by an additional five percent;

(3) If we determine that a Tribe failed to meet the minimum work participation rate(s) established for the Tribe, the TFAG for the following fiscal year will be reduced. The amount of the reduction will depend on whether the Tribe was under a penalty for this reason in the preceding year. If not, the penalty reduction will be a maximum of five percent. If a penalty was imposed on the Tribe in the preceding year, the penalty reduction will be increased by an additional 2 percent, up to a maximum of 21 percent. In determining the penalty amount, we will take into consideration the severity of the failure and whether the reasons for the failure were increases in the unemployment rate in the TFAG service area and changes in TFAG caseload size during the fiscal year in question; and

(4) If a Tribe fails to repay a Federal loan provided under section 406 of the Act, we will reduce the TFAG for the following fiscal year by an amount equal to the outstanding loan amount plus interest.

(b) In calculating the amount of the penalty, we will add together all applicable penalty percentages, and the total is applied to the amount of the TFAG that would have been payable if no penalties were assessed against the Tribe. As a final step, we will subtract other (non-percentage) penalty amounts.

(c) When imposing the penalties in paragraph (a) of this section, we will not reduce an affected Tribe's grant by more than 25 percent. If the 25 percent limit prevents the recovery of the full penalty imposed on a Tribe during a fiscal year, we will apply the remaining amount of the penalty to the TFAG payable for the immediately succeeding fiscal year.

(1) If we reduce the TFAG payable to a Tribe for a fiscal year because of penalties that have been imposed, the Tribe must expend additional Tribal funds to replace any such reduction. The Tribe must document compliance with this provision on its TANF expenditure report.

(2) We will impose a penalty of not more than 2 percent of the amount of the TFAG on a Tribe that fails to expend additional Tribal funds to replace amounts deducted from the TFAG due to penalties. We will apply this penalty to the TFAG payable for the next succeeding fiscal year, and this penalty cannot be excused (see § 286.235).

(d) If a Tribe retrocedes the program, the Tribe will be liable for any penalties incurred for the period the program was in operation.

§ 286.200 How will we determine if Tribal Family Assistance Grant funds were misused or intentionally misused?

(a) We will use the single audit or Federal review or audit to determine if

a Tribe should be penalized for misusing Tribal Family Assistance Grant funds under §286.195(a)(1) or intentionally misusing Tribal Family Assistance Grant funds under §286.195(a)(2).

(b) If a Tribe uses the TFAG in violation of the provisions of the Act, the provisions of 45 CFR part 92, OMB Circulars A–87 and A–133, or any Federal statutes and regulations applicable to the TANF program, we will consider the funds to have been misused.

(c) The Tribe must show, to our satisfaction, that it used the funds for purposes that a reasonable person would consider to be within the purposes of the TANF program (as specified at §286.35) and the provisions listed in §286.45.

(d) We will consider the TFAG to have been intentionally misused under the following conditions:

(1) There is supporting documentation, such as Federal guidance or policy instructions, indicating that TANF funds could not be used for that purpose; or

(2) After notification that we have determined such use to be improper, the Tribe continues to use the funds in the same or similarly improper manner.

(e) If the single audit determines that a Tribe misused Federal funds in applying the negotiated time limit provisions under §286.115, the amount of the penalty for misuse will be limited to five percent of the TFAG amount.

(1) This penalty shall be in addition to the reduction specified under §286.195(a)(1).

(2) [Reserved]

§286.205 How will we determine if a Tribe fails to meet the minimum work participation rate(s)?

(a) We will use the Tribal TANF Data Reports required under §286.255 to determine if we will assess the penalty under §286.195(a)(3) for failure to meet the minimum participation rate(s) established for the Tribe.

(b) Each Tribal TANF Grantee's quarterly reports (the TANF Data Report and the Tribal TANF Financial Report) must be complete and accurate and filed by the due date. The accuracy of the reports are subject to validation by us.

(1) For a disaggregated data report, ''a complete and accurate report'' means that:

(i) The reported data accurately reflect information available to the Tribal TANF grantee in case records, financial records, and automated data systems;

(ii) The data are free from computational errors and are internally consistent (*e.g.,* items that should add to totals do so);

(iii) The Tribal TANF grantee reports data for all required elements (*i.e.,* no data are missing);

(iv) The Tribal TANF grantee provides data on all families; or

(v) If the Tribal TANF grantee opts to use sampling, the Tribal TANF grantee reports data on all families selected in a sample that meets the specification and procedures in the TANF Sampling Manual (except for families listed in error); and

(vi) Where estimates are necessary (*e.g.,* some types of assistance may require cost estimates), the Tribal TANF grantee uses reasonable methods to develop these estimates.

(2) For an aggregated data report, ''a complete and accurate report'' means that:

(i) The reported data accurately reflect information available to the Tribal TANF grantee in case records, financial records, and automated data systems;

(ii) The data are free from computational errors and are internally consistent (*e.g.,* items that should add to totals do so);

(iii) The Tribal TANF grantee reports data on all applicable elements; and

(iv) Monthly totals are unduplicated counts for all families (*e.g.,* the number of families and the number of out-of-wedlock births are unduplicated counts).

(3) For the Tribal TANF Financial Report, a ''complete and accurate report'' means that:

(i) The reported data accurately reflect information available to the Tribal TANF grantee in case records, financial records, and automated data systems;

(ii) The data are free from computational errors and are internally consistent (*e.g.*, items that should add to totals do so);

(iii) The Tribal TANF grantee reports data on all applicable elements; and

(iv) All expenditures have been made in accordance with 45 CFR part 92 and all relevant OMB circulars.

(4) We will review the data filed in the quarterly reports to determine if they meet these standards. In addition, we will use audits and reviews to verify the accuracy of the data filed by the Tribal TANF grantee.

(c) Tribal TANF grantees must maintain records to adequately support any report, in accordance with 45 CFR part 92 and all relevant OMB circulars.

(d) If we find reports so significantly incomplete or inaccurate that we seriously question whether the Tribe has met its participation rate, we may apply the penalty under § 286.195(a)(3).

§ 286.210 What is the penalty for a Tribe's failure to repay a Federal loan?

(a) If a Tribe fails to repay the amount of principal and interest due at any point under a loan agreement:

(1) The entire outstanding loan balance, plus all accumulated interest, becomes due and payable immediately; and

(2) We will reduce the TFAG payable for the immediately succeeding fiscal year quarter by the outstanding loan amount plus interest.

(b) Neither the reasonable cause provisions at § 286.225 nor the corrective compliance plan provisions at § 286.230 apply when a Tribe fails to repay a Federal loan.

§ 286.215 When are the TANF penalty provisions applicable?

(a) A Tribe may be subject to penalties, as described in § 286.195(a)(1), § 286.195(a)(2) and § 286.195(a)(4), for conduct occurring on and after the first day of implementation of the Tribe's TANF program.

(b) A Tribe may be subject to penalties, as described in § 286.195(a)(3), for conduct occurring on and after the date that is six months after the Tribe begins operating the TANF program.

(c) We will not apply the regulations retroactively. We will judge Tribal actions that occurred prior to the effective date of these rules and expenditures of funds received prior to the effective date only against a reasonable interpretation of the statutory provisions in title IV-A of the Act.

(1) To the extent that a Tribe's failure to meet the requirements of the penalty provisions is attributable to the absence of Federal rules or guidance, Tribes may qualify for reasonable cause, as discussed in § 286.225.

(2) [Reserved]

§ 286.220 What happens if a Tribe fails to meet TANF requirements?

(a) If we determine that a Tribe is subject to a penalty, we will notify the Tribe in writing. This notice will:

(1) Specify what penalty provision(s) are in issue;

(2) Specify the amount of the penalty;

(3) Specify the reason for our determination;

(4) Explain how and when the Tribe may submit a reasonable cause justification under § 286.225 and/or a corrective compliance plan under § 286.230(d) for those penalties for which reasonable cause and/or corrective compliance plan apply; and

(5) Invite the Tribe to present its arguments if it believes that the data or method we used were in error or were insufficient, or that the Tribe's actions, in the absence of Federal regulations, were based on a reasonable interpretation of the statute.

(b) Within 60 days of receipt of our written notification, the Tribe may submit a written response to us that:

(1) Demonstrates that our determination is incorrect because our data or the method we used in determining the penalty was in error or was insufficient, or that the Tribe acted prior to June 19, 2000, on a reasonable interpretation of the statute;

(2) Demonstrates that the Tribe had reasonable cause for failing to meet the requirement(s); and/or

(3) Provides a corrective compliance plan as discussed in § 286.230.

(c) If we find that the Tribe was correct and that a penalty was improperly determined, or find that a Tribe had

reasonable cause for failing to meet a requirement, we will not impose the related penalty and so notify the Tribe in writing within two weeks of such a determination.

(d) If we determine that the Tribe has not demonstrated that our original determination was incorrect or that it had reasonable cause, we will notify the Tribe of our decision in writing.

(e) If we request additional information from a Tribe, it must provide the information within thirty days of the date of our request.

§ 286.225 How may a Tribe establish reasonable cause for failing to meet a requirement that is subject to application of a penalty?

(a) We will not impose a penalty against a Tribe if it is determined that the Tribe had reasonable cause for failure to meet the requirements listed at § 286.195(a)(1), § 286.195(a)(2), or § 286.195(a)(3). The general factors a Tribe may use to claim reasonable cause include, but are not limited to, the following:

(1) Natural disasters, extreme weather conditions, and other calamities (*e.g.,* hurricanes, earthquakes, fire, and economic disasters) whose disruptive impact was so significant that the Tribe failed to meet a requirement.

(2) Formally issued Federal guidance which provided incorrect information resulting in the Tribe's failure or prior to the effective date of these regulations, guidance that was issued after a Tribe implemented the requirements of the Act based on a different, but reasonable, interpretation of the Act.

(3) Isolated, non-recurring problems of minimal impact that are not indicative of a systemic problem.

(4) Significant increases in the unemployment rate in the TFAG service area and changes in the TFAG caseload size during the fiscal year being reported.

(b) We will grant reasonable cause to a Tribe that:

(1) Clearly demonstrates that its failure to submit complete, accurate, and timely data, as required at § 286.245, for one or both of the first two quarters of FY 2000, is attributable, in significant part, to its need to divert critical system resources to Year 2000 compliance activities; and

(2) Submits complete and accurate data for the first two quarters of FY 2000 by November 15, 2000.

(c) In addition to the reasonable cause criteria specified above, a Tribe may also submit a request for a reasonable cause exemption from the requirement to meet its work participation requirements in the following situation:

(1) We will consider that a Tribe has reasonable cause if it demonstrates that its failure to meet its work participation rate(s) is attributable to its provisions with regard to domestic violence as follows:

(i) To demonstrate reasonable cause, a Tribe must provide evidence that it achieved the applicable work rates, except with respect to any individuals receiving good cause waivers of work requirements (*i.e.,* when cases with good cause waivers are removed from the calculation in § 286.85); and

(ii) A Tribe must grant good cause waivers in domestic violence cases appropriately, in accordance with the policies in the Tribe's approved Tribal Family Assistance Plan.

(2) [Reserved]

(d) In determining reasonable cause, we will consider the efforts the Tribe made to meet the requirements, as well as the duration and severity of the circumstances that led to the Tribe's failure to achieve the requirement.

(e) The burden of proof rests with the Tribe to fully explain the circumstances and events that constitute reasonable cause for its failure to meet a requirement.

(1) The Tribe must provide us with sufficient relevant information and documentation to substantiate its claim of reasonable cause.

(2) [Reserved]

§ 286.230 What if a Tribe does not have reasonable cause for failing to meet a requirement?

(a) To avoid the imposition of a penalty under § 286.195(a)(1), § 286.195(a)(2), or § 286.195(a)(3), under the following circumstances a Tribe must enter into a corrective compliance plan to correct the violation:

(1) If a Tribe does not claim reasonable cause for failing to meet a requirement; or

(2) If we found that a Tribe did not have reasonable cause.

(b) A Tribe that does not claim reasonable cause will have 60 days from receipt of the notice described in § 286.220(a) to submit its corrective compliance plan to us.

(c) A Tribe that does not demonstrate reasonable cause will have 60 days from receipt of the second notice described in § 286.220(d) to submit its corrective compliance plan to us.

(d) In its corrective compliance plan the Tribe must outline:

(1) Why it failed to meet the requirements;

(2) How it will correct the violation in a timely manner; and

(3) What actions, outcomes and time line it will use to ensure future compliance.

(e) During the 60-day period beginning with the date we receive the corrective compliance plan, we may, if necessary, consult with the Tribe on modifications to the plan.

(f) A corrective compliance plan is deemed to be accepted if we take no action to accept or reject the plan during the 60-day period that begins when the plan is received.

(g) Once a corrective compliance plan is accepted or deemed accepted, we may request reports from the Tribe or take other actions to confirm that the Tribe is carrying out the corrective actions specified in the plan.

(1) We will not impose a penalty against a Tribe with respect to any violation covered by that plan if the Tribe corrects the violation within the time frame agreed to in the plan.

(2) We must assess some or all of the penalty if the Tribe fails to correct the violation pursuant to its corrective compliance plan.

§ 286.235 What penalties cannot be excused?

(a) The penalties that cannot be excused are:

(1) The penalty for failure to repay a Federal loan issued under section 406.

(2) The penalty for failure to replace any reduction in the TFAG resulting from other penalties that have been imposed.

(b) [Reserved]

§ 286.240 How can a Tribe appeal our decision to take a penalty?

(a) We will formally notify the Tribe of a potential reduction to the Tribe's TFAG within five days after we determine that a Tribe is subject to a penalty and inform the Tribe of its right to appeal to the Departmental Appeals Board (the Board) established in the Department of Health and Human Services. Such notification will include the factual and legal basis for taking the penalty in sufficient detail for the Tribe to be able to respond in an appeal.

(b) Within 60 days of the date it receives notice of the penalty, the Tribe may file an appeal of the action, in whole or in part, to the Board.

(c) The Tribe must include all briefs and supporting documentation when it files its appeal. A copy of the appeal and any supplemental filings must be sent to the Office of General Counsel, Children, Families and Aging Division, Room 411–D, 200 Independence Avenue, SW, Washington, DC 20201.

(d) ACF must file its reply brief and supporting documentation within 45 days after receipt of the Tribe's submission under paragraph (c) of this section.

(e) The Tribe's appeal to the Board must follow the provisions of this section and those at §§ 16.2, 16.9, 16.10, and 16.13 through 16.22 of this title to the extent they are consistent with this section.

(f) The Board will consider an appeal filed by a Tribe on the basis of the documentation and briefs submitted, along with any additional information the Board may require to support a final decision. Such information may include a hearing if the Board determines that it is necessary. In deciding whether to uphold an adverse action or any portion of such action, the Board will conduct a thorough review of the issues.

(g) The filing date shall be the date materials are received by the Board in a form acceptable to it.

(h) A Tribe may obtain judicial review of a final decision by the Board by

filing an action within 90 days after the date of such decision with the district court of the United States in the judicial district where the Tribe or TFAG service area is located.

(1) The district court will review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by 5 U.S.C. 706(2). The court's review will be based on the documents and supporting data submitted to the Board.

(2) [Reserved]

(i) No reduction to the Tribe's TFAG will occur until a final disposition of the matter has been made.

Subpart E—Data Collection and Reporting Requirements

§ 286.245 What data collection and reporting requirements apply to Tribal TANF programs?

(a) Section 412(h) of the Act makes section 411 regarding data collection and reporting applicable to Tribal TANF programs. This section of the regulations explains how we will collect the information required by section 411 of the Act and information to implement section 412(c) (work participation requirements).

(b) Each Tribe must collect monthly and file quarterly data on individuals and families as follows:

(1) Disaggregated data collection and reporting requirements in this part apply to families receiving assistance and families no longer receiving assistance under the Tribal TANF program; and

(2) Aggregated data collection and reporting requirements in this part apply to families receiving, families applying for, and families no longer receiving assistance under the Tribal TANF program.

(c) Each Tribe must file in its quarterly TANF Data Report and in the quarterly TANF Financial Report the specified data elements.

(d) Each Tribe must also submit an annual report that contains specified information.

(e) Each Tribe must submit the necessary reports by the specified due dates.

§ 286.250 What definitions apply to this subpart?

(a) Except as provided in paragraph (b) of this section, the general TANF definitions at §§ 286.5 and 286.10 apply to this subpart.

(b) For data collection and reporting purposes only, ''TANF family'' means:

(1) All individuals receiving assistance as part of a family under the Tribe's TANF program; and

(2) The following additional persons living in the household, if not included under paragraph (b)(1) of this section:

(i) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(ii) Minor siblings of any child receiving assistance; and

(iii) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

§ 286.255 What quarterly reports must the Tribe submit to us?

(a) *Quarterly reports.* Each Tribe must collect on a monthly basis, and file on a quarterly basis, the data specified in the Tribal TANF Data Report and the Tribal TANF Financial Report.

(b) *Tribal TANF Data Report.* The Tribal TANF Data Report consists of three sections. Two sections contain disaggregated data elements and one section contains aggregated data elements.

(1) *TANF Data Report: Disaggregated Data—Sections one and two.* Each Tribe must file disaggregated information on families receiving TANF assistance (section one) and families no longer receiving TANF assistance (section two). These two sections specify identifying and demographic data such as the individual's Social Security Number; and information such as the type and amount of assistance received, educational level, employment status, work participation activities, citizenship status, and earned and unearned income. These reports also specify items pertaining to child care and child support. The data requested cover adults (including non-custodial parents who are participating in work activities) and children.

(2) *TANF Data Report: Aggregated Data—Section three.* Each Tribe must

file aggregated information on families receiving, applying for, and no longer receiving TANF assistance. This section of the Report asks for aggregate figures in the following areas: the total number of applications and their disposition; the total number of recipient families, adult recipients, and child recipients; the total number of births, out-of-wedlock births, and minor child heads-of-households; the total number of non-custodial parents participating in work activities; and the total amount of TANF assistance provided.

(c) *The Tribal TANF Financial Report.* Each Tribe must file quarterly expenditure data on the Tribe's use of Tribal Family Assistance Grant funds, any Tribal fund expenditures which are being substituted for TFAG funds withheld due to a penalty, and any State contributions. The report must be submitted on a form prescribed by ACF.

§ 286.260 May Tribes use sampling and electronic filing?

(a) Each Tribe may report disaggregated data on all recipient families (universal reporting) or on a sample of families selected through the use of a scientifically acceptable sampling method. The sampling method must be approved by ACF in advance of submitting reports.

(1) Tribes may not use a sample to generate the aggregated data.

(2) [Reserved]

(b) ''Scientifically acceptable sampling method'' means a probability sampling method in which every sampling unit has a known, non-zero chance to be included in the sample, and the sample size requirements are met.

(c) Each Tribe may file quarterly reports electronically, based on format specifications that we will provide. Tribes who do not have the capacity to submit reports electronically may submit quarterly reports on a disk or in hard copy.

§ 286.265 When are quarterly reports due?

(a) Upon a Tribe's initial implementation of TANF, the Tribe shall begin collecting data for the TANF Data Report as of the date that is six months after the initial effective date of its TANF program. The Tribe shall begin collecting financial data for the TANF Financial Report as of the initial effective date of its TANF program.

(b) Each Tribe must submit its TANF Data Report and TANF Financial Report within 45 days following the end of each quarter. If the 45th day falls on a weekend or on a national, State or Tribal holiday, the reports are due no later than the next business day.

§ 286.270 What happens if the Tribe does not satisfy the quarterly reporting requirements?

(a) If we determine that a Tribe has not submitted to us a complete and accurate Tribal TANF Data Report within the time limit, the Tribe risks the imposition of a penalty at § 286.205 related to the work participation rate targets since the data from the Tribal TANF Data Report is required to calculate participation rates.

(b) Non-reporting of the Tribal TANF Financial Report may give rise to a penalty under § 286.200 since this Report is used to demonstrate compliance with provisions of the Act, the provisions of 45 CFR part 92, OMB Circulars A–87 and A–133, or any Federal statutes and regulations applicable to the TANF program.

§ 286.275 What information must Tribes file annually?

(a) Each Tribal TANF grantee must file an annual report containing information on its TANF program for that year. The report may be filed as:

(1) An addendum to the fourth quarter TANF Data Report; or

(2) A separate annual report.

(b) Each Tribal TANF grantee must provide the following information on its TANF program:

(1) The Tribal TANF grantee's definition of each work activity;

(2) A description of the transitional services provided to families no longer receiving assistance due to employment; and

(3) A description of how a Tribe will reduce the amount of assistance payable to a family when an individual refuses to engage in work without good cause pursuant to § 286.145.

(4) The average monthly number of payments for child care services made

by the Tribal TANF grantee through the use of disregards, by the following types of child care providers:

(i) Licensed/regulated in-home child care;

(ii) Licensed/regulated family child care;

(iii) Licensed/regulated group home child care;

(iv) Licensed/regulated center-based child care;

(v) Legally operating (*i.e.*, no license category available in Tribal TANF grantee's locality) in-home child care provided by a nonrelative;

(vi) Legally operating (*i.e.*, no license category available in Tribal TANF grantee's locality) in-home child care provided by a relative;

(vii) Legally operating (*i.e.*, no license category available in Tribal TANF grantee's locality) family child care provided by a nonrelative;

(viii) Legally operating (*i.e.*, no license category available in Tribal TANF grantee's locality) family child care provided by a relative;

(ix) Legally operating (*i.e.*, no license category available in Tribal TANF grantee's locality) group child care provided by a nonrelative;

(x) Legally operating (*i.e.*, no license category available in Tribal TANF grantee's locality) group child care provided by a relative; and

(xi) Legally operating (*i.e.*, no license category available in Tribal TANF grantee's locality) center-based child care.

(5) A description of any nonrecurring, short-term benefits provided, including:

(i) The eligibility criteria associated with such benefits, including any restrictions on the amount, duration, or frequency of payments;

(ii) Any policies that limit such payments to families that are eligible for TANF assistance or that have the effect of delaying or suspending a family's eligibility for assistance; and

(iii) Any procedures or activities developed under the TANF program to ensure that individuals diverted from assistance receive information about, referrals to, or access to other program benefits (such as Medicaid and food stamps) that might help them make the transition from Welfare-to-Work; and

(6) A description of the procedures the Tribal TANF grantee has established and is maintaining to resolve displacement complaints, pursuant to §286.110. This description must include the name of the Tribal TANF grantee agency with the lead responsibility for administering this provision and explanations of how the Tribal TANF grantee has notified the public about these procedures and how an individual can register a complaint.

(7) Tribes electing the FVO must submit a description of the strategies and procedures in place to ensure that victims of domestic violence receive appropriate alternative services, as well as an aggregate figure for the total number of good cause domestic waivers granted.

(c) If the Tribal TANF grantee has submitted the information required in paragraph (b) of this section in the TFAP, it may meet the annual reporting requirements by reference in lieu of re-submission. Also, if the information in the annual report has not changed since the previous annual report, the Tribal TANF grantee may reference this information in lieu of re-submission.

(d) If a Tribal TANF grantee makes a substantive change in certain data elements in paragraph (b) of this section, it must file a copy of the change either with the next quarterly data report or as an amendment to its TFAP. The Tribal TANF grantee must also indicate the effective date of the change. This requirement is applicable to paragraphs (b)(1), (b)(2), and (b)(3) of this section.

§ 286.280 When are annual reports due?

(a) The annual report required by §286.275 is due 90 days after the end of the Fiscal Year which it covers.

(b) The first annual report for a Tribe must include all months of operation since the plan was approved.

§ 286.285 How do the data collection and reporting requirements affect Public Law 102–477 Tribes?

(a) A Tribe that consolidates its Tribal TANF program into a Public-Law

102–477 plan is required to comply with the TANF data collection and reporting requirements of this section.

(b) A Tribe that consolidates its Tribal TANF program into a Public-Law 102–477 plan may submit the Tribal TANF Data Reports and the Tribal TANF Financial Report to the BIA, with a copy to us.

PART 287—THE NATIVE EMPLOYMENT WORKS (NEW) PROGRAM

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AUTHORITY: 42 U.S.C. 612.

SOURCE: 65 FR 8554, Feb. 18, 2000, unless otherwise noted.

Subpart A—General NEW Provisions

§ 287.1 What does this part cover?

(a) The regulations in this part prescribe the rules for implementing section 412(a)(2) of the Social Security Act (the Act), as amended by the Personal

Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104–193) and the Balanced Budget Act of 1997 (Pub. L. 105–33).

(b) Section 412(a)(2) of the Act, as amended, authorizes the Secretary to issue grants to eligible Indian tribes to operate a program that makes work activities available to ''such population and such service area or areas as the tribe specifies.''

(c) We call this Tribal work activities program the Native Employment Works (NEW) program.

(d) These regulations specify the Tribes who are eligible to receive NEW Program funding. They also prescribe requirements for: funding; program plan development and approval; program design and operation; and data collection and reporting.

§ 287.5 What is the purpose and scope of the NEW Program?

The purpose of the NEW Program is to provide eligible Indian tribes, including Alaska Native organizations, the opportunity to provide work activities and services to their needy clients.

§ 287.10 What definitions apply to this part?

The following definitions apply to this part:

ACF means the Administration for Children and Families;

Act means the Social Security Act, unless we specify otherwise;

Alaska Native organization means an Alaska Native village, or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is eligible to operate a Federal program under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450);

Consortium means a group of Tribes working together for the same identified purpose and receiving combined NEW funding for that purpose.

Department means the Department of Health and Human Services;

Division of Tribal Services (DTS) means the unit in the Office of Community Services within the Department's Administration for Children and Families that has as its primary responsibility the administration of the Tribal family assistance program, called the Tribal Temporary Assistance for Needy Families (TANF) program, and the Tribal work program, called the Native Employment Works (NEW) program, as authorized by section 412(a);

Eligible Indian tribe means an Indian tribe, a consortium of Indian tribes, or an Alaska Native organization that operated a Tribal Job Opportunities and Basic Skills Training (JOBS) program in fiscal year 1995 under section 482(i) of the Act, as in effect during that fiscal year;

Fiscal year means the 12-month period beginning on October 1 of the preceding calendar year and ending on September 30;

FY means fiscal year;

Indian, Indian tribe, and Tribal organization—The terms Indian, Indian tribe, and Tribal organization have the meaning given such terms by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b);

Native Employment Works Program means the Tribal work program under section 412(a)(2) of the Act;

NEW means the Native Employment Works Program;

Program Year means, for the NEW Program, the 12-month period beginning on July 1 of the calendar year and ending on June 30;

PRWORA means the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193;

Public Law 102–477 refers to the Indian Employment, Training and Related Services Demonstration Act of 1992, whose purpose is to provide for the integration of employment, training and related services to improve the effectiveness of those services;

Secretary means the Secretary of the Department of Health and Human Services;

State means, except as otherwise specifically provided, the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa;

TANF means the Temporary Assistance for Needy Families Program;

Temporary Assistance for Needy Families Program means a family assistance grant program operated either by a

Tribe under section 412(a)(1) of the Act or by a State under section 403 of the Act;

Tribal TANF program means a Tribal program subject to the requirements of section 412 of the Act which is funded by TANF funds on behalf of eligible families;

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

Subpart B—Eligible Tribes

§ 287.15 Which Tribes are eligible to apply for NEW Program grants?

To be considered for a NEW Program grant, a Tribe must be an ''eligible Indian tribe.'' An eligible Indian tribe is an Indian tribe or Alaska Native organization that operated a Job Opportunities and Basic Skills Training (JOBS) program in FY 1995.

§ 287.20 May a Public Law 102–477 Tribe operate a NEW Program?

Yes, if the Tribe is an ''eligible Indian tribe.''

§ 287.25 May Tribes form a consortium to operate a NEW Program?

(a) Yes, as long as each Tribe forming the consortium is an ''eligible Indian tribe.''

(b) To apply for and conduct a NEW Program, the consortium must submit a plan to ACF.

(c) The plan must include a copy of a resolution from each Tribe indicating its membership in the consortium and authorizing the consortium to act on its behalf in regard to administering a NEW Program. If an Alaska Native organization forms a consortium, submission of the required resolution from the governing board of the organization is sufficient to satisfy this requirement.

§ 287.30 If an eligible consortium breaks up, what happens to the NEW Program grant?

(a) If a consortium should break up or any Tribe withdraws from a consortium, it will be necessary to allocate unobligated funds and future grants among the Tribes that were members of the consortium, if each individual Tribe obtains ACF approval to continue to operate a NEW Program.

(b) Each withdrawing Tribe must submit to ACF a copy of the Tribal resolution that confirms the Tribe's decision to withdraw from the consortium and indicates whether the Tribe elects to continue its participation in the program.

(c) The allocation can be accomplished by any method that is recommended and agreed to by the leaders of those Tribes.

(d) If no recommendation is made by the Tribal leaders or no agreement is reached, the Secretary will determine the allocation of funds based on the best available data.

Subpart C—NEW Program Funding

§ 287.35 What grant amounts are available under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) for the NEW Program?

Each Tribe shall receive a grant in an amount equal to the amount received by the Tribe in FY 1994 under section 482(i) of the Act (as in effect during FY 1994).

§ 287.40 Are there any matching funds requirements with the NEW Program?

No, Tribal grantees are not required to match NEW Federal funds.

§ 287.45 How can NEW Program funds be used?

(a) NEW grants are for making work activities available to such population as the Tribe specifies.

(b) NEW funds may be used for work activities as defined by the Tribal grantee.

(c) Work activities may include supportive services necessary for assisting

NEW Program participants in preparing for, obtaining, and/or retaining employment.

§ 287.50 What are the funding periods for NEW Program grants?

NEW Program funds are for operation of the NEW Program for a 12-month period from July 1 through June 30.

§ 287.55 What time frames and guidelines apply regarding the obligation and liquidation periods for NEW Program funds?

(a) NEW Program funds provided for a FY are for use during the period July 1 through June 30 and must be obligated no later than June 30. Carry forward of an unobligated balance of NEW funds is not permitted. A NEW fund balance that is unobligated as of June 30 will be returned to the Federal government through the issuance of a negative grant award. Unobligated funds are to be reported on the SF–269A that Tribes must submit within 30 days after the funding period, *i.e.*, no later than July 30. This report is called the interim financial report.

(b) A Tribe must liquidate all obligations incurred under the NEW Program grant awards not later than one year after the end of the obligation period, *i.e.*, no later than June 30 of the following FY. An unliquidated balance at the close of the liquidation period will be returned to the Federal government through the issuance of a negative grant award. Unliquidated obligations are to be reported on the SF–269A that Tribes must submit within 90 days after the liquidation period, *i.e.*, by September 28. This report is called the final financial report.

§ 287.60 Are there additional financial reporting and auditing requirements?

(a) The reporting of expenditures are generally subject to the requirements of 45 CFR 92.41.

(b) NEW Program funds and activities are subject to the audit requirement of the Single Audit Act of 1984 (45 CFR 92.26).

(c) A NEW Program grantee must comply with all laws, regulations, and Departmental policies that govern submission of financial reports by recipients of Federal grants.

(d) Improper expenditure claims under this program are subject to disallowance.

(e) If a grantee disagrees with the Agency's decision to disallow funds, the grantee may follow the appeal procedures at 45 CFR Part 16.

§ 287.65 What OMB circulars apply to the NEW Program?

NEW Programs are subject to the following OMB circulars where applicable: A–87 ''Cost Principles for State, Local, and Indian Tribal Governments,'' A–122 ''Cost Principles for Non-Profit Organizations,'' and A–133 ''Audits of States and Local Governments.''

Subpart D—Plan Requirements

§ 287.70 What are the plan requirements for the NEW Program?

(a) To apply for and conduct a NEW Program, a Tribe must submit a plan to ACF.

(b) The plan must identify the agency responsible for administering the NEW Program and include a description of the following:

(1) Population to be served;

(2) Service area;

(3) Client services;

(4) Work activities to be provided;

(5) Supportive and job retention services to be provided;

(6) Anticipated program outcomes, and the measures the Tribe will use to determine them; and

(7) Coordination activities conducted and expected to be conducted with other programs and agencies.

(c) The plan must also describe how the Tribe will deliver work activities and services.

(d) The format is left to the discretion of each NEW grantee.

§ 287.75 When does the plan become effective?

NEW plans, which are three-year plans, become effective when approved by the Secretary. The plans are usually operative the beginning of a NEW Program year, July 1.

§ 287.80 What is the process for plan review and approval?

(a) A Tribe must submit its plan to the ACF Regional Office, with a copy sent to the Division of Tribal Services, Office of Community Services, Administration for Children and Families, Attention: Native Employment Works Team.

(b) To receive funding by the beginning of the NEW Program year (July 1), a Tribe must submit its plan by the established due date.

(c) ACF will complete its review of the plan within 45 days of receipt.

(d) After the plan review has occurred, if the plan is approvable, ACF will approve the plan, certifying that the plan meets all necessary requirements. If the plan is not approvable, the Regional Office will notify the Tribe regarding additional action needed for plan approval.

§ 287.85 How is a NEW plan amended?

(a) If a Tribe makes substantial changes in its NEW Program plan or operations, it must submit an amendment for the changed section(s) of the plan to the appropriate ACF Regional Office for review and approval, with a copy sent to the Division of Tribal Services, Office of Community Services, Administration of Children and Families, Attention: Native Employment Works Team. The review will verify consistency with section 412(a)(2) of the Act.

(b) A substantial change is a change in the agency administering the NEW Program, a change in the designated service area and/or population, a change in work activities provided or a change in performance standards.

(c) A substantial change in plan content or operations must be submitted to us no later than 45 days prior to the proposed implementation date.

(d) ACF will complete the review of the amended plan within 45 days of receipt.

(e) An amended plan becomes effective when it is approved by the Secretary.

§ 287.90 Are Tribes required to complete any certifications?

Yes. A Tribe must include in its NEW Program plan the following four certifications and any additional certifications that the Secretary prescribes in the planning guidance: Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions; Certification Regarding Drug Free Workplace Requirements for Grantees Other Than Individuals; Certification Regarding Tobacco Smoke, and Assurances—Non-Construction Programs.

§ 287.95 May a Tribe operate both a NEW Program and a Tribal TANF program?

Yes. However, the Tribe must adhere to statutory and regulatory requirements of the individual programs.

§ 287.100 Must a Tribe that operates both NEW and Tribal TANF programs submit two separate plans?

Yes. Separate plans are needed to reflect different program and plan requirements as specified in the statute and in plan guidance documents issued by the Secretary for each program.

Subpart E—Program Design and Operations

§ 287.105 What provisions of the Social Security Act govern the NEW Program?

NEW Programs are subject only to those requirements at section 412(a)(2) of the Act, as amended by PRWORA, titled ''Grants for Indian Tribes that Received JOBS Funds.''

§ 287.110 Who is eligible to receive assistance or services under a Tribe's NEW Program?

(a) A Tribe must specify in its NEW Program plan the population and service area to be served. In cases where a Tribe designates a service area for its NEW Program that is different from its Bureau of Indian Affairs (BIA) service area, an explanation must be provided.

(b) A Tribe must include eligibility criteria in its plan and establish internal operating procedures that clearly specify the criteria to be used to establish an individual's eligibility for NEW services. The eligibility criteria must be equitable.

§ 287.115 When a NEW grantee serves TANF recipients, what coordination should take place with the Tribal or State TANF agency?

The Tribe should coordinate with the Tribal or State TANF agency on:

(a) Eligibility criteria for TANF recipients to receive NEW Program services;

(b) Exchange of case file information;

(c) Changes in client status that result in a loss of cash assistance, food stamps, Medicaid or other medical coverage;

(d) Identification of work activities that may meet Tribal or State work participation requirements;

(e) Resources available from the Tribal or State TANF agency to ensure efficient delivery of benefits to the designated service population;

(f) Policy for exclusions from the TANF program (*e.g.*, criteria for exemptions and sanctions);

(g) Termination of TANF assistance when time limits become effective;

(h) Use of contracts in delivery of TANF services;

(i) Prevention of duplication of services to assure the maximum level of services is available to participants;

(j) Procedures to ensure that costs of other program services for which welfare recipients are eligible are not shifted to the NEW Program; and

(k) Reporting data for TANF quarterly and annual reports.

§ 287.120 What work activities may be provided under the NEW Program?

(a) The Tribe will determine what work activities are to be provided.

(b) Examples of allowable activities include, but are not limited to: Educational activities, alternative education, post secondary education, job readiness activity, job search, job skills training, training and employment activities, job development and placement, on-the-job training (OJT), employer work incentives related to OJT, community work experience, innovative approaches with the private sector, pre/post employment services, job retention services, unsubsidized employment, subsidized public or private sector employment, community service programs, entrepreneurial training, management training, job creation activities, economic development leading to job creation, and traditional subsistence activities.

§ 287.125 What supportive and job retention services may be provided under the NEW Program?

The NEW Program grantee may provide, pay for or reimburse expenses for supportive services, including but not limited to transportation, child care, traditional or cultural work related services, and other work or family sufficiency related expenses that the Tribe determines are necessary to enable a client to participate in the program.

§ 287.130 Can NEW Program activities include job market assessments, job creation and economic development activities?

(a) A Tribe may conduct job market assessments within its NEW Program. These might include the following:

(1) Consultation with the Tribe's economic development staff or leadership that oversees the economic and employment planning for the Tribe;

(2) Consultation with any local employment and training program, Workforce Development Boards, One-Stop Centers, or planning agencies that have undertaken economic and employment studies for the area in which the Tribe resides;

(3) Communication with any training, research, or educational agencies that have produced economic development plans for the area that may or may not include the Tribe; and

(4) Coordination with any State or local governmental agency pursuing economic development options for the area.

(b) The Tribe's NEW Program may engage in activities and provide services to create jobs and economic opportunities for its participants. These services should be congruous with any available local job market assessments and may include the following:

(1) Tribal Employment Rights Office (TERO) services;

(2) Job creation projects and services;

(3) Self-employment;

(4) Self-initiated training that leads a client to improved job opportunities and employment;

(5) Economic development projects that lead to jobs, improved employment opportunities, or self-sufficiency of program participants;

(6) Surveys to collect information regarding client characteristics; and

(7) Any other development and job creation activities that enable Tribal members to increase their economic independence and reduce their need for benefit assistance and supportive services.

§ 287.135 Are bonuses, rewards and stipends allowed for participants in the NEW Program?

Bonuses, stipends, and performance awards are allowed. However, such allowances may be counted as income in determining eligibility for some TANF or other need-based programs.

§ 287.140 With whom should the Tribe coordinate in the operation of its work activities and services?

The administration of work activities and services provided under the NEW Program must ensure that appropriate coordination and cooperation is maintained with the following entities operating in the same service areas as the Tribe's NEW Program:

(a) State, local and Tribal TANF agencies, and agencies operating employment and training programs;

(b) Any other agency whose programs impact the service population of the NEW Program, including employment, training, placement, education, child care, and social programs.

§ 287.145 What measures will be used to determine NEW Program outcomes?

Each grantee must develop its own performance standards and measures to ensure accountability for its program results. A Tribe's program plan must identify planned program outcomes and the measures the Tribe will use to determine them. ACF will compare planned outcomes against outcomes reported in the Tribe's annual reports.

Subpart F—Data Collection and Reporting Requirements

§ 287.150 Are there data collection requirements for Tribes that operate a NEW Program?

(a) Yes, the Tribal agency or organization responsible for operation of a NEW Program must collect data and submit reports as specified by the Secretary.

(b) A NEW Program grantee must establish and maintain efficient and effective record-keeping systems to provide accurate and timely information regarding its service population.

(c) Required reports will provide Tribes, the Secretary, Congress, and other interested parties with information to assess the success of the NEW Program in meeting its goals. Also, the reports will provide the Secretary with information for monitoring program and financial operations.

§ 287.155 What reports must a grantee file with the Department about its NEW Program operations?

(a) Each eligible Tribe must submit an annual report that provides a summary of program operations.

(b) The Secretary has developed an annual operations report (OMB clearance number 0970–0174). The report specifies the data elements on which grantees must report, including elements that provide information regarding the number and characteristics of those served by the NEW Program. This report is in addition to any financial reports required by law, regulations, or Departmental policies.

(c) The report form and instructions are distributed through ACF's program instruction system.

(d) The program operations report will be due September 28th, 90 days after the close of the NEW Program year.

§ 287.160 What reports must a grantee file regarding financial operations?

(a) Grantees will use SF–269A to make an annual financial report of expenditures for program activities and services.

(b) Two annual financial reports will be due to the appropriate Regional Office. The interim SF–269A is due no

later than July 30, *i.e.*, 30 days after the end of the obligation period. The final SF–269A is due 90 days after the end of the liquidation period.

§ 287.165 What are the data collection and reporting requirements for Public Law 102–477 Tribes that consolidate a NEW Program with other programs?

(a) Currently, there is a single reporting system for all programs operated by a Tribe under Public Law 102–477. This system includes a program report, consisting of a narrative report, a statistical form, and a financial report.

(1) The program report is required annually and submitted to BIA, as the lead Federal agency and shared with DHHS and DOL.

(2) The financial report is submitted on a SF–269A to BIA.

(b) Information regarding program and financial operations of a NEW Program administered by a Public Law 102–477 Tribe will be captured through the existing Public Law 102–477 reporting system.

§ 287.170 What are the data collection and reporting requirements for a Tribe that operates both the NEW Program and a Tribal TANF program?

Tribes operating both NEW and Tribal TANF programs must adhere to the separate reporting requirements for each program. NEW Program reporting requirements are specified in §§ 287.150–287.170.

PARTS 288–299 [RESERVED]